LATVIJAS REPUBLIKAS SATVERSMES TIESA
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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J U D G E M E N T

on Behalf of the Republic of Latvia

in Riga on 23 April 2019-06-18

in Case No. 2018-12-01

The Constitutional Court of the Republic of Latvia comprised of: the chairperson of the court hearing Sanita Osipova, Justices Ineta Ziemele, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska and Jānis Neimanis,

with respect to an application regarding initiation of a case submitted by twenty members of the 12th convocation of the *Saeima:* Boriss Cilevičs, Igors Pimenovs, Ivans Ribakovs, Jānis Tutins, Artūrs Rubiks, Sergejs Potapkins, Ivars Zariņš, Romans Miloslavskis, Jeļena Lazareva, Jūlija Stepaņenko, Andris Morozovs, Jānis Urbanovičs, Raimonds Rubiks, Vladimirs Nikonovs, Jānis Ādamsons, Vitālijs Orlovs, Mihails Zemļinskis, Igors Zujevs, Sergejs Mirskis, and Sergejs Dolgopolovs (hereinafter – the Applicant),

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

with the participation of the Applicant's representative – Boriss Cilevičs,

as well as the authorised representative of the institution, which issued the contested acts – the *Saeima,* Ilze Tralmaka,

and the secretary of the court hearing Baiba Tropiņa,

on 26 and 27 February and 19 and 20 March 2019, with the participation of the participants in the case, examined the case **"On Compliance of the First Part of Section 1, the Words of the Second Part of Section 1 "on the level**

of pre-school education and basic education, abiding by the provisions of Section 41 of this Law" of the law "Amendments to the Education Law" of 22 March 2018 and the Words of the First Part of Section 3 "basic education" and Section 2 of the Law of 22 March 2018 "Amendments to the General Education Law" with the Second Sentence of Article 91, Article 112 and Article 114 of the *Satversme* of the Republic of Latvia".

The Facts

1. The Education Law was adopted on 29 October 1998. It has been amended a number of times. On 22 March 2018, the *Saeima* adopted the law "Amendments to the Education Law" (hereinafter also – Amendments to the Education Law). Section 1(1) of this Law envisages adding Part 1^1 to Section 9 of the Education Law in the following wording:

"1^1) At private institutions of education, the general education and professional education on the level of basic and secondary education shall be acquired in the official language."

Whereas the second part of this Section envisages expressing Para 1 and Para 2 of Section 9 (2) of the Education Law, which define the institutions of education, where education can be acquired in another language, in the following wording:

"1) institutions of education, which implement education programmes in accordance with bilateral or multilateral agreements of the Republic of Latvia;

2) institutions of education, which implement minority education programmes on the level of pre-school education and basic education, abiding by provisions of Section 41 of this Law".

Amendments to Section 3(1) of the Education Law envisage substituting the words in Section 41 (1) of the Education Law "in the respective standard of the state education" by the words "the state basic education standard"."

Hence, the new wording of Section 41 (1) of the Education Law provides:

"(1) Educational programmes for ethnic minorities shall be drawn up by an educational institution selecting any of the model educational programmes included in the guidelines for the State pre-school education or in the respective State basic education standard."

Section 3 (2) of the Amendments to the Education Law envisages adding Para 1^1 and 1^2 of Section 41 of the Education Law, worded as follows:

"(1^1) In the education programmes of ethnic minorities, from Grade 1 to Grade 6, the acquisition of the study content in the official language is ensured at least in the amount of 50 per cent of the total workload of classes in the school year, including foreign languages.

(1^2) In the education programmes of ethnic minorities, from Grade 7 to Grade 9, the acquisition of the study content in the official language is ensured at least in the amount of 80 per cent of the total workload of classes in the school year, including foreign languages."

Pursuant to Section 7 of the Amendments to the Education Law on transitional provisions, the contested norms enter into force gradually – amendments to Section 9, which envisaged adding Part 1^1 to the Section and expressing Para 2 in new wording, as well as amendments to Section 4 (1), which envisage substituting words in it and adding Part 1^1 and Part 1^2 to it, enter into force on 1 September 2019 (with respect to implementation of pre-school study programmes and basic education programmes in Grades 1–7), on 1 September 2020 (with respect to implementation of basic education programmes in Grade 8 and secondary education programmes in Grade 10 and Grade 11), and on 1 September 2021 (with respect to implementation of basic education programme in Grade 9 and implementation of secondary education programme in Grade 12).

At the same time, i.e., on 22 March 2018, the *Saeima* also adopted the law "Amendments to the General Education Law" (hereinafter also – Amendments to the General Education Law). Section 2 of these Amendments envisages expressing the text of Section 43 of the General Education Law in the following wording:

"Section 43. The compulsory content of general secondary education programmes

(1) The compulsory content of general secondary education programmes shall be determined by the state general secondary education standard.

(2) Without exceeding the number of lessons per week defined in Section 44 of this Law and the number of lessons per week, an institution of education may additionally include in the programme of general secondary education study subjects which are not referred to in the state general secondary education standard, including learning content linked to the minority native language and minority identity and integration into the Latvian society" (hereinafter, together with the contested norms of the Education Law also – the contested norms)."

Pursuant to Section 3 of the Amendments to the General Education Law, the amendments regarding expressing Section 43 in new wording enter into force on 1 September 2020 (with respect to implementation of secondary education programme in Grade 10 and Grade 11) and on 1 September 2021 (with respect to implementation of secondary education programme in Grade 12).

2. The Applicant – twenty members of the 12th convocation of the *Saeima* – holds that the contested norms are incompatible with Article 112 of the *Satversme*, which imposes an obligation upon the State to respect the parents' rights to ensure to their children education that complies with their religious beliefs and philosophical views, as well as to ensure that education is acceptable to its addressees. At the court hearing, the Applicant expressed the opinion that the right to education manifested itself, *inter alia*, as freedom of choice within the framework of education system established by the State. Education, as to its form and content, including programmes and teaching methods, should be acceptable to the addressees – the learners and their parents.

The Applicant underscores that the legislator, in selecting the measures for implementing education policy, should reach as fair as possible balance between the interests of various members of society. Likewise, persons' right to participate in decision taking should be ensured. In drafting the contested norms, teachers and parents had not been surveyed. Also, the opinions of the addressees of the contested norms are not reflected in the annotations to both draft laws. Many learners who belong to ethnic minorities and their parents, allegedly, do not support the contested norms. In general, a significant part of society, directly affected by the contested norms, is said to be against these norms and, in general, the State's policy in the area of education for ethnic minorities.

At the court hearing, the Applicant emphasized that the objections made by public organisations of ethnic minorities had not been taken into account in the course of adopting the contested norms. Allegedly, annotations to the draft laws comprise incomplete and distorted information regarding support by the public organisations of ethnic minorities for these draft laws.

It is maintained that the contested norms are not based on comprehensive sociological studies. The studies referred to by the Ministry of Education and Science, allegedly, are not linked to the factual situation in schools. The outcomes of national tests and examinations are said to be more accurate indicators. Problems like lack of teachers, of teaching methodology, regional differences had not been analysed. The lack of such analysis could hinder reaching the aims of education and damage the quality of education. Hence, it cannot be held that the restriction on fundamental rights had been established by a law adopted in due procedure.

At the court hearing, the Applicant noted that the model of bilingual education should be seen as Latvia's achievement. A parallel model of schools like this could not be characterised as segregation, i.e., maintaining separate systems of education (*see the transcript of the court hearing, Case Materials, Vol. 4, pp. 148 –149*).

The Applicant admits that the State may set the minimum standard of education that complies with the aim of education. However, allegedly, the contested norms introduce such restriction that cannot be considered to be the minimum standard of education. It is said to restrict the teachers' academic freedom in selecting the measures for reaching the aims of education. Previously, the languages of ethnic minorities had been used more extensively in the Latvian system of education, whereas their use in educational programmes is said to be restricted disproportionally by the contested norms. Hence, the current situation is said to differ from the one in 2005 when the Constitutional Court, in case No. 2004-18-0106, examined similar issues related to the proportion of languages of ethnic minorities in the process of education. Allegedly, the findings made by the Court in the respective case are not applicable to the contested norms.

The Applicant refers also to the findings by the European Commission for Democracy through Law (hereinafter – the Venice Commission) regarding the norms of the Education Law of Ukraine. The Applicant holds that the findings of the Venice Commission are applicable also in Latvia's situation.

The contested norms are said to be incompatible also with the principle of prohibition of discrimination included in the second sentence of Article 91 of the *Satversme*, which prohibits discrimination on the grounds of language. Accordingly, in the framework of the system of education, allegedly, it requires differential treatment of learners, whose native language in the particular state must be considered as being a minority language.

At the court hearing, the Applicant underscored that, in Latvia, all learners belonging to ethnic minorities were in similar and comparable circumstances. Allegedly, the contested norms envisage discriminatory treatment of learners belonging to ethnic minorities, whose native language is not one of the official languages of the European Union (hereinafter –the EU) (e.g., Russians, Ukrainians, Belarusians), compared to those learners, who also belong to ethnic minorities but whose native language is one of the official EU languages (e.g., Poles, Lithuanians, Estonians). On the level of secondary

education, the possibility to acquire education in the official EU languages will be retained but not in the languages that are not the official languages of the EU. The Applicant holds that, in this aspect, the contested norms lack a legitimate aim.

It is maintained that the contested norms are incompatible also with Article 114 of the *Satversme* since the limited use of the languages of ethnic minorities would deprive the learners of essential pre-conditions for preserving and developing the national identity.

In substantiating the possible incompatibility of the contested norms with Article 114 of the *Satversme*, the Applicant referred to Para 2 of Article 14 in the Framework Convention for the Protection of National Minorities (hereinafter also – the Minorities' Convention). Pursuant to it, States must act to ensure effective protection to ethnic minorities, in case of necessity, implementing reasonable adjustment measures. The contested norms, allegedly, do not provide for such measures, e.g., exceptions that would allow implementing adjustment measures with respect to accessibility of teachers, to abide by the interests of some groups of pupils and parents, pupils with poor knowledge of the Latvian language, *inter alia*, asylum seekers, refugees, and recent immigrants (*see Application in Case Materials, Vol. 1, p. 17).*

Both in the application and during the court hearing, the Applicant referred also to the findings regarding the implementation of the Convention in Latvia included in the opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter – the Advisory Committee). Allegedly, it follows from these that the Advisory Committee expresses concern regarding the decreasing possibilities to acquire education in languages of ethnic minorities.

The Applicant emphasized that the arguments provided applied to the acquisition of education in languages of ethnic minorities both in state and local government in institutions of education and in private institutions of education.

3. The institution, which issued the contested acts, – the *Saeima* – is of the opinion that the contested norms comply with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*.

The *Saeima* draws attention to the fact that the contested norms do not determine directly the proportion of language use at an institution of education, to which, essentially, the Applicant objects. It is alleged that the proportion of using the official language and other languages on the level of basic education is determined by Section 3 (2) of the law of 22 March 2018 "Amendments to the Education Law", which have not been contested in the present case.

In the present case, the complicated ethno-demographic situation, which has developed as a result of Soviet occupation, should be taken into consideration; i.e., the fact that during the period of occupation the only privileged ethnicity in Latvia were Russians, to whom, accordingly, education to children in their native language, i.e., the Russian language, had been ensured (*Written reply by the* Saeima *in Case Materials, Vol. 2. p. 20*).

At the court hearing, I. Tralmaka, representative of the *Saeima*, underscored that the politics of Russification implemented during the period of Soviet occupation was not aimed at the social integration of the Soviet migrants who had arrived in Latvia. They had not had the obligation to master the Latvian language, whereas all Latvians and residents belonging to ethnic minorities living in Latvia had been obliged to master Russian. Hence, the national identity of other ethnicities had been supressed by the politics of Russification.

Allegedly, the contested norms is a stage that concludes the united reform, implemented over twenty years, aimed at reinforcing the official language in the system of education and envisaging gradual and more lenient transition to studies in the official language.

Latvia's policy regarding the official language may not be viewed in isolation from the situation that the official language is in and the level of prevalence of ethnic minorities' languages. In general, the Latvian language proficiency in Latvia is said to be less widespread than the Russian language

proficiency. The *Saeima* underscores that, in accordance with the data provided by the Central Statistical Bureau on the ethnic composition of the population, also in 2018, the title nation, substantially, is still the minority in a number of largest cities – Riga, Daugavpils, and throughout the whole region of Latgale. Reinforcing the knowledge of the official language is said to be an on-going process, with the factors impacting the language – the social structure, geopolitical situation and other factors – changing and developing.

The *Saeima* emphasizes that the ability to use the official language freely ensures the possibility to become integrated into the labour market as well as free access and possibilities of choice with respect to information space. The persons, to whom due to the lack of official language knowledge information in only one language is available, in the case of Latvia – in Russian, are subject to influence by this information space. Therefore it is essential to ensure that ethnic minorities would be able to use, without difficulties, various sources of information, *inter alia*, also in the official language, to compare and assess the obtained information critically. This is said to be an important pre-requisite for qualitative involvement of persons in the public discourse of Latvia – a democratic state governed by the rule of law.

The *Saeima* does not uphold the Applicant's view that the second sentence of Article 14 of the Minorities' Convention would prohibit from reforming the system of education by increasing the proportion of using the official language in it. In regulating the use of languages of ethnic minorities in education, a balance between two aims needs to be found – to preserve and develop the identity and language of persons belonging to ethnic minorities and to integrated the persons belonging to ethnic minorities in the society they live in.

In the Latvian system of education, the languages of ethnic minorities, in particular, Russian, cannot be considered as being endangered. Russian is freely used in the private sphere and also, in certain cases, in the public sphere. Due to is historical dominance, the Russian language is the most extensively used and even privileged minority language in Latvian. Both the press and

other mass media as well as an extensive range of cultural events in their native language is said to be available to the inhabitants speaking the language. Both in Latvian movie theatres and TV broadcasts subtitle translation into Russian is ensured. Allegedly, the contested norms do not prohibit children belonging to ethnic minorities from using their native language or acquiring and developing their culture. In the system of education in general and, in particular, in its initial stage, which is the most important for the child's development and formation of identity, sufficient possibilities for mastering the native language are ensured. Whereas learning the official language from Grade 1 is said to provide the possibility to a child to start learning the official language at a sufficiently early age and, thus, ensure to him or her the knowledge of the official language needed for full participation in public life.

The opinion of the Venice Commission on the Ukrainian system of education cannot be applied to Latvia. The special circumstances of each country should be taken into account, *inter alia*, the historical and political situation as well as its national legal system.

The *Saeima* expressed the opinion that Article 112 of the *Satversme* did not comprise the parents' right to select the child's language of instruction without any limits but underscored that the contested norms did not prohibit parents from exercising their rights and participate in the process of a child's education insofar this right had been granted to them in accordance with Article 112 of the *Satversme*.

At the court hearing, I. Tralmaka, the *Saeima*'s representative, upheld the opinion expressed in the written reply. She underscored that neither Article 112 of the *Satversme* separately nor in interconnection with Article 91 or Article 114 of the *Satversme*, nor international documents in the field of minority rights binding upon Latvia imposed the obligation on the State to guarantee within the system of education the same scope of using languages of ethnic minorities as that of the official language. The official language and the languages of ethnic minorities were said to be incomparable as to their status and functions. One of the most important aims of education is the acquisition of

the official language on the level allowing the learner to participate fully in the democratic process of Latvia, to continue education on the next level of education and participate in the labour market. Hence, equal rights to acquire the official language must be ensured.

The *Saeima* does not uphold the Applicant's statement that representatives of ethnic minorities had not been sufficiently heard in the process of adopting the contested norms. The Rules of Procedure of the *Saeima* guarantee sufficiently extensive possibilities for submitting, within the set term, proposals for the drat law, to defend these at the sittings of the responsible committee and speak at the discussions during the *Saeima* meetings. The opinion of the representatives of ethnic minorities had been duly heard and assessed in the course of adopting the contested norms.

4. The summoned person – the Ministry of Education and Science – holds that the contested norms are compatible with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*.

The Ministry underscores that in the present case reinforcement of the Latvian language – the only official language in Latvia – is of major importance. Allegedly, the State has the obligation to establish such system of education that would ensure the possibilities to master the official language effectively, *inter alia*, to those persons for whom the official language is not their native language. The proficiency level of the official language should be such that would ensure that all learners would be able to use it as the common language of communication and that equal opportunities for democratic participation and social inclusion would be ensured to everyone.

The historical context is also said to be significant. As the result of the Soviet occupation, the prevalence of the Latvian language within the state had decreased significantly, and the consequences of occupation are still felt.

The measures chosen by the legislator are said to be proportional. It is alleged that the education reform is being implemented with sufficient leniency. By the adoption of the contested norms, the transition to a united

system of education in the official language, which has been implemented gradually since 1995, has been completed.

The quality of education is said to be constantly assessed. This is done systemically, i.e., the curriculum, educational materials and test results are being assessed. At the court hearing, D. Dalbiņa, the representative of the Latvian Language Agency, emphasised that the Agency had been developing various educational materials and methodology for mastering study subjects, among other, specifically for programmes of education for ethnic minorities, already since 1995.

This work is on-going, and currently educational materials for the coming academic years are being developed, including such educational materials that are intended for students and teachers (so-called teachers' books), as well as methodological materials for mastering the curriculum studied in a language that is not the native language, and bilingually. Likewise, teachers' continuous training courses are organised constantly.

The Ministry does not uphold the Applicant's arguments that changes in the quality of education had not been duly analysed. The outcomes of implementation of the education reform are being analysed constantly. It has been found that, as the result of language policy and education reform, the Latvian language proficiency of persons belonging to ethnic minorities had improved significantly. Already, more than 94 per cent of persons belonging to ethnic minorities know Latvian, and a particularly positive trend is observed among the youth. The sociological surveys conducted in the schools of ethnic minorities show that the general level of knowledge of learners belonging to ethnic minorities is high, in many subjects even higher than that of other schools. Moreover, sociological surveys prove that teachers do not consider that the course of the education reform had been hurried. Among students, in turn, the motivation to learn Latvian has increased. The Ministry draws attention to the fact that the teacher 'skill and motivation are of major importance in implementing the education reform.

At the court hearing, D. Dambīte, the Ministry's representative, upheld the Ministry's opinion expressed in writing. It is contended that the contested norms in no way deny the possibility to persons belonging to ethnic minorities to acquire and to use their native language and to develop their culture. The contended norms ensure the acquisition and use of languages of ethnic minorities in Latvia, at the same time giving to all learners the possibility to master, equally well, also Latvian, which is the official language in Latvia, and to acquire education in it. The parents' rights to participate in resolving matters of education, allegedly, are not restricted in any way.

The Ministry underscored that the reform of the education system to be implemented was not contrary to Latvia's international commitments. Quite to the opposite, the State, by implementing the education reform, is fulfilling its duty to ensure to learners belonging to ethnic minorities the best possible social integration, inclusion in the cultural, social and economic life.

Likewise, the Ministry informs that the Advisory Council on Minority Education Affairs, established by it, had conceptually supported the education reform to be implemented.

5. The summoned person – the Ministry of Justice – holds that the contested norms achieve balance between the expansion of using the official language in the system of education and the right to education and the protection of the rights of ethnic minorities, and, thus, comply with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*.

There are no grounds to doubt that the contested norms had been established by a law adopted in due procedure. They are said to have a legitimate aim, i.e., they are aimed at reinforcing an essential element in the identity of a nation state – the Latvian language, as well as ensuring due mastering of the official language to learners belonging to ethnic minorities since proficiency in the official language is necessary for full-fledged life in society. The Ministry of Justice is of the opinion that the contested norms do not affect teachers' academic freedom since, both in Latvian and international

law; manifestations of academic freedom are attributed to the acquisition of higher education and not to the acquisition of general education.

Regulation of the contested norms, essentially, is the current stage in the transition to the process of education in the official language. The Ministry of Justice considers that the contested norms ensure succession in the course of education reforms as well as uniformity of regulations related to the language of instruction in education.

At the court hearing, L. Medina, the representative of the Ministry of Justice, underscored that the education reform that expanded the use of the official language in the process of education had to be examined in a broader context, in interconnection with the values enshrined in the *Satversme*. The State has the obligation to ensure that its residents acquire the Latvian language as a means of communication that unites the society of Latvia.

The Ministry of Justice is of the opinion that within the framework of education system established by the State, ethnic minorities have been ensured the possibility to preserve and develop their language, their ethnic and cultural singularity.

6. The summoned person – the Ministry of Culture – expresses the opinion that the contested norms do not violate the principle that prohibits discrimination.

At the court hearing, M. Kaprāns, the representative of the Ministry of Culture, emphasized the importance of ensuring the safeguarding and development of the Latvian language in the state's historical context, at the same time pointing out that safeguarding the diversity of the ethnic minorities' cultures had always been one of the national priorities since the restoration of independence. Ethnic minorities and their culture is an important part of the Latvian society and cultural space. In Latvia, a person belonging to an ethnic minority is ensured the right to preserve and develop his language, ethnic and cultural singularity. At the same time, he underscored that the Latvian language was the language of democratic participation and the basis of cohesive society

in Latvia. A decrease in its use would endanger social integration. Therefore it is the State's task to ensure that all inhabitants of Latvia would know and use the Latvian language. M. Kaprāns underscored that a trend was observed that the proficiency level of the official language among ethnic minorities, in general, had not changed, that it was average. This could be called the trap of average skills. This kind of, average, knowledge of the official language allows communicating on the level of daily interactions; however, the official language is not performing the function of consolidating society. Due to average skills in the official language, representatives of ethnic minorities are not using it as the language of united information space and, by this, isolate themselves from the shared information space (*see Case Materials, Vol. 6, pp. 97 –102*).

The Ministry of Culture informs that it has established the Advisory Committee of Representatives from Minority Non-Governmental Organisations. Its aim is to facilitate the participation of non-governmental organisations in the shaping of civil society, development of ethno-politics as well as in the area of the rights and culture of ethnic minorities. This Committee submits proposals on coordinating the fulfilment of commitments envisaged in the Minorities' Convention and also co-operates with the President's Minorities Advisory Council.

7. The summoned person – the Ministry of Foreign Affairs – holds that the contested norms are not contrary to the Minorities' Convention and Latvia's other international commitments.

One of the Ministry's of Foreign Affairs function is the implementation of united national politics by political and diplomatic measures, *inter alia*, by expressing Latvia's opinion at the Council of Europe, in the framework of which the Minorities' Convention had been adopted. The dialogue with the Council of Europe regarding implementation of the Convention referred to is said to be a constant process, in which each State explains its specific circumstances, which influence the process going on in the respective country.

In Latvia's case, these specific circumstances are mainly linked to the state's historical context.

At the court hearing, K. Līce, the representative of the Ministry of Foreign Affairs, underscored that education had a significant role in creating a cohesive society. In Latvia's historical and political context, it is said to mean also creating a united information space and consolidating the position of the Latvian language to this end, as well as averting threats of hybrid war and refuting fake news. The Ministry of Foreign Affairs considers that the purpose and course of the education reform to be implemented in Latvia complies with requirements of the Minorities' Convention.

At the court hearing, J. Mažeiks, the representative of the Ministry of Foreign Affairs, noted that Latvia had inherited a segregated system of education. This kind of system of education was not aimed at social integration and it could not be reformed rapidly. Therefore changes to the system of education had been gradual (*see the transcript of the court hearing in Case Materials, Vol. 5, pp. 124 –125).* Also, it should be taken into account that an obligation to ensure educating children belonging to ethnic minorities in school only or predominantly in the languages of ethnic minorities does not follow from the international legal norms binding upon Latvia. However, the State has the obligation to facilitate, among all children, acquisition of the official language on a sufficient level, allowing integration into society without difficulties.

8. The summoned person – the Ombudsman – holds that the contested norms comply with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*.

Implementation of the regulation established in the contested norms is said to be the final stage in reforming the system of education, which will conclude the transition to a united system of education. In Latvia, the transition to education in the official language has been implemented gradually already

since 1998. Hence, in total, the transitional period has lasted for more than 20 years and is to be considered as being proportional.

The Ombudsman expressed the opinion that Article 112 of the *Satversme* did not comprise parents' right to choose the language of instruction for the child. Hence, the Ombudsman holds that the Applicant's opinion that the contested norms restrict the right to education, guaranteed in Article 112 of the *Satversme*, is unfounded.

Allegedly, pursuant to Article 30 of the Convention on the Rights of the Child, the State's obligation is to not deny to a child belonging to an ethnic, denominational or linguistic minority the possibility to enjoy together with other members of his group the cultural values of his nation, convert and practice his religion or use the native language. The State has the obligation to ensure the possibilities to acquire the minority language and culture also within the framework of the system of education. The Ombudsman is of the opinion that the Latvian system of education ensures these possibilities.

At the court hearing, the Ombudsman underscored that the State had the obligation also to see to it that the system of education would ensure acquisition of the official language on such a level that young people, who have obtained the basic or secondary education, could fully participate and become involved in the life of the state and society, acquire state-financed vocational or higher education, which currently is available only in the official language. In the long-term, the contested norms should be assessed as a major contribution to the development of a united society in Latvia.

9. The summoned person – ***Dr. habil. philol. prof*. Ina Druviete**– holds that the regulation of the contested norms is not incompatible with Article 114 of the *Satversme*.

She expressed the opinion that the Education Law and the General Education Law were tools for implementing the language policy. The task of the language policy is to guarantee the linguistic rights of persons belonging to

ethnic minorities and, at the same time, protect the general means of communication – the official language – necessary for the state to exist.

At the court hearing, I. Druviete underscored that harsh competition between languages was typical of Latvia. Following the restoration of Latvia's independence, overcoming the consequences of Russification had been one of the most important tasks. The content norms also should be examined in this respect.

In selecting the most appropriate model for using the languages of ethnic minorities in education, the totality of a number of factors, e.g., the available budget, linguistic conflicts, situation of the official language, should be taken into account. Each State, in accordance with its linguistic situation, may choose such a model that ensures best of all the acquisition of the official language as the symbolic and instrumental mechanism of social integration. Also in other European states, the dominant model is a united education system, based on the official language of the respective state.

In every society, the use of a language and acquisition of languages in schools is said to be an area influenced not only by pedagogical and socio-linguistic considerations but also traditions, assumptions and linguistic conviction. In Latvia, policy makers should be able to provide a reasoned opinion on each initiative in language policy and explain the impact of changes to be introduced. I. Druviete forecasted that discussions on the basic principles of language policy would continue in Latvia therefore special attention should be paid to explaining language policy and education policy.

10. The summoned person – Deniss Kļukins, the director of Riga Rīnuži Secondary School – stated at the court hearing that the education reform had not been sufficiently prepared and teachers of all subjects were lacking but teachers of the Latvian language – in particular. A large part of teachers is of pre-retirement or retirement age, and they do not have particular incentives for learning the language. He believes that teachers work will be made more difficult by the fact that in the future it will not be possible to use

the methodology of bilingual education in the acquisition of the curriculum, which had been used until now. Moreover, learners' motivation to learn could decrease while learning in a language that is not their native language. This, in particular, applies to teenagers, who, in general, are characterised by inclusion and motivation issues.

D. Kļukins criticised the communication by the Ministry of Education and Science with schools that implemented minority education programmes, being of the opinion that it was not sufficiently supportive and explanatory but was limited to punishing those teachers with insufficient proficiency in the official language.

11. The summoned person – Svetlana Semenko, the director of Riga Zolitūde Gymnasium, – holds that due to economic and psychological reasons it will be impossible to implement in practice the regulation included in the contested norms.

At the court hearing, S. Semenko underscored that huge effort had been invested in developing the model of bilingual education. The trend of more students choosing to take exams in the official language is gradually growing. Therefore the rule that students of Grade 12 take examinations only in the official language should be supported. However, S. Semenko also expressed the view that increasing the proportion of learning in Latvian in the process of education, envisaged by the contested norms, lacked objective grounds. Allegedly, the contested norms are not aimed at improving and reinforcing the quality of education. In the context of improving the quality of education, it would be more essential to resolve issues related to the curriculum of education. Likewise, there are concerns that all required preliminary work for implementing the education reform has not been done in due time.

The composition of Latvia's population is characterised by the fact that in many families Russian is children's native language. Looking both from the pedagogical and psychological perspective, it should be admitted that neither pupils nor teachers or parents are ready for the implementation of the

regulation set by the contested norms. The contested norms could create an unjustified psychological burden. S. Semenko emphasised communication problems, particularly pronounced in the teenage period. Implementation of the contested norms could only acerbate this problem. There are also concerns whether there would be enough teachers able to teach pupils in the official language because the lack of teachers is constant.

12. The summoned person – ***Dr. sc. soc.*** **Brigita Zepa** – holds that following the restoration of the State's independence, in Latvia, education policy cannot be assessed from the perspective of the abstract principle of social equality. Education policy is based on the need to eliminate the consequences of the Soviet occupational regime and to create an integrated society, founded on shared values.

B. Zepa underscores that the ethnic composition of the population had significantly changed due to the migration policy implemented by the occupational regime. Moreover, during the period of Soviet occupation, using the Latvian language had not been necessary in practice since the Russian language had dominated as the language of communication in all areas of public life. Acquisition of the Latvian language had been formal in schools with Russian as the language of instruction, whereas in schools with Latvian as the language of instruction special focus had been placed on mastering Russian. As a result, certain asymmetry of language proficiency developed.

In accordance with the data of 1989 census, only 22.3 per cent of the Russian speakers living in Latvia knew the Latvian language, whereas Russian was known by 70 per cent of Latvians. The education policy is gradually approaching its aim since research on language skills reveal that the Latvian language proficiency is improving among the youth whose native language is not Latvian. According to the data of a study conducted by the Latvian Language Agency in 2014, all young persons in the age group from 15 to 24 years have indicated that they knew Latvian at least on the level of basic knowledge.

B. Zepa is of the opinion that an impeding factor in the implementation of education policy is the unwillingness of some representatives of ethnic minorities to master the Latvian language. Allegedly, the attitude towards the official language is changing among ethnic minorities; however, this process is complicated and gradual. Sociological research reveals unwillingness of the Russians to resign to the change in their status from the majority to a minority, as well as unwillingness to accept the changed status of the Latvian language.

13. The summoned person – ***E. MA.*** **Reinis Āboltiņš** – was an expert on the Advisory Committee in the period from 2014 to 2018.

R. Āboltiņš holds that the legitimate aim of the contested norms is to facilitate social integration of learners both in social and economic respect. The requirement to learn the official language and other subjects in the official language is said to be legitimate and to promote social cohesion and integration. The Advisory Committee is also constantly underscoring the importance of education in creating a cohesive society and is highlighting the significance of official language proficiency in ensuring equal opportunities. In education, to the extent possible, segregation should be avoided – even if ethnic minorities wish to remain separated or segregated from the system of education. The context of each country should be taken into account and the target should be an optimal solution, by creating a common education space with equal opportunities to acquire high quality education. R. Āboltiņš underscored that situations, where persons belonging to ethnic minorities implement self-segregation, i.e., defend their right to own identity and the use of their own language so intensively that these efforts are no longer balanced with the aim and interests of a cohesive society, should be eliminated.

At the court hearing, R. Āboltiņš expressed the opinion that the legislator had examined and adopted the contested norms within a very short period of time. To his mind, the process of discussing the contested norms had been formal. He also drew attention to the fact that the implementation of the regulation set in the contested norms without sufficient preparation could have

a negative impact on the quality of education. The principles of good governance should be complied with in planning and implementing significant changes in education with lasting impact. This is also constantly emphasised by the Advisory Committee, pointing to the need to prevent the risks that tension might arise as well as to communicate in due time and regularly with the target group of change, giving it the possibility to prepare for the respective change. R. Āboltiņš believes that the legislator and the executive power should be certain that high quality educational materials will be available in due time as well as the teachers' ability to ensure the study process in the official language.

14. The summoned person – ***Dr. art.*** **Deniss Hanovs** – holds that the contested norms will foster the linguistic competence of children belonging to ethnic minorities living in Latvia as well as their participation in the political processes in the state, at the same time also facilitating the dynamics of naturalisation. Allegedly, the contested norms give the possibility to combine the priorities of the national language policy in the conditions of post-soviet society with the needs of European, democratic culture. However, recognition of ethnic and linguistic diversity is one of the means of inclusive politics.

At the court hearing, D. Hanovs underscored that language as one of the most essential elements in the self-awareness of an individual and groups was, simultaneously, an important measure of integration policy, serving to ensure that the space of official language would be accessible to all, that language proficiency would not create internal barriers, possibilities for excluding someone, creating differential treatment. Affiliation with the State of Latvia can develop in the space of Latvian language; however, this does not mean giving up different identities (*see the transcript of the court hearing, Case Materials, Vol. 6, pp. 23 –24*). The Latvian regulatory enactments in the area of linguistic rights and the rights of ethnic minorities, to a large extent, are the continuation of the discourse of Latvia's history in legislation, reflecting the process, in which the Latvian nation regained its legal status. An essential argument in favour of adopting the contested norms is the significance of the

official language in development of a political nation. The official language is said to be the common means of communication of the state, i.e., a totality of citizens, where the political discourse is formed and changes, it should help in ensuring to the totality of citizens effective functioning in the main process of a sustainable democracy – in the discourse on issues that are relevant to society, interests and needs.

D. Hanovs does not uphold the Applicant's reasoning and underscored that schools still had been ensured the possibility to create a range of subjects for reinforcing the identity and culture of ethnic minorities. On the level of national politics, the possibilities for exercising the rights of national minorities are not limited. However, D. Hanovs criticised communication during the period of implementing education reform, which currently exceeds two decades. The acute reaction is said to be the outcome of poor quality communication by the State, which is interpreted as "imposing" of the Latvian language and culture. Effective communication, appropriate for the target audience should be developed, focusing on the Latvian language as the language of opportunities and decreasing the populist view of "repressive" nature of the Latvian language.

15. The summoned person – the director of Riga Secondary School No. 34 Nataļja Rogaļeva – holds that the transition to learning in the Latvian language requires more time.

Allegedly, methods for teaching the content of subjects in Latvian to pupils whose native language is not Latvian have not been developed in Latvian. Teachers lack experience in managing the study process in a language, which is not the pupils' native language and, often, neither is the native language of teachers.

At the court hearing, N. Rogaļeva expressed high appreciation of the outcomes of introducing bilingual education and admitted that, in the stage of introducing bilingual education, the education reform had been sufficiently gradual and provided with good methodological support. However, in adopting

the contested norms, the previous successful experience had not been taken into account. At present, detailed models of the new education programmes and high quality educational materials are not available yet, neither are courses of professional education organised.

It should be taken into account, that also new curriculum is introduced as of 1 September 2019. This is said to cause even greater problems. There are valid concerns that pupils will need more time for acquiring the curriculum in a language that is not their native language and, thus, will have no time for rest – walks outdoors and interests related education; moreover, pupils might experience psychological tension. Lack of teachers is also an important factor.

16. The summoned person – ***Dr. paed.*** **Liesma Ose** – holds that the contested norms had been adopted within a very short period of time. The fast advancement of the contested norms causes doubts regarding the legislator's democratic intentions, i.e., regarding sufficient hearing of and discussions on the proposals.

L. Ose admits that the requirement to master the official language is legitimate and fosters social cohesion; however, it could be fostered also in the framework of programmes of bilingual education. The expedience of retaining bilingual education could be substantiated by the fact that, in Latvia, very many pupils belong to ethnic minorities – approximately one-third of all pupils belong to them, and also there is a large number of mixed families, where children speak two languages. In substantially changing the existing proportion of the languages of instruction, more lenient actions would be in place, without causing possible negative consequences with respect to the quality of education. L. Ose expressed the opinion that prior to adopting the contested norms all possible risks had not been analysed.

At the court hearing, she expressed the opinion that acquiring the curriculum only in Latvian could cause problems to those pupils, who experience difficulties also while learning in their native language. Lack of qualified teachers could hinder the implementation of the contested norms.

The Findings

17. At the court hearing, the Applicant has requested broadening the limits of the claim, examining the compliance of Part 1^1 and Part 1^2 of Section 41 of the law of 22 March 2018 "Amendments to the Education Law" with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*. It is alleged that the aforementioned norms are closely linked to the contested norms indicated in the application.

The Constitutional Court has repeatedly found that, in certain cases, the limits of the claim can be broadened in cases that already have been initiated (*see, for example, Judgement of 19 December 2007 by the Constitutional Court in Case No. 2007-13-03, Para 6, and Judgement of 29 December 2014 in Case No. 2014-06-03, Para 17*).

The Constitutional Court may broaden the limits of the claim by abiding with certain criteria, first and foremost, "the concept of close connection". I.e., to conclude, whether, in a particular case, the limits of the claim could and should be broadened, it must be established, first of all, whether the norms, with respect to which the claim is broadened, are so closely linked with the norms contested in the case that the assessment thereof is possible within the framework of the same reasoning and is necessary for ruling in the particular case, and, secondly, whether the broadening of the limits of the claim is necessary to abide by the principles of the legal proceedings before the Constitutional Court (*see, for example, Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 17, and Judgement of 20 October 2011 in Case No. 2010-72-01, Para 15*).

At the court hearing, the Applicant has provided legal arguments regarding the possible incompatibility of Part 1^1 and Part 1^2 of Section 41 of the law of 22 March 2018 "Amendments to the Education Law" with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme.* Section 3 (2) of the law of 22 March 2018 "Amendments to the Education

Law" envisages adding to Section 41 of the Education Law Part 1^1 and Part 1^2. The aforementioned norms define the proportion of using the official language and the minority language in acquiring the curriculum. Hence, they are closely connected to the contested norms.

In view of the above, broadening the limits of the claim in this case is possible and necessary for a comprehensive and objective examination of the present case.

Hence, the Constitutional Court will examine also compliance of Section 3 (2) of the law of 22 March 2018 "Amendments to the Education Law" with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*.

18. The Applicant contests compliance of two legal norms with the *Satversme*, i.e., the first and the second part of Section 1, the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to the Education Law" as well as Section 2 of the law of 22 March 2018 "Amendments to the General Education Law" with a number of norms of the *Satversme* – the second sentence of Article 91, Article 112 and Article 114.

18.1. Section 9 (1) of the Education law provides that, in the state and local government institutions of higher education, education is acquired in the official language. By the first part of the law of 22 March 2018 "Amendments to the Education Law", this general rule on the language of instruction in education in state and local government institutions of education is applied also to private institutions of education on the level of basic and secondary education: "At private institutions of education, the general education and professional education on the level of basic and secondary education shall be acquired in the official language."

Section 9 (2) of the Education Law defines those institutions of education, where education may be acquired in another language. The contested norms – the second and the third part of Section 1 of the law of

22 March 2018 “Amendments to the Education Law” – provide that education may be acquired in another language:

“1) institutions of education, which implement education programmes in accordance with bilateral or multilateral agreements of the Republic of Latvia;

2) institutions of education, which implement minority education programmes on the level of pre-school education and basic education, abiding by provisions of Section 41 of this Law”

2^1) institutions of education, which implement the programme of general education in full or partially in a foreign language, to ensure the acquisition of other official languages of the European union, abiding by the requirements of the respective state standard of education ”.

Part 1^1 and Part 1^2 of Section 41 of the Education Law specify the proportion of using the official language in acquiring the curriculum on the level of basic education, envisaging that in elementary school and basic school it is, respectively, in the amount of at least 50 and 80 per cent (*see Section 3 (2) of the law of 22 March 2018 “Amendments to the Education Law*). Whereas Section 2 of the law of 22 March 2018 “Amendments to the General Education Law” provides that the mandatory curriculum of the general secondary education is determined by the national standard of general education. Hence, in secondary schools, use of minority languages in acquiring the curriculum no longer will be envisaged in secondary schools.

Hence, by adopting the contested norms, the legislator:

1) has attributed the general rule on acquiring education in the Latvian language to private institutions of education on the level of basic and secondary education:

2) in institutions of education, which implement education programmes of ethnic minorities, on the level of basic education, decreased the proportion of using the minority language in acquiring the curriculum, by providing that acquisition of the curriculum in the official language is ensured in the amount of at least 80 per cent in basic school and in the amount of at least 50 per cent in elementary school;

3) attributed to the level of secondary education in institutions of education, which implement the education programmes of ethnic minorities, the general rule on acquiring education in the Latvian language.

The contested norms, which set out new regulation with respect to the proportions of using the languages of instruction in the educational for ethnic minorities implemented in the state and local government institutions of education on the level of basic and secondary education, are closely connected and constitute a united legal regulation. These norms are Section 1(2), the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to the Education Law" and Section 2 of the law of 22 March 2018 "Amendments to the General Education Law".

18.2. Cases No. 2018-22-01, No. 2019-04-01 and No. 2019-06-01 are currently being prepared at the Constitutional Court.

In case No. 2018-22-01, compliance of Section 1(1) of the law of 22 March 2018 "Amendments to the Education Law" with Article 1, the first sentence of Article 112 and Article 114 of the *Satversme* is contested. In case No. 2019-04-01, compliance of the same norm with the second sentence of Article 91 and the first sentence of Article 112 of the *Satversme* is contested. Whereas in case No. 2019-06-01, compliance of the same norm with the second sentence of Article 91 of the *Satversme* is contested. The aforementioned cases have been initiated on the basis of constitutional complaints.

Also in the present case, one of the contested norms is Section 1(1) of the law of 22 March 2018 "Amendments to the Education Law". The Applicant has requested examining the compliance of this norm with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme*. It applies to private institutions of education the regulation on acquiring education in the official language on the level of basic and secondary education. Prior to the adoption of the contested norms this rule was not applied to private institutions of education.

While case No. 2018-22-01 was being prepared for reviewing, the applicants requested joining the aforementioned case with the present case, i.e., case No. 2018-12-01. In examining the request, it was decided to not join the cases. It is noted in the decisions that, *inter alia*, in deciding on joining the cases, both the claims to be examined in both cases and the merits of the cases, as well as other circumstances had to be taken into account. Hence, the preparation and examination of the cases requires different approaches and comprehensive adjudication could be ensured by hearing the cases separately (*see Decisions of 13 February 2019 in Case No. 2018-22-01*).

The aim of applications submitted to the Constitutional Court by the subjects of the abstract review of legal norms, *inter alia*, members of the *Saeima*, is the protection of public interests. The abstract review of legal norms is, *inter alia*, a means that serves to align the legal system (*compare: Judgement of 15 June 2006 by the Constitutional Court in Case No. 2005-13-0106, Para 20.2.*). The Constitutional Court holds: in view of the fact that the addressees of the regulation of Section 1 (1) of the law of 22 March 2018 "Amendments to the Education Law" are private institutions of education it would be expedient to decide on the matters of constitutionality of all these norms within the framework of one case.

Hence, abiding by the principle of expedience, compliance of Section 1 (1) of the law of 22 March 2018 "Amendments to the Education Law" with the second sentence of Article 91, Article 112 and Article 114 should be examined in reviewing case No. 2018-22-01.

19. Hereinafter, in the present case, compliance of Section 1 (2), the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to Education Law" as well as of Section 2 of the law of 22 March 2018 "Amendments to the General Education Law", hereafter in the text denoting them jointly also as the contested norms, with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme* will be examined.

The Applicant holds that the contested norms will have a negative impact on the situation of those learners, belonging to ethnic minorities, who are studying in the education programmes of ethnic minorities on the level of basic and secondary education in state and local government schools. To substantiate this opinion, the Applicant has expressed a number of considerations.

Firstly, too rapid implementation of the transition to the Latvian language as the language of instruction in schools has been planned; moreover, availability of appropriate methodological educational materials has not been ensured.

Secondly, the rights of the learners belonging to ethnic minorities to acquire education in their native language as well as their parents' right to participate in the process of education, by choosing the language of instruction, had been violated.

Thirdly, the regulation of the contested norms in a number of respects is said to envisage discriminatory treatment of learners belonging to ethnic minorities.

Fourthly, for learners belonging to ethnic minorities, while learning in the official language, the possibility to preserve and develop their language, their ethnic and cultural singularity would be hindered.

It is alleged that in the process of adopting the contested norms these objections had not been taken into account.

The Constitutional Court finds that, first and foremost, it needs to examine compliance of the contested norms with Article 112 of the *Satversme* in connection with the Applicant's first and second consideration, following that compliance with the second sentence of Article 91 of the *Satversme* in connection with the third consideration, and, finally, compliance with Article 114 in connection with the fourth consideration, insofar these apply to state and local government institutions of education.

20. The Applicant holds that the contested norms are incompatible with Article 112 of the *Satversme*. It provides: "Everyone has the right to education. The State shall ensure that everyone may acquire basic and secondary education without charge. Basic education shall be compulsory."

The right to education has the nature of both civil and political rights, requiring the State to allow the possibilities of free choice (for example, abiding by the parents' wish to educate their children in accordance with their beliefs), as well as the nature of economic, social and cultural rights that require positive actions by the State (for example, ensuring education free of charge). The right to education has also a certain element of solidarity, which pertains to a certain social group (for example, persons with special needs) and requires the support of the State and society, including the learners themselves, in exercising the right to education of a certain social group (*compare: Jarinovska K. 112. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Rīga: Latvijas Vēstnesis, 2011, 664. lpp.*). Hence, the right to education, included in Article 112 of the *Satversme*, as to its nature, relates to Article 13 of the International Covenant on Economic, Social and Cultural Rights, Article 2 of the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms, the first part of Article 5 of the Convention against Discrimination in Education as well as the third part of Article 28 of the Convention on the Rights of the Child. The right to education gives to an individual the possibility to develop as a free personality and to integrate into the civic society [*see also: 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. 1*].

Hence, the first sentence of Article 112 of the *Satversme* guarantees the right to make full use of all opportunities provided by the system of education. Respectively, this means that the State has the obligation to establish a system of education accessible to all learners. The State's actions, in creating a system

of education accessible to all learners, must comply with such basic requirements as availability, accessibility, acceptability and adaptability of education. Availability of education means establishing a sufficient quantity of institutions of education appropriate for the learners' needs and of programmes of education to guarantee that the objectives of education are met. Accessibility of education is ensured by creating equal opportunities and eliminating obstacles that might arise, in using the education opportunities. Acceptability of education is to be ensured by adjusting the curriculum and methods of education to learners' needs, *inter alia*, by setting standards of education and creating conditions for creative freedom in reaching the respective standards in certain stages of education, as well as envisaging possibilities of parent involvement. Acceptability of education comprises also children's right to free participation in cultural life, the right to rest, leisure time, as well as safe and healthy conditions of education. Whereas adaptability of education means constant development of the education system in compliance with the changing needs of society [*see also: 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*].

Basic and secondary education, paid for by the State, envisaged by the second sentence of Article 112 of the *Satversme*, is the basic means for ensuring the right to education. It should be considered as being the minimum of rights that the State has committed itself to guarantee and the decrease of which, therefore, is inadmissible. The mandatory nature of the basic education, established in the third sentence of Article 112 of the *Satversme*, in turn, follows from the principle of a democratic state governed by the rule of law. I.e., a democratic state governed by the rule of law is based on an educated person who is able to obtain information independently, to reason, to think critically and to adopt rational decisions. Education is one of the pre-requisites for a person's choice to continue self-improvement throughout his or her lifetime. Hence, education is one of the most important pre-conditions for

consolidating a free and democratic society. Similarly to the second sentence of Article 112 of the *Satversme*, also the third sentence comprises the learner's obligation *vis-à-vis* society and the state, in the framework of which society develops, i.e., to make use of the opportunities provided by the system of education, by acquiring skills and knowledge, which, *inter alia*, foster exercising the right to participation in a democratic state governed by the rule of law.

The State's obligation in ensuring education is not restricted to ensuring that the learner acquires knowledge and skills that comply with certain standards of education set by the State. The aims of education should be viewed in a broader perspective. This also follows from para "c" of the first part of Article 29 of the Convention on the Rights of the Child, which provides that the aim of education is the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, as well as for other cultures. Likewise, the European Court of Human Rights (hereinafter– ECtHR), in interpreting Para 2 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and abiding by other norms of international law, *inter alia*, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, has underscored that the nature of the right to education is finding harmonious balance between the general public interests and respect for an individual's fundamental rights (*see ECtHR Judgement of 23 July 1968 in 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 un 2126/64, part I B Para 5*).

The aim of Latvia's system of education has been enshrined in Section 2 of the Education Law, providing that to every resident of Latvia the opportunity to develop his of her mental and physical potential should be ensured, in order to become an independent and fully developed individual, a

member of the democratic State and society of Latvia. The aim defined in this Section of the Education Law – to ensure learners' right to receive such education and upbringing that would allow to develop and reinforce the feeling of affiliation with Latvia – has been recognised by the Constitutional Court as compatible with the interests of not only the learners themselves but those of society in general (*see Judgement of 21 December 2017 in Case No. 2017-03-01, Para 19.3.*).

20.1. In the present case, contradictory opinions have been expressed regarding the connection of the contested norms with the right to education. The *Saeima* and a number of summoned persons – the Ministry of Justice, the Ministry of Foreign Affairs and the Ombudsman – express the opinion that the contested norms do not directly affect exercising the right to education, enshrined in Article 112 of the *Satversme*. Whereas the Applicant, S. Semenko and N. Rogaļeva are of the opinion that the State, by increasing the use of the official language in the acquisition of education, has failed to fulfil its positive duty to ensure the possibilities to exercise the right to education to those learners, who acquire it within the framework of the model of bilingual education.

Compliance of education programmes of ethnic minorities and the model of bilingual education with Article 11 of the *Satversme* in interconnection with Article 2 of the First Protocol to the Convention was already examined in the Constitutional Court's judgement of 13 May 2005 in case No. 2004-18-0106. In this judgement, the Constitutional Court found that the Convention did not envisage the State's obligation to guarantee within the system of education created by it limitless choice with respect to the language of instruction but to guarantee the right to use all opportunities provided by the system of education already existing in the state (*see Judgement of 13May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 10 and 11 of The Findings*). In a number of cases, ECtHR has assessed the State's discretion in organising the system of education, defining aspects of choice of the learners and their parents within the framework of the established system of education.

As regards a particular language of instruction, ECtHR has found that a State's obligation to guarantee to parents the right to choose for their children a language of instruction that is not the official language of the state did not follow from Article 2 of the First Protocol to the Convention (*see ECtHR Judgement of 23 July 1968 in 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 un 2126/64, Part I B Para 6)*. ECtHR has recognised that the State has the obligation, in certain circumstances, to take into account the religious conviction and views of children and parents (*see, for example, ECtHR Judgement of 29 June 2007 in Case "Ingebjørg Folgerø and Others v. Norway", Application No. 15472/02, Para 84*); however, a finding that the State should comply with the children's or parents' wish regarding ensuring to them, within the system of education established by the state, languages of instruction acceptable to them, moreover, in a certain proportion of use, cannot be found in its judicature.

ECtHR's judgement in case "*Oršuš and Others v. Croatia*", assessing the issue in the education of minority, i.e., Roma, children, which was linked to insufficient knowledge of the Croatian language among Roma children and insufficient state support to Roma families while their children acquired education, recognised that establishing of separate (segregated) classes as a temporary measure would be admissible if children had insufficient knowledge of the official language; however, if such segregated classes were turned into a constant element of the system of education, a solution like this would require special substantiation. In the context of enacting minority rights, ECtHR, in this case, underscored that children belonging to ethnic minorities should be ensured access to the system of education established in the state that would promote their integration into society and, thus, the possibility to benefit from the acquired education should be ensured. The opinion of international non-governmental human rights organisations provided in the case indicate the necessity to establish such education system of the state that would ensure every child's social integration (*see Judgement of 16 March 2010 by ECtHR*

Grand Chamber in Case "Oršuš and Others v. Croatia", Application No. 15766/03, Para 139, 141 and 146).

The Applicant also refers to the findings with respect to compliance of measures implemented by the State with Article 2 of the First Protocol to Convention, which ECtHR has expressed in Case *"Cyprus v. Turkey"* (*see Application in Case Materials, Vol. 1, p. 7, and Judgement of 10 May 2001 by ECtHR Grand Chamber in Case "Cyprus v. Turkey", Application No. 25781/94*). The Constitutional Court underscores that the differences between the facts of the case referred to and the situation in Latvia has already been indicated in case No. 2004-18-0106 (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 14 of the Findings*).

Hence, the system of education that has been established in the state must be accessible to all learners, also the learners belonging to ethnic minorities. To ensure access to the system of education established in the state, in turn, special measures for supporting the learning of the official language may be necessary. Therefore Article 112 of the *Satversme* defines the State's obligation to ensure to all learners access to education in the official language to foster reaching the aims of the system of education.

20.2. The Applicant is of the opinion that the circumstances of the case differ from the ones examined in case No. 2004-18-0106. At the court hearing, both the Applicant and several of the persons summoned in the case – S. Semenko, D. Kļukins, N. Rogaļeva and L. Ose – assessed positively introduction of the model of bilingual education and juxtaposed it to the introduction of the regulation set in the contested norms. The Applicant expressed the opinion that the transition to even greater proportion of using the Latvian language in the acquisition of education, established by the contested norms, was not adapted to the possibilities of learners, their parents and teachers. Allegedly, neither the learners nor their parents and teachers are ready for the transition as rapid as this. The *Saeima*, the Ministry of Education and Justice, the Ministry of Education, the Ministry of Justice, the Ombudsman, B. Zepa and I. Druviete do not uphold this opinion and note that the contested

norms are only one stage in the successively implemented education reform and that, in general, transition to the Latvian language as the main language of instruction has been gradually implemented in schools over more than 20 years.

Hence, the Constitutional Court must assess, whether the State's action in adopting the contested norms complies with the right to education included in Article 112 of the *Satversme* with respect to its availability, adaptability and accessibility.

The Constitutional Court, having analysed the materials in the case and having heard the participants of the court hearing, finds that already Article 5 of the Education Law of the Republic of Latvia adopted on 19 June 1991 provided that, in the Republic of Latvia, the right to acquire education in the official language is guaranteed, hence, envisaging for all learners the right to be educated in Latvian.

On 10 August 1995, the law "Amendments to the Education Law of the Republic of Latvia" was adopted, providing that in comprehensive schools, where the language of instruction was not Latvian, in Grade 1-9, in at least two subjects, but in Grade 10-12, in at least three humanities or science subjects the language of instruction should be the official language. The aforementioned regulation entered into force starting with school year 1996/1997.

On 29 October 1998, the new Education Law was adopted, starting to abolish segregation of schools and envisaging development of a united system of education (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 3 of the Findings, and the written reply by the* Saeima *in Case Materials, Vol. 2, pp. 22*).

Section 9 (1) of the law defined the general principle that in state and local government institutions of education the language of instruction was the official language. Whereas Para 2 of the second part of the same Section provided that the language of instruction could be another language in those state and local government institutions, where the education programmes of ethnic minorities were implemented. As regards the implementation of the education programmes of ethnic minorities, schools were granted discretion to

choose and implement one of the offered models of education programmes, depending on learners' level of proficiency in Latvian. All schools, which had chosen to implement education programmes of ethnic minorities, in the stage of basic education – from Grade 1 to Grade 9 – had completed this stage of the reform by 2002 (*see Opinion of the Ministry of Education and Science in Case Materials, Vol. 3, pp. 96 –99*).

Sub-para 3 of Para 9 in the Transitional Provisions of the Education Law envisaged the implementation of the next stage in the education reform. In the initial wording, it provided that in the tenth grades of state and local government comprehensive schools and the first year of state and local government institutions of vocational education studies only in the official language should begin on 1 September 2004.

This norm was amended shortly before this date, i.e., Sub-para 3 of Para 9 of the Transitional Provisions of the Education Law provided that beginning with 1 September 2004, in state and local government institutions of secondary education, which implemented education programmes of ethnic minorities, beginning with Grade 10, the official language is the language of instruction in accordance with the standard of general secondary education. It, in turn, provided, that acquisition of curriculum in the official language had to be ensured in at least three-fifths of the total load of classes within the school year, foreign languages including, and that acquisition of curriculum related to the language, identity and culture of ethnic minorities would be ensured in the language of the ethnic minority. I.e., in school year 2004/2005, this proportion was applied to Grade 10, in school year 2005/2006 – to Grade 10 and Grade but in school year 2006/2007 – to Grades 10, 11 and 12 (*see Sub-para 3 of Para 9 of the Transitional Provisions in the Amendments of 5 February 2004 to the Education Law*). Thus, substantially, the transitional period was extended for three more years by these amendments.

Amendment to the legal norm included in Sub-para 3 of Para 9 of the Transitional Provisions of the Education Law was demanded by the Latvian Association for the Support of Schools Teaching in Russian and was

introduced in connection with the Association's negative attitude towards Sub-para 3 of Para 9 of the Transitional Provisions in the Education Law entering into force simultaneously, i.e., on 1 September 2004, with respect to all groups of grades in the secondary education stage (*see Report on the initial impact assessment of the draft law "Amendments to the Education Law", Para I and Para VI*).

Starting with school year of 2008/2009, a requirement was in force that in the education programmes of ethnic minorities in secondary schools in each school year at least five subjects, including the Latvian language and literature, had to be acquired in Latvian (*see Cabinet Regulation of 2 September 2008 No. 715 "Regulation on the National Standard of General Secondary Education and Standards of General Secondary Education Subjects"*).

In 2913, it was found that 13 per cent of institutions of education had licenced programmes of education developed by the institutions themselves, combining these with the programme of basic education (*see Para 2 in the initial impact assessment report for Cabinet Regulation of 6 August 2013 "Regulation on the National Standard of Basic Education, Standards of Basic Education Standards and Model Programmes of Basic Education"*). In view of this trend, it was decided to expand even more the choices available to an institution of education in implementing the educational programmes for ethnic minorities (*see Annex 25 to Cabinet Regulation of 6 August 2013 "Regulation on the National Standard of Basic Education, Standards of Basic Education Standards and Model Programmes of Basic Education".*) Thus, an institution of education could choose one of five variants of the offered plans for the subjects of education programmes and classes.

In the period from 2008 up to 2015, the situation of the official language was monitored, assessing the impact of the reform with respect to the language of instruction on the dynamics in the knowledge of the official language, quality of education and other indicators (*see Opinion of the Ministry of Education in Case Materials, Vol. 3, pp. 100–103; see also: Lauze L.*

(zin. red.), Kļava G. (atb. red.) Valodas situācija Latvijā: 2010–2015. Sociolingvistisks pētījums. Rīga: LVA, 2016).

Continuing to reinforce the official language as the language of instruction, the contested norms were adopted (*see Written Reply by the* Saeima *in Case Materials, Vo. 2, pp. 24–25, and Opinion of the Ministry of Education and Science in Case Materials, Vol. 3, pp. 96–100*). The regulation established by the contested forms will enter into force gradually until 2021 (*see Para 1 of this Judgement*).

Thus, the State has gradually consolidated a united system of education accessible to all learners and the use of the official language in state and local government institutions, taking into consideration the learners' and their parents' and teachers' abilities to adjust.

20.3. The Applicant and the persons summoned in the case N. Rogaļeva, D. Kļukins and S. Semenko hold that the State, in adopting the contested norms, has not ensured that methodological educational materials are ensured. Whereas the *Saeima*'s representative I. Tralmaka, representatives of the Ministry of Education and Science as well as I. Druviete at the court hearing pointed to the opposite, i.e., that appropriate methodological educational materials were available and that schools had been regularly informed about available support (*see the transcript of the court hearing, Case Materials, Vol. 5, pp. 167–170 and Vol. 6, pp. 5, 88–90*).

Hence, the Constitutional Court must review compliance of the contested norms with the State's obligation to enact the right to education with respect to its acceptability; i.e., in connection with ensuring support measures and educational materials, as well as ensuring parents' participation. As noted in the initial impact assessment report regarding the draft law No. 1128/Lpl2 "Amendments to the Education Law", "linguistic skills depend on the intensity of using the language on the respective proficiency level; therefore, on the basis of information provided by teachers from general education and administrative institutions of education, it is envisaged to improve the skills of using the Latvian language among the teachers, support staff and

administration in general education so that they, in implementing the learning process, would be able to perform the functions of a language bearer in full, participate in implementing the learning process and provide the necessary support to learners in reaching their aims". The report also points to the planned measures for increasing the amount of methodological educational materials and improving teachers' professional qualification (*see initial impact assessment report to draft law No.1128/Lpl2 "Amendments to the Education Law", Para 3)*. At the court hearing, representatives of the Ministry of Education and Science D. Dambīte and D. Dalbiņa provided information on the accessibility of an extensive range of methodological educational materials (*see the transcript of the court hearing, Case Materials, Vol. 5, pp. 168–170, and Vol. 6, pp. 81–86*).

The Constitutional Court finds that the Ministry of Education and Science, in implementing the education reform, had constantly ensured the totality of the required support measures – methodological educational materials, opportunities of teachers' continuous education and professional improvement. Hence, the considerations expressed by the Applicant regarding insufficient methodological support were not confirmed in the course of hearing the case.

20.4. The Applicant holds that the contested norms do not ensure parents' right to participation.

The Education Law envisages the participation of both society and parents in the process of education. Section 21 (1) of the Education Law provides that society participates in the organisation and development of education by popularising all forms of education, educating and promoting improvement in the quality of education, creating educational programmes, protecting the rights and interests of learners and teachers during the acquisition of education and work process, developing educational institutions and education support institutions, associations and foundations. Whereas in accordance with Section 31 (2) of the Education Law, parents may realise their interests by participating in the work of the council of the educational

institution, and parents constitute the majority in the council of the educational institution.

Section 31 (3) of the Education Law defines the functions of the council of the educational institution, envisaging, *inter alia*, that the council of the educational institution provides proposals regarding implementation of the educational programmes. All these mechanisms of participation, defined in the Education Law, aim to ensure the acceptability of education to learners and their parents and can be used also in deciding on matters related to the implementation of the educational programmes of ethnic minorities.

Hence, the contested norms do not affect parents' rights to participate in the process of education.

20.5. Already in Para 20 of this Judgement, the Constitutional Court has recognised that Article 112 of the *Satversme* defines the State's obligation to establish and to maintain a system of education that is beneficial to all learners. However, the right to education defined in Article 112 of the *Satversme* does not comprise the right of learners or their parents to choose the language of instruction in state and local government institutions of education because that would be contrary to the principle of unity of the educational system established by the State and, also, would not promote an approach to the national education system that would allow reaching the aims of education with respect to each learner. Neither does Article 112 of the *Satversme* envisage the State's obligation to guarantee that, within the framework of the educational system established by the State, on the level of basic and secondary education, alongside the official language also the possibility to acquire education in another language in a specific proportion preferred by learners or their parents would be ensured. The Constitutional Court finds that, within the framework of a united system of education, the right to acquire education in state and local government institutions of education in the official language is ensured by meeting the obligations, defined in Article 112 of the *Satversme*, with respect to the basic requirements of availability, acceptability and adjustability of education.

Thus, the Constitutional Court has not gained confirmation that the contested norms would affect the right to education; hence, in accordance with Para 6 of Section 29 (1) of the Constitutional Court Law, legal proceedings in this part of the case should not be continued.

Hence, legal proceedings in the part of the case regarding the compliance of the contested norms with Article 112 of the *Satversme* should be terminated.

21. The Applicant has requested examining the compliance of the contested norms also with the principle of prohibition of discrimination included in the second sentence of Article 91 of the *Satversme*.

Article 91 of the *Satversme* provides: "All human beings shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind." This Article comprises two closely interconnected principles: the equality principle – in the first sentence, and the principle of prohibition of discrimination – in the second sentence. The equality principle, enshrined in the first sentence of Article 91, allows and even demands differential treatment of persons who are in different circumstances as well as allows differential treatment of persons who are in similar circumstances if there are objective and reasonable grounds for it (*see Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-28-0306, Para 9*). Whereas the prohibition of discrimination, included in the second sentence of Article 91 of the *Satversme*, is an aspect of the equality principle, which, in certain situations, specifies this principle and helps to apply it. The aim of the prohibition of discrimination is to eliminate discrimination if it is based on an inadmissible criterion (*see, for example, Judgement of 29 December 2008 by the Constitutional Court in Case No. 2008-37-03, Para 6)*. These criteria reflect the decision on the features, which in society, as a matter of principle, should not be admitted as the grounds for differential treatment. Hence, substance of the principle of prohibition of discrimination, enshrined in the second sentence of Article 91 of the *Satversme*, is to prevent the possibility

that, in a democratic state governed by the rule of law, a person's fundamental rights were restricted on the basis of an inadmissible criterion (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.3.).*

The Applicant holds that language is a criterion falling within the content of the second sentence of Article 91 of the *Satversme* and that in the circumstances of the present case, on the basis of the criterion, discriminatory treatment of learners belonging to ethnic minorities exists in the following respects:

1) the contested norms have established similar treatment of learners, whose native language is the official language, and learners, whose native language is one of the languages of ethnic minorities, although the treatment should be different;

2) the contested norms, allegedly, envisage differential treatment of learners, who belong to ethnic minorities and whose native language is not one of the official languages of the EU, compared to the learners belonging to ethnic minorities whose native language is one of the official languages of the EU;

3) the contested norms, allegedly, envisage differential treatment of those learners belonging to ethnic minorities, who attend institutions of education, which implement educational programmes of ethnic minorities, compared to those learners belonging to ethnic minorities, who attend institutions of education, which implement educational programmes of ethnic minorities in accordance with bilateral or multilateral international agreements binding upon the Republic of Latvia.

To assess, whether, indeed, discriminatory treatment exists, it must be established, first and foremost, whether language is a prohibited criterion falling within the content of the second sentence of Article 91 of the *Satversme*.

The second sentence of Article 91 of the *Satversme* comprises a general prohibition of discrimination but the prohibited criteria are not listed. These criteria must be "read into" the Article, by using methods for interpreting legal

norms as well as in the basis of the principle that characterises the Latvian legal system that it is open to international law. Hence, attention should be paid also to the global trends in the development of fundamental human rights. Article 26 of the International Covenant on Civil and Political Rights (hereinafter – the Covenant) provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. The law should prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination – irrespectively of race, colour of skin, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. Hence, in accordance with the norms of international human rights binding upon Latvia, language and nationality are the forbidden grounds of discrimination. Hence, the aforementioned criteria are included in the content of the second sentence of Article 91 of the *Satversme*. However, differential treatment, which is based on any of these criteria, should be deemed to be discrimination only if it is unjustified. Admissibility of a justification applicable to a particular criterion depends on the substance of this criterion and the situation in which it is used (*see: Levits E. 91. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Rīga: Latvijas Vēstnesis, 2011, 105. lpp.*).

Hence, to assess, whether possible discrimination exists in the aspects indicated by the Applicant, it must be established, first and foremost, which persons or groups of persons are in circumstances that are comparable in accordance with a definite criterion.

21.1. The applicant holds that the contested norms establish similar treatment of learners, whose native language is the official language, and learners, whose native language is a language of an ethnic minority, although the treatment should be different.

The Constitutional Court has already noted that, pursuant to Section 9 (1) of the Education Law, the language of instruction in state and local government educational institutions is the official language. On the level

of secondary education, this requirement applies both to persons, whose native language is the official language, and to persons, whose native language is not the official language. Hence, the contested norms envisage similar treatment of all learners, irrespectively of their native language.

The Constitutional Court has recognised that similar treatment *per se* should not be deemed a restriction on the rights established in Article 91 of the *Satversme* (*see, for example, Judgement of 13 February 2013 by the Constitutional Court in Case No. 2012-12-01, Para 8.1.*). Hence, it should be verified, whether the State's obligation to ensure differential treatment of a person (a group of persons) in the circumstances of the present case follows from the *Satversme*.

The Constitutional Court has underscored: to reach the required answer to a particular question of law, a separate norm of the *Satversme* should be interpreted in interconnection with other norms of the *Satversme* since, in accordance with the principle of the unity of *Satversme*, they influence the scope and the content of each separate norm (*compare, see Judgement of 13 February 2013 by the Constitutional Court in Case No. 2012-12-01, Para 8.1.*).

The *Satversme* defines the status of the official language of the Latvian language and grants it constitutional value (*see: Osipova S. Valsts valoda kā konstitucionāla vērtība. Jurista vārds, 18.10.2011., Nr. 42, 6. lpp.*). Article 4 of the *Satversme* is one of those Articles that constitute the constitutional basis of the State, defining the political-legal nature of Latvia's state order (*see: Levits E. Par latviešu valodu Satversmes 4. pantā nacionālas valsts kontekstā. Grām.: Levits E. Valstsgriba. Idejas un domas Latvijai 1985–2018. Rīga: Latvijas Vēstnesis, 2019, 555. lpp.*). Hence, the Latvian language is the language of the united discourse of the democratic society in Latvia. The first paragraph in the Preamble to the *Satversme* reveals those historical circumstances, as a result of which the Latvian people exercised their right to self-determination, by establishing the State of Latvia, and also defines the purpose of the State, i.e., "to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries" (*see the first*

paragraph in the Preamble to the Satversme). In view of the fact that Latvia is the only place in the world where the existence and development of the Latvian language and, hence, also Latvians as the title nation can be guaranteed, narrowing of the status and use of Latvian as the official language is inadmissible and can be considered to be a threat to the democratic state order (*see also Judgement of 21 December 2001 by the Constitutional Court in Case No. 2001-04-0103, Para 3.2. of the Findings*).

In a situation like this, the Applicant's finding to the contrary, i.e., that the right of persons, whose native language is not the official language, to demand ensuring differential treatment with respect to the language of instruction in state and local government educational institutions belonging to the national system of education, follows from the second sentence of Article 91 of the *Satversme* is unfounded. I.e., it is important to establish that the *Satversme*, in the particular case, does not guarantee the right to demand differential treatment. The Constitutional Court has already recognised that neither the *Satversme* nor norms of international law binding upon Latvia impose the obligation on the State to ensure that a learner, in the process of acquiring education, could use, in a proportion preferred by him or her, another language, which is not the official language (*see Para 20.5. of this Judgement*). Hence, in Latvia, learners whose native language is not the official language but is another language are not in comparable circumstances with learners, whose native language is the official language. Therefore, in the circumstances of the present case, the second sentence of Article 91 of the *Satversme* does not guarantee such right to this group of persons.

21.2. The Applicant holds that the contested norms envisage differential treatment of persons belonging to ethnic minorities, living in Latvia, whose native language is not one of the official languages of the EU, compared to those persons belonging to ethnic minorities, whose native language is one of the official languages of the EU.

The sixth paragraph of the Preamble to the *Satversme* highlights Latvia's role in promoting the values of united Europe. The EU is based on the

idea of united Europe. It is a supra-national organisation, which has created a common legal space and the Member States of which have common values. Latvia's aim to reinforce learning of the EU languages to participate fully in the processes of developing united Europe follows from the Preamble of the *Satversme* and the principle of good faith that exists in international law.

Para 2^1 of Section 9 (2) of the Education Law provides that education can be acquired in another language in educational institutions, where the subjects of the programme of general education are taught in a foreign language fully or partially to ensure mastering of other official languages of the EU, complying with the requirements of the respective standard of national education. It has been already recognised in this judgement that Section 9 (2) of the Education Law, in particular, its Para 2^1, is an exception to the general principle, included in Section 9 (1) of the Education Law, that in state and local government educational institutions the language of instruction is the official language.

Pursuant to Section 41 (2) of the Education Law, the specific feature of education programmes for ethnic minorities is the fact that the content that is needed to acquire the culture and language of the respective ethnic minority as well for integration into the Latvian society is included additionally. In difference to education programmes for ethnic minorities, the purpose of the exception established in Para 2^1 of Section 9 (2) of the Education Law is not developing the culture and identity of the state, the language of which is partially used as the language of instruction, but promoting in-depth acquisition of the respective foreign language. This applies to such educational institutions as, for example, Riga French Lyceé, Riga English Gymnasium, Riga Gymnasium of Nordic Languages (*see written reply by the* Saeima, *Case Materials, Vol. 2, p. 41*). Therefore the learners, who acquire education in state and local government institutions of education, acquiring, *inter alia*, in-depth a language of the EU states, cannot be compared to learners, who have chosen to master the national educational curriculum in state and local government

institutions of education, which implement educational programmes for ethnic minorities.

21.3. The Applicant holds that the contested norms envisage discriminatory treatment of also those learners belonging to national minorities, who attend state and local government institutions of education that implement educational programmes of ethnic minorities, compared to those learners belonging to ethnic minorities, who attend institutions of education that implement programmes of education of ethnic minorities in accordance with bilateral or multilateral international agreements entered into by the Republic of Latvia.

The Constitutional Court establishes that on 1 January 2019 the following international agreements are applicable to the present case:

1) Agreement between the Government of the Republic of Latvia and the Government of the Republic of Poland on Cultural and Educational Co-operation (concluded on 29.03.2006.);

2) Agreement between the Government of Ukraine and the Government of the Republic of Latvia on Co-operation in Education, Science, Youth and Sports (concluded on 29.09.2017.);

3) An Agreement between the Governments of Latvia and Israel on Co-operation in Fields of Education, Culture and Science. (concluded on 27.02.1994.);

4) An Agreement between the Ministry of Education and Science of the Republic of Latvia and the Ministry of Education of the Republic of Belarus Education in Co-operation in Education and Science (concluded on 13.05.2004.);

5) Agreement among the Government of the Republic of Latvia, the Government of the Republic of Estonia and the Government of the Republic of Lithuania, on the creation of a common educational space in general upper secondary education and vocational (up to higher education level) education within the Baltic States (concluded on 10.07.1998.).

If an institution of education implements general secondary education programme on the basis of a bilateral or multilateral international agreement entered into by the Republic of Latvia, a special requirement with respect to the minimal admissible number of learners on the level of secondary education has been envisaged (*see Cabinet Regulation of 11 September 2018 No. 583 "Criteria and Procedure in which the State Participates in Financing Teachers' Remuneration on the Level of Secondary Education" Sub-para 4.3.1.*). With the aim of developing and safeguarding ethnic, cultural and linguistic identity, the Parties commit themselves to ensure to ethnic minorities, living in the territory of the Republic of Latvia, teaching of the native language, history and culture as well as education in the native language in accordance with the system of education of the Republic of Latvia. None of these agreements provide for the right to special proportion of using the language of ethnic minority in the process of education, different from the one defined in the Education Law. Therefore, the Applicant's opinion that these groups are in circumstances that are comparable according to a particular criterion is unfounded.

Thus, in the circumstances of the present case, differential treatment does not exist and the contested norms comply with the second sentence of Article 91 of the *Satversme*.

22. The Applicant holds that the measures taken by the State to reinforce the use of the official language in the system of education and adoption of the contested norms accordingly are contrary to 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."

In assessing the compliance of the contested norms with Article 114 of the *Satversme*, the Constitutional Court should, first and foremost, establish what an ethnic minority is in the meaning of this Article of the *Satversme* and what kind of rights and obligations this Article of the *Satversme* defines.

In establishing the scope of Article 114 of the *Satversme*, the Constitutional Court must reveal the place of this Article in the system of the *Satversme*. The Preamble to the *Satversme* reflects the process of consolidation of the Latvian nation and the decision to establish the Latvian State to "ensure freedom and promote welfare of the people of Latvia and each individual (*see the first paragraph in the Preamble to the* Satversme). Article 2 of the *Satversme* provides that, in Latvia, the sovereign power is vested in the people of Latvia.

In Latvia, representatives of other nationalities have always lived alongside Latvians throughout history. The Latvian national culture developed before the State of Latvia was established and became the foundation for the culture of an independent state. Cultures of Latvia's ethnic minorities began their special path of development after 18 November 1918, when ethno-cultural communities turned into minorities and residents belonging to these – into Latvian citizens (*see: Dribins L., Goldmanis J. Mazākumtautību devums Latvijas Republikas kultūrā. Grām.: Stradiņš J. (red.) Latvieši un Latvija: akadēmiskie raksti. IV sējums „Latvijas kultūra, izglītība, zinātne". Rīga: Latvijas Zinātņu akadēmija, 2013, 231. lpp.*). Soon after State of Latvia was established, i.e., on 23 August 1919, the law on nationality that was adopted granted Latvia's citizenship to all persons – irrespectively of ethnicity, who had officially lived in Latvia before the beginning of World War I. In the inter-war period, for example, 77 per cent of the total Latvian population were Latvians; 8.8 per cent – Russians; 4.9 per cent – Jews; 3.3 per cent – Germans; 2.5 per cent – Poles. The proportion of other nationalities was low, below two per cent (*see B. Zepa's opinion in Case Materials, Vol. 4, p. 13*), Hence, the concept of "the people of Latvia", used in the Preamble to the *Satversme*, includes all individuals, irrespectively of their ethnicity, who have legal ties with Latvia, i.e., Latvia's citizenship (*see: Ījabs I., Levits E., Paparinskis M., Pleps J. 2. panta komentārs. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Rīga: Latvijas Vēstnesis, 2014, 249. lpp.*).

Article 114 of the *Satversme*, which is systemically linked to the Preamble to the *Satversme* and Article 2, highlights ethnic minorities and reinforces their rights in the State of Latvia. This understanding of the scope of Article 114 of the *Satversme* is attested by the declaration that the Republic of Latvia submitted on 26 May 2005 upon ratifying the Minorities' Convention. Namely: "The Republic of Latvia declares that the term "national minorities", which is not defined in the Convention", under the Convention shall refer to those citizens of Latvia who differ from Latvians in terms of culture, religion or language who have been traditionally living in Latvia for generations, who consider themselves as belonging to the State of Latvia and the Latvian community, and who would like to preserve and develop their culture, religion and language" (*see Law "On the Framework Convention for the Protection of National Minorities", Section 2*). Hence, Latvia has recognised as the criteria for a person's belonging to an ethnic minority difference in culture, religion and language, citizenship and the historical link of the particular ethnic minority with Latvia.

Section 2 of the law "On the Framework Convention for the Protection of National Minorities" provides: "Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Convention as defined in the declaration submitted by Latvia, but who identify themselves as a national minority that meets the definition contained in the declaration, shall enjoy the rights prescribed in the Convention, unless specific exceptions are prescribed by the law".

In ratifying the Minorities' Convention, Latvia has added a declaration, in which it has underscored the impact of historical circumstances caused by the Soviet occupation (*see Latvia's Declaration upon Ratifying the Framework Convention for the Protection of National Minorities, the Preamble*).

The Constitutional Court already analysed the impact of these historical circumstances in the judgement in case No. 2004-18-0106 and also analysed it in the present case, taking into account its particular circumstances. The impact

of Latvia's historical circumstances on the changes in the ethnic composition was underscored also by the *Saeima* and the persons summoned in the case – the Ministry of Justice, the Ministry of Culture, the Ministry of Education and Science, the Ombudsman, R. Āboltiņš, I. Druviete, D. Hanovs, and B. Zepa.

During the period of Soviet occupation, large numbers of migrants moved to the territory of Latvia from the territory of the USSR of the time. As B. Zepa notes in her opinion, in the period from 1951 to 1990, immigration indicator in Latvia exceeded the indicators of emigration; moreover, in some periods, the increase in the scope of migration was among the highest globally (*see Case Materials, Vol. 4, p. 3*). Thus, in the period of Soviet occupation, the proportion of ethnic Latvian inhabitants in Latvia significantly decreased. For example, in 1959, it was 62 per cent but in 1989 – only 52 per cent. Thus, in 1989, 48 per cent of Latvia's total population were people belonging to other nationalities, i.e., 34 per cent – Russians; 4.5 per cent – Belarusians; 3.5 per cent – Ukrainians; 2.3 per cent – Poles, but the proportion of other ethnic minorities did not amount to two per cent (*see R.Zepa's opinion in Case Materials, Vol. 4, p. 13).*

Thus, during the period of Soviet occupation, the historical ethnic composition of Latvia's society changed significantly. After the independence of the State was restored, alongside historical national minorities, the migrants that arrived during the Soviet occupation and their successors live in Latvia. Moreover, Latvia also has emerging ethnic minorities, for example, those migrants of the Soviet period, who do not belong to the historical national minorities but due to minority integration policy implemented in Latvia are gradually regaining their culture, language and also the selfhood typical of ethnic minorities (*see the transcript of the court hearing, Case Materials, Vol. 6, pp. 98, 101 and 108*).

Latvia's declaration added to the Minorities' Convention and Section 2 in the law "On the Framework Convention for the Protection of National Minorities" prove that the possibility of exercising the rights of Article 114 of the *Satversme* has been applied also to the migrants of the Soviet period. I.e., if

a person permanently residing in Latvia self-identifies with an ethnic minority that has historically resided in the territory of Latvia, it can exercise the rights guaranteed in Article 114 of the *Satversme*.

23. Continuing assessment, the Constitutional Court must clarify what rights and obligations Article 114 of the *Satversme* defines.

As noted above in this judgment, Article 114 of the *Satversme* reveals the content of the principle of respecting ethnic minorities. Hence, in Latvia, the singularity of ethnic minorities is safeguarded alongside the Latvian values. In difference to other Articles of Chapter VIII of the *Satversme*, Article 114 is particular content-wise; i.e., it covers not only a person's right to maintain their language and culture but also collective right with a united aim – to ensure preservation and development of the ethnic minority's identity since a person belonging to an ethnic minority can preserve their identity only together with other persons belonging to the respective national minority.

The content of rights included in Article 114 of the *Satversme* should be revealed in interconnection with documents of international law in the area of protecting the right of national minorities binding upon Latvia.

The rights of national minorities are recognised in Article 27 of the Covenant. The Human Rights Committee in General Comment No. 23 explains: for the national minority to preserve and develop its language, ethnic and cultural singularity, the States must guarantee the possibility to use this language, to establish their schools and centres of culture or religion [*see: UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5*]. This means that the State cannot prohibit ethnic minorities from implementing such initiatives. Moreover, the State, within the limits of its possibilities, should provide both financial and administrative support for such initiatives.

It is recognised in the Minorities' Convention that protection of the rights and freedoms of national minorities and persons belonging thereto is an integral part of the international system for protecting human rights, and the

scope of minority rights protection is specified. The Minorities' Convention comprises certain principles that the Member States must abide with, in implementing its general purpose, – creating climate of tolerance and dialogue in a pluralistic society, at the same time granting discretion to the Member States with respect to implementation of particular measures (*see also Framework Convention for the Protection of National Minorities, Derogation 13 and Article 1).*

23.1. The Applicant holds that decreasing the proportion of using the languages of ethnic minorities in state and local government schools on the level of basic education and the transition to Latvian as the language of instruction on the level of secondary education is incompatible with the standard set in the second part of Article 14 of the Minorities' Convention (*see application in Case Materials, Vol. 1, pp. 13 –17*). Substantially, this opinion was supported also by the summoned persons S. Semenko, N. Rogaļeva.

Pursuant to Article 31 of the Vienna Convention on the Law on Treaties of 1969, a legal norm included in an international treaty must be interpreted in good faith, clarifying its grammatical meaning and taking into account its context, as well as the subject and purpose of the treaty. Article 14 of the Minorities' Convention should be interpreted accordingly.

Article 14 of the Minorities' Convention specifies the scope of right to education necessary to preserve the identity of national minorities. The Article consists of three parts, interconnected content-wise. The first part of Article 14 of the Minorities' Convention stipulates that any person belonging to a national minority has the right to learn the minority language, which is one of the means by which such persons can assert and preserve their identity. (*see Framework Convention for the Protection of National Minorities and Explanatory Report, Para 74*). The second part of Article 14 of the Minorities' Convention also provides that, in certain circumstances, a person belonging to a national minority should have the possibility to acquire education in the language of the respective national minority or to learn this language. Whereas the third part of

Article 14 stipulates that the second part of this Article must be implemented without prejudice to the learning of the official language.

It is noted in the Explanatory Report to the Minorities' Convention with respect to the second part of Article 14 that the condition included in it pertains both to learning the language of a national minority and acquiring education in the language of the national minority. Recognising the possible financial, administrative and technical burden that could arise, this provision is worded in a way that leaves broad discretion to the States Parties to the Convention (*see Framework Convention for the Protection of National Minorities and Explanatory Report, Para 75 and 76*). Thus, the States have been given the possibilities of choice, abiding by the purposes of the Minorities' Convention, to implement one or both provisions; moreover, taking into consideration the available resources and the system of education that has been established.

Hence, it follows from Article 114 of the *Satversme*, interpreted in interconnection with international human rights documents in the area of protecting national minorities, that national minorities have the right to develop their language, their ethnic and cultural singularity, *inter alia*, within the framework of the educational system established by the State.

23.2. Further, the Constitutional Court must clarify the State's obligations in ensuring the rights of ethnic minorities in state and local government institutions of education within the framework of the educational system maintained by the State.

The Applicant has referred to consideration regarding Latvia included in the Opinions by the Advisory Committee and has underscored that Committee sees a number of problems in the situation in Latvia.

The context, in which the standard of the Minorities' Convention, binding upon Latvia, should be interpreted, is constituted also by the practice of other Member States and the analysis of this practice, which allows ascertaining the compliance of those measures that some States have taken to implement the Convention. With respect to Sub-para "b" of Para 3 of Article 31 of the Vienna Convention, which stipulates that alongside the

context of the treaty also the practice of applying the treaty should be taken into account, which proves the agreement of the Member States on interpretation thereof, the International Law Commission notes that the opinion of the expert committee established on the basis of the treaty could facilitate the development of the States' practice or to identify such practice [*International Law Commission, Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties. 2018, (A/73/10), Conclusion 13, commentary, paras. 11–12, pp. 110–111*]. The International Law Commission has noted in its conclusions that the expert committee, exercising the competence defined in the treaty, could contribute to the interpretation of the treaty in connection with the analysis of the national practices. However, the competence of the expert committee should be distinguished from judicial competence. I.e., a legally binding interpretation of an international treaty is provided only by a court. The findings and recommendations made by an expert committee must be taken into account, on the basis of the good faith principle, in meeting treaty commitments [*sk.: ibid., para. 23, p. 115*].

The Constitutional Court has familiarised itself with the Opinion of the Advisory Committee of 2018 in the framework of the third monitoring cycle regarding Latvia with respect to the issue to be examined in this case. The Opinion of the Advisory Committee on Latvia is that none of the implemented measures should decrease the role of the school in preserving the identity of an ethnic minority, *inter alia*, culture, tradition and national heritage. Public institutions have been repeatedly called upon to ensure continuous access to education in the languages of ethnic minorities throughout the territory of the state to meet the existing demand. However, in assessing the education reform, the need to reinforce the knowledge of the official language among learners belonging to ethnic minorities is pointed to. (*see The Advisory Committee's Third Opinion on Latvia, No. ACFC/OP/III(2018)001, Para 152 and Para 154*). In its Opinion, the Advisory Committee expresses its view on education in the languages of ethnic minorities, criticises actions taken by the State and

expresses regret regarding Latvia's efforts to consolidate the official language as the basic language of instruction within the united system of education established by the State (*see The Advisory Committee's Third Opinion on Latvia, No. ACFC/OP/III(2018)001, Para 146 –156*). The Constitutional Court finds that also the Committee on Elimination of All Forms of Racial Discrimination has expressed concern regarding the impact of the process of education reform on the rights of ethnics minorities in Latvia (*see: Concluding Observations on the Combined Sixth to Twelfth Periodic Reports of Latvia. 25 September 2018. CERD/C/LVA/CO/6-12, para. 20*).

The Constitutional Court finds that the considerations included in the aforementioned opinions could be expressed on the basis of information available to the experts. As noted by the Ombudsman at the court hearing, he had had to conclude that these committees do not have full and comprehensive information and legal reasoning at their disposal (*see the transcript of the court hearing, Case Materials, Vol. 6, pp. 131 and 136.*). The representatives of the Ministry of Foreign Affairs also drew the Court's attention to this fact (*the transcript of the court hearing, Case Materials, Vol. 5, pp. 128–129*). The Constitutional Court subscribes to this opinion and see no grounds for making the conclusion that the State's obligation to ensure such form of preserving and developing the language, ethnic and cultural singularity of ethnic minorities as acquiring education in the language of the ethnic minority or in a certain proportion of using this language in state and local government educational institutions in the framework of educational system established by the State, without taking into account the national constitutional system and the general purpose of the Minorities' Convention – to create climate of tolerance and dialogue in a pluralistic society – would follow from the Minorities' Convention.

The Convention of Minorities confers extensive discretion to the Member States in embodying the principles defined in it, allowing taking into consideration the singularities of the constitutional system, historical and geopolitical situation of each State and the fundamental principles of a

democratic state governed by the rule of law defined in constitutional basic laws. This is attested also by the practice of other Member States with respect to models of education that are used. I.e., the models used by the States Parties to the Minorities' Convention differ; whoever, the most common solution are schools, where the official language dominates and certain subjects are taught in the language of the ethnic minority or with its assistance (*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 1996, para. 2.3.2*). The Constitutional Court finds that also the Reports by the Advisory Committee on the implementation of the Minorities' Convention in the Member States reflect very diverse practice with respect to meeting the commitments that follow from its Article 14. In general, the Advisory Committee has recognised diverse national practices as being compatible with the Minorities' Convention [*see, for example, Fourth Opinion on Finland, No. ACFC/OP/IV(2016)002, Fourth Opinion on Germany, No. ACFC/OP/IV(2015)003, Fourth Opinion on Sweden, No. 2017ACFC/OP/IV(2017)004*]. The diversity of national practices prohibits from drawing conclusions on united interpretation of Article 114 of the Minorities' Convention.

The purpose of the Minorities' Convention is to consolidate the solidarity among the Member States of the Council of Europe within European cultural space. I.e., the aim of protecting the rights of ethnic minorities is to promote enrichment and solidarity of society in general. Likewise, the rights of ethnic minorities that are guaranteed in Article 114 of the *Satversme* are aimed at ensuring balance in society, by creating a benevolent environment for the preservation of the languages, ethnic and cultural singularity of ethnic minorities, at the same time ensuring due respect for constitutional values. This purpose can be implemented if society in general and, *inter alia*, ethnic minorities themselves also perceive exercising the rights of ethnic minorities as enriching society in general. Exercising the rights of ethnic minorities may not be aimed at social segregation and threaten social unity. If those belonging to

different identities retreat each in the space of his own identity the possibility of democratic discourse and common activities in a united society is jeopardised. (*see: Fukuyama F. Identity. Contemporary Identity Politics and the Struggle for Recognition. London: Profile Books, 2018, p. 165*).

The principle of reciprocal enrichment of democratic society must be complied with also in the area of education. I.e., the State must support preservation and development of the singularity of ethnic minorities within the framework of a united system of education, promoting the development of a common identity of democratic society and not by contrasting the rights of ethnic minorities with the shared interests of society. The Convention on the Rights of the Child also defines the State's obligation not to deny a child, who belongs to an ethnic or linguistic minority, the right to enjoy the values of his or her culture together with others belonging to this minority or to use the native language (*see Article 30 of the Convention on the Rights of the Child*) but also provides that one of the aims of education is to develop in the child respect for the national values of the country, in which the child lives (*see Sub-para "c" of the first part of Article 29 of the Convention on the Rights of the Child*).

Hence, the State has the obligation to ensure the possibility to acquire in state and local government schools education that consolidates the common identity of a democratic society.

24. The Applicant holds that decreasing the proportion of using languages of ethnic minorities in state and local government schools on the level of basic education as well as the transition to the Latvian language as the language of instruction on the level of secondary education jeopardises exercising the rights of ethnic minorities. The Applicant's arguments, substantially, refer to possible insufficient fulfilment of the State's obligation and possible restriction of the rights of ethnic minorities.

In view of the considerations expressed by the Applicant and the summoned persons, in the present case, the Constitutional Court has to provide answers to the following questions:

1) whether, in adopting the contested norms, the principle of good legislation had been complied with;

2) whether, in the system of education in state and local government schools, the possibilities to preserve and develop the language, ethnic and cultural singularity of ethnic minorities have been ensured.

24.1. The Applicant holds that, in the drafting and adoption of the contested norms, representatives of ethnic minorities had not been sufficiently involved and heard, that their proposals had not been sufficiently examined (*see application in Case Materials, Vol. 1, p. 11).* The *Saeima* does not uphold this opinion held by the Applicant and underscores that all objections made by the representatives of ethnic minorities had been examined and voted on (*see the* Saeima's *written reply in Case Materials, Vol. 2, p. 38*).

Article 15 of the Minorities' Convention imposes an obligation upon the State to create the conditions necessary for the effective participation of persons belonging to ethnic minorities in cultural, social and economic life and in public affairs, in particular, those affecting ethnic minorities. The Advisory Committee has assessed implementation of the commitments included in this Article in the States Parties to the Convention by analysing the participation of persons belonging to ethnic minorities not only in elected bodies but also in expert committees, non-governmental organisations and institutions established for dealing with social, cultural and economic issues. I.e., the right to participation in public rights of the ethnic minority is extensive in its scope (*see: Verstichel A. Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits. Antwerp: Intersentia, 2009, p. 32*).

As the Constitutional Court has already recognised, the *Satversme* advances certain requirements for any decision that pertains to an important issue in public life that ensure that the decision is adopted in the interests of

society in accordance with the principle of a democratic state governed by the rule of law (*compare to Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 7 of the Findings*). The legislative process must comply not only with the formal requirements set in regulatory enactments but also must foster persons' trust in the State and law (*see Judgement of 12 April 2018 by the Constitutional Court in Case No. 2017-17-01, Para 21.3.*).

The Constitutional Court has also recognised that the legislator must ensure a process of drafting regulatory enactments with sufficient hearing and assessment of opinions, including proposals and alternatives (*compare to Judgement of 7 July 2014 by the Constitutional Court in Case No. 2013-17-01, Para 28.1.)*. Thus, abiding by the principle of good legislation in adopting decisions that affect the rights of ethnic minorities means that the right to participate of persons belonging to ethnic minorities is respected; i.e., the opinions and proposals of the respective persons or social groups are heard and examined.

To ensure the involvement of society, *inter alia*, of ethnic minorities, in the democratic discussion, the legislator examines a draft law openly at the sittings of the *Saeima* and those committees, where it is possible to discuss it and the members of the *Saeima* may exercise their right to express their opinion and to vote. In a democratic state governed by the rule of law, the legislator also has the obligation to inform society in due time and appropriately and to involve it, to the extent possible, in the legislative process and to seek the stakeholders' advice (*see Judgement of 6 March 2019 by the Constitutional Court in Case No. 2018-11-01, Para 18.1.*). Compliance with the principle of good legislation facilitates the development of certainty regarding the legality of adopted decisions in society.

The contested norms have been adopted by two separate amendments to laws; i.e., by the law of 22 March 2018 "Amendments to the Education Law" and the law "Amendments to the General Education Law" adopted on the same date. Examination of both draft laws had been interlinked. It follows from

information included in the initial impact assessment reports (hereinafter – annotations) on the need to draft both legal acts and interconnection thereof. Annotations present the purpose of the intended regulation, characterise the current issues, include research data and information about the constitutionality of the regulation. At the court hearing, the representative of the Ministry of Education and Science O. Arkle confirmed that both amendments to laws had been discussed at the Advisory Council on Minority Education Affairs (*see the transcript of the court hearing in Case Materials, Vol. 6, p. 6).*

The Rules of Procedure of the *Saeima* envisage entrusting large part of the preparatory work in drafting a law, prior to examining it at the sitting of the *Saeima,* to the committees of the *Saeima,* and it is the responsible committee that ensures that the draft law is fully prepared for examination at the sitting of the *Saeima* (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 18*).

It follows from the case materials that both draft laws that include the contested norms were reviewed at the sittings of the Committee of Education, Culture and Science of the 12th convocation of the *Saeima* on 14 and 28 February and 1 and 14 March 2018. K. Šadurskis, the Minister for Education and Science, as well as representatives of several other ministries, the representative of the *Saeima* Legal Bureau, the Ombudsman's representative, as well as other social partners, representatives of the sector and parents' representative attended all sittings of the Committee (*see minutes of the sittings of the Committee of Education, Culture and Science of the 12th convocation of the* Saeima *of 14, 28 February and 1, 14 March 2018), Case Materials, Vol. 2, pp. 73 –155*).

Those present at the sittings of the Committee of Education, Culture and Science have expressed their opinions and debated (*see audio recordings and minutes of the sittings of the Committee of Education, Culture and Science of the 12th convocation of the* Saeima *of 14, 28 February and 1, 14 March 2018 in Case Materials, Vol. 2., pp. 73 –155 and Vol. 3, pp. 1 –77*). The materials of the Committee's sittings prove that all proposals submitted within the set term

were discussed and assessed. Likewise, the opinion expressed by the Advisory Council on Minority Education Affairs was examined (*see Case Materials, Vol. 2, pp. 101 –103*). Members of the *Saeima*, including those who submitted application requesting initiation of the present case, have submitted proposals, the Committee has examined each of them; moreover, the Minister for Education and Science K. Šadurskis and representatives of ministries have provided explanations regarding these (*see Case Materials, Vol. 2, pp. 92 – 110*). Each proposal has been voted on. The *Saeima* has examined both draft laws in three readings and adopted the laws on 22 March 2018. The President promulgated both laws on 2 April 2018.

The Constitutional Court underscores that the principle of good legislation, *inter alia*, in the area of the rights of ethnic minorities, does not guarantee a particular outcome preferable to a person or a group of persons; however, abiding by it assures everyone that the particular matter has been democratically debated, i.e., different opinions have been expressed and analysed, and the best possible balance between various conflicting rights and interests has been searched for, abiding by the values included in the *Satversme* and the general principles of law. The Constitutional Court has not gained confirmation of the considerations expressed by the Applicant that the opinion of the representatives of ethnic minorities on the contested norms had not been heard. No other aspects in the adoption of the contested norms have been contested in the case.

Thus, in the adoption of the contested norms, the principle of good legislation has been complied with.

24.2. The Constitutional Court must ascertain, whether the possibility to preserve and develop the language of an ethnic minority, ethnic and cultural singularity has been created in state and local government schools within the framework of the educational system established by the State, at the same time ensuring that the common identity of a democratic society is reinforced.

The *Saeima* and several summoned persons – the Ministry of Foreign Affairs, I. Druviete, D. Hanovs and B. Zepa – underscore that, in the

circumstances of the present case, it is important to take into account the context, in which the contested norms were adopted, i.e., the negative and still perceptible effect left by the occupation on the use of the official language in society in general (*see Case Materials, Vol. 3, pp. 83, 87, and Vol. 4, pp. 3–9 and 21*). It has been recognised also by the Advisory Committee in its Third Opinion on Latvia, indicating that Latvia is still struggling with the consequences of the past https://rm.coe.int/revised-version-of-the-english-language-version-of-the-opinion/1680901e79 (*see Executive Summary of the Third Opinion on Latvia of the Advisory Committee on Framework Convention on Protection of National Minorities of 23 February 2018*).

The special circumstances that have developed as the result of lengthy occupation and Russification already were analysed in case No. 2004-18-0106 (*see Judgement of 13 May 20025 by the Constitutional Court in Case No. 2004-18-0106, Para 1 and 2 of the Findings*). Para 22 of this judgement also refers to these circumstances. Due to migration facilitated by the occupational power, the issue of language use became relevant. Although part of the migrants of the Soviet period were not ethnic Russians, in Latvia, their only language of communication was Russian. The issue of communication was resolved by implementing general Russification, allowing the use of Russian in daily communication without any restrictions and imposing the use of it in state institutions.

In the field of education, Russification was implemented by paying special attention to learning of the Russian language in schools with Latvian as the language of instruction as well as by establishing schools with Russian as the only language of instruction and, thus, in fact, creating a segregated system of education. Hence, by the language use in society, *inter alia*, in the educational system, the Russian language was given special privileges and it rapidly spread throughout society (*see B. Zepa's opinion in Case Materials, Vol. 4, p. 4*). The impact left by occupation on the language use within the system of education is proven also by considerations expressed by the Applicant and persons summoned in the case S. Semenko, D. Kļukins and

N. Rogaļeva that many children, upon starting school, have no knowledge of Latvian and therefore they encounter difficulties in acquiring the curriculum in the official language. Those teachers, whose native language is not Latvian, continue having difficulties in communicating in the official language, *inter alia*, ensuring that the programmes of education are acquired in the official language (*see the transcript of the court hearing in Case Materials, Vol. 5, pp. 59 and 74*).

The persons summoned in the case I. Druviete and B. Zepa noted that the linguistic attitude was an important factor influencing the opinion of ethnic minorities on the contested norms and the official language in general. Linguistic attitude should be understood as a set of subjective factors, for example, peculiarities in language perception among social groups and individuals, attitudes towards different languages and the measures taken by state institutions to regulate the linguistic situation. Linguistic attitude is influenced, *inter alia*, by the environment, in which a child develops (*see: Baltaiskalna D. Lingvistiskās attieksmes – būtisks valodas politikas faktors. Grām.: Vēbers E. (red.) Integrācija un etnopolitika. Rīga: Jumava, 2000, 231.–232. lpp.*).

Allegedly, attitude towards the Latvian language is influenced also by the fact that following restoration of Latvia's independence the status of the Latvian language as the only official language has been enshrined in the *Satversme*, whereas the Russian language lost its official status that it held during the period of Soviet occupation.

The *Saeima* and a number of persons summoned in the case have underscored that also following restoration of the State's independence, in Latvia, Russian is extensively used in society. The choice of Russian is available in movie theatres and TV broadcasts (translation of subtitles in Russian is provided). The content of many mass media outlets is, basically, created in Russian, and many press editions are available only in Russian. In this situation, there is no other national minority in Latvia, the regaining of whose identity following the policy of Russification implemented during the

Soviet occupation for a long time has been supported by the State of Latvia already since it regained its independence (*see the transcript of the court hearing in Case Materials, Vol. 5. pp. 50 –52 and Vol. 6, pp. 106, 114*). Other persons summoned in the case also expressed the opinion that the Russian language was self-sufficient in Latvia; i.e., that it was enough to know only Russian for daily communication and it was possible to do without knowledge of Latvia (*see the transcript of the court hearing in Case Materials, Vol. 5, pp. 54 and 86 –87*). Thus, the State's obligation to create pre-conditions for the participation of ethnic minorities in the discourse typical of a democratic society but also ethnic minorities should show initiative to participate in this discourse in the official language. D. Hanovs pointed to this, underscoring that negative attitude, as a matter of principle, towards the official language and insufficient initiative to participate in the common discourse of civil society hindered the development of civil society. Initiative of individuals belonging to ethnic minorities was said to be an important pre-requisite of social integration. Ethnic minorities should participate effectively, offering solutions, acceptable to each of them, within the framework established by the *Satversme* (*see the transcript of the court hearing in Case Materials, Vol. 6, p. 35*).

An individual need appropriate knowledge of the official language to wish and be able to participate in public life. Alongside its other functions, the official language also performs specific tasks of national importance since it ensures the functioning of the state and communication between a person and the State (*see: Lässig C. L. Deutsch als Gerichts- und Amtssprache. Berlin: Duncker & Humblot, 1980, S. 11–15*). The Preamble to the *Satversme* reveals values that are the foundation for creating an inclusive democratic society. The Latvian language is one of these values. It is an integral part of the constitutional identity of the Latvian State. The function of the official language to serve as the common language of communication and democratic participation follows from the constitutional status of the official language (*see Valsts prezidenta Konstitucionālo tiesību komisijas 2012. gada 17. septembra*

viedokļa „Par valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 319. punktu).

The Constitutional Court has already recognised that the Latvian language performs the functions of the only official language; i.e., it is the common language of communication for all residents of Latvia and a language that unites democratic society (*see Judgement of 21 December 2001 by the Constitutional Court in Case No. 2001-04-0103, Para 3.2. of the Findings*). Hence, all persons who reside permanently in Latvia should know the language of this state; moreover, on the level allowing full participation in the life of democratic society. Members of society, who understand and respect the values upon which the *Satversme* is founded, is the pre-requisite for the existence of a democratic state governed by the rule of law.

Hence, the right established in Article 114 of the *Satversme* is exercised by ethnic minorities by participating in the discourse of a democratic society in the official language.

24.3. The Constitutional Court has recognised that the basic aim of education is to ensure the learners' right to receive education that would allow developing and reinforcing the sense of belonging to Latvia (*see Judgement of 21 December 2017 by the Constitutional Court in Case No. 2017-03-01, Para 19.3.*). Hence, the task of the educational system is to ensure that each learner, including those belonging to ethnic minorities, would know the official language on the level allowing to participate, according to one's own choice, in public life and be involved in the democratic processes of the state. In verifying, whether the State fulfils this obligation, the Constitutional Court must ascertain, whether the possibilities for acquiring appropriate skills of the official language and to preserve and develop the language of an ethnic minority, its ethnic and cultural singularity are ensured in state and local government institutions of education.

The Constitutional Court has already noted that the norm that in state and local government institutions of education the language of instruction is the official language was adopted already in 1998 (*see Para 20.2. of this*

Judgement). The aim defined in Section 2 of the Education Law is to ensure to every resident of Latvia the opportunity to develop his or her mental and physical potential, in order to become an independent and fully developed individual, a member of the democratic State and society of Latvia. This relates to the aims of the Official Language Law, *inter alia*, the aim to include representatives of ethnic minorities in Latvia's society, respecting their right to use their native language or other languages, and to increase the influence of the Latvian language in the cultural space of Latvia, thus facilitating social integration. The *Saeima* has underscored in its written reply that the ability to use the official language freely is needed not only to acquire higher education but is also an important pre-requisite for professional development, social activism and possibilities of choice with respect to accessible information space. I.e., those individuals who are proficient in the official language have the possibility to compare to assess critically information obtained and qualitatively participate in the public discourse, which is an integral element of a democratic society (*see the* Saeima's *written reply in Case Materials, Vol. 2. p. 24*). Knowledge of the official language as a necessary pre-requisite for participation in the life of a democratic society was highlighted also in the opinions expressed by a number of summoned persons – I. Druviete, D. Hanovs, the Ministry of Justice and the Ministry of Culture (*see Case Materials, Vol. 3, pp. 84, 87, 91 and 123*).

Section 41 of the Education Law applies, in particular, to the regulations on developing educational programmes for ethnic minorities, the second part of this Section provides, *inter alia*, that the curriculum necessary for acquiring the respective ethnic culture and integration of ethnic minorities in Latvia should be included in the educational programmes for ethnic minorities

Para 2 of the Cabinet Regulation of 27 November 2018 No. 747 "Regulation Regarding the State Standard in Basic Education, the Subjects of Study Standards in Basic Education and Model Basic Education Programmes" provides that the aim of implementing the curriculum of basic education is a fully developed and competent student, who is interested in his or her

intellectual, social, emotional and physical development, leads a healthy and safe life-style, enjoys learning and shows interest in it, participates in a socially responsible way in public affairs and shows initiative, is a patriot of Latvia. Para 1 of Annex 12 to this Regulation "Model of Basic Education Programme for Ethnic Minorities" stipulates that the aim of basic education programme for ethnic minorities is to ensure comprehensive development and value system of a student so that the student would want to be able to continue general education or acquire vocation in the official language, participate in public life and develop into a happy and responsible personality. Whereas Para 2 of Annex 12 to this Regulation provided that, in implementing educational programme for ethnic minorities, acquisition of the ethnic culture is ensured, integrated learning of the official language and the study curriculum is promoted, and the student's integration into Latvia's society is facilitated.

The aforementioned Annex stipulates that an educational institution may choose one of the following proportions of language use in acquiring the study curriculum to implement the teaching process

1) the institution of education determines the subjects to be studied in Latvian, in the amount of at least 80 per cent of the load of classes in the school year, and study subjects to be learned in the language of an ethnic minority and bilingually;

2) the institution of education determines the subjects, in Grades 1- 6, to be studied in Latvian in the amount of at least 50 per cent of the total load of classes in the school year, including foreign languages, and study subjects to be learned in the language of an ethnic minority and bilingually;

3) developing its own educational programme and including in it study subjects, which are not included in the model basic education programme, the educational institution determines the subjects that in Grades 1-6 must be learned in Latvian in the amount of at least 50 per cent of the total load of classes in a school year, including foreign languages, and study subjects to be learned in the language of the ethnic minority and bilingually, as well as the study subjects that in Grades 7-9 must be learned in Latvian in the amount of at

least 80 per cent of the total load of classes in a school year, including foreign languages, and study subjects to be learned in the language of the ethnic minority and bilingually. Moreover, the total number of classes in a study subject has been set for three years, allowing an institution of education to plant he study curriculum and organise the learning process flexibly, in accordance with the outcomes to be reached (*see Para 7 and 8 of Annex 12 to the Cabinet Regulation of 27 November 2018 No. 747 ""Regulation Regarding the State Standard in Basic Education, the Subjects of Study Standards in Basic Education and Model Basic Education Programmes*").

Ensuring the rights of ethnic minorities envisaged also on the level of secondary education. Para 2 of the Cabinet Regulation of 21 May 2013 No. 281 "Regulations Regarding the State General Secondary Education Standard, Subject Standards and Model Education Programmes" provides that one of the main aims of educational programmes is promoting a socially active attitude of the learner, preserving and developing his or her language, ethnical and cultural singularity, as well as improving understanding of the basic principles of human rights included in the *Satversme* of the Republic of Latvia and in other legal acts (*see "Cabinet Regulation No. 281 "Regulations Regarding the State General Secondary Education Standard, Subject Standards and Model Education Programmes", Para 2.3.*) Para 5 of this Regulation, in turn, defines the main objectives of educational programmes, *inter alia*, the following: to improve the competences of the Latvian language, minority language (in minority education programmes) and foreign languages as the means for mental development, intellectual development and self-realisation of an individuality in a multicultural society; to improve understanding regarding cultural diversity in the context of cultural values of Latvia and the world; to promote personal interest and understanding regarding his or her place in the society, culture heritage of Latvia and the world, responsible participation in creation of the culture environment on the basis of democracy principles and human values (*see "Cabinet Regulation No. 281 "Regulations Regarding the*

State General Secondary Education Standard, Subject Standards and Model Education Programmes", Para 5.2., 5.3. and 5.4.).

Thus, the Education Law and the national standards, established on the basis of this law as well as the model educational programmes ensure the possibility to learn the language of a national minority and also preserve the culture and identity of a national minority, at the same time creating for learners belonging to national equal opportunities to develop into full-fledged members of the Latvian society. Such an approach by the State to organising the system of education complies with Article 114 of the *Satversme* in interconnection with Article 14 of the Minorities' Convention. I.e., the rights of national minorities to using their own language within the framework of the educational system must be exercised without prejudice to learning the official language or acquiring education in the official language (*see also the text of the Framework Convention on the Protection of National Minorities and Para 78 of Explanatory Report*).

The Constitutional Court has recognised already before that, in developing a tolerant society, the initiative and co-operation of the ethnic minorities themselves to integrate into the common democratic identity are of great importance. It is recognised in the Preamble to the Minorities' Convention that, parallel to the State's obligations, also every person should act in a way to direct exercising the rights of national minorities towards enrichment of society rather than division of it. It is underscored in the Preamble to the International Covenant on Economic, Social and Cultural Rights that, alongside the State's obligations, also that an individual has duties to other individuals and the community to which he belongs. In the context of the present case, it is important to underscore once again also the Convention on the Rights of the Child, which stipulates that for a child to develop fully and harmoniously as a personality, he or she needs to be brought up in the spirit of peace, self-respect, tolerance, freedom, equality, and solidarity (*see Convention on the Rights of the Child, Preamble, Para" d" of the first part of Article 29 and International Covenant on Economic, Social and Cultural Rights, the first*

part of Article 13). The duty of a democratic state governed by the rule of law is to ensure that the rights of each individual are respected and to create a harmonious framework for the development of free, educated personality. The right included in Article 114 of the *Satversme* is only one element of this framework that needs to be balanced with common values of society.

The Constitutional Court has not gained confirmation of the Applicant's opinion that the contested norms would prohibit from exercising the rights of ethnic minorities. I.e., the system of education established by the State envisages curriculum in the state and local government institutions of education that ensures the possibilities to learn the language of the ethnic minority as well as to preserve the culture and identity of ethnic minorities, at the same time creating for the learners belonging to ethnic minorities equal possibilities to develop into full-fledged members of Latvia's society. Neither do the contested norms restrict the possibilities of learners belonging to ethnic minorities to cultivate their language, ethnic and cultural singularity.

Hence, the contested norms, insofar they determine the language of instruction in state and local government institutions of education, comply with Article 114 of the *Satversme*.

The Substantive Part

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

held:

1) to examine the compliance of Section 1 (1) of the law of 22 March 2018 "Amendments to the Education Law" with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme* of the Republic of Latvia within the framework of case No. 2018-22-01;

2) to terminate the case in the part regarding the compliance of Section 1 (2), the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to the Education Law" and Section 2 of the law of 22 March 2018 "Amendments to the General Education Law" with Article 112 of the *Satversme* of the Republic of Latvia;

3) to recognise Section 1(2), the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to the Education Law" and Section 2 of the law of 22 March 2018 "Amendments to the General Education Law" as being compatible with the second sentence of Article 91 of the *Satversme* of the Republic of Latvia;

4) to recognise Section 1 (2), the first and the second part of Section 3 of the law of 22 March 2018 "Amendments to the Education Law" and Section 2 of the law of 22 March 2018 "Amendments to the General Education Law" as being compatible with Article 114 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

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

Chairperson of the court hearing S. Osipova