



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

VERDICT

On behalf of the Republic of Latvia

Riga, 26 May 2022

Case No. 2021-33-0103

The Constitutional Court, composed of Aldis Laviņš, the President of the Court, judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs and Anita Rodiņa,

on a constitutional complaint by Markus Kārklīņš, Timur Jareško, Valērija Jareško, Nadežda Kadikova, Fjodor Kadikov, Boris Kadikov and Luka Kadikov,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Article 16, Clauses 1 and 3, Article 17, part one, Clause 11 as well as Articles 19² and 28¹ of the Constitutional Court Law,

in the written procedure, at the hearing on 26th of April, 2022, the case was examined

"On compliance of the Law on the Management of the Spread of Covid-19 infection, Article 4, part one, Clause 8, of the Education Law, Article 1, Clauses 1¹ and 12⁴, Article 14, Clause 45 as well as Cabinet of Ministers Regulations from 9th of June, 2020 No 360 "Epidemiological Safety Measures to Limit the Spread of Covid-19 Infection" Sub-paragraph 27.1.3., Clause 32⁷ sub-paragraph² and 3 with Article 112 of the Constitution of the Republic of Latvia".

The Establishing Part

1. On 11 March 2020, the World Health Organisation announced that the worldwide outbreak of the coronavirus disease Covid-19 has reached pandemic proportions. On 5 June 2020, the Parliament adopted the Covid-19 Infection Spread Management Law (hereinafter the Management Law). It entered into force on 10 June 2020.

Article 4, part one, Clause 8 of the Management Law stipulates that in case of the spread or threat of the spread of Covid-19 infection, the Cabinet of Ministers may determine the conditions and procedures for the organisation of the educational process for epidemiological safety purposes, including for ensuring the learning process remotely.

2. On the November 12, 2020, the Saeima adopted the Law "Amendments to the Education Law", which entered into force on November 20, 2020. The amendments of the Education Law, inter alia, include Clauses 1¹ and 12⁴ to Article 1 and Clause 45 to Article 14.

Since the coming into force of the abovementioned amendments, Article 1¹, Clause 1 of the Education Law stipulates that remote learning is a part of the on-site education process in which educatees learn, including by using information and communication technologies, without being physically present in the same room or place of study together with the teacher.

Clause 12⁴ of this Article stipulates: on-site learning is a form of acquisition of education in which an educatee acquires the educational content by visiting an educational institution, including remote learning, according to the educational programme implemented by the educational institution.

In turn, in accordance with Article 14, Clause 45 of the Education Law, the Cabinet of Ministers shall determine the procedures for the organisation and implementation of remote learning.

3. On the 9th of June, 2020, the Cabinet of Ministers, basing, inter alia, on the Article 4, part one, Clause 8 of the Management Law, issued Regulations No 360 "Epidemiological safety measures to limit the spread of Covid-19 infection" (hereinafter - Regulations No 360), which entered into force on 10th of June, 2020.

Regulations No 360 have been amended several times. In particular, by the Cabinet of Ministers Regulations No 460 from 28th of July, 2020, "Amendments to the Cabinet of Ministers Regulations No 360 from 9th of June, 2020, Epidemiological Safety Measures to Limit the Spread of Covid-19 Infection" sub-paragraph 27.1.3. has been supplemented. This rule is expressed in a new wording by the Cabinet of Ministers Regulations No 571 from 15th of September, 2020, "Amendments to the Cabinet of Ministers Regulations No 360 from 9th of June, 2020, "Epidemiological safety measures to limit the spread of COVID-19 Infection"".

In turn, with the Regulations of the Cabinet of Ministers No 191 from 1st of April, 2021, "Amendments to the Cabinet of Ministers Regulations No 360 from 9th of June, 2020, "Epidemiological safety measures to limit the spread of COVID-19 Infection"" Regulations No 360 were supplemented with the Clause 32.⁷.

Regulations No 360, sub-paragraph 27.1.3 (hereafter in the version in force from 17 September 2020 to 19 August 2021) provided that, in addition to requirements in Articles 25 and 26 of these Regulations towards educational institutions, except colleges and universities, the educational process in accordance with the decision of the founder of the educational institution and the procedures established by the educational institution, can be partly or fully implemented remotely, "if in the administrative territory of the municipality where the educational institution is located or in the territories with which it borders, an increase in the prevalence of Covid-19 infection is observed or high rates of infection persist, according to information provided by the Centre for Disease Prevention and Control. In such a case, the educational institution shall immediately inform the State Education Quality service that it is implementing remote learning."

Pursuant to Regulations No 360, Clause 32.⁷ sub-paragraph 2 (hereafter in the version in force from 7 April 2021 to 19 August 2021), from the 7 April 2021, in the field of education and sport, subject to a number of other provisions of these Regulations, on-site learning in all educational institutions was suspended and remote learning was provided, except as provided in sub-paragraphs of the Regulations No 360, Clause 32.⁷. These included on-site pre-school education, practical part of vocational education programmes and higher education study programmes, individual counselling for learners at risk of early school leaving and for learners scheduled to pass state examinations in the first half of 2021, state examinations in primary and secondary education and on-site state examinations and final examinations at universities and colleges.

However, Regulations No 360, Clause 32. ⁷, sub-paragraph 3 (hereafter in the version in force from 7 April 2021 to 19 August 2021) stipulated that from the 7 April 2021 "on-site teaching in grades 1-6 and 12, and rotationally in grades 7-9 and 10-11 can be provided, if the epidemiological safety requirements and weekly testing of staff working in the educational institution can be met if, on Tuesday of the current calendar week, the 14-day cumulative number of Covid-19 cases per 100 000 population in the administrative area of the city or county in which the educational establishment is located does not exceed 200 and epidemiological conditions indicate a safer situation in the administrative area. The Centre for Disease Prevention and Control publishes weekly, on Thursdays, in the official publication "Latvijas Vēstnesis" a list of cities and districts where, according to the information published on the website of the Centre for Disease Prevention and Control on Wednesday, the 14-day cumulative morbidity rate is sufficient to implement on-site education in grades 1-6 and 12, and in rotation in grades 7-9 and 10-11. In certain cases, under epidemiological conditions that reduce the risks of the spread of Covid-19, on-site teaching in grades 1 to 6 and 12, and on a rotational basis in grades 7 to 9 and 10 to 11, may also be organised if the 14-day cumulative incidence of Covid-19 per 100 000 population exceeds 200, but not more than:

32.7 3.1. 220 - when deciding whether to resume on-site education in a given municipality;

32.7 3.2. 250 - when deciding whether to continue on-site education in a given municipality. The assessment of the situation is based on several epidemiological criteria, including the geographical distribution of the newly detected Covid-19 cases, their association with specific institutions, businesses, households, events, etc., while assessing their potential impact on the organisation of the educational process."

Regulations No 360 expired on 11th of October, 2021, when they was replaced by the Cabinet of Ministers Regulations No 662 of 28th of September, 2021, "Epidemiological safety measures to control the spread of Covid-19 infection" (hereinafter - Regulations No 662).

On 8 February 2022, the Cabinet of Ministers, on the basis of Article 45, Clause 14 of the Education Law, adopted Regulations No 111 "Procedure for the Organisation and Implementation of Remote Learning" (hereinafter - Regulations No 111).

4. The Applicants - Markuss Kārklīņš, Timurs Jareško, Valērija Jareško, Nadežda Kadikova, Fjodors Kadikovs, Boriss Kadikovs and Luka Kadikovs (hereinafter - the Applicants) - consider that Clause 8 of Article 4, part one, of the Management Law, Clauses 1¹ and 12⁴ of Article 1 of the Law on Education, Clause 45 of Article 14, as well as subparagraph 27.1.3 of the Regulations No 360, and sub-paragraphs 2 and 3 of Clause 32.⁷ (hereinafter also - the Contested rules) are incompatible with the Article 112 of the Constitution of the Republic of Latvia (hereinafter - the Constitution).

Applicants are pupils studying at primary and general secondary education level. Two of the Applicants study in private educational institutions, while the others study in state and municipal educational institutions.

The Applicants submit that the Contested norms provided the acquisition of general education by remote learning also after 7 April 2021, when the state of emergency declared in the country ended. As a result of the remote learning, the Applicants have suffered from various physical and psycho-emotional health problems.

General education is of fundamental importance because it determines a person's ability to function independently in the state and society. General education is not only about acquiring knowledge and skills in specific subjects, but also about preparing children for a conscious life in society, developing their reasoning skills, critical thinking, creativity and social skills.

The fundamental right to education also includes the accessibility and quality of schools and education programmes, as well as the acceptability of education programmes and methods to students and their parents. Moreover, in deciding on the content and form of education, the best interests of the learners alone must be a primary consideration. The Applicants hold that the Contested rules restrict educational opportunities, access to education, as well as reduce the acceptability of general education.

The State must establish a legal framework for general education which enables all the aims of education to be achieved in accordance with the particular level and type of education. Schools are not sufficiently equipped with learning materials to fully implement their licensed and accredited education programmes remotely. Remote learning cannot be compared to on-site learning and would require a unique curriculum and content, but no such curriculum or content has been developed. Remote learning reduces the content of all subjects, so learners do not get a quality education. In addition, pupils are completely deprived of opportunities to communicate with each other, to play sport, to develop creatively and to improve. Remote learning severely limits a key component of the right to education, namely by failing to give the individual a full opportunity to develop as a free person, without providing the social skills and experience needed to participate in society and the life of the state. Thus, the Contested rules restrict educational opportunities.

Remote learning puts a large part of the burden of providing general education on parents. The biggest difficulties are faced by primary school children and their parents, as they are not yet able to learn independently. Access to education is also limited for those pupils whose parents, due to the nature of their work or financial considerations, are unable to support their child in the distance

learning process on a daily basis or to provide all the necessary support for remote learning. According to the Applicants, the Contested rules make the acquisition of education dependent on family circumstances, in particular financial and economic ones. This is the most significant restriction on the access of primary school pupils, children from large families, the poor and disadvantaged families to a full education.

The powers of the Cabinet of Ministers contained in the Article 4, part one, Clause 8 of the Management Law and Article 14, Clause 45 of the Education Law are excessively broad, therefore the Contested rules are incompatible with the principle of separation of powers contained in Article 1 of the Constitution and Article 64 of the Constitution. The legal framework contained in these laws applies to the period when a state of emergency has not been declared. At this time, it is unacceptable for the Saeima to authorise the Cabinet of Ministers to develop the entire legal framework on an issue of utmost importance to society, which affects the rights of children, rather than regulating the issue itself.

In addition, both the Management Law and the Law of 12 November 2020 "Amendments to the Law on Education" have been adopted by the Saeima as urgent. The Saeima failed to listen to the views of pupils, their parents and non-governmental organisations and adopted these laws in an unjustified hurry, without a full discussion. According to the Applicants, the Contested rules cannot be regarded as "law" in the substantive sense, as they are contrary to the principle of good legislation. Thus, the restriction on fundamental rights laid down in the Contested rules is not "established by law".

The objective of all the Contested rules is directly or indirectly related to the protection of public health, i.e. to achieve epidemiological safety and to limit the spread of the Covid-19 epidemic caused by the SARS-CoV-2 coronavirus. According to Article 116 of the Constitution, this may be a legitimate aim of restricting a person's fundamental rights. The Applicants recognise that the restriction of the fundamental right to education has a legitimate aim if a state of emergency has been declared in the country during which, in the public interest, substantial restrictions on the rights of natural persons are permissible. However,

the Contested rules apply to the period when the state of emergency is no longer declared, therefore the restriction of fundamental rights laid down therein does not have a legitimate aim. Moreover, the Contested rules of the Law on Education apply to the education process as a whole, not only during the Covid-19 pandemic, therefore these rules do not have a legitimate aim and it is impossible to achieve any legitimate aim with these rules, insofar as they will continue to operate and be applicable even after the epidemiological situation improves.

The Contested rules of the Management Law and Regulations No 360 could theoretically ensure that pupils stay at home and have less contact with others, thus reducing the risk of infection and disease. However, in the absence of conclusive studies confirming that it is children who spread the Covid-19 infection, the achievement of the legitimate aim is questionable.

Studies by international organisations and the experience of other countries show that closing schools is not the best solution. Closing educational institutions should be considered a last resort and should only be considered if there are no alternatives. After the end of the state of emergency, it was possible to organise on-site teaching in general education institutions, while taking precautions. Remote learning can only be introduced temporarily and as a last resort, when all other means have been tried and failed. Thus, according to the Applicants, there are effective and alternative means which would less restrict the fundamental right established in Article 112 of the Constitution, namely the right to education, however, when adopting the Contested rules, a proper assessment of possible alternatives has not been carried out.

The negative impact of remote learning on children's health, education and development, as well as on family incomes, the national economy and welfare, is so negative that it cannot be outweighed by the potential benefits of reducing the risk of Covid-19. Such restrictions are therefore not justified in circumstances where the prevalence of Covid-19 infection is not critically high. The Applicants hold that by adopting the Contested rules, the principle of priority of the rights and interests of a child has been violated, since priority has been given to considerations of public epidemiological safety, rather than to the full realisation

of the right of children to education. This principle does not preclude other interests from being taken into account, but a careful assessment of the various interests involved is necessary in reaching a decision. The Saeima, when adopting the Contested rules of the Management Law and the Law on Education, has not assessed whether they comply with the principle of priority of the rights and interests of children. Moreover, the deterioration in the quality of general education, including students' knowledge and social skills, as a result of remote learning is not only to the detriment of the learners themselves, but also to the significant detriment of society as a whole, with long-term social and economic consequences, among others. The country needed to find a solution that would benefit all learners. The fact that some learners were able to study fully or partially in person at an educational institution cannot be an argument for imposing only remote learning for the rest. The Contested rules do not strike a fair balance between different interests and values and thus do not comply with the principle of proportionality.

5. The institution that issued the Contested rule – the Saeima – considers that the Contested rules comply with Article 112 of the Constitution.

The Contested rules of the Law do not oblige the Cabinet of Ministers to establish remote learning in general education institutions and do not prohibit the acquisition of general basic education and general secondary education in person. Article 1, Clauses 1¹ and 12⁴ of the Education Law contain only a legal definition of the terms "remote learning" and "on-site learning", but do not impose an obligation to organise learning in a particular form. Legal definitions are to be used in the interpretation of legal norms included in a normative act, but they do not in themselves create legal consequences and do not infringe the fundamental rights of the Applicants established in the Constitution within the meaning of Article 19², part one of the Constitutional Court Law.

Remote learning in the context of Covid-19 infection ensures continuity of education and persons' access to education. Remote learning is part of access to education and, in some cases, the only practical way in which the right to education

can be exercised. It is therefore essential to provide for the possibility of using remote learning as part of the educational process, particularly in situations where it can serve as an effective and proportionate means of limiting the spread of the Covid-19 infection. Establishment of such a possibility at the legal level does not in itself infringe the rights of persons and, inter alia, is aimed directly at ensuring the rights of persons, since it empowers the Cabinet of Ministers, in a specific epidemiological situation, within the legal framework clearly established by the legislator, to find the necessary balance between the right to life, health protection and education. Consequently, in the opinion of the Saeima, the Contested rules do not restrict the right of persons to education and are not subject to the test of restriction of fundamental rights.

The Saeima notes that draft law No 715/Lp13 "Law on the Management of the Spread of Covid-19 Infection" and draft law No 847/Lp13 "Amendments to the Law on Education" have been deemed urgent and have been considered in two readings in accordance with the procedure established in the Saeima's Rules of Procedure. The Contested rules of the laws were adopted in accordance with the due procedure, in compliance with the Constitution and the Rules of Procedure of the Saeima.

Participation of interested Parties in the process of consideration of a draft regulatory enactment may contribute to the adoption of an impartial decision and balancing of various interests, however, the Contested rules of law do not directly affect the rights and interests of a person. The purpose of the contested provisions of law is to create a legal framework which would allow effective decisions to be taken in the light of the specific epidemiological situation. In such situations, it is acceptable that the meetings of the Saeima committees primarily listen to the risk forecasts and assessments made by experts in the field. Moreover, in rapidly changing circumstances, the precautionary principle must be taken into account. The Saeima considers that the Contested rules of the law are based on reasonable assumptions as to the most appropriate regulation and are aimed at the protection of fundamental rights. Thus, the contested provisions of law were adopted in compliance with the principle of good legislation.

The authorisation given to the Cabinet of Ministers in Article 4, par one, Clause 8 of the Management Law and Article 14, Clause 45 of the Education Law is in accordance with the Constitution, is clear and, inter alia, enables the Cabinet of Ministers to take proportionate and effective action to combat the spread of the Covid-19 infection and ensure respect for the fundamental rights of persons.

The context in which the provisions of the management Law were drafted and operated - the fight against the spread of the Covid-19 infection - is of fundamental importance. After the end of the state of emergency on 9 June 2020, it was necessary to continue to address the risks associated with the spread of Covid-19 by regulating the competences and activities of individuals and institutions. The draft law "Law on the Management of the Spread of Covid 19 Infections", drafted by the Cabinet of Ministers, contains an appropriate framework that would allow for the gradual lifting of precautionary measures and, at the same time, effectively ensure the rights of individuals should the epidemiological situation deteriorate again. The law has a clear purpose and establishes the general principles of the activities of public authorities and the rights and obligations of private individuals to prevent and overcome the national threat during the spread of the Covid-19 infection. According to the Management Law, the rights of individuals can only be restricted for the purpose of protecting public health and safety in relation to the spread of the Covid-19 infection. The legislator has established that this law cannot serve as a legal basis for imposing restrictions on a person's rights which are not related to this objective, and that any restrictions must be immediately repealed as soon as the objective need to maintain them ceases to exist. The Management Law thus sets out the key issues related to the management of the spread of the Covid-19 infection and establishes a clear legal framework within which the executive is able to develop more detailed regulations and take the decisions necessary in the epidemiological situation as regards the necessary precautionary measures and restrictions on the rights of individuals.

The text of the Management Law clearly indicates the right of the Cabinet of Ministers to decide on the organisation of the education process remotely. This

would not conflict with Article 14, Clause 45 of the Education Law. The powers of the Executive body have been temporarily extended to enable it to take effective action in the public interest, taking into account the multilayered nature of the risks of Covid-19 infection and the wide range of persons affected. Thus, the authorisation given by the legislator to the Cabinet of Ministers in the Contested rules of the Law is sufficiently clear.

Moreover, the Management Law does not provide for a permanent framework and is only in force for as long as there is a threat to epidemiological safety due to the spread of the Covid-19 infection. The purpose and scope of the law itself indicate that it regulates the post-emergency phase, so that the scope of the rights and obligations of public authorities and individuals is adapted to the situation where the Covid-19 infection continues to spread in the country. The Management Law also includes a mechanism for regularly informing the Parliament about the current epidemiological situation and the actions of the executive body. The delegation of power to the Cabinet of Ministers in no way alters the status of Parliament as the democratically elected legislator and, if necessary, the Saeima is entitled to adopt the necessary regulations on the spread of the Covid-19 infection.

Thus, the Saeima holds that the Contested rules of the law do not restrict the fundamental rights of persons, but provide for a clear mandate to the Cabinet of Ministers, which is to be implemented within the legal framework established by the legislator.

6. The institution that issued the Contested rules - the Cabinet of Ministers - holds that the sub-paragraph 27.1.3 and sub-paragraphs 2 and 3 of Clause 32. ⁷ of Regulations No 360 (hereinafter also - the Contested rules of the Regulation) comply with Article 112 of the Constitution.

The Cabinet of Ministers may only specify or detail the law adopted by the Saeima and, when issuing the Contested rules of the Regulations, it was guided by the content and purpose of the enabling norms. Taking into account the authorisation contained in Article 4, part one, Clause 8 of the Management Law,

the Cabinet of Ministers is to regulate all matters related to the organisation and procedure of the educational process contained in Article 14 of the Education Law, including the provision of the educational process remotely. The Initial Impact Assessment Report (hereinafter referred to as the "Annotation") of Regulations No 360 on the conditions for the organisation and conduct of the educational process states that it is necessary to maintain reasonable epidemiological safety measures in the field of education even after the end of the emergency situation. The Contsted rules of the Regulation must be assessed in the context of the epidemiological circumstances of the particular situation. Those provisions were adopted in the light of the mandate to continue implementing the restrictions after the end of the state of emergency, as well as the risks of the spread of the Covid-19 infection in the specific situation.

The Cabinet of Ministers during the meeting on 24 March 2021 and the emergency meeting on 26 March 2021 considered a presentation prepared by the Ministry of Education and Science entitled "Statistical Analysis of Starting Schools on a Regional Basis" and discussed the restrictions on education after the end of the state of emergency. After lengthy discussions, the government meeting authorised the implementation of the education process on a regional basis, taking into account the cumulative incidence rates of Covid-19. The regional principle was chosen to allow the resumption of on-site learning in a phased manner, avoiding the uncontrolled spread of the Covid-19 infection. An alternative solution would be to organise the entire education process remotely.

At the end of the state of emergency, the epidemiological situation in the country has not improved rapidly and the increase in disease rates has continued. Between March and May 2021, when on-site learning was allowed in some cases, the incidence of Covid-19 in the age group 7 to 19 age group increased. In addition, a high proportion of Covid-19 cases were among teachers. In other service areas, various restrictions on the provision of services have also been imposed with effect from 7 April 2021, with the possibility of their gradual removal or relaxation. The regulation established by the Cabinet of Ministers achieves the same objective that the legislator intended to achieve by adopting the Management Law. The

Contested rules were also adopted in accordance with the purpose of the authorisation.

The set of measures laid down in the Management Law during the spread of the Covid-19 infection is sufficiently clear. The legitimate aim of the restrictions on the fundamental rights of a person under the law is the protection of public security and health interests. The right to education established in Article 112 of the Constitution in conjunction with the right to health guaranteed in Article 111 of the Constitution, *inter alia*, establishes the obligation of the State to take care of children's health, as well as to ensure that children are able to exercise their right to education. This duty required both adapting the curriculum to the national state of emergency and taking appropriate precautions against the spread of the Covid-19 infection. Means, chosen by the legislator and the executive body are appropriate to achieve the legitimate aim, since the Contested rules both ensure the right to education and achieve the objective of public safety and health interests. The benefit to society outweighs the restriction of the individual's rights.

7. The invited body – the Ministry of Education and Science – holds that the Contested rules comply with Article 112 of the Constitution.

After the end of the state of emergency on 7 April 2021, the epidemiological situation in the country has made it necessary to continue the learning process remotely. The main indicator was the Covid-19 morbidity rate, but other circumstances, including outbreaks in specific institutions and migration of population between districts, also influenced decisions about the educational process. A regional approach has been chosen for the gradual resumption of teaching, avoiding the uncontrolled spread of the Covid-19 infection.

To reduce the psycho-emotional burden on learners, part of the formal education curriculum has been designed to be delivered outdoors. Students of the 12th grade, as well as students at risk of early school leaving due to various environmental and social conditions, were provided with the opportunity to receive individual counselling in person. This provides a proportionate solution for consolidating certain aspects of the knowledge acquired during remote learning.

Other support measures are also provided for learners, their parents and teachers. Pupils can receive individual counselling and psycho-emotional support, while teachers can also attend supervision sessions within the framework of the project "Support for Reducing Early School Leaving" implemented by the State Education Quality Service. The National Centre for Education is implementing a project "Support for the Development of Individual Competences of Learners", which offers counselling to parents of children with special needs regarding the organisation and learning process. In turn, on 19 January 2021, the Cabinet of Ministers approved an informational report by the Ministry of Health "About the measures to be taken in 2021 and annually thereafter to reduce the long-term negative impact on public mental health of the Covid-19 pandemic".

The State Service for Quality in Education has carried out a study on remote learning between April and June 2020, as well as in the 2020/2021 school year, involving all educational institutions subject to accreditation of an educational institution or educational programme, and a survey of 754 heads of educational institutions. The study concluded that the quality of remote learning is influenced by a number of factors, including the quality of the educational institution's governance, technical support and software, the communication and support package in place to engage with parents and learners, the digital literacy of all involved, the openness of educational institutions and teachers to change, the quality of education system governance and the ability to implement crisis communication.

Summarising the information and data collected during the 2020/2021 academic year, the study shows that remote learning has had a significant impact on the quality of education. The digital skills of all involved have improved significantly, but the technical support and software available to learners and teachers has been variable and only partially sufficient. It also concludes that remote learning in a crisis situation should not be considered as a solution equivalent to regular education, but as an appropriate solution to ensure continuity of education in a situation of epidemiological constraints. Remote learning is said to have contributed to an increase in inequality in the quality of education,

depending on whether the educational institution has been able to provide more individualisation of the learning process or has left most of the responsibility for the learning process to parents.

Research by the National Service for Quality in Education also found that distance learning had a significant impact on the well-being of learners, their parents and teachers, and had the greatest impact on adolescents' mental health. This is a direct result of too much screen time for children and young people, which can lead to health problems, addictions and weight gain due to sedentariness. Some children, especially adolescents, find it stressful to turn on a camera and look at themselves on a screen.

As regards the regional approach, the study concludes that it partly helps to address the challenges related to the quality of education, as learners need a period of adaptation after returning to education, during which educational and socialisation issues take precedence over learning. Educational institutions need additional time to adapt to the new epidemiological requirements, to organise the safe transport of pupils to and from educational institutions, and to arrange meals.

The Ministry of Education and Science points out that from the very beginning of remote learning, it has continuously called on educational institutions and teachers to purposefully assess the main emphases of the curriculum and significantly reduce the amount of content to be covered, as it is not possible to implement the curriculum remotely to the same extent as under normal on-site conditions. The recommendation to reduce the curriculum content is also included in all National Centre for Education guidelines for remote learning from spring 2020.

It concluded that the amount of content covered by remote education in the crisis situation had decreased by 30 to 50 percent, depending on the age of the learners and the approach taken by the educational institution. However, around 30% of teachers have experienced difficulties with the need to reduce the curriculum and take into account the learners' ability to cover all the planned subjects remotely but with high quality during the school year. If the teacher was

not flexible enough to reduce the content of the lessons to suit the circumstances, the classrooms were or could have been overloaded.

Recommendations are made to educational institutions on how to implement remote learning for different target groups. For general education, it recommends, for example, to inform pupils and their parents about the assignment according to the plan, to post links to learning materials to be studied independently, to establish a timetable for remote feedback. National Centre for Content in Education has also provided other recommendations to the heads of educational institutions for the organisation of remote learning work and to teachers for the planning and implementation of remote learning, as well as guidelines for the implementation of on-site, blended and remote learning and for the assessment of pupils' learning performance. It has also been repeatedly expressed that the specific National exams for the 2020/2021 school year and beyond will be designed taking into account the limited opportunities for pupils during the pandemic to fully master the curriculum relevant to the education standards. Pupils are expected to master the learning outcomes defined in the education standards. A great emphasis is placed on diagnosing pupils' readiness and skills using diagnostic works - both those created by teachers themselves and those developed within the framework of the European Union Structural Funds project "Competence-based Approach to Curriculum" (hereinafter - *Skola 2030* project) implemented by the National Centre for Education.

Various types of support are offered to educational institutions and teachers during remote learning, including regular online tutorials, webinars, a *Skola 2030* user support service and expert participation in events organised by the municipality or educational institution, teacher learning communities and professional development events, a repository of learning resources that is regularly updated, an educational website for students and teachers - tavaklase.lv. Most of the methodological materials, guidelines and necessary information for teachers, pupils and their parents are available on the *Skola 2030* project website, as well as on the website of the National Centre for Content of Education.

The Ministry of Education and Science points out that the results of the National examinations in recent years are not comparable with those of previous years because the pandemic meant that the events either did not take place, were different in the way they were conducted (on-site or remote), or changed their purpose and content. For example, the Grade 9 exams were not held in the 2019/2020 school year due to restrictions on attendance, while in the 2020/2021 school year they were replaced by compulsory diagnostic tests. In the case of the diagnostic tests in grades 3 and 6, teachers had the opportunity to revise the content of the tests in advance during the remote learning to allow students to skip tasks that were designed to test skills that, for various reasons, they had not yet mastered. This possibility may have been the reason why, for example, the results of the diagnostic tests in mathematics for Grade 6 in 2021 were higher than in previous years.

The average achievement of general secondary education pupils in centralised examinations has not changed significantly in the last three years. However, it should be noted that the exam syllabuses were already changed in 2020. In 2021, compared to 2020, there are more of those pupils who have achieved high results in centralised examinations, but also more pupils who have underperformed or performed poorly in examinations. In the school year 2020/2021, the number of secondary school graduates with excellent and outstanding academic achievements has increased.

8. Invited body — the Ministry of Justice — holds that the Contested rules comply with Article 112 of the Constitution.

The Ministry of Education and Science is responsible for developing and adapting teaching tools and methods to ensure that children learn the curriculum and develop their skills as well as possible, including through remote learning.

The mandate to the Cabinet of Ministers included in Article 14, Clause 45 of the Education Law and Article 4, part one, Clause 8 of the Management Law is clear and indicates how it is to be implemented. These provisions empower the Cabinet of Ministers to determine the conditions and procedures for the organisation of the educational process, including the organisation and

implementation of remote learning, in the event of the spread or threat of spread of Covid-19 infection for epidemiological safety purposes. The Contested rules of law were adopted in accordance with the procedure laid down in the Constitution and the Rules of Procedure of the Saeima, respecting the principle of separation of powers. Thus, the restriction of fundamental rights contained in those provisions is established by law.

The legitimate aim of the restriction of fundamental rights is the protection of public safety and health. The Ministry of Justice points out that the interests of public safety and health must be protected even in a situation where a state of emergency has not been declared. Although the National state of emergency had ended on 7 April 2021, the spread and incidence of Covid-19 infection continued. In order to protect public safety and health interests, appropriate measures should have been put in place to reduce and prevent the spread of Covid-19 even after the end of the state of emergency.

Remote learning prevents chains of infection and children coming into contact with each other. Moreover, the implementation of remote learning was established as a last resort, in the sense that, at a time when the Covid-19 infection was spreading in the country, it was recognised that the right to education was one of the most fundamental rights. In a situation where restrictions are imposed on the assembly of persons, the field of education is the last area in which the State imposes restrictions on remote learning. The support provided by the State to families for remote learning, i.e. €500 per child, should also be taken into account.

In the opinion of the Ministry of Justice, the means chosen by the legislator were appropriate to achieve the legitimate aim and alternative, more lenient means could not achieve this aim, at least in the same quality. The Cabinet of Ministers has introduced a solution that allows the resumption of on-site learning on a regional basis, thus analysing the situation in each municipality and allowing on-site learning in those municipalities where the cumulative incidence of Covid-19 was not too high. The chosen solution was considered to be a more lenient measure, as it allowed the teaching process to be conducted in person in a number

of exceptional cases. Thus, the restrictions on fundamental rights imposed by the Contested rules are in accordance with the principle of proportionality.

9. Invited body - the Ministry of Health - holds that the Contested rules comply with Article 112 of the Constitution.

According to Article 111 of the Constitution, the State is obliged to respond to pandemics and to adopt regulations aimed at protecting public health and limiting the spread of infection. On the basis of the authorisation provided for in Article 4, part one, Clause 8 of the Management Law, the Cabinet of Ministers may, in the event of the spread or threat of spread of a Covid-19 infection, for the purposes of epidemiological safety, determine the conditions and procedures for organising the educational process, including the provision of the educational process remotely. According to the Ministry of Health, the restriction of fundamental rights included in the contested norms was established by law and had a legitimate aim – protection of public safety and health.

The Ministry of Health considers that the means chosen by the legislator and the executive were appropriate to achieve the legitimate aim, as the regulation in question both ensured the right to education and achieved the objective of public safety and health interests. The benefit to society - public safety and public health - in the present case outweighs the loss to the individual caused by the restriction of the right to on-site education in epidemiologically unsafe conditions. Moreover, in the circumstances of the case, there were no other means of achieving the legitimate aim in the same quality. Thus, the restriction of the fundamental right, namely the right to education, established by the contested norms is in conformity with the principle of proportionality.

10. The invited official – the Ombudsman – holds that the Contested rules of the regulations – do not comply with Article 112 of the Constitution.

The Ombudsman agrees with the Saeima's reply that the Contested rules of the Law on Education do not in themselves prevent the acquisition of primary and secondary education and the possibility to use remote learning as part of the on-

site education process does not infringe the rights of the child, but is directly aimed at ensuring the rights of the child in a particular epidemiological situation. The possibility for children to continue their education process remotely during the pandemic caused by the Covid-19 infection, when restrictive measures are being imposed in various areas, should not be regarded as a restriction of the right provided for in Article 112 of the Constitution, but - on the contrary - as a means of ensuring the right to free primary and secondary education.

Thus, the Ombudsman considers that the Contested rules of the Law on Education comply with Article 112 of the Constitution, however, draws attention to the fact that the Cabinet of Ministers has still not fulfilled the mandate given to it in Article 14, Clause 45 of this Law to establish the procedure for organising and implementing remote learning. This risks arbitrary implementation of remote learning to the detriment of the quality of the education process.

Any decision affecting access to education must be assessed in terms of whether and to what extent it ensures a child's right to quality education. Ensuring these rights cannot be formal - the State must identify and develop specific minimum requirements for education standards that cover not only the content of education, but also the educational environment and other conditions that affect a child's full development.

In order to assess how the remote learning process has affected the quality of education, the Ombudsman has addressed the Ministry of Education, the State Service for Quality of Education and the State Centre for Content in Education. The responses of these institutions indicate that remote learning has affected the content of the curriculum, the well-being of children and families, and increased inequalities between learners from different educational institutions and learners from families at social risk. Moreover, there is limited ability to adequately assess the extent to which remote learning has affected pupils' knowledge and skills, as children took the tests remotely, while the National exams were either abolished or their requirements were significantly reduced. There has been no significant increase or change in the number of children who drop out, are left for a second year or do not continue their secondary education, so it can be concluded that the

education process was not interrupted during the Covid-19 pandemic. However, the National Service for Quality in Education has assessed that remote learning in grades 1-3 cannot be delivered at the same quality as on-site learning and should therefore primarily be kept on-site, while for grades 4-12 the principle of rotation and individual or group counselling should be introduced for the acquisition of various skills and related subjects, leading to the conclusion that the restrictions introduced by the Contested rules, which prevented the resumption of on-site education at all after the end of the emergency situation, significantly restricted the right to general basic education and general secondary education laid down in Article 112 of the Constitution.

The Contested rules of the Regulations were issued in compliance with the authorisation granted by the legislator and in compliance with other legal norms. The legitimate aim of the restriction on fundamental rights laid down in the Contested rules is the protection of other people's rights and public welfare.

The measures to limit the spread of Covid-19 infection are primarily implemented to protect adults and not children, but this does not mean that the restrictions are not also in the interest of children. Children are the most dependent part of society on adults, so a threat to public health is also a threat to children's health and development. Thus, timely and effective action to protect the country's population from Covid-19 infection can be consistent with the interests of the child to receive adequate care, education and to grow up in a safe environment.

The right to education established in Article 112 of the Constitution is an important fundamental human right, in particular, it concerns the right and obligation of a child to acquire primary education. When imposing restrictions to reduce the spread of the Covid-19 infection, it is necessary to carefully assess the proportionality of those restrictions to the child's right to education and the compulsory nature of primary education. Decisions relating to epidemiological safety must be assessed in the light of a number of factors, namely not only the possible impact of those decisions on the spread of the Covid-19 infection, but also other consequences for children and society as a whole. Studies by the European Union and international organisations on the spread of Covid-19 and access to

education have concluded that the decision to close educational institutions should be taken as a last resort to contain the spread of Covid-19 infection, as the potential benefits are unlikely to outweigh the negative impact on children's physical and mental health, the quality of education, and the wider economic impact on society as a whole. Therefore, the Cabinet of Ministers should have provided concrete and unquestionable evidence that the restriction is proportionate to the legitimate aim, rather than a general claim that it protects public health. The Cabinet of Ministers has not provided such evidence, neither when it issued the Contested rules of the Regulations, nor in its reply. Nor do the statistics provided show that the introduction of remote learning has helped to reduce the prevalence of Covid-19 infection beyond the 7-19 age group. This is in line with the conclusion of international studies that on-site activities in educational institutions do not significantly increase the prevalence of Covid-19 infection, provided that appropriate safety precautions are taken.

The Ombudsman considers that the Cabinet of Ministers has not assessed alternative means that would be less restrictive of the fundamental rights of a person and has not justified that the public benefit outweighs the restriction imposed on the rights of a person. The argument about the high incidence of Covid-19 among teachers cannot be accepted either, as vaccines were already available for teachers in spring 2021. In addition, the government should have explained how it plans to address the foreseeable harm that prolonged remote learning could cause to children and society. Latvia has been one of the longest remote-learning using countries. Thus, the restriction of fundamental rights laid down in the Contested rules of the Regulation does not comply with the principle of proportionality.

11. The invited body – the Centre for Disease Prevention and Control
– points out that by analysing epidemiological data, it can be concluded that the introduction of remote learning has had a significant impact on the intensity of COVID-19 infection in children and young people in the age group of 7 to 19 years. Without such a restriction, the incidence of Covid-19 among school-age

children is likely to continue to increase rapidly, with a significantly higher increase in the overall national incidence, leading to an overburdened health sector, an increase in severe cases and an increase in mortality.

School closures were one of the main measures implemented by almost all European Union and European Economic Area countries during the initial phase of the Covid-19 pandemic. With the start of the 2020/2021 school year, there has been a sharp increase in the disease burden in society as a whole. Among school-age children and young people, this trend has been even more pronounced than in the general population. The epidemiological investigation of the Covid-19 cases showed that more than half of the affected pupils in grades 7-12 were infected after attending an educational institution. During the period of on-site learning, several outbreaks of Covid-19 were reported in schools, which were considered to be 60-170 cases per institution, with 72% of the cases among schoolchildren and 28% among school staff. After the introduction of remote learning, the number of outbreaks in educational institutions decreased significantly and the increase in the 7-19 age group was lower than in the national population and other age groups, with even a slight decrease in incidence immediately after the restrictions were introduced.

Initially, scientific evidence was scarce and knowledge about the effectiveness of school closures in general was limited. As new scientific evidence emerges on the epidemiological impact of school closures, research has also begun on the adverse secondary effects of school closures. Research shows that proactive school closures contribute to inequality and have a negative impact on children's physical and mental health, the quality of education, and a country's economic growth and productivity. These effects were taken into account in the decision-making process and school closures were used as a last resort to control the spread of the disease. In Latvia, schools have also continued to operate on-site after September 2021, when the incidence of Covid-19 rose sharply again. However, school closures may still have some impact in limiting respiratory tract infections, especially when implemented in combination with other physical distance restrictions and contact tracing.

12. Invited official - Head of the Department of Public Health and Epidemiology, Faculty of Public Health and Social Welfare of the Riga Stradiņi University *Dr. med. Ģirts Brīdis* - points out that from an epidemiological point of view, after the end of the state of emergency on 7 April 2021, there were grounds to continue the learning remotely. If there had been a complete switch to on-site learning at that time, the level of disease and the risk of outbreaks would have increased.

Human contact is a key prerequisite for the transmission and further spread of Covid-19. Schools and pre-schools are particularly favourable environments for the spread of infection. Experience in many countries, including Latvia, shows that schools are often the starting point for new outbreaks and further increases in overall morbidity. There was therefore an epidemiological basis for limiting exposure of children and young people to educational institutions as much as possible, while allowing on-site learning would have meant deliberately increasing the risk of disease. The restrictions are weighed against the potential damage to education, children's development and mental well-being. The organisation and conduct of education, whether on-site or not, is a political decision that must take into account all the possible risks and other disadvantages associated with the disease.

An emergency situation is not an epidemiological but a legal concept, and its designation is a political and administrative act of risk management aimed at achieving specific objectives at specific times, taking into account all possible factors. There are no clear epidemiological criteria for defining an emergency. For example, at the time of the opinion, on 6 October 2021, the epidemiological situation is much worse and more threatening than it was in the spring, but no state of emergency has been declared. Thus, the political decision to keep the education process as much on-site as possible in order to prevent other losses, mainly in the quality of education, is a deliberate epidemiological risk. Regular testing of schoolchildren for the presence of the Covid-19 infectious agent and the requirement to vaccinate school staff only partially and incompletely mitigate the

epidemiological risks. Nor can the causal link between the applicants' health problems and the distance learning process alone or at all be established.

13. Invited officials – Professors of the Faculty of Pedagogy, Psychology and Art of the University of Latvia, *Dr. paed. Linda Daniela and Dr. psych. Baiba Martinsone* - points out that the emergency remote learning process has had an impact on education and its quality, but that this impact has not been created in a targeted way.

During the period of remote learning, quite a number of solutions have been put in place to overcome the problems and support children and teachers. For example, the "Tava klase" (Your class) project has been set up, which includes filming lessons to be used in the learning process, and changes have been made to the legislation defining remote learning as a form of on-site learning, thus ensuring that remote learning is also organised in a structured way.

The decline in the quality of education is being witnessed all over the world. The World Bank study concludes that whatever model is used to predict possible scenarios, remote learning is likely to result in losses after a pandemic. Despite the already foreseen problems with the quality of education, there is no reason to argue that the continuation of remote learning during the last month and a half of the school year is the reason for the overall decline in the quality of education. Nor can it be ascertained that the Applicants' health problems arose precisely during this period of remote learning after stopping the state of emergency.

14. Invited official – *Dr. iur. Kristīne Jarinovska* - holds that the Contested rules does not comply with Article 112. of the Constitution.

The purpose of the right to education is to ensure that everyone has a real opportunity to develop and improve his or her personality in order to live a life of self-respect and to become a full member of society and a contributor to a deliberative democracy. The freedom of the form of primary education is linked to the compulsory nature of this level of education, which is part of the universally recognised human rights norms binding on the Republic of Latvia. Article 112 of

the Constitution serves to guarantee these rights. The provision of on-site primary education - through public or state-recognised private educational institutions - as a basic form of education is part of the cultural tradition of the Western world, thus ensuring both the minimum basic education required by the state and the socialisation of the individual. Other forms of education are necessary to increase the accessibility, reach, acceptability and adaptability of education. The State has a duty to offer a variety of innovative and learner-centred solutions for education. In terms of the form of education, such an obligation implies more individualised solutions to safeguard the rights and legal interests of the learner.

Today, the right to free education generally means the right to free education in an institution. And early career guidance should be available to all, regardless of ability and skills. Remote learning, as a form of education delivered through a network of appropriate public and publicly recognised private educational institutions, is considered to be the most appropriate basic form of early vocational training. A different form of primary education is to be established for cases where education is not acquired within the time limit laid down in Article 4 of the Education Law - up to 18 years of age. In particular, the State must provide a form of education that is valid regardless of the age of the learners.

Although general secondary education is not compulsory in Latvia, it is a necessary stage of education for the development of the individual, society and the state. On-site general secondary education should be considered the basic form of education, given the free condition and the importance of socialisation in achieving the objectives of secondary education. However, other forms of education, such as distance learning and self-education, are also important at this stage in the process of preparing for independent life. The form of education is not only important for determining the quality of education, but its compliance with formal quality requirements is also an important prerequisite for the recognition of education at national, European Union and international level.

Thus, the fundamental right established in Article 112 of the Constitution, namely the right to education, includes the freedom of the form of obtaining education. Taking into account the importance of education for the development

of personal, social and deliberative democracy, as well as the need to organise the education system in accordance with the cultural traditions of the Western world, including the provision of free education, on-site education is to be regarded as the basic form of education. The State protects everyone's legitimate expectation to be able to receive education in person, while the freedom of choice in favour of another form of education is primarily related to ensuring the rights and legitimate interests of the learner. However, even where another form of education is chosen, socialisation must be provided to the extent necessary to stimulate personal development and to prepare the learner for life and participation in the political process, thus creating a modern deliberative democracy.

The State, having recognised the Covid-19 pandemic as a public emergency threatening the life of the nation, has the right to restrict the right to education, including by limiting the freedom to pursue a form of education, or by renouncing this freedom altogether. In such a situation, the State must comply with the procedure laid down in Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

The term "on-site" in the sense of the legislator no longer includes the compulsory need to be physically present in the building of the educational institution or other designated premises where the educational programme is implemented. The term "remote learning" was introduced without adequate justification, as a legal fiction to classify both part-time and remote learning as on-site, thereby disregarding the legal consequences that may arise from the actual form of education. The legislator's discretion in defining the content of concepts is limited - it is limited by legal norms, by legal doctrine, by the branches of science to which the legislator's creativity is related, and by open concepts and terms denoting open concepts rather than fictional concepts.

In its reply, the Saeima wrongly referred to sub-paragraph 6 (b) of General Comment No 13 of the United Nations Committee on Economic, Social and Cultural Rights, as it primarily refers to distance education and not to remote learning. Physical accessibility of education also means accessibility of education through modern technology, but it must be taken into account that this must not

result in discrimination in law or in fact and that such accessibility must be economically feasible for everyone.

The Cabinet of Ministers' reply did not refer to the existence of the reasoning provided for in Article 15, part three of the Convention. Inappropriate legislation cannot be justified on epidemiological grounds more than one and a half years after the spread of the Covid-19 infection reached pandemic levels.

The Saeima's and the Cabinet of Ministers' replies do not include scientific justification for the chosen measures, nor specific references to such justification, although some studies have already been published in 2020. The words "epidemiological safety" and other general statements cannot be considered as justification.

15. The invited official – Nils Konstantinovs, a specialist in child and adolescent psychotherapy - points out that, in general, distance learning created additional risk factors that could interfere with pupils' development and exacerbate their psycho-emotional difficulties. However, in developmental psychology, it is usually not possible to establish a direct causal link between a single isolated factor, such as the transition to remote learning, and a specific developmental outcome, such as a psychopathology or a significant negative impact on development. Therefore, without further assessment and psychodiagnostics, it cannot be scientifically substantiated that the restrictions imposed have had a negative impact on a child or have exposed him or her to significant risks to his or her development.

Psycho-emotional disorders are most common in school-age children and adolescents and are influenced by many factors, including psychological, biological, environmental and social. The manifestation of these disorders in a given child is determined by the child's individual factors, such as temperament and the support system available. Children with psycho-emotional disorders are at significantly higher risk than others of poorer developmental outcomes in many areas of life, such as learning, work and relationships.

The role of the educational institution is essential in all aspects of a child's development, and this role has become particularly prominent in the context of the restrictions imposed by the Covid-19 pandemic. The increase in psycho-emotional health problems in school-age children is attributed to various factors, including changes in school routines and teaching methods. Most of the talk is about an increase in anxiety and depressive disorders, as well as difficulties in learning and studying.

However, research in Europe and around the world points to a wide range of psycho-emotional health outcomes, which may be explained by the very different influences of general and individual factors on the development of psychopathology. The increase in psycho-emotional disorders in school-age children is not a phenomenon unique to the Covid-19 pandemic, as it has been described in various studies for at least two decades. Every new generation since the early 20th century has a higher prevalence of psycho-emotional disorders than the previous generation. This is explained by ecological and societal changes, as well as changes in lifestyles due to new technologies. Thus, the impact of the restrictions introduced during the Covid-19 pandemic on children's development and health is more likely to be seen as one of several factors that reinforced a societal trend that had already existed for decades and was perhaps more pronounced in educational institutions that were already more negatively affected or unable to provide children with support appropriate to their psycho-emotional needs. But the impact of restrictions at the level of the individual child could vary from negative to positive.

The Concluding Part

16. Article 112 of the Constitution determines the following: “Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.”

The Constitutional Court has recognised that the first sentence of Article 112. of the Constitution establishes the fundamental right to receive education in

the broadest sense of this right and is applicable to all levels and types of educational programmes (*see Judgement of the Constitutional Court of 6 May 2011 in case No 2010-57-03 Clause 11.1.*) The right to education also includes the freedom of a person to choose to receive general education not only in state and municipal, but also in private educational institutions (*see Clause 15.2 of the judgment of the Constitutional Court of 13 November 2019 in Case No 2018-22-01*).

Article 112 of the Constitution provides for the State's obligation to establish an education system accessible to all learners. The education system must meet basic requirements such as educational opportunity, accessibility, acceptability and adaptability. Educational opportunities mean the provision of a sufficient number of educational institutions and educational programmes to meet the needs of learners, so as to guarantee the achievement of educational objectives. Access to education is achieved by creating equal opportunities and removing barriers that might arise in accessing education opportunities. The acceptability of education is ensured by adapting the content and methods of education to the needs of learners, including by setting educational standards and creating the conditions for creative freedom to achieve the relevant educational objectives at certain stages of education, and by providing opportunities for parental involvement. The acceptability of education also includes the child's right to free participation in cultural life, the right to rest, leisure and safe and healthy conditions for learning. The adaptability of education, in turn, means the continuous development of the education system in accordance with the changing needs of society (*see, for example, Clause 20 of the Constitutional Court's judgment of 23 April 2019 in Case No 2018-12-01*). Thus, Article 112 of the Constitution includes the right of the learner to expect that the State's obligations with regard to the education system included in the legal norms comply with the mentioned criteria (*see, for example, Clause 13 of the Constitutional Court's judgment of 19 June 2020 in Case No 2019-20-03*).

When ascertaining the content of fundamental rights established in the Constitution, Latvia's international obligations in the field of human rights should

also be taken into account (*see, for example, Clause 16.2 of the Constitutional Court's judgment of 2 December 2021 in Case No 2021-07-01*). The Constitutional Court has already indicated that the right to education included in Article 112 of the Constitution by its very nature interconnects, inter alia, with Article 13 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (hereinafter - the Covenant), Article 2 of the First Protocol to the Convention and Article 28 of the Convention on the Rights of the Child (*see, for example, Clause 20 of the Judgment of the Constitutional Court in Case No 2018-12-01 of 23 April 2019*).

Article 13 of the Covenant implies that the State enjoys a margin of appreciation in the exercise of the right to education. The application of the right to education depends on the circumstances in each Member State (*see: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 6*). The European Court of Human Rights has also recognised, in relation to Article 2 of Protocol No 1 to the Convention, that the legal regulation of the right to education may be subordinate to the needs and resources of society (*cf. the judgment of the European Court of Human Rights of 23 July 1968 in Relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium, Application No 1474/62, No 1677/62, No 1691/62, No 1769/63, No 1994/63, No 2126/64, paragraph 5 of Part IB and paragraph 41 of the judgment of 25 February 1982 in Campbell and Cosans v. the United Kingdom, Application Nos 7511/76 and 7743/76*). At the same time, in exercising its discretion as to what kind of education system to establish, the State is obliged to respect the aspects of opportunity, accessibility, adaptability and acceptability of the right to education (*cf: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para 6 (a), (b), (c), (d)*).

The right to education refers to access to educational institutions that exist at a given time, but such access is only one aspect of the right to education. For the

right to education to be effective, it is necessary, inter alia, that the person being educated should be able to benefit from the education received (*see the judgment of the European Court of Human Rights of 23 July 1968, Relating to certain aspects of the laws on the use of languages in education in Belgium v Belgium, Applications No 474/62, No 1677/62, No 1691/62, No 1769/63, No 1994/63, No 2126/64, paragraphs 3 and 4 of Part IB*). Likewise, in certain cases, States Parties may be obliged to take measures to improve access to and the quality of education (*cf. paragraph 177 of the judgment of the Grand Chamber of the European Court of Human Rights of 10 March 2010 in Oršuš and Others v. Croatia, application No 15766/03*). Article 28, part one, of the Convention on the Rights of the Child requires States parties, inter alia, to introduce compulsory free primary education, to promote the development of various forms of secondary education, both general and vocational, by ensuring its accessibility to all children and by taking appropriate measures, such as introducing free education and, where necessary, providing financial assistance.

The right to choose the forms and methods of education does not derive directly from Article 112 of the Constitution. However, where access to an already established national education system is to be ensured, the legislator's discretion is limited by considerations of the objectives to be achieved by the right to education. In particular, if the legislator has created an education system and conceptually decided on specific organisational forms of education - full-time, part-time, distance education, self-education, family education - such implementation of the legislator's choice must comply with the State's obligations under Article 112 of the Constitution and ensure the right of persons to receive quality and inclusive education.

The quality of education is defined by the skills, values, attitudes and knowledge that enable individuals to lead full and fulfilled lives, make informed and informed decisions, respond to challenges and succeed in the labour market. Inclusive education ensures that everyone has the opportunity to achieve their educational goals to the best of their ability. Thus, quality and inclusive education also has several functions: firstly, personal development, which aims at the

expression of a person's inner freedom and independence; secondly, inclusion, which enables a person to integrate into society by accepting its values; and thirdly, economic, which enables everyone to adapt the knowledge, skills and attitudes he or she has acquired to the economic needs of society.

A sustainable education system is one of the values of a democratic state governed by the rule of law. The education system must be sufficiently stable on the one hand, and capable of evolving to achieve the highest possible quality of education on the other. Similarly, the state must be able to respond to different types of challenges by ensuring the right to education. When fulfilling the educational objectives to be achieved with content, the education system needs to be flexible enough to respond, among other things, to the challenges posed by the Covid-19 pandemic. While ensuring the right to education in the context of the spread of the Covid-19 infection, the State must also ensure that it fulfils its obligations under other provisions of fundamental law, including the obligation to protect human health laid down in Article 111 of the Constitution. Where there is a significant and serious risk to public health, the State has a duty to take reasonable and appropriate measures to protect the fundamental rights of individuals and to adapt the education system to such a situation.

Various exceptional circumstances, such as the Covid-19 pandemic, pose a challenge to the State in terms of ensuring fundamental rights. Article 13. of the Covenant, concerning the right to education, imposes on the Member States a number of obligations which must be fulfilled irrespective of State resources, opportunities and circumstances, including: ensuring access to education and training for all without discrimination; ensuring that the educational programmes offered comply with the objectives set out in the international treaties on the right to education, in particular with respect for human rights; and guaranteeing compulsory completion of primary education (*see: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 57.*). Thus, these obligations arising from the right to education must be fulfilled also under the circumstances of spread of the Covid-

19 infection, irrespective of national capacities, resources, the epidemiological situation and other circumstances.

The right to education established in Article 112 of the Constitution includes, inter alia, the obligation of the state to develop a sustainable education system that is capable of adapting to changing circumstances, while ensuring the right to quality and inclusive education.

17. The Applicants request the Constitutional Court to assess compliance of the Contested rules as a single legal regulation with Article 112 of the Constitution.

17.1. Article 4, part one, Clause 8 of the Management Law stipulates that in case of the spread or threat of the spread of Covid-19 infection, the Cabinet of Ministers may determine the conditions and procedures for the organisation of the educational process for epidemiological safety purposes, including for ensuring the learning process remotely. Thus, by the Contested rules of the management Law the legislator has authorised the Cabinet of Ministers, inter alia, to develop the conditions for organising the learning process remotely. The power granted to the Cabinet in the Governance Act therefore applies to the period when the Cabinet has identified a high prevalence or threat of Covid-19 infection in the country.

The Education Law lays down the basic principles, form, organisation and management of the education system in the country. Article 1, Clause 1¹ of the Education Law provides that remote learning is a part of the process of on-site education in which students learn, including using information and communication technologies, without being physically in the same room or place of instruction together with the teacher. According to Clause 12.⁴ of the Education Law, presence is a form of acquisition of education, in which the learner acquires the content of education by attending an educational institution, including remote learning, in accordance with the educational program implemented by the educational institution. Article 14, Clause 45 of this Law provides that the Cabinet of Ministers shall determine the procedure for organising and implementing remote learning.

Thus, the terms "remote learning" and "on-site" used in Article 1(1¹) and (12⁴) of the Education Law apply not only to the period when the legal framework of the Governance Law was in force, but also to the legal situation after the end of the Covid pandemic. However, the authorisation to the Cabinet of Ministers to establish the procedure for remote learning by educational institutions, contained in Article 14, Clause 45 of the Education Law, applies to the organisation of the education process after the end of the Covid-19 pandemic.

17.2. Sub-paragraph 27.1.3 of Regulations No 360 stipulated in which cases educational institutions, except colleges and universities, shall carry out the educational process partially or fully remotely. According to sub-paragraph 2 of the Clause 32. ⁷ of the Cabinet of Ministers Regulations No 360, on-site learning at all the educational institutions was discontinued and remote learning was provided in the field of education and sports as of 7 April 2021, except as provided for in this sub-paragraph. However, sub-paragraph 3, Clause 32. ⁷ of Regulations No 360. provided, inter alia, for the cases in which the educational process could be organised in person in grades 1 to 6 and 12 as well as in rotation in grades 7 - 9 and 10-11, ensuring epidemiological safety requirements and conducting weekly testing of the staff employed in the educational institution.

Thus, Regulations No 360 laid down the procedures for the organisation of the teaching process in the event of the spread or threat of spread of the Covid-19 infection. Regulations No 360 expired on 11 October 2021, when they were replaced by the Cabinet of Ministers Regulations No 662 of 28 September 2021 "Epidemiological safety measures to limit the spread of Covid-19 infection".

17.3. Some of the Contested rules of the Applicants were adopted in the framework of the measures to combat the pandemic Covid-19 in order to prevent the uncontrolled spread of the Covid-19 infection after the end of the state emergency situation. Other Contested rules provide for changes in the form of on-site education after the end of the Covid-19 pandemic. Therefore, the Contested rules regulate legal relations not only in the conditions of the Covid-19 pandemic, but also determine the legal framework in the education system after the end of the Covid-19 pandemic.

It arises from the file materials that the Contested rules were applied to the Applicants during the period from 7 April 2021 to the end of the school year 2020/2021. During this period, the Applicants received their primary and general secondary education only remotely, given the risk of spreading the Covid-19 infection in the country. Thus, the Contested rules were applied to the applicants in a situation of risk of spread of Covid-19 infection. Namely, the Contested rules of the Management Law and Regulations No 360 were applied to them in conjunction with the Contested legal framework established in Article 1, Clause 1¹ and 12⁴ of the Law on Education.

At the time when the Contested rules were applied to the Applicants, the Cabinet of Ministers had not yet adopted the Regulations provided for in Article 14, Clause 45 of the Law on Education. At the time of the present case, the legislation adopted to manage the spread of Covid-19 is still in force. In addition, although most of the previously imposed restrictions related to epidemiological safety have been lifted, the incidence of Covid-19 still persists in the country (*see information on the Centre for Disease Control and Prevention website: <https://www.spkc.gov.lv/lv>*). Thus, the disputed Article 1, Clause 1¹ and 12⁴) of the Education Law, insofar as these legal provisions apply to the organisation of the education process after the end of the COVID-19 infection, have not been applied to the Applicants. Also, the authorization to the Cabinet of Ministers specified in Article 14, Clause 45 of the Education Law is not applicable to the situation of the Applicants, as the Applicants are not within the scope of this legal norm.

Consequently, in the case under review, the Constitutional Court will examine Article 4, part one, Clause 8 of the Management Law, Article 1, Clause 1¹ and 12⁴ of the Education Law, as well as sub-paragraph 27.1.3, Clause 32⁷, sub-paragraph 2 and 3 of Regulations No 360, in so far as these legal norms apply to the organisation of the educational process during the spread of the Covid-19 infection. However, with regard to Article 14, Clause 45 of the Education Law, the proceedings in the case must be terminated on the basis of Article 29, part one, Clause 6 of the Constitutional Court Law.

18. If the compatibility of several legal norms of different legal force with the Constitution has been contested, then, taking into account the essence of the case under examination, the Constitutional Court must determine the most effective approach to assess the compatibility of these norms (*see, for example, Clause 14 of the Judgment of the Constitutional Court of 28 March 2020 in Case No 2019-37-0103*).

Article 1, Clause 1¹ and 12⁴ of the Education Law contain an explanation of the terms "remote learning" and "on-site education". Within the framework of the Contested legal regulation of the Management Law and Regulations No 360, the legislator exercised the right granted to it in the event of the spread or threat of spread of an infection Covid-19 to determine the conditions and procedures for the organisation of the educational process, including the provision of the educational process remotely, for the purposes of epidemiological safety. In other words, these norms regulate the same legal issue - the procedure for organising the educational process in the event of the spread or threat of spread of the Covid-19 infection - and are interrelated. Although Regulations No 360 expired on 11 October 2021, it, together with Article 1, Clause 1¹ and 12⁴ of the Education Law and Article 4, part one, Clause 8 of the Management Law, applied to the Applicants and they have requested that these provisions be declared null and void as of 7 April 2021.

Consequently, in the case under review, the Constitutional Court will assess compliance of Article 4, part one, Clause 8 of the Management Law, Article 1, Clause 1¹ and 12⁴ of the Education Law, as well as sub-paragraph 27.1.3, sub-paragraphs 2 and 3 of Clause 32⁷ of Regulations^{No 360}, in so far as these legal norms relate to the organisation of the educational process during the spread of the Covid-19 infection, as a single legal regulation with Article 112 of the Constitution.

19. Taking into account the content of the State obligation included in Article 112 of the Constitution and Article 4, part one, Clause 8 of the Management Law, Article 1¹ and 12⁴ of the Education Law, as well as sub-paragraph 27.1.3,

Clause 32⁷ sub-paragraphs 2 and 3 of Regulations No 360 (hereinafter - the Contested regulations), in order to assess the constitutionality of the contested regulation in the present case, the Constitutional Court must establish whether:

1) The legislator had taken measures to ensure the rights of persons to primary and general secondary education during the period of the spread of the Covid-19 infection;

2) These measures were taken in an appropriate manner, i.e., in such a way as they are consistent with the aspects of the education opportunities, accessibility, adaptability and acceptability.

20. The Applicants consider that the contested regulation has not been adopted in due procedure. With regard to each of the rules of the Contested regulation, the application contains different arguments, which, according to the Applicants, justify the incompatibility of these norms with the principle of good legislation.

The Constitutional Court has recognised that compliance with the procedure of adoption of a legal norm is a precondition for the validity of a legal norm (*see, for example, Clause 7.3 of the Constitutional Court's judgment of 24 September 2008 in Case No 2008-03-03*). The principle of good law-making applies to the process of preparation and adoption of any normative act (*see, for example, Clause 24 of the judgment of the Constitutional Court of 19 June 2020 in Case No 2019-20-03*). However, the Constitutional Court has also recognised that only substantial breaches of procedure are grounds for recognising that the adopted act does not have legal force (*see Clause 16 of the judgment of the Constitutional Court of 7 January 2022 in Case No 2021-06-01*).

Thus, in order to establish in the case under review whether the legislator has taken measures to fulfil its obligation under Article 112 of the Constitution, the Constitutional Court must first examine whether each of the norms of the contested regulation has been adopted in due procedure, i.e., in accordance with the principle of good law-making.

20.1. The Applicants submit that they have no information to indicate that the procedure established in the Constitution and the Rules of Procedure of the Saeima have been violated in the adoption or promulgation of Article 1, Clause 1¹ and 12⁴ of the Law on Education. However, they believe that the Saeima has not listened to the opinions of pupils, their parents and non-governmental organisations when adopting these norms, and has adopted these norms in an unjustified haste, without a full discussion.

The Saeima points out that the meaning of Article 1, Clause 1¹ and 12⁴ of the Education Law is the creation of a legal framework that would allow decisions to be taken in a balanced, effective manner and in accordance with the specific epidemiological situation. In such cases, it is therefore permissible that the meetings of the Saeima committees primarily hear the risk forecasts and assessments made by sectoral experts. Those provisions are aimed at creating a clear legal framework after the end of the state of emergency in order to safeguard the fundamental rights of individuals in rapidly changing circumstances.

Article 1, Clause 1¹ and 12⁴ of the Educational Law have been introduced by the Act of 12 November 2020 "Amendments to the Educational Law", which has been considered in urgent procedure in two readings, on 5 November 2020 and 12 November 2020 respectively. The Law was promulgated by the President of Latvia on 19 November 2020 in the Official Gazette of Latvia No 224 and entered into force on 20 November 2020.

In accordance with Article 75 of the Constitution and Article 92 of the Rules of Procedure of the Saeima, the legislator is entitled to make its own considerations of expediency on consideration of a draft law under the urgency procedure (*see Clause 16 of the Constitutional Court's judgment of 3 July 2015 in Case No 2014-12-01*).

It is evident from the materials for the drafting law No 847/Lp13 "Amendments to the Law on Education" that the legislator's decision to advance this law as urgent in two readings is based on the fact that in the context of the Covid-19 pandemic, educational institutions are forced to continue implementing distance learning even after the end of the state of emergency situation. The

annotation of the draft law indicates that, taking into account the practice of the European Union Member States and the guidelines published by the European Commission for a combined learning process, the optimal option would be to use remote learning as a part of the form of acquiring on-site education, however, the current version of the Education Law does not provide for such a form of acquiring education (see the annotation of the draft law No 847/Lp13 “Amendments to the Education Law” submitted to the Saeima 9 October 2020 and the audio recording of the meeting of the Education, Culture and Science Commission of the Saeima on 10 November 2020).

The principle of good law-making does not guarantee a specific result desirable for one person or a group of persons, however, its observance gives everyone confidence that the relevant issue has been discussed democratically, i.e., various opinions have been expressed and analysed, and the best possible balance between various conflicting rights and interests has been sought, observing the values and general principles of law enshrined in the Constitution (*see Clause 24.1 of the Judgment of 23 April 2019 in Case No 2018-12-01 of the Constitutional Court*).

It is evident from the process of adoption of Article 1, Clause 1¹ and 12⁴ of the Education Law that the views of non-governmental organisations and representatives of the sector were heard in the responsible Commission. During the first and second readings of the draft law, the deputies debated the contested norms of the Education Law (*see audio recordings of the meeting of the Saeima Education, Culture and Science Commission on 10 November 2020 and 11 November 2020*).

The Constitutional Court has indicated that it is essentially the responsible commission that ensures that the draft law is fully prepared for consideration at the sitting of the Saeima (*see Clause 31.2 of the Constitutional Court's judgment of 11 June 2020 in Case No 2019-12-01*). Participation of interested persons in the process of consideration of a draft regulatory enactment may facilitate adoption of an objective decision and balancing of various interests, however, the legislator is not bound by the opinion of a particular group of persons (*see Clause 18.1 of the*

Constitutional Court's judgment of 25 March 2015 in Case No 2014-11-0103 and Paragraph 17.2 of the judgment of 26 November 2009 in Case No 2009-08-01).

Although draft law No 847/Lp13 "Amendments to the Law on Education" was examined under the urgency procedure, the materials of its drafting confirm that the legislator made its considerations in compliance with the principles enshrined in the Constitution and the Saeima's Rules of Procedure. In particular, the draft law was examined at meetings of the Saeima and Saeima committees, ensuring that it could be discussed and that Members could exercise their right to speak, table motions and vote. Stakeholders were also involved in the legislative process.

20.2. According to the Applicants, Article 4, part one, Clause 8 of the Management Law is incompatible with the principle of separation of powers arising from Articles 1 and 64 of the Constitution. The legislator itself has not regulated in the Management Law the organisation of the general education process remotely at a time when the risks of spreading the Covid-19 infection are high. At a time when a state of emergency has not been declared in the country, it is unacceptable that the Saeima does not regulate an issue of public importance, moreover, an issue that affects the rights of pupils, but authorises the Cabinet of Ministers to elaborate the entire regulation.

The Saeima points out that the legislator has regulated the most important legal relations for society and has developed a clear legal framework within which the executive power is able to develop more detailed regulations and take decisions necessary in the given epidemiological situation. This is demonstrated by the purpose of the Management Law, its principles and control mechanisms. The mandate given to the Cabinet of Ministers by the Management Law is clear and particularly necessary in rapidly changing epidemiological conditions. The context in which the provisions of the Management Law were drafted and operated - the fight against the spread of the Covid-19 infection (*see Volume 1 of the case file*) - is of fundamental importance. *p. 143*

20.2.1. Pursuant to Article 64 of the Constitution, the Saeima, as well as the people, have the right to legislate in accordance with the procedure and to the

extent provided for in the Constitution. However, in order to ensure a more effective exercise of public power, there is a derogation from the requirement that the legislator must give full weight to all matters. This efficiency is achieved by the legislator deciding on the most important issues in the legislative process, while authorising the Cabinet of Ministers or other state institutions to elaborate more detailed regulations and technical norms necessary for the implementation of the law (*see Clause 25.3.1 of the Constitutional Court's judgment of 20 March 2020 in Case No 2019-10-0103*). The legislator must clearly indicate which issues and in what manner the Cabinet of Ministers is entitled to regulate (*see Clause 10 of the Constitutional Court's judgment of 21 November 2005 in Case No 2005-03-0306*).

In order to assess compliance of norms issued by the executive power with Article 64 of the Constitution, it is necessary to assess whether the procedure of authorisation has been observed, i.e., the content and purpose of the authorising norms must be ascertained, and then it must be examined whether the Cabinet of Ministers, by issuing the respective norms, has observed the limits of the authorisation established by law (*see Clause 32.3 of the 20 March 2020 Constitutional Court Judgment in Case No 2019-10-0103*).

Draft law No 715/Lp13 "Management Law of the Spread of Covid-19" was submitted to the Saeima on 29 May 2020. The Saeima deemed the draft law urgent and considered it at two readings, on 4 June 2020 and 5 June 2020 respectively. The Law was promulgated by the President of Latvia on 9 June 2020 in the Official Gazette of Latvia No 110A and entered into force on 10 June 2020.

The Management law was drafted in view of the fact that, after the end of the state of emergency, it was not possible to lift all the restrictions imposed due to the spread of Covid-19 for reasons of epidemiological safety. The execution of the rights of persons required the establishment of additional criteria and restrictive conditions for a longer period of time, until an effective medical solution to control the spread of the Covid-19 infection was found (*see draft law No. 715/Lp13 "Management Law of the spread of Covid-19 infection", submitted to the Saeima on 29 May 2020*).

The legal framework for such a legislative mandate is set out in Article 1 of the Management Law. However, the discretion of the executive body is limited by Article 3 of the Management Law, i.e. restrictions on the rights of private individuals may only be imposed if the public safety risks associated with the spread of the Covid-19 infection cannot be effectively addressed by applying the legal remedies available under the general legal order.

The mandate given to the Cabinet of Ministers in the Management Law requires it to develop emergency mechanisms only in cases where a high risk of Covid-19 infection is detected. Thus, the power given to the Cabinet of Ministers in the Management Law does not provide the right to determine the forms or methods of delivery of general education where there is no identifiable risk of the spread of Covid-19 infection.

The Management Law, and therefore the Contested regulations contained therein, is time-limited, i.e. Clause 10 of the Transitional Provisions of the Management Law provides that the Law shall remain in force as long as there is a threat to epidemiological safety due to the spread of the Covid-19 infection. The Management Law also provides for an additional mechanism for parliamentary scrutiny and regular information. In particular, according to Clause 10 of the Transitional Provisions of the Management Law, the Cabinet of Ministers shall report to the Saeima at least every three months on the epidemiological security threat related to the spread of the Covid-19 infection.

The Constitutional Court recognised that the legislator had established the most important issues related to the management of the spread of Covid-19 infection in the Contested rules of the Management Law, as well as established a clear legal framework within which the necessary precautionary measures could be established and the protection of the rights of persons could be ensured.

20.2.2. The Applicants consider that Article 4, part one, Clause 8 of the Management Law is not a "law" in the substantive sense and, in this respect, refer to the same arguments as those raised in relation to Article 1, Clause 1¹ and 12⁴ of the Law on Education regarding the failure to hear the views of interested parties and the lack of discussion.

The Saeima points out that Article 4, part one, Clause 8 of the Management Law does not provide for the restriction of the rights of individuals and in the rapidly changing circumstances of the spread of Covid-19 the precautionary principle should be taken into account in particular. In a democratic state governed by the rule of law, this means not waiting until real harm has already occurred. Reasonable suspicion of the likelihood of such harm is sufficient for the State to take effective and proportionate measures at an early stage to prevent the harm from occurring. Where there is a substantial and serious risk to the health and well-being of persons, the State has a duty to take reasonable and appropriate measures to protect the fundamental rights of persons even before the adverse consequences have occurred. That is, in a unique and uncertain situation, the legislator is entitled to take decisions which are, first, based on a reasonable presumption and, second, aimed at protecting fundamental rights. Therefore, the absence of in-depth discussions that would have significantly delayed the adoption of the decision and its effectiveness at the time of adoption of the contested regulation cannot be a ground for declaring these norms unlawful.

The Constitutional Court concludes that the need to protect human health while at the same time fulfilling the obligations laid down in Article 112 of the Constitution in circumstances where the risk of the spread of the Covid-19 infection remained high, required the legislator to act urgently. The draft law in question was prepared by the Cabinet of Ministers and submitted to the legislator (*see annotation of the draft law No 715/Lp13 "Management Law of the Spread of Covid-19 Infection"*, submitted to the Saeima on 29 May 2020). During the drafting of the draft law, the Members of the Saeima, as representatives of the people, inter alia representing various interests of their constituents, had the opportunity to discuss the draft law and submit proposals both in the responsible committee and at the Saeima sessions. While a hearing of interested parties and additional consultations with experts in the field would have been desirable, the absence of such consultations in the present case does not in itself constitute a material breach in the adoption of Article 4, part one, Clause 8 of the Management Law.

20.3. The Applicants point out that by adopting sub-paragraph 27.1.3, Clause 32⁷, sub-paragraphs 2 and 3 of the Regulations No 360, the Cabinet of Ministers has not complied with the scope of the power granted to it by the legislator.

The Cabinet of Ministers has indicated that it has a broad competence in the education sector, as it needs to regulate various issues related to both the content of education and the organisational arrangements for its acquisition. According to Article 14 of the Education Law, the Cabinet of Ministers is authorised to determine more than 40 different issues related to the organisation of education (*see vol 1. of the case materials p. 118*)

Sub-paragraph 27.1.3 of Regulations No 360 stipulated that in certain epidemiological circumstances, the educational process could be partially or fully carried out remotely, in accordance with the decision of the founder of the educational institution and the procedures established by the educational institution. Thus, each educational institution, taking into account the epidemiological situation, was able to determine individual solutions for the implementation of the curriculum at a given level of education, ensuring as far as possible the continuation of the learning process in person. The provision in question was therefore aimed at ensuring the regional principle and was intended to ensure access to the right to education as far as possible, while at the same time respecting the criteria laid down by the State as to when such action is possible.

In the sub-paragraph 2 of Clause 32. ⁷ of the Regulations No 360 it was provided that from 7 April 2021, in the field of education and sport, subject to a number of other provisions of the Regulations, on-site learning in all educational institutions was to cease and remote learning was to be provided. Thus, Regulations No 360, Clause 32. ⁷, sub-paragraph 2 regulated the cases in which, in the event of epidemiological risks, it was not permissible to organise on-site learning due to the risk to public health interests. Sub-paragraph 3, Clause 32. ⁷ of the Regulations No 360, on the other hand, laid down the procedure and conditions under which, in compliance with epidemiological requirements, pupils at the relevant levels of education could participate in on-site learning, without

complying with the general requirements laid down in those provisions concerning the total prohibition of on-site education. Thus, this legal provision provided for exceptions to the general procedure for remote learning.

Consequently, the Contested rules of Regulations No 360 generally established the principle of when an educational institution should switch to remote learning, as well as established exceptional cases when the on-site learning in an educational institution should be maintained. The Contested rules of Regulations No 360 do not include such a legal framework that would provide for the introduction of new educational methods, standards or forms of educational organisation. These rules did not change the education system itself. In particular, Regulations No 360 set out precisely when educational institutions are obliged to switch to remote learning.

Thus, by issuing Regulations No 360, subparagraph 27.1.3, subparagraphs 2 and 3 of Clause 32.⁷, the Cabinet of Ministers has complied with the scope of the authorisation granted to it by the legislator.

Consequently, the Contested regulations, in so far as it concerns the organisation of the educational process at the time of the spread of the Covid-19 infection, was adopted in accordance with due procedure.

21. In order to ascertain whether the legislator has taken measures to ensure the right of persons to primary and general secondary education during the spread of the Covid-19 infection, it is necessary to look at the education system already in place before the Covid-19 pandemic and examine how the legislator has acted to adapt this system to the circumstances of the spread of Covid-19.

21.1. The forms of education - on-site full time, part-time, distance education, self-education and family education - are regulated in Article 8, part one of the Education Law. Article 8, part two of the Education Law stipulates that an education institution is entitled to implement education programmes in the form of on-site full-time, part-time and distance education. Pre-primary education programmes are delivered in a on-site form. General primary and general secondary education programmes are implemented in the form of part-time and

distance education, in accordance with the criteria and procedures for the implementation of general education programmes established by the Cabinet of Ministers.

The form of on-site education, as set in Article 8, part one of the Education Law, is based on a ratio of individual work and contact hours in the classroom between the teacher and the learner. On-site education, unlike part-time and distance education, involves implementing the curriculum and organising learning in the educational institution in the form of contact hours in close cooperation with the teacher. On the contrary, part-time and distance education as forms are based on the principle that the learner learns most of the curriculum independently, while contact hours at the educational institution are organised as tutorials to support the learner in the learning process and to help prepare for examination papers.

The education system separates forms of learning. For example, Clause 4 of the Cabinet of Ministers Regulations of 27 November 2018 No 747 "Regulations on the State Standard of Primary Education and Model Programmes of Primary Education" states that primary education can be organised in the form of on-site full-time, part-time and distance education. In turn, in the Cabinet of Ministers' Regulations No 281 of 21 May 2013 "Regulations on the State General Secondary Education Standard, Subject Standards and Model Curricula" (*expired on 1 September 2020*) sub-paragraph 31.1. sub-paragraph that, in accordance with the Latvian Classification of Education, a programme of general secondary education in the general education field, a programme of general secondary education in the humanitarian and social field, a programme of general secondary education in the mathematics, science and technology field and a programme of general secondary education in the vocational field shall be implemented in the on-site form of education.

In its turn, the Cabinet of Ministers Regulations of 3 September 2019 No 416 "Regulations on the Samples of State General Secondary Education Standards and General Secondary Education Programmes", which replaced the lapsed Cabinet of Ministers Regulations No 281 of 21 May 2013 "Regulations on the Standards of State General Secondary Education Standards, Standards of Subjects

and Examples of Education Programmes”, sub-paragraph 12.1 provides that the education programme shall be implemented in 3360-3780 study hours in the on-site form and 1890-2205 study hours in the part-time form or distance education.

Thus, education programmes in the forms of part-time and distance education can be implemented in accordance with the criteria and procedures established by the Cabinet of Ministers, which differ significantly from the requirements and methodological methods for learning the relevant curriculum, including the choice of teaching aids, established for the on-site form of education.

21.2. The conditions and criteria for learning the subjects at the appropriate level of education are described in the subject programmes. By Article 14, Clause 19 of the Education Law, the legislator has empowered the Cabinet of Ministers to set national education standards and develop model curricula. The curriculum describes the aims and objectives of the subject, the compulsory content, the sequence and timing of lessons, the forms and methods of assessing achievement, and the teaching tools and methods to be used for learning the content.

Thus, within the framework of the education system established by the State, any form of education is linked to the educational curriculum and its content is included in the Cabinet of Ministers' Regulations.

21.3. The law "Amendments to the Law on General Education" of 21 June 2018, which entered into force on 18 July 2018, launched the gradual introduction of competency-based curricula. Promoting the development of competences in education is one of the objectives of the European area of education, which could fully exploit the potential of education and culture to contribute to employment, social justice and active citizenship (*see European Commission Communication "Strengthening European identity through education and culture", 14.11.2017, COM (2017)673 final*). The amendments to the General Education Law introduced an interpretation of the term "form of educational organisation", i.e. it means a structured form of cooperation between a teacher and a learner, which regulates the joint activity of the teacher and the learner and is implemented as a lesson, playgroup, practice, game, play, outdoor activity or excursion (*see Article 1, part two, Clause 4²*) of the General Education Law). The annotation to the draft law

explains this concept as a form of educational organisation that allows learning to take place in a wide variety of places - school, library, museum, business, forest - using a variety of learning methods, not just the 40-minute lesson. In accordance with Clause 27 of the Transitional Provisions, Clause 4² of the second part of Article 1 of this Law entered into force on 1 September 2020.

The legislator thus provided for more possibilities to organise the learning process through different forms of educational organisation, but remote learning was not originally defined as a form of learning organisation.

Thus, the education system established by the legislator before the spread of the Covid-19 infection provided on-site learning as one of the forms of educational organisation, without any element such as remote learning.

21.4. With the global outbreak of Covid-19 reaching pandemic proportions, countries faced various challenges and had to adapt in order to guarantee, even in a pandemic, the exercise of state duties and functions and the protection of the rights and legitimate interests of individuals.

In Latvia, a state of emergency has been declared on several occasions to limit the spread of the Covid-19 virus, and a specific legal framework has been established for the duration of the Covid-19 pandemic. Among other, the state of emergency was declared from 9 November 2020 to 6 April 2021 by Clause 1 of the Cabinet of Ministers' Order No 655 of 6 November 2020 "On Declaring a State of Emergency".

Remote learning was introduced in the education system as part of the Covid-19 infection control measures, with the aim of enabling learners to continue their education, limit the spread of infection and thus protect human health. Given the rapid spread of the infection, the suspension of on-site learning was part of a complex set of measures under the country's overall protection plan. Remote learning was added to on-site learning. In response to the spread of the Covid-19 pandemic, other countries around the world have also adopted the remote learning model and developed crisis solutions to ensure continuity of learning for learners of different ages and abilities (*see: OECD, Lessons for Education from COVID-*

19: A Policy Maker's Handbook for More Resilient Systems, 15 December 2020, available at: <https://www.oecd.org/>).

Invited official *Prof. Dr. med. Ģirts Briģis* points out that human contact is the key to the transmission and further spread of Covid-19. Educational institutions are particularly favourable environments for the spread of infection. Experience in many countries, including Latvia, shows that educational institutions are the starting point for new outbreaks and further increases in overall morbidity. There is therefore an epidemiological basis for limiting exposure of children and young people to educational institutions as much as possible. From an epidemiological point of view, allowing on-site education would have meant deliberately increasing the risk of disease, and there was therefore a case for continuing the education remotely (*see case materials, Vol. 2 p. 25*).

In the state of emergency, in the process of remote learning, the contact between the teacher and the learners maintained the same in learning the content, the feedback to the learner and the responsibility of the teacher for the methods chosen to organise the learning process. The Applicants do not dispute the need for the introduction of remote learning in time of the state of emergency.

However, the absence of a national state of emergency does not mean that there are no longer significant threats to the health and well-being of individuals that require urgent state action. The conditions created by the Covid-19 pandemic are characterised by uncertainty and relatively rapid changes (*see, for example, Clause 24.3 of the judgment of the Constitutional Court of 10 March 2022 in Case No 2021-24-03*). Therefore, after the end of the state of emergency situation, the Contested rules of the Management Law granted the Cabinet of Ministers the power to determine the conditions and procedures for the organisation of the educational process, including the provision of the educational process remotely of the Covid-19 infection or the threat of its spread for the purposes of epidemiological safety. The annotation to the draft law states that it is impossible to predict the future risks of the spread of the Covid-19 infection, and therefore, for reasons of legal stability and public safety, it is necessary to develop legislation at the level of law to regulate the rights of individuals and the competences and

activities of institutions after the end of the state of emergency. For reasons of epidemiological safety, any restrictions imposed due to the spread of Covid-19 cannot be lifted until the end of the state of emergency. Therefore, the execution of the rights of individuals will require additional criteria and restrictive conditions for a longer period of time until an effective medical solution is found to control the pandemic (*see the annotation to Bill 715/Lp13 "Law on the Management of the Spread of Covid-19 Infection" submitted to the Saeima on 29 May 2020*).

The Saeima points out that the Contested rules of the Management Law are aimed at creating a clear legal framework after the end of the state of emergency situation in order to ensure the fundamental rights of persons in rapidly changing circumstances. Remote learning was recognised as one of the ways to ensure access to education and to protect the right to safety and health of individuals in the context of the spread of the Covid-19 infection (*see case materials, Vol. 1 p. 142*).

Also, from the publicly available statistics on the prevalence of Covid-19 in Latvia in 2021 it can be understood that, for example, between 5 April and 11 April 2021, 96 251 Covid-19 tests were carried out and 3503 infected persons were detected, while between 12 April and 18 April 2021, 96 358 Covid-19 tests were carried out and 3726 infected persons were detected, but between 10 May and 16 May 2021, 90 049 Covid-19 tests were carried out and 4051 infected persons were detected (*see Covid-19 national official website. Available at: <https://covid19.gov.lv/>*). It means that even after the lifting of the state of emergency in spring 2021, the relevant morbidity rates remained high.

There were therefore objective reasons for maintaining some of the restrictive measures in order to continue to ensure the right to education without endangering public health. In order to ensure the continuity of work of educational institutions after the end of the state of emergency, the Cabinet of Ministers was given the power to regulate the conditions and procedures for the organisation of educational processes in the event of the spread of Covid-19 infection. Therefore, the Applicants' argument that remote learning should only be allowed during a declared state of national emergency is unfounded.

21.5. The purpose of Article 1, Clauses 1¹⁾ and 12⁴⁾ of the Education Act was to explain the concepts of "remote learning" and "on-site learning". The committee responsible for the advancement of the draft law drew attention to the different practices of educational institutions in cases where remote learning is implemented, and highlighted the fact that some educational institutions use elements of remote learning in their methodology, therefore the legislator is obliged to immediately define remote learning as part of the on-site education process. However, the annotation to the draft law states: taking into account the fact that within the framework of epidemiological safety measures, educational institutions should provide partly or fully remote learning, which does not exclude, inter alia, attendance at an educational institution in person, remote learning should not be defined as a separate form of education, but as an integral part of the form of on-site education (*see the annotation of the draft law No 847/Lp13 "Amendments to the Law on Education" submitted to the Saeima on 9 October 2020 and the audio recording of the meeting of the Saeima Committee on Education, Culture and Science on 11 November 2020*).

Thus, the legislator provided the legal framework for the implementation of remote learning during the Covid-19 pandemic through Article 1, Clauses 1¹⁾ and 12⁴⁾ of the Education Law.

21.6. In turn, the Contested rules of Regulations No 360 strengthened the regional principle for the implementation of on-site educational programmes by stipulating that in the administrative territories of municipalities where the cumulative number of Covid-19 cases per 100 000 inhabitants in a 14 day period in a given city or county where an educational institution is located allows it, it is possible to implement on-site educational processes in grades 1-6 and 12, as well as, if the founder of the educational establishment assesses the possibility of meeting the epidemiological safety requirements, on a rotational basis in grades 7-11 (*see case materials, Vol. 1 p. 123 - 124*). The introduction of the regional principle in Regulations 360 was thus the basis for the gradual resumption of on-site learning, avoiding the risk of uncontrolled spread of Covid-19 infection.

The interpretation of remote learning in the Education Law and the mandate to the Cabinet of Ministers to develop procedures for the implementation of remote learning in the Management Law provided a mechanism to continue to legally ensure access to the education system and certain education programmes in the face of the spread of the Covid-19 infection. In turn, the Contested rules of Regulations No 360 regulated the cases when, if the risk of spreading Covid-19 infection increases, educational institutions should switch to remote learning. Thus, the Contested regulations are not aimed at changing the form of organisation of on-site education established in the State.

The legislator had to ensure the right to health even after the end of the state of emergency. By implementing remote learning as part of an on-site form of education, the legislator ensured the right to education at a time when the Covid-19 infection continued to spread rapidly and the gathering of individuals could have posed risks of uncontrolled spread of the infection. Thus, by adopting the Contested regulations and determining the cases when remote learning can be used as a form of on-site education, the legislator has tried to adapt the already established education system at the level of primary and general secondary education to unprecedented external conditions - the spread of Covid-19 infection.

Consequently, the legislator has taken measures to ensure the right of individuals to primary education and general secondary education during the spread of COVID-19 infection.

22. The Applicants point to a number of problems in the implementation of remote education, which, in their opinion, have been caused by the Contested regulations: the opportunities and access to education have been negatively affected, and the quality of education has also suffered. The Constitutional Court will examine the above arguments separately with regard to each aspect of the right to education, ascertaining whether the legislator has properly taken measures to ensure the right of persons to primary and general secondary education at the time of the spread of the Covid-19 infection.

Article 112 of the Constitution implies the State's obligation to respect, protect and implement the aspects of educational opportunities, accessibility, acceptability and adaptability enshrined in the scope of the right to education. In achieving the objectives of the right to education, the State enjoys discretion as to how long, by what methods and with what resources available to the State these objectives will be achieved. During the spread of the Covid-19 infection, the country had to take immediate action to adapt its education system to the new conditions. The State's obligations to achieve the objectives of the right to education in the present case must therefore be considered in the light of the epidemiological safety rules implemented by the State.

22.1. Educational opportunities include the need for sufficient educational institutions and curricula and for the State to ensure their practical implementation, including the obligation to provide adequate facilities, teaching materials and teachers (*see: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 6 (a)*).

The Commentary to Article 13 of the Covenant explains that educational opportunities can be provided, inter alia, through the use of modern technologies (*see: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para 6 (a), (b) (ii)*). This means that in the context of the spread of Covid-19, access to educational institutions and curricula could have been provided through electronic resources and interactive learning platforms.

The Covid-19 pandemic has led to the temporary closure of educational institutions in virtually every country in the world (*see OECD study "Education at a Glance 2021". Available at: <https://www.oecd.org/>*). In Latvia, the risk of spread of Covid-19 infection remained high even after the state of emergency, so remote learning was implemented in many educational institutions as part of on-site learning.

During the state of emergency, educational institutions were forced to completely change and restructure their on-site education process and teaching methods, with a particular focus on improving remote learning. In line with national epidemiological safety rules, including restrictions on gatherings, changes were made to the curriculum, the organisation of the school year and the digital skills of teachers. Including while the educational institutions were fully or partially switching to remote learning, teachers were adapting the content to the learners' abilities (*see case materials, Vol 2. p. 29*).

In order to provide the learning tools, interactive learning platforms and electronic resources necessary for remote learning, which would include the content necessary for the implementation of the education programme and the opportunities for its active learning, the Cabinet of Ministers foresaw the reallocation of funds in the amount of 7.4 million *EUR* for the development of digital learning resource kits, methodological and technical support for educational institutions in the implementation of the digital solution, development and validation of the learning resource repository, as well as the development of digital materials. In addition, funding has been reallocated to a specific support objective - improving access to electronic communications infrastructure in rural areas. Also, the state budget funding was allocated for the implementation of the measure "Modernisation of information and communication technology solutions for general secondary education institutions to ensure the learning process", ensuring the purchase of information and communication technology solutions for educational institutions in 2020(*see Cabinet of Ministers Regulation No 670 of 24 November 2015 "Measure 8.3.1.1 "Approval and implementation of competence-based general education content" of the Specific Support Objective 8.3.1 of the Operational Programme "Growth and Employment" "Develop competence-based general education content"*).

During the spread of Covid-19, the "Tava klase" (Your Class) project was also implemented - video lessons for pupils in grades 1-6, 9 and 12 (*see case materials, Vol. 2 p. 66*). The methodological recommendations developed by the Ministry of Education and Science for general and vocational education

institutions emphasised the freedom of educational institutions to decide on the most appropriate model for implementing the learning process. Recommendations were also made on how to continue the learning process for learners in self-isolation or home quarantine, how to prepare for changing delivery models in response to a rapidly changing situation, and how to inform and get feedback from learners and parents (*see: <https://www.skola2030.lv/attalinata-macisanas/vadlinijas>*).

In 2020, the *Skola 2030* (School 2030) project, in cooperation with the National Centre for Education, developed guidelines for remote learning, including recommendations on how to support learning at different age levels, how to organise learning work for the management of educational institutions, how to plan teaching and lessons for teachers, and information on digital tools to support learning (*see: <https://www.skola2030.lv/attalinata-macisanas/vadlinijas>*).

The Ministry of Education and Science supplemented the methodological materials developed during the emergency with recommendations on how to plan and implement the curriculum during the spread of Covid-19. Educational institutions were advised to implement the learning process on the basis of three models. Depending on the circumstances of the educational institution, Model A - on-site (with or without remote learning elements), Model B - combined (on-site and remote learning) or Model C - remote learning (remote learning for all learners). In Model C, learners do not visit the premises of the educational institution, but study only remotely with a teacher online or by doing independent work individually or in collaboration with others, with targeted and systematic support from the teacher (*see the Ministry of Education and Science's methodological material "Guidelines for the implementation of on-site, combined and remote learning", 8 January 2021*). Available at: https://skola2030.lv/admin/filemanager/files/2/Vadlinijas%20attalinatam%20macibam_31032021.pdf). Thus, in the context of Covid-19 infection, remote learning was only implemented at high risk of Covid-19 infection and the recommendations made to educational institutions for the organisation of the learning process

focused on an individualised approach, with the most appropriate model being selected.

The reform of the general education curriculum, launched by the Law of 21 June 2018 on Amendments to the Law on General Education, with the aim of moving towards competence-based education, should also be taken into account. Changes to the curriculum include the use of more modern teaching tools and pedagogical methods in pedagogical work to develop learners' abilities to solve non-standard situations, critically analyse information and take initiative (*see the annotation to Bill 1205/Lp12 "Amendments to the Law on Education"*). Thus, the implementation of remote learning during the Covid-19 outbreak already provided some continuity in the adaptation of competency-based learning content.

The measures taken by the legislature to ensure the right of persons to primary and general secondary education at the time of the spread of the Covid-19 infection are therefore consistent with the right to educational opportunities.

22.2. Access to education means that education must be provided without discrimination and must be physically and economically accessible (*see: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 6 (b)*). The obligation of the State to ensure an education system that promotes equal access to education for all, including pupils from socially disadvantaged families, derives from Article 112 of the Constitution in conjunction with Article 91 of the Constitution.

Information and communication technologies offer new opportunities to adapt the education system to cope with the new reality of the Covid-19 contagion. Consequently, the State has the obligation, while guaranteeing access to education, to provide all learners with the necessary resources and technical equipment so that they can benefit equally from distance learning programmes, regardless of their financial means and social situation, at a time when educational institutions are closed due to the Covid-19 pandemic (*see: UN Committee on Economic, Social and Cultural Rights, Statement on the coronavirus disease (Covid-19) pandemic and economic, social and cultural rights, 17 April 2020 E/C.12/2020/1, paras 7, 18*).

The development of competences in education involves different learning approaches and environments, including the use of digital technologies. In addition, support must be provided to teachers, learners and their families to support and develop learning in different settings and at different levels. Also, in the context of the spread of Covid-19 infection through remote learning, risks related to the availability of internet resources, technical equipment and a suitable learning environment should be considered, as their insufficient provision risks discrimination between learners.

The Ombudsman has pointed out that children with special needs face barriers related to access to inclusive education. It also underlines the legislator's duty to carefully assess whether the restrictions on attending an educational institution in person to reduce the spread of the Covid-19 infection are proportionate to the right to education and the compulsory primary education (*see Ombudsman's Report 2021. Available: <https://www.tiesibsargs.lv/>*).

Unequal access to education has a long-term impact on the future prospects of learners, especially socially vulnerable learners. Thus, in order to fulfil the obligation to ensure inclusive and quality education laid down in Article 112 of the Constitution, the legislator, also in the context of the spread of the Covid-19 infection, must eliminate possible risks that may jeopardise access to education by reviewing the existing forms of education.

With the amendments to the Management Law of 18 February 2021, which entered into force on 24 February 2021, a one-off support of 500 *EUR* per child was provided to persons bringing up a child in the context of the end of the state of emergency in order to mitigate the negative impact of the spread of the Covid-19 infection and the tension in families with children. The annotation to the draft law points out that parents are forced to invest a large part of their resources in order to be able to combine work and their children's education without losing their jobs, which is particularly difficult for families with several children. In addition, both the parent and the learner must be provided with remote working and remote learning. Therefore, the state support is aimed at enabling the learner to continue remote learning and his/her parents to continue their remote work (*see the*

annotation of the draft law No 934/Lp13 "Amendments to the Law on Overcoming the Consequences of Covid-19 Infection" submitted to the Saeima on 17 February 2021).

In the context of the spread of Covid-19, the country implemented a series of measures to support learners and educators in organising remote learning. For example, in order to improve the technological support of educational institutions, in 2020 the Cabinet of Ministers allocated funding to the Ministry of Education and Science for the purchase of laptops for the needs of educational institutions and learners (*see: Cabinet of Ministers Order No 507 of 16 September 2020 "On Allocation of Financial Resources from the State Budget Programme "Contingency Funds", Minutes Decision No 54, § 30*). There was also the possibility of individual on-site counselling for learners at risk of early school leaving due to different environmental and social circumstances. Learners could receive both individual counselling and psycho-emotional support. The National Centre of the Content of Education implemented the project "Support for the Development of Individual Competences of Learners", which offered counselling to parents of children with special needs regarding the organisation of the learning process (*see case materials, Vol. 2 p. 58-60 and 62*).

Thus, the measures taken by the legislator to ensure the right of persons to primary and general secondary education at the time of the spread of the Covid-19 infection are consistent with the aspect of access to education.

22.3. Acceptability of education means that curricula and teaching methods must be acceptable to learners, and this criterion also includes the quality of education (*see: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 6 (c)*).

The Ombudsman emphasises that any decisions affecting the right to education must be assessed in terms of whether and to what extent they ensure the learner's right to quality education. Ensuring these rights cannot be formal - the State must identify and develop specific minimum requirements for education standards, which would cover not only the content of education, but also the

educational environment and other conditions on which the full development of the learner depends (*see case materials, Vol. 2 p. 33*).

The country has a mechanism for monitoring and controlling the quality of education. The Ministry of Education and Science has indicated that the National Service for Quality in Education has carried out a study on remote learning between April 2020 and June 2020 and in the 2020/2021 school year, involving all educational institutions where the accreditation of the educational institution and programmes took place. The information was gathered through various methods - during the accreditation process, as well as during the course "Democratic Governance in an Educational Institution" organised by the State Service for Quality in Education, through a survey of 754 heads of educational institutions. It was concluded that the quality of education during remote learning was influenced by several factors and in cases when the management of the educational institution did not pay sufficient attention to one of them, the quality of education decreased (*see the case materials, Vol. 2 p. 58*).

A study by the World Bank concludes that education systems around the world have experienced a decline in the quality of education in the face of the Covid-19 pandemic. Whatever models are used for remote learning, it is expected that the quality of education will be reduced after the Covid-19 pandemic (*see: The COVID-19 Pandemic: Shocks to Education and Policy Responses. World Bank, 2020. Available: <https://openknowledge.worldbank.org/>*). However, a possible reduction in the quality of education for a certain period after the COVID-19 pandemic does not in itself mean that the State would not have taken adequate action to ensure the acceptability of the right to education.

Remote learning as a combined learning method requires a high level of digital literacy and professionalism on the part of educators, and guaranteed methodological support from the state. Thus, the professionalism of teachers and their ability to adapt the learning process to the abilities and needs of learners is crucial to the quality of education. The quality of education is enhanced when teachers use a variety of teaching strategies, methods and techniques in a professional and appropriate way.

The Cabinet of Ministers' briefing notes that webinars, consultations and online forums have been organised to support teachers in implementing the improved content and approach during on-site and remote learning, as well as regular online consultations for teachers and subject group discussions with experts from the *Skola 2030* project. Within the framework of the *Skola 2030* project, learning materials have been developed and published in a repository of learning resources, including for children with intellectual disabilities. Students and teachers were also given the opportunity to continue participating in online events during the Covid-19 outbreak - national subject Olympiads, international Olympiads, the Baltic Informatics Olympiad and the Free Data Virtual Hackathon, the national conference for scientific research papers, as well as workshops. At the same time, several professional development courses for teachers were continued and launched - to identify a child's talent, to introduce an interdisciplinary approach to teaching, to promote literacy and to support learners' behaviour (*see: Informative Report "On the Preconditions for Ensuring Quality General Secondary Education Cabinet of Ministers Decision No 62 of 20 October 2020 32. §*).

A reduction in the quality of education can only be justified by specific circumstances, in this case the consequences of the spread of the Covid-19 infection. In addition, the country has identified the factors that have led to a decline in the quality of education. These factors are identified and can be adequately controlled and prevented. The State is obliged to constantly monitor the quality of education, effectively using the established quality control mechanism of the education process in order to detect possible changes in the quality of education (*for comparison see paragraph 22.1 of the Constitutional Court's judgment of 13 November 2019 in Case No 2018-22-01*). In addition, the quality of education expected by society and provided for in the country's regulatory framework tends to evolve and improve.

Thus, the measures taken by the legislature to ensure the right of persons to primary and general secondary education at the time of the spread of the Covid-19

infection are therefore compatible with the admissibility aspect of the right to education.

22.4. Adaptability means the continuous development of the education system in line with the changing needs of society, so that it can respond to the needs of learners in different social and cultural contexts (*see: UN Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, para. 6 (d)*).

According to the Centre for Disease Prevention and Control, the epidemiological investigation of Covid-19 cases showed that more than half of the sick pupils in grades 7-12 were infected after attending an educational institution. During the course of the school year, several outbreaks of Covid-19 were detected in educational institutions, 60-170 cases per establishment, with 72% of the cases among students and 28% among staff. The introduction of remote learning led to a significant reduction in the number of outbreaks in educational institution and a lower increase in the 7-19 age group than in the national population and other age groups, and even a slight decrease in the number of cases immediately after the restrictions were introduced (*see case materials, Vol. 2 p. 27-28*).

Given that on-site classroom-based contact lessons were not acceptable in the regions of Latvia where the incidence of Covid-19 infection was high, an alternative solution to remote learning could have been to close educational institutions and suspend the learning process for a certain period of time. However, the legislator adapted the education system in such a way that the continuity of education was ensured in the face of the spread of Covid-19 and the closure of educational institutions was not necessary. In the context of the spread of Covid-19, remote learning ensured access to education and guaranteed its continuity.

In these circumstances, the right to education was exercised, inter alia, through the learners themselves adapting to changes in the learning process. Parents also needed to pay more attention and support learners in exercising their right to education. It should also be noted that, according to the Introduction to the Constitution, everyone has the duty to take care of himself and his family. This

obligation is specified, inter alia, in Article 177 of the Civil Code, which sets out the rights and duties of parents to care for their children. This includes the care of the child, which also includes his or her education. The person exercising guardianship of a child shall help the child to prepare for independent life in society and bring him up in the spirit of peace, human dignity, tolerance, freedom, equality and solidarity, promoting his full development (*see Clause 20 of the Constitutional Court's judgment of 5 December 2019 in Case No 2019-01-01*). In other words, the obligation to promote the child's right to education and to support him or her in the education process is not only incumbent on the State, but also on the child's parents or other persons exercising guardianship over the child.

The measures taken by the legislature to ensure the right of persons to primary and general secondary education at the time of the spread of the Covid-19 infection are therefore consistent with the adaptation aspect of the right to education.

Consequently, the Contested regulations, in so far as it relates to the organisation of the educational process during the spread of the Covid-19 infection, is compatible with Article 112 of the Constitution.

Part of rulings

On the basis of Article 29, part one, Clause 6 and Clauses 30-32 of the Constitutional Court Law, the Constitutional Court

decided:

1. To dismiss the proceedings in the case in the part concerning compliance of Article 14, Clause 45 of the Education Law with Article 112 of the Constitution of the Republic of Latvia.

2. To declare Article 1, Clauses 1¹ and 12⁴ of the Education Law, insofar as it relates to the organisation of the education process during the spread of Covid-19 infection, as well as Article 4, part one, Clause 8 of the

Management Law of the Spread of Covid-19 Infection compliant with Article 112 of the Constitution of the Republic of Latvia.

3. To declare sub-paragraph 27.1.3 (in the wording effective from 17 September 2020 to 19 August 2021), Clause 32 7, sub-paragraph 2 (in the wording effective from 17 September 2020 to 19 August 2021) and sub-paragraph 3 (in the wording effective from 17 September 2020 to 19 August 2021) of the Cabinet of Ministers Regulations No 360 of 9 June 2020 "Epidemiological Safety Measures for the Containment of the Spread of COVID-19 Infection" compliant with Article 112 of the Constitution of the Republic of Latvia.

The Verdict is final and not subject to appeal.

The Verdict shall enter into force as of the date of its publication.

President of the Court Aldis Laviņš