



**The norms that determine the language of instruction in pre-school institutions
comply with the *Satversme***

On 19 June 2020, the Constitutional Court passed the judgement in case No. 2019-20-03 “On Compliance of Para 9 of Annex 2 and Para 9 of Annex 4 of the Cabinet Regulation of 21 November 2018 No. 716 “Regulation on the National Guidelines on Pre-school Education and Model Programmes of Pre-school education” with Article 64, Article 91, the First Sentence of Article 112 and Article 114 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Para 9 of Annex 2 and of the Cabinet Regulation of 21 November 2018 No. 716 “Regulation on the National Guidelines on Pre-school Education and Model Programmes of Pre-school Education”:

“Throughout the stage of pre-school education, acquisition of the Latvian language in integrated learning process shall be facilitated, by using bilingual approach, which, in accordance with the child’s development, shall be implemented in co-operation between teachers, specialists and other employees of the education institutions, as well as using the Latvian language in daily communication. For children from the age of five, in game activities, the main means of communication shall be the Latvian language, except for targeted activities organised for mastering the language and culture of the ethnic minority.”

Para 9 of Annex 4 of the Cabinet Regulation of 21 November 2018 No. 716 “Regulation on the National Guidelines on Pre-school Education and Model Programmes of Pre-school Education”:

“Throughout the stage of pre-school education, acquisition of the Latvian language in integrated learning process shall be facilitated, by using bilingual approach, which, in accordance with the child’s development, shall be implemented in co-operation between teachers, specialists and other employees of the education institutions, as well as using the

Latvian language in daily communication. For children from the age of five, in game activities, the main means of communication shall be the Latvian language, except for targeted activities organised for mastering the language and culture of the ethnic minority.”

The Norms of Higher Legal Force

Article 64 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this *Satversme*.”

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

The first sentence of Article 112 of the *Satversme*: “Everyone has the right to education.”

Article 114 of the *Satversme*: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.”

The Facts

The case has been initiated with respect to an application submitted by children belonging to ethnic minorities, who attend state (local government) or private institutions of pre-school education, and their parents. In these institutions, minority pre-school education programme or minority special pre-school education programme is implemented. The applicants note that the contested norms are incompatible with the first sentence of Article 112, Article 64, Article 114 and Article 91 of the *Satversme*.

The applicants hold that the contested norms restrict a child’s right, included in the first sentence of Article 112 of the *Satversme*, to acquire qualitative education in their native language. Firstly, the contested norms change the approach to organising the learning process with respect to the language used; i.e., in the stage of pre-school education from five to seven years, the Cabinet has given up the model of bilingual education. Secondly, education is not ensured in the language of ethnic minority, hence, a learner belonging to an ethnic minority will not be able to master the curriculum in a language that he or she

understands. Thirdly, the contested norms have been adopted without the State ensuring to teachers sufficient training and a possibility to re-qualify. The applicants also hold that the parents' right to participate in determining the child's education process is restricted.

The applicants note that, in the adoption of the contested norms, the authorisation granted by the *Saeima* and the procedure envisaged in regulatory enactments had been violated, also, that representatives of ethnic minorities had not been heard in the process of adopting the norms. Hence, Article 64 of the *Satversme* had been violated

The State's actions, in adopting the contested norms, are said to be contrary to Article 114 of the *Satversme*, since, in the pre-school education stage from five to seven years, the contested norms restrict a child's right to master and use freely and without interference their native – Russian – language, as well as the rights of the child and parents to safeguarding the ethnic, cultural and linguistic identity of Russians.

The applicants see a breach of Article 91 of the *Satversme* in two different situations. In the first case, in the applicants' opinion, the contested norms create differential treatment of two groups of pre-school learners; i.e., learners, who acquire education in the Latvian language, and learners, who acquire education in the language of ethnic minority, mainly – in Russian. Namely, the first group has the right to acquire education in the native language, whereas the second group has been denied this right. In the second case, in the applicants' opinion, the contested norms cause, without grounds, equal treatment of two groups of pre-school learners belonging to ethnic minorities – children with special needs and children who do not have such needs. Allegedly, a child with special needs requires special treatment with respect to the language use in the pre-school stage.

The Court's Findings

On how the constitutionality of the contested norms is assessed

The Constitutional Court noted that the Cabinet had requested terminating legal proceedings in the case in the part with respect to the compliance of the contested norms with the first sentence of Article 112 of the *Satversme*, hence, it had to be examined, first

and foremost, whether the legal proceedings in this part of the case should be continued. Upon establishing an infringement on the applicants' rights included in the *Satversme*, the Constitutional Court ruled that the legal proceedings in the case should be continued and assessed the compliance of the contested norms with Article 112 of the *Satversme*. After that, the Constitutional Court examined the compliance of the contested norms with Article 114 and Article 9, and, *inter alia*, also Article 64 of the *Satversme*. [11., 15.]

On the compliance of the contested norms with the first sentence of Article 112 of the *Satversme*

The Constitutional Court found that, within the Latvian system of education, pre-school education is divided into two stages, depending on the child's age. The first stage is from eighteen months to five years and the second stage is from five to seven years. The Constitutional Court recognised that the right to education, included in the first sentence of Article 112 of the *Satversme*, comprised the pre-school education level in both its stages. [12., 12.2.]

The Constitutional Court concluded that the first sentence of Article 112 of the *Satversme* comprised the applicants' right to expect that the State's obligations with respect to the system of education, included in this legal norm, met the following criteria: availability, accessibility, acceptability and adaptability of education. At the same time, the Constitutional Court recognised that since the right to education in the language of one's choice was not included in the first sentence of Article 112 of the *Satversme*, the Constitutional Court would examine the applicants' arguments insofar they pertained to the right to acquire education that complied with the purposes of education in the official language, i.e., qualitative education. [13.]

In view of the arguments presented in the case, the Constitutional Court assessed, whether the State's actions complied with the right to education, included in the first sentence of Article 112 of the *Satversme*, with respect to the right of education in its aspects of accessibility, adaptability and acceptability. The Constitutional Court found that the State's actions, in adopting the contested norms, complied with these aspects. Hence, the contested norms comply with the first sentence of Article 112 of the *Satversme*. [14.]

On compliance of the contested norms with Article 114 of the *Satversme*

First and foremost, the Constitutional Court verified, whether the applicants, in accordance with the information provided, belonged to any of the ethnic minorities that had resided historically in Latvia. The Constitutional Court stated that it would assess, whether the State had fulfilled the positive obligation, included in Article 114 of the *Satversme*, with respect to the applicants, who belonged to the historical ethnic minority of Russians in Latvia . [17.]

The Constitutional Court found that the legislator, in regulating the use of languages in institutions of pre-school education, had ensured to the learners, who belonged to the Russian ethnic minority, the right to safeguard and develop their identity and culture in a way, which took into account the circumstances that characterised the Russian ethnic minority in Latvia's historical context. It follows from the contested norms and the regulation related to them that, in the stage of pre-school education from five to seven years, the learners are ensured the possibility to use the Russian language. Hence, the contested norms were recognised as being compatible with Article 114 of the *Satversme*. [18.]

On the compliance of the contested norms with Article 91 and Article 64 of the *Satversme*

In examining the compliance of the contested norms with Article 91 of the *Satversme* in the first situation, the Constitutional Court repeatedly noted that, in the circumstances of the present case, the learners belonging to the title nation and the learners belonging to an ethnic minority did not constitute comparable groups. Hence, in this part, the contested norms were recognised as being compatible with Article 91 of the *Satversme*. [21.]

With respect to the second situation, the Constitutional Court noted that the contested norms envisaged equal treatment of groups of individuals, who were in different circumstances; i.e., a child with special needs and a child who did not have such needs. [23.]

The Constitutional Court, in examining the compliance of the treatment referred to above with Article 91 of the *Satversme*, found that it had been established by a legal norm adopted in due procedure, and the contested norms complied with Article 64 of the

Satversme, and also that the equal treatment had a legitimate aim – protection of other persons' rights. [24., 25.]

The Constitutional Court concluded that the equal treatment was appropriate for reaching the legitimate aim. It is not possible to reach the legitimate aim in the same quality by another, alternative measure. Although as regards the purpose to be reached, the legislator has established equal treatment of a child with special needs and a child, who does not have such needs, in reaching this purpose differential treatment is applied; i.e., positive measures are taken to ensure that a child with special needs would integrate in the best possible way into Latvian system of education and, hence, also in society by mastering the Latvian language within the limits of his or her abilities. Hence, the contested norms were recognised as being compatible with Article 91 of the *Satversme*. [26.1., 26.2., 26.3.]

The Constitutional Court held:

to recognise Para 9 of Annex 2 and Para 9 of Annex 4 of the Cabinet Regulation of 21 November 2018 No. 716 “Regulation on the National Guidelines on Pre-school Education and Model Programmes of Pre-school education” as being compatible with the first sentence of Article 112, Article 114, Article 91 and Article 64 of the *Satversme* of the Republic of Latvia.

The judgement by the Constitutional Court is final and not subject to appeal, it will enter into force on the day it is published.

The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2019/09/2019-20-03_Spriedums-1.pdf

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements,

decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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