THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, September 14, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005-02-0106

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Ilma Čepāne, Juris Jelāgins, Gunārs Kūtris and Andrejs Lepse

on the basis of the constitutional claim by 20 deputies of the Republic of Latvia Saeima (Parliament) – Juris Sokolovskis, Nikolajs Kabanovs, Vladimirs Buzajevs, Andris Tolmačovs, Andrejs Aleksejevs, Jakovs Pliners, Aleksandrs Golubovs, Oļegs Deņisovs, Igors Solovjovs, Sergejs Fjodorovs, Martijans Bekasovs, Boriss Cilevičs, Jānis Jurkāns, Ivans Ribakovs, Aleksejs Vidavskis, Vitālijs Orlovs, Andrejs Klementjevs, Valerijs Agešins, Aleksandrs Bartaševičs and Jānis Urbanovičs

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Items 1 and 6), 17 (Item 3 of the First Paragraph) and 28^1

in written proceedings at August 30, 2005 Court session reviewed the matter

"**On the Compliance of Section 59 (Second Paragraph, Second Sentence in the Part on Participation in Financing of Private Educational Institutions if the Programs are Implemented in the Official language) of the Education Law with Article 91 of the Republic of Latvia Satversme (Constitution) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (as Being Read in Conjunction with Article 2 of the First Protocol).**

The establishing part

1. On October 29, 1998 the Republic of Latvia Saeima (henceforth – the Saeima) adopted the Education Law. The objective of the Law is to ensure that every resident in Latvia has the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia.

The initial wording of Section 59 (the second Paragraph) of the Education Law established:
”Private educational institutions are financed by their founders. The State and local governments can participate in the financing of private educational institutions if these educational institutions are implementing State-accredited education programs in the State language.”

On November 11, 1999 the Saeima passed the Law ”Amendments to the Education Law”, expressing the second Paragraph of Section 59 in the following wording:
”Private education institutions are financed by their founders. The State and the local governments participate in the financing of private educational institutions in accordance with the minimum amount of the financing and material means for educational institutions determined by the Cabinet of Ministers, if these educational institutions are implementing accredited mandatory education programs in the State language, which are determined in Article 4 of this Law”.

In its turn on May 11, 2000 the Saeima adopted the Law ”Amendments to the Education Law”, expressing the second paragraph of Section 59 in the following wording:
”Private educational institutions are financed by their founders. The State and local governments shall participate in the financing of private educational institutions in compliance with the Cabinet of Ministers Regulations on the minimum cost of implementation of educational programs for one educate if within those educational institutions are implemented accredited elementary education and general secondary education programs in the State language”.

The above wording of the second Paragraph of Section 59 of the Education Law was in effect at the moment of submission of the claim.

2. **The submitters of the claim – 20 Saeima deputies (**henceforth – the submitters**)** when specifying the claim, incorporated in the initial application, request to assess the conformity of the words ”in State language” (henceforth – the impugned norm) with Article 91 of the Republic of Latvia Satversme (henceforth – the Satversme) and Article 14 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms – henceforth - EHRC (as being read in conjunction with Article 2 of the First Protocol).

The submitters point out that the norm, enshrined in Article 91 of the Satversme, is ”open”, namely the principles of the prohibited discrimination are not enumerated; and to their mind discrimination on the basis of the language shall not be permissible.

They hold that the impugned norm endows only the children belonging to the ethnic majority with the right of acquiring education at private schools in the native language. In their turn the parents of the children belonging to ethnic minorities have to cover all the expenses, connected with the educational process.

The submitters indicate that mainly there exist two circumstances, which make the impugned norm discriminating. First of all, the parents have a double financial burden; namely, they have to cover both - the expenses, connected with the education of their children and to pay taxes, which are not used for educating their children. Secondly, the specific measures, realized by the State for the support of the State language, to their mind are discriminating.

The submitters acknowledge that the impugned norm has a legitimate aim and that it possibly is directed towards strengthening of the State language. They state that the means, chosen for realization of the legitimate aim are disproportionate as it is possible to reach the aim by different means, which are restrictive in a lesser degree. They hold that it should be taken into consideration that- when strengthening the knowledge of the State language – the State has the possibility of implementing several positive measures, for example, to ensure the existence of State financed programs for mastering the Latvian language.

Thus the submitters conclude that the impugned norm is disproportionate to its legitimate aim and request to reject it from the moment of its adoption.

3. **The Saeima** points out that the impugned norm shall be assessed as read in conjunction with the defined in Section 3 of the Education Law range of persons, to whom equal rights to education are secured. To create the united and consolidated society, it is the duty of any state to ensure acquiring of education in the State language. Acquiring of the knowledge of the State language favors adapting of a person to the society, in its turn the State realizes the above duty in accordance with the resources at its disposal.

It is stressed in the written reply that the State – by taking into consideration the number of the educatees - ensures existence of a sufficient number of educational institutions in every certain territory. Besides, the State has determined the same favorable rules for those educational institutions, in which the education programs for ethnic minority schools are realized, as compared to other State and local authority educational institutions. Persons, who wish to acquire an ethnic minority program, may do it at the State or local authority education institution for State or municipality financing, without paying for it themselves.

The Saeima mentions that the impugned norm shall be assessed as read in conjunction with the Cabinet of Ministers November 27, 2001 Regulations No. 498 "On the Procedure, under which the State Finances Programs for Basic Education, Secondary Education and Higher Education, which are Implemented at Private Educational Institutions". Item 2 of the above Regulations establishes that an accredited private basic and general education institution receives State subsidy for payment of the salary and mandatory payments of social insurance, but this financing is not envisaged for covering other expenses of educational institutions. Besides, Item 5 of the Regulations anticipates concrete criteria, which a private education institution shall observe to receive the above State support.

The Saeima points out that the State experiences the right of choosing private educational institutions to support. The main criterion of this choice is – the private educational institution shall realize education programs in the State language. It is possible that private educational institutions can offer manifold and more specified education; and those private educational institutions, in which education in the State language is ensured, realize definite State tasks. However, the above State support does not mean that the State undertakes the duty of partly financing all private educational institutions.

Thus the Saeima holds that the impugned norm is not at variance with Article 91 of the Satversme and EHRC Article 14, as read together with Article 2 of the First Protocol and shall remain valid.

4. **Dr. iur. Ineta Ziemele – the professor of the Riga Graduate School of Law and guest professor of the Lund Raul Valenberg Institute** in her answer to the Constitutional Court points out that creation of private schools is a much more extensive problem than the one, mentioned by the submitters; as teaching at private schools may be realized also in foreign languages, which are not the languages of the ethnic minorities, residing in Latvia. The Education Law allows creation of such schools,

but their economic basis is to a great extend determined by market demand.

When analyzing several international instruments, including the EHRC norms, I.Ziemele concludes that the above international instruments do not assign the duty of taking part in financing of private educational institutions to the government. To a great extent it follows from the principle that the parents have a free choice – to send their children to a State or private educational institution. In its turn, as long as there is the possibility to acquire qualitative education at the State or local authority schools in the languages of ethnic minorities in the territory of Latvia; the State shall have the possibility of choosing – to support or not to support private educational institutions. The ruling criterion in this case is the quality of education offered by the private schools and not the source of the granted funding.

I.Ziemele also stresses that one would be able to speak about discrimination if a differentiated attitude as concerns financing were established when comparing two private minority schools, for example, an Ukrainian private school and a Russian private school. However, to her mind, from the information, included in the claim, discrimination of this kind cannot be established. Thus, the author of the conclusion does not hold that the impugned norm incorporates violation of the principle of discrimination and equal rights.

5. **The Human Rights Institute of the Latvian University Faculty of Law** holds that the impugned norm creates obstacles for the creation and development of private minority schools. Therefore, its proportionality with its legitimate aim – strengthening of the Latvian language – is rather doubtful. The State has different other mechanisms at its disposal, with the help of which and without violating the rights of a person, determined in the Satversme and the European Convention for the Protection of Human Rights and Fundamental Freedoms, the legitimate aim can be reached. The Institute holds that in the democratic society the impugned norm is not of social necessity, as it creates discrimination on the basis of the language and thus –restricts the right of a person to education.

6. **The State Human Rights Bureau** points out that the impugned norm creates a discriminating attitude towards persons on the basis of their language and indirectly also of their nationality. Even though the restriction has a legitimate aim – protection of the State language, the chosen means cannot be regarded as proportionate. If the State has taken the decision to support private education institutions, then the support shall comply with the principles of reasonability, fairness, proportionality and prohibition of arbitrariness. To the mind of the

Bureau to reach the legitimate aim it has been possible to choose means, restricting the right in the lesser degree – not by denying the support but by supporting teaching of the State language at the private minority schools. Thus - the impugned norm to their mind does not comply with Article 91 of the Satversme.

7. **The Republic of Latvia Ministry for Education** in an answer to the questions of the Constitutional Court points out that more than one and a half million lats have been granted to private educational institutions since 1998. Besides, from the information, furnished by the Ministry for Education it can be seen that during the last ten years the amount of the grant, assigned to private education institutions has grow approximately ten times – from 54 458 lats in 1998 to 536 205 lats in 2004.

8. During the period of preparation of the matter for review information was requested also from 4 municipalities of cities – the Daugavpils City Dome (Council), Liepāja City Dome , Riga Dome and Ventspils City Dome.

8.1. **The Daugavpils City Dome** informs that there are no private educational institutions, in which the programs of basic and general education are being implemented; thus funding of private educational institutions has never been urgent.

8.2. **The Liepāja City Dome** points out that private educational institutions have been granted funding in the amount of 6156 lats in 2003, but in 2004 –in the amount of 7440 lats. In its turn the above funding for 2005 is anticipated to reach 10 009 lats. When answering to the question of the Constitutional Court about implementation of programs of basic and general education not in the State language but in another languages, the Dome stresses that funding has been granted to the private Russian school ”Podsolnuh”, in which bilingual training- in Latvian and Russian- is being implemented.

8.3. **The Ventspils City Dome** points out that from 1996 till June of 2004 had functioned the private school ”Zirnītis” , in which the educatees acquired the program of basic education in the minority language. In its turn from the school year 2000/2001 the program of basic education in the Latvian language has been additionally implemented at the above school. In 2001 the school was granted funding in the amount of 6415 lats; in 2002 – 6807 lats but in the first half of 2003 – 4218 lats. The Dome stresses that costs per one educatee have noticeably surpassed the costs, established by the Cabinet of Ministers Regulations. Up to March 29, 2003 the cost was 126 lats, but after March 29, 2003 – 145 lats a year.

8.4. **The Riga Dome** points out that financing to private schools has been granted from its budget regardless of the fact in which language the education programs are implemented. As the number of educatees is constantly decreasing, there has been no necessity to conclude agreements with private educational institutions. The Riga Dome adds that within the framework of its budget it finances different sport and interest programs for Riga residents.

The concluding part

9. Article 91 of the Satversme determines 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".

When assessing the compliance of the impugned norm with the above Article, one has first of all to take into consideration the fact that this norm cannot be evaluated if isolated from Article 4 of the Satversme, which attaches constitutional status to the Latvian language in the Republic of Latvia; because the Satversme is a single aggregate body and the norms, incorporated into it shall be interpreted systemically (*sk. Satversmes tiesas 2002.gada 22.oktobra sprieduma lietā No. 2002-04-03 secinājumu daļas 2.punktu; see the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03; Item 2 of the concluding part).* Besides, one has to also take into consideration the fact that, regardless of the State language being fixed in the Satversme, because of historical circumstances sufficient use of the Latvian language in the State is still endangered (*sk. Satversmes tiesas 2005.gada 13.maija sprieduma lietā No. 2004-18-0106 secinājumu daļas 2.punktu; see the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106; Item 1 of the concluding part).* Thus the State has the duty of creating such educational system, which will ensure efficient practice of the Latvian language as the State language – even with regard to those persons, whose native language is not the Latvian language.

9.1. The Constitutional Court, when interpreting Article 91 of the Satversme has concluded: "The principle of equality follows from the first sentence of this Article, which inter alia forbids the State institutions to pass norms that without a reasonable ground permit different attitude to persons, who are in similar conditions. The second sentence of Article 91 of the Satversme, determining that "human rights shall be realized without discrimination of any kind" does not restrict the first sentence, but supplements it. The principle of equality may be attributed also to legal entities as the body of physical persons; besides within the legal system it functions immediately" (sk. *Satversmes tiesas 2001. gada 3.aprīļa sprieduma lietā No. 2000-07-0409 secinājumu daļas 4. punktu;* see *the*

Constitutional Court April 3, 2001, Judgment in case No. 2000-07-0409; Item 1 of the concluding part).

The principle of equality shall guarantee the existence of unified legal procedure. Namely, its task is to ensure that the demand of the law-governed state of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law. However, such a unity of legal procedure does not mean leveling, as "equality permits a differentiated approach, if it is justifiable in a democratic society" (*sk. Satversmes tiesas 2001.gada 26. jūnija sprieduma lietā No. 2001-02-0106 secinājumu daļas 4. punktu; see the Constitutional Court June 26, 2001 Judgment in case No. 2001-02-0106; Item 4 of the concluding part).*

9.2. In its turn to conclude that the second sentence of the Satversme Article 91 has been violated, it is necessary to establish that all-embracing appliance of the equality principle without justification of the actions of the State is restricted by the criterion, use of which is at variance with the fundamental idea of a democratic and law-governed state, as well as with the aims and ideals domineering in the society. Such restriction should be considered as non-acceptable, arbitrary, inadmissible or groundless. Criteria, which create the contents of the second sentence of the Satversme Article 91, are different. Namely, justification of the use of the above criteria may differ, when taking into consideration both – specifics of every criterion and actual circumstances of the concrete matter. There are also criteria on the basis of which a differentiated attitude shall not be permitted. Thus – their use is not justifiable either. Social origin, belonging to a certain race or the world outlook may be regarded as such criteria.

9.3. Already at the time of elaboration of Chapter 8 of the Satversme separate viewpoints were expressed on the necessity of supplementing Article 91 of the Satversme with criteria on the basis of which differentiation of persons would be inadmissible. It was advised to include in the above criteria, for example, belonging to a certain race, nationality, sex, age, language, belonging to a certain political party, political belief, religious or world outlook, social and financial position or rank; moreover, this enumeration shall be created as the uncompleted range of forbidden criteria (*sk. Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību žurnāls 9-12/1999, 28. un 29.lpp; see: Levits E.*

Comment on Chapter 8 of the Satversme – Fundamental Human Rights. Human Rights Journal 9-12/199; pp. 28,29).

In difference from the first sentence of Article 91 of the Satversme, the essence of the prohibition principle, enshrined in the second sentence of the Article is like this: to avert the possibility that in a democratic and law-governed state the fundamental rights of a person are violated on the basis of some inadmissible criterion. Besides, the duty of proving it - as regards non-existence of prohibition of the discrimination, included in the second sentence of the Satversme Article 91 – lies on the shoulders of the State.

In the interpretation of the European Court of Human Rights (henceforth – ECHR) discrimination means general cases, in which a person or a group of persons without sufficient grounds finds itself in a less favorable situation than another person or a group of persons, even if the ECHR does not require a more favorable attitude (*Abdulaziz, Cabales and Balkandali v. the United Kingdom Judgment of 28 May, 1985; Series A No. 94, p. 39; para.82).*

It can be seen that the legislator has incorporated two mutually closely connected principles in Article 91 of the Satversme: the equality principle – in the first sentence and the principle of prohibition of discrimination – in the second sentence. Besides both – the equality principle and the principle of prohibition of discrimination shall be attributed also to legal entities and it shall act in an immediate way, namely, these principles have a direct effect.

10. In accordance with Article 89 of the Satversme ”the State shall recognize and protect human rights in accordance with this Constitution, laws and international agreements binding upon Latvia”. From the above Article can be seen that the aim of the legislator has been to reach mutual harmony of the international human rights norms incorporated into the Satversme (*sk., piemēram, 2003. gada 27. jūnija spriedumu lietā No. 2003-04-01 secinājumu daļas 1. punktu un 2005. gada 17. janvāra sprieduma lietā No. 2004-10-01 7. punkta 1. apakšpunktu; see e.g. June 27, 2003 Judgment in case No.2003-04-01; Item 1 of the concluding part and January 17, 2005 Judgment in case No. 2004 -10-01; Sub-item 1 of Item 7).*

On its essence the Satversme cannot envisage a lesser scope of ensuring or protecting fundamental rights than is envisaged in any of the international legal acts. A different conclusion would be at variance with the idea on the law-governed state, incorporated in Article 1 of the Satversme; because one of the main forms of expression of the law-governed state is recognition of human rights and fundamental freedoms

as the highest value of the state. When interpreting the Satversme and the international liabilities of Latvia one shall find such a solution, which ensures harmony, not opposing (*sk. Satversmes tiesas 2005. gada 13. maija sprieduma lietā No. 2004-18-0106 5. punktu; see the Constitutional Court May 13, 2005 Judgment in matter No. 2004-18-0106; Item 5).* Besides, one has to take into consideration that the Satversme may establish a more extensive protection of the particular fundamental right than the international human rights acts. Thus, for example, Article 91 of the Satversme anticipates a more extensive scope of rights if compared with Article 14 of EHRC (*sk. Satversmes tiesas 2002. gada 22. februāra sprieduma lietā No. 2001-06-03 3. punktu; see the Constitutional Court February 22, 2002 Judgment in case No. 2001-06-03; Item 3).*

Thus, if interpreting an international norm of rights, it is concluded that the Satversme guarantees a more extensive protection of the particular fundamental right, then it is inadmissible to confine oneself to application of the norm, which is incorporated into international human rights acts; it is necessary to apply the norm of the Satversme.

11. Article 14 of EHRC determines: ” The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

When interpreting the above Article ECHR has concluded: ” As to the scope of the guarantee provided under Article 14, the Court recalls that according to its established case-law a difference in treatment is discriminatory if ”it has no objective and reasonable justification”, that it does not pursue a ”legitimate aim” or if there is not a ”reasonable relationship of proportionality between the means employed and the aim sought to be realized”. Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment”” (*Larkos v. Cyprus [GC], No. 29515/95, para. 29; EHRC 1999-I).*

12. Article 112 of the Satversme inter alia determines the right of a person to education. Even though in difference to Article 7 of the Basic Law of the German Federative Republic the Article does not anticipate acquiring education at private educational institutions, the first sentence of the above Article does not forbid it either. Acquiring of education at these institutions in Latvia is regulated by the Education Law. However, from Article 112 of the Satversme follows that the State has the duty of supervising it, so that the education acquired at the private education institutions shall be equal to education, acquired at State schools.

Besides, in compliance with Item 4 of the First Paragraph of Article 15 of the Law ”On Local Governments” to provide for the residents’ education (securing of rights prescribed to residents on primary and general secondary education, securing of children of pre-school age and school age with places at instructional and educational institutions, organizational and financial assistance for leisure-time instructional and educational institutions and institutions supporting education etc.) shall be the permanent functions of self-governments.

13. To assess the compliance of the impugned norm with Article 91 of the Satversme one has to ascertain:

a) whether language shall be considered as the criterion, which creates the contents of the above Article;
b) whether granting of the State funding only to those private educational institutions, which implement accredited basic education and general secondary educational programs in the official language, is justifiable.

14. When revealing the contents of the second sentence of the Satversme Article 91 and establishing whether such a criterion exists, one shall be guided – as has been mentioned before - by the viewpoint expressed in international human rights instruments as well as in Constitutions of other states.

Article 2 (the First Paragraph) of the Universal Declaration of Human Rights; Article 14 of the EHRC, Articles 2 (the First Paragraph) and 26 of the International Covenant on Civil and Political Rights, Article 2 (the Second Paragraph) of the International Covenant on Economic, Social and Cultural Rights as well as Article 1 (the First Part) of the United Nations Organization (Henceforth – UNO) December 14, 1960 Convention against Discrimination in the Sector of Education determine that discrimination on the ground of the language is inadmissible.

Besides, also Article 12 of the Republic of Estonia Constitution, Article 3 of the Republic of Italy Constitution, Article 19 of the Russian Federation Constitution, Article 29 of the Republic of Lithuania Constitution, Article 6 of the Republic of Finland Constitution and Article 3 of the Basic Law of the German Federative Republic do not permit discrimination on the ground of such a criterion as the language.

Thus the language as one of the exclusive criteria has been included within several international legal acts as well as in the Constitutions of other states.

15. To infer whether the State language at the accredited private educational institutions, which implement programs of basic and general secondary education , may serve as the main criterion for granting State or local authority financing, one shall first of all establish whether such a restriction has a legitimate aim and , secondly, whether the above regulation is in this case proportionate.

15.1. Both – the submitters and the Saeima reasonably hold that the legitimate aim of the impugned norm is to strengthen the use of the State language. The constitutional status of the State language in a juridical way fixes the right and also the duty of the residents of Latvia to use the Latvian language in oral as well as in written communication. Both – the ECHR and also the Constitutional Court have established that the State of Latvia by observing the fundamental human rights may regulate the use of the State language. For example, the Constitutional Court has pointed out that the necessity of protecting the state language and strengthening of its usage is closely connected with the democratic system of the State of Latvia: "… in the era of globalization Latvia is the only place in the world where the existence and development of the Latvian language and together with it – the existence of the main nation may be guaranteed; limitation of the usage sectors of the Latvian language as the State language in the State territory shall be regarded as the threat to the democratic system" (*sk. Satversmes tiesas 2001. gada 21. decembra sprieduma lietā No. 2001-04-0103 secinājumu daļas 3. punkta 2. apakšpunktu; see the Constitutional Court December 21, 2001 Judgment in case No. 2001-04-0103; Item 3, Sub-item2 of the concluding part).*

15.2. ECHR in its turn has established that " the greatest part of the Contracting states have chosen granting the status of the State language to one or several languages and have incorporated the above languages as State languages into their Constitutions. Taking it into consideration, the Court holds that to the above states the state language is one of the constitutional fundamental values in the same way as the state territory, the state system or the state flag. However, the language is not an abstract value; the language cannot be separated from the fact how it is used by those, speaking in that language. Thus, the State, when determining a language as the State language, undertakes the duty of guaranteeing to its citizens the right of using the language without any restrictions and not only in private life but also with regard to State institutions, i.e. – when furnishing and receiving information in this language. The Court holds that just in this aspect the means, the aim of which is to protect the particular language, shall be assessed. In other words, the existence of the state language means that its users have certain subjective rights"

(*Mentzen alias Mencena c. Lettonie, No. 71074/0; see also Latvijas Vēstnesis No.54, April 6, 2005).* Also in the matter "Podkolzina v. Latvia" as concerns the working language of the National Parliament, ECHR has stressed: the demand that a deputy shall know the State language in an adequate level "is within the exclusive competence of the State" (*see: Podkolzina v. Latvia, No. 46726/99, para.34, ECHR 2002-II; see also Latvijas Vēstnesis No. 75, May 21, 2002).*

15.3. Besides, decisions by the state power institutions dedicated to the protection of topical for the state values, for example, the protection of the language, citizenship or cultural heritage shall be regarded as political decisions. The European Court of Justice has also established that the Contracting States of the European Union may adopt political decisions for the protection of the State language of the particular State. However, the policy of promotion of the state language shall be proportionate and indiscriminating (*see: C-379/87 Groener v. Ireland [1989] ECJ 3967, para. 19, 24).*

Taking into consideration the historical experience of Latvia as well as the fact that dominance of the Latvian language in the State territory has not yet been secured well enough, the Constitutional Court holds that even at the present moment there exists the necessity for the State to implement positive means and protect the State language in a more intensive way.

Thus the impugned norm has a legitimate aim.

16. The impugned norm refers to those private educational institutions in which accredited basic education and general secondary education programs are implemented in the official language. However, it indirectly concerns both – those private educational institutions in which accredited basic and general secondary education programs are implemented in some other language and the educatees of those private schools as well as their parents. One has to take into consideration that four percent out of all comprehensive schools were private in school year 2004/2005 and 2861 educatees acquired education at those schools. 1185 educatees acquired the program in the Russian language. In their turn at the State and local authority day schools 297 806 educatees acquired education, out of them – 83 374 in the Russian language (*see the First Volume of the matter, pp. 147 -151).*

The submitters of the claim, holding that the impugned norm is discriminatory, use *the UN Human Rights Committee'Concluding observations: Latvia' (6 November, 2003) UN Doc CCPR/CO/79/LVA, para.20 and UN Committee on the Elimination of Racial Discrimination*

'Concluding observations: Latvia' (10 December, 2003) UN Doc CERD/C/63/CO/7, para/16 as arguments . In the above documents it is indicated that the above Committees are worried about the differences in the State of Latvia support to private schools connected with the criterion of the State language. The above Committees hold that "the state shall secure granting of state subsidies to private schools without discrimination on any ground".

The conclusions, expressed in the above documents have to be regarded as a sufficiently enough authoritative viewpoint; however, it is not binding on the state as, for example, the Judgments of ECHR or the European Court of Justice are. These documents shall be assessed as the sources of the soft law; they do not charge the state with mandatory duties, but give an advice for choosing the optimal model of action for the solution of the particular problem.

17. The Education Law establishes that the State has the duty of securing compliance of the education acquired at private educational institutions with certain educational standards as well the possibility of the graduate of the above educational institution to freely fit in the society of Latvia and compete in the labor market. When assessing the justification of the impugned norm, one has to take into consideration that even if the accredited programs for basic and general secondary education are implemented in private schools in other languages, the educates - in conformity with the Cabinet of Ministers December 5, 2000 Regulations No. 462 "Regulations on the Standard of the State Basic Education" and Regulations No. 463 " Regulations on the Standard of the State General Secondary Education" - shall learn the State language as well as – in compliance with Section 9 (the Third Paragraph) of the Education Law – take examinations testing his or her knowledge of the official language.

17.1. Therefore one has to agree with the submitters that it is necessary either to discontinue financing private educational institutions from the State or local authority budget or to grant such financing on the ground of equality. The laws of the Republic of Estonia and Lithuania, which regulate financing of private schools, do not anticipate analogous regulation to the impugned norm either. In accordance with Article 22 (the Second Paragraph) of the Estonian Private School Law and Article 44 (the Third Paragraph) of the Basic School and Secondary School Law basic schools and secondary schools, regardless of the language of tuition, receive financing from the state budget. In its turn Article 69 (the Seventh Paragraph) of the Lithuania Education Law envisages that the private schools receive financing from the state and the local authority budget in accordance with the procedure determined by the state.

The above financing is granted regardless of the fact what language of tuition is used at the private educational establishment.

17.2. The Saeima has not taken into consideration the viewpoint of the President either, that separate norms of the Education Law, also the impugned norm, shall be amended in the shortest possible time. Namely, referring to the request of the Saeima faction ”For Human Rights in Unitary Latvia”, the public organization ”Strasbourg” and the Association supporting the Latvian Russian language schools not to proclaim February 5, 2004 Law ”Amendments to the Education Law”, in her letter to the Chairperson of the Republic of Latvia Saeima and the Prime Minister she inter alia pointed out, that Paragraph 2 of Section 59 of the Education Law is unjust and ungrounded with regard to those private educational institutions, in which the educational programs are implemented in minority languages. To her mind contrary to Section 9 of the Education Law the impugned norm discriminates private educational institutions and violates the principle in accordance with which the State and local authority financing ”follows” the educatee to the school in which he/she learns (*Latvijas Republikas prezidentes 2004. gada 10. februāra vēstule No. 52 Latvijas Republikas Saeimas priekšsēdētājai un Latvijas Republikas Ministru przidentam. Sk. lietas pirmā sējuma 213. un 214. lpp; the Republic of Latvia President's February 10, 2004 letter No.52 to the Chairperson of the Republic Saeima and the Republic of Latvia Prime Minister. See pp. 213 and 214 of the First Volume of the Matter).*

17.3. One has to stress that the State in contrast to the means determined in the impugned norm has other means, which would hasten the above aim – strengthening of the State language – in a more appropriate way. To ensure mastering of the State language at private educational institutions, in which the educational programs are not implemented in the State language, stricter requirements to accreditation of these private schools may be determined. As the Cabinet of Ministers November 27, 2001 Regulations No. 498 establish that private educational institutions shall receive the State subsidies only for covering the payment of the salaries of the teachers and the mandatory payment of the state social insurance (*sk.: minēto noteikumu 2.punktu; see Item 2 of the above Regulations),* it is possible to include qualified teachers in the staff, who can help to secure acquiring high level of the knowledge of the State language. The Constitutional Court agrees with the viewpoint of the State Human Rights Bureau, that it is possible to find other means for realization of the legitimate aim – not by denying support but by special encouragement to teaching of the State language at the minority schools. Besides, one has to take into consideration the fact

that the number of teachers at the private educational institutions is comparatively small – approximately two percent from the total number of teachers (*sk. lietas pirmā sējuma 145. lpp.; see p. 145 of the First Volume of the Matter).*

18. The Constitutional Court holds that it is necessary to stress that neither Article 91 nor Article 112 of the Satversme assign the State to fulfill the duty of financing private educational institutions. In its turn, if the State has taken the political decision and takes part in financing of the above institutions, the Constitutional Court is not authorized to question the decision of the legislator. However, in case if the State or local authority have decided to carry out some positive activities and support several private schools, then – by taking into account the fundamental rights - it shall be granted on the basis of equality. When taking the decision on the above financing, it is permissible to take into consideration e.g. financial feasibilities of the local authority.

Thus the impugned norm is not proportionate to its legitimate aim and is at variance with Article 91 of the Satversme.

19. Taking into consideration the fact that the impugned norm is unconformable with Article 91 of the Satversme, there is no necessity to assess its compliance with Article 14 of EHRC (as read in conjunction with Article 2 of the First Protocol).

20. Even though the submitters have included in their claim the request to declare the impugned norm invalid as of the moment of its adoption, such a request has not been substantiated in the claim.

The operative part

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

hereby rules:

to declare the phrase ”the State language”, included in Section 59 (the second sentence of the second Paragraph) of the Education Law as unconformable with Article 91 of the Republic of Latvia Satversme and null and void from the moment of publication of the Judgment.

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the moment of its publication.

The Chairman of the Court session Aivars Endziņš