THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 28 June 2023

in Case No. 2021-45-01

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa,

with the participation of

Inese Nikuļceva and Elizabete Krivcova, the authorised representatives of the Applicant – twenty members of the 13th convocation of the *Saeima*: Valērijs Agešins, Edgars Kucins, Boriss Cilevičs, Ivans Klementjevs, Artūrs Rubiks, Jānis Tutins, Vladimirs Nikonovs, Igors Pimenovs, Ivars Zariņš, Regīna Ločmele, Inga Goldberga, Ivans Ribakovs, Vitālijs Orlovs, Jānis Krišāns, Andrejs Klementjevs, Ļubova Švecova, Jānis Urbanovičs, Sergejs Dolgopolovs, Nikolajs Kabanovs, and Karina Sprūde,

Sandis Bērtaitis, the authorised representative of the *Saeima*, the institution which issued the contested act,

Alise Ziemele and Laura Stutāte, secretaries of the court hearing,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 3 of Section 17 (1) and Section 28 of the Constitutional Court Law,

in Riga, at the court hearing on May 16, 17, 18 and 30 of 2023, with the participants in the case present, examined the case

"On Compliance of the Third, Fourth and Fifth Part of Section 56 of the Law "On Higher Education Institutions" with Articles 105, 112 and 113 of the *Satversme* of the Republic of Latvia".

The Facts

1. From 1 January 2019 until 30 April 2021, Section 56 of the law "On Higher Education Institutions" was in force in the following wording:

(1) Studies in a higher education institution and college shall take place in accordance with the study programmes which have been developed, approved and licensed in accordance with the procedures prescribed by this Law. Study programmes shall be implemented in full-time and part-time studies.

(2) This law shall not regulate the content of studies and the requirements to be brought forward in examinations which are related to medicine, sports, arts, police, border guard, fire-fighting and rescue, probation, penitentiary work, national defence, and other specific areas of activities of the relevant higher education institution or college. These requirements shall be set by the constitution of the respective higher education institution or the statute of the respective college.

(3) The study programmes of higher education institutions and colleges shall be implemented in the official language. The use of foreign languages in the implementation of study programmes shall be possible only in the following cases

1) A study programme may be implemented in the official languages of the European Union, which foreign students master in Latvia, and study programmes, which are implemented in the framework of cooperation envisaged in programmes of the European Union and international agreements. For foreign students the acquisition of the official language shall be included in the compulsory scope of the study course if studies in Latvia are expected to last longer than six months or exceed 20 credit points;

2) no more than one-fifth of the amount of credit points of the study programme may be implemented in the official languages of the European Union,

taking into account that this part may not include the final and state examinations, as well as writing of the qualification, bachelor's or master's paper;

3) in study programmes, the implementation of which in a foreign language is necessary for the achievement of the objectives of the study programme in accordance with the Latvian Classification of Education in the following groups of educational programmes: language and culture studies, language programmes. The licencing commissions shall decide on the conformity of the study programme with the groups of educational programmes;

4) joint study programmes may be implemented in the official languages of the European Union.

(4) A higher education institution or a college is entitled to implement preparatory courses in order to prepare foreigners for studies in study programmes of the higher education institution or college.

On 11 June 2020, the Constitutional Court delivered its judgement in case No. 2019-12-01 "On compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Higher Education Institutions" with Article 1, Article 105 and Article 112 of the *Satversme* of the Republic of Latvia" (hereafter also – the Constitutional Court's Judgement of 2020), by which it recognised Section 56 (3) of the law "On Higher Education Institutions" (in the wording that was in force from 1 January 2019 until 30 April 2021), insofar it applied to private higher education institutions, their faculty members and students, as being incompatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) and valid as of 1 May 2021.

On 8 April 2021, the *Saeima* adopted the law "Amendments to the Law "On Higher Education Institutions"", which entered into force on 1 May 2021 (hereafter – Amendments to the Law "On Higher Education Institutions" of 8 April 2021), and expressed Section 56 of the law "On Higher Education Institutions" in the following wording:

(1) Studies in a higher education institution and college shall take place in accordance with the study programmes which have been developed, approved and

licensed in accordance with the procedures prescribed by this Law. Study programmes shall be implemented in full-time and part-time studies.

(2) A higher education institution or a college shall determine in its internal legal acts the content of studies and the requirements to be brought forward in examinations which are related to medicine, sports, arts, police, border guard, fire-fighting and rescue, probation, penitentiary work, national defence, and other specific areas of activities of the relevant higher education institution or college, insofar as it is not in contradiction with the requirements of this Law and other laws and regulations.

(3) The study programmes of higher education institutions and colleges shall be implemented in the official language. In a study programme which is implemented in the official language, not more than one-fifth of the credit point amount of the study programme may be implemented in other official languages of the European Union, taking into account that final and State examinations as well as the writing of a qualification paper, bachelor or master's thesis may not be included in this part.

(4) Study programmes may be implemented in the official languages of the European Union in the following cases:

1) if it is laid down in international agreements or within the scope of cooperation provided for in European Union programmes;

2) if all study programmes which are part of the same thematic area of education as the study programme to be implemented in the official language of the European Union have received a good or excellent evaluation in the accreditation process of the study field;

3) if they are joint study programmes.

(5) A study programme, including a joint study programme, may be implemented in any of the official languages of the European Union or another foreign language if it is necessary for the achievement of the objectives of the study programme in accordance with the Latvian Classification of Education in the following groups of educational programmes: language and culture studies, language programmes. In such case, all study programmes should have received a

good or excellent evaluation in the accreditation process of the study field. The Higher Education Quality Commission shall decide on the conformity of the study programme with the groups of educational programmes.

(6) A higher education institution or a college is entitled to implement preparatory courses in order to prepare entrants for studies in study programmes of the higher education institution or college.

(7) For foreign students the acquisition of the official language shall be included in the study course compulsory amount if studies in Latvia are expected to be longer than six months or exceed 20 credit points."

On 15 September 2022, the *Saeima* adopted the law "Amendments to the Law "On Higher Education Institutions", which entered into force on 11 October 2022 (hereafter – Amendments of 15 September 2022 to the Law "On Higher Education Institutions"), and deleted from Section 56 (3) of the law "On Higher Education Institutions" the words "and colleges", expressing this section in the following wording:

"The study programmes of higher education institutions shall be implemented in the official language. In a study programme which is implemented in the official language, not more than one-fifth of the credit point amount of the study programme may be implemented in other official languages of the European Union, taking into account that final and State examinations as well as the writing of a qualification paper, bachelor or master's thesis may not be included in this part."

2. The Applicant – twenty members of the 13th convocation of the *Saeima* (hereafter – the Applicant) – holds that the third part of Section 56 of the law "On Higher Education Institutions" (in the wording that was in force from 1 May 2021 until 10 October 2022), the fourth and the fifth part (hereafter – the contested provisions) are incompatible with Article 105, Article 112 and Article 113 of the *Satversme*.

The Applicant holds that the contested provisions, by envisaging general prohibition to provide higher education services in foreign languages, restrict the

rights of Latvia's higher education institutions to freedom of establishment. Allegedly, the contested provisions hinder the competitiveness of Latvia's institutions of higher education on the international level. The founders of a higher education institution are said to be entitled to benefit from the investments placed in the material technical base and personnel of the higher education institution. Distance-learning courses have become a rapidly developing sector; the contested provisions, however, significantly restrict the possibilities of Latvia's higher education institutions to participate in this global competition because, prior to that, they have to go through lengthy processes of verification, implementing study programmes in Latvian in appropriate quality. It is also not possible to attract foreign lecturers and start implementing study programmes in a foreign language in order to reinforce the offer of these study programmes in Latvian and receive a good or excellent evaluation.

Likewise, it is contended that the contested provisions restrict also the possibilities of higher education institutions of the EU Member States to provide higher education services in Latvia. Although the rules with respect to higher education institutions of Latvia and other Members States are the same, actually, the contested provisions create advantages for Latvia's higher education institutions because, substantially, higher education institutions of other Member States have to create new services from resources that are available in Latvia. Higher education institutions, willing to implement independently their education programme, have the possibility either to wait until the State of Latvia concludes an international agreement with the respective Member State or request the *Saeima* to adopt a special law in favour of the respective higher education institution; however, both these options are said to be entirely dependent on the political will of the State of Latvia. Thus, the contested provisions are said to restrict also the freedom of establishment and the freedom to provide services, guaranteed in Article 49 and Article 56 of The Treaty on the Functioning of the European Union, as well as the right to property, included in Article 105 of the *Satversme*.

Allegedly, the restriction on the right to property had not been established by a law, adopted in due procedure, as because of the harried legislative process

there had not been enough time to examine alternative measures for reaching the legitimate aim and the compliance of the contested provisions with the provisions of international and the European Union law. The Applicant holds that the *Saeima* has disregarded the Constitutional Court's Judgement of 2020.

The Applicant acknowledges that the contested provisions have a legitimate aim –strengthening the official language as qualitative language of education and science; however, the restriction is said to be unsuitable for reaching this aim. Allegedly, only systemic and consistent policy of the official language could reach the legitimate aim; however, the legislator has envisaged narrower possibilities for using foreign languages in higher education, compared to general education. Moreover, the contested provisions set out that mediocre and poor higher education may be provided only in the official language, whereas good and excellent one – also in another official language of the European Union. Thus, the aim of strengthening the position of the official language as a competitive language of education and high-level science is not reached. It is maintained that alternative measures for reaching the legitimate aim exist, for example, a higher education institution could be granted the right to implement study programmes in foreign languages if an equivalent programme also in the official language was ensured.

Allegedly, the contested provisions restrict also the autonomy of higher education institutions, included in Article 112 and Article 113 of the *Satversme*, and the related academic freedom of faculty members and students. The contested provisions are said to restrict also the rights of higher education institutions to decide on their academic activities and strategy, as well as cooperation with other higher education institutions. A field of study should be made good or excellent, by using only Latvian forces, and only then study programmes in the official languages of the European Union may be offered. Thus, the possibility to implement a strategy, pursuant to which foreign faculty members are attracted to improve quality, is excluded. It is contended that the contested provisions also limit the possibilities of faculty members to develop and teach study courses in a foreign language, as well as their possibilities to cooperate with foreign colleagues in implementing study courses and programmes. Likewise, the contested provisions

restrict students' right to choose such study programmes that are implemented also in foreign languages. Allegedly, neither had this restriction on fundamental rights been established by a law, adopted in due procedure, and it is not suitable for reaching the legitimate aim. Moreover, there are alternative measures for reaching the legitimate aim. Thus, for example, a larger proportion of foreign languages could be allowed on higher levels of studies or in some areas.

At the court hearing, the Applicant's authorised representatives repeated the reasoning set out in the application and, additionally, requested reviewing also compliance of the contested provisions with Article 105 of the *Satversme*, in conjunction with its Article 106. Likewise, it was underscored that higher education institutions themselves, with the framework of their autonomy, should decide on the language, in which their study programmes are implemented. Moreover, the contested provision disregards the rights of ethnic minorities to study in their own language.

3. The institution, which issued the contested act, – **the *Saeima*** – holds that the contested provisions are compatible with Article 105, Article 112 and Article 113 of the *Satversme.*

With respect to compliance of the contested provisions with Article 112 and Article 113 of the *Satversme*, the *Saeima* notes: solely the fact that the draft law had been submitted to the *Saeima* by the Education, Culture and Science Committee of the *Saeima* (hereafter – the Committee) and not by the Cabinet does not mean that the principle of good legislation had been violated. Likewise, there are no grounds for ascertaining that the enforcement of the Constitutional Court's Judgement of 2020 had begun only when the Committee submitted the respective draft law to the *Saeima* for examination. Prior to that, elaboration of the draft law had been ongoing both at the Ministry of Education and Science and the Committee.

Allegedly, the legitimate aims of the restriction are protection of other persons' rights and of the democratic state system. The contested provisions are said to facilitate the use of the official language in higher education, to improve

students' proficiency in the language, as well as to strengthen the role of Latvian in science and, thus, cultivate the use of the Latvian language in various branches of science. The *Saeima* holds that the chosen measures are suitable for reaching the legitimate aim. Contrary to the statements included in the application, such procedure for quality assessment has been integrated into the system of higher education that implementation of a low quality study programme would not be allowed at all. Likewise, the State's positive obligation to facilitate the use of the official language in all stages of education should be taken into account. Cultivation and development of the official language is said to be a task that follows from the higher education institution's duty to act in public interests.

The *Saeima* is of the opinion that there are no measures that would be less restrictive on fundamental rights and as effective. The restriction on fundamental rights, established by the contested provisions, is said to facilitate the use of the official language in higher education and to strengthen the role of the Latvian language in science. Latvia, being a Members State of the European Union, supports consolidation of the European cultural space. Therefore, implementation of studies only in the official language and other official languages of the European Union rather than in any other foreign language is said to be admissible.

The adverse consequences, caused to a person as the result of the restriction on fundamental rights, are said to not outweigh the benefit that society gains through this restriction. The State should ensure that the potential of the Latvian language as the language of science is not decreased, and, at the same time, the need to reinforce the involvement of Latvia's higher education and science in international circulation should be taken into consideration. By balancing these interests, the legislator has set out that the basic language for implementing studies is the Latvian language; however, in certain cases it may be also another official language of the European Union or another foreign language.

At the court hearing, the authorised representative of the *Saeima* reiterated the arguments set out in the *Saeima's* written reply and noted, in addition, that the contested provisions did not restrict the right to property, included in Article 105 of the *Satversme.* Allegedly, the Applicant had not expressed objections related to

the fact that the contested provisions would restrict such rights of higher education institutions that had already been granted to them. Moreover, the contested provisions do not deprive higher education institutions of the right to operate in the market of higher education. Likewise, the *Saeima* pointed out that the contested provisions had been adopted in conjunction with other provisions that envisage gradual transition to education in the official language. Hence, there have been repeated and prolonged discussions of these issues in society and in the sector of education.

4. The summoned person – **the Ministry of Education and Science** – holds that the contested provisions are compatible with Article 105, Article 112 and Article 114 of the *Satversme*.

Allegedly, in the course of drafting the contested provisions, the legislator had consulted with representatives of the sector who had participated in the Committee's sitting, and the measures chosen by the legislator are said to be suitable for reaching the legitimate aim. The same criteria regarding implementation and accreditation of study programmes should be applied both to state and private higher education institutions, thus, also the rules on implementing study programmes in the official language should be the same. Likewise, the Ministry does not uphold the statement made in the application that it is admissible that higher education in the Latvian language is of lower quality compared to higher education implemented in a foreign language. In general, the system of education seeks to ensure that only qualitative education can be obtained at higher education institutions.

Part of the alternative measures, referred to in the application, substantially, cannot be deemed to be alternative, whereas other measures would not reach the legitimate aim in the same quality. The Ministry notes that, for example, the possibility to implement study programmes in foreign languages and the related obligation to ensure an equal programme in the official language would cause fragmentation of study programmes and the workload of faculty members, as well as increase in costs, moreover, would not facilitate competitive remuneration.

At the court hearing, the authorised representatives of the Ministry of Education and Science noted that discussions on internationalisation of higher education were continuous and, thus, it could not be asserted that discussions on implementing study programmes in the official language had not taken place. It should be taken into account that, at the time when the legislator had to draft the contested provisions, the Ministry, parallel to it, had to prepare several sizeable draft laws. Allegedly, the contested provisions allow rather extensive use of foreign languages; however, it is limited by the demand in the labour market.

5. The summoned person – **the Ministry of Justice** – holds that the contested provisions comply with Article 105, Article 112 and Article 113 of the *Satversme*.

The restriction on fundamental rights had been established by a law, adopted in due procedure. The content of the contested provisions had not formed suddenly and unexpectedly since numerous discussions and exchanges of opinion had taken place. The restriction is said to have legitimate aims – protection of the democratic system and of other persons' rights, and it is directed at reinforcing the central element of the nation state – the official language. Likewise, the proportionality principle had been complied with. The Ministry of Justice holds that the contested provisions facilitate the use of the official language in higher education, improving the proficiency in the official language and reinforcing its role in science. If other solutions were chosen, the use of Latvian in higher education would decrease and the legitimate aims would not be reached in the same quality. The Ministry holds that the public benefit, provided by the contested provisions, outweighs the restriction of persons' rights, if such was established. The Latvian language as a uniting element is said to be the foundation of societal consolidation.

At the court hearing, the authorised representative of the Ministry of Justice noted: the fact that the Ministry was not involved in the procedure for adopting the contested provisions was a rare occasion; however, this does not mean that the

principle of good legislation had been violated. Allegedly, the contested provisions pertain to a specific sector.

6. The summoned person – **the Ombudsman** – holds that the contested provisions are incompatible with Article 105, Article 112 and Article 113 of the *Satversme.*

Allegedly, the restriction on fundamental rights had not been established by a law, adopted in due procedure, because the principle of good legislation had been violated. The proposals, submitted for the draft law, had not been carefully discussed, and the draft law had been elaborated in haste. In the process of legislation, the discussions, actually, had been on whether the draft law should be recognised as being urgent, rather than on alternative solutions. However, the Ombudsman is of the opinion that the legislator had to examine the alterative measures, referred to in the Constitutional Court's Judgement of 2020. Moreover, also the applicability of the quality criterion, introduced by the contested provisions, as the only measure had to be discussed. The assertion made by the Ministry of Education and Science that the contested provisions are one of the best alternative measures, *per se*, is said to be an insufficient argument. Likewise, society's participation and discussions with experts of the sector have not been ensured.

The Ombudsman holds that violations made in the legislative process are substantial because the legislator has not assessed the alternative measures, has not discussed the proposals properly, has not ensured society's participation and discussions with experts of the sector. The discussion of proposals should be reasoned and weighed, in particular, if public involvement had been insufficient, the adopted legal provisions had not been previously approved by the Cabinet and such an important element of higher education as language use is affected. Moreover, the haste creates an impression of carelessness and, thus, undermines trust in the state power in general.

At the court hearing, the authorised representative of the Ombudsman's Office underscored: even if the Ministry of Education and Science, in the

framework of various processes, has examined issues related to the language, in which study programmes are implemented, this does not release the legislator from the obligation to conduct its own assessment. Moreover, the Ombudsman has not gained confirmation that the contested provisions and issues included therein had been examined in these processes.

7. The summoned person – **the Council of Higher Education** – holds that the regulation, included in the contested provisions, places disproportionate restrictions on the autonomy and academic freedom of higher education institutions and does not protect the role of the Latvian language in higher education. The contested provisions are said to be founded on a contradictory assumption that poorer quality is admissible in higher education that is implemented in Latvian compared to higher education implemented in a foreign language.

The role of the official language in higher education should be reinforced not by restrictive legal provisions but by positive coercive instruments and remote management. In Estonia, all full time students who study in Estonian receive state financing.

At the court hearing, the authorised representative of the Council of Higher Education noted that the quality of a higher education institution was much broader than a study programme. It is said to include also research and knowledge transfer in society. Allegedly, higher education institutions are reinforcing the role of the official language not only in the framework of study programmes but also by holding cultural events. The Council of Higher Education objects to the application of the requirement to receive a good or excellent evaluation of the entire thematic area of education or field of studies, because sometimes there are plans to close certain programmes but they must be continued to ensure the students' right to complete the specific programme. The quality of such study programmes would no longer reach the required assessment.

8. The summoned person – **the Council of Rectors** – holds that the contested provisions had been adopted in non-compliant legislative process.

The draft law had not been properly coordinated with other ministries, institutions and non-governmental organisations because the Ministry of Education and Science had not been putting it forward for examination by the Cabinet. It is said to be inadmissible that the Constitutional Court's judgement is enforced in hasty legislative process.

The Council of Rectors holds that the requirement to receive a good or excellent evaluation is disproportionate because it is set not only for those study programmes that are to be implemented in a foreign language but for all study programmes that fall within one thematic area of education or field of studies. Fields of studies and thematic areas of education can comprise very different study programmes of various sectors. Likewise, regulatory enactments do not envisage the possibility to retain the right to implement study programmes in foreign languages if, during accreditation, one of the programmes does not receive an excellent or good evaluation.

At the court hearing, the authorised representative of the Council of Rectors pointed out: although representatives of higher education institutions had participated in the committee's sitting, the formal proceedings had denied full-fledged discussions regarding alternative solutions. Likewise, application of the requirement to receive a good or excellent evaluation for the entire thematic area or field of studies is said to be disproportional because it hinders a higher education institution from launching new study programmes. Allegedly, it is not easy to achieve the necessary level of quality of new study programmes in order not to lose the right to implement study programmes in foreign languages.

9. The summoned person – **the Latvian Association of Universities** – holds that the requirement, included in the contested provisions, for all study programmes, belonging to one thematic area of education, to receive a good or excellent evaluation is incompatible with Article 113 of the *Satversme*.

The requirement to receive a good or excellent evaluation has been unfoundedly expanded to apply to the entire field of studies. The prohibition to implement study programmes in other official languages of the European Union or in other foreign languages if all programmes have not received a good or excellent evaluation is said to be contrary to the autonomy of higher education institutions and to create obstacles for the functioning of higher education institutions. However, the Latvian Association of Universities holds that the restriction, pursuant to which study programmes may be implemented only in the official languages of the European Union and, thus, other foreign languages are excluded, should be retained because it allows implementing study programmes in English, which has been the international working language for a long time. The Association is of the opinion that alternative measures had not been examined in the process of adopting the contested provisions.

10. The summoned person – the Association of Private Higher Education Institutions – holds that the contested provisions are incompatible with Article 105, Article 112 and Article 113 of the *Satversme.*

The *Saeima* had not examined alternative measures and did not consult with specialists of the sector. The contested provisions have not been properly justified by suitable research conducted by the sectoral experts and are incompatible with the requirements regarding internationalisation of study process, in compliance with the Bologna Process. The Ministry of Education and Science also has not examined alternative measures and has not heard the Association as the representative of private higher education institutions. Thus, the principle of good legislation had been violated.

It is alleged that, likewise, the contested provisions place disproportional restrictions on the rights of higher education institutions to property and freedom of establishment. The Association of Private Higher Education Institutions is of the opinion that the number of students in Latvian higher education institutions will decrease considerably, and this condition not only will restrict significantly the commercial interests of higher education institutions but also, in general, will

have negative impact on the ability of Latvian higher education institutions to compete in the European Union and will hinder the development of Latvian economy. Allegedly, in the context of national development, aims of education are linked to economic growth and development of the State's competitiveness and only after this – to the sustainability of the Latvian language.

It is contended that the contested provisions place disproportional restrictions on the autonomy of higher education institutions and academic freedom, included in Article 112 and Article 113 of the *Satversme*. The pre-condition that a good or excellent evaluation should be received in accreditation is said to be an essential obstacle for foreign higher education institutions to enter the Latvian marker. The exclusive right, granted to two private higher education institutions, to implement study programmes entirely in the official languages of the European Union, is said to prove that less restrictive measures for reaching the legitimate aim exist. Likewise, a requirement for the students to pass the Latvian language examination could be an alternative measures; however, the possibility to master the Latvian language should be ensured to them at the same time.

At the court hearing, the authorised representative of the Association of Private Higher Education Institutions noted that the legislator prohibited higher education institutions from planning their operations in the long-term. Moreover, there are other ways to ensure protection for the official language – every higher education institution has elaborated a strategy for cultivating the official language.

11. The summoned person – ***Dr. habil. philol.*** **Ina Druviete** – holds that the contested provisions comply with Article 105, Article 112 and Article 113 of the *Satversme*.

Allegedly, the contested provisions comply with the right to property. Contrary to the statement made in the application, the concept of internationalisation includes not only implementation of study programmes in foreign languages but also mobility, sharing of know-how, knowledge transfer, uniform quality criteria. Likewise, internationalisation is said to be only one factor in the competitiveness of the national system of higher education. Moreover,

currently, the concept of inclusive multilingualism is becoming established in the academic community, highlighting, in particular, the place and role of national languages. In the application, the competitiveness of Latvian higher education institutions is said to be unfoundedly linked to foreign languages.

It would be worthwhile for the legislator to review the need to link acquisition of education in the official languages of the European Union with a good or excellent evaluation of study programmes that are implemented in Latvian. Parallel study programmes in the Latvian language and in the official language of the European Union are not always necessary. Programmes intended especially for foreigners is said to be one of the possibilities for attracting more extensively foreign students and faculty members. Likewise, certain deficiencies in the regulation on two higher education institutions, which function on the basis of special laws, can be discerned.

Higher education is said to be public good, which ensures not only opportunities for individual careers but also growth of the entire state. The official language has to compete with two languages – Russian and English. Therefore, the free market principles are not applicable and legal regulation is needed. Both state and private higher education institutions issue State-recognised diplomas, therefore, the State has the right and the obligation to define rules on implementing study programmes, *inter alia*, the language in which study programmes are implemented.

Allegedly, the contested provisions comply also with Article 112 and Article 113 of the *Satversme*. Ina Druviete does not subscribe to the statement that the contested provisions would deny faculty members the possibility to cooperate with foreign colleagues in implementing study programmes and points out that international cooperation is one of the requirements set for licencing and accrediting programmes. The primary objective of higher education as public good is raising intelligentsia and preparing specialists for its own state. These specialists must meet certain requirements of professional qualification, and high proficiency in the official language is one of them. The legislator has examined alternatives for ensuring the use of the official language in the area of higher education. Several

of the alternatives, referred to in the application, would be contrary to the status of the official language.

At the court hearing, Ina Druviete pointed out that the issue of the language, in which study programmes are implemented, is not of particular importance in the accreditation procedure. The quality criteria "good" or "excellent", defined in the contested provisions, on the basis of which the right to implement study programmes in foreign languages should be granted, indeed, are said to be not the most successful solution.

12. The summoned person – ***D. M. soc.*** **Aigars Rostovskis** – holds that the contested provisions are incompatible with Article 112 and Article 113 of the *Satversme*.

The principle of good legislation had been violated in the process of adopting the contested provisions because higher education institutions had not been consulted with. No substantial amendments had been introduced by the Amendments of 8 April 2021 to the law "On Higher Education Institutions" because higher education institutions are still denied the possibility to implement study programmes in foreign languages. The condition, which allows implementing a study programme in a foreign language only if the study programmes, belonging to one thematic area, have received a good or excellent evaluation does not provide an actual possibility for implementing study programmes in foreign languages. Such restriction, in fact, prohibits from launching study programmes in foreign languages if another study programme, belonging to the same field of study and which is scheduled to be closed, has been assessed as being mediocre.

13. The summoned person –Ilga Šuplinska, the former Minister for Education and Science – points out: although a working group for enforcing the Constitutional Court's Judgement of 2020 was not established, the language issues could be made relevant as part of other processes. At the time when the respective Constitutional Court's judgement was delivered, the reform of the higher

education governance, as well as matters related to Covid-19 infection had been the priority for the Ministry of Education and Science. Likewise, the conceptual report "On Introducing a New Model of Doctoral Studies in Latvia" had been drafted, in the framework of which also issues of language had been discussed. Within the Ministry of Education and Science, a platform always had been provided to which representatives of higher education institutions, upon their own initiative, could submit proposals related to issues of language and enforcement of the Constitutional Court's Judgement of 2020.

Ilga Šuplinska is of the opinion that the legislator must determine the use of the official language in higher education by taking into account that Latvian is a small language, Latvia's demographic, geopolitical situation and history also should be taken into consideration. The quality criteria had been integrated into the contested provisions because the quality of higher education should be improved and foreign students, to whom poor quality services cannot be offered, need to be attracted.

14. The summoned person –Reinis Znotiņš, the former Parliamentary Secretary of the Ministry of Education and Science, – points out that representatives of higher education institutions had had the possibility to express their opinion. Discussions on the language, in which study programmes are implemented, had been held in various formats, *inter alia*, as undocumented and informal discussions.

Reinis Znotiņš holds that the use of foreign languages in higher education should not be opposed to the Latvian language. Such foreign languages as English are said to be necessary for the development of science. All study programmes should strive for excellence. Low-quality education is an obstacle for attracting foreign students. Discussions are still continuing as to how exactly the quality of education should be measured.

The Findings

15. The compliance of several provisions of the law "On Higher Education Institutions" with several provisions of the *Satversme* has been contested in the case. Therefore, the Constitutional Court needs, first and foremost, determine the most effective approach to reviewing the constitutionality of the contested provisions.

15.1. Section 56 (3) of the law "On Higher Education", in the wording that was in force from 1 May 2021 until 10 October 2022, provided that study programmes were implemented in the official language; however, no more than one-fifth of the amount of credit points of the study programme could be implemented in other official languages of the European Union. Whereas the fourth and the fifth part of this section defined cases when study programmes could be implemented in another official language of the European Union and the fifth part, in turn, regulated the use of foreign languages in groups of education programmes: language and culture studies, language programmes.

Thus, the contested provisions set out regulation on the language, in which study programmes must be implemented. Both contested provisions are interconnected, therefore, the Constitutional Court will review the constitutionality of the contested provisions as united legal regulation. Only those aspects of review that pertain only to one of the contested provisions will be indicated separately.

15.2. The contested provisions are applicable to both state and private higher education institutions, as well as colleges.

The reasoning, provided in the application, applies to higher education institutions and the Applicant requests review of two issues: firstly, the possibility of state and private higher education institutions, within the framework of their autonomy, to implement accredited study programmes in foreign languages, the academic freedom of faculty members of higher education institutions to develop and teach study courses in foreign languages, as well as students' academic freedom to choose accredited study programmes in foreign languages; secondly, the right to establishment of private higher education institutions through

implementing study programmes in foreign languages. The *Saeima* and the summoned persons also have provided their opinions on the compliance of the contested provisions with the *Satversme*, insofar they are applicable to higher education institutions and related persons.

The Constitutional Court has recognised that state and private institutions of higher education belong to a united area of higher education, *inter alia*, issue State-recognised diplomas and are involved in reinforcing the official language (*see Judgement by the Constitutional Court of 9 February 2023 in Case No. 2020-33-01, Para 35.1*.). Likewise, the Constitutional Court has recognised that the autonomy of higher education institutions and academic freedom is applicable to both state and private higher education institutions (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 26*).

Thus, in the present case, the constitutionality of the contested provisions should be reviewed insofar they apply to the autonomy of state and private higher education institutions and the academic freedom of the related faculty members and students and insofar they apply to the right of establishment of private higher education institutions.

15.3. The application comprises a request to recognise the contested provisions as being incompatible with Article 105, Article 112 and Article 113 of the *Satversme*. At the court hearing, the authorised representative of the Applicant requested reviewing the compatibility of the contested provisions also with Article 106 of the *Satversme*.

In view of the content of the contested provisions, the facts of the case and the reasoning provided by the Applicant regarding the alleged incompatibility of the contested provisions with the *Satversme*, it can be concluded that the basic matter in the case relates to the autonomy of higher education institutions, included in Article 112 and Article 113 of the *Satversme*, and the academic freedom of related faculty members and students with respect to the language, in which study programmes are implemented.

The Constitutional Court has recognised that higher education combines harmoniously both the process of education and scientific activities and research.

These aspects of higher education cannot be separated. Thus, if provisions that pertain to higher education are contested in a case, their compliance with Article 112 of the *Satversme* should be examined in conjunction with Article 113 of the *Satversme* (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 24*).

The Constitutional Court will review, first and foremost, the compatibility of the contested provisions as united legal regulation, insofar it applies to higher education institutions, faculty members and students thereof, with Article 112 of the *Satversme*, in conjunction with Article 113.

16. The Applicant holds that the contested provisions restrict the fundamental rights of several subjects – higher education institutions, their faculty members and students. The Constitutional Court will examine separately whether fundamental rights of each of the subjects referred to are restricted.

16.1. The Applicant holds that the contested provisions restrict the right of higher education institutions to decide on their academic activities and strategy, as well as their cooperation with other higher education institutions.

Article 112 of the *Satversme*, in conjunction with Article 113, includes the autonomy of higher education institutions. Its purpose is to protect higher education against political and economic interference and to ensure self-governance of the academic community (*see: Academic Freedom and Institutional Autonomy: Commitments Must Be Followed by Action. Joint Statement by ALLEA, EUA and Science Europe, April 2019. Available: eua.eu*). The autonomy of higher education institutions cannot be examined in isolation from academic freedom. Within the framework of their autonomy, higher education institutions may, insofar it complies with the general legal principles and the *Satversme*, make decisions, free from external pressure, to ensure their academic freedom. The autonomy of higher education institutions includes the right of a higher education institution to develop its institutional strategy, by defining its aims and mission, as well as ways for reaching and implementing them, *inter alia*, choosing the

language, in which study programmes are implemented (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 25.2.*).

The contested provisions restrict the rights of higher education institutions to make decisions on their academic activities and strategy, as well as their cooperation with other higher education institutions. Namely, they restrict the freedom of higher education institutions to create study programmes to be implemented in foreign languages because this can be done only in certain amount and in specified cases.

Thus, the contested provisions, by restricting the possibilities of higher education institutions to create and implement study programmes in foreign languages, restrict the autonomy of higher education institutions.

16.2. It is noted in the application that the contested provisions restrict the academic freedom of faculty members to develop and teach study courses of higher education institutions in foreign languages, as well as their possibilities to cooperate with their foreign colleagues in the implementation of study courses and programmes.

Academic freedom is one of the aspects of the right to education and freedom of scientific creativity, included in Article 112 of the *Satversme*, in conjunction with Article 113 (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 25.1.*). Academic freedom is essential for ensuring qualitative education and research (*see: State of Play of Academic Freedom in the EU Member States: Overview of de facto Trends and Developments. European Parliamentary Research Service, March 2023, p. 4. Available: europarl.europa.eu*). The concept of academic freedom should be understood broadly and it comprises the freedom to disseminate information, engage in research, share knowledge, as well as express one's views and opinions (*see Judgement by the Court of Justice of the European Union of 6 October 2020 in Case C-66/18 "Commission/Hungary (Enseignement supérieur)", Para 225 and 226; see also Judgement by the European Court of Human Rights of 27 May 2014 "Mustafa Erdoğan and others v. Turkey", Applications No. 346/04, etc., Para 40*).

The academic freedom of faculty members includes the freedom to teach, *inter alia*, the right to choose what will be taught and what kind of teaching method will be used (*see: Vrielink J., Lemmens P., Parmentier S., Academic Freedom as a Fundamental Right. Procedia – Social and Behavioral Sciences, 2011, Vol. 13, pp. 124–125*). Pedagogical work cannot be separated from scientific research (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 29.1.*). Academic freedom is to be linked with the right of faculty members to freely conduct, both individually and collectively, research in the areas of their interest, to disseminate outcomes of such research and other knowledge, to share ideas and express their opinion, without succumbing to the pressure of certain doctrines, also within the framework of study process, e.g., by conducting classes and advising scientific research work (*compare, see Judgement by the Constitutional Court of 7 June 2019 in Case No. 2018-15-01, Para 11.3 , and Judgement of 11 June 2020 in Case No. 2019-12-01, Para 25.1.*).

The contested provisions do not limit the faculty members' possibilities to conduct research and share ideas in foreign languages; however, by restricting the possibilities for higher education institutions to create and implement study programmes in foreign languages, the possibilities for the faculty members of higher education institutions to participate in implementation of study programmes in foreign languages, *inter alia,* to cooperate with foreign colleagues, are impacted. By regulating the language, in which study programmes are implemented, the academic freedom of faculty members is restricted, *inter alia*, the freedom to choose the language in which to communicate with students in the study process. The Constitutional Court has recognised previously that the restriction to develop and teach study courses in foreign languages should be recognised as a restriction of faculty members' academic freedom, included in Article 112 of the *Satversme*, in conjunction with Article 113 (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 29.1.*).

Thus, the contested provisions restrict the academic freedom of faculty members of higher education institutions, i.e., the freedom to develop and teach study courses in foreign languages.

16.3. The Applicant holds that the contested provisions restrict also students' right to choose such study programmes that are implemented in foreign languages.

Academic freedom, included in Article 112 of the *Satversme*, in conjunction with Article 113, requires protecting science and education from censorship, allowing students to exercise their freedom of expression in the context of academic work. Academic freedom comprises students' rights to engage in scientific creativity and choose fields of studies and programmes, within the framework of the system of education, established by the State (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 25.1*.).

The contested provisions set out that study programmes should be implemented in the official language, except for the cases envisaged in these provisions when implementation of study programmes in foreign languages is admissible. Thus, the contested provisions influence students' possibilities to study in study programmes to be implemented in foreign languages, after completion of which the higher education institution issues a State-recognised diploma for obtaining higher education. However, the Constitutional Court already has recognised that students' right to demand accreditation of a study programme to be implemented in a foreign language of their choice and to obtain a State-recognised diploma of higher education for successful completion of such a study programme does not follow from Article 112 of the *Satversme*, in conjunction with Article 113 (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 29.2*.). Therefore, the contested provisions do not restrict the academic freedom of students at higher education institutions.

Thus, the contested provisions restrict the autonomy of higher education institutions and the academic freedom of related faculty members, included in Article 112 of the *Satversme*, in conjunction with Article 113.

17. In reviewing the constitutionality of a restriction on fundamental rights, it should be verified, first and foremost, whether the restriction has been established by a law, adopted in due procedure. A restriction on fundamental rights

should be established in such legislative procedure that complies with the principles of good legislation (*see Judgement by the Constitutional Court of 29 September 2022 in Case No. 2022-08-01, Para 13*).

17.1. In assessing whether a restriction on fundamental rights had been established by a law, adopted in due procedure, it should be verified whether the law has been adopted, promulgated and is publicly accessible in accordance with statutory requirements and whether it has been worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and foresee the consequences of application thereof.

The contested provisions were adopted on 8 April 2021, were promulgated on 26 April 2021 in the official journal "Latvijas Vēstnesis" No. 79A and entered into force on 1 May 2021 (*see information in the database of draft laws regarding draft law No. 1019/Lp13 "Amendments to the Law "On Higher Education Institutions"". Available: saeima.lv*). The Constitutional Court has no doubts that the contested provisions have been adopted and promulgated in the procedure defined in the *Satversme* and the Rules of Procedure of the *Saeima* and are also available in accordance with statutory requirements. Likewise, the Constitutional Court does not doubt that the contested provisions have been worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and foresee the consequences of application thereof.

17.2. The Applicant holds that the legislator, in the course of adopting the contested provisions, has violated the principle of good legislation. It is alleged that the legislative process had been hurried and that the legislator had not enforced the Constitutional Court's Judgement of 2020 and had not examined alternative solutions. Likewise, the legislator had not ensured discussions with representatives of the sector and society, as well as had not assessed compliance of the contested provisions with Latvia's international commitments. Several summoned persons also expressed a similar opinion (*see Opinions of the Ombudsman, the Council of Rectors, the Association of Private Higher Education Institutions and Aigars Rostovskis, Case Materials, Vol. 2, pp. 76–80, 100–101,103–104 and 132–133*).

The *Saeima*, in turn, notes that the legislative process had complied with the principle of good legislation. Allegedly, the contested provisions had been adopted in conjunction with other provisions, aimed at implementing a reform, i.e., transition to education in the official language, and issues related to the official language had been discussed within the sector and society for a long time. The Ministry of Education and Science and the Ministry of Justice also hold that the principle of good legislation had been respected.

17.2.1. Article 85 of the *Satversme* grants to the Constitutional Court exclusive jurisdiction to recognise laws and other acts or parts thereof as being void. It follows from this article that the Constitutional Court's judgement has a generally binding effect and is mandatory for everyone, *inter alia*, also the legislator. In a democratic state governed by the rule of law, constitutional bodies have mutual respect for one another, and a situation where the Constitutional Court's judgement is not enforced or is enforced only formally would be inadmissible. The principle of good legislation requires the legislator to review the constitutionality of a restriction on fundamental rights, taking into account the findings, expressed in the Constitutional Court's judgements. In particular, the legislator must take into consideration those judgements by the Constitutional Court, in which the respective matter already has been examined and the specific legal provisions have been recognised as being incompatible with the *Satversme*.

By the Constitutional Court's Judgement of 2020, the previously valid legal regulation on the language for implementing study programmes was recognised as being incompatible with the *Satversme*. It was concluded in the judgement that the legislator had not considered the possibilities of using other measures, less restrictive upon persons' rights, to reach the legitimate aim (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 35*).

Pursuant to the principle of good legislation, the legislator must examine the measures that are less restrictive upon a person's rights for reaching the legitimate aim, referred to in the Constitutional Court's judgement. If the legislator, in assessing the alternative measures pointed out by the Constitutional

Court, recognises another solution as being more suitable, it has the right to choose it, within the framework of its discretion, providing reasoning for this choice.

17.2.1.1. It was recognised in the Constitutional Court's Judgement of 2020 that one of the alternative measures for reaching the legitimate aim that would infringe less upon the autonomy of higher education institutions and the academic freedom of related faculty members would be the following: to grant the right to implement study programmes in foreign languages to those higher education institutions that meet certain quality criteria (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 35.1.*).

Para 2 of Section 56 (4) of the law "On Higher Education Institutions" provides that study programmes may be implemented in the official languages of the European Union if all study programmes which are part of the same thematic area of education as the study programme to be implemented in the official language of the European Union have received a good or excellent evaluation in the accreditation process of the study field. Thus, the legislator has set in the contested provisions meeting quality criteria as a pre-condition for the right to implement study programmes in the official languages of the European Union.

However, the Constitutional Court draws attention to the fact that, in the Constitutional Court's Judgement of 2020, the quality criteria had been recognised as a measure that would restrict the autonomy of higher education institutions and the academic freedom of faculty members to a lesser extent. Although, within the accreditation process, each study programme is assessed individually, the legislator has applied the requirement to receive a good or excellent evaluation of all study programmes, belonging to the same thematic area of education. Thus, the right to implement study programmes in the official languages of the European Union depends also on whether all other study programmes belonging to the particular thematic area of education have received the respective evaluation. However, very diverse study programmes may belong to one thematic area of education (*see the Cabinet Regulation of 13 June 2017 No. 322 "Regulation on the Classification of Education in Latvia"*). The contested provisions might influence the way in which higher education institutions, within the framework of

their autonomy, make decisions on study programmes. When creating new study programmes or planning to close a study programme, higher education institutions must take into account that these programmes might not receive a good or excellent evaluation and, thus, it will be impossible to implement other study programmes, belonging to the same thematic area of education, in the official languages of the European Union (*see Opinions of the Council of Higher Education, the Council of Rectors and Ilga Šuplinksa in Case Materials, Vol. 4, pp. 15–16, 36 and 101*).

The legislator has set the requirement to receive a good or excellent evaluation in accreditation also for study programmes belonging to the groups of education of language and culture studies, language programmes. Namely, Section 56 (5) of the law "On Higher Education Institutions" provides that study programmes, including joint study programmes in the following groups of educational programmes: language and culture studies, language programmes, may be implemented in the official languages of the European Union or another foreign language if all study programmes have received a good or excellent evaluation in the accreditation process of the study field.

The proposal to apply the criteria "good" or "excellent" also to language and culture studies was submitted by Members of the *Saeima* to the Committee before the second reading of the draft law. To substantiate this proposal, it was noted: if we are moving towards quality then also these study programmes should meet certain quality criteria (*see Audio recording of the sitting of the Education, Culture and Science Committee of the Saeima on 6 April 2021, Case Materials, Vol. 2)* The Constitutional Court notes that language and culture studies cannot be mastered by studying only in the official language. This group of education programmes is special because it includes mastering official languages of the European Union or other foreign languages. However, Section 56 (5) of the law "On Higher Education Institutions" prohibits implementation of such study programmes in foreign languages if any study programme, belonging to the study field, has received an evaluation lower than "good" or "excellent".

The Constitutional Court concludes that, in the contested provisions, the legislator has set the meeting of the quality criteria as a pre-condition for the right

to implement study programmes in the official languages of the European Union or in other foreign languages but has not assessed whether these criteria would not restrict disproportionally the autonomy of higher education institutions and the academic freedom of related faculty members.

Moreover, the legislator had to take into account the finding made in the Constitutional Court's Judgement of 2020 that the legal regulation on the language for implementing study programmes reinforces the role of the official language in higher education (*see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 32*). Namely, the legislator had to assess how the contested provisions protected the official language in higher education.

At the court hearing, the authorised representatives of the Ministry of Education and Science noted: the contested provisions envisage extensive possibilities for using foreign languages and, essentially, allow implementation of all study programmes in foreign languages because the majority of study programmes receive a good or excellent evaluation at accreditation. Allegedly, higher education institutions continue implementing study programmes in the official language in accordance with the demand in the Latvian labour market. However, the Constitutional Court draws attention to the fact that legal regulation which pertains to the official language should envisage safeguards that are compatible with the constitutional level of the official language. The use of official language in higher education cannot be made dependent only on the labour market demand. Such approach is not directed towards sustainable protection of the official language.

Moreover, the contested provisions contrast the quality of higher education and the official language, allowing implementation in foreign languages only such study programmes that have received a good or excellent evaluation, but in the official language – also such that have been evaluated as "mediocre". Thus, the possibilities to receive qualitative higher education in the official language might be jeopardised and also the academic and scientific development of the official language might become endangered. In ensuring quality and development of higher education, the official language should be seen as a priority. The

Constitutional Court notes: the experience of other states proves that various solutions can be used in higher education institutions to protect the official language (*see, for example: Pruvot E. B., Estermann T., Popkhadze N., University Autonomy in Europe IV: The Scorecard 2023. Brussels: European University Association, pp. 50.–51. Available: eua.eu*).

Thus, the legislator has not assessed whether the contested provisions will not impose disproportionate restrictions on the autonomy of higher education institutions and the related academic freedom of faculty members, at the same time protecting the official language in higher education.

17.2.1.2. It is noted in the Constitutional Court's Judgement of 2020 that also exemptions from the general regulation could be a measure that restricts a person's fundamental rights to a lesser extent, for example, in some branches of science or studies of a certain level.

Section 56 (3) of the law "On Higher Education Institutions" (in the wording that was in force from 1 May 2021 until 10 October 2022), as well as the previous wording of this provision, which already was reviewed in the Constitutional Court's Judgement of 2020, determined the use of the official language and foreign languages in equal proportions in all branches of science and on all levels of studies.

At the court hearing, Ilga Šuplinska, the former Minister for Education and Science, confirmed that possible exemptions in some branches were not examined. With respect to certain levels of studies, the authorised representatives of the Ministry of Education and Science noted that this issue had been examined, in drafting the conceptual report "On Introducing a New Model of Doctoral Studies in Latvia". Namely, in the course of drafting this report, the proposal regarding possibilities of using foreign languages on the level of doctoral studies had not been supported by representatives of higher education institutions. However, at the court hearing, the authorised representative of the Council of Rectors noted that the higher education institutions had not objected to there being different legal regulation on different levels of studies regarding the language, in which study programmes are implemented, but to the proposal to set the obligation to write the

doctoral thesis in English. Moreover, the Constitutional Court noted that the aforementioned report could not substitute the legislator's assessment of the use of foreign languages in studies of a certain level, it pertains only to the doctoral-level studies and is not directed at the legal regulation on the language, in which study programmes are implemented.

Thus, the Constitutional Court is not assured that the legislator had examined whether the proportion of foreign language use in some branches of science or on certain levels of studies could be different.

17.2.1.3. The time period set in the Constitutional Court's Judgement of 2020 for drafting the new legal regulation exceeded ten months. On the basis of a proposal, expressed in the letter by the Ministry of Education and Science, the Committee submitted the draft law to the *Saeima* approximately one month before this term expired. The draft law was examined in urgent procedure so that the legal provisions would enter into force before the previous legal regulation would become void in accordance with the Constitutional Court's Judgement of 2020.

It is noted in the annotation to the draft law that consultations had not been held in the course of elaborating the draft law (*see Initial impact assessment (annotation) to the draft law "Amendments to the Law "On Higher Education Institutions" (No. 1019/Lp13)*). At the Committee's sitting, several Members of the *Saeima* noted that the process of legislation had been hasty and an extended discussion regarding the enforcement of the Constitutional Court's Judgement of 2020 and alternative measures had not taken place. The Ministry of Education and Science admitted, at the court hearing, that the work on preparing the draft law should have been commenced much earlier to hold consultations with representatives of the sector. Likewise, the Legal Bureau of the *Saeima* also noted that it had not gained assurance that all alternative measures, referred to in Constitutional Court's Judgement of 2020, had been weighed (*see Audio recording of the Saeima Education, Culture and Science Committee's sittings of 23 and 24 March, 6 and 7 April of 2021, Case Materials, Vol. 2).*

The Constitutional Court does not gain confirmation that the legislator, in examining the alternative measures referred to in the Constitutional Court's

Judgement of 2020, had identified, to the extent possible, the stakeholders' opinions.

The Constitutional Court concluded that the legislator had not duly examined the alternative measures referred to in the Constitutional Court's Judgement of 2020.

17.2.2. The Applicant holds that, in drafting the legal regulation that determines the language in which study programmes are implemented, the legislator had to take into account also the rights of ethnic minorities.

The Constitutional Court has recognised that the legislator has the obligation to review the compliance of legal provisions, envisaged in a draft law, with superior legal provisions, *inter alia*, the *Satversme* and provisions of international law (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 17*).

Recognition of and respect for the rights of ethnic minorities are included in Article 114 of the *Satversme*. The State has the obligation to respect and to guarantee the rights of persons belonging to ethnic minorities to retain and develop their identity, retaining and developing the minority language, as well as ethnic and cultural singularity (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.2.*). Education is essential for safeguarding the identity of an ethnic minority, basically formed by language and culture. Legal regulation, which, in groups of education programmes – language and culture studies, language programmes – envisages exception from the obligation to implement study programmes in the official language, ensures the possibilities to implement study programmes aimed at preserving the identity of ethnic minorities (*see Judgement by the Constitutional Court of 9 February 2023 in Case No. 2020-33-01, Para 34*).

The content of rights, included in Article 114 of the *Satversme*, should be revealed in conjunction with international legal documents in the area of minority rights protection, binding upon Latvia, *inter alia*, the Framework Convention for the Protection of National Minorities (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2., and Judgement of*

19 June 2020 in Case No. 2019-20-03, Para 18.3.). The Framework Convention for the Protection of National Minorities regulates, *inter alia*, the ethnic minorities' right to education. The Advisory Committee on the Framework Convention for the Protection of National Minorities has noted that the concept of education in the Convention should be understood broadly, comprising also higher education (*see: Advisory Committee on the Framework Convention for the Protection of National Minorities: Commentary on Education under the Framework Convention for the Protection of National Minorities (Thematic Commentary No. 1). 2 March 2006, ACFC/25DOC(2006)002, p. 13; see also.: Advisory Committee on the Framework Convention for the Protection of National Minorities: The Language Rights of Persons Belonging to National Minorities under the Framework Convention (Thematic Commentary No. 3). 5 July 2012, ACFC/44DOC(2012)001 rev, para. 75*).

The contested provisions allow the possibility to implement study programmes in certain groups of education – language and culture studies, language programmes – in the official languages of the European Union or in other foreign languages only if all study programmes belonging to the respective field of studies have received a good or excellent evaluation. Thus, the contested provisions may have an impact upon the protection of ethnic minorities' rights.

Therefore, the legislator, in adopting the contested provisions, had to review the compliance thereof with Article 114 of the *Satversme* and the Framework Convention for the Protection of National Minorities. Materials in the case do not allow ascertaining that the legislator had conducted such review.

17.2.3. In view of the statement made in Para 17.2. of this judgement, the legislator has not reviewed the alternative measures, referred to in the Constitutional Court's Judgement of 2020, which would be less restrictive upon a person's fundamental rights, balancing these with the need to protect the official language in higher education. Thus, the legislator has not ensured due enforcement of the Constitutional Court's Judgement of 2020. Likewise, the legislator has not examined compliance of the contested provisions with Article 114 of the *Satversme* and the Framework Convention for the Protection of National

Minorities. Thus, a substantial violation of the principle of good legislation has been made.

Hence, the restriction on fundamental rights, included in the contested provisions, has not been established by a law, adopted in due procedure, and the contested provisions, insofar they apply to higher education institutions and faculty members thereof, are incompatible with Article 112 and Article 113 of the *Satversme*.

18. Upon establishing incompatibility of the contested provisions with even one article of the *Satversme*, they must be recognised as being unlawful and void. Since the contested provisions, insofar they apply to higher education institutions and faculty members thereof, have been recognised as being incompatible with Article 112 and Article 113 of the *Satversme*, assessment of the compatibility of these provisions with Article 105 and Article 106 of the *Satversme* is no longer necessary.

19. By the Amendments of 15 September 2022 to the law "On Higher Education Institutions", the legislator deleted from Section 56 (3) (in the wording that was in force from 1 May 2021 until 10 October 2022) the words "and colleges". Thus, Section 56 (3) of the law "On Higher Education Institutions" (in the wording that has been in force since 11 October 2022) no longer regulates implementation of study programmes in state colleges; however, continues to regulate implementation of study programmes in state higher education institutions.

Section 56 (3) of the law "On Higher Education Institutions", in the wording that has been in force since 11 October 2022, has not been contested before the Constitutional Court. The Constitutional Court must examine whether it is necessary and admissible to broaden the limits of the claim in the present case and examine also the matter whether Section 56 (3) of the law "On Higher Education Institutions", in the wording that has been in force since 11 October 2022, complies with Article 112 and Article 113 of the *Satversme*.

The Constitutional Court must ensure comprehensive and unbiased examination of a case, as well as procedural economy and existence of such legal system, in which legal regulation, which is incompatible with the *Satversme*, is eliminated as completely as possible (*see Judgement by the Constitutional Court of 22 December 2017 in Case No. 2017-08-01, Para 10*). To conclude whether in a particular case the limits of the claim can and should be extended, it must be established whether the provision, with respect to which the claim is being extended, is so closely linked to the contested provision that it can be reviewed in the framework of the same reasoning and is necessary for adjudicating the particular case (*compare, see Judgement by the Constitutional Court of 12 February 2015 in Case No. 2014-08-03, Para 9.2.*).

Section 56 (3) of the law "On Higher Education Institutions", in the wording that has been in force from 1 May 2021 until 10 October 2022 and in the wording that has been in force since 11 October 2022, envisages identical legal regulation on the language, in which study programmes of higher education institutions are implemented. Therefore, the findings made in this judgement regarding the incompatibility of Section 56 (3) of the law "On Higher Education Institutions"(in the wording that has been in force from 1 May 2021 until 10 October 2022), insofar it applies to higher education institutions and faculty members thereof, with Article 112 and Article 113 of the *Satversme*, are appliable also to Section 56 (3) of the law "On Higher Education Institutions", in the wording that has been in force since 11 October 2022. Hence, Section 56 (3) of the law "On Higher Education Institutions", in the wording that has been in force since 11 October 2022, insofar it applies to higher education institutions and faculty members thereof, can be recognised as being incompatible with Article 112 and Article 113 of the *Satversme* within the framework of the same reasoning.

Thus, also Section 56 (3) of the law "On Higher Education Institutions" (in the wording that has been in force since 11 October 2022), insofar it applies to higher education institutions and faculty members thereof, is incompatible with Article 112 and Article 113 of the *Satversme*.

20. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal provision that has been recognised by the Constitutional Court as being incompatible with a superior legal provision, is to be recognised as void as of the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. The Constitutional Court enjoys broad discretion in deciding on the date as of which the contested provision becomes void. The Constitutional Court must substantiate its opinion (*see Judgement by the Constitutional Court of 28 November 2014 in Case No. 2014-09-01, Para 21, and Judgement of 27 October 2022 in Case No. 2021-31-0103, Para 43*).

Section 56 (3) of the law "On Higher Education Institutions" in the wording, which was in force from 1 May 2021 until 10 October 2022 and has been contested in the application, has become void. By the Amendments of 15 September 2022 to the law "On Higher Education Institutions", the legislator amended Section 56 (3) of the law "On Higher Education Institutions" and, since 11 October 2022, it is in force in a new wording. The fourth and the fifth part of Section 56 of the law "On Higher Education Institutions" are in force in the wording that has been contested by the Applicant. The Applicant has requested recognising the contested provisions as being void sine the date of adoption thereof.

20.1. First and foremost, the Constitutional Court will examine as of which date the third part (in the valid wording), the fourth and the fifth part of Section 56 of the law "On Higher Education Institutions" become void.

The Constitutional Court takes into account that these provisions pertain to the constitutional identity of the Latvian State – the official language – and regulate an important aspect in higher education. If they were recognised as being void as of the date when the Constitutional Court's judgement is announced or from a certain past date then not a single provision would regulate the use of languages in the study programmes of higher education institutions. In the particular situation, the legislator needs a reasonable time period to examine, carefully and considerately, how to find the best balance between the autonomy of higher

education institutions and the academic freedom of faculty members with the necessity to protect the official language in higher education. The legislator must create such legal regulation that is directed at sustainable protection of the official language in higher education and, at the same time, ensures balance with the development of higher education and science in the European cultural space.

Hence, the third part (in the valid wording), the fourth and the fifth part of Section 56 of the law "On Higher Education Institutions" shall be recognised as being void as of 1 July 2024.

20.2. The Constitutional Court must examine also the Applicant's request to recognise Section 56 (3) of the law "On Higher Education Institutions" (in the wording, which was in force from 1 May 2021 until 10 October 2022) as being void since the date of its adoption.

In deciding on the date as of which the contested provision becomes void, the Constitutional Court takes into consideration the principle of legal security. The contested provisions constitute united legal regulation, which defines the language, in which study programmes are implemented. If even a part of the united legal regulation were to be recognised as being void as of a past date, it would cause legal uncertainty.

Hence, Section 56 (3) of the law "On Higher Education Institutions" (in the wording, which was in force from 1 May 2021 until 10 October 2022) shall not be recognised as being void as of the date of its adoption.

The Substantive Part

On the basis of Sections 30–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To recognise the third, fourth and fifth part of Section 56 of the law "On Higher Education Institutions", insofar they apply to higher education

institutions and faculty members thereof, as being incompatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia and void as of 1 July 2024.

2. To recognise Section 56 (3) of the law "On Higher Education Institutions" (in the wording, which was in force from 1 May 2021 until 10 October), insofar this provision applies to higher education institutions and faculty members thereof, are incompatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement was delivered in Riga on 28 June 2023.

The judgement enters into force at the moment it is delivered.

Chairperson of the court hearing Aldis Laviņš