THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

Riga, May 13, 2005

JUDGMENT
in the name of the Republic of Latvia
in case No. 2004-18-0106

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Andrejs Lepse, Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins and Gunārs Kūtris with the Court session secretary Gunta Barkāne in presence of Boriss Cilevičs - the representative of the submitter of the claim i.e. twenty deputies of the 8th. Saeima: B.Cilevičs, I.Ribakovs, V.Buzajevs, V.Orlovs, A.Aleksejevs, I.Solovjovs, A.Klementjevs, A.Tolmačovs, J.Pliners, N.Kabanovs, V.Agešins, J.Sokolovskis, J.Urbanovičs, A.Vidavskis, A.Bartaševičs, J.Jurkāns, A.Golubovs, O.Deņisovs, S.Fjodorovs and M.Bekasovs as well as the authorized representative of the institution, which has passed the impugned act – the Saeima, the Head of the Legal Affairs Bureau Gunārs Kusiņš under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Items 1 and 6) and 17(Item 3 of the First Part) of the Constitutional Court Law on April 5, 12, 13 and 15, 2005 in a public hearing in Riga reviewed the matter

”On the Compliance of Section 9, Paragraph 3 of the Education Law Transitional Provisions with Articles 1, 91 and 114 of the Republic of Latvia Satversme, Article 2 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as its Article 14 (linked with Article 2 of the First Protocol), Articles 26 and 27 of the International Covenant on Civil and Political Rights, Article 5 of the International Convention on Elimination of any Form of Race Discrimination, Articles 2 and 30 of the Convention on the Rights of a Child as well as Article 18 of the Vienna Convention on the International Agreement Rights”.

The establishing part

1. On February 5, 2004 the Saeima adopted the Law ”Amendments to the Education Law”. By this Law, inter alia, Section 9, Paragraph 3 of the Education Law Transitional Provisions was expressed in a new wording: ” On September 1, 2004 – studies in the State and local government general educational institutions, in which the educational programmes for minority schools are realized, studies in the tenth form shall be commenced in the official State language in accordance with the Standard for the State general high school institutions; in the first academic year of the State and local government professional educational institutions studies shall be commenced in the official language in accordance with the State Education Standard for professional education or the Education Standard for the State professional high school education. The State general high school education Standard, the State professional education Standard and the professional high school education Standard determine that acquirement of the educational material in the State language shall be ensured in not less than three fifths from the total number of classes of a school year, including the foreign languages as well as ensures acquirement of subjects, which are connected with the language, identity and culture of the minority, in the language of the minority.”

2. On July 22, 2004 twenty deputies of the 8th. Saeima (henceforth – the submitter of the claim) submitted the claim to the Constitutional Court, contesting Section 9, Paragraph 3 of the Education Law Transitional Provisions. On the basis of this claim matter No. 2004-18-0106 was initiated on August 19, 2004. It is pointed out in the claim that the impugned norm does not comply with Articles 1, 91 and 114 of the Republic of Latvia Satversme (henceforth – the Satversme). The submitter of the claim holds that the impugned norm does not comply with several international legal norms either. Namely, with Article 2 of the First Protocol and Article 14 (linked with Article 2 of the First Protocol) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – EHRC), Articles 26 and 27 of the International Covenant on Civil and Political Rights, Article 5 of the International Convention on Elimination of any Form of Race Discrimination, Articles 2 and 30 of the Convention on the Rights of a Child as well as Article 18 of the Vienna Convention on the International Agreement Rights (henceforth – the Vienna Convention).

In the claim the submitter points out that the impugned norm runs contrary to Article 1 of the Satversme, as it follows from the principle of justice that the legislator, when choosing the measures for implementation of the educational policy, shall reach a fair balance between the contradictious interests of different members of the society.

However, to their mind the balance does not exist at the present moment, because the measures, chosen by the State are not efficient.

It follows from the claim that the impugned norm runs contrary also to Articles 91 and 112 of the Satversme. The submitter of the claim points out that - in conformity with Article 89 - Article 112 of the Satversme shall be assessed as read together with Article 2 of the First Protocol of EHRC, namely, ”in the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. Making reference to the case law of the European Court of Human Rights (henceforth – ECHR), the submitter stresses that Article 2 of the EHRC First Protocol does not determine the language in which teaching shall be realized so that the right to education would be observed. The second sentence of the above Article does not assign the state with the duty of taking into consideration the linguistic choice of the parents in the sector of education, but only their religious and philosophical convictions. However, the above Article guarantees the right to benefits of those measures of education, which exist at the concrete moment. The submitter of the claim stresses that – before the impugned norm was adopted - there existed the possibility of acquiring knowledge also in the language of the minority. Thus to their mind the impugned norm violates the rights of the minorities to education.

It is pointed out in the claim that the impugned norm violates the principle of legal equality, which has been fixed both in Article 91 of the Satversme and Article 26 of the International Covenant on Civil and Political Rights, as well as in several above mentioned legal norms. Taking into consideration the initial differences between the natives and the minorities, this principle – so as to implement the principle of complete equality - requires a differentiated attitude with regard to minorities. Therefore, when determining any restriction, its proportionality with the legitimate aim shall be assessed.

The submitter of the claim expresses the viewpoint that the above restriction has a legitimate aim. The restriction is directed to improvement of the knowledge of the State language among persons, belonging to minorities. Besides - to their mind – the Constitutional Court has also recognized that consolidation of the State language is closely connected with the democratic structure of the Latvian State. However, the submitter expresses the viewpoint that it is possible to reach the above legitimate aim with other measures, restricting the rights and legitimate interests of an individual in a lesser degree. It can be done first of all, by allocating additional funds for realization of several activities with an aim to improve knowledge of the State language.

Secondly - by carrying out several activities at the minority schools, for example, by increasing the number of the Latvian language classes as well as separating the subjects of the Latvian language and the Latvian literature etc.

The submitter of the claim holds that public benefit, acquired from the implementation of the reform, is less than the damages to the rights and interests of an individual.

It is mentioned in the claim that the impugned norms are unconformable with Article 114 of the Satversme , Article 27 of the International Covenant on Civil and Political Rights and Article 30 of the Convention on the Rights of a Child, as, by implementing the impugned norm, the rights of persons, belonging to minorities, to make use of their and other members of the certain group culture, religion and use their language are violated.

3. **At the Court session the representative of the submitter** stressed that he does not object to the proportion determined by the Law, however, he requested to declare the impugned norm as invalid so that the legislator was able to find a more reasonable solution, which would be ”flexible” and based on efficient cooperation of the parents, teachers and pupils as well as ensure realization of the fundamental aims of education in Latvia – quality, efficiency and accessibility.

   He recognized that the right to a State financed education in minority languages is not fixed in the EHRC or any other legally binding documents and as concerns the case – there is no dispute on the fact that the State experiences the right to determine the use of language in the educational process. However, in certain situations the restriction to use minority languages in public schools to his mind might be qualified as discrimination, namely, if education of a lower quality is being offered to persons, belonging to minorities. He drew the attention of the Court to the fact that in comparison with 1995, when the Universal Convention for the Protection of Minorities (henceforth – the Minority Convention) was signed, guarantees, allowing persons, belonging to minorities, to acquire secondary education in native language, have been limited. The above does not influence ratification of this Convention; however, it indicates that the Republic of Latvia does not act in accordance with the objectives of the Minority Convention.

   To his mind, the educational reform will negatively affect the quality of education, as it does not envisage any exceptions – one and the same proportion of the usage of the teaching language and unified term for its implementation has been determined, without taking into consideration the regional features, specialization, the body of the teachers, wishes of

the parents etc. The objectives of the impugned norm, their structure as well as several fundamental concepts have not been clearly defined either. The impugned norm does not increase the competition ability of the pupils, if just the language skills are not meant by it. The representative of the submitter of the claim expressed failure to understand the fact that serious research about the influence of the impugned norm on the quality of education has not been carried out. He also expressed doubt on the monitoring methods and practice of the quality of education.

Even though to his mind the government and local government institutions have done very much and noteworthy funds have been invested to ensure implementation of the impugned norm so as not to allow diminishing of the quality of education, still it is not clear whether the above measures have been sufficient to ensure equal possibilities of education for the children, belonging to minorities.

The representative of the submitter of the claim expressed the viewpoint that in a democratic society the compromise between the right of the minorities to effective protection against discrimination and maintaining of cultural identity on the one hand and use of the state language on the other hand is reached by making use of general principles of democracy. First of all – the principle of efficient participation, determined in several international legal instruments, i.e., that the viewpoint of those persons and groups, whose interests the particular decision concerns, shall be taken into consideration. The State of Latvia to his mind has not observed the principle of efficient participation and has not taken into consideration the viewpoint of the concerned persons, among them also that of the legal representatives of the children, on the conformity of the norm with the interests of children. He holds that public shall be involved in the discussion on the decisions, which - envisaging irreversible consequences – vitally change the future perspective of a certain group and consensus shall be reached. The impugned norm cannot be regarded as a compromise or a result of a dialogue, as the concerned persons, that is – the pupils of minority schools and their parents, school self-governments as well as the Saeima opposition deputies, who represent the citizens belonging to minorities, have not been involved in the process of adoption of the decision or at least in consultation about the problem; besides, suggestions of the Organization for the Protection of Latvian Schools with the Russian Language of Instruction have not been taken into consideration either. Formation of the Consultative Board of the Ministry of Education cannot be regarded as an adequate way for implementation of the efficient participation principle, as it has been formed only in 2001 when all main decisions had been adopted. It has not been created in conformity with the representation principle, as the majority of its members are the

employees of the Ministry and persons subordinated to the Ministry – school principals but not representatives of the civil minority society, who have been included in the body of the Board only in 2004. Besides, concrete and essential motions of the Board have been rejected without serious discussion. The representative of the submitter also pointed out that the attitude of the pupils and parents, belonging to the minorities to bilingual education, were on the whole positive but to the impugned norm –fundamentally negative.

4. **The Saeima - the institution, which has passed the impugned act** in its written reply points out that the aim of the educational process is ” use of the State language in acquiring knowledge at the State and local government educational institutions, at the same time ensuring that persons, who belong to minorities, master their native language and subjects, connected with their particular minority culture”.

   The impugned norm is a needed element for reaching this aim and it has a legitimate aim, which can be defined in a versatile way. The Saeima dismisses the viewpoint of the submitter that the legitimate aim of the impugned norm is just to improve the knowledge of the State language of persons, who belong to minorities. It is much more extensive and ”follows also from other norms”. First of all the impugned norm shall be analyzed as being read in conjunction with Article 4 of the Satversme, which determines that the Latvian language is the official language of the State. Maintaining and use of the Latvian language as the State language is ”one of the fundamental elements, priorities of the Republic of Latvia and it is a constitutionally guaranteed demand”. Secondly, when defining the aim of the impugned norm, the Saeima refers to Article 1 of the State Language Law, which – inter alia – determines that the above Law shall ensure ”the integration of members of ethnic minorities into the society of Latvia, while observing their rights to use their native language or other languages”, as well as ” the increased influence of the Latvian language in the cultural environment of Latvia, to promote a more rapid integration of society”. The Saeima holds that the impugned norm promotes implementation of this task.

   The Saeima concludes that the most essential elements of the legitimate aim of the impugned norm are strengthening of the use of the State language, ensurance of the right to use the Latvian language in any sphere of life within the whole territory of Latvia and promotion of integration of society, taking care of integration of the members of minorities into the society of Latvia, while observing their rights to use their native language.

   Opposing conclusion does not follow either from Article 114 of the Satversme, which determines that persons, belonging to ethnic

minorities have the right to preserve and develop their language and their ethnic and cultural identity. This norm shall be dealt with together with the already mentioned norms, which makes one conclude that ”the persons, belonging to ethnic minorities have the duty to integrate into the society and mastering the State language”. The Hague Recommendation on the Rights of Ethnic Minorities to Education confirms the above.

The Saeima does not agree to the viewpoint of the submitter that it is possible to reach the aims of the impugned norm by measures, restricting the right in a lesser degree. The written reply stresses the historical development of the education system of Latvia and progressive increase of the proportion of the Latvian language as well as the reaction of the legislator and administration institutions to hardships arising during the process.

The Saeima explains that the development of the normative regulation in the sphere of education has been progressive and consistent. The Republic of Latvia Education Law, which inter alia established the right of acquiring knowledge in the language of the State, was adopted already in 1991, but in 1995 the Law was amended, determining that at elementary schools and secondary schools, in which the language of instruction is not the Latvian language, at least respectively two and three subjects shall be taught in the State language. The Education Law, which is in effect now and has been passed in 1998, continues the tendency. In accordance with the fundamental principle fixed in it at State and local government educational institutions education shall be acquired in the official language of the State; even though one of the exceptions determines that education may be acquired in another language in institutions in which educational programmes for ethnic minorities are implemented. A certain amount of subjects at the above schools shall be taught in the official state language. The Saeima points out that ”the purpose of this norm was to determine the rights of these persons to maintain their language and to ensure by the quality of the educational programmes for ethnic minorities that these persons acquire knowledge of the State language in such an extent, which ensures their successful integration into the Latvian society and its labor market”. Realizing that ”the balance of these interests cannot be achieved in a short period of time”, already the initial wording of the Transitional Provisions of the Law envisaged that transition to acquirement of knowledge in the State language was postponed till September 1, 2004.

Making references to statistics data the written reply indicates that during this progressive process the knowledge of the State language of the teachers has improved, thus the number of educationalists, who are able to communicate only on the level of everyday speech is

insignificant. Besides, the headmasters of all the ethnic minority educational institutions have expressed readiness to commence transition to teaching in the State language.

In addition during the progressive process of the education reform the legislator and the State Board have reacted to the real situation in a ”flexible” way. First of all, as teaching of the Latvian language as a school subject has not given the desirable results, the above 1995 Amendments to the Education Law were introduced. It should ensure mastering of the State language with the help of practical use. Secondly, when September 1, 2004 was nearing, it was ascertained that transition to teaching only in the State language to the above date would not be possible. Therefore the impugned norm, which determines only partial transition to acquirement of school subjects in the State language, was established. Thirdly the educational institutions are allowed to choose the subjects to be taught in the State language.

The written reply declines the viewpoint of the submitter, that it is possible to reach the legitimate aim of the impugned norm by measures, which are less restricting. First of all, ”when learning the language just as a subject, functional bilingualism is very rarely achieved. […] In circumstances of Latvia – i.e. in circumstances of linguistic self-sufficiency of the Russian ethnic minority - the Latvian language in the function of a school subject is in fact the only way to achieve competitive level of knowledge of the State language”. Secondly, ”the measure offered by the submitter – increasing of the number of classes of the Latvian language as the school subject – would be even more restricting as it would increase the total study-load of pupils”. Thirdly, if adequate mastering of the Latvian language were not ensured in the State and local government educational institutions, the families would have to finance the process, and not everybody would be able to afford it. The Saeima reminds that ” ensuring the role of the State language, the State at the same time furthers maintenance of the language of the ethnic minority, multilingualism of the individual and positive attitude to language diversity”.

The Saeima does not agree with the statement of the submitter that the State has not furnished information on the educational reform. The State institutions organized seminars and conferences on the changes of the policy of education; a Consultative Council on the Issues of Education of Ethnic Minorities was carrying out activities, the project ”Open School” was implemented, besides at all the local government educational institutions there were coordinators of bilingual education.

5. **At the Court session the representative of the Saeima** pointed out that at the present moment the impugned norm is the only way to achieve the

situation under which the pupils later will be able to realize other rights, inter alia, the right to compete in the labor market and acquire higher education at the State universities in budget groups. Besides, the above norm allows implementation of the integration program for the Latvian society. If the aim of the norm is achieved the persons to be educated will have the possibility of freely and in conformity with their abilities making use of the right to employment. To his mind, the measures of the educational reform and the impugned norm are the most efficient means to reach such objectives and to ensure the fairest balance, which at the present moment is possible between different public representatives and their interests.

The representative of the Saeima acknowledged that there have been grounds for amending Section 9, Paragraph 3 of the Education Law Transitional Provisions and make its requirements more lenient. The existing situation and not the State resolutions determine the pace of the educational reform. He also conceded that in 1998, when Section 9, Paragraph 3 of the Education Law Transitional Provisions was adopted there had been hopes that the Russian-speaking persons would like to learn more subjects in the State language, unfortunately, that did not happen.

At the present moment the established Standard of secondary education ensures acquirement of subjects, connected with the ethnic minority language, identity and culture in the respective ethnic minority language and makes it clear what amount of knowledge shall be acquired in the official State language. In Latvia the representatives of the ethnic minorities are guaranteed the right to acquiring the knowledge under the ethnic minority educational program, in which are included the native language of the ethnic minority as well as school subjects, connected with the identity of the ethnic minority and its integration into the Latvian society.

The State Education Inspection (henceforth – the Inspection) has asked the educational institutions to submit self-appraisal on readiness to commence teaching subjects only in the State language on September 1, 2004. Opinion poll of pupils, teachers and parents has been carried out. One may deduce that - as concerns the educational institutions – deep and versatile analyses of the performance of the previous school year as well as the analyses of the readiness for implementation of changes have taken place and adequate plans for the further activities have been elaborated. At the present moment the Inspection continues assessment of the real situation. The documents, submitted to the Court, as well as March 17, 2005 Directive of the Inspection, in which the duty of checking the present situation has been set, testify the above.

The Saeima representative stressed that the State, when creating a participation system, has ensured observation of the principle of participation. The process has been public and accessible. Its implementation has been discussed and assessed by the society. As concerns the policy of education of ethnic minorities, a dialogue on a professional and public level is being continuously maintained.

He also holds that the submitters have not proved the harmful consequences, caused by the impugned norm and the statement that there exists violation of the rights, determined by the Satversme and international instruments, is only a speculation. He stresses the viewpoint, expressed also by several invited persons, that at the present moment there is no possibility of impartially assessing the influence of the impugned norm, as the quality of education, acquired by the pupils, does not depend just upon the impugned norm but also on many other factors, especially on the quality of teachers' work. Quality of education depends also on the family attitude to the State language. Making references to the materials in the case, he stressed that in case if the particular subjects were to be mastered in English and not in Latvian, the majority of pupils would agree to it.

The Saeima representative pointed out that Article 18 of the Vienna Convention had not been violated, as it did not follow from the signed but not ratified Minority Convention that persons, belonging to ethnic minorities had the right of acquiring knowledge only in the native language and such rights were neither the aim nor the object of the Convention.

6. **The invited person – the deputy of the 8th. Saeima and the former Minister of Education and Science Kārlis Šadurskis** at the Court session pointed out that the main objective of the secondary school is to prepare the young people for higher school, in which studies – in accordance with the adopted in 1995 Higher School Law – take place in the Latvian language. Thus, the State language shall be mastered in twelve years. He objected to the proposal of the submitters to increase the number of the Latvian language classes and noted that the study load would be too big, besides it would mean additional expenses as well.

   He mentioned the possibility of the schools to choose what subjects to teach in the official language as an important solution, which was used when adopting the impugned norm. The proportion of the language of instruction "60/40" was chosen after evaluation of the situation, consulting with the school administration and specialists as well as with the representatives of international institutions and after the Consultative Board of the Ethnic Minorities had assessed the readiness of schools and practical necessities.

Kārlis Šadurskis pointed out that the monitoring realized by the Inspection convinced that in the overwhelming majority of cases the impugned norm would be successfully implemented. Initially the possibility to envisage exception for some of the schools in the normative acts has been discussed. But the results have been good enough and the school directors informed about readiness for this reform.

He informed about the measures undertaken to ensure willingness of the teachers. A structural unit of the Ministry of Education was established to prepare teachers, raise the level of their State language knowledge and ensure mastering of methods for teaching particular subjects in the State language. Two free of charge course programs have been guaranteed for the teachers – the language course and the course of bilingual methods, which took place throughout the state. Tens of study aids have been issued.

7. **The invited person – the Minister of Education and Science Ina Druviete –** at the Court session concluded that any process in the sector of education of ethnic minorities concerned not only the particular ethnic minority but the whole society. Therefore it is important to interpret any process from the viewpoint of general benefit but not from the viewpoint of just one group.

   During 12 years school gives knowledge necessary for life, which is not abstract but conforms to a certain time, certain space, thus – with a certain society. Knowing of the Latvian language is the precondition for making use of the knowledge, acquired at school, in everyday work.

   Ina Druviete expressed the viewpoint that real rights of the Latvian language shall be secured in the territory of Latvia. She holds it can be realized only if the Latvian language becomes the means of communication of the Latvian and ethnic minority representatives, that is, by realizing real integration, the sense of which is the following: the state shall intensively and actively help any ethnic minority to maintain its language and culture, at the same time maintaining the Latvian language as the common language for communication. The educational system ensures such knowledge of the language. To her mind, it just cannot be that the school does not guarantee knowledge of the language, sufficient for the language itself to carry out the functions of integration of the society, so that every Latvian was guaranteed the elementary linguistic human rights, namely, so that the user of the State language could always and everywhere use his/her language in his/her country.

She stresses that the education reform has been very carefully prepared, consequently realized and it cannot be dealt with in the scale of a school, as one has to deal with the general language policy in Latvia.

Ina Druviete points out that the secondary school is a stage of acquisition of qualitatively new knowledge, with a quite different approach to the study process, the aim of which is to prepare the pupil for studies at the higher school. Therefore it is vitally important to understand that the quality of knowledge means also the ability to use the above knowledge in practical activities and bilingual education - about which in Latvia one can speak already since 1995- ensures it. A progressive method – integration of language and study contents – is used in schools and the teacher is the person, who adapts a relevant method to a concrete child. Besides, when choosing the teaching method, the situation in the State, where there is no strong external Latvian language environment, which would ensure automatic mastering of the above knowledge, shall be taken into consideration.

Theoreticians of the world bilingual education also stress that bilingual education is effective only then, if - by the help of it – are taught the so-called serious subjects, inter alia – the exact subjects. Therefore there is no reason for getting carried away by retrospective illusions on the Latvian language as, say, the language of folklore and only Latvian identity. The Latvian language is a contemporary language, the language of science and technique. And all the inhabitants of Latvia shall know it.

It has been proved that when studying the second language only as a school subject, mostly knowledge on the language is acquired, but the mechanism of the hereditary language mastering is not activated. The recent conclusions of the theory of language mastering are the following: in the process of acquirement of a language the most important thing is to activate relicts of the above so-called hereditary language mechanisms, which remain also after the age of 12 and it can be done only if the language is actively produced but not reproduced.

Ina Druviete points out: if the general level and coefficient of the intellect of the pupil is sufficient, then he/she has no difficulty in mastering the Latvian language as the State language and thus – he/she has no difficulty to study at the secondary school. In their turn the separate, individual cases can be solved by making out the real cause of the difficulties.

Ina Druviete emphasizes the idea expressed in the Comment on the Minority Convention Article 14. Namely, the right of the representatives of the ethnic minority – the right of maintaining their identity – can be realized without prejudice to acquirement of the official language or

studies in this language. Knowledge of the official language is an undisputable factor of the society integration. She expresses conviction that the presently determined proportion complies with the State socio-linguistic reality and the concept of the society integration of Latvia. Neither in Latvia nor in any other place of the world there exist normative acts which require that the teachers, who work with the children of ethnic minorities, shall know the native language of these children. In pedagogical literature the ability to do so is acknowledged as desirable but not mandatory.

8. **The invited person – the Associate Professor of the Latvian University Philology Faculty Department of the Slav Languages and Literature Tatjana Liguta** at the Court session points out that no reform can take place until all of its participants clearly understand its aims. She said she had established that the aims of the education reform were improvement of knowledge of the State language, increasing of competitiveness of children, elimination of segregation of schools, integration of society and ensurance of existence of Latvian language environment in schools. No document clearly indicates the above aims and at different times, different main aims have been stressed. Tatjana Liguta holds that the aims are too diverse to be reached with one and the same measure.

   Acquirement of the State language is a very significant aim which at the present moment is supported by almost everybody, as the pupils and their parents clearly understand that without knowing the Latvian language they will not be able to live in Latvia. However, to reach the above aim there is no necessity to commence teaching the subjects only in the State language. Other measures and methods may be used, for example, Latvian language classes in the kindergartens or deeper optional out of school program mastering of such subjects, which are more interesting to the pupil or which are connected with his/her future. Tatjana Liguta also holds that bilingual education shall be continued at the secondary school just as it is being done in primary school.

   She expresses doubt whether in real life it is possible to exactly proportionally divide the study volume and determine how many subjects are being taught in one language and how many in the other. Proportion of the use of the language of instruction ”60/40” is rather subjective and ungrounded, besides the first elaborated model had envisaged the proportion ”70/30”. The division, which is valid at the present moment to her mind, is the result of a political decision.

   Tatjana Liguta stresses that there is no reason to speak about the gradual process of the reform. In 1995 it was determined that two subjects should be taught in the Latvian language in the primary school and three

– in the secondary school. Schools were not prepared for such s step and good teaching quality of these subjects in the first years was not reached. In 1998 it was established that the norm ”does not work”, therefore other measures were introduced in the Education Law. Thus from schools, which had hardly managed one thing, unexpectedly was required quite something else.

In difference from mastering the State language, which is a priority, maintenance of the ethnic minority languages and identity has not been secured. The number of subjects to be taught in the native language is continuously decreasing, but the pupil is not able to master other languages if he/she does not know his/her own language well. The Russian language is ”in a poor situation” and pupils may hear literary language only at school. Tatjana Liguta concludes: too short a period of time has passed to discuss pedagogical results of the educational reform. However, one may speak about the political results. Children are losing interest about lessons, issues on the education quality have been ”moved to the back level”. She holds that the State does not want to hear the voice of the ethnic minority and it creates feeling of humiliation in rather big part of the society. As the result of incorrect policy the public disintegration has deepened.

9. **The invited person –the Representative of the Secretariat of the Minister for Special Assignments of Integration Matters Ilmārs Mežs** at the Court session states that in several ethnic minority schools, for example, Polish, Ukrainian and Lithuanian schools the so-called immersion method is being used, namely, the first graders commence studies in the native language, in which their knowledge is very poor, or none at all, because the language is not used in the family. However, it cannot be regarded as a non-proportional restriction of the rights of the children of the ethnic minority or harm to interests of the children.

   He explaines that an essential mistake was made in the claim, when stating that the educational system of the pre-war Latvia, in accordance with which the Latvian language was just a school subject at the ethnic minority schools, had favorably influenced the ability of persons, belonging to ethnic minorities, to use the State language . The data of the 1925 census testify that 81 percent of the Russians living in Latvia did not know the Latvian language. Thus the supposition of the submitter that education, realized mainly in the Russian language, could ensure the necessary knowledge of the State language is erroneous.

   The fact that 40 percent of the subjects are being taught in the language of the ethnic minority proves that ethnic minorities in Latvia are not denied to use their native language also at the secondary schools. Ilmārs Mežs made reference to Article 14 (the third Part) of the Minority

Convention, which envisages that mastering of the native language or acquiring of knowledge in the language of the ethnic minority shall be realized without making any harm to acquirement of the State language or acquiring of knowledge in it. He pointed out: as concerns observation of the Minority Convention in Estonia, where an analogous second school reform is envisaged, the proportion ”60/40” has been considered as an acceptable way of implementation of Article 14 of the above Convention.

In the Member States of the European Union a state guaranteed secondary education in the languages of ethnic minorities is a rare occasion. In Russia also - even on the level of primary education – education in the languages of ethnic minorities is not ensured either to the 30 000 inhabitant Latvian minority or many other big – more than million inhabitant ethnic minorities like the Ukrainians, Byelorussians, Armenians and others. The practice of the European Union Member States in realization of the Minority Convention testifies that the aim of the above Convention usually is to protect the assimilated ethnic minorities from vanishing. In fact, in the understanding of this Convention, in Western Europe there are no ethnic minorities, the greatest part of which does not know the state language. In the same way in the greatest number of the European Union Member States this Convention is not applied to the post-war settlers and the greatest part of Russians of Latvia may be regarded as such. There are states in which the protection of the ethnic minorities is applied to very small and assimilated ethnic minorities, which do not reach even one percent of the total number of the residents, however, the big – consisting of thousands or even millions of persons of the after-war immigrants – communities are ignored. Persons, belonging to the above communities may be born or naturalized in the state; however, they do not have close and stable ties with this state. The situation of Latvia is even more complicated, as in one and the same ethnic minority are united both - after-war immigrants and about one-third of the Russians of Latvia, whose ancestors have lived in Latvia for a century or two. For example, Finland has chosen to differentiate old Russians, whose ancestors lived in its territory since the 19th. century and those Russians, who arrived in Finland after the Second World War.

In Latvia the Russians are ensured to use their native language in the process of education and the existence of the Russian Cultural Societies is supported. However, from the viewpoint of Ilmārs Mežs it would not be proper to attribute to them the ”most serious” Articles of the Minority Convention, as in other states in a similar situation are not applied any or are applied just the minimum rights of the ethnic minorities.

He assessed the presumption of the submitter that as the result of the reform a great number of pupils would not be able to continue education at the secondary school because of insufficient knowledge of the State language as erroneous. The data of the Ministry of Education testify that in autumn of 2004 6733 pupils (59 percent) continued studies at the 10th. form of the schools with the Russian teaching language. This proportion does not differ from the ratio of previous years and is analogous at the Latvian schools.

At the Court session Ilmārs Mežs expresses the viewpoint that the problems have arisen not because Latvia was trying to force on the Russian ethnic minority internationally inadmissible norms but just because this ethnic minority was used to historically created linguistic privileges and it was hard for it to give the privileges up. He also holds that it is speculative to speak about endangering of the Russian identity, unless one does not consider that the Russian identity is lost when a person knows the Latvian language. If their identity is important and dear for these people then they will maintain it also in case if just one school subject a week was taught in their language.

10. **The invited person – the former Chairman of the Russian School Association of Latvia Igors Pimenovs** expresses the viewpoint that the education reform is being implemented by force. Sufficient estimate of the public opinion has not been carried out. The process of collaboration by which a situation that both parties, even though one of them is the State, are ready to listen to all arguments and change the viewpoint, has not been realized either.

    To his mind the transition from the Russian language to the State language as the language of instruction takes place too rapidly. The existing education reform ensures the possibility of choosing the instruction program only at the primary school, in its turn at the secondary school there is no possibility of doing it.

    He stresses that education in the State language cannot be connected with promoting of public integration. There are other measures for promoting integration. Integration to his mind shall be based ”on establishment of common values, common feelings and creation of attitude towards the state”. This aim may be realized even if the native language and not the State language is the language of information. The language of the ethnic minority has to be the dominating one in the process of education, both in primary schools and the secondary schools.

11. **The invited person – Assistant Principal of the private secondary school ”Evrika” Valērijs Buhvalovs –** points out that the reform does not stimulate future competitiveness of pupils. Bilingual education is a

very good idea but it has not been methodically elaborated. There are several preconditions for implementation of bilingual education. First of all the teachers shall freely use both languages and master the terminology of the subject. Secondly, textbooks and training devices with bilingually differentiated contents are needed. Thirdly, versatile methods for teachers, confirmed at the Ministry of Education and Science, are needed. Fourthly, every primary school and secondary school shall experience the right of changing the amount of the language of instruction in every school subject.

The impugned norm to his mind shall be assessed as a political norm, which has no scientific substantiation. To reach a political compromise the norm might be supplemented with two words ”or bilingually”.

12. **The invited person - the Director of the Latvian Human Rights and Ethnic Study Centre Ilze Brands Kehre –**at the Court session points out that the most important issue within the framework of the case to be reviewed is as follows: is adopting of the impugned norm just an interim period or a net result in the process of implementation of the ethnic minority education reform? Therefore it is very important to define whether the language proportion, included in the impugned norm, is a temporary solution for the transition to the State language as the language of instruction or this norm will be at the basis of language use in the process of ethnic minority education.

    She stresses that the Education Law shall clearly determine that the impugned norm is the Transitional Provision on the road to other, still undetermined model. But if the impugned norm is permanent (as the representatives of the State institutions stated at the Court session) then it shall be defined more precisely in the Education Law.

    Ilze Brands Kehre expressed the viewpoint that the impugned norm had been adopted only on February 5, 2004, shortly before the date of its implementation (September 1, 2004), however the reform was commenced in 1991. Therefore the issue on participation of the representatives of ethnic minorities in this process is important. She stresses ” participation is quite another concept than a dialogue, which can be included in the first, but it does not mean the whole participation”. In OSCE Lund Recommendation certain recommendations are elaborated just about the participation of ethnic minorities and they shall be taken into consideration in Latvia, as several experts have worked on them. Participation has very many and different forms. The most essential of them is ”direct participation in administration, direct participation of ethnic minorities in the executive power, especially in sectors, which concern a certain ethnic minority or an interest group”. Such a form of ethnic minority participation has not

been dealt with, even though it should have been dealt with already some years ago. Therefore, to ensure ethnic minority participation in the education reform and legitimization of this process, representatives of ethnic minorities should have been included in the process.

13. **The invited person - the Leading Researcher of the Latvian University Philosophy and Sociology Institute Dr.hist. Leo Dribins–** at the Court session expresses the viewpoint that assessment of the contents of the impugned norm at the Constitutional Court on one hand is taking place too late. On the other hand, in fact a more extensive problem – conformity of realization (application) of the impugned norm with the Satversme is being reviewed at the Court session, however to his mind it is too early to assess it as realization of the impugned norm was commenced only on September 1, 2004. Therefore the information, which has been received to this moment on the positive and negative aspects of the implementation of the transition is not sufficient to reach the decisions ”whether it on the whole complies with the letter and spirit of the Satversme principles”. Leo Dribins stresses that the main problem of realization of the education reform is the fact that the greatest part of ethnic minority school teachers are not well-enough prepared to teach classes in the State language. In part of the ethnic minority schools the situation is as follows: ”the teachers help the pupils to learn the subject material but the pupils help the teachers to learn speaking the Latvian language correctly”. Besides he stresses that the teacher, trying to observe the requirement of the Law and use both languages, in fact bilingually - just to achieve some result – manages to cover only two thirds, but in some cases only half of the envisaged material. Thus in the process of realization of the educational reform the pupil of a secondary school does not receive the established education, thus the right of pupils to education, guaranteed in the Satversme, is violated.

    Leons Dribins concludes that ethnic school education reform would be advisable and the proportion chosen by the legislator ”60/40” suitable and acceptable, however the above inequality arises not because of the text of the impugned norm but because of the process of its realization. At the present moment the state is not ready to implement ethnic minority education reform.

    He stresses that reforming of the secondary education, i.e. – partial or complete transition to the state language takes place in other countries as well, for example, in Poland, partially also in the Ukraine and Lithuania. However, it takes place without ”the unnecessary noise”, with the ethnic minority families themselves choosing this transition. Thus, if the reform is voluntary, no problems arise, as the state does not administratively dictate to do it and does not interfere in the above process by the power of force.

14. **The invited person – the Leading Researcher of the Public Policy Centre PROVIDUS Marija Golubeva –**at the Court session stresses that the impugned norm in itself can be neither discriminating nor non-discriminating, as it only indicates in what proportion languages of information may be used at school. But practice, following from the above norm, may turn out to be discriminating.

    She points out that at the time when the impugned norm was adopted under the procedure, envisaged in Article 81 of the Satversme, assessment on social influence, influence on national influence was also included in the annotation of the draft law. The assessment, incorporated in annotations uses to be very primitive; it is not based on any scientific researches and not even on strict methodology. It is just what happened when adopting the impugned norm. Thus research or assessment on its social influence has not taken place.

    Marija Golubeva agrees that monitoring of the educational process has not yet been carried out, as it is not objectively known how the impugned norm is being realized in schools. Reports by the school principals cannot be regarded as an information upon which one might rely as the principals are " in power relationship with both – their subordinates and also the Ministry". In the same way one cannot rely only upon polls, during which the Inspection asks questions to pupils, parents and teachers, as they are only one of the ways how to find out the real situation.

    Marija Golubeva expresses the viewpoint that it is possible to establish an adequate monitoring or the system for evaluation of influence. Therefore the fact "that at the present moment there is no possibility to compare and measure, is not a serious argument". It can be done both after a month and after a year or two. However, at the present moment influence on the whole process of education cannot be assessed as the reform was commenced only on September 1, 2004. It will be able to do so after five years or even later.

15. **The invited person Dmitrijs Katemirovs**, - the father of three children, who study in the 9^{th}., the 10^{th}. and the 11^{th}.forms, expressed the viewpoint that it was difficult for Russian children to study, when acquiring knowledge of the specified subjects bilingually or in the Latvian language. He affirmed that the education reform psychologically affected children in a negative way; besides it was difficult for the parents to help as they either did not know the Latvian language or knew it badly. Besides he stressed that he had not noticed that with the introduction of the education reform children's knowledge of the Latvian language had improved. He also expressed concern that the reform might lower the level of education. Dmitrijs Katemirovs, not

doubting the necessity of knowing the Latvian language, reproached the State for not ensuring qualitative teaching of the Latvian language at schools.

16. **The invited person – Sergejs Ancupovs** referred to his experience, obtained while working as the Advisor for Issues of Ethnic Minority Education to the Minister of Education and when investigating issues connected with the education reform. He indicated that the participants in the case and the invited persons made two mistakes of methodic nature. First of all, ungrounded is the statement on non-existence of data, with the help of which one is able to make conclusions. Secondly, the speakers groundlessly generalize some certain detail, viewpoint or situation.

    Sergejs Ancupovs mentioned as a positive example the experience, obtained 10, 8 and 5 years ago, when commencing integration of the state language in the process of education. When carrying out the analyses of the school results, one may establish that after the State language as the language of instruction of other school subjects was introduced, knowledge of not only the Latvian language but also knowledge of other subjects has improved in schools. He points out that the Latvian Multi-culture Association of Schools has been set up in Latvia. Schools, which make use of several languages in the training process, participate in the activities of the Association. It is a very up-to-date and efficient method. However, it cannot be attributed to all schools.

    Sergejs Ancupovs, when analyzing the data on the results of pupils by the Centre for the Education Curriculum and Examinations, concluded that at the present moment approximately 30 percent of pupils because of different causes do not have sufficient knowledge and skills even if they learn in their native language. These pupils, if studying separate subjects in the State language might have additional complications and the quality of their education might decrease. It is the only potential risk group, however, it is sufficiently large and special attention shall be paid to it. To help these pupils there is no necessity to reject the impugned norm; however, it is advisable to find individual solutions with a positive attitude. The State has to contribute funds to help the above people.

    When answering to the question of the submitter i.e. to what sectors State funds shall be attracted, Sergejs Ancupovs mentioned several courses. First of all, integration of the positive experience of the schools in which teaching methods are efficient into schools, in which the situation is worse. Secondly, - control and motivation of teachers.

Thirdly, issuing of qualitative, useful for bilingual instruction literature. Finally, informing and inducement of the society.

17. **The invited person – the Acting Chairman of the State Education Inspection Valda Puiše –** points out that in conformity with the functions determined in the Education Law the Inspection carries out systematic control already since 1996. In 2004, when ensuring implementation of the impugned norm in the tenth grade, there have been enough teachers, who are able to teach their subject in good State language. Only 1,2 percent of the total number of the teachers did not meet the established requirements.
She pointed out that, when passing the impugned norm, the dialogue between the State and persons, whom the above norm concerned, had not been promoted. Mutual distrust is the result, which, possibly, makes it hard to implement the impugned norm.

When assessing the level of the teachers' State language knowledge, Valda Poiše points out that is gradually improving. When answering to the question of the Court on the control over implementation of the reform, she acknowledges that – for example – in all Riga schools, including the ethnic minority schools, control is carried out by five inspectors.

18. **The invited person – the Deputy Director of the Education and Science Ministry General Education Department, Head of the Integration Section Evija Popule –** points out that Latvia could serve as a good example to the fact that even a small state may ensure state and local government financed education in ethnic minority languages at eight primary schools and seven secondary schools.

1998 Education Law put an end to the period of segregated school system, as unified educational programs have been introduced. Any school may choose either acquiring the educational program in the State language or such a program, in accordance with which one may study in the ethnic minority language and the State language. The Cabinet of Ministers Regulations on the Standard for primary education envisages four different program models, out of which the school may choose the most suitable. All the above models ensure transition to proportion "60/40" in form 10. The secondary school may elaborate the educational program of its own, in which the mandatory subjects, subjects of the particular course and subjects, introduced by the school shall be included. When choosing the language of instruction the school shall take into consideration that at least five school subjects, not including the Latvian language classes, shall be taught in the State language. Thus the school may freely choose the methodical way. Simultaneously the

school is responsible for the way of reaching the final goal. Only the final result is important also for the Licensing Commission.

Evija Popule acknowledges that the Ministry of Education and Science has allowed the schools to choose the subjects to be taught in the State language. The Ministry has advised to commence with teaching housekeeping, handicraft and sport classes in the State language and then later to progressively start teaching geography, natural science and exact subjects in the State language. When answering to the question on the education quality, Evija Popule stresses that centralized examinations is one of the most important sources of information, allowing to judge about the quality of education. Latvia has participated in the OECD State Pupils' Assessment International Program (1998 - 2004) and it can be seen from the particular Report that both – the pupils, who learn in the Latvian language and those, who learn in the ethnic minority language show dynamics and proportional improvement of their skills.

When answering to the question on cooperation of the Ministry with the representatives of the ethnic minorities in the process of the educational reform, Evija Popule stressed that mainly school directors had been the main partners at seminars, discussions and professional dialogues. However, several working groups, which visited schools, have been formed to speak also with the pupils' parents. In 2001 the Consultative Board in the sector of Education of Ethnic Minorities, in which the representatives of not only Russian but also other ethnic minority schools as well as the representative of the parents were included was created. In 2004 the body of the Consultative Board was enlarged, including in it also those organizations of the ethnic minorities, which had been formed anew and had expressed interest in the education of ethnic minorities.

19. **The Reader of the Latvian University Faculty of Law Māris Lejnieks** in his written reply to the Constitutional Court observes that Article 18 of the Vienna Convention assigns the state with the duty of not rejecting the object and aim of an international agreement before it has taken effect. He draws the attention of the Court to the fact that the state duty "not to unsettle" or "not to frustrate" object or aim of the international agreement follows from the English and French text of the above Convention.

Such a duty is rooted in the principle of good trust – not to make contract liabilities impossible before the agreement norms obtain binding force and thus – not to lead to violation of a concluded agreement. The duty of non- abrogation of the aim and object of the agreement is valid from the moment of the State signing the above

agreement, and ends, when it becomes unmistakably clear that the agreement will not ever be in force or if the state has made its intention of not becoming a participant of the agreement unmistakably clear.

Māris Lejnieks holds that abrogation of the object and aim of the Minority Convention may express itself, for example, in closing the ethnic minority schools or the prohibition to acquire knowledge in the native language. Determination of the proportion of the languages of instruction in acquiring the contents of the teaching process to his mind cannot be regarded as the ”destruction of object” of an international agreement.

The concluding part

1. When assessing the conformity of the impugned norm with several legal norms, incorporated in the Satversme and international human rights instruments, one has first of all to take into consideration that the above matter cannot be reviewed as isolated from the complicated ethno-demographic situation, which was created as the result of the Soviet occupation. The content of the impugned norm is causatively connected with the situation.

In June of 1940 the USSR occupied Latvia, Estonia and Lithuania. As the result – these states lost their freedom, experienced mass deportations and killing of its inhabitants as well as inflow of Russian-speaking immigrants. 2,3 percent of inhabitants were deported from Latvia on March 25, 1949, that is about thrice as many persons than in June 14, 1940 deportation and 96 percent of them were the Latvians. As a matter of fact, during the occupation of Latvia the USSR purposefully realized genocide against the nation of Latvia (*see also the Saeima August 22, 1996 Declaration on the Occupation of Latvia).*

After the Second World War mass immigration of the USSR citizens in Latvia took place and the ethnic composition of the inhabitants of Latvia in comparison with that of the prewar situation noticeably changed. As the result of it the number of the Latvians decreased but that of the aliens, especially the Russians, the Byelorussians and the Ukrainians materially increased. For example, in accordance with the data of the State Statistics Committee in 1935 the basic nation – the Latvians were 77 percent of the whole number of inhabitants, however in 1989 – before restitution of independence of Latvia – the proportion of the Latvians was only 52 percent. As the result of the Russification policy, carried out by the Soviet power, in Latvia a special group of inhabitants- the so-called Russian language speaking inhabitants was artificially created and the greatest part of other nations, for example the

Byelorussians, the Ukrainians and the Jews were forced to become part of the group. They were given just two possibilities- either to learn in the Russian language or in the language of that titular language in the administrative territory of which they lived. In the occupied Latvia already in the seventies 85 percent out of the children, who were neither the Russians or the Latvians learned at the Russian schools but 15 percent - in schools with the Latvian language of instruction. The only privileged nation was the Russians, to whom educating their children in the native Russian language was ensured in every place of the USSR. Russification subdued and destroyed the national awareness of those people, who lived outside of their ethnos and deprived them of the possibility of defending their national self (*see: Dribins L. Ethnic and National Minorities in Europe. Riga: the Information Bureau of the European Council, 2004, pp.71-72).*

In the same period of time immigration to many Western European states also took place, however– in difference from Latvia - with the agreement of these states. There is one more significant difference: the governments of the Western European states tried hard to reach social integration of the immigrants, in their turn the Soviet immigrants were not integrated into the society of Latvia. In Latvia was created a school system based on the segregation principle: for children of the immigrants was created a separate parallel school network for the Russian speaking people, at the same time the ethnic minority schools, among them also the Russian national schools, which existed before the occupation, were liquidated.

2. After declaring of the Latvian independence creation of a new educational system was a natural step. On June 19, 1991 the Supreme Council passed the Republic of Latvia Education Law. This Law commenced democratization, decentralization and depoliticizing of the educational system; it was also directed towards the possibility of ensurance of versatility of education. Section 5 of the Law determines that in the territory of the Republic of Latvia education in the State language shall be guaranteed. Acquisition of knowledge of the State language is mandatory in all educational institutions. Simultaneously the Section envisaged that the right to education in the native language for inhabitants of other nations is determined in the Language Law.

At that time the LSSR Language Law, which was adopted on May 5, 1989 was in effect and its Section 1 determined that ”the Latvian language shall be the State language in Latvia”. As Latvia had not yet renewed its independence, in the State –in the result of the occupation - there was a great number of persons, whose language of instruction was not the Latvian language and quite a great number of schools, in which the language of instruction was not the Latvian language, in Section 10

of the Law was determined the right to acquiring education in the native language also to the inhabitants of other nations, living in Latvia. As a matter of fact, the Russian language was the language of instruction at these schools. The Supreme Council left this Section unchanged also on March 31, 1992, when passing the Language Law in a new wording.

As the Saeima points out, four years after the adoption of the Republic of Latvia Education Law, it was established that many graduates of the educational institutions, in which the language of instruction was not the Latvian language, did not know it sufficiently. The possibilities of these persons to start studying at the higher educational establishments, competing in the labor market and integrating into the society of Latvia were limited. Therefore on August 10, 1995 the Saeima adopted Amendments to the Republic of Latvia Education Law and supplemented Section 5 with the sixth part. It determined:" In comprehensive schools of ethnic minorities, in which the language of instruction is not the Latvian language, in 1^{st}. -9^{th}. forms at least **two** but in 10^{th}.-12^{th}. forms at least **three** subjects either in humanitarian or exact subjects shall be basically taught in the State language". This legal norm took effect as with the beginning of 1996/97 school year.

3. On October 29, 1998 a new Education Law was adopted, by which school segregation was abrogated, envisaging creation of a unified educational system. The first part of Section 9 of the Law determines that education shall be acquired in the official language at the State and local government education institutions. In its turn, in accordance with Paragraph 2 of the second part of this Section education may be acquired in another language in state and local government educational institutions in which **educational programmes for ethnic minorities** are implemented. In these programmes are determined subjects, which – in accordance with the requirements of the normative acts- shall be acquired in the official language, ethnic minority language or in both languages.

The above norms on the State language as the only language of instruction and educational programmes for ethnic minority education came into force progressively. Namely, Section 9, Paragraph 1 of the Transitional Provisions envisaged that on September 1, 1999 State and local authority educational institutions with another but not Latvian language of instruction shall commence implementation of educational programme of ethnic minorities or a transition to studies in the official language. On the basis of this norm the programmes of ethnic minorities were introduced from the first form at primary schools, but – in accordance with Section 6 of the Education Law Transitional Provisions - implementation of educational programmes of ethnic minorities shall be progressively commenced also in the other primary school forms. In

conformity with Article 6^1 of the Cabinet of Ministers December 5, 2000 Regulations No. 462 ”On the Standard of the State Primary Education” , use of the Latvian language in primary education programmes of ethnic minorities is determined by the educational programmes licensed by the educational institutions and the Standards for programmes of general primary education of ethnic minorities.

In its turn Section 9, Paragraph 3 of the Education Law Transitional Provisions is differently formulated. It determines that on September 1, 2004 studies in the tenth form of the State and local government general educational institutions and in the first academic year of the State and local government professional educational institutions shall be commenced only in the official language.

4. However, in the summer of 2003, after it was established that the educational institutions were not ready to ensure studies only in the State language, the Cabinet of Ministers on August 12, 2003 under Article 81 of the Satversme passed Regulations No.444 ”Amendments to the Education Law”. On September 1, 2003 the Regulations were forwarded to the Saeima for confirmation. From the annotation, attached to the above normative act, it can be seen that the aim of the Amendments has been to avert the discrepancy between Section 42, Paragraph 2 of the General Education Law, which envisages that general secondary education programme in the particular sector may be combined with the educational programme of the ethnic minorities, including in it the native language of the ethnic minority, with the contents of ethnic identity and integration into Latvian society; and Section 9, Paragraph 3 of the Education Law Transitional Provisions, which determines that on September 1, 2004 studies in the tenth form of the State and local government educational institutions and in the first academic year of the State and local government professional educational institutions (henceforth – educational institutions) shall be commenced only in the official State language *[skat: Normatīvā akta projekta ”Ministru Kabineta noteikumi, kas izdoti Satversmes 81.panta kārtībā ”Grozījumi Izglītības likumā” anotācija. Lietas materiālu 1.sēj., 215.lpp. (see: Annotation of the Draft Normative Act ”The Cabinet of Ministers Regulations, passed under Article 81 of the Satversme ”Amendments to the Education Law. Materials in caseVol.1, p. 215)].* The above Amendments determine that from September 1, 2004 studies at the secondary educational institutions shall be commenced and implemented in accordance with **the General Secondary Education Standard.** Already at that time the Standard determined: acquiring of the study contents in ethnic minority languages may be ensured if up to **two fifth** of the total amount of classes in the study year are taught in it.

When considering the Draft Law ”Amendments to the Education Law”, which was submitted as Regulations, adopted under Article 81 of the Satversme, on February 5, 2004 the Saeima established that the educational institutions were not ready to ensure studies **only** in the official language. In the same way, at variance with the requirements of the Law on the official language as the only language of instruction, it was not possible in the General Education Standard, which had been confirmed by the Cabinet of Ministers Regulations, to determine a concrete proportion for use of the language. Therefore Section 9, Paragraph 3 of the Education Law Transitional Provisions - the impugned norm – was expressed in another wording. Namely, from September 1, 2004 not less than **three fifths** of the total yearly study load, including the foreign languages, of the study contents in the tenth form and the first academic years of the educational institutions shall be ensured in the official language.

In accordance with Article 44, the first Paragraph of the General Education Law, weekly general secondary education study load in 10^{th} – 12^{th}. forms shall not exceed 36 classes. It means that not less than 22 classes shall be taught in the State language and not more than 14 – in the ethnic minority language. Simultaneously, it follows from Item 3.1. of the 3^{rd}. Supplement of December 5, 2000 Cabinet of Ministers Regulations No. 463 ”On the General State Education Standard” (henceforth – Regulations), that not less than **five** study subjects shall be taught in the State language.

Thus at least 22 out of 36 classes, not less than five study subjects (including the foreign languages) shall be taught in the official State language.

5. As the submitter requests to assess conformity of the impugned norm with several Satversme and international legal norms, the Constitutional Court reminds that the aim of the legislator has not been to oppose the human rights norms, included in the Satversme, to international human rights norms. The chance and even necessity to apply international norms for interpretation of the fundamental rights, incorporated in the Satversme, inter alia follow from Article 89 of the Satversme, which determines that the State shall recognize and protect fundamental human rights in accordance with the Satversme, laws and international agreements binding upon Latvia. It can be seen from the Article that the aim of the legislator has been to achieve the harmony of norms, incorporated in the Satversme with international human rights norms Besides, Chapter VIII of the Satversme ”Fundamental Human Rights” was passed after Latvia had undertaken the relevant international liabilities. (*see: the Constitutional Court August 30, 2000 Judgment in case No.2000-03-01, Item 5 of the concluding part and January 17,*

2002 Judgment No. 2001-08-01, Item 3 of the concluding part). The other Constitutional Courts of the European States, when interpreting the national Constitution norms, similarly use the EHRC (European Human Rights Convention) and other international human rights norms as well as the practice of the European Court of Human Rights (ECHR). The German Federal Constitutional Court has established that EHRC guarantees influence interpretation of fundamental rights included in the Basic Law and the principle of the law-governed state. The text of the EHRC and the practice of ECHR serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights, included in the Basic Law, that is – to influence, which is precluded by Article 53 of the EHRC. The constitutional legal meaning of international human rights is the expression of favourableness (*Völkerrechtsfreundlichkeit)* of the Basic Law towards the international law, which strengthens the state sovereignty by an international legal norm and the aid of general principles of international law. Therefore the Basic Law shall be interpreted as much as possible in such a way that the conflict with international liabilities of the German Federative Republic does not arise (*see the German Federative Constitutional Court October 14, 2004 Judgment in case 2BVR 1481/04).*

When renewing the independence of the Republic of Latvia, the Supreme Council stressed the significance of international legal principles [*sk. LPSR Augstākās Padomes 1990. gada 4.maija Deklarācijas par Latvijas neatkarības atjaunošanu 1.punktu. (See Item 1 of the LSSR Supreme Council May 4, 1990 Declaration on the Renewal of Independence of Latvia)*]. Simultaneously the Supreme Council, by adopting the ”Declaration on the Accession of the Republic of Latvia to International Legal Instruments Relating to Human Rights”, declared that it recognized as binding more than 50 international documents, relating to human rights.

Thus, when interpreting the Satversme and international liabilities of Latvia, one should look for the interpretation, which ensures harmony, but not confronting.

5.1. Article 5 of the International Convention on Elimination of any Kind of Racial Discrimination requires the Member States to prohibit and liquidate all kinds of race discrimination and ensure equality of all human beings before the law and they have the right to equal protection by the law without any kind of discrimination. Any kind of discrimination shall be prohibited by the law and the law shall guarantee equal and efficient protection of all persons against any kind of discrimination.

Article 2, Paragraph 1 of the Convention on the Rights of a Child envisages that the Member State has the duty to respect and ensure realization of all the rights, set out in the above Convention, to every child, whom the jurisdiction of the Member State concerns, as well as to perform all the necessary measures to protect the child from all forms of discrimination or punishment.
In accordance with Article 91 of the Satversme all human beings in Latvia are equal before the law and the courts. Human rights shall be realized without discrimination of any kind. The content of the Article includes the norms of the above Conventions on the prohibition of discrimination. Thus the compliance of the impugned norm with Article 26 of the International Covenant on Civil and Political Rights and Article 5 of the International Convention on Elimination of any Kind of Race Discrimination as well as Article 2 of the Convention on the Rights of a Child shall be analyzed in conjunction with Article 91 of the Satversme.

5.2. Article 30 of the Convention of the Rights of a Child inter alia envisages that children, who belong to ethnic, confessional or language minorities shall not be deprived of the right to make use of their culture, religion and observe its rituals together with the members of the group; besides – they shall not be forbidden to use their native language. Article 27 of the International Covenant on Civil and Political Rights determines that in those states in which ethnic, religious or linguistic minorities exist, persons, belonging to such minorities, shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In Article 114 of the Satversme the right to preserve and develop their language and their ethnic and cultural identity is established for persons belonging to ethnic minorities. This Article not only includes the norms of the above international instruments, but envisages even more extensive rights. The norms of the above international instruments do not determine specific guarantees relating to the language of instruction of the representatives of ethnic minorities. At the Court session even the representative of the submitter acknowledged that by saying that the right to state financed education in the languages of ethnic minorities has not been fixed either in EHRC or other legally binding instruments. Thus the compliance of the impugned norm with Article 30 of the Convention on the Rights of a Child and Article 27 of the

International Covenant on Civil and Political Rights shall be analyzed in conjunction with Article 114 of the Satversme.

5.3. The application includes the claim to assess the compliance of the impugned norm with Article 2 of the First Protocol of EHRC. Even though Article 112 of the Satversme has not been mentioned in the claim, the Constitutional Court, taking into consideration the fact that this Article might envisage more extensive rights than Article 2 of the First Protocol of EHRC, has the duty to establish whether the impugned norm does not envisage also the restriction of the rights, determined in Article 112 of the Satversme. Thus the conformity of the impugned norm with Article 2 of the First Protocol of EHRC shall be analyzed in conjunction with Article 112 of the Satversme.

5.4. It is requested in the claim to assess the conformity of the impugned norm with Article 18 of the Vienna Convention on International Agreement Rights. The Constitutional Court concludes that no similar in contents legal norm of the Satversme has been mentioned in the claim. Therefore conformity of the impugned norm with Article 18 of the Vienna Convention on International Agreement rights shall be separately assessed.

6. To assess the compliance of the impugned norm with the norms of the rights, mentioned in the claim the Constitutional Court shall find answers to the following issues;

a) whether the principle of participation was observed when adopting the impugned norm;
b) whether the signed but not ratified international agreement – the Minority Convention is binding on the State;
c) whether the right of the representatives of ethnic minorities to maintain their identity and originality has been violated when determining the proportion of the languages of instruction at ethnic minority schools;
d) whether the impugned norm restricts the right to education and whether the personal interest of the parents to themselves solve the issues connected with education of their children has been taken into consideration;
e) whether the impugned norm complies with the principle of legal equality.

7. The submitter of the claim holds that the impugned norm violates Article 1 of the Satversme, which determines that Latvia is an independent democratic republic. At the Court session the representative of the submitter pointed out that the principle of efficient participation was violated when elaborating and adopting the impugned norm,

because the representatives of ethnic minorities had not been sufficiently involved and heard out and their proposals had not been assessed well enough. In the same way the basic concepts for discussion had not been established and defined and the impugned norm was adopted without the needed substantiation. Data of a poll, which as if testify about a negative attitude of a part of society to State policy in the education sector of ethnic minorities, are included in the claim. Thus – as the representative of the submitter concludes – by not observing the principle of efficient participation such principles like the rule of law and principle of justice, following from Article 1 of the Satversme , have been violated.

The principle of the rule of law follows from Article 1 of the Satversme and the Constitutional Court in its Judgments has repeatedly interpreted it, for example, when pointing out that the decisions adopted by the state power shall create faith of their being adopted by observing the principle of rule of law [*see the Constitutional Court March 24, 2000 Judgment in case No. 04-07 (99),Item 3 of the concluding part*], that – when assessing restrictions of the fundamental rights – the principle of rule of law shall be observed (*see the Constitutional Court January 21, 2002 Judgment in case No. 2001-09-01*).

The Constitutional Court agrees to the statement, mentioned in the claim, that the principle of rule of law requires reaching as fair a balance between the controversial interests of the society as possible. One of the ways of implementation of this principle is to ensure observation of participation of persons in the adoption of different decisions and creation of the political will. In a democratic state the most favorable conditions shall be created so that the representatives of ethnic minorities and their institutions might efficiently participate in elaboration and implementation of such policy and programmes, which concern education of ethnic minorities. Participation is the basic concept, which ensures legitimacy and efficiency of democracy. The submitter reasonably points out that the representatives of ethnic minorities should have been heard out and their proposals evaluated during the process of elaboration and adoption of the impugned norm. However, to hear out and evaluate does not mean accepting of all the proposals. The sense of participation does not lie in the fact that the viewpoint of any group of persons is binding on the legislator, but in adopting of objective decisions and reaching balance of different interests. One of the aims of participation is to ensure that the addressees of the decision support the chosen solution and thus are motivated to implement it. However, one cannot assert that participation has been inefficient just because the addressees of the decision do not support it. Their negative viewpoint alone does not make the adopted decision invalid or unrealizable.

To declare a legal norm as unconformable with Article 1 of the Satversme, it should be established at first what – **content of the norm** or the **process of its adoption –**is at variance with the principle of a democratic republic. The submitter of the claim does not indicate that **the content** of the impugned norm contradicts Article 1 of the Satversme. It follows from the submitted claim and explanations of the representative of the submitter at the Court session that **the process** of elaboration and adoption of the impugned norm has been at variance with Article 1 of the Satversme, as efficient participation of the representatives of ethnic minorities has not been ensured.

Not denying the fact that in a democratic state hearing out and involvement of target audience in the process of adoption of the decision is a necessity, the Constitutional Court holds that it is not within its competence to assess whether – when elaborating the State policy in the sector of education - the viewpoint of persons, whom the results of this policy will concern, has been sufficiently taken into consideration. To assess the efficiency of policy is not and cannot be an issue within the competence of the Court. Only whether **the procedure** of adoption of decisions, including the public right to participation in adoption of these decisions, has been in conformity with the requirements of the normative acts may be established at the Constitutional Court process (*see the Constitutional Court Judgments in case No.2003-16-05 and No. 2002-14-04).*

The Constitutional Court experiences the right of assessing whether the procedure of adoption of the impugned norm complies with Article 1 of the Satversme. The impugned norm cannot be declared as being in conformity with Article 1 of the Satversme if the process of its elaboration and adoption is unconformable with the principles of a democratic republic.

As the impugned norm is the norm of law and has been adopted by the Saeima, the process of its adoption shall be assessed as read in conjunction with the first sentence of Article 21 of the Satversme, namely: ”The Saeima shall establish rules of order to provide for its internal operations and order”. On the one hand Article 21 of the Satversme determines that the Saeima itself establishes its procedure, also the procedure of reviewing draft laws. On the other hand, when elaborating its Rules of Procedure, the Saeima has to take the Satversme into consideration, also the legal principles, following from Article 1 of the Satversme. The Rules of Procedure in effect are meant for determining such a procedure for the Saeima, which – when implementing the will of the majority - at the same time guarantees the rights of the minority and ensures efficiency of the Saeima performance. The Rules of Procedure guarantee extensive opportunities for every

deputy to forward proposals for the draft laws (*see Item 4 of Article 95 of the Rules of Procedure),* defend them at the Committee meetings and express their viewpoint in the debate of the Saeima meetings. Besides, in difference from the former Rules of Procedure, voting shall take place for every proposal, which has not been recalled by the submitters.

At the time when the draft law was reviewed in the Saeima, persons, belonging to ethnic minorities, who did not agree with the norms, elaborated by the Cabinet of Ministers, together with some Saeima deputies participated in several activities. Therefore in the framework of the particular matter there is no doubt that it was possible with the help of those deputies to inform the Saeima about the particular viewpoint.

There is no evidence about the fact that the deputies, who acted as the defenders of the interests of ethnic minorities, were not sufficiently heard out and their proposals –at variance with the procedure established in the Rules of Procedure – were not assessed. Quite to the contrary. From the Saeima Education, Culture and Science Committee January 14, January 28 and January 29, 2004 Protocols can be seen that the deputies, also those, who signed the claim on initiation of the matter to be reviewed, submitted proposals, the Committee assessed every proposal, explanations on almost all of them were given by the representatives of the Ministry of Education and Science. The deputies voted for the proposals. They were reviewed at the Saeima sittings.

Thus the impugned norm does not violate Article 1 of the Satversme.

8. One of the claims of the submitter touches upon the issue on interpretation of international liabilities of Latvia, namely, whether a signed but not yet ratified international agreement may be binding on Latvia. In the claim the viewpoint is expressed that Article 18 of the Vienna Convention obliges to observe signed on May 11, 1995 but not yet ratified agreement – the Minority Convention. It is mentioned in the claim that Latvia may not act against the object and aim of the Minority Convention. To the mind of the submitters Latvia has to give adequate possibilities to the representatives of ethnic minorities to acquire knowledge of their native language or acquire education in this language; it shall abstain from activities, which might defeat the object and aim of the agreement. In its turn the Saeima – to their mind – when passing the impugned norm has limited the possibilities of the representatives of ethnic minorities to acquire knowledge in their native language, comparing with the requirements, existing in Latvian normative acts at the time of signing the Minority Convention.

8.1. Article 18 of the Vienna Convention inter alia establishes that the state has a duty of abstaining from activities, which are directed against the object and aim of the agreement, if the state has signed the agreement with a resolution of its ratification.

From the first Paragraph of Article 38 of the UNO International Court Statutes it follows that international agreements, international customs and recognized legal principles of civilized nations are independent sources of international law. Such legal sources shall be applied also in the legal system of Latvia. Section 1, Paragraph 7 of the Administrative Procedure Law, which determines that legal norms of international law are comprised by international agreements, binding on Latvia, international customary law and general principles of international law confirms the above.

However, every one of these sources of international law is binding on Latvia in a different way. In accordance with Article 68, Paragraph 1 of the Satversme all international agreements, which settle matters that may be decided by the legislative process, shall require ratification by the Saeima. Confirmation by the Saeima is needed for such an agreement to become binding on the State. The Constitutional Court holds that Article 18 of the Vienna Convention is not an exception from the duty of confirmation, expressed in Article 68 of the Satversme. Liabilities, following from both these Articles are different and they shall not be disarranged. Article 18 of the Vienna Convention indicates it: " […] the state has signed the agreement with a condition on its ratification".

From the moment of ratification the international contract together with the legal norms, included in it, becomes binding and may be directly used in legal relations inside the state, if the state, at the time of ratifying it has not incorporated reservation into it. In its turn the essence of Article 18 of the Vienna Convention is to serve as a guarantee so that ratification of the contract does not become senseless, for example, in case if the object of the agreement ceases to exist. This Article does not oblige the states to implement the liabilities of a signed but not valid as concerns the state contract. Article 18 of the Vienna Convention assigns the states with the duty of **not defeating** the object and aim of a signed contract before the contract takes effect. It, in its turn, follows from the principle of good faith – not to make implementation of contract liabilities before the norms of it become binding and thus not to lead to violation of the concluded contract. Liabilities, determined by Article 18 of the

Vienna Convention are narrower than those, following from ratification of the contract.

8.2. The Constitutional Court holds that determination of the use of language proportion in the process of acquiring study contents is not an activity, which would defeat the object of an international contract – the Minority Convention or would be at variance with the aims of this Convention. The aim of this Convention is not to exclude determination of proportions of languages of instruction at ethnic minority schools and establish the right of representatives of ethnic minorities to acquire education **only** in the native language. Quite to the contrary. It is said in the Explanatory Report on the Minority Convention by the European Council that its norms give for the Member States extensive freedom of choice of measures by which to ensure the right to education in the native language for ethnic minorities. One of such means is introduction of bilingual education (*see: Framework Convention for the Protection of National Minorities. Explanatory Report// http://conventions.coe.int/Treaty/EN/Reports/Html/157.htm.)*
Besides Article 14, Paragraph 3 of the Minority Convention determines that not a single requirement of this Article limits acquirement of knowledge of the State language or acquiring education in the State language.

At the Court session the representative of the submitter points out that Article 14, Paragraph 2 of the Convention really does not envisage the obligation of the state to ensure acquiring of the contents of study subjects in the ethnic minority language. He also does not contest the fact that the above norm has not become an international norm of international customs law. Thus the fact of signing the Minority Convention and the content of it do not restrict Latvia in realization of such an education policy, which it considers as well-grounded.

However, the representative of the submitter of the claim stresses that the impugned norm is at variance with Article 18 of the Vienna Convention because - since the moment of signing the Minority Convention- the possibility of obtaining education in the ethnic minority language has been limited.

The Constitutional Court agrees with the viewpoint, expressed by the submitter that since the moment of signing Minority Convention, the possibilities of the representative of ethnic minorities to acquire education in the native language have been restricted, as at the moment of signing the Convention normative

acts did not envisage mandatory acquiring of some subject in the State language. In its turn at the present moment the impugned norm determines proportion of use of the languages of instruction.

The signed Minority Convention is not binding on Latvia because it has not yet been ratified. The same refers to Article 14 of the Minority Convention. This Article has not become binding on Latvia as the international contract norm. Moreover, it cannot be binding as a norm of international customs law either, as application of this Article in Member States of Minority Convention is too different. This Article does not incorporate unmistakable and exact requirements to the state, which the state itself would declare as binding without ratification of the Minority Convention. Even though the right of ethnic minorities to acquire education in the native language, envisaged in the national legal acts, has been limited after the moment of signing the Minority Convention, the Constitutional Court recognizes the second statement of the submitter that the above limitation does not create obstacles for ratification of the Minority Convention as well-grounded. In its turn, the aim of Article 18 of the Vienna Convention is just to fight the obstacles, which make it difficult to ratify international contracts.

Thus it cannot be established that the impugned norm would defeat the aim and object of the Minority Convention. Thereby the impugned norm complies with Article 18 of Vienna Convention.

9. The submitter of the claim holds that the impugned norm does not comply with Article 114 of the Satversme. This Article establishes that persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity. The concept ”ethnic minority”, mentioned in Article 114 of the Satversme, is not defined in legal acts of Latvia. Even on international level the problem of defining ethnic minorities is very urgent and is solved in a different way (*see e.g. ECHR Judgment in case ”Gorzelik and others v. Poland”,§67)* by assessing both – what is the historical ethnic minority of the particular state and the fact, what protection is needed.

The duty of the Constitutional Court is not to determine the definition of ethnic minorities. Therefore, nothing, which is mentioned in this Judgment, shall not be interpreted in such a way, that it restricts the right of the legislator to elaborate the definition of ethnic minorities, which cannot be found in Latvian legal acts and to determine adequate regulation to the protection of ethnic minorities within the framework of

Article 91 of the Satversme. The representative of the submitter of the claim pointed out at the Court session that the above was not being requested from the Constitutional Court and there was no necessity for it. In adjudication of the matter the problem of defining ethnic minorities is of no importance as the situation is not such, that the regulation of the Education Law would deny anybody access to education at schools, which implement the programmes for ethnic minority education. The notions ”ethnic minority education programmes” and ”ethnic minority language”, mentioned in the impugned norm shall be autonomously interpreted within the framework of the educational system and refer to those educational institutions, in which - in parallel to the state language - acquiring of knowledge is ensured in eight other languages – Byelorussian, Romany, Hebrew, Estonian, Russian, Lithuanian, Polish and Ukrainian. All in all in Latvia there are 133 general secondary education institutions, which implement education programmes for ethnic minorities and, which are financed from the state and local government funds.

9.1. Article 91 of the Satversme prohibits discriminating of the representatives of ethnic minorities, who make use of the rights, granted to them. That is **the negative duty** of the state- to abstain from activities, which can be discriminating. In its turn Article 114 of the Satversme requires **positive activities** of the state – to protect and secure the rights of the representatives of ethnic minorities.

At the Court session the representative of the submitter challenges the fact whether the proportion, incorporated in the impugned norm, allows the child to maintain the culture identity. He concludes that there is an essential difference between teaching ethnic minority language as the school subject and its use as the language of instruction. Use of the native language as the basic language of instruction in cases, when it is objectively possible, would ensure maintenance of culture identity of persons, belonging to ethnic minorities.

In its turn the Saeima substantiates that Article 114 of the Satversme shall be read in conjunction with Article 4 of the Satversme, which refers also to representatives of ethnic minorities. They shall acquire and use the State language.

Besides the Constitutional Court points out that the scope of protection of ethnic minorities shall be approximated to the interests of the basic nation of the State and the whole State. This principle has been included also in Article 8, the first part, of the Language Charter of European Regional Languages and Ethnic

Minority Languages, namely, in the sector of education requirements of the Charter are applied on the basis of the importance of each language and so as not to harm teaching of the state language.

9.2. When adopting the impugned norm the Saeima has envisaged in it the way of balancing the interests of the languages of ethnic minorities and the official state language as concerns acquiring the study content. Even though there undoubtedly is a possibility of improving the above approach, it does not require amending of the impugned norm as the norm itself *expressis verbis* assigns the duty of ensuring use of the ethnic minority language for acquirement of the study content of connected with the language identity and culture of the ethnic minority. Thus the impugned norm itself ensures implementation of the requirements, included in Article 114 of the Satversme. This requirement is implemented by introduction of ethnic minority educational programmes, which shall ensure originality of ethnic minority languages and culture. Section 41 of the Education Law, which determines that educational programmes for ethnic minorities shall include content necessary for acquirement of the relevant ethnic culture and for integration of ethnic minorities in Latvia, confirms it. As concerns the secondary education the above becomes apparent in several ways. First of all, language and literature of the ethnic minority are being taught as mandatory subjects. Secondly, there exists the possibility of acquiring 40 percent of the study content in the language of the ethnic minority. Thirdly, textbooks are mainly issued in two languages – Latvian and Russian. Fourthly, the school – after receiving approval from the Ministry of Education and Science - may introduce teaching of some subjects like the Russian history or the Ukrainian folklore However, as was stated by the invited person Evija Popule, schools very rarely made use of such a possibility when elaborating ethnic minority educational programmes.

9.3. The scope of rights in the section of education for the representatives of ethnic minorities greatly differs. One cannot affirm that in Europe there is equal approach to the issue. For example in **Sweden** during the process of education at primary and secondary schools parallel to everyday classes the representatives have the possibility of attending additional classes in the native language – the language of the ethnic minority is taught as a subject or other school subjects are taught in it if at least five pupils have applied for such classes. The representatives of the Lapps are in a specific situation; they are given the possibility to choose one of the three study models, in

which their native language is being taught in different proportions simultaneously with the Swedish language, or they may learn at a six-grade Lapp school but after that acquire knowledge in the Swedish language.

In **Germany** studies in the native language, which is not the German language, at state schools are ensured only for children speaking the Danish language (for example in Schleswig-Holstein) and the Sorbian language (in Cotbus and Bautzen districts). In its turn the Turkish community, which is quite numerous, does not have the status of ethnic minority in Germany. Even though already the second generation of the representatives of this nation lives in Germany, at state schools they can learn only in the German language [*sk. arī Dribins L. Etniskās un nacionālās minoritātes Eiropā. Rīga: Eiropas Padomes Informācijas birojs, 2004, 92-194 lpp. (also see Dribins L. Ethnic and national minorities in Europe. Riga: European Council Information Bureau, 2004, pp. 192-194)*].

In **Lithuania** almost 86 percent of inhabitants belong to the basic nation. The biggest minorities are the Poles (6,7 percent) and the Russians (6,3 percent); but the Ukrainians and the Byelorussians are considered to be small ethnic minorities (about 1 percent). The educational system has been determined in conformity with the ethnic division. At Lithuanian schools the Lithuanian language has to be the language of instruction. However in close communities of ethnic minorities study process in the native language may be introduced at primary schools, schools or general education schools. Separate grades, optional classes or Sunday schools may be opened in general state schools for those ethnic minorities, who do not have close communities, but whose children would like to learn or improve their knowledge of the native language. However, in accordance with the Standards of the Ministry of Education and Culture, all the general secondary educational institutions shall ensure that all pupils know the Lithuanian language.

Thus in Latvia the possibilities to maintain and develop their language, ethnic and cultural originality are established for persons, belonging to ethnic minorities. Determination of proportion of language use for acquirement of the study content is not at variance with Article 114 of the Satversme.

10. Fundamental rights, determined by the Satversme create a mutually balanced system and they shall not be reviewed in an isolated way. The first sentence of Article 110 of the Satversme establishes: ”The State shall protect and support marriage, the family, the rights of parents and

rights of the child". Similar rights are established also in the Constitutions of other European states, which are often formulated in a more detailed way. For example, the second paragraph of Article 6 of the German Basic Law determines: "Care for children and their upbringing are natural rights of the parents and first of all their duty. The state shall see to their implementation". Article 110 of the Satversme by establishing that the state shall protect the rights of parents and rights of the child, also inter alia determines both – the natural right of the parents to take care about their children and bring them up in conformity with their religious and philosophical convictions and the duties, which are connected with care and upbringing of children. As concerns issues on the education of the child, the right of the parents to care for the children, among other things also when participating in taking the decisions, connected with their education, in many cases compete with the right of the person to education, which – in this or that way is connected with the State determined or supervised educational system.

Such conflicts have repeatedly been solved in the Constitutional Court practice of other states. In its July 14, 1998 Judgment in case on the German Language Spelling Reform (*see: BVerfGE 98, 218, 244)* the German Federative Constitutional Court, referring also to its former case law, stresses that in compliance with Article 6, Paragraph 2 of the Basic Law the parents experience the right and have the duty to care for their children and freely bring them up , using their own convictions. In comparison with other persons, who take part in upbringing of the children, the parents have prior rights to determine upbringing of their children as far as it is not restricted by the duty assigned to the state by Article 7 of the Basic Law to supervise the whole educational system. Therefore the parents are responsible for upbringing of their children and in principle have the right to request ensurance of the possibility of influencing upbringing of children also with regard to the content of school subjects. However the first sentence of Article 6, Paragraph 2 of the Basic Law does not establish for the parents exclusive rights to upbringing. As concerns education, the right and duty of the parents to bring their children up, clashes with the obligation of the state to supervise the educational system. This duty of the state is not subordinated to the rights of the parents, but exists side by side with it (*gleichgeordnet).* Upbringing of children is a joint duty of the parents and the school. It shall be done in the way of reasonable and mutual cooperation. Therefore with regard to schools the state shall take into consideration responsibility of the parents for the total plan of upbringing their children and shall take care of receptiveness to manifold viewpoints as far as the well-arranged state system school may "stand" it. For that the duty of the legislator is to establish the border between the rights of the parents and the state duty as concerns upbringing of children.

Article 2 of the EHRC First Protocol inter alia envisages that the state, when carrying out functions, which it assumes in relation to education, shall respect the right of parents to ensure such education and to teaching in conformity with their own religious and philosophical convictions. This Article guarantees the right of the parents to observation of their viewpoints as concerns education of their children. It is stressed also by the submitter of the claim. Parents, when doing their self-evident duty to their children, are responsible for such a significant period of life of children as acquisition of secondary education. Thus the parents may request observation of their religious and philosophical conviction in the process of education of their child. Thus the rights of the parents correspond to their responsibility, which is closely connected with the right to education and use of the above right.

As ECHR has explained, Article 2 of the EHRC First Protocol neither directly nor indirectly includes reference to the language of instruction. ECHR came to the above conclusion when reviewing the Belgium Linguistics case (*see I.B. 6.§ of the above case)*, in which the French speaking Belgium parents contested the school system of Belgium, namely, division of the state into several regions, the purpose of which was to determine the language of instruction at schools of particular regions. The Court concluded that it did not comply with Article 14 of the EHRC (in conjunction with Article 2 of the First Protocol) as the French speaking children were denied the right to attend a French school just because of their place of residence. As concerns the above case the Court concluded that religious and philosophical conviction of the parents should not be connected with linguistic factors. ECHR concluded: if linguistic factors were included in the concepts ”religious conviction” and ”philosophical convictions” then it would mean ”reading in the Convention something, which was not written there”. ECHR recognizes that EHRC does not assign the state with the duty of taking into consideration wishes of the parents, concerning the language of instruction, with the help of which education shall be acquired. ECHR holds that Article 2 of the First Protocol in no way determines the duty of guaranteeing the right of the parents to choose for their children such a language of instruction, which is not the state language.

Besides, it cannot be declared that the Education Law prohibits the parents of the children to influence the course of educational process. In accordance with Section 30, Paragraph 3 of the Education Law it is an obligation of the head of an educational institution to ensure the creation of a self-governing body for the educational institution if the educatees, educators or the parents of the educatees propose it. Article 31 of this Law determines that the self-governing body of a primary and secondary educational institution shall consist of representatives delegated by the

founder of the institution, by the educatees and parents of such, and by employees of the institution. The self-governing body elaborates proposals for the development of the educational institution, ensures cooperation of the educational institution with parents of the educatees and submits proposals to the head of the educational institution also about implementation of the educational programme.

Thus the impugned norm is not at variance with Article 2 of the First Protocol of the EHRC on observation of the religious and philosophical conviction of the parents in the process of education.

11. Article 2 of the EHRC First Protocol determines that no-one shall be denied the right to education. Even though this Article has been formulated in the negative, namely, ”no-one shall be denied the right […], there is no doubt that it establishes ”rights”. The negative formulation of this Article is not accidental, and it has its legal consequences. This Article does not impose any duties to the state, which would oblige it for budget funds ensure or subsidize acquirement of education of any kind or level. Such ECHR conclusion is rooted in the circumstance that Member States of the European Council had already created their own educational system. Therefore Protocol 1, Article 2 guarantees the right of a person to enjoy the possibilities, which are given by the educational system, existing in the state. For the right to education to be effective, their beneficiary shall ensure the possibility of gaining benefit from the acquired education, that is, acquiring education in this or that way in accordance with the provisions in effect in the state, as well as to rely upon official recognition of the completed education (*see: Grosz S., Beatson J., Duffy P. Human Rights. The 1998 Act and the European Convention. London: Sweet & Maxwell, 2000, pp. 359 -360).* In its turn the European Commission of Human Rights (henceforth – the Commission) has concluded that Article 2 of the First Protocol mainly refers to primary education. The state may regulate accessibility of other kinds of education and not violate Article 2 of the First Protocol. The Commission holds that the State does not have the duty of ensuring the possibility of acquiring higher or special education (*see, for example, Applications No. 5962/72 and No. 7671/76).*

It has to be simultaneously pointed out that Article 2 of the EHRC First Protocol refers to both – secondary and higher education in the scope in which the particular educational level is accessible in accordance with the normative acts of the Member State. Even though Article 2 of the First Protocol mainly refers to primary education, however, if other kinds and levels of education have been created, then the above Article refers also to them. For example, the Commission has concluded that state financed possibility of acquiring higher education may be limited

to those students, who have reached such an academic level, which is necessary to obtain the greatest benefit from the already acquired knowledge (*see application No. 8844/80).* Similar is the case law of ECHR and the Constitutional Court, when interpreting the right of a person to a fair court. Namely, ECHR does not impose the obligation of creating the court of cassation instance, however, if it has been created then Article 6, Paragraph 1 of EHRC and the first sentence of Article 92 of the Satversme shall be observed in the performance of this court (*see the Constitutional Court June 27, 2003 Judgment in case No. 2003-04-01, Item 1 of the concluding part).*

ECHR has concluded that the contents of schools programs is within the competence of the Member States (*see ECHR Judgment "Kjeldsen, Busk Madsen and Pedersen v. Denmark" §53).* Even though reference to the language of instruction is neither directly nor indirectly included in Article 2 of the First Protocol, the right to education may become meaningless if it cannot be implemented just because of the language barrier (*see: Case "Relating to certain aspects of the laws on the use of languages in education in Belgium"v. Belgium (Merits)" I.B.§3).*

The first sentence of Article 112 of the Satversme, which determines that everyone has the right to education, shall be interpreted just in the same way as Article 2 of the EHRC First Protocol. In its turn the second and third sentences of Article 112 of the Satversme envisage more extensive rights for persons. Even though Article 2 of the EHRC First Protocol does not impose the duty of creating educational system of certain type to the state, the second sentence of Article 112 of the Satversme obliges the State to ensure that everyone may acquire primary and secondary education without charge. In its turn, the third sentence of this Article even determines that primary education shall be compulsory.

As the secondary school educational system has been created and exists in Latvia, the first and second sentences of Article 112 of the Satversme undoubtedly include accessibility to secondary education. In its turn the impugned norm, taking into consideration linguistic factors, might be regarded as restriction of the right, included in this Article. However the fact, whether the restriction is justifiable, taking into consideration the formulation included in the claim, shall be assessed as read in conjunction with Article 14 of the EHRC and Article 91 of the Satversme.

12. Article 91 of the Satversme establishes that all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind. Similar general prohibitions of discrimination are included in several Constitutions of European states. As the Constitutional Court has concluded (*see the Constitutional*

Court February 22, 2002 Judgment in case No. 2001-06-03, Item 3 of the concluding part) Article 3, Paragraph 1 of the German Basic Law in a similar manner determines that ”all human beings are equal before the law”. The principle of equality, included in this Article, is assessed as the immediate rights. In Germany courts and the greatest part of specific literature declare that from Article 3, Paragraph 1 of the Basic Law follow subjective public rights to equal treatment (*see:Grundgesetzkommentar. Band 1, 5. Auflage, München, Verlag C.H.Beck, 2000. S. 195).*

To assess whether the impugned norm conforms to the above norms, prohibiting discrimination, it is necessary to establish:

a) which persons are in equal or different circumstances;
b) whether the impugned norm envisages equal or different attitude to these persons;
c) whether such attitude has an objective and reasonable basis, namely, whether a legitimate aim exists and whether the principle of proportionality has been observed.

13. The principle of legal equality obliges equal attitude only to persons who are in equal and comparable circumstances. This principle concedes and even demands different attitude to persons, who are in different circumstances. However, only if it has been established that there is an objective and reasonable aim, the principle of equality permits different attitude to persons, who are in different circumstances (*see e.g. the Constitutional Court Judgment in case No. 2000-07-0409,Item1 of the concluding part).*

The Constitutional Court agrees with the viewpoint of the submitter of the claim, who – inter alia indicating to the ECHR Judgment in case *Thlimmenos v. Greece (see §44 of the Judgment)*- points out that a person, belonging to ethnic minority is not in equal circumstances with persons, belonging to the basic nation. Among the criteria, which determine this difference, one may name language and ethnic belonging. These criteria may not fully conform to the situation, because the language, spoken by the pupil, may not coincide with his/her ethnic belonging as well as the language of instruction of the chosen school may differ from the native language of the person.

In accordance with Article 9, Paragraph 1 of the Education Law education shall be acquired in the official language in State and local government educational institutions. Mainly persons, whose native language is the official language, learn at these schools. Article 9, Paragraph 2 of the Education Law establishes that education may be acquired in another language in State and local government educational institutions in which educational programmes for ethnic minorities are

implemented. Thus, when elaborating the Education Law, the legislator has taken care so that in these schools persons, belonging to ethnic minorities, might acquire education also in their native language.

The impugned norm clearly points to the fact that in schools, which implement the educational programmes for ethnic minorities, acquiring of the study content only in the language of ethnic minority, is not possible. As has been mentioned before, this norm establishes a certain proportion of the language of instruction, namely, at least three fifths of the study content shall be acquired in the state language, that is in language, which is not the native language of the educatee.

Thus the impugned norm only partly envisages a different attitude to persons, who are in different circumstances.

14. The representative of the submitter also agrees with the above conclusion and points out that the impugned norm only partly envisages a different attitude to persons, who are in different circumstances. It unequivocally follows from the impugned norm, which **does not prohibit** using other not only the State language for acquiring the study content at schools, which implement the educational programmes for ethnic minorities, but merely – by observing the proportion determined in the impugned norm.

Because of the above condition, the argument of the submitter on the similarity of the matter being reviewed with the ECHR adjudicated matter *Cyprus v. Turkey* shall be rejected. In the above matter the Court concluded that Article 2 of the EHRC First Protocol was violated because the Turkish Republic of the Northern Cyprus forbade pursuing a secondary education to the Greek children in the Northern part of the island, even though it had undertaken responsibility and created Greek primary schools. The Greek children, who had learnt only in the Greek language at primary school, had no possibility of acquiring secondary education in the Northern part of the island that is in the Turkish part of Cyprus. ECHR rejected the alternative solution, that is – the possibility of continuing their children's education in the Southern part of the island, i.e., in the Greek part of Cyprus – on the basis of violation of private life (*see §277 – 280 of the above Judgment).*

In the same way similarity of the matter being reviewed with April 6, 1935 advisory opinion of the Permanent Court of Justice in the matter of ethnic minority schools in Albania, in which the liability of Albania to allow establishment of private schools was analyzed. In 1933 Albania, on the pretext of a particular amendment to the Constitution, decided to close all - Albanian and ethnic minority - private schools. The Court concluded that together with closing of the private schools ethnic and

religious singularities of the basic nation would remain untouched but the representatives of ethnic minorities would lose the institutions, which are needed to maintain singularities, rituals etc. Thus Albania could not excuse itself by equal attitude towards the representatives of the basic nation and ethnic minorities, as with regard to the representatives of ethnic minorities a different attitude might be needed (*see: Minority schools in Albania. Advisory opinion of Permanent Court of Justice.* *http://www.icjcij.org/cijwww/cdecisions/ccpij/serie_AB/AB_64/01_Ecoles_minoritaires_Avis_consultatif.pdf*).

15. The Constitutional Court recognizes that the impugned norm only partly envisages different attitude to persons, who are in different circumstances, as has been mentioned in Item 11 of this Judgment, thus restriction of the right to education is established. Therefore it is necessary to assess the above restriction, namely, to ascertain whether it has been determined by law, whether it has a legitimate aim and whether it complies with the principle of proportionality.

16. At the basis of restriction of any fundamental right of a person there shall be circumstances and arguments about why it is necessary. Thus restriction is determined for the sake of important interests – the legitimate aim. The Constitutional Court has established that Article 4 of the Satversme, when determining that the Latvian language shall be the official language in the Republic of Latvia, attaches constitutional status to it. Taking into consideration the fact that under conditions of globalization Latvia is the only place in the world where existence and development of the Latvian language and together with it the existence of the basic nation can be guaranteed, therefore narrowing of the use of the State language is inadmissible within the territory of the State and in can be regarded as threatening to the State democratic system (*see the Constitutional Court December 21, 2001 Judgment in case No.2001-04-0103; Item 3.2 of the concluding part).* When determining restrictions, the aim of which is the protection of the Latvian language, one shall take into consideration the fact that the Latvian language as the State language in Latvia has been fixed only recently as well as the fact that from 1940 till 1990 - because of historical circumstances - usage of the Latvian language had noticeably decreased (*see the Constitutional Court June 6, 2003 Judgment in case No. 2003-02-0106; Item 3 of the concluding part).*

However, the legitimate aim of the impugned norm is not only the protection of the State language. When passing the impugned norm the legislator has taken into consideration the constitutional status of the Latvian language and wanted to strengthen the use of the State language also in the educational system as the basis for furthering possibilities of

a person to use the state language and thus be adapted to the society, as well as gain some benefit from the educational system. The Constitutional Court agrees with the viewpoint of the Saeima that reorganization of the educational system, envisaged in the impugned norm, promotes adaptation of the representatives of ethnic minorities in the Latvian society and at the same time observes their right to maintain, use and develop their native language, ethnic and cultural originality. Thus the rights of everybody to use the State language in any sector within the whole territory of the State are indirectly insured. When analyzing the conclusions of international institutions, it can be established that no principled objections to the necessity of education reform have been expressed. Quite to the contrary. Thus, for example, during his October 12-13, 2004 visit the High OSCE Commissioner on National Minorities Rolf Eckeuss recognized that Latvia not only experiences the right, but has the **duty** to ensure both education in the state language and simultaneously – maintenance of ethnic minority identity (*OSCE High Commissioner on National Minorities. Statement to the Permanent Council. 28.October 2004. See Vol.2, pp. 77-83 of the matter).* Such duty follows also from Article 29, First Paragraph of the Convention on the Rights of a Child. Item ”d” of it requires bringing the child up in such a manner that he/she is prepared for the conscientious life in a free society, where there prevails understanding, peace, tolerance, equality of men and women and friendship among all nationalities and all ethnic, national and confessional groups as well as the persons, belonging to the basic nation.

Besides, determination of the proportion for the languages of instruction has one more aim – protection of the rights of other persons. Namely, the representatives of ethnic minorities, who wish to acquire good level of knowledge of the State language, also using it for acquirement of study content, shall be given such an opportunity. Restricting of such an opportunity would violate not only their right to education, inter alia also to State financed higher education, but also their possibilities to use the State language in certain sectors. As the Saeima representative pointed out at the Court session, many children of ethnic minorities chose studying at schools with the State language as the language of instruction. The fact, mentioned at the Court session, that there is no private school in Latvia at which the Latvian language as the language of instruction is not used, indirectly testifies about the necessity of using the State language in acquiring the study content.

Thus the impugned norm has legitimate aims – strengthening of the use of the State language and the protection of the rights of other persons.

17. Even though both – the submitter of the claim and the Saeima agree that the impugned norm has a legitimate aim, its conformity with the principle of proportionality is assessed in a different way. This principle determines that in case, if the public power limits the rights and legitimate interests of a person, then a reasonable balance between the interests of the society and those of an individual shall be observed. To establish, whether the principle of proportionality has been observed, one has to ascertain whether the measures, chosen by the legislator are **appropriate** for reaching the legitimate aims, **whether more lenient measures** might not have been used for reaching the above aims and whether the activity of the legislator is adequate or **proportionate.** If, when assessing the legal norm, it is recognized that it is unconformable with at least one of the above criteria, then it is unconformable with the principle of proportionality and unlawful (*see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-01; Item 3.1 of the concluding part and June 27, 2004 Judgment in case No. 2003-04-01, Item 3 of the concluding part).*

18. The legislator has chosen several measures for reaching the legitimate aims. First of all teaching of the State language as the school subject and its use for acquiring the study content shall be mentioned. The impugned norm includes one of them – the use of the State language for acquiring study content in accordance with the proportion for use of the languages of instruction.

In accordance with this proportion one part of the study content is acquired in the native language of the ethnic minority, but other part – in the State language or in both languages. Schools, when elaborating their programme for **primary education,** may choose one of the standards for the ethnic minority school primary education. In its turn, when implementing the programmes meant for ethnic minority **general secondary education**, the educational institutions themselves determine the language to be used for acquiring the knowledge of the school subjects, observing the proportion, established in the impugned norm. The chosen programme is licensed by the Ministry of Education and Science. For example, the 2004/2005 study year curriculum of the Jewish Secondary School named after Sh. Dubnov envisages that the pupils shall learn history, sports, practical informatics, geography, chemistry, biology and history of culture in the State language, but algebra, geometry, business economics and physics – bilingually. Acquiring of study contents in the Russian language was determined in the following subjects: Russian language and literature, fundamentals of Judaism and the history of the Jewish nation. Other school subjects are mainly studied in the Russian language; several also alternately – one class in the Russian, the other- in the Latvian language (*see the material in case, Vol.2, pp.160-177).* In some schools already before September

1, 2004 more than five subjects or even all subjects are being taught in the state language, for example, at Limbaži 2.secondary school, Gulbene 2.secondary school, Bauska district Iecava secondary school and Riga Ukrainian school (*see the material in case, Vol.4, pp. 5-6).*

In its explanation to the Constitutional Court the Ministry of Education and Science points out several factors, which establish the substantiation of the chosen measure. **First of all it** is the factor of succession, as, in accordance with the models of State Standards for primary education, the proportion of the use of State language for acquiring knowledge of the study content reaches 50 – 70 percent. Thus the language proportion established for the secondary school – three fifths – is the logical continuation of the proportion determined for language use at the primary school. Besides, studies at the State higher educational institutions take place only in the State language, but the entrance examinations are united with the State examinations at the secondary school. **Secondly,** the choice of measure of the impugned norm has been determined by the scientific factor, namely, necessity to encourage pedagogically correct choice of the subjects to be taught in the State language at the educational institutions. **Thirdly,** the practical factor is also of great importance. It includes the aim to favor such establishment of educational programmes and choice of language of instruction, which would ensure training and competing abilities of the graduate in the State, in which the official language is the Latvian language. At the Court session Ina Druviete stressed that in Latvia the ”knowledge basket” undeniably included also the Latvian language, because in case, when people did not know the Latvian language, one might speak just about ” acquirement of abstract facts, understanding of them but about practical inability to use the knowledge in everyday work”.

In addition to the above factors we shall take into consideration also the fact that in 1995 the legislator, when elaborating amendments to the Republic of Latvia Education Law (*see Item 4 of this Judgment),* has established that by teaching the Latvian language in ”an isolated way” one cannot reach sufficient level of knowledge of the language and its use in practice. As has been pointed out in the Saeima written reply, the approach, that teaching of other subjects in a language favors acquirement of the language, is scientifically justified.

Ina Druviete at the Court session recognized that the model of bilingual education should be assessed not only within the framework of pedagogy but also within the framework of socio-linguistics. She does not agree with the statement, that number of Latvian language classes should be increased. To her mind it would give no result. When acquiring just the knowledge of a language, a person learns to answer to questions by using more or less known phrases etc., but the so-called

inborn mechanism of mastering a language is not being activated. At the Court session the representative of the submitter also agreed to that, saying that the bilingual education method was not being contested. He drew attention to the fact that the bilingual education method was complicated and its implementation – hard to prognosticate. However, to ensure equality and non-discrimination of persons, belonging to ethnic minorities as well as their right to maintain culture identity, favoring acquiring of the knowledge of the State language and integration of these persons, the bilingual education method is widely used. The Hague OSCE Recommendations Regarding the Educational Rights of National Minorities also mention the above approach to the educational process at ethnic minority schools. At the Court session the representative of the submitter also made reference to this Recommendation. Item 13 of the Explanatory Note of the Recommendation indicates that part of the subjects shall be taught in the national minority language and gradually the number of subjects, which are being taught in the State language shall be increased (*see: The Hague Recommendations Regarding the Educational Rights of National Minorities and Explanatory Note, October1996; http://www.osce.org/hcnm/documents/recommendation/hague/ index/php).*

Thus the measure chosen by the legislator – use of the official language in acquiring knowledge of the study content by determining proportion of the use of the language of instruction, - all in all is appropriate for reaching the legitimate aims.

19. The restriction of fundamental rights determined in the impugned norm is proportionate only if there are no other means, which are as effectual and by choosing them the fundamental rights will be restricted in a lesser degree. When assessing whether the legitimate aim may be reached in a more lenient way, the Constitutional Court takes into consideration that a more lenient means are not any means, but only such by which the aim may be reached in the same quality. When establishing the possibility of a more lenient way, the Court may not act instead of the legislator and the State Administration. It refers also to the policy of education, as it is the sector in which the State institutions have the greatest freedom of action. For example, if the methods of training are different and the state has chosen one of them, then the Court may not choose another one, even though if the latter is scientifically more correct. As was established at the Court session, just the bilingual education has 200 different models with countless variations (*see also the Material in case, Vol.6, pp. 90-110).*

19.1. The submitter of the claim points out that there is another measure than the one envisaged in the impugned norm. For

example the number of the classes of the State language can be increased. The Saeima reasonably holds that this measure will be even more restricting as then the study-load of the pupils would be increased and that would threaten the quality of acquiring other school subjects. The fact, that during the last 15 years, when the State language is being taught as a separate subject, knowledge of the Latvian language has not noticeably improved, also cause doubt about the efficiency of the above measure. Thus this measure cannot be regarded as a more lenient one. As has been mentioned before (*see Item18 of this Judgment),* teaching the State language just as a separate subject is not effective. The ability to use the language is necessary and this ability can be acquired by mainly using the State language for acquiring the study content.

19.2. Other, more lenient measures - with an exception of increasing the number of the State language classes – are not mentioned in the claim. The submitter of the claim did not name them at the court session either. From the materials of the Saeima sessions and Commissions it can be seen that during the adoption of the impugned norm, there have been debates also on other wording of the norm (*see the third reading of the"Amendments to the Education Law". Material in case, Vol.3, p.97).* Trying to formulate the existing wording of the impugned norm, it was recommended to substitute the words "only in the State language" with "mostly in the State language" (*proposal No.48),* "not less than three school subjects, as well as the Latvian language and literature" (*No.46),* "at the ethnic minority secondary schools 40 percent of subjects besides the native language and literature shall be taught in the native language" (*No. 52),* "the language of instruction of acquirement of the study content shall be determined in accordance with Section 41 of the Education Law (*No. 53).* At the Saeima January 28, 2004 sitting of Education, Culture and Science Committee the deputy Jakovs Pliners mentioned that "the language of instruction shall be determined by school in accordance with the decision of the local authority, because the Ministry of Education and Science is not cleverer than the school and the local authority" (*see the Minutes of the meeting No.7. material in case Vol.3, p.36).* This deputy in his letter addressed to several officials proposes that it would be preferable to teach five school subjects (including the Latvian language and literature) in the State language, simultaneously allotting six and not 4 classes for teaching the Latvian language and literature (*see Material in case Vol.3, p.110).*

19.3. The Constitutional Court holds that the submitter of the claim neither at the Saeima meetings nor at the Court session has indicated more lenient measure, which would allow reaching the legitimate aim as efficiently. All the mentioned measures either only adjust the impugned norm not changing its essence or envisage quite a different approach. For example, if the right of choosing the language of instruction were delegated to the local authority, then the rights of the pupils would be violated, as every local authority might choose the language of instruction to be used for acquirement of knowledge of the study content. It would make the further education possibilities for pupils more difficult and limit their possibilities for integration in the society as the language of instruction, used in the process of education, would not comply with the language used for communication. No above measure can be regarded as a more lenient one, as in difference from the measures, envisaged in the impugned norm, it would not allow continuation of **strengthening** of the Latvian language in the educational system in future, would not observe **succession** in the process of the educational reform and the educational system; as well as would not ensure **uniformity** of provisions, connected with the language of instruction, in the whole State.

In its turn the impugned norm is ”flexible” enough. First of all it allows using the Latvian language for acquiring study contents of more than just three fifths of subjects. Secondly, the schools, cooperating with the Ministry of Education and Science may determine the contents of its education programme freely enough, also the choice of language for concrete subjects (the State language, the ethnic minority language, division of the subject for teaching in two languages). The circumstance that there are not similar but multiform educational programmes in the State testifies about it. Namely, every school, cooperating with the Ministry may adapt use of the languages for its specific situation. Thirdly, the impugned norm requires protection of the identity and culture of the ethnic minority.

Thus, in can be concluded that there are no other more lenient measures to reach the legitimate aims.

20. Finally the Constitutional Court has to establish whether the action of the legislator is adequate or proportionate. Namely, whether, the measure, chosen by the legislator ensures that by determining the restriction the benefit of the society is greater than the damage, caused to the interests of an individual. To establish, whether the principle of proportionality has been observed, attention shall be paid to the following issues:

a) whether the proportion of use of the language of instruction, envisaged in the impugned norm, determines the language in which State tests shall be taken;
b) whether introduction of the impugned norm does not worsen the quality of mastering the study content;
c) whether, by adopting the impugned norm, a considerate transition to the new legal regulation has been ensured.

20.1. Education is a complex process, which includes both – acquisition of the study content and the assessment of the result of the process. The impugned norm determines the proportion of the languages of instruction in the process, however from it does not directly follow in what language the State examinations (tests) are to be taken. In accordance with Item 3.3 of the 3rd. Supplement to the Regulations since 2007 " the contents of the State tests (examinations) shall be in the Latvian language".

The Saeima in its additional explanations points out that when interpreting Item 3.3 of the 3rd. Supplement to the Regulations separately from other norms and using only the method of grammatical interpretation, it could be incorrectly interpreted. Namely, that the language in which the State examination has to be taken might be different from the language of instruction for teaching the study subject. The issuer of the Regulations – the Cabinet of Ministers, when answering to the letter of the Constitutional Court draws attention to the fact that the above norm does not limit the right of the pupil to choose the language for answering at the examination.

The Constitutional Court recognizes that determination of the optimum balance between the proportions of the language of instruction, established in the impugned norms and the language of the State examination work is within the competence of the Saeima and the Cabinet of Ministers but it should be taken into consideration that there has to be a possibility of checking at the examination whether the school graduate is able to continue education in the Latvian language – the only language in which studies at the higher educational institutions take place. However, when interpreting Item 3.3 of the Supplement to the Regulations in a way that this norm does not limit the right of the pupil to choose the language in which to answer at the examination both – the impugned norm and the principle of proportionality are observed.

20.2. At the Court session concern about the influence of the impugned norm on quality of education and that of the educational process

as well as about the evidently insufficient control of the educational process and quality of education, was expressed. As in the context of the above statements the representative of the submitter indicated to the burden of proof and substantiating of the institute, which has passed the impugned norm, the Constitutional Court holds that it is necessary to establish, who of the participants in case of the Constitutional Court process has the burden of proof of and substantiating.

20.2.1. The representative of the submitter holds that at the Constitutional Court process the institution, which has passed the impugned norm, has the burden of proof and substantiating. The Constitutional Court itself has an active role in obtaining proof and providing substantiation. Besides, Article 18, Paragraph 1, Item 4 imposes the duty of including the legal justification in the claim. The Saeima, when preparing the written reply, has to give an exhaustive and complete substantiation as well as submit the necessary proof for its statements, but not only confine itself with an agreement to the claim or disproof of the arguments included in the claim. Such a conclusion is founded on the circumstance that the passer of the impugned norm best of all knows its substantiation, necessity and influence on the existing legal relations. Thus, to the institution, which has passed the impugned act, the burden of proof and substantiating is far greater than to the submitter of the claim. Even though it does not acquit the submitter of the claim from the duty of submitting proof and giving substantiation, however in this particular case just the Saeima had to offer all the needed proof to the fact, so as to objectively and as far as possible substantiate the influence of the impugned norm on the quality of the educational process.

20.2.2. At the Court session the representative of the submitter pointed out: the impugned norm in itself is not discriminating, however, the restriction envisaged in it may lead to the situation, that education of lower quality is being offered to persons, belonging to ethnic minorities. At the Court session doubt was also expressed on the fact whether schools had been completely prepared for the process, whether the pedagogues had adequate education and abilities, whether all the necessary training devices were issued etc.

First of all the Constitutional Court indicates that, when reviewing the case, taking the decision of the efficiency of the impugned norm is not within its competence. Secondly, at the moment its is not possible to establish the influence of the

impugned norm on the quality of education and educational process, as it has been in effect for less than for nine months, but influence on the quality can be assessed only in a long term. Thus the Saeima did not have the possibility of objectively proving that in the result of implementation of the impugned norm, the quality of education or that of educational process would not turn for the worse.

Both the Saeima and the Inspection have furnished extensive information to the Court on the preparation measures for implementation of the impugned norm. For example, further educational courses in the State language and courses in methods for teaching a particular subject were ensured for the pedagogues, besides the resources, needed for teaching school subjects in the State language, have been considerably increased. The Saeima also points out that during seven years the State budget funding in the amount of 10 539 667 lats has been granted for implementation of the ethnic minority educational policy (*see a more detailed information on utilization of this sum in the case material, Vol.6, pp. 208-209).*

2004-2005 information, compiled by the Inspection on the readiness of schools to implement the requirement of Section 9, Paragraph 3 of the Education Law Transitional Provisions – the impugned norm – that teaching at the educational institutions shall take place **only** in the State language is attached to the case material (*see: material in case, Vol. 3, pp. 198 -218; Vol.4 pp. 1-64).* This information testifies that schools were predominantly ready to implement the above requirement. In accordance with the above information, the knowledge of the language of the teachers was sufficient to teach the study content only in the State language. As concerns provision with textbooks and methodical resources, it has been more critically evaluated, namely, 65 percent of teachers have pointed out that schools are only partly supplied with textbooks and methodical resources.

These data of course cannot directly confirm changes either in the quality of education or express any outlook. The above opinion of the State institutions as well as August 16 and October 1, 2004 informative reports by the Ministry of Education and Science on the readiness of ethnic minority schools for the education reform and beginning of the school year (*see the case material, Vol. 6, pp. 173 -209)* testify financial investment and contribution of efforts as well as

realization of different measures for efficient implementation of the impugned norm. However, whether the measures have been sufficient and really efficient cannot be regarded as an issue to be established and assessed in the process of the Constitutional Court.

Thus, as concerns the matter at the present moment it is not verifiable that implementation of the impugned norm will cause decline of the quality of education and educational process.

20.2.3. Even though at the present moment influence of the impugned norm on the quality of education and educational process is not verifiable, there shall be mechanism with the help of which changes of quality can be established. It especially concerns the quality of the educational process. The above changes not only can be established, they shall be actively controlled. It is required by the right to education, which is incorporated in the first sentence of the Satversme Article 112. Besides, it follows from the sentence that the controlling mechanism of the quality control shall be impartial, versatile, professional and regular, based of scientific conclusions and methods. The State has the duty to ensure obtaining of such data, by analyzing which one can take weighed out decisions as well as furnish information on the changes of educational quality and course of the educational process to the educates and their parents.

Regardless of the fact that within the framework of this matter it is not within the competence of the Constitutional Court to analyze or assess the controlling mechanism of the education and educational process quality, existing in the State (for example, examination and supervision, which is realized by the Inspection, the Court, on the basis of conclusions, acquired during the period of preparation and adjudicating of the matter, expresses doubt about the sufficient efficiency of the mechanism. At the present moment the controlling mechanism is directed more to obtaining of quantitative but not qualitative data. Generalization and analyses of the data is insufficient. Data obtained earlier have not been adequately systematized and analyzed. The letter by the Examination Centre of the Education Content to the Constitutional Court (*see material in the matter Vol.4, p.65)* indirectly confirms it. Besides, since school year 1996/97 systematic research on changes in quality of ethnic minority education has not been carried out. Thus, a situation may arise, that any changes,

introduced in the educational system do not reach their aim and the educational process loses sense.

Thus, the existing controlling mechanism of the education and educational process is not sufficiently effective.

20.3. At the Court session the Saeima representative upheld the viewpoint, expressed in the Saeima written reply, namely, that the schools had been given sufficient time for preparation of the requirements of the impugned norm, that the educational process was being supervised and that the pedagogues on the whole were prepared to teach in accordance with the proportion of the language instruction, envisaged in the impugned norm.

As has been mentioned before the Constitutional Court can neither doubt nor confirm it. However, to establish, whether a considerate transition process was envisaged when adopting the impugned norm, one should not analyze only the sums of money, used for the reform, issued teaching aids, courses organized for training of the teachers etc. The educatee and his/her ability to adapt to the new requirements, especially those, which influence the language of acquirement of the study subject is the most important person. As the impugned norm concerns the secondary education, the previous process of studies should have been long enough directed to preparation of the educatee to the requirements of the impugned norm. It is not possible in a court process to determine how adequate the process of preparation has been at every particular school.

In return, when being guided by the requirements, determined in the normative acts, it is necessary to conclude whether adopting the impugned norm, there was the need to establish a more lenient transition. Namely, the legislator, when passing a legal norm, has always to make certain about its influence on the existing legal relations. In a democratic and law-governed state, when making amendments to the normative acts, the duty of the passer of the act has the duty of considering and envisaging a lenient transition to the new legal regulation (*see the Constitutional Court March 25, 2003 Judgment in case No. 2002-12-01, Item 2 of the concluding part).* In such cases, if it is necessary, reasonable terms for implementation of the new requirements shall be established. Lack of lenient transition alone may serve as the basis for illegitimacy of a legal norm.

20.3.1. The claim includes reference to separate viewpoints of the UNO institutions, in which - in accordance with several international

human rights instruments – has been assessed the former wording of the impugned norm, that envisaged commencement of studies at the educational institutions **only** in the State language from September 1, 2004.

UNO institutions have objected to the implementation terms of the reform. On December 10, 2003, when interpreting the International Convention on Elimination of Discrimination of Any Kind, the UNO Committee for Elimination of Race Discrimination (*CERD/C/63/CO/7)* concluded that – when changing the language of instruction to the State language at schools in the term, envisaged in the law, complications might arise for representatives of ethnic minorities. On November 6 of the same year the UNO Human Rights Committee (*CCPR/CO/79/LVA*) in accordance with observation of Article 26 and 27 of the International Covenant for Civil and Political Rights expressed the same concern, namely, on the terms, which had been determined for change of the language of instruction to the State language for ethnic minority schools.

However, the above conclusions by the UNO institutions cannot be wholly attributed to the impugned norm. As has been mentioned, all the above viewpoints have been expressed about the previous, much stricter wording of the norm, which did not envisage the proportion of the languages of instruction, but established that with September 1, 2004 studies at the secondary schools shall be commenced **only** in the State language. The Cabinet of Ministers and the Saeima acknowledged that requirements of Section 9, Paragraph 3 of the Education Law Transitional Provisions should be ”softened” and expressed in a new wording. However, the moment – September 1, 2004 – from which the impugned norm takes effect, was not changed.

20.3.2. In this matter there is no dispute about the fact whether lenient transition has been observed with regard to the pupils, who after September 1, 2004 continue studying in forms 11 and 12 of the secondary school. These persons acquire knowledge of the study content with the same proportion of the State language, which was determined before the impugned norm taking effect. Namely, in 2004/2005 school year - in accordance with Item 3.2 of the third Supplement of the Regulations – in the 12th. form not less than three school subjects shall be acquired in the Latvian language.

20.3.3. One of the most important study content elements of the right to education is the possibility to gain benefit from the acquired

education. First of all, the possibility of continuing education at the higher educational institution – both at the secondary school and higher school – shall be considered as such benefit. Thus, the State has the obligation of ensuring efficiency of such transition. Any new requirement may be introduced into the educational process only then, when reasonable doubt about the fact that it will not create any negative consequences in the process is excluded. For the training process to be efficient when introducing changes in the educational system, positive motivation to acquire new knowledge and abilities has to be maintained. Without a real will to learn, the process of training is ineffective or even impossible.

Marija Golubeva in her written viewpoint to the Constitutional Court acknowledges that – in accordance with Section 6 of the Education Law Transitional Provisions - total transition of the ethnic minority primary school to new bilingual education models was envisaged for September 1, 2002, when pupils at all primary schools had to learn in two languages. Thus, the pupils, who commenced studies at the primary school in two languages in 1999, would enter the secondary school only in 2007/2008 school year. Thus, the Amendments, which were made to the proportion of language use envisaged for secondary schools, were not approximated with the requirements of the normative acts, which in the group of the 1st. to 9th. forms were established for the pupils, who on September 1, 2004, commenced studies in the 10th.form.

Item 3.7 of the Conception on the Development of Education for 2002- 2005, adopted by the Cabinet of Ministers on June 17, 2002 establishes the principle of succession as one of the principles of educational policy. It determines that- before commencing of new reforms - the results of the previous reforms shall be assessed and positively assessed initiatives shall be continued. The principle of succession in introduction of bilingual education means that before new requirements of language use are introduced, it shall be assessed what introduction of bilingual education at the primary school has given. However, when adopting the impugned norm, the results of implementation of the previous reforms have not been sufficiently assessed.

Up to September 1, 2002, when introduction of the model of bilingual education in the whole 1. – 9. grade group was completed, use of the State language in acquiring the knowledge of the study content was rather incomplete as concerns both - the

number of subjects to be taught in the State language and providing of teaching aids. Thus, for example, beginning from 1996/97 school year at least two school subjects had to be taught in the State language at primary schools. Evija Papule explained that schools had been advised to attribute this norm to subjects, in acquiring of which language is not dominant (e.g. domestic science, manual training, sports, but later also – geography and biology). As Tatjana Liguta acknowledged at the Court session – schools had not been prepared for this step and during the first years good quality of teaching these subjects was not reached. When adopting the Education Law it has been established that the norm about two school subjects in the State language at primary schools does not function and other measures were introduced in the Education Law.

Therefore, on the one hand, it can be concluded that when choosing the moment of the impugned norm taking effect, lenient transition would be possible just beginning with September 1, 2007, when those pupils, in the educational process of whom bilingual methods have been used at

However, on the other hand, the Constitutional Court recognizes that the obligation to ensure a considerate transition cannot be attributed to all pupils. Such an interpretation concerning the obligation to ensure a considerate transition, namely, that the proportion of the language of instruction shall be alike for all the pupils – from the 1st. to the 12th. form- would violate the interests of those pupils, who know the State language well enough. That would be at variance with the aim of the Education Law – to ensure for every inhabitant of Latvia the possibility of developing his/her intellectual and physical potential in compliance with his/her needs. Besides, changing of the proportion of the use of language is an essential condition for successful bilingual education, so as to ensure the possibility of the educatee to reach progress in his/her knowledge and skills.

Thus, it is necessary to find a balanced solution between the ensurance of a lenient transition and the process of not violating the interests of other pupils by determination of such a transition.

20.3.4. At the Court session the representative of the submitter of the claim pointed out that in many cases the proportion, determined in the impugned norm, might turn out to be acceptable and even efficient. In several schools it has been successfully introduced. However, to his mind, determination of a unified term for implementation of this proportion and not taking into consideration the regional specifics, specialization and the body

of teachers of schools may lead to offering education of lower quality to the representatives of ethnic minorities.

At the Court session Sergejs Ancupovs recognized that there were rather many of those pupils, who because of different reasons had difficulties in realizing the requirements of the impugned norm in the process of studies. To his mind it applies approximately to 30 percent of pupils. The education level of these pupils might potentially worsen. As this group is big enough, individual solutions might be envisaged for it. It is possible to do it without amending the impugned norm.

Valērijs Buhvalovs also stressed the need for individual developments. To his mind it could be reached by amending the impugned norm by stating that three fifths of the educational process was realized in the State language **or bilingually.** After that schools might gradually pass over to observation of the proportion established in the impugned norm. Even though in a lesser degree, Ina Druviete also recognizes: if the lesson is in the Latvian language and the pupils do not understand the material, it is not forbidden to give translations of the terms and explanations in the native language. On the contrary – it is very advisable, only on the condition if the above explanations do not turn into the basic content of the lesson. Ina Druviete points out: it is a conceptual and legal error to state that the concept ”bilingual” cannot be found in the Education Law with regard to the ethnic minority educational reform (*sk.: ”Latviski nemācās, ja nevar”//Diena, 22.04. 2005; see ”Do not learn in the Latvian language, if one cannot do it// Diena, April 22, 2005).*

At the Court session Evija Papule explained that the above solution has been found also within the framework of the impugned norm. Namely, the number of classes may be divided in those subjects, teaching which in Latvian may cause concern for the parents; then one part of the subject is taught is the State language but another part, for example, in Russian. The subject is being divided into classes, in which different languages are used and it is listed in the school programme. Thus, the ”bilingual education is legalized in practice”.

20.3.5. The impugned norm envisages one of the forms of bilingual teaching methods. In accordance with this method one subject shall be learnt only in the State language, another one – only in the ethnic minority language. However, as has been mentioned, in several schools one subject is being taught like this: a part of it is determined in the programme as being taught in the State

language; but another one – to be taught in the ethnic minority language. The material in the matter testifies it (*see Material in matter, Vo.2, p.170).*

The bilingual teaching method, included in the impugned norm shall be assessed in conjunction with ensurance of a lenient transition. Namely, a balanced solution between the ensurance of a lenient transition and ensurance of non- violation of the interests of other pupils by determination of such a transition shall be found. When adopting the impugned norm, the legislator has decided to more protect the interests of those pupils, who are ready to implement requirements, included in it but has not determined in the law a considerate mechanism with regard to pupils, the educational process at primary school of whom has been incomplete.

However, such a considerate mechanism may be reached by interpreting and applying the impugned norm in accordance with Article 91 of the Satversme. By coordinating it with the licensee of the ethnic programme, the teaching method envisaged in the impugned norm might be used in a more lenient way, namely, up to September 1, 2007, when studies in the 10th. form will be commenced by those pupils, who at the primary school have been taught by bilingual teaching models, simultaneously teaching a particular subject in two languages (bilingually). Such an interpretation and application of the impugned norm would balance the interests of different persons – some might implement the requirements of the impugned norms, the others would use them in a lenient way. The Constitutional Court holds that the impugned norm, if it is adequately interpreted, is not at variance with the principle of proportionality.

Thus, adequately interpreting the impugned norm, one shall conclude that it is in conformity with Article 91 of the Satversme.

The substantive part

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

to declare Section 9, Paragraph 3 of the Education Law Transitional Provisions as conformable with Articles 1, 91 and 114 of the Satversme; Article 2 of the

First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Article 14 (in conjunction with Article 2 of the First Protocol); Articles 26 and 27 of the International Covenant on Civil and Political Rights; Article 5 of International Convention on Elimination of Race Discrimination of any Kind; Articles 2 and 30 of the Convention on the Rights of a Child as well as Article 18 of the Vienna Convention on International Agreement Rights.

The Judgment is final and allowing of no appeal.

The Judgment is announced in Riga, on May 13, 2005.

The Chairman of the Court session A.Endziņš