



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT

On behalf of the Republic of Latvia

in Riga, on 19 June 2020

in case No. 2019-20-03

The Constitutional Court of Latvia, comprised of the Chairperson of the Court hearing Ineta Ziemele, as well as judges Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

pursuant to the constitutional complaints lodged by Inna Djeri, Jeļena Djeri, Aļona Grigorjeva-Kuļinoka, Aļisa Kuļinoka, Nadežda Smirnova, Alisa Vaskova, Anna Soldatenko, Sergejs Zimins, Oļesja Zimina, Jūlija Sohina, Ratmirs Čubarovs, Elizabete Krivcova, Arsenijs Ivanovs, and Nikita Ivanovs,

on the basis of Article 85 of the *Satversme* [the Constitution] of the Republic of Latvia and Articles 16(3), 17(1)( 11), 19<sup>2</sup> and 28<sup>1</sup> of the Constitutional Court Law,

on 21 May 2020, heard by way of written proceedings the case

**“On the compliance of Annex 2, paragraph 9 and Annex 4, paragraph 9 of the Cabinet of Ministers Regulations No. 716 “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education Programmes” of 21 November 2018 with Articles 64 and 91, the first sentence of Article 112, and Article 114 of the *Satversme* of the Republic of Latvia”.**

## Facts

1. Pursuant to Article 14(18<sup>1</sup>) of the Education Law the Cabinet of Ministers determines the guidelines for state pre-school education, which include model education programmes, in accordance with the requirements set forth by these guidelines.

On the basis of Article 14(18<sup>1</sup>) of the Education Law the Cabinet of Ministers Regulations No. 716 “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes” of 21 November 2018 (hereinafter: Regulations No. 716) were adopted.

Annex 2 of Regulations No. 716 contains a model ethnic minority pre-school education programme. Paragraph 9 of Annex 2 provides: “Throughout the entire pre-school education stage, the acquisition of the Latvian language is promoted in an integrated learning process, using a bilingual approach, which is implemented in co-operation with teachers, specialists, and other employees of the educational institution in accordance with the development of the child, as well as using Latvian in everyday communication. For children from the age of five, the main means of communication in play is Latvian, with the exception of purposefully organised activities for the acquisition of the minority language and ethnic culture.”

Annex 4 of Regulations No. 716 contains a model special pre-school education programme for ethnic minorities. Paragraph 9 of Annex 4 provides: “Throughout the entire pre-school education stage, the acquisition of the Latvian language is promoted in an integrated learning process, using a bilingual approach, which is implemented in co-operation with teachers, specialists, and other employees of the educational institution in accordance with the development of the child, as well as using Latvian in everyday communication. For children from the age of five, the main means of communication in play is Latvian, with the exception of purposefully organised activities for the acquisition of the minority language and ethnic culture.”

**2. Applicants – Inna Djeri, Jeļena Djeri, Aļona Grigorjeva-Kuļinoka, Aļisa Kuļinoka, Nadežda Smirnova, Alisa Vaskova, Anna Soldatenko, Sergejs Zimins, Oļesja Zimina, Jūlija Sohina, Ratmirs Čubarovs, Elizabete Krivcova, Arsenijs Ivanovs, and Nikita Ivanovs** (hereinafter: the Applicants) – consider that the contested provisions do not comply with Articles 64 and 91, the first sentence of Article 112, and Article 114 of the *Satversme* of the Republic of Latvia.

In the view of the Applicants, the contested provisions do not comply with the first sentence of Article 112 of the *Satversme*, which determines that everyone has the right to education. The contested provisions restrict the child’s right to quality education, the child’s right to education in their mother tongue,

and the parents' right to freely choose the type of education for their child. Parents do not have the opportunity to participate in the work and development of educational institutions or in the implementation of education programmes developed by educational institutions. In support of their view that the right to education has been violated, the Applicants refer to several rulings of the European Court of Human Rights (hereinafter: ECtHR).

Referring to findings of various international organisations (Organisation for Security and Co-operation in Europe, Council of Europe, United Nations), the Applicants indicate that the mother tongue plays a crucial role in the early development of the child, and the state has a minimal right to impose restrictions pertaining to pre-school education.

The implementation of the contested provisions would lead to the decrease in the overall quality of education of a minority learner at all stages of the education, the restrictions on the use of the mother tongue established by the contested provisions being significantly stricter (the control of use of language all day, especially for children from the age of five) than restrictions imposed on pupils from first to sixth grade (mother tongue can be used for up to 50 percent of the total study load). After the completion of a pre-school educational institution, a child may experience difficulties in continuing education in a primary school where a minority education programme is implemented. As such, an interference with the child's fundamental rights, namely the right to quality education, can be expected in the future as well.

The implementation of the contested provisions has not been accompanied by sufficient resources, i.e., an appropriate requalification of teachers has not been ensured. In order for teachers to be able to ensure bilingual study process, they need to be adequately trained. The contested provisions entered into force on 1 September 2019; however, the training of pre-school and primary school teachers is expected to be completed only in 2022. The duration of requalification courses – five days – is also insufficient.

In the opinion of the Applicants, Article 64 of the *Satversme*, which provides that the right to legislate belongs to the *Saeima* and the people in accordance with the procedure and to the extent provided for in the *Satversme*, has been violated.

The restriction of fundamental rights has not been established by a law adopted in due order. The Cabinet of Ministers did not have the appropriate authorisation granted by the *Saeima*. The authorisation included in

Article 14(18<sup>1</sup>) of the Education Law has been violated. This provision does not give the Cabinet of Ministers the right to restrict the child's right to use their mother tongue in the pre-school education process. This is evidenced by the fact that restrictions on the use of the mother tongue in the acquisition of the study content in minority study programme from first to sixth grade and from seventh to ninth grade are specified in Article 41(1<sup>1</sup>) and (1<sup>2</sup>) of the Education Law. The legislature has not authorised the executive power to restrict the right to obtain pre-school education in a language other than the official language specified in Article 9(2)(2) and Article 41(1) of the Education Law.

In addition, when adopting the contested provisions, paragraph 91.9<sup>1</sup> of the Regulations No. 300 of the Cabinet of Ministers "Rules of Procedure of the Cabinet of Ministers" (hereinafter: Regulations No. 300) has not been complied with. Namely, when drafting Regulations No. 716, the opinion of the Latvian National Commission of the United Nations Educational, Scientific, and Cultural Organisation (hereinafter: UNESCO) has not been requested. In addition, paragraph 144 of Regulations No. 300 has also been breached, as the draft of Regulations No. 716 has not been reviewed at the meeting of the Committee of the Cabinet of Ministers.

Although an extensive public discussion of Regulations No. 716 has taken place, it cannot be established that specific specialists on minority issues or minority organisations have participated in it. The annotation of Regulations No. 716 do not mentioned the contested provisions at all. The contested provisions are included not in the text of Regulations No. 716, but in the annexes, which has also impeded a full-fledged public discussion.

The contested provisions can be applied arbitrarily. Employees of an educational institution could abstain from using the child's mother tongue or replace it extensively with Latvian. The Applicants consider that the contested provisions do not ensure the right to parental participation either.

In the opinion of the Applicants, the contested provisions do not comply with Article 114 of the *Satversme*. Substantiating their affiliation with the Russian ethnic minority, the Applicants indicate that they are Russians by nationality and mostly Latvian citizens, except for one Applicant who has the status of a non-citizen. The mother tongue and family language of the Applicants is Russian, they were mostly baptised in Orthodoxy, except for one Applicant, who was baptised in the Old Believers. The families of the Applicants have been

living in Latvia for several generations. In addition, education has also been acquired in Russian for several generations already.

Inna Djeri, Aļona Grigorjeva-Kuļinoka, and Jūlija Sohina want to preserve and develop Russian culture and their mother tongue, especially education in their mother tongue, which is a part of the culture of Russians of Latvia. Nadežda Smirnova, Anna Soldatenko, and Sergejs Zimins wish to preserve and develop their traditional Christian faith, Russian language, education, and culture. Elizabete Krivcova wants to preserve and develop the cultural identity of Russians of Latvia.

The contested provisions restrict the right of the child to learn and use the mother tongue freely and without interference, especially in everyday communication in an educational institution, as well as the right of the child and the parents to preserve their ethnic, cultural, and linguistic identity. The Applicants consider that the question of compliance of the contested provisions with Article 114 of the *Satversme* should be viewed in the context of the child's right to receive quality education in their mother tongue.

The Applicants indicate that the Committee on the Elimination of Racial Discrimination in its reports on Latvia has expressed concerns and recommended to assess whether amendments to the Education Law that change the proportion of the use of the minority language in the teaching process are necessary. A similar opinion has been expressed by the United Nations Special Rapporteurs on the right to education, promotion and protection of the right to freedom of opinion and expression, and minorities (hereinafter: Special Rapporteurs) in a letter dated 26 January 2018 to the Government of Latvia. Concerns about the complete transition to the official language in the educational process have also been expressed by the Human Rights Committee. These international institutions and experts have expressed fundamental objections against the need for an educational reform in Latvia.

The Council of Europe's Framework Convention for the Protection of National Minorities (hereinafter: the Minority Convention) stipulates that the right to learn a minority language must be granted unconditionally. However, the Applicants do not deny that the prospect of studying in the mother tongue may be subject to certain conditions – the demand for the use of the mother tongue in certain territories and the possibilities of the state – and acknowledge that it is important not to harm the acquisition of the official language or the acquisition

of education in it. In Latvia, the system of ethnic minority pre-school education has existed for at least 28 years and complies with the set conditions.

The dominance of the official language has been established in the most important form of learning – play, which takes place throughout the day. In such a way, the right of the child to use the mother tongue is restricted.

The current situation regarding the proportion of ethnic minorities amongst pupils and the knowledge of the Latvian language amongst the population is similar to the situation in pre-war Latvia. Therefore, the education of minority children using primarily their mother tongue does not conflict with the principle incorporated in the preamble of the *Satversme*—the existence and development of the Latvian nation, language, and culture through the centuries. In addition, guaranteeing the right to education in the mother tongue of the learner belonging to an ethnic minority would be fully in line with the principle of dignity of the minority.

The Applicants consider that the contested provisions do not comply with Article 91 of the *Satversme*. The contested provisions create a differential treatment of two groups of pre-school learners: learners who receive education in the Latvian language and learners who receive education in Russian. The first group consists mainly of Latvians, the second group—of those belonging to an ethnic minority. The contested provisions severely restrict the right of the latter group to receive education in their mother tongue.

The children of both aforementioned groups are in comparable conditions, because every child needs to be provided with sufficient care and comprehensive development opportunities. Therefore, in a pre-school educational institution it is necessary to adapt to the individual abilities of the child and use the child's mother tongue in education and communication.

The pre-school education system which existed before the entry into force of the contested provisions did not entail a differential treatment in the domain of use and development of the child's mother tongue. This system has proved its effectiveness and has been in demand. The Applicants refer to the principle of the inviolability of rights, which is already enshrined in a number of provisions prohibiting discrimination, in particular Article 1 of the UNESCO Convention against Discrimination in Education, Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 26 of the International Covenant on Civil and Political Rights, and Article 14 of the European Convention for the Protection of Human Rights and Fundamental

Freedoms (hereinafter: the Convention) in conjunction with Article 2 of Protocol No. 1 and the Minority Convention.

In addition, the Applicants emphasise that the contested provisions create an unjustified equal treatment of two groups of minority pre-school learners: children with developmental disorders and children without such disorders. Two of the Applicants are obtaining pre-school education in an educational institution which implements the specialised minority pre-school education programme.

A child with speech, reading, and writing disorders is much more vulnerable than other children. In such a case, Article 23(1) and (2) of the Convention on the Rights of the Child requires a differential treatment. It should also be taken into account that disability is one of the prohibited criteria falling within the scope of the second sentence of Article 91 of the *Satversme*. Neither the text of Regulations No. 716 nor the annotation of these regulations substantiates an equal treatment of learners with developmental disorders and learners without such disorders.

The Applicants indicate that the only legitimate aim of the contested provisions could be to ensure the right of every person to use the official language in any sphere of life in the entire territory of the state. However, that aim must be seen in the context of the child's educational objectives set out in Article 29(1) of the Convention on the Rights of the Child, including the objective of development of the child's personality and the full development of his talents and his mental and physical abilities. The contested provisions present a serious obstacle to the development of the child's personality. The less the mother tongue is used in the education of a pre-school-aged child, the worse the result of his development. This conclusion should be borne in mind in particular with regard to the use of the official language in the education of a child with a developmental disability.

Other objectives recognised by the Constitutional Court in the previously examined cases are not relevant for the matter to be adjudicated. Strengthening the use of the official language and protecting the democratic system of the state is not necessary, because the proportion of Latvians in Latvia is constantly and substantially increasing. There is also a significant increase in the number of Latvians who know the Latvian language, including the proportion of Latvian speakers amongst non-Latvians and youth in particular. It is also not necessary to protect the rights of other persons. There is no segregation in the Latvian education system, and parents have the opportunity to choose the pre-school

educational institution, be it a Latvian or ethnic minority institution, in which the child will receive education.

The contested provisions do not comply with the principle of proportionality. It is not possible to achieve the legitimate aim of the restriction of fundamental rights by the means selected by the legislature. The contested provisions envisage stricter restrictions than are necessary for the child to be able to continue education in primary school.

The Applicants consider that the legitimate aim can be achieved by other means that are less restrictive of the rights and legal interests of the individual, namely, by maintaining the already established principles in the education system, which have been in force for the last 28 years.

Restrictions on the use and acquisition of the mother tongue in a democratic society are not necessary. The benefit gained by the society from the implementation of the contested provisions is not apparent, whereas the harm caused to the rights and legal interests of the individual is obvious. The right of the child to learn their mother tongue is disproportionately restricted. Likewise, the right to preserve one's cultural and ethnic traditions, and even the right to philosophical beliefs is disproportionately restricted.

**2.1.** At the request of the Applicants, several documents were attached to the case file: letter of the Special Rapporteurs to the Government of Latvia dated 24 September 2019 (Document No. OL OLVA 1/2019) and Letters of the Committee on the Elimination of Racial Discrimination to the Government of Latvia dated 10 May 2019 (Document No. CERD/EWUAP/98thsession/Latvia/JP/ks) and 29 August 2019 (Document No. CERD/EWUAP/99thsession/Latvia/JP/ks).

**2.2.** After familiarising himself with the materials of the case, the representative of the Applicants Vladimirs Buzajevs emphasised that the contested provisions introduce such a learning approach within which the acquisition of a second language is not promoted, but rather the learning process itself is organised in a language other than the child's mother tongue.

Vladimirs Buzajevs considers that neither the reply of the Cabinet of Ministers nor the opinions expressed by the invited persons outweigh the opinion of the Applicants. In addition, it is indicated that in accordance with the principle of good governance the Cabinet of Ministers had to follow the procedure arising from the rules of procedure of the Cabinet of Ministers, namely, to discuss the draft in three stages with the participation of both decision-makers and experts.

The Cabinet of Ministers has chosen a simplified procedure, namely, discussion of the draft in two stages and in absentia.

After familiarising herself with the materials of the case, Elizabete Krivcova pointed out that in the pre-school education stage from five to seven years at the level of objectives of the education programme the use of minority language is allowed only in one of the seven fields of study which are set out in paragraphs 3.4 and 10 of Regulations No. 716 and explained within the framework of the project “Competence Approach to Curriculum” (*Skola2030*) implemented by the National Centre for Education. The Applicants object to the aim of the contested provisions – that in the pre-school education stage from five to seven years all fields of study, except languages, must be acquired in Latvian. This is not in accordance with the principle of succession of the learning process, which is a fundamental principle of the minority education programme, and ignores the laws of the child’s physiological and psychological development. Hence, this goal is contrary to the interests of the child. The pre-school education stage of ethnic minorities from one and a half to five years, as well as the primary school stage, is based on a balanced approach to bilingualism, and its aim is to develop equally good skills of the mother tongue and the Latvian language in various fields of study. However, the pre-school education stage from five to seven years is taken out of the context and subordinated to other goals. Elizabete Krivcova refers to several findings from various studies in substantiating the argument about the influence of language on the child’s development.

**3. The institution that adopted the contested act – the Cabinet of Ministers** – indicates in its written reply that the legal proceedings in the part regarding the compliance of the contested provisions with the first sentence of Article 112 of the *Satversme* should be terminated, but in the other part the norms contested comply with Articles 64, 91, and 114.

The state has created a unified education system, implementing the principle that education is acquired in the official language and supporting the preservation of the ethnic and cultural identity of the minority and the acquisition of the mother tongue. The contested provisions do not affect the right to education, and the restriction of this right indicated by the Applicants cannot be established.

The state has not only the right, but also the obligation to ensure that quality education would be available to a child. Education is aimed not only at the learner

to acquire specific knowledge and skills, but also at instilling in the child respect for his or her cultural identity and language, promoting his or her development and thus also the development of the child's own identity and personality. However, a no less important goal of education is to prepare the child for a conscientious life in a free society. This is not possible without sufficient knowledge of the state language. The task of pre-school education of a learner belonging to an ethnic minority is to lay the foundation for cross-cutting skills, which can be used in various fields of human activity, as well as to promote the acquisition of the Latvian language in an integrated learning process using a bilingual approach. In pre-school, the teacher promotes the formation of habits appropriate to the age of the learner.

The aim of the Latvian education system is to strengthen the provisions of the first sentence of Section 2 of the Education Law: to provide every inhabitant of Latvia with an opportunity to develop their mental and physical potential in order to become an independent and developed personality, a member of a democratic Latvian state and society. Article 112 of the *Satversme* establishes the obligation of the state to ensure access to education in the state language for every learner in order to promote the achievement of the goals of the education system. Annexes 2 and 4 of Regulations No. 716 provide the learner belonging to an ethnic minority with access to education in order to achieve the goal of education in the pre-school stage.

The Cabinet of Ministers refers to Article 20(1)(6) of the General Education Law, which stipulates that the pre-school education programme ensures the preparation of the learner for the acquisition of basic education, including the acquisition of basic skills in the use of the official language. Consequently, pre-school educational institutions are obliged to develop the content of the minority education programme in such a way that the learner, after graduating from a pre-school educational institution and continuing studies at the basic education level, is able to acquire the educational content in the official language in the amount of no less than 50 per cent from the total study load during the school year.

The Ministry of Education and Science, whilst implementing the education reform, has gradually and constantly provided the teachers with a set of necessary support measures. Since 1999, teachers are required to be proficient in the official language at the highest level. Since 2013, employees of the pre-school educational institutions (pedagogical assistants) are also required to know

the official language at the highest level. Since 1996, the Latvian Language Agency has been providing free Latvian language skills improvement courses for the performance of professional duties for teachers working in minority schools and pre-school educational institutions. Since 2015, the course offer has been improved. Since 2018, the project “Competence Approach in Curriculum” is being implemented, offering complex support to teachers and ensuring the improvement of Latvian language skills and professional competence for work in a linguistically heterogeneous environment.

Teaching aids for minority students have likewise been developed since 1996. Electronic teaching aids are also available. Pre-school children have access to materials on the website—the portal “Teach and Learn Latvian”. The Latvian Language Agency is also systematically developing methodological tools for teachers. With regard to pre-school, three sets of didactic materials have been published, which can be used to develop the child’s speaking, listening, and reading skills.

Parents are not denied or restricted the right to actively participate in the work and development of educational institutions, participating also in the implementation of the minority education programme. For instance, according to Article 31(2) of the Education Law parents have the right to participate in the work of the council of an educational institution. In addition, paragraph 11.7 of Regulations No. 716 strengthens the role of the parents in the learning process.

In the opinion of the Cabinet of Ministers, the contested provisions comply with Article 64 of the *Satversme*. The contested provisions have been adopted in compliance with the procedures provided for in regulatory enactments, they have been promulgated and are publicly available in accordance with the requirements of regulatory enactments, and they have been formulated sufficiently clearly for a person to understand the content of rights and obligations and anticipate the consequences arising therefrom.

The contested provisions have not been adopted in violation of the authorisation granted by the legislature. In developing guidelines for pre-school education and model curricula, it was necessary to ensure that Regulations No. 716 comply both with the purpose of the law laid down in Article 2 of the Education Law and with the fundamental rights guaranteed by the *Satversme*, including those pertaining to the existence of the Latvian language and culture. The will of the legislature and Regulations No. 716 had to comply with the norms of a higher legal force, i.e., with the guarantee of the existence of the Latvian

language established in the preamble of the *Satversme*, with Article 4 of the *Satversme*, and with the right of the minorities to preserve and develop their language, ethnic and cultural identity.

The authorisation of the Cabinet of Ministers specified in Article 14(18<sup>1</sup>) of the Education Law cannot be viewed in isolation from other legal provisions regulating education. Regulations No. 716 had to include the requirements specified in the Education Law pertaining to the use of the Latvian language in the minority education programme. The regulation issued by the Cabinet of Ministers is based on the Education Law and is aimed at the same goal as the one that the legislature sought to achieve by adopting this law. In accordance with the structure of the Education Law and Article 14 of this law the Cabinet of Ministers is authorised to determine the requirements regarding the Latvian language acquisition process throughout the entirety of the pre-school education stage. Article 14(18<sup>1</sup>) (authorisation of the Cabinet of Ministers) and Article 33 (education programme) in conjunction with Article 9(1) and (2)(2) (language of education), Article 41 (minority education programmes), and paragraphs 68 and 70 of the transitional provisions must be viewed systematically. By adopting the contested provisions, the Cabinet of Ministers has fulfilled the task delegated to it by paragraph 68 of the transitional provisions of the Education Law to review the state pre-school education guidelines in connection with the introduction of the new curriculum at all levels of general education, including pre-school education. In addition, when dealing with any issue related to education, it is necessary to take into account the relevant legal provisions from other areas, for example, the requirements for the health and safety of children arising from the Law on the Protection of the Rights of the Child.

The provision previously in force, namely, Annexes 2 and 4 of the Cabinet of Ministers Regulations No. 533 “Regulations on the guidelines for pre-school education” of 31 July 2012 (hereinafter: Regulations No. 533) pertaining to the acquisition and use of the Latvian language correspond to the content of Regulations No. 716 and the contested provisions. The legislature has authorised the Cabinet of Ministers to develop the pre-school education guidelines and the respective model education programmes and has determined the main content of the guidelines with Article 15<sup>1</sup> of the General Education Law.

In addition, the submission, review, progression, and co-ordination procedures of the draft Regulations No. 716 has been in accordance with the requirements stipulated by Regulations No. 300. There was no need for review

of the draft Regulations No. 716 by the committee of the Cabinet of Ministers or co-ordination of the draft with the Latvian National Commission for UNESCO.

The Cabinet of Ministers considers the opinion of the Applicants on the arbitrary application of the contested provisions to be unsubstantiated. The contested provisions do not impose an obligation to separate the percentage or number of hours per day that the Latvian language is acquired or used for the acquisition of the study content. This is dependent on the abilities and age of the child. In pre-school, the child acquires the Latvian language bilingually, in a manner integrated into the common learning process. Latvian as the primary language of everyday communication is used from the age of five. Given that pre-school education must provide the child with an opportunity to prepare for the acquisition of primary education, as well as the fact that the acquisition of a pre-school education programme is compulsory for children from the age of five, the requirement that the main language of communication in play for children from the age of five is Latvian is also considered lawful and justified. In such a way, a full-fledged further acquisition of basic education in the respective education programme will be ensured. The Cabinet of Ministers has no legal basis to believe that a teacher (pedagogue) who influences the life of the learner on a daily basis could arbitrarily apply or even abuse the recommendations indicated in the curriculum when planning and managing the acquisition of the study content in the fields of study.

Representatives of ethnic minorities have been provided with an opportunity to express their opinion and proposals both after the publication of the draft of Regulations No. 716 on the website of the Cabinet of Ministers and during the co-ordination of pre-school education guidelines and model education programmes. Various representatives of the public have been involved in the development process of Regulations No. 716.

The Cabinet of Ministers considers that the contested provisions comply with the principle of equality and prohibition of discrimination enshrined in Article 91 of the *Satversme*. In Latvia, learners whose mother tongue is a language other than the official language are not in comparable conditions with learners whose mother tongue is the official language.

The pre-school education programme for ethnic minorities has been developed on the basis of the pre-school education programme and by adding to it content related to the acquisition of the language, culture, and traditions of ethnic minorities. Consequently, the statement of the Applicants that the

contested provisions give rise to a differential treatment of the so-called pre-school Latvian education programme as compared to the pre-school minority education programme is not substantiated. The contested provisions apply only to the pre-school minority education programme and are binding only to those educational institutions that implement such a programme.

Regulations No. 716 determine model education programmes for two groups of persons, i.e., for minority learners and minority learners with special needs, for whom a special education programme is provided. The contested provisions which apply to each of these groups are identical, and thus no differential treatment of learners is allowed. The aim of both programmes is to promote the comprehensive development of the child and strengthening of the child's health, to promote the acquisition of ethnic culture and preparation for the acquisition of basic education. There is no legal basis to establish differential treatment towards the aforementioned groups of learners. In order to take into account diversity and promote the successful integration of a child with special needs into the education system, the child with special needs is provided with support in the educational process to achieve the aim of the pre-school education programme—promotion of the comprehensive development of the child and strengthening of the child's health, as well as preparation for the acquisition of primary education—according to the child's abilities, level of development, and health.

In the opinion of the Cabinet of Ministers, the contested provisions comply with Article 114 of the *Satversme*.

The Education Law and Regulations No. 716 issued on its basis provide opportunities to acquire the language of the minority, as well as to preserve the culture and identity of the minority, but at the same time create equal opportunities for learners belonging to an ethnic minority to become full-fledged members of Latvian society.

Neither the *Satversme* nor the international documents binding on Latvia in the field of protection of minority rights oblige the state to guarantee that the minority language has the same status and scope of use in the education system and in various education programmes as the official language. The official language and the minority language are not comparable either in terms of their status or functions in the democratic society of Latvia.

The protection of minority language in the education system has certain goals, and they are closely related to the general goals of the protection of

minority rights. The language of a minority should ensure that the learner belonging to a minority acquires his or her mother tongue and ethnic culture. At the same time, in the initial stage of education it is necessary to create conditions for the gradual expansion of the use of the official language in the education system in such a way that the negative impact on the quality of education would be minimal. However, Article 112 of the *Satversme* does not, either separately or in conjunction with Article 91 or 114 of the *Satversme*, envisage the obligation to ensure equal opportunities to study in the mother tongue of a learner whose mother tongue is the official language and a learner whose mother tongue is a minority language. With regard to minorities, one of the most important goals of education is the acquisition of the state language at a functional level, so that the learner can fully participate in the democratic processes of Latvia and continue education sequentially at each following level of education. Thus, the *Satversme* to a certain extent even requires equal treatment with respect to proper acquisition and use of the official language in the study process.

The contested provisions do not prohibit a child belonging to an ethnic minority from using and developing his or her mother tongue, nor from acquiring and practicing his or her culture. The education system in general, especially in the early stages of education, provides the child with sufficient opportunities to learn both the mother tongue and the official language. When a child is taught the official language, he or she is given the opportunity to start learning the language at a sufficiently early age.

In order to achieve high-quality acquisition of the Latvian language as the only official language of Latvia in educational institutions, Latvia has chosen a reasonable period for the transition to studies in Latvian. The reform of minority education has been implemented gradually, from 1996 to 2019, i.e., over 23 years. The fact that education reforms are being continued in relation to the acquisition of the official language and the promotion of its use in the pre-school education level is a logical and legally correct solution for the Latvian education system. In addition to Latvian values, the cultural diversity of Latvian society and the richness resulting from this diversity are respected. The contested provisions do not deprive the minority of opportunities to learn and use their language, to establish their own ethnic and cultural centres, as well as private weekend schools.

The Cabinet of Ministers points out that educational institutions subject to amendments related to the use of the Latvian language in the acquisition of

compulsory education content were given a reasonable transition period—one year—for reviewing and updating education programmes. In addition, in implementing the education reform, the Ministry of Education and Science has gradually and constantly strengthened a unified education system accessible to all learners and the use of the official language in educational institutions, taking into account the adaptability of learners and their parents, and provided the necessary support measures.

With the new state pre-school education guidelines and standards, the state provides all inhabitants of Latvia, especially children, with equal opportunities to learn Latvian, to receive education in the official language, but in no way denies opportunities to preserve and develop minority language and ethnic and cultural identity. According to the age of the pre-school child, the compulsory content of pre-school education is acquired in an integrated learning process, using a bilingual approach and the Latvian language in everyday communication. At the end of pre-school education, the learner achieves certain results, which ensures preparation for the acquisition of compulsory basic education.

Taking into account the foregoing, it should be acknowledged that the acquisition and use of minority languages in pre-school educational institutions and in the acquisition of compulsory education content is being respected in accordance with the education policy, thereby ensuring equal opportunities for all learners to learn Latvian—the only official language in Latvia—and acquire education in Latvian.

**4. The invited person – the *Saeima*** – indicates that in issuing the contested provisions the Cabinet of Ministers has acted in accordance with the authorisation granted to it. In adopting Regulations No. 716, the Cabinet of Ministers has fulfilled the task stipulated by paragraph 68 of the transitional provisions of the Education Law to review the state pre-school education guidelines in connection with the introduction of the new competency-based curriculum at all levels of general education, including pre-school education. The aim of the contested provisions is to ensure that upon the completion of the acquisition of the minority education programme at the pre-school education level a child would have acquired such skills in the use of the official language as are necessary to start full-time studies in the first grade of the primary education programme.

The authorisation given by the legislature should be understood not only as one specific, laconic legal norm (in the case under review: Section 14, clause 18<sup>1</sup> of the Education Law), but also the essence and objectives of the law itself. The adoption of Regulations No. 716 is one of the measures taken to introduce the new competency-based approach at all levels of general education—pre-school education, primary education, and general secondary education. The issue of the acquisition of the official language is only one of the issues addressed in connection with the introduction of the new competency-based curriculum at all levels of general education. In connection with this, on 22 March 2018 the *Saeima* adopted amendments to the Education Law, and on 21 June 2018—amendments to the General Education Law. Within the framework of these amendments, the *Saeima* has imposed by means of paragraph 68 of the transitional provisions of the Education Law an obligation on the Cabinet of Ministers to review the regulations of the Cabinet of Ministers determining the state pre-school education guidelines. This task was fulfilled with the adoption of Regulations No. 716.

One of the levels of education is pre-school education, and it cannot be considered in isolation from other, successive stages of education, because together with primary education and general secondary education it forms one common general education system. It follows from Articles 15 and 15<sup>1</sup> of the General Education Law that the state pre-school education guidelines, the state basic education standard, and the state general secondary education standard regulate essentially the same issues, only pertaining to different levels of general education.

The pre-school education programme should ensure that in the process of pre-school education the learner acquires such knowledge of the official language as is necessary for him or her to fully begin studies in the first grade in one of the education programmes. The preparation of the learner for the acquisition of primary education is inconceivable without the acquisition of appropriate basic skills in the use of the official language. Acquisition of these skills in accordance with Article 20(1)(6) of the General Education Law is one of the tasks of the pre-school education programme.

In the opinion of the *Saeima*, issues related to the acquisition of skills in the use of the official language belong to the issues to be regulated in the state pre-school education guidelines. These issues were regulated in the state pre-school education guidelines also prior to the entry into force of the contested provisions,

namely, paragraphs 4.2, 7, 9, 18.2, 18.3, 19 of Annex 2 and paragraphs 4.2, 7, 9, 20, 22.2, 22.3, 22.6 and 23 of Annex 4 to Regulations No. 533. Consequently, they were also to be regulated in Regulations No. 716.

The contested provisions are aimed at preparing the child for the acquisition of the primary education, namely, that he or she should acquire appropriate skills in the use of the official language in the process of pre-school education. It does not follow from the wording of the contested provisions that only the official language may be used in the pre-school education process. It follows from the first sentence of the contested provisions that a bilingual approach is used throughout the entirety of the pre-school education stage. The second sentence of the contested provisions envisages that the main means of communication in play for a child from the age of five is the Latvian language, but this does not mean that the Latvian language would be the only means of communication, namely, that other languages could not be used in communication in play. In addition, it also follows from the second sentence of the contested provisions that in a purposefully organised activity a language other than Latvian may be used for the acquisition of the minority language and ethnic culture. Thus, the contested provisions do not prevent persons belonging to ethnic minorities from cultivating their language and ethnic and cultural identity.

**5. The invited person—the Ministry of Education and Science—**indicates that the advocates of the ethnic minority interests, parents and teachers of children, as well as other interested parties have been sufficiently heard. Everyone has been provided with an opportunity to participate in the development of the content and teaching approach of minority pre-school education programmes, as well as in the discussion of legal norms for a relatively long period of time.

The Ministry of Education and Science points to the measures that have been taken to ensure the observance of the various interests affected by the contested provisions and public participation. The draft description of the new curriculum and learning approach was submitted for public consultation. At the end of it, the received comments and recommendations were evaluated. A working group was set up, including representatives of various educational and other institutions, *inter alia* representatives of ethnic minority interests. Within the framework of the project “Competence Approach to Curriculum” (*Skola2030*) implemented by the National Centre for Education, also

representatives of educational institutions implementing minority education programmes were invited as experts. In addition, six pre-school educational institutions implementing minority education programmes participated in the approbation of the new curriculum, which took place starting 1 March 2017. The General Education Content Advisory Council has been established, encompassing representatives of educational and other institutions and non-governmental organisations, and representatives of Riga, Jelgava, and Daugavpils education administrations have also been addressed. This Council has reviewed and assessed the Cabinet of Ministers draft Regulations No. 716 (*see the case materials, vol. 2, pp. 105–106*).

**6. The invited person—the State Education Quality Service**—indicates that it is monitoring the quality of education. Monitoring is systematically manifested in several activities—registration of educational institutions, licensing of education programmes, assessment of the quality of the educational process, and monitoring of the legality of the activities of educational institutions.

The State Education Quality Service may carry out on-site inspections in educational institutions, *inter alia* by observing play classes, getting acquainted with teaching materials, inspecting premises, and requesting the necessary information and documents. If deficiencies in the operation of educational institutions are established, the head of the educational institution is instructed to eliminate the identified discrepancies and ensure the legality of the operation of the educational institution, and after receiving the relevant information from the educational institution, a follow-up regarding the assigned tasks is performed.

Until this moment, pre-schools implementing the pre-school education programme for ethnic minorities have mostly already taken the necessary steps to ensure compliance with the guidelines of Regulations No. 716, including by modifying education programmes or changing the organisation of their activities.

In addition to the foregoing, the State Education Quality Service points out that early bilingualism which is supported or implemented by an educational institution facilitates the possibility of acquiring the education programme in several languages.

By monitoring the teachers' implementation of the respective education programmes and the fulfilment of the requirements of regulatory enactments

pertaining to the use and development of the official language, from 2018 to 2020 it has been found that 19 teachers did not meet the required level of proficiency of the official language, therefore these teachers cannot implement pre-school education programmes.

Within the framework of other supervision measures, the State Education Quality Service has established that it is necessary to raise the professional development level of teachers of pre-school educational institutions with the aim of acquiring a higher level of proficiency of the official language and to plan relevant in-service teacher training courses, and that there is a need for increased use of words in the Latvian language in decorating the premises of the educational institutions. The State Education Quality Service has also established that in several educational institutions the use and development of the official language by learners and teachers is especially promoted, a favourable environment for the co-existence of ethnic cultures is created, and informative materials are offered to the parents of the learners so that they can help their child learn Latvian successfully.

**7. The invited person – the Ombudsman** – draws the attention of the Constitutional Court to the right of a child to obtain high-quality education at an early age, which is aimed at ensuring the development, welfare, and well-being of the child.

According to Article 5(1)(1) of the Education Law, pre-school education is one of the four levels of education. The second paragraph of the same article stipulates that the learner has the right to obtain education at each level, successively moving from one level of education to the next. Article 4 of the Education Law lays down a mandatory requirement that the preparation of a child for the acquisition of basic education must begin at the age of five.

It follows from the foregoing that a child who has reached the age of five must start acquiring a pre-school education programme in order to prepare for the acquisition of basic education. In Latvia, this preparation is compulsory and is not separated from the entire state education system. In turn, pre-school education from one and a half years to five years of age is the initial stage of the pre-school education level. Although the law does not require that a child from one and a half to five years of age attend a pre-school educational institution, the aims of education are the same in all four levels of education. It follows from Article 20(1) of the General Education Law that the aim of pre-school education

is to promote the general development of a child by preparing him or her for primary school as a curious and creative pupil with independent learning skills.

The Ombudsman refers to the principle of the priority of the rights and interests of the child enshrined in Article 3(1) of the Convention on the Rights of the Child and notes that the Committee on the Rights of the Child explains that this provision imposes certain obligations on the States Parties to the Convention: 1) to ensure that the best interests of the child are adequately integrated and consistently assessed in all activities carried out by the public authority; 2) to ensure that all decisions relating to children, as well as policies and legislation, clearly demonstrate that the best interests of the child have been a primary consideration. Other factors are not considered as important as the best interests of the child. If the interests of the child conflict with other interests or rights (for example, of other children, public, parents), greater importance should be imparted on what is best for the child.

It follows from Article 6(2) of the Convention on the Rights of the Child and the explanation of the Committee on the Rights of the Child on the exercise of the rights of the child in early childhood that it is the duty of the responsible authorities to assess and represent the rights and interests of a young child in relation to decisions and actions that affect his or her well-being, whilst taking into account the views and development of the child. Thus, the emphasis is yet again on the principle of the priority of the rights and interests of the child.

Article 13(1) of the International Covenant on Economic, Social and Cultural Rights and Article 28(1) of the Convention on the Rights of the Child enshrine the right to education. According to the interpretation of the Committee on the Rights of the Child, the right to early childhood education begins immediately after birth and is closely linked to the child's right to development from early childhood.

Article 29(1) of the Convention on the Rights of the Child lays down the goals of education of a child. The Committee on the Rights of the Child has explained that these goals are prerequisites for quality education, which, in turn, is a guarantee for the development and well-being of the child. The Committee on the Rights of the Child has also admitted that high-quality education programmes should be implemented in pre-schools, which can help a child to successfully begin studies in primary school.

Thus, in the Ombudsman's opinion, a gradual increase of the proportion of the official language in the education process, starting from the pre-school

education level, is a logical measure for ensuring high-quality education aimed at the child's development and well-being.

However, it should be taken into consideration that the interests of different groups of persons may conflict. In such a case, in accordance with the principle of the priority of the rights and interests of the child, it is first necessary to consider the aspects from which follows a solution that would be in the best interests of the child. When assessing whether a particular decision has been made in accordance with the principle of the priority of the rights and interests of the child, it is important to understand whether this decision benefits the child in the long term. The Ombudsman considers that a gradual increase of the proportion of the official language in the education process, starting from the pre-school education level, is also to be considered a long-term investment in the child's rights to obtain education according to his or her abilities, as it provides a long-term support for subsequent education in primary school in the official language.

**8. The invited person—Irina Avdejeva, an expert on education issues of the Latvian Trade Union of Education and Science Employees (hereinafter: LIZDA)** – indicates that, on summarising the opinions of LIZDA members on the draft of Regulations No. 716, it can be concluded that teachers, including those implementing the new minority pre-school education programme, have not had and still do not have any objections or concerns that the implementation of this education programme could harm the development of students' knowledge and skills. In evaluating the draft of Regulations No. 716, LIZDA has drawn attention to the fact that the requirements included in these regulations may remain unfulfilled if the teachers are not provided with the necessary support for the improvement of skills and use of the Latvian language.

In order to ensure the development of a learner with special needs, it is necessary to evaluate the proportion of the use of Latvian in accordance with each child's abilities, level of development, and state of health. Teachers who implement special education programs need to be provided with professional autonomy and freedom to choose methods and language according to the development needs of the learner. A learner with special needs should acquire basic language skills in their mother tongue.

Irina Avdejeva does not see any threats to the development of the learners' knowledge and skills in the current state guidelines for pre-school education and pre-school education programmes, as well as in their implementation.

**9. The invited person—Sandra Millere, a teacher at the Ogre general pre-school educational institution “Zelta sietiņš”** – on summarising the experience of pre-school teachers, pre-schools experts, and herself, concludes that the pre-school study and education content should be acquired in the official language already at an early age.

Sandra Millere's experience allows her to conclude that a child whose mother tongue is not Latvian acquires the curriculum better if communication and education in the pre-school educational institution takes place in Latvian on a daily basis. Then the child not only acquires the ability to speak and use the language in communication quicker, but also becomes more socialised more effectively, has a better understanding of Latvian traditions, is more open and confident, as well as better prepared for the next stage of education—school.

In the daily work with children whose mother tongue is not Latvian bilingual methods are used. Children from bilingual families learn to read in both languages very quickly, provided that the pre-school education is in Latvian.

If the teaching takes place in Latvian, the beneficiaries are both the children belonging to an ethnic minority and the children whose mother tongue is Latvian. When a child learns to accept someone who speaks differently, and empathy is formed in communication with those who speak another language, he or she is taught to respect another language. In her teaching, Sandra Millere uses various methods, such as sports and music play classes, and also organises events that involve both children and parents, holding various performances together in their native language.

An exception to teaching in Latvian could be pre-school educational institutions implementing an education programme for children with mental developmental disabilities. In these institutions, in communication with the child the mother tongue of the child could be used.

**10. The invited person – docent of the Faculty of Psychology, Pedagogy, and Art of the University of Latvia, director of the first level professional higher education study programme “Pre-school education teacher” and professional Bachelor study programme “Teacher” sub-programme “Pre-**

**school education teacher”** *Dr. paed. Antra Randoha* – points out that persons who study in the pre-school education teacher study programmes offered by the University of Latvia are properly prepared for work in pre-school education institutions where the minority education programme as well as the special pre-school education programme for ethnic minorities is being implemented.

The study programmes of the Faculty of Pedagogy, Psychology, and Art of the University of Latvia within which pre-school education teachers receive education are the first level study programme “Pre-school education teacher”, the second level study programme “Teacher” with the sub-programme “Pre-school education teacher” and the Bachelor study programme “Teacher” with the sub-programme “Pre-school and primary school teacher”. In these programmes, the content of teaching methodologies has been developed and amended in accordance with the requirements of Regulations No. 716. For example, the aforementioned Bachelor’s study programme includes the study course “Bilingualism and Basics of Bilingual Education”, wherein knowledge about the essence of bilingual education, tasks of teaching the second language, etc. is acquired. The study course emphasises the competence of the future teacher to choose the study content and methods for the organisation and implementation of the pedagogical process in accordance with the model of bilingual education in pre-school, as well as the ability to independently plan and conduct bilingual play classes in pre-school.

The content of the traineeships is also closely related to the requirements of Regulations No. 716. At the end of the qualification traineeship, the future teachers take an exam in teaching methodologies and practically prove their professionalism in educational institutions, including minority pre-school educational institutions, conducting play classes in the official language, using appropriate teaching aids: folk tales, songs, poems, stories, letters, and other visual materials in the children’s mother tongue. During the qualification traineeship it is possible to observe children’s behaviour, mutual communication, co-operation with the teacher, use of language in everyday and play situations, in which both the child’s abilities and the teacher’s professionalism regarding the acquisition of the official language and the mother tongue are revealed. By taking into account the abilities of each child and in accordance with the pre-school education programme, the teacher plans tasks corresponding to the study content and achieves the planned results in the field of language teaching, as well as in

other fields of study in accordance with Annex 2, paragraph 9 of Regulations No. 716.

## Findings

**11.** Different views have been expressed in the case as to whether the right to education has been restricted. The Cabinet of Ministers requests to terminate the legal proceedings in the case regarding the compliance of the contested provisions with the first sentence of Article 112 of the *Satversme* and indicates that a restriction of the Applicants' right to education is not apparent. In their turn, the Applicants consider that the contested provisions restrict the right to quality education in their mother tongue, as well as the right of a parent to participate in the determination of the child's education process.

If arguments that could constitute the basis for the termination of the proceedings have been expressed in the case, they must be assessed first (*see, e.g., judgment of the Constitutional Court of 26 June 2017 in the case no. 2015-22-01, para. 12*).

Thus, the Constitutional Court will first assess whether in the case under review the legal proceedings regarding the compliance of the contested provisions with the first sentence of Article 112 of the *Satversme* are to be continued. In order to determine whether legal proceedings in the case should be continued, the Constitutional Court must ascertain whether the situation under review falls within the scope of the fundamental right specified in the first sentence of Article 112 of the *Satversme* and whether the contested provisions restrict specifically the rights of the Applicants enshrined in the *Satversme* (*see, e.g., judgment of the Constitutional Court of 12 March 2020 in the case no. 2019-11-01, para. 9*). Only upon establishing that the rights of the Applicants enshrined in the *Satversme* have been restricted, the Constitutional Court may further assess the compliance of the contested provisions with Article 112 of the *Satversme*.

**12.** The Applicants consider that the contested provisions restrict the right to education enshrined in the first sentence of Article 112 both for a child aged one and a half to five years and for a child aged five to seven years.

Annex 2, paragraph 9 and Annex 4, paragraph 9 of Regulations No. 716 lay down identical provisions for ethnic minority pre-school education, including

special education. Namely, the contested provisions stipulate that the acquisition of the Latvian language in an integrated learning process, using the bilingual approach, is promoted throughout the entire stage of pre-school education, as well as provide that Latvian should be used in everyday communication. For children from the age of five, the main means of communication in play lessons is Latvian. Consequently, the Constitutional Court considers the contested provisions to be a cohesive regulation and will consider them jointly.

The first sentence of Article 112 of the *Satversme* provides: “Everyone has the right to education.” The Constitutional Court has acknowledged that Article 112 of the *Satversme* establishes an obligation of the state to establish and maintain an education system from which any learner can benefit (*see judgment of the Constitutional Court of 13 April 2019 in the case no. 2018-12-01, para. 20*). The first sentence of Article 112 of the *Satversme* establishes the right to obtain education in the broadest sense of this right and is applicable to all levels and types of education programmes (*see, judgment of the Constitutional Court of 6 May 2011 in the case no. 2010-57-03, para. 11.1*). As the case concerns the pre-school education stage, the Constitutional Court must ascertain whether the scope of the first sentence of Article 112 of the *Satversme* includes the right to obtain education at the level of pre-school education both at its early stage, i.e., from one and a half years to five years, and at the stage from five to seven years.

Article 89 of the *Satversme* stipulates that the state recognises and protects fundamental human rights in accordance with the *Satversme*, laws, and international agreements binding on Latvia. It follows from this article that the aim of the legislature is to achieve harmony of the human rights provisions enshrined in the *Satversme* with the provisions of international law. At the level of constitutional law international human rights provisions binding on Latvia and the practice of their application also serve as a means of concretisation to determine the content and scope of fundamental rights and principles of a state governed by the rule of law, insofar as it does not lead to reduction or restriction of fundamental rights enshrined in the *Satversme* (*see, e.g., judgment of the Constitutional Court of 12 May 2015 in the case no. 2015-14-0103, para 15.1*).

The Constitutional Court has recognised that the right to education is of the nature both of civil and political rights and of economic, social, and cultural rights, and it also has an element of solidarity. Consequently, the right to education enshrined in Article 112 of the *Satversme* is inherently linked with,

*inter alia*, Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 2 of Protocol No. 1 to the Convention (*see judgment of the Constitutional Court of 23 April 2019 in the case no. 2018-12-01, para. 20*).

The Committee on Economic, Social and Cultural Rights, in interpreting Article 13 of the International Covenant on Economic, Social and Cultural Rights, has recognised that the application of the term “right to education” depends on the circumstances prevailing in each Member State (*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*). The European Court of Human Rights has also recognised that the right to education by its very nature requires national regulation and that this regulation may vary in time and place depending on the societal needs and resources (*see, e.g., judgment of the European Court of Human Rights of 23 July 1968 in the case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium, applications no. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, and 2126/64, Part I B, para. 5, and judgment of 25 February 1982 in the case “Campbell and Cosans v. the United Kingdom”, applications No. 7511/76 and 7743/76, para. 41*). Thus, the right to education allows a certain margin of appreciation of the state with regard to the education system that the state establishes. Considering both the resources available to the state and the needs of the society at its specific stage of development, Article 112 of the *Satversme* includes the obligation to observe, protect, and implement the right to education.

Article 112 preserves the discretionary power of the legislature on the issue of how early and in what way should a child have access to the education system established by the state, as the public understanding of the child’s development needs is constantly evolving. However, if the legislature has decided on a specific moment from which a child may exercise his or her right to education, the implementation of such choice of the legislature must comply with the obligations of the state enshrined in Article 112 of the *Satversme*.

**12.1.** The Convention on the Rights of the Child reinforces and emphasises the principle of the primary role of the parents in the development and education of the child (Article 5 and Article 18(1)). At the same time, the Convention on the Rights of the Child obliges Member States to provide appropriate assistance

to parents in fulfilling their child-rearing responsibilities, including access to childcare facilities and institutions for working parents (Article 18(2) and (3)).

The Committee on the Rights of the Child has emphasised that a Member State should consider this primary responsibility for parents as a starting point for the development of a pre-school education system. The Member State must provide an education system that complements the role of the parents. By recognising the principal role of the parents in the upbringing of a child and in addition by organising education in an educational institution it is ensured that the child acquires education in its broadest sense (*see Committee on the Rights of the Child, General Comment No. 7 (2005) U.N.Doc. CRC/G/GC/Rev. 1, 20 September 2006, para. 29, para. 30*).

Article 13(1) of the International Covenant on Economic, Social and Cultural Rights states that the aim of education must be the comprehensive development of the human person and his dignity, and that education must strengthen respect for human rights and fundamental freedoms. Learning begins at birth. This means that the child must be provided with the necessary care and education from an early age.

Articles 28 and 29 of the Convention on the Rights of the Child do not explicitly oblige states parties to provide pre-school education for children. It has already been pointed out that the Convention on the Rights of the Child strengthens the role of the family and fellow human beings in the early education of a child. At the same time, the Convention also contains provisions stating that a child-friendly and responsive environment can also be created outside the family and can be used, in close co-operation with parents, to broaden the child's experience. The Convention on the Rights of the Child sets out such an approach, taking into account the national differences and traditions in raising a child.

In the light of the developmental tendencies of the public opinion and human rights, the Committee on the Rights of the Child requires Member States to provide up-to-date information on laws, policies, regulations, and their implementation, quality standards, financial and human resources, and any other measures. This aims to ensure that the child can fully exercise his or her right to care and education from an early age up to the higher and vocational education stage (*see Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child, U.N.Doc. CRC/C/58/Rev. 2, 25 November 2020, para. 37*).

The Committee on the Rights of the Child thus interprets the right to education as a right enjoyed by a child already from an early age. It starts already at birth and is closely linked to a young child's right to full development (*see Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, U.N.Doc. CRC/C/GC/7Rev. 1, 20 September 2006, para. 28*). The implementation of the child's rights from an early age is an effective way of helping to overcome personal, social, and educational difficulties in early childhood and adolescence (*see Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, U.N.Doc. CRC/C/GC/7Rev. 1, 20 September 2006, para. 28*).

The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter: Advisory Committee) has also emphasised that the term "education" within the meaning of Article 12 of the Minority Convention covers not only compulsory primary education but also pre-school education (*see Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, No. ACFC/25DOC(2006)002, 2 March 2006, para. 2.1.2*).

The Constitutional Court concludes that in the practice of application of international human rights provisions in relation to pre-school education the specific age from which a child has a right to exercise the right to education is not emphasised. It is recognised that this right belongs to the child from an early age. However, the ways in which this right is exercised vary depending on the capabilities of the state and the traditions and values of the particular society.

**12.2.** Article 24(1) and (2) of the Law on the Protection of the Rights of the Child determines the duty of parents to take care of a child and prepare the child for an independent life in society. Article 26(1), (3), and (4) of the Law on the Protection of the Rights of the Child determine the obligation of the state to support the family, *inter alia*, in the upbringing and education of a child. It can be seen that the Law on the Protection of the Rights of the Child, in accordance with the aforementioned provisions of international law, determines both the obligation of parents to take care of a child, including the child's education and development, and the state's obligation to support parents.

According to Article 11(2) of the Law on the Protection of the Rights of the Child, a child has the right to, *inter alia*, a free pre-school education. Pursuant to

Article 55(1) of the Education Law, the learner has the right to, *inter alia*, obtain pre-school education paid for by the state or the local government. Respectively, Article 5(1)(1) of the Education Law and Article 3(1)(1) of the General Education Law establish that pre-school education is the first level of education in the Latvian education system.

It follows from Article 21 of the General Education Law that a child shall have access to a pre-school educational institution from the age of one and a half years. However, pre-school education from this age is not compulsory. This means that parents can choose whether they have a need for the services provided by the pre-school educational institution. According to Article 4 of the Education Law, the preparation of a child for the acquisition of the basic education is compulsory from the age of five. Article 20(2) of the General Education Law stipulates that a child acquires a pre-school education programme until the age of seven.

Thus, the state, in fulfilling its obligation to support parents, has established a pre-school education level – the first level in the education system. In pre-school education in Latvia, studies are divided into two stages. The first stage is pre-school education at an early age, namely, from one and a half years to five years. The second stage is compulsory pre-school education for children between the ages of five and seven.

In the pre-school education period from one and a half to five years, the role of parents is primary, and such an approach is in line with the standard of the right to education contained in international human rights instruments discerned in paragraph 12.1 of this judgment. At this stage, the legislature has provided an opportunity for the parent to choose how the child's education and development will be ensured – in a narrower circle, namely, in an environment comprised of family and peers, or by additionally and partially entrusting parental duties to a pre-school, its teachers and staff. The state, by establishing a level of pre-school education that a child can enter from the age of one and a half years, has established a support mechanism for parents so that they can ensure the child's education and development. In view of the above, the stage of pre-school education from one and a half years to five years of age cannot be considered in isolation from the general education system. It fits into this system and is an integral part of it.

In turn, pre-school education is compulsory for children from the age of five. Its aim is to prepare children for basic education.

**Thus, the right to education enshrined in the first sentence of Article 112 of the *Satversme* covers both stages of pre-school education level.**

13. The Applicants consider that the contested provisions restrict their right to quality education in their mother tongue. The Applicants, by referring to several judgments of the European Court of Human Rights, argue that the first sentence of Article 112 of the *Satversme* establishes an obligation of the state to ensure access to education in a minority language (*see the case materials, Vol. 1, pp. 18–19*).

The Constitutional Court has already recognised that the case-law of the European Court of Human Rights does not assert that the state must observe the child's or parents' wish to provide an acceptable language of instruction—moreover, in a certain proportion—in the education system established by the state (*see, judgment of the Constitutional Court of 23 April 2019 in the case no. 2018-12-01, para. 20.1*).

The Constitutional Court, in revealing the scope of Article 112 of the *Satversme*, has extended it to the right to education in the official language. Namely, the Constitutional Court has acknowledged that the education system established in the state must be accessible to all learners, including those belonging to ethnic minorities. In turn, in order to access to the education system established in the state, it may be necessary to take special measures to support the acquisition of the official language. Therefore, Article 112 of the *Satversme* imposes the obligation of the state to ensure access to education in the official language for every learner in order to promote the achievement of the goals of the education system (*see judgment of the Constitutional Court of 23 April 2019 in the Case No. 2018-12-01, para. 20.1*). The goal of the system of education is enshrined in Article 2 of the Education Law. This goal – to ensure the right of learners to receive an education and upbringing which would allow to form and strengthen the feeling that they belong to Latvia – is in the interests of not only the learners themselves, but of the whole society (*see judgment of the Constitutional Court of 23 April 2019 in the Case No. 2018-12-01, para. 20*).

Consequently, the first sentence of Article 112 of the *Satversme* does not include the right to education in a language of one's choice, including the mother tongue of the learner belonging to an ethnic minority. Thus, the Constitutional Court will evaluate the arguments of the Applicants insofar as they relate to the

right to obtain education in the official language corresponding to the goals of education, namely, quality education.

In this regard, the Applicants have expressed several observations.

First of all, the Applicants object to the fact that the contested provisions have changed the approach to the organisation of the study process regarding the language used in it. In the opinion of the Applicants, this will lead to a decrease in the quality of education in the education process in general.

Secondly, the contested provisions have been adopted without the state providing sufficient training for teachers and the opportunity to requalify.

Thirdly, the contested provisions do not ensure the right of participation of the Applicants – parents.

In its turn, the Cabinet of Ministers believes that teaching the official language gives the child an opportunity to start learning the language at a sufficiently early age and thus already at this age to begin developing skills for later full-fledged participation in the life of the Latvian democratic society, which mainly takes place in the official language.

The first sentence of Article 112 of the *Satversme* enshrines the right to make full use of all opportunities provided by the education system. Accordingly, this means that the state has an obligation to establish an education system that is accessible to all learners. State action to make the education system accessible to all learners must meet basic requirements, such as educational opportunities, accessibility, acceptability, and adaptability. Educational opportunities mean the establishment of a number of educational institutions and education programmes corresponding to the needs of learners in a way that guarantees the implementation of the goals of education. Accessibility of education shall be ensured by creating equal opportunities and removing obstacles that may arise when using the opportunities of education. Acceptability of education shall be ensured by adapting the content and methods of education to the needs of learners, *inter alia*, by providing conditions for creative freedom in achieving the relevant standards at certain stages of education, as well as by providing opportunities for parental participation. Acceptability of education also includes the child's right to free participation in cultural life, the right to rest, leisure, as well as safe and healthy conditions for education. In turn, adaptability of education means the constant development of the education system in accordance with the changing needs of society (*see judgment of the Constitutional Court of 23 April 2019 in the case no. 2018-12-01, para. 20*). This

means that the first sentence of Article 112 of the *Satversme* includes the right of the Applicants to expect that the obligations of the state regarding the education system contained in this legal provision comply with the aforementioned criteria.

**Accordingly, the proceedings in the case are to be continued.**

14. The Applicants have expressed the arguments set forth in paragraph 13 of this judgment to substantiate the existence of a restriction of their right to education. However, the Constitutional Court, taking into account the scope of the right contained in Article 112 of the *Satversme* which was revealed in the case no. 2018-12-01 must assess the potential violation of the first sentence of Article 112 of the *Satversme* by examining whether the state has fulfilled its positive obligation (*see judgment of the Constitutional Court of 23 April 2019 in the case no. 2018-12-01, para. 20*). In the opinion of the Constitutional Court, the first two objections of the Applicants are to be assessed as a single argument regarding a possible decline in the quality of education. In its turn, the third argument regarding the Applicants' participation rights must be assessed separately. These arguments of the Applicants relate to the requirements of accessibility, acceptability, and adaptability of education.

14.1. In the opinion of the Applicants, the quality of education will decrease due to the contested provisions, because, firstly, it follows from the text of the contested provisions that the Cabinet of Ministers has abandoned the bilingual education model in the pre-school education stage from five to seven years; secondly, education is not provided in the language of the ethnic minority, therefore a learner belonging to a minority will not be able to acquire the subject matter in a language that he or she understands; and, thirdly, the state has not provided sufficient training for teachers and the opportunity to requalify.

The Cabinet of Ministers points out that the task of pre-school education of ethnic minorities is to lay the foundation for the learner's cross-cutting skills, including the promotion of the acquisition of the Latvian language in an integrated learning process by using a bilingual approach. The contested provisions have introduced a competency-based education and changed only the method by which a child learns a language. This is without prejudice to the Applicant's right to quality education. The Cabinet of Ministers and the Ministry of Education and Science point out that the contested provisions are one of the successively implemented stages of education reform. The necessary set of

support measures has been gradually and permanently provided to the pre-school educational institutions and teachers of ethnic minorities.

Taking into account these observations expressed by the Applicants and the Cabinet of Ministers, the Constitutional Court will assess whether the action of the state in adopting the contested provisions complies with the right to education enshrined in the first sentence of Article 112 of the *Satversme* with respect to the criteria of accessibility, adaptability, and acceptability. The argument about the provision of teacher training and opportunity to requalify must be assessed in terms of the acceptability of the right to education.

**14.2.** The Constitutional Court must ascertain in what way do the contested provisions ensure the accessibility and adaptability of pre-school education for a child in Latvia, including a child belonging to an ethnic minority.

The Constitutional Court has indicated that in order to verify the compliance of the contested provisions with the *Satversme*, it is necessary to ascertain the purpose and true meaning of these provisions and closely related provisions (*cf. decision of the Constitutional Court on terminating legal proceedings of 22 April 2005 in the case no. 2004-25-03, para. 6, and decision on terminating legal proceedings of 2 March 2015 in the case no. 2014-16-01, para. 9*). This can be ascertained by interpreting legal provisions by applying all methods of interpretation (*cf. judgment of the Constitutional Court of 15 November 2018 in the case no. 2018-07-05, para. 14.1*).

It follows from the contested provisions that the acquisition of the Latvian language in an integrated learning process is promoted throughout the entire level of pre-school education, i.e., from one and a half to seven years, but by using a bilingual approach. As to the pre-school education stage from five to seven years, it is emphasised that the main means of communication in play is the Latvian language. As the second sentence of the contested provisions, being an exception to the general regulation, raises doubts for the Applicants as to its true meaning, the Constitutional Court will clarify the meaning and purpose of the contested provisions at the pre-school education stage from five to seven years.

Pursuant to Section 20, paragraph 1 of the General Education Law, the pre-school education programme ensures the preparation of the learner for the acquisition of basic education, covering the formation of individuality, mental, physical, and social development, the development initiative, curiosity, independence, and creative activity, promotion of health, psychological

preparation for the acquisition of basic education, and basic usage skills of the official language.

The provision in this version is applicable from 1 September 2019. Pursuant to Section 12 of the law “Amendments to the General Education Law” of 21 June 2018, the word “comprising” in the introductory part of Section 20 of the General Education Law has been replaced by the words “comprising in terms of content”. Within the framework of these amendments, the first paragraph of Section 17, which stipulates what must be included in the general education programmes, including pre-school education programme, has also been reworded.

By examining the drafting materials of the said amendments, it can be concluded that at least one of the goals of the legislature was to introduce a competency-based curriculum in the Latvian education system at all its levels. During the *Saeima* debates, MP Raivis Dzintars pointed out that what a student acquires in one subject must be aligned with what he or she studies in another subject. He must learn to present himself, learn the culture of communication, be creative, and the determination and motivation of the student must be developed. MP Jānis Dombrova pointed out that in the current education system the students are provided with knowledge, but they lack understanding and motivation to improve themselves (*see the transcript of the 12<sup>th</sup> Saeima sitting of 26 April 2018*). Former Minister of Education and Science Kārlis Šadurskis pointed out that the essence of the new educational content is to provide the students with conditions conducive to promoting deep understanding and development of skills, as well as to personal development. At the centre of the learning process should be a student who is learning to think, co-operate, search for answers, find or not to find them, find the right path, and acquire skills to use knowledge (*see the transcript of the 12<sup>th</sup> Saeima sitting of 7 June 2018*).

The aforementioned amendments to the General Education Law should be read in conjunction with the amendments to the Education Law of 22 March 2018. With regard to the pre-school education, Section 9 of the Education Law was amended by rewording clause 2 of paragraph 2, and the transitional provisions were supplemented by paragraphs 66, 68, and 70 (*see, e.g., the Initial impact assessment report (annotation) of the draft law “Amendments to the General Education Law”, Part I, para. 4*).

It follows from the drafting materials of these amendments that one of the stages of the education reform was the transformation of minority education

programmes and the reform of the curriculum, including in pre-school. MP Aldis Adamovičs pointed out that the aim of these amendments is to provide every child in Latvia with equal opportunities to obtain a quality education that promotes the acquisition of knowledge, skills, and attitudes necessary in the 21<sup>st</sup> century (*see the transcript of the 12<sup>th</sup> Saeima sitting of 22 March 2018*). The amendments also decided on changes to be introduced in bilingual education. Former Minister of Education and Science Kārlis Šadurskis pointed out that the model of the bilingual education system needs to be improved in accordance with the requirements of the era (*see the transcript of the 12<sup>th</sup> Saeima sitting of 22 February 2018*). However, these changes did not mean abandoning bilingual education. According to the MP Laimdota Straujuma, bilingual education is preserved in pre-school (*see the transcript of the 12<sup>th</sup> Saeima sitting of 8 March 2018*).

Thus, the Constitutional Court concludes that the said amendments to the General Education Law and the Education Law have been made within the framework of the general education content reform and as a result a competency-based study content has been created and implemented, the acquisition and use of the official language being one of the main issues therein.

One of the primary measures to be taken in order to ensure competency-based study content in pre-school was the approval of the pre-school education guidelines (*see the Initial impact assessment report (annotation) of the draft law “Amendments to the General Education Law”, Part I, para. 2*). This was also confirmed by MP Aldis Adamovičs at the *Saeima* sitting on 26 April 2018, noting that the Cabinet of Ministers is responsible for competencies, guidelines, and standards (*see the transcript of the 12<sup>th</sup> Saeima sitting of 26 April 2018*). The Cabinet of Ministers fulfilled the authorisation granted to it by adopting Regulations No. 716. It also follows from the initial impact assessment report (annotation) of Regulations No. 716 that the adoption of these regulations is one of the measures taken to introduce the new competency-based study content, i.e., to introduce this content in pre-school education (*see the Initial impact assessment report (annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”, Part I, para. 2*).

With the entry into force of Regulations No. 716, Regulations No. 533 were repealed. Regulations No. 533 established requirements both for the acquisition of elements characteristic of a minority culture, in particular the minority

language (e.g., Annex 2, para. 4.1, clause 7 and Annex 4, para. 4.1, clause 7), and for the acquisition and use of the Latvian language (e.g., Annex 2, para. 4.2, clause 7 and Annex 4, para. 4.2, clause 7). Thus, these regulations regulated the issue of acquisition of the official language but left the pre-school educations free to determine how this requirement should be fulfilled. Comparing Regulations No. 533 and Regulations No. 716, it can be concluded that, in essence, by means of Regulations No. 716 the transition from the unclear and fragmented learning model previously in force to a model in which the curriculum content is being implemented in a cohesive process has been completed. Namely, in order to provide competency-based education, a model has been introduced, within which all areas of learning, including languages, can be learned systematically and in an integrated manner as part of the overall curriculum.

According to the second sentence of the contested provisions, the main means of communication in play for children from the age of five is the Latvian language. For a child between the ages of five and seven learning becomes more intensive, because it is at this age that the child is being prepared for basic education. It follows from the pre-school education programme developed by the National Centre for Education that, for example, in the area of languages one of the aims to be achieved in the official language in the minority education programme is that the child must be able to answer questions about what he or she has seen or heard. The teacher promotes this skill by, for example, creating problem situations in which the child is asked short, simple questions about daily activities (*see Annex 6 of the pre-school education programme prepared within the framework of the National Centre for Education project “Competence Approach to Curriculum” (Skola2030), p. 84. Available: <https://mape.skola2030.lv/resources/10>*). However, this does not mean that the requirement to use the Latvian language as the main means of communication in play should be seen as detached and in isolation from the rest of the legal framework, especially from the general rule that bilingual learning should be ensured in pre-school education.

Paragraph 11.1 of Regulations No. 716 provides that one of the principles of the implementation of pre-school education content is a cohesive process of upbringing and learning, wherein the child acquires knowledge, understanding, and basic skills in various fields of study in an integrated manner, develops cross-cutting skills, and forms values-based habits.

According to paragraph 11.2 of Regulations No. 716, the main form of organisation of the learning process is play. In order to achieve the intended results, it is implemented throughout the entire day, indoors and outdoors, including free and independent play of the child and purposefully organised and indirectly guided learning, ensuring even load, rest, and activity of the child in accordance with individual abilities.

Paragraph 7 of Annexes 2 and 4 to Regulations No. 716 provides that the compulsory content of pre-school education, which includes values and virtues, cross-cutting skills and knowledge, understanding and basic skills in different areas of study (language, social and civic, cultural awareness and art of self-expression, science, mathematics, technology, health, and physical activity) is a whole implemented in play as an integrated learning process throughout the day according to the age of the pre-school child.

The Constitutional Court concludes that the purpose of the second sentence of the contested provisions is to establish a new content of play lessons that corresponds to the shared goals of the education reform. By strengthening the implementation of play in the Latvian language, the availability and acceptability of education is ensured, because every child is being prepared for obtaining education at the next level. The Constitutional Court has not obtained corroboration of the statement of the Applicants that teachers at this level of education would be prohibited from using the bilingual method in the teaching and recreation process.

**14.3.** In the Case No. 2018-12-01, the Constitutional Court considered the new education model introduced as a result of the education reform at the primary and secondary education levels and held it to be compatible with Article 112 of the *Satversme*. The Latvian education system is organised in such a way that in educational institutions implementing minority education programmes the proportion of the use of the Latvian language in studies is gradually increased both within each level of education and with each subsequent level of education. This ensures effective acquisition of knowledge and skills necessary for a child to successfully enter and assimilate to the basic education level and then the subsequent levels of education. Pre-school education must ensure that the learner, after graduating from a pre-school educational institution and then continuing studies at the level of basic education, is able to acquire the content of the curriculum in the official language to the extent specified for the acquisition of the basic education.

This approach is in line with the finding of the Committee on the Rights of the Child that high-quality, development-oriented, and multicultural education programmes have a positive impact on and contribute to the child's successful transition to basic education. This ensures the continuity and progression of education (*see Committee on the Right of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, U.N.Doc. CRC/C/GC/7Rev. 1, 20 September 2006, paras. 30–31*).

The competency-based education introduced by contested provisions and the use of the bilingual method also ensure accessible and acceptable education for a learner belonging to a minority. The option of using two or more languages is preserved for both pre-school learners aged one and a half to five years and pre-school learners aged five to seven. Consequently, the objections of the Applicants in the first two aspects indicated by them must be rejected.

**14.4.** In accordance with paragraph 18 of Regulations No. 716, these Regulations shall enter into force on 1 September 2019. Paragraph 17 of these Regulations provides that an educational institution which has licensed a pre-school education programme before the date of entry into force of these Regulations shall ensure its implementation in accordance with the relevant model pre-school education programme.

The Constitutional Court has previously indicated that its competence does not extend to deciding on the effectiveness of implementation of the contested provisions (*see Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 22.1*). However, the Constitutional Court must ascertain whether there is a mechanism by means of which changes in the quality of education can be determined, especially with regard to the quality of the educational process. Its changes even need to be actively monitored. This is required by the right to education enshrined in the first sentence of Article 112 of the *Satversme* (*see Judgment of 13 May 2005 by the Constitutional Court in the Case No. 2004-18-0106, para. 20.2.3*). However, the quality of education can only be assessed when changes that could affect the quality have taken place over a period of time. In accordance with the paragraph 3 of the Cabinet of Ministers Regulations No. 225 “Regulations on the State Education Quality Service”, the State Education Quality Service performs, inter alia, the following functions: obtains, compiles, and analyses information necessary for the development and implementation of the education policy, ensures the quality assessment of general and vocational education, with the exception of higher

vocational education, and controls educational process and provides recommendations for the elimination of the identified deficiencies.

Section 30, paragraph 1 of the Education Law stipulates that the head of an educational institution is responsible for the activities of the educational institution and its results, the compliance with this Law and other regulatory enactments regulating the activities of the educational institution, as well as reasonable use of intellectual, financial, and material resources. In accordance with paragraph 3<sup>3</sup> of this Section, the head of an educational institution has an obligation to organise the assessment of the quality of teachers' professional activities.

The invited person—the State Education Quality Service—indicated the methods by which it carries out inspections in educational institutions, namely, both in person by participating in the study process and getting acquainted with the teaching aids and remotely by requesting the necessary information and documents. The State Education Quality Service has supervised pre-school educational institutions and performed inspections therein after the entry into force of Regulations No. 716. Both violations and nuances requiring improvement have been identified, as well as the first positive examples of implementation of Regulations No. 716.

Thus, a mechanism for monitoring and controlling the quality of education has been established in the state. Control is exercised through the state administration institution, as well as within each specific educational institution by means of the head of the institution. The supervisory and control mechanism has already established and strengthened a number of working methods. Therefore, the availability and acceptability of education is ensured in this respect as well.

**14.5.** The Cabinet of Ministers has indicated that since 1999 teachers must speak the official language at the highest level. Since 2013, employees of pre-school educational institutions (pedagogical assistants) also must speak the official language at the highest level. Since 1996, the Latvian Language Agency is providing teachers in minority schools and pre-school educational institutions with free Latvian language skills improvement courses for the performance of professional duties. Since 2015, the course offer has been improved. Since 2018, the project “Competence Approach to Curriculum” is being implemented, offering complex support to teachers, ensuring the improvement of Latvian language skills and professional competence for work in a linguistically

heterogeneous environment (*see Case Materials, Vol. 2, pp. 12–16*). Measures to promote and increase the professional skills of teachers (both in terms of training for the acquisition of competency-based methods and in relation to the use of the official language) have been organised both by the state from its budget and by involving local governments, which are responsible for further effective application of these professional skills of teachers on the local level (*see the Initial impact assessment report (annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”, Part I, para. 2*). As such, teachers are provided with the necessary support measures, i.e., opportunities have been created to increase their professional qualification in the provision of the new curriculum-based education. Whether teachers use the opportunities offered to them is a matter of the teachers’ discretion. In addition, it must be borne in mind that the teacher must meet certain requirements and be able to fulfil the task entrusted to him or her, that task being the education of the child.

The invited person Antra Randoha has indicated that in the study programmes of the Faculty of Pedagogy, Psychology, and Art of the University of Latvia, wherein pre-school education teachers receive education, the content of teaching methodologies has been adapted to the requirements of Regulations No. 716. For example, a new study course “Bilingualism and Basics of Bilingual Education” has been developed. The content of the traineeship is also closely related to the requirements of Regulations No. 716.

Taking the aforementioned into account, the Constitutional Court has no grounds to find that the state has not provided acceptable education in this respect. It cannot be concluded that the contested provisions, insofar as adaptation to the needs of the learner is envisaged, would cause a decrease in the quality of education. However, the Constitutional Court emphasises that the state has a duty to continuously control the quality of education by effectively using the quality control mechanism of the educational process established in the state to determine possible changes in the quality of education (*cf. Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 22.1*).

**14.6.** The Applicants consider that the contested provisions do not ensure the right of parental participation. To ensure this right, it is not sufficient that educational institutions may determine a specific regulation within the framework of the education programme, because parents still do not have the

right to determine the content of these programmes. This argument of the Applicants must be assessed by examining whether the act of the state in adopting the contested provisions complies with the right to education enshrined in the first sentence of Article 112 of the *Satversme* in the aspect of the acceptability of education.

The Committee on the Rights of the Child in its General Comment No. 7 “Implementing child rights in early childhood” has indicated that education programmes should be designed and developed in collaboration with parents and the public as much as possible (*see Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, U.N.Doc. CRC/C/GC/7Rev. 1, 20 September 2006, paras. 29 and 31*).

The Education Law provides for the participation of both the public and parents in the educational process. Section 21, paragraph 1 of the Education Law stipulates that the public participates in the organisation and development of education by popularising all types of education, providing education and improving the quality of education, creating education programmes, protecting the rights and interests of learners and teachers in the process of acquiring and implementing education, establishing educational and educational support institutions, associations, and foundations. In turn, according to Section 31 of the Education Law, parents may pursue their interests by participating in the work of the council of the educational institution. Pursuant to paragraph 2 of this Section, the representatives of parents form the majority of the council of the educational institution. The functions of the council of an educational institution are defined in Section 31, paragraph 3 of the Education Law, which provides, *inter alia*, that the council of the educational institution shall submit proposals regarding the implementation of education programmes.

Paragraph 11.7 of Regulations No. 716 lays down one of the principles of implementation of pre-school education content: realisation of purposeful, supportive, child’s learning and development-oriented co-operation of the child, teachers, parents or child’s legal representatives, involving parents or child’s legal representatives in the child’s learning process, and providing regular feedback on child’s performance and achievements.

All these participation mechanisms are aimed at ensuring the acceptability of education for learners and their parents, and can be used, *inter alia*, to address issues related to the implementation of minority education programmes. Thus,

the contested provisions ensure the right of the Applicants to participate in the pre-school education process.

Taking into account the foregoing, the act of the state in adopting the contested provisions complies with the right to education enshrined in the first sentence of Article 112 of the *Satversme* in the aspects of accessibility, adaptability, and acceptability of education. Given that Article 112 of the *Satversme* includes the obligation to provide a unified education system in the official language, the Constitutional Court finds that the right to obtain education in the official language is ensured also in minority pre-school educational institutions by using a bilingual approach in the study process. To ensure this right, the state has also determined appropriate compulsory pre-school education content.

**Thus, the contested provisions comply with the first sentence of Article 112 of the *Satversme*.**

15. The Applicants request that the Constitutional Court declare the contested provisions inconsistent with Articles 64, 91, and 114 of the *Satversme*. If the compliance of legal norms with several norms of the *Satversme* is disputed, then the Constitutional Court, taking into consideration the nature of the case under review, must determine the most effective approach to the assessment of this compliance (*see Judgment of 26 April 2018 by the Constitutional Court in the Case No. 2017-18-01, para. 23*).

In order to ensure a more efficient examination of the case, the Constitutional Court will first assess the compliance of the contested provisions with Article 114 of the *Satversme*, and then—with Article 91 and Article 64.

16. In the view of the Applicants, the act of the state in adopting the contested provisions is in conflict with Article 114 of the *Satversme*, which provides: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.” The Applicants point out that the contested provisions restrict their right to learn and use their native Russian language freely and without interference, as well as the right of a child and parents to preserve their Russian ethnic, cultural, and linguistic identity. The Applicant Elizabete Krivcova points out that the minority pre-school education programme in the period from one and a half to five years is based on a balanced bilingualism approach, the aim of which is to develop the

child's Russian and Latvian language skills in various fields of study equally well. The Applicants emphasise that the right to use the Russian language is restricted in the pre-school education stage from five to seven years of age, especially in everyday communication in the pre-school educational institution.

In its turn, the Cabinet of Ministers points out in the written reply that the contested provisions do not prevent a child belonging to a minority from using and developing his or her mother tongue, nor from acquiring or practicing his or her culture. The education system in general, especially in the early stages of education, provides the child with sufficient opportunities to learn the mother tongue.

The Constitutional Court has previously acknowledged that Article 114 of the *Satversme* requires positive action from the state in order to protect and ensure the right of members of ethnic minorities to preserve and develop their language and ethnic and cultural identity (*see Judgment of 13 May 2005 by the Constitutional Court in the Case No. 2004-18-0106, para. 9.1*). In considering the compliance of the competency-based education model with Article 114 of the *Satversme*, the Constitutional Court must ascertain whether any of the rights enshrined in Article 114 of the *Satversme* are applicable to the Applicants.

**Consequently, the arguments of the Applicants are to be assessed by verifying whether the state has fulfilled its positive obligation.**

**17.** First of all, it must be ascertained whether the Applicants belong to any of the minorities historically living in Latvia.

The Constitutional Court affirmed in the Case No. 2018-12-01 that Latvia has recognised, *inter alia*, cultural, religious, and linguistic differences, citizenship, and the historical connection of the particular minority with Latvia as criteria for belonging to a minority. In addition, a distinction must be made between the historical Russian minority and migrants who arrived during the Soviet occupation and their descendants (*see Judgment of 23 April 2019 by the Constitutional Court in the Case No. 2018-12-01, para. 22*).

In the present case, the Applicants have substantiated their belonging to the historical Russian minority on the basis of several different factors. Some of the Applicants indicate that their families have lived in Latvia for several generations, that they have acquired Latvian citizenship and thus both constitute the Russian minority in Latvia and wish to preserve their identity.

The Constitutional Court has held in the Case No. 2018-12-01 that the possibility to exercise the rights included in Article 114 of the *Satversme* may also be extended to Soviet-era migrants who have not acquired Latvian citizenship. That is, if a person permanently residing in Latvia identifies himself or herself with a minority historically residing in Latvia, he or she may exercise the rights enshrined in Article 114 of the *Satversme* (see *Judgment of 23 April 2019 by the Constitutional Court in the Case No. 2018-12-01, para. 22*). However, Latvia has no obligation to ensure the exercise of this right for Soviet-era migrants. At least one Applicant wishes to use the rights enshrined in Article 114 of the *Satversme* in such a context.

The Constitutional Court has no other information at its disposal that would negate the information provided by the Applicants. Thus, the Constitutional Court will assess whether the state has fulfilled its positive obligation specified in Article 114 of the *Satversme* in relation to the Applicants belonging to the historical Russian minority of Latvia.

**18.** In principle, the Applicants have not denied the need for the child to learn several languages. In the opinion of the Applicants, the contested provisions restrict the opportunities of the child to acquire the culture of the Russian minority and the Russian language. Consequently, the Constitutional Court will assess whether the contested provisions have provided the child with an opportunity to identify and strengthen his or her identity as an individual belonging to the Russian minority.

First of all, it should be noted that the importance of the mother tongue in the child's development and education is undeniable. The mother tongue is an essential part of quality education, especially during the first years of a child's life. However, bilingual education is just as important, if education is provided in a language other than the learner's mother tongue. In this case, in addition to the acquisition of the mother tongue, the child's acquisition of the official language must also be ensured already from an early age. In a state where the learner's mother tongue is not the official language, bilingual education can make it possible for him or her to be educated in his or her mother tongue, whilst ensuring the acquisition also of the language that is primarily used in that state (see *Education in a multilingual world: UNESCO education position paper, 2003, p. 14, pp. 30–32*). Early age in particular is the best time to learn a language without much effort. In addition, although a pre-school child is not yet aware of

the need for language skills, multilingualism will help him or her to pursue a career in the future, as well as to seek opportunities for closer integration in the economic and social environment.

Bilingualism as a method has been gradually introduced into the Latvian education system for several years. In order to ensure the most effective acquisition of several languages, bilingualism is included in the education system already from a pre-school level. Namely, a child who uses the opportunity to obtain pre-school education in a pre-school educational institution acquires not only the mother tongue, but also the official language from the age of one and a half years. This position is also in line with the Advisory Committee's finding that the bilingual and plurilingual approach permeates the framework of the Minority Convention (*see Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, 2 March 2006, para. 2.1.2, p. 16*).

**18.1.** Article 114 of the *Satversme* safeguards the right of ethnic minorities to develop their language and ethnic and cultural identity. In Latvia, the distinctiveness of ethnic minorities is protected (*see Judgment of 23 April 2019 by the Constitutional Court in the Case No. 2018-12-01, para. 23*).

In accordance with Article 114 of the *Satversme*, the state has a duty to respect and guarantee the right of persons belonging to ethnic minorities to preserve and develop their identity by preserving and developing the language of the minority, as well as ethnic and cultural distinctiveness. This fundamental right of persons belonging to ethnic minorities is complex and comprises several elements. An integral element of this fundamental right of persons belonging to ethnic minorities is the right to acquire the language of the particular minority and use it as a language of instruction in the educational process (*see Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 15.2*).

The state must ensure the right of a child belonging to a minority to acquire the mother tongue in the initial stages of education. This means that the state must ensure that children have the opportunity to communicate with each other in their mother tongue. This can be done by giving the child the opportunity to learn his or her mother tongue or receive instructions in the mother tongue in pre-school and basic education level educational institutions (*see UN Human Rights Council, Report of the Special Rapporteur on the Right to Education on*

*the Promotion of Equality of Opportunity in Education, UN Doc.A/HRC/17/29 (2011), para. 63; Recommendations of the Forum on Minority Issues, UN Doc. A/HRC/10/11/Add 1 (2009), para. 58).*

Section 11, paragraph 3 of the Law on the Protection of Rights of the Child provides that children belonging to Latvian minorities have the right to receive education in their mother tongue in accordance with the Education Law.

**18.2.** The Constitutional Court has already concluded that in accordance with the contested provisions in the pre-school education stage from one and a half to five years both Russian and Latvian language should be used in the acquisition of the study content, i.e., bilingual approach should be used in every area of study. This is not disputed by the Applicants. They have not objected to pre-school education at this stage of education. Consequently, there is no dispute that at this stage the rights enshrined in Article 114 of the *Satversme* are ensured.

Objections have been raised in relation to the pre-school education period from five to seven years, in particular in relation to the fact that the main means of communication in play is the Latvian language, with the exception of purposefully organised activities for the acquisition of the minority language and culture. Consequently, the Constitutional Court must ascertain whether the contested provisions guarantee the Applicants the right to preserve their, i.e., Russian identity.

The use of a minority language in the educational process must ensure not only the formal acquisition of this language, but also the development of the identity of a person belonging to the minority. This means that a regulation that would completely exclude the use of the minority language from the educational process or reduce it to such an extent that the minority language as a language of instruction is used only in the acquisition of this language as a specific subject of study could not be considered as compatible with Article 114 of the *Satversme* (see *Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 22.2*).

In accordance with Section 41, paragraph 2 of the Education Law, the content necessary for the acquisition of the relevant ethnic culture and integration of ethnic minorities in Latvia shall be additionally included in minority education programmes. It follows from this norm that the pre-school education programme of ethnic minorities has been developed on the basis of the pre-school education programme and by adding to it content related to the acquisition of the language, culture, and traditions of the ethnic minorities. This is affirmed by Regulations

No. 716, Annex 2, paragraph 1, which states that the aim of the implementation of the pre-school education programme for ethnic minorities is to promote the comprehensive development and strengthening of the health of the child, to promote the acquisition of the ethnic culture, and to prepare the child for basic education. An analogous provision is included in Annex 4, paragraph 1.

It has been established in paragraph 14.2 of this Judgment that Regulations No. 716 have introduced an integrated learning process at the pre-school education level. This means that the upbringing and study process is cohesive. Therefore, the requirements of the minority pre-school education programme must be considered in context. Inter alia, the requirement to promote the acquisition of minority culture and language determines a part of the content to be included in the minority pre-school education programme. Given that an integrated learning process is envisaged, the relevant requirements may be included in other provisions or result from the legal framework as a whole.

Paragraph 10 of Regulations No. 716 sets out the basics of skills that a child must acquire in each area of education by the end of pre-school education. The results to be achieved—which, inter alia, ensure the acquisition of the language and culture of the minority—are likewise determined therein.

In the field of language learning, it is stated that the child explains why people use language to communicate, listens to the text, names the people acting therein, restates events, thinks about the continuation of the text, asks questions and answers a specific question, clearly and successively talks about what has been seen, heard, experiences, participates in the conversation, does not interrupt the speaker, uses different speech intonations, distinguishes and names sounds, labels the sound with an appropriate letter, reads words and understands what has been read, writes written letters—all in the language in which the curriculum is implemented (Regulations No. 716, para. 10.1.1).

In the field of social and civic education, the child is aware of himself and of the belonging to a family and to an educational institution, explains that Latvia is a part of the world, understands that people are different (Regulations No. 716, para. 10.2).

In the field of cultural awareness and art of self-expression arts, the child gets acquainted with the traditional culture of other nations, chants folk songs, recites short poems, plays out a self-invented or literary plot, sings, makes music, dances, improvises freely and confidently with movements or sound instruments, singing individually and together with others, with and without musical

accompaniment, tells about his experience in creative activity, describes the emotions caused by visual art, music, and literary work (Regulations No. 716, para. 10.3).

In the field of technology, the child learns various techniques, approaches, and safety rules for the use of materials and tools to implement his or her vision, creates and connects parts, obtaining the desired shape from the offered or selected materials, participates in cooking simple and healthy foods (Regulations No. 716, para. 10.6).

As has already been demonstrated, paragraph 7 of Annexes 2 and 4 to Regulations No. 716 provide that learning, namely, play is to be implemented as an integrated learning process. This means that the basics of minority language skills and the basics of minority culture awareness and self-expression skills are also acquired in an integrated way through play and according to the results to be achieved, defined in each of the aforementioned areas of study. Consequently, the Constitutional Court finds that in a number of areas of study there is a possibility to introduce and acquire the culture and language of the minority.

This is also corroborated by the invited persons Antra Randoha, Sandra Millere, and Irina Avdejeva. Antra Randoha points out that at the end of the traineeship prospective teachers have to prove their professionalism in leading play activities, including teaching aids in the child's mother tongue, such as folk tales, songs, poems, stories, letters, and other visuals. Sandra Millere refers to the fact that within the framework of teaching it is possible to organise events that involve both children and parents, jointly organising various performances in their mother tongue. Irina Avdejeva does not see any threat to the development of the learners' knowledge and skills in the implementation of the existing pre-school education programmes. LIZDA members, including those implementing the new minority pre-school education programme, have no objections or concerns that the development of learners' knowledge and skills could be impaired.

The model pre-school education programme developed by the National Centre for Education incorporates the aforementioned requirements of Regulations No. 716 regarding the acquisition of the minority language and culture. For example, in the field of social and civic education, the teacher invites the child to tell about himself or herself and his or her family, encourages to watch people around the child and in pictures, to see what is common and different, draws the attention of the child to different languages used in

communication, asks the child which languages he or she knows, which languages he or she speaks, which languages are used to communicate in the family, which languages are spoken in Latvia, invites to name the holidays celebrated in the family, asks about traditions of celebrating holidays in Latvia, compares holiday traditions, encourages to accept differences in celebrating holidays, respecting each person's choice, offers pictures and videos about Latvia and other countries mentioned by the child. In the field of cultural awareness and art of self-expression, the teacher offers to watch contemporary dance and folk dance recordings, listen to fairy tales, stories, poems, or plays, listen to recordings of poems or recite a poem, arouses interest in the traditional Latvian culture and culture of other nations, invites to sing folk songs, participate in play and dances, plays or reads fairy tales, finds out about the child's experience with annual festivities and invites to participate in the planning of the festivities (*see Annex 6 of the pre-school education programme prepared within the framework of the National Centre for Education project "Competence Approach to Curriculum"* (Skola2030), pp. 88, 90, 94, and 98. Available: <https://mape.skola2030.lv/resources/10>).

According to paragraph 8.5 of Annex 2 to Regulations No. 716, the implementation of the compulsory curriculum shall be planned and organised, including various events, such as those related to public holidays, annual customs, traditions, and the acquisition of ethnic culture, in order to achieve the intended results of the compulsory curriculum. An analogous provision is included in paragraph 8.5 of Annex 4. This norm affirms that the organisation of various events is also related to the aforementioned planned learning outcomes of the acquisition of skills in minority music (folk songs), visual arts (illustrations by Russian artists for Russian folk tales), literature (Russian folk tales, short poems), and theatre (fairy tale staging, theatre).

In addition, the second sentence of the contested provisions provides that the main means of communication in play is the Latvian language, with the exception of purposefully organised activities for the acquisition of the minority language and ethnic culture. This exception to the requirement to use mainly the Latvian language allows minority pre-school educational institutions discretion with regard to, for example, the annual festivities or the preservation of traditions. In the present case, for example, children can prepare for a holiday and celebrate Maslenitsa, Easter, the Day of Slavic Writing and Culture, and the Feast of Alphabet in Russian, and thus learn and maintain Russian culture.

Consequently, the contested provisions do not exclude the possibility that the Russian language may be used in pre-school education, and Regulations No. 716 ensure the preservation of the mother tongue and the identity of the learner belonging to the Russian minority.

In addition, it should be taken into consideration that the concept of education also includes educational activities outside the education system established by the state, such as minority Sunday schools or summer camps. This is also in line with the findings of the Advisory Committee (*see Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, No. ACFC/25DOC(2006)002, 2 March 2006, para. 2.1.2*). Thus, in addition to the education system established by the state, the Applicants can strengthen the identity of the Russian minority by, for example, establishing their own ethnic and cultural centres or private weekend schools.

**Thus, the conditions regarding the use of languages of instruction in the pre-school education process included in the contested provisions encompass the right of a learner belonging to the Russian minority to use the mother tongue in the said process.**

**18.3.** The Constitutional Court indicates that it has familiarised itself with the 2018 opinion of the Advisory Committee provided within the framework of the third monitoring cycle with regard to the present issue under consideration. The Committee has called on the Latvian authorities to continue their efforts to ensure an adequate bilingual curriculum at the pre-school level, as well as to provide adequate funding for quality teaching of the Latvian language in pre-schools (*see Advisory Committee's Third Opinion on Latvia, No. ACFC/OP/III(2018)001, paras. 152 and 156*). The Constitutional Court has also familiarised itself with the letters of the Committee on the Elimination of Racial Discrimination and the Special Rapporteurs to the Government of Latvia submitted by the Applicants, which relate to Regulations No. 716. The Committee on the Elimination of Racial Discrimination has expressed concerns about the possible discriminatory effects of Regulations No. 716 on national minorities in the field of education (*see Case Materials, Vol. 2, pp. 59 and 62*). According to the Special Rapporteurs, the mother tongue of learners belonging to a minority is excluded from the learning activities included in pre-school education, thus the right of minority learners to use their language in their

community in communication with its other members may be violated (*see Case Materials, Vol. 2, pp. 54–55*).

The Constitutional Court has already assessed in Case No. 2018-12091 the applicability of the 2018 opinion of the Advisory Committee provided within the framework of the third monitoring cycle to the reforms implemented by Latvia in the field of education. The Constitutional Court did not establish any grounds to find that the Minority Convention imposes an obligation on the state to ensure such means of preserving and developing minority language and ethnic and cultural distinctiveness as obtaining education only in the language of the minority or in internationally determined proportion of its use within the state education system. The Constitutional Court pointed out that in determining the most appropriate way to exercise the rights enshrined in Article 114 of the *Satversme* in conjunction with Article 14 of the Minority Convention, the circumstances characteristic of the specific society and the minority, as well as the historical context should be taken into account (*see Judgment of 23 April 2019 by the Constitutional Court in the Case No. 2018-12-01, paras. 23.2 and 24.2*). The Advisory Committee has also indicated that the specific circumstances of each state must be taken into account. In particular, the Advisory Committee has drawn the attention of the Member States to the circumstances that should be taken into account or considered when deciding on minority education issues and developing minority education programmes. It has also recognised that Member States may adapt certain methods and instruments to the specific needs of the state, region, or minority (*see Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on Education under the Framework Convention for the Protection of National Minorities, No. ACFC/25DOC(2006)002, 2 March 2006, para. 2.3.2*).

The Constitutional Court concludes that it follows from the letters of the Committee on the Elimination of Racial Discrimination and the Special Rapporteurs to the Government of Latvia that at the time of drafting of these letters, comprehensive information on the scope of Regulations No. 716, clarified in this Judgment, was not yet available. These letters are to be considered as an invitation to dialogue between the Government of Latvia and the relevant United Nations mechanisms.

The Constitutional Court concludes that by regulating the use of languages in pre-school educational institutions, the legislature has ensured the right of a

learner belonging to the Russian minority to preserve and develop his or her identity and culture in a way that corresponds to the conditions characteristic of the Russian minority in the historical context of Latvia. It follows from the contested provisions and the related regulation that a learner is provided with the opportunity to use the Russian language also in the pre-school education stage from five to seven years of age.

**Consequently, the contested provisions comply with Article 114 of the *Satversme*.**

19. The Applicants request to assess the compliance of the contested provisions with Article 91 of the *Satversme*.

Article 91 of the *Satversme* provides: “All human beings in Latvia shall be equal before the law and the courts. Human rights are realised without discrimination of any kind.”

The Constitutional Court has recognised that the function of the principle of equality is to ensure that the all-encompassing effect of the law on all persons as a prerequisite of a state under the rule of law is implemented and that the law is applied without any privileges (*see Judgment of 2 February 2010 by the Constitutional Court in the Case No. 2009-46-01, para. 7*). The principle of equality enshrined in the first sentence of Article 91 of the *Satversme* allows and even requires differential treatment of persons who are in different circumstances, as well as allows differential treatment of persons who are in equivalent conditions if there are objective and reasonable grounds for it (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-28-0306, para. 9*).

In turn, the prohibition of discrimination enshrined in the second sentence of Article 91 of the *Satversme* is an aspect of the principle of equality, which in certain situations specifies this principle and helps to apply it. The purpose of the prohibition of discrimination is to eliminate unequal treatment if it is based on an impermissible criterion (*see Judgment of 23 November 2015 by the Constitutional Court in the Case No. 2015-10-01, para. 15*). The criteria on which the difference in treatment is based are different. Depending on the specifics of the criterion in question and the actual circumstances of the case, the justification for using the criterion may differ. Namely, there are such criteria the use of which cannot be justified, as well as such criteria the use of which can be

justified in certain cases (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-28-0306, para. 9*).

The Applicants perceive the violation of Article 91 of the *Satversme* in two different situations. In the first case, in the view of the Applicants, the contested provisions provide for a differential treatment of two groups of pre-school learners, i.e., learners who receive education in the Latvian language and learners who receive education in the minority language, mainly Russian. Namely, the first group has the right to receive education in their mother tongue, whilst the second group is denied such rights. Thus, the contested provisions unreasonably envisage a differential treatment of the students in pre-school educational institutions on the basis of the language criterion. In the second case, in the view of the Applicants, the contested provisions unreasonably provide for an equal treatment of two groups of minority pre-school learners—children with special needs and children without such needs. The treatment of children with special needs in relation to the use of language in pre-school education should be different. The prohibited criterion—disability—must be taken into account.

Taking into account the argumentation provided in the constitutional complaint and other materials of the case, the Constitutional Court will assess the situation in which unreasonably differential treatment of persons belonging to ethnic minorities and persons belonging to the nation of the state is possible. Subsequently, the Constitutional Court will assess the situation in which unreasonably equal treatment of children with special needs and children without such needs is potentially manifested.

**20.** In order to assess whether the contested provisions comply with Article 91 of the *Satversme* in the case under review, the following must be ascertained:

1) whether and which persons (groups of persons) are in equal and, according to certain criteria, comparable conditions;

2) whether the contested provision envisages equal or differential treatment of these persons;

3) whether such treatment has been determined by a legal norm adopted in accordance with the procedure provided for in regulatory enactments;

4) whether there are objective and reasonable grounds for such treatment (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-28-0306, para. 11*).

**21.** The Applicants consider that the contested provisions provide for a differential treatment of learners whose mother tongue is one of the minority languages compared to with learners whose mother tongue is the official language, although the treatment should be the same. In turn, the Cabinet of Ministers considers that a violation of Article 91 of the *Satversme* cannot be established, because in Latvia learners whose mother tongue is a language other than the official language are not in comparable conditions with learners whose mother tongue is the official language.

The Constitutional Court has already held that in Latvia those learners whose mother tongue is a language other than the official language are not in comparable conditions with the learners whose mother tongue is the official language. This finding of the Constitutional Court is based on the constitutional status and significance of the official language in the functioning of a democratic state, as well as the fact that neither the *Satversme* nor the norms of international law binding on Latvia impose an obligation on the state to ensure that a learner can use a language of his or her choice in the educational process, or use in it a language other than the official language in the proportion desired by the learner (*see Judgment of 23 April 2019 by the Constitutional Court in the Case No. 2018-12-01, para. 21.1*).

In the case under review, the contested provisions determine the use of the official language in pre-school educational institutions, and not in primary and secondary education institutions. Therefore, it must be ascertained whether the finding of the Constitutional Court also applies to the level of pre-school education.

The Constitutional Court has already established that Latvia has instituted a cohesive education system consisting of four levels. The level of pre-school education is one of the elements of this cohesive system. In Latvia, the general rule is that education is acquired in the official language (Section 9, paragraph 1 of the Education Law). There is one official language in Latvia, and it is the Latvian language. It has been concluded in paragraph 14 of this Judgment that the state has fulfilled its obligation arising out of Article 112 of the *Satversme* and that in Latvia every learner is provided with the opportunity of acquiring the official language also at the level of pre-school education.

The Constitutional Court has already addressed the issue of possible comparison of groups of persons mentioned by the Applicants in the Case No. 2018-12-01. In Latvia, a pre-school learner whose mother tongue is a language

other than the official language is not in comparable conditions with a learner whose mother tongue is the official language. Thus, in the circumstances of the present case the learners belonging to the nation of the state and the learners belonging to ethnic minorities do not constitute comparable groups.

**Taking into account the foregoing, the contested provisions in this part comply with Article 91 of the *Satversme*.**

22. The Applicants consider that a child who attends a pre-school educational institution implementing a minority education programme and a child who attends a pre-school educational institution implementing a special minority education programme are in different situations. A child with special needs is much more vulnerable. Consequently, a child with special needs should have the right to education in his or her mother tongue, taking into account his or her special needs. In turn, the Cabinet of Ministers considers that there is no legal basis to determine a differential treatment of a learner within the framework of the minority education programme and a learner with special needs within the framework of the minority special education programme.

As has already been indicated above, the principle of equality enshrined in the first sentence of Article 91 of the *Satversme* allows and even requires differential treatment of persons who are in different circumstances, as well as allows different treatment of persons who are in equivalent conditions if there are objective and reasonable grounds for it. In turn, the purpose of the prohibition of discrimination included in the second sentence of Article 91 of the *Satversme* is to eliminate unequal treatment if it is based on a prohibited criterion, such as race, nationality, or gender (*see, e.g., Judgment of 29 December 2008 by the Constitutional Court in the Case No. 2008-37-03, para. 6*). Unlike the first sentence of Article 91 of the *Satversme*, the essence of the prohibition of discrimination enshrined in the second sentence of this Article is to prevent the possibility of a fundamental right of a person being restricted on the grounds of a prohibited criterion in a democratic state governed by the rule of law (*see Judgment of 14 September 2005 by the Constitutional Court in the Case No. 2005-02-0106, para. 9.3*).

The Constitutional Court has acknowledged that, since the legislature must take into consideration the principle of equality enshrined in Article 91 of the *Satversme* when issuing legal acts, it is obliged to develop such norms that envisage different treatment of persons in different circumstances, unless there

are reasonable and objective grounds to envisage equal treatment of all persons covered by the specific regulation (*see Judgment of 23 November 2015 by the Constitutional Court in the Case No. 2015-10-01, para. 15*).

**Thus, the Constitutional Court must ascertain whether the contested provisions envisage equal treatment of a group of individuals who are in different circumstances on the basis of an identifiable criterion and a group of individuals who cannot be identified by such a criterion, and whether such treatment precludes restriction of fundamental rights of these persons.**

**23.** First of all, the Constitutional Court points out that the *Satversme* includes the right of every child to education. Section 3<sup>1</sup>, paragraph 1 of the Education Law and Section 3, paragraph 1 of the Law on the Protection of the Rights of the Child in conjunction with Section 11 stipulate that a child has the right to receive education regardless of his or her state of health. Section 11, paragraph 1 of the Law on the Protection of the Rights of the Child provides that the state shall ensure equal rights and opportunities for all children to receive education in accordance with their abilities.

Thus, every child, regardless of his state of health, has the right to receive everything the education system offers. A child with special needs has the same needs as other children of the same age in addition to other unique needs specific to that child.

The right of a child with special needs to special protection is enshrined in the Convention on the Rights of Persons with Disabilities. Article 7 of the Convention provides that States Parties shall take appropriate measures to ensure that the child with special needs enjoys all human rights and fundamental freedoms on an equal basis with other children and that in all decisions concerning children with disabilities, the primary consideration shall be the best interests of the child.

The right of a child with special needs to special care is also established in the Convention on the Rights of the Child. In accordance with the first paragraph of Article 23 of the Convention, states parties recognise that a child with special needs should live a full and dignified life in conditions that guarantee his or her dignity, help him to maintain confidence in his abilities, and facilitate his active participation in the society. The second paragraph of the same Article states that states parties shall recognise the right of a child with special needs to special care.

Children with special needs are one of the most vulnerable groups of children. Discrimination occurs in various aspects of the life and development of a child with special needs, including in education (*see Committee on the Rights of the Child, General Comment No. 9 (2006), U.N.DOC. CRC/C/GC/9, 27 February 2007, paras. 8 and 11*). States parties must develop effective policies aimed not only at the full and non-discriminatory exercise of the rights enshrined in the Convention on the Rights of the Child, but also at ensuring that the child with special needs and his parents or other carers receive special care and assistance (*see Committee on the Rights of the Child, General Comment No. 9 (2006), U.N.DOC. CRC/C/GC/9, 27 February 2007, para. 13*). Thus, Article 91 of the *Satversme* includes not only the prohibition of unequal treatment based on the prohibited criterion of the special needs of the child, but also the obligation of the state to take additional measures to ensure that the prohibited criterion does not prevent the child from exercising the rights enshrined in the *Satversme*, including the right to education.

Article 7 of the Education Law provides that the target group of education is a group of persons who have similar needs, interests, and abilities, who wish to be educated or for whom the acquisition of compulsory education is prescribed by law. The main target groups of education are the following: 1) pre-school aged children; 2) children and youth of compulsory education age; 3) youth; 4) persons with special needs; 5) adults.

Section 38, paragraph 2, clause 2 of the Education law determines that a special education programme is one of the special types of education programmes. In accordance with Section 42, paragraph 1 of this Law, a person with special needs may acquire special education in an educational institution if he or she is provided with opportunities to obtain education that corresponds to his state of health and the nature of the developmental disorder in this institution.

As such, in order to ensure the right of a child with special needs to education, a corresponding separate target group of education is recognised in Latvia, and special education programmes intended for it have been established. Consequently, it is recognised that a child with special needs is in a different situation from a child without such needs, and that a child with special needs requires special attention.

The Applicants consider that the contested provisions envisage equal treatment with regard to the use of the Latvian language in pre-school educational institutions. The Cabinet of Ministers points out that it has not, by

means of the contested provisions, allowed differential treatment of learners who acquire the minority pre-school education programme and those learners who acquire the minority special education programme, because with regard to the use of the Latvian language the same requirements apply to both the minority education programme and the minority special education programme.

According to the contested provisions, regardless of whether the pre-school educational institution implements a minority education programme or a minority special education programme, the acquisition of the Latvian language must be promoted during the entire pre-school education period; moreover, for a child from the age of five the main means of communication in play is Latvian.

**Thus, the contested provisions provide for equal treatment of groups of individuals who are in different circumstances, namely, a child with special needs and a child without such needs.**

24. The next step in order to ascertain whether the contested provisions comply with Article 91 of the *Satversme* is an assessment of whether equal treatment has been established by a legal norm adopted in accordance with the procedure provided for in regulatory enactments.

In the opinion of the Applicants, the contested provisions have been adopted in violation of the authorisation granted by the *Saeima* and the procedure provided for in regulatory enactments, as well as without hearing the representatives of ethnic minorities. Thus, Article 64 of the *Satversme* has been violated. In turn, the Cabinet of Ministers points out that the legislature has authorised it to adopt the contested provisions, it has complied with the procedure relating to the adoption of regulations of the Cabinet of Ministers specified in the regulatory enactments, and the hearing of the representatives of ethnic minorities has been ensured.

In examining cases regarding the compliance of legal norms with Article 64 of the *Satversme* and the rights included in Chapter VIII of the *Satversme*, the Constitutional Court has assessed the compliance of these norms with Article 64 of the *Satversme* by verifying whether the restriction of fundamental rights included in the contested provisions has been established by law (*see, e.g., Judgment of 16 December 2008 by the Constitutional Court in the Case No. 2008-09-0106, para. 6*). As the Constitutional Court must ascertain whether the equal treatment included in the contested provisions is determined by a legal norm adopted in accordance with the procedure provided for in regulatory

enactments, it must assess the compliance of the contested provisions with Article 64 of the *Satversme*.

Equal treatment may be prescribed by law. The word “law” covers not only the laws adopted by the *Saeima*, but also other generally binding (external) regulatory enactments (*see, e.g., Judgment of 2 March 2016 by the Constitutional Court in the Case No. 2015-11-31, para. 20*). In accordance with Article 64 of the *Satversme*, legislative rights belong to the *Saeima*, as well as to the people in accordance with the procedure and to the extent provided for in the *Satversme*. The executive power—the Cabinet of Ministers—has the right to issue legal norms only in cases specified by law, within the framework of law, and they may not be in conflict with the *Satversme* and other laws. This follows from the principles of the rule of law and the division of power, which are the basis for the existence of any democratic state governed by the rule of law (*see Judgment of 12 December 2018 by the Constitutional Court in the Case No. 2018-06-0103, para. 18*).

Thus, when assessing the compliance of the regulations of the Cabinet of Ministers with Articles 64 and 91 of the *Satversme*, it is necessary to evaluate the compliance of these regulations with several conditions.

First of all, the Cabinet of Ministers requires a special authorisation of the legislature to issue regulations, which is included in the legal norm. The authorisation must set out the main objectives of the rules.

Secondly, taking into account the fact that the Cabinet of Ministers issues regulations to promote the implementation of the law, they may not include such norms that could not be considered as aids for the implementation of the legal norm.

Thirdly, the Cabinet of Ministers may issue regulations only in cases specified by law, within the framework of law, and they may not be in conflict with the *Satversme* and other laws.

Fourthly, the regulations of the Cabinet of Ministers must be published and sufficiently clearly formulated, so that the addressee of the norms contained therein can understand his or her rights and obligations (*see Judgment of 21 November 2005 by the Constitutional Court in the Case No. 2005-03-0306, para. 9*).

Any equal or differential treatment must be established in such a process of creation of legal norms that complies with the principle of good legislation (*see, e.g., Judgment of 20 March 2020 by the Constitutional Court in the Case No.*

2019-10-0103, para. 32). The *Saeima* and the people have the right to legislate in accordance with the procedure and to the extent provided for in the *Satversme*, but the Cabinet of Ministers has an important role in the legislative process and therefore the Cabinet of Ministers must also comply with the requirements arising out of the principle of good legislation. The principle of good legislation is applicable to the process of preparation and adoption of every regulatory enactment, including the process of adoption of regulatory enactments of the Cabinet of Ministers.

**24.1.** The Constitutional Court has recognised that in order to assess the compliance of norms issued by the executive power with Article 64 of the *Satversme*, it is necessary to assess whether the authorisation procedure has been complied with, i.e., to clarify the limits of the specified authorisation (*see Judgment of 20 March 2020 by the Constitutional Court in the Case No. 2019-10-0103, para. 32.3*).

The Applicants consider that the Cabinet of Ministers has not had the appropriate authorisation granted by the *Saeima*; namely, the authorisation specified in Section 14, clause 18<sup>1</sup> has been exceeded. The Applicants point out that the legislature sought to regulate the issue of the use of the official language in educational institutions implementing the minority education programme, and refers to Section 41, paragraphs 1<sup>1</sup> and 1<sup>2</sup> of the Education Law to substantiate this opinion.

The legal norm by which the legislature authorises the Cabinet of Ministers to regulate the procedure for implementation of fundamental rights of a person specified in the *Satversme* or restrictions for the implementation of these rights must be clear and precise (*see Judgment of 21 November 2005 by the Constitutional Court in the Case No. 2005-03-0306, para. 10*).

The Cabinet of Ministers has adopted the contested provisions on the basis of Section 14, clause 18<sup>1</sup> of the Education Law, which provides that the Cabinet of Ministers shall determine the state pre-school education guidelines, which include model education programmes in accordance with the requirements of these guidelines.

Section 31, paragraph 1, clause 1 of the Law on the Structure of the Cabinet of Ministers provides: “The Cabinet of Ministers may issue external regulatory enactments if the law has specifically authorised the Cabinet of Ministers to do so. The authorisation shall set out the main directions of content thereof.”

On the other hand, the authorisation granted by the legislature must be understood not only as one specific, laconic legal norm, but also as the essence and purpose of the law itself. Therefore, the content of the authorisation granted by the legislature can be clarified by systematically assessing the whole regulatory enactment, but, if necessary, also the regulation of the respective field or sometimes even other related fields in its entirety (*see Judgment of 18 October 2018 by the Constitutional Court in the Case No. 2017-33-03, para. 14*).

Taking into account the foregoing, it is necessary to ascertain whether the Education Law or the set of regulatory enactments regulating the field of education implies an authorisation for the Cabinet of Ministers to establish guidelines for the use of the Latvian language in pre-school educational institutions implementing minority education programmes.

In its reply, the Cabinet of Ministers indicates that the regulation encompassed in the Education law must be viewed systematically. The *Saeima* also points out that the authorisation granted by the legislature must be understood not only as one specific, laconic legal norm, but also as the essence and purpose of the law itself.

The Constitutional Court has already established in paragraph 14.2 of this Judgment that the adoption of Regulations No. 716 was one of the measures taken to introduce the new competency-based curriculum in pre-school education. As part of this education reform, amendments to the Education Law were adopted on 22 March 2018 and amendments to the General Education Law—on 21 June 2018.

It follows from the drafting materials of the amendments to the Education Law of 21 June 2018 that the MPs have discussed and clarified the issue of the level of detail at which the law should be drafted, as well as discussed the issues to be conveyed to the Cabinet of Ministers. At the *Saeima* sitting of 26 April 2018, the MPs indicated that the Cabinet of Ministers is responsible for guidelines and standards, including competencies and specific areas of study (*see the transcript of the 12<sup>th</sup> Saeima sitting of 26 April 2018*). Former Minister of Education and Science Kārlis Šadurskis pointed out at the *Saeima* sitting of 7 June 2018 that the *Saeima* has delegated the development of educational standards, including setting specific procedures and addressing specific issues related to the areas of study, to the government (*see the transcript of the 12<sup>th</sup> Saeima sitting of 7 June 2018*).

With regard to the level of pre-school education, the *Saeima*, by amending the Education Law on 22 March 2018, imposed with paragraph 68 of the transitional provisions of this Law an obligation on the Cabinet of Ministers to review its regulations establishing the state pre-school education guidelines.

Thus, the legislature has instructed the Cabinet of Ministers to harmonise the teaching method used in the pre-school education stage with the methods used in other general education stages. Namely, the Cabinet of Ministers is obliged to introduce the new teaching method also in the pre-school education stage, which includes competency-based study content. Section 20, paragraph 1, clause 6 of the General Education Law stipulates that the pre-school education programme ensures the preparation of the learner for the acquisition of basic education, including the acquisition of basic skills in the use of the official language. Thus, one of the main elements of this method is to strengthen the acquisition of the official language. The necessity of specifying the intended results in the acquisition of the Latvian language in the minority education programme within the framework of the competency-based study content is also emphasised in the annotation of Regulations No. 716 (*see Annotation of the draft Regulations No. 716, Part I, para. 2*).

In performing the aforementioned task, the Cabinet of Ministers has adopted Regulations No. 716, including the contested provisions. The contested provisions determine how the Latvian language should be included in the study content. The contested provisions strengthen the central role of the Latvian language both in the competency-based curriculum and in the entire pre-school education system. It does not follow from the authorisation granted by the legislature that the task of the Cabinet of Ministers was to provide in Regulations No. 716 for a certain relationship between the use of the minority language and the Latvian language.

At the same time, when developing a regulation, the Cabinet of Ministers must take into consideration that the authorisation granted by the legislature must be implemented within the framework of the *Satversme*—in the case under review, by taking into consideration the rights of ethnic minorities enshrined in Article 114 of the *Satversme*. The Constitutional Court has already considered this issue in paragraph 18 of this Judgment and found that a child belonging to the Russian minority is provided with opportunities to acquire his or her own culture and mother tongue in addition to the acquisition of the Latvian language.

In accordance with Section 41, paragraph 1 of the Education Law, the minority pre-school education programme is developed by the educational institution choosing one of the model education programmes. Unlike the basic education level, the pre-school education level is not subject to the requirements pertaining to the proportion of the use of languages. However, the fact that the legislature has decided to regulate the proportion of the use of the official language and the minority language at the level of basic education does not mean that the legislature has not regulated the use of languages at the pre-school level, and that determining the proportion of language use is the best approach for the pre-school level.

Within the framework of the education reform, the legislature has determined that a new concept should be introduced in Latvia, namely, competency-based curriculum. It also covers the regulation of the acquisition of the official language and other languages, so that every learner from the first stage of the education system has the preconditions for acquiring the official language at an appropriate level, as well as the preconditions for using the opportunities provided by all successive levels of the education system. With the contested provisions, the Cabinet of Ministers has fulfilled the task entrusted to it by the legislature at the level of pre-school education, maintaining the bilingual approach in the process of study and recreation.

Taking the foregoing into account, it must be recognised that the Cabinet of Ministers, in adopting the contested provisions, has acted within the framework of authorisation and in accordance with the *Satversme*.

**24.2.** The Applicants consider that in adopting the contested provisions the requirements of Regulations No. 300, namely, paragraphs 91.9<sup>1</sup> and 144, have not been complied with.

**24.2.1.** Paragraph 91.9<sup>1</sup> of Regulations No. 300 provides that an opinion (approval) on the announced draft from the Latvian National Commission for UNESCO is required if the draft relates to the international obligations of the Republic of Latvia in the field of activities of UNESCO (education, science, culture, environment, information and communication, media).

Latvia became a member of UNESCO on 14 October 1991. Article 7 of the UNESCO Constitution stipulates that each Member State shall make arrangements as suit its particular conditions for the purpose of its principal bodies interested in co-operating with UNESCO in educational, scientific, and cultural matters forming a national commission that would be broadly

representative of the government and the respective bodies. The Charter of National Commissions of UNESCO defines the goals, tasks, and functions of the national commissions. It follows from Article 1 of this Charter that the national commissions of UNESCO co-operate with the government and other institutions of the respective state, involve the representatives of the public and the government in the establishment and implementation of UNESCO programmes. It follows from Article 2 of the Charter that each member State determines the responsibilities of the national commission, including the obligation to promote close links between the government and the institutions and other bodies in matters relating to education, science, culture, and information (Article 2, para. 1, clause (a)), as well as the obligation to participate in national activities related to UNESCO programmes (Article 2, para. 1, clause (d)). However, how these responsibilities are to be fulfilled or how the ability of the UNESCO National Commission to fulfil these responsibilities is to be ensured is left to the discretion of each Member State (Article 4, para. 1).

The requirement to coordinate draft legal acts, planning documents, and other documents to be considered by the Cabinet of Ministers with the UNESCO National Commission was introduced with the adoption of the Law on the Latvian National Commission of the United Nations Educational, Scientific and Cultural Organisation on 28 October 2010. Section 3, paragraph 4 of this Law stipulates that the Cabinet of Ministers shall determine the procedure for coordinating with the Commission the documents to be reviewed by the Cabinet of Ministers in the UNESCO's field of education, science, culture, communications, and information. Accordingly, on 6 September 2011 Regulations No. 300 were amended, supplementing them with paragraph 91.9<sup>1</sup>.

Thereby, the legislature has chosen to strengthen the role of the UNESCO National Commission in the process of adopting regulatory enactments of the Cabinet of Ministers within its discretion. Such an initiative by Latvia reflects the principle enshrined in the Latvian legislative traditions—that it is necessary to identify the opinions and interests of all persons to whom a specific regulatory enactment applies and who may be affected by it.

The Constitutional Court points out that the principle of good legislation imposes an obligation on the Cabinet of Ministers to receive an opinion (approval) from the Latvian National Commission for UNESCO, if the draft relates to the international obligations of the Republic of Latvia in the field of activities of UNESCO. However, the Constitutional Court has also

acknowledged that not every violation of the procedure for the adoption of a legal act is a sufficient basis for holding that the adopted act has no legal force. In order for an act to be declared invalid due to a violation of the procedure, there must be reasonable doubts that if the procedure had been complied with, the Cabinet of Ministers would not have taken the same decision (*cf. Judgment of 13 July 1998 by the Constitutional Court in the Case No. 03-04(98), para. 3 of the Findings*). That is, a legal norm may be considered unlawful only due to a significant procedural violation (*cf. Judgment of 7 June 2019 by the Constitutional Court in the Case No. 2018-15-01, para. 13.2*).

The issues regulated by Regulations No. 716 undoubtedly relate to a field of activity of UNESCO, i.e., education. Consequently, in the process of adopting these regulations, it was necessary to receive an opinion (approval) from the Latvian National Commission for UNESCO. In its reply, the Cabinet of Ministers does not deny that this requirement was not complied with. Thus, the Constitutional Court finds that in the process of adoption of the contested provisions the requirement of the Latvian legislature to request and receive the approval of the Latvian National Commission for UNESCO has not been complied with.

However, the Constitutional Court has already acknowledged that by means of the contested provisions the Cabinet of Ministers has ensured the right to education of a learner belonging to an ethnic minority and the right to preserve and develop the identity and culture of the Russian minority. The Constitutional Court reached this conclusion by, *inter alia*, analysing the international human rights norms binding on Latvia and the practice of their application. Thus, the Constitutional Court has no grounds to find that in the event the draft of Regulations No. 716, including the contested provisions, had been co-ordinated with the Latvian National Commission for UNESCO before their adoption, the Cabinet of Ministers would have adopted a different decision.

Thus, the Constitutional Court does not find a violation of the principle of good legislation in this respect.

**24.2.2.** In accordance with paragraph 144 of Regulations No. 300, the Committee of the Cabinet of Ministers reviews: prior to review at the meeting of the Cabinet—a draft planning document which has not been agreed upon in the conciliation process and a draft information report (para. 59 of these Regulations) which has not been agreed upon in the conciliation process; a draft legal act which has not been agreed upon at the meeting of the State Secretaries,

a draft legal act which has not been specified in accordance with the decision of the meeting of the State Secretaries, a planning document, an information report, and a draft legal act on which objections or significant clarifications have been proposed; a draft legal act on which the State Chancellery has significant legal or editorial objections upon drawing it up of which for consideration at a sitting of the Cabinet; repeatedly—a draft planning document, information report, and legislative act which was not specified in accordance with what was decided at the Committee meeting, or a draft not supported at the Committee meeting, or a draft legislative act containing technical regulations objected to by the European Commission, and which has been accordingly specified.

In accordance with the Cabinet of Ministers Regulations No. 171 “Procedures for Institutions to Publish Information on the Internet” of 6 March 2007 (in force until 28 September 2018) and Regulations No. 970 “Procedures for Public Participation in the Development Planning Process” of 25 August 2009, the Ministry of Education and Science published the draft Regulations No. 716 on its website on 17 April 2018. The Cabinet of Ministers published the draft Regulations No. 716 on its website on 19 April 2018.

At the meeting of the State Secretaries on 19 April 2018, the draft regulation “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education Programmes” was submitted. The meeting of the State Secretaries on 19 April 2018 took place in absentia.

According to paragraph 96 of Regulations No. 300, the Ministry of Education and Science prepared a statement on the objections included in the opinions. Objections were received from the Ministry of Justice, the Ministry of Health, the Ministry of Welfare, the Latvian Association of Local Governments, Free Trade Union Confederation of Latvia, Latvian Trade Union of Education and Science Employees, association “Association of Regional Development Centres”, the Latvian Identity Support Association, association “Parents’ Alliance”, and association “Latvian Association of Large Cities”.

Following the electronic co-ordination against the draft Regulations No. 716 on 20 August and 28 August 2018, there were no uncoordinated objections, therefore in accordance with paragraphs 103 and 106 of Regulations No. 300 the draft was considered to be co-ordinated and was submitted by the Ministry of Education and Science for review at the meeting of the Cabinet of Ministers.

According to paragraph 144 of Regulations No. 300, the draft regulations shall be reviewed in the Committee of the Cabinet of Ministers only if no agreement has been reached. Since in the case under review the necessary agreement regarding the draft Regulations No. 716 was reached, it must be acknowledged that the Cabinet of Ministers has not violated the procedure specified in paragraph 144 of Regulations No. 300.

Thus, the submission, review, progress, and co-ordination procedures of draft Regulations No. 716 have been in accordance with the requirements of Regulations No. 300 and there is no breach of the principle of good legislation in this respect.

**24.3.** The Applicants consider that the discussion of Regulation No. 716 with the Russian minority has not been ensured, as it cannot be established that specialists on Russian minority issues or the organisations of this minority participated in the discussion organised by the Cabinet of Ministers. The Cabinet of Ministers does not agree with this opinion of the Applicants and emphasises that the representatives of ethnic minorities were provided with an opportunity to express their opinion and proposals both following the placement of the draft Regulations No. 716 on the website of the Cabinet of Ministers and during the co-ordination of guidelines on pre-school education and models of education programmes. The same view is expressed by the Ministry of Education and Science.

The Constitutional Court has already indicated that in accordance with the principle of good legislation, the legislature must ensure that in the legislative process the views of all interested parties are identified and objections to the legal regulation provided for in the draft are directly or indirectly heard. The legislature may also ensure the hearing of interested persons by hearing the representatives of the respective groups of persons (*see Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 17*).

Compliance with the principle of good legislation in making decisions that affect the rights of ethnic minorities means that the right of participation of persons belonging to ethnic minorities is respected, i.e., the opinions and proposals of the respective persons or groups of society are heard and evaluated (*see Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 24.1*). This can be achieved both by setting up working groups or councils and by inviting experts, as well as by using other methods insofar as

the various interests which may affect the norms to be adopted are represented. However, the main requirement arising out of the principle of good legislation is the involvement of the public in the process of adopting norms.

The Ministry of Education and Science points out that on 4 July 2014 a working group “Opportunities for Improving the Curriculum of Pre-school Education” was established. It included representatives of various educational and other institutions, including Romans Alijevs (Chairman of the Advisory Council for Minority Education, Director of Riga Classical Gymnasium), Heads of Pre-school Educational Institutions Jautrīte Glaudiņa (head of a pre-school educational institution implementing both pre-school education programme and minority pre-school education programme), Inga Gudēviča, Solveiga Vaivode-Kļaviņa (heads of pre-school educational institutions implementing pre-school education programmes) (*see Case Materials, Vol. 2, pp. 107–109*). The working group prepared proposals for a child to successfully acquire Latvian in pre-school with the language of instruction of an ethnic minority and indicated which compulsory content directions should be included in the curriculum (*see Case Materials, Vol. 2, pp. 110–129*). The working group supported the acquisition of basic Latvian language skills at the pre-school level. It pointed to the importance of acquisition of languages at this level. The importance of the mother tongue was acknowledged, i.e., the stronger the knowledge of the mother tongue, the higher the quality and faster the process of learning other languages. The need to learn the Latvian language was pointed out, i.e., the need for a learning environment appropriate for learning the Latvian language. The child must hear the Latvian language on a daily basis in a free, unforced environment based on the child’s interests (*see Case Materials, Vol. 2, pp. 122*).

The Ministry of Education and Science points out that within the project “Competence Approach to Curriculum” (*Skola2030*) launched on 17 October 2016, Riga City pre-school educational institution “Kastanītis” methodologist, Deputy Head of the Riga City pre-school educational institution “Mārītes” in the field of education (both educational institutions implement the minority education programme), and Deputy Head of the Riga City pre-school educational institution No. 14 and Latvian language teacher acted as experts responsible for the Latvian language section during the development of the minority pre-school curriculum (*see Case Materials, Vol. 2, p. 105*).

The content and approach of the new curriculum developed within the framework of the project were approbated in the following pre-school

educational institutions that implement minority pre-school education programmes: Silmala pre-school educational institution, Rēzekne pre-school educational institution “Pasaka”, Ķekava pre-school educational institution “Avotiņš”, Jelgava pre-school educational institution “Kamolītis”, Krāslava pre-school educational institution “Pienenīte”, and Līvāni pre-school educational institution “Rūķīši” (said institutions implement the education programme in both Latvian and minority languages). Within the framework of the project, a forum “How skilled should a pre-school graduate be?” was also organised (*see Case Materials, Vol. 2, p. 105*).

On 13 April 2018, the General Education Content Advisory Council was also established (*see Case Materials, Vol. 2, pp. 130–131*). It also includes representatives of two parents’ non-governmental organisations (“*Mammām un Tētiem*” (“For Mums and Dads”) and “Latvian Autism Association”), as well as the education boards of Riga, Jelgava, and Daugavpils. The representative of Daugavpils Education Board is a methodologist in bilingual education issues. This Council also considered issues related to draft Regulations No. 716. The Council expressed support for the further development of the draft Regulations (*see Case Materials, Vol. 2, p. 132*).

Detailed information on public participation in the development of the draft Regulations No. 716 is also provided in Part VI of the annotation to the draft Regulations.

Paragraph 7 of the Regulations No. 970 “Procedures for Public Participation in the Development Planning Process” of 25 August 2009 provides possible forms of public participation. For example, members of the public can take part in development planning by participating in inter-institutional working groups and advisory councils, participating in public consultations, public discussions, discussion groups, forums, and other participatory activities (such as videoconferencing and opinion polls), providing an opinion on the development planning process at its drafting stage in a written form (paras. 7.1–7.4<sup>1</sup>).

According to paragraph 9 of Regulations No. 970, a public consultation is a meeting in which members of the public participate and present their objections and suggestions. This paragraph sets out the requirements to be met by the institution when organising a public consultation, such as the location, time, and the responsible official of the meeting, ensuring that all information relating to

the meeting is available on the institution’s website at least 14 days before the public consultation.

Paragraph 10 of the said Regulations provides that a public discussion is a period specified by an external regulatory enactment or an institution during which members of the public submit their objections and proposals or take part in other public participatory activities organised by the institution (for example, public consultations and opinion polls). This paragraph sets out the requirements to be met by the institution when organising a public discussion, for example, setting a public discussion period of no less than 30 days, unless otherwise provided by regulatory enactments, or ensuring public access to the documents under public discussion on the website during the entire length of the public discussion.

It follows from the annotation to the draft Regulations No. 716 that the project “Education for Modern Competence” of the improved curriculum and approach has been submitted for public consultation. The public consultation lasted from 25 September 2017 to 1 February 2018. During the four months, about 11400 experts or more than a quarter of those working in the field of education, as well as parents of children, representatives of public organisations, and other interested parties have participated in the public discussion. A total of 887 proposals were submitted (*see the Initial impact assessment report (annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”, Part I, para. 2*). The Cabinet of Ministers points out that at the end of the public consultation the received comments and recommendations were evaluated and on the basis of the aforementioned document the guidelines for pre-school education were submitted to the Cabinet of Ministers for approval (*see Case Materials, Vol. 1, p. 149*).

In addition to the foregoing, the Constitutional Court finds that on 11 April 2018 the content of the draft Regulations, emphasising inclusive education, was discussed by the Advisory Council “Education for All” (established in accordance with the Regulation No. 529 of the Cabinet of Ministers “Statute of the Advisory Council ‘Education for All’” of 16 September 2003) at the meeting “School—ready for diversity?” (*see the Initial impact assessment report (annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”, Part I, para. 2*). As a result of public participation, the draft Regulations take into

account, *inter alia*, recommendations to specify the principles of inclusive education (see the *Initial impact assessment report (annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”*, Part VI, para. 3).

The principle of good legislation, including in the field of minority rights, does not guarantee a specific result for one person or a group of persons, but compliance with it provides everyone with confidence that the issue is democratically debated, i.e., different views are 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 *Satversme* (see *Judgment of 13 November 2019 by the Constitutional Court in the Case No. 2018-22-01, para. 24.1*). The principle of good legislation does not impose an obligation on the legislature to address and hear a particular person. The legislature has the discretion to identify and decide whom to invite to express an opinion. It is essential to seek the views of all stakeholders as far as possible, respecting the right of participation of persons belonging to ethnic minorities. This was ensured by setting up working groups and councils, inviting experts, carrying out other aforementioned activities, as well as announcing a public consultation. From the constitutional complaint and other materials of the case it cannot be established that the Applicants took the opportunities to take part in these consultations and to express their views or that they were denied such opportunities.

Consequently, it must be acknowledged that various representatives of the public have been involved in the development process of Regulations No. 716, including representatives of educational institutions that implement minority education programmes. Here, too, a breach of the principle of good legislation cannot be established.

**Thus, the equal treatment enshrined in the contested provisions is determined by a legal norm adopted in accordance with the appropriate procedure, and the contested provisions comply with Article 64 of the *Satversme*.**

**25.** Equal treatment of persons in different circumstances requires a legitimate aim.

The Cabinet of Ministers points to the need to respond to diversity and the need to promote the successful inclusion of a child with special needs in the education system.

As stated above, in accordance with the first paragraph of Article 23 of the Convention on the Rights of the Child, States Parties recognise that every child with a mental or physical disability should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.

The Committee on the Rights of the Child has states that the main purpose of this norm is the inclusion of a child with special needs in society. Measures taken to implement the right enshrined in the Convention on the Rights of the Child with regard to children with special needs, for instance, in the field of education or health, must be clearly aimed at the maximal inclusion of such a child in society (*see Committee on the Rights of the Child, General Comment No. 9 (2006) U.N.Doc. CRC/G/GC/9, 27 February 2007, para. 11*).

On 22 May 2014, the *Saeima* approved the Guidelines for the Development of Education for 2014–2020. It follows from these guidelines that the overarching goal of education development policy is quality and inclusive education for personal development, human well-being, and sustainable growth of the state. In the context of inclusive education, a number of target groups are identifiable, including children at risk of exclusion due to the state of their development, abilities, and health. It is important to promote the communication skills, socialisation, and inclusion of a child and a young person with special needs, and to develop and offer complex inclusion measures that would at the same time promote public awareness of the limitations and needs of such groups.

It follows from the drafting materials of the Amendments to the General Education Law of 21 June 2018 that within the framework of these amendments the legislature has also decided on issues related to the provision of education for a child with special needs. MP Aldis Adamovičs has pointed out that the amendments provide greater opportunities for children with special needs, especially those with physical disabilities, to be included in ordinary educational institutions (*see the transcript of the 12<sup>th</sup> Saeima sitting of 7 June 2018*).

As follows from the initial impact assessment report (annotation) of the draft Regulations No. 716, the draft Regulations describe the principles of implementation of the curriculum and of assessment of achievements of the child, updating inclusive education (*see the Initial impact assessment report*

*(annotation) of the draft regulations “Regulations on State Pre-school Education Guidelines and Model Pre-school Education Programmes”, Part I, para. 2).*

Thus, extending the requirement to promote the acquisition of the Latvian language to a child with special needs is aimed at including such a child in the education system.

**Thus, the legitimate aim of equal treatment is the protection of the rights of other persons.**

**26.** In order to assess whether the equal treatment included in the contested provisions complies with the principle of proportionality, it is necessary to examine:

1) whether the means selected by the legislature are appropriate for the achievement of the legitimate aim;

2) whether such action is necessary, i.e., whether the legitimate aim cannot be achieved by other means which are less restrictive of the rights and legal interests of the individual;

3) whether the act of the legislature is proportional, i.e., whether the benefit obtained by the society is greater than the harm inflicted to the rights and legal interests of the individual (*see, e.g., Judgment of 23 November 2015 of the Constitutional Court in the Case No. 2015-10-01, para. 18*).

**26.1.** When assessing whether equal treatment is proportionate, it must first be ascertained whether the contested provisions are appropriate for achieving the legitimate aim.

In the Guidelines for the Development of Education 2014–2020, inclusive education is defined as a process that meets the diverse needs of all learners, increasing the opportunities for each learner to participate in the learning process, culture and different communities, and reducing the chances of exclusion from education and the process of acquisition of education.

Acquisition and use of the official language is one of the central principles in the Latvian education system. The requirement of knowledge of the official language permeates the entire education system, it being used at a certain level and proportion at every level of education. Knowledge of the official language is necessary for the individual to be able to successfully integrate into the life of a democratic society in the future. A child belonging to an ethnic minority and who has special needs is at particular risk of being excluded from society,

therefore the acquisition of the official language is all the more important in such a situation.

Thus, the equal treatment established by the contested provisions is appropriate for achieving the legitimate aim.

**26.2.** The Applicants consider that pre-school educational institutions that implement the minority special education programme should not be subject to the requirement to use the Latvian language. According to the invited person Sandra Millere, in these institutions the child's mother tongue could be used to communicate with the child. The Cabinet of Ministers has not commented on this issue.

The deliberations of the Applicants cannot be considered as arguments regarding a possible alternative means by which it would be possible to achieve the legitimate aim in the same quality. Nor does it follow from the other materials of the case that the Applicants or any other person have indicated a possible other means to achieve the legitimate aim in the same quality.

A child with special needs must also have the opportunity to learn the official language. Otherwise, a child with special needs, who, after graduating from a pre-school educational institution, would have little or no knowledge of the Latvian language, would be even more exposed to exclusion and isolation from society. Thus, the sole use of the mother tongue in the education of a child with special needs at the pre-school education level would not achieve the legitimate aim in the same quality. In turn, Sandra Millere's observations are directed at the use of the bilingual approach in accordance with the individual abilities of each child, and, as the Constitutional Court has already established, it is one of the methods used in the pre-school education process.

**26.3.** In ascertaining whether equal treatment is proportionate or appropriate, the Constitutional Court verifies whether the benefit derived by the society from such treatment is greater than the harm inflicted to the rights and legal interests of the person. The Committee on the Rights of the Child has urged Member States to pay special attention to the maximum inclusion of children with special needs in society. Appropriate measures should be designed so as to ensure that children with special needs have effective access to education. Pre-school education is of particular importance in this context. Early education of a child with special needs is particularly important to help the child reach his or her full potential. It opens up a much greater opportunity for the child to benefit from pre-school education, which should be tailored to his or her individual

needs (*see Committee on the Rights of the Child, General Comment No. 9 (2006) U.N.Doc. CRC/G/GC/9, 27 February 2007, paras. 14 and 65*).

Inclusive education is one of the rights enshrined in the *Satversme*. This follows from Article 91 of the *Satversme* in conjunction with Article 112. Inclusive education is undoubtedly the goal of education of a child with special needs. This means not only the formal application of the same requirements to all children, but also the genuine integration of a child with special needs into the education system. The legislature has a positive obligation to ensure that a child with special needs is not excluded from the general education system, inter alia on the basis of language. The legislature must prescribe the type and form of inclusion that would meet the individual educational needs of each child and promote his or her effective education to the greatest extent possible.

Article 24 of the Convention on the Rights of Persons with Disabilities gives rise to the principle of reasonable accommodation. From this follow the possible measures to be taken in order to help learners with special needs acquire education on an equal footing with others (*see the UNICEF factsheet on inclusive education*. Available at:

[https://www.unicef.org/eca/sites/unicef.org/eca/files/IE\\_summary\\_accessible\\_20917\\_0.pdf](https://www.unicef.org/eca/sites/unicef.org/eca/files/IE_summary_accessible_20917_0.pdf)). The principle of reasonable accommodation has also been developed in the case law of the ECtHR. The ECtHR has emphasised that inclusive education is widely recognised as the most appropriate means of achieving the goals of inclusion and non-discrimination in education. Public authorities have an obligation to ensure reasonable accommodation to the special needs of the child from the moment it is requested. However, this burden should not impose a disproportionate burden on the public authorities. Reasonable accommodation can take a variety of forms—tangible, intangible, educational, or organisational—and relate to the architectural accessibility of school buildings, teacher training, adaptation of the curriculum or the provision of appropriate opportunities (*see ECtHR Judgment of 25 June 2019 in the case “Stoian v. Romania”, Application No. 289/14, paras. 102–103*). The general state-developed rules for obtaining education will not always be suitable for the special needs of the child. The principle of accommodation encompasses the requirement of the state to adapt these general rules to the specific needs of each child. It also means that the legislature must develop rules that are sufficiently flexible to meet the requirements of these rules with due consideration of the specific needs and individual abilities of each child.

It follows from Section 2 of the Education Law that every inhabitant of Latvia must have the opportunity to develop his or her mental and physical potential. The opportunities provided by the education system are provided in accordance with the age and needs of the learner.

In order to ensure equal opportunities for every child regardless of their developmental needs and abilities, the Latvian education system envisages the possibility to implement also a special education programme. Paragraph 1 of Section 49 of the General Education Law provides: “Special education programmes provide learners with acquired or congenital functional disorders the opportunity to obtain general education in accordance with their special needs.”

The goal of the implementation of both the minority pre-school education programme and the minority special education programme is to promote the comprehensive development and strengthening of the child’s health, to promote the acquisition of ethnic culture and preparation for basic education (Regulations No. 716, Annex 2, para. 1, and Annex 4, para. 1).

The implementation of the minority special education programme takes place in accordance with the child’s abilities, level of development, state of health, interests, and individual experience and needs, promoting the individual achievements of each child (Regulations No. 716, Annex 4, para. 5).

In organising the pedagogical process, the educational institution shall ensure: 1) a study process that corresponds to the child’s abilities, level of development, and state of health; 2) the pedagogical and psychological support necessary for the child; 3) basic skills and operational experience that enable the child to act in both known and new situations (Regulations No. 716, Annex 4, para. 6). In addition to these regulations, there are also general requirements that apply to both the minority pre-school education programme and the minority special education programme.

According to paragraph 8.4 of Annex 4 to Regulations No. 716, regardless of the age of child, the implementation of the compulsory curriculum shall be planned and organised by ensuring the daily acquisition of the Latvian language curriculum, regular physical activity, and the development of health-promoting habits.

Thus, with regard to the minority special education programme, Regulations No. 716 particularly emphasise the need to take into consideration and evaluate the abilities, level of development, and state of health of the child

with special needs. Additional support measures are envisaged, inter alia the requirement to ensure the acquisition of the Latvian language curriculum on a daily basis. This is necessary for a child with special needs to benefit from pre-school education in the same way as a child without such needs does or to achieve the goal set for both minority pre-school education programmes.

Inclusive education is a set of values, principles, and practices aimed at meaningful, effective, and high-quality education for all learners, organised in such a way as to ensure the diversity of learning conditions and requirements. This goal can be achieved by various organisational means, respecting the needs of the child. In accordance with Section 51, paragraph 1 of the General Education Law, the inclusion of learners with special needs may take the form of acquisition of a special education programme 1) in a general education class; 2) in a special class or group of a general educational institution; 3) in a special educational institution.

Paragraph 1 of Section 53 of the General Education Law provides that learners with special needs may be admitted to general education programmes. Paragraph 2 of this Section stipulates that the availability of appropriate support measures for a learner with special needs admitted to a general education programme shall be ensured by the educational institution. The educational institution develops and individual education programme acquisition plan for each enrolled learner with special needs.

Paragraph 10 of Annex 2 to Regulations No. 716 provides that when implementing a special pre-school education programme, a child with special needs shall be included in the pre-school education group in accordance with the regulatory framework, and an individual education programme acquisition plan shall be developed for him or her. Paragraph 11 of Annex 4 to Regulations No. 716 provides that a child with special needs shall be included in the pre-school education group in accordance with the regulatory framework, and an individual education programme acquisition plan shall be developed for him or her.

It follows from the foregoing that special measures are being implemented in Latvia to include a child with special needs in pre-school education. In order to achieve this goal, a special education programme has been established, the aim and basic requirements of which, inter alia the acquisition of the Latvian language, coincide as much as possible with the provisions of the minority education programme. In addition, the legislature has provided that inclusion cannot be practiced independently of the child's individual circumstances and

needs. In order to truly include the child in the education system, special attention is paid to the child's special needs and support measures, adjusting the requirements of the curriculum, i.e., by developing an individual curriculum, if need be. No less important is the environment in which the inclusion of the child with special needs is envisaged. The legislature has provided that a special education programme may be implemented in a general educational institution, a general education class, a special class, and a special institution, in the first two cases ensuring that the child with special needs has contact with children without such needs. This is in line with the international standard on the rights of the child set out above.

The procedure for assessment of how to organise the education of a child with special needs is specified in the Regulations of the Cabinet of Ministers No. 709 "Regulations on Pedagogical Medical Commissions" of 16 October 2009 (hereinafter: Regulations No. 709). According to paragraph 3 of Regulations No. 709, the competence of the local government commissions is to provide an opinion on the most appropriate pre-school education programme or special pre-school education programme. Paragraph 6 of these Regulations sets out the responsibilities of the local government commission, including the obligation to assess the state of health, abilities, and development of a child living in the municipal administrative territory and to provide an opinion on the most appropriate education programme for the child, i.e., pre-school education programme or special pre-school education programme (Regulations No. 709, para. 6.1.1), as well as the obligation to promote the integration of a child with special needs living in the administrative territory of the municipality into general educational institutions located in the administrative territory of the municipality (Regulations No. 709, para. 6.4) and to provide methodological and organisational support to educational institutions in the administrative territory of the municipality in the assessment of the level of development and abilities of the child, as well as in the development of the individual education plan of a child with special needs (Regulations No. 709, para. 6.9).

Taking into account the foregoing, from the contested provisions does not follow the requirement to use the Latvian language without regard to the special needs of the child. On the contrary, considering the contested provisions as a part of the aforementioned Regulations, it can be concluded that a child with special needs is provided with support, as well as with special and individual approach and treatment necessary to receive appropriate education on an equal footing

with others in both stages of pre-school education. Inter alia, by providing access to the education system and the acquisition of the Latvian language, an individual approach is provided. Thus, although the legislature has established equal treatment of a child with special needs and a child without such needs in terms of the goal to be achieved, a different treatment is applied to achieve this goal, i.e., positive measures are taken to make sure that a child with special needs fits into the Latvian education system and, consequently, into society, to the greatest extent possible, acquiring the Latvian language within the limits of his or her abilities.

Thus, the contested provisions comply with Article 91 of the *Satversme*.

### **Substantive Part**

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

**held:**

**1) to declare Annex 2, paragraph 9 and Annex 4, paragraph 9 to the Regulations No. 716 of the Cabinet of Ministers “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education Programmes” of 21 November 2018 to be in compliance with the first sentence of Article 112 of the *Satversme*;**

**2) to declare Annex 2, paragraph 9 and Annex 4, paragraph 9 to the Regulations No. 716 of the Cabinet of Ministers “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education Programmes” of 21 November 2018 to be in compliance with Article 114 of the *Satversme*;**

**3) to declare Annex 2, paragraph 9 and Annex 4, paragraph 9 to the Regulations No. 716 of the Cabinet of Ministers “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education Programmes” of 21 November 2018 to be in compliance with Article 91 of the *Satversme*;**

**4) to declare Annex 2, paragraph 9 and Annex 4, paragraph 9 to the Regulations No. 716 of the Cabinet of Ministers “Regulations on State Guidelines on Pre-school Education and Model Pre-school Education**

**Programmes” of 21 November 2018 to be in compliance with Article 64 of the *Satversme*.**

The judgment is final and not subject to appeal.

The judgment enters into force on the day it is promulgated.

Chairperson of the Court hearing

I. Ziemele