



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On Behalf of the Republic of Latvia in Riga on 13 November 2019 in Case No. 2018-22-01

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

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

as well as to the constitutional complaints lodged by Davids Džibuti, Dana Džibuti, Timurs Jareško, Mila Šteina, Edvards Šmits, Aleksandrs Fominovs, Vladislavs Kuļikovs, Vlada Elīza Ševšeļova, Jeļizaveta Kotova, Anna Lisa Čmihova, Agnija Busila, Marija Busila, Mihails Zaslavskis and Aleksandrs Zaslavskis,

in accordance with the Judgment issued in case No. 2018-12-01 “On Compliance of the First Part of Section 1, the Words of the Second Part of Section 1 “on the level of pre-school education and basic education, abiding by the provisions of Section 41 of this Law” of the law “Amendments to the Education Law” of 22 March 2018 and the Words of the First Part of Section 3 “basic education” and Section 2 of the Law of 22 March 2018 “Amendments to the General Education Law” with the Second Sentence of Article 91, Article 112

and Article 114 of the *Satversme* of the Republic of Latvia” within the framework of the present case,

based on Article 85 of the *Satversme* of the Republic of Latvia as well as Para 1 of Section 16, Paras 3 and 11 of Section 17 (1), Sections 19² and 28¹ of the Constitutional Court Law,

by written procedure at the hearing on 15 October 2019 examined the case

“On Compliance of the Part 1 of Section 1 of the Amendments to the Education Law of 22 March 2018 with Article 1, the Second Sentence of Article 91, the First Sentence of Article 112 and Article 114 of the *Satversme* of the Republic of Latvia”.

The Facts

1. The Education Law was adopted on 29 October 1998. The Part 1 and 2 of Section 9 of the Education Law that was in force until 15 April 2018 provided that education in state, municipal and state higher institutions of education shall be acquired in the official language, whereas education in another language can be acquired: 1) in private institutions of education; 2) in state and municipal institutions of education, which implement minority education programmes in conformity with the provisions of Section 41 of this Law; 3) in institutions of education specified by other laws.

1.1. On 16 April 2018 the Law “Amendments to the Education Law” (hereinafter — Amendments to the Education Law) of 22 March 2018 entered into force, Part 1 of Section 1 of which is to complement Section 9 of the Education Law with Part 1¹ in the following wording:

“(1¹) In private institutions of education, general and vocational education at the primary and secondary level shall be acquired in the official language.”

Whereas Part 2 of the said Section foresees to express Para 1 and 2 of Part 2 of Section 9 of the Education Law in the following wording:

“1) institutions of education implementing educational programmes in accordance with bilateral or multilateral international agreements of the Republic of Latvia;

2) in institutions of education implementing ethnic minority education programmes at the pre-school and basic education level, in compliance with the provisions of Section 41 of this Law.”

Part 1 of Section 3 of the Amendments to the Education Law provides for the replacement of the wording in Part 1 of Section 41 of the Education Law that reads "in the respective State educational standards" with the words "in National Basic Education Standard". Thus, Part 1 of Section 41 of the Education Law in the new wording provides that:

"(1) Educational programmes for ethnic minorities shall be drawn up by an educational institution selecting any of the model educational programmes included in the State Pre-school Education Guidelines or in the respective National Basic Education Standard."

Further, Part 2 of Section 3 of the Amendments to the Education Law envisages adding Part 1¹ and 1² of Section 41 of the Education Law, worded as follows:

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

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

Pursuant to Section 7 of the Amendments to the Education Law on the transitional provisions, amendments to Section 9 of the Education Law adding Part 1¹ and expressing Para 2 of Part 2 in new wording, as well as amendments to Part 1 of Section 41 which envisage substituting words in it and adding Parts 1¹ and 1² to it shall enter into force progressively: on 1 September 2019 with respect to implementation of pre-school study programmes and basic education programmes in Grades 1–7, on 1 September 2020 with respect to implementation of basic education programmes in Grade 8 and secondary education programmes in Grade 10 and Grade 11, and on 1 September 2021 with respect to implementation of basic education programme in Grade 9 and implementation of secondary education programme in Grade 12.

1.2. On the same day, on 22 March 2018, the *Saeima* also adopted the Law “Amendments to the General Education Law” (hereinafter also — Amendments to the General Education Law). Section 2 of this Law envisages expressing Section 43 of the General Education Law in the following wording:

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

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

Pursuant to Section 3 of the Amendments to the General Education Law on the Transitional Provisions, the said amendments to Section 43 shall enter into force on 1 September 2020 with respect to implementation of secondary education programme in Grade 10 and Grade 11 and on 1 September 2021 with respect to implementation of secondary education programme in Grade 12.

2. The Applicant — twenty members of the 12th convocation of the *Saeima* (hereinafter also — the Applicant) — holds that Part 1 of Section 1 of the Amendments to the Education Law does not comply with the second sentence of Article 91, as well as Articles 112 and 114 of the *Satversme* of the Republic of Latvia.

2.1. On 23 April 2019 the Constitutional Court delivered judgment in the case No. 2018-12-01 “On Compliance of the First Part of Section 1, the Words of the Second Part of Section 1 “on the level of pre-school education and basic education, abiding by the provisions of Section 41 of this Law” of the law “Amendments to the Education Law” of 22 March 2018 and the Words of the First Part of Section 3 “basic education” and Section 2 of the Law of 22 March 2018 “Amendments to the General Education Law” with the Second Sentence of Article 91, Article 112 and Article 114 of the *Satversme* of the Republic of Latvia” (hereinafter — case No. 2018-12-01) that was initiated on the basis of an application submitted by twenty members of the 12th convocation of the *Saeima*.

In the Judgment in the case No. 2018-12-01 the Constitutional Court decided on the application submitted by twenty members of the 12th convocation of the *Saeima* regarding the compliance of Part 1 of Section 1 of the Amendments to the Education Law with the second sentence of Article 91, Article 112 and Article 114 of the *Satversme* within the framework of the case under review.

2.2. Within the framework of case No. 2018-12-01 the twenty members of the 12th *Saeima* of in their application to the court and during the court hearings referred their arguments on the acquisition of education in ethnic minority languages to state and municipal institutions of education as well as to private institutions of education.

In their opinion, Part 1 of Section 1 of the Amendments to the Education Law does not comply with Article 112 of the *Satversme*, which obliges the state to observe the right of parents to provide their children with education that conforms to their religious beliefs and philosophical beliefs, as well as the obligation to provide the acceptability of education to its addressees. The right to education, *inter alia*, takes the form of freedom of choice within the education system established by the state. Education, in its form and content, including programmes and teaching methods, should be acceptable to its addressees — the students and their parents.

When choosing the means of implementing education policy, the legislator should achieve the best possible balance between the interests of different members of society. Compliance with the rights of participation of persons in decision-making shall also be ensured. When drafting the Amendments to the Education Law and Amendments to the General Education Law, teachers and parents were not consulted. The opinions of the addressees of these norms are not reflected in the annotations of the draft laws. Many ethnic minority students and their parents do not support these norms. Generally speaking, a significant part of the population directly affected by these amendments is against them and, more generally, against national policy on minority education.

At the court hearing in the case No. 2018-12-01, a representative of the twenty members of the 12th *Saeima* emphasised that the objections of ethnic minority public organisations were not taken into account in the process of adopting the amendments. The draft law annotations allegedly contain incomplete and distorted information on the support of ethnic minority public organisations for the draft laws.

Part 1 of Section 1 of the Amendments to the Education Law is allegedly not based on comprehensive sociological research. The studies referred to by the Ministry of Education and Science, are allegedly not directly related to the actual situation in schools. The results of state examinations and exams are allegedly much more accurate indicators. Problems such as lack of teachers, teaching

methods, regional differences have allegedly not been analysed. The lack of such analysis could allegedly make it difficult to achieve educational goals and harm the quality of education. Consequently, the restriction of fundamental rights allegedly cannot be considered to be established by duly adopted law.

The model of bilingual education can allegedly be seen as a benefit for Latvia. Such a parallel school model cannot allegedly be described as segregation, i.e. the maintenance of separate education systems.

The state can set the minimum standard of education that corresponds to the purpose of education. However, Part 1 of Section 1 of the Amendments to the Education Law allegedly introduces a restriction that cannot be considered as a minimum education standard. It allegedly limits the academic freedom of educators to choose the means to achieve their educational goals. Previously, the use of ethnic minority languages had, apparently, been more widespread in the Latvian education system, but Part 1 of Section 1 of the Amendments to the Education Law restricts such use in education programmes disproportionately. Thus, the situation is different now than in 2005 when the Constitutional Court in the case No. 2004-18-0106 “On Compliance of Para 9(3) of the Transitional Provisions of the Education Law with Articles 1, 91 and 114 of the *Satversme* of the Republic of Latvia, Article 2 of Protocol 1 and Protocol 14 (in relation to Article 2 of Protocol 1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 26 and 27 of the International Covenant on Civil and Political Rights, Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 2 and 30 of the Convention on the Rights of the Child, and Article 18 of the Vienna Convention on the Law of Treaties” (hereinafter — Case No. 2004-18-0106) examined similar issues relating to the proportion of ethnic minority language use in education. In the aforementioned case, the conclusions expressed by the court do not apply to the Part 1 of Section 1 of the Amendments to the Education Law.

The Applicant also refers to the findings by the European Commission for Democracy through Law regarding the norms of the Education Law of Ukraine. The Applicant holds that the conclusions of the Commission are applicable also in Latvia’s situation.

Part 1 of Section 1 of the Amendments to the Education Law does not comply with the principle of prohibition of discrimination included in the second sentence of Article 91 of the *Satversme*, which prohibits discrimination on the

grounds of language. Accordingly, in the framework of the system of education it requires differential treatment of students whose native language in the particular state must be considered as being a minority language.

At the court hearing in the case No. 2018-12-01, the representative of the twenty members of the 12th *Saeima* emphasised that all students belonging to ethnic minorities in Latvia are in similar and comparable circumstances. In the case No. 2018-12-01, the contested provisions envisage discriminatory treatment of students belonging to ethnic minorities whose native language is not that of the official languages of the European Union (hereinafter — EU) (for example, Russians, Ukrainians, Belarusians) when compared to students also belonging to ethnic minorities but whose native language is one of the official languages of the EU (for example, Polish, Lithuanian, Estonian). On the level of secondary education, access to education in the official languages of the EU will be retained, but not in non-EU languages. The twenty members of the 12th *Saeima* hold that in this respect within the framework of the case No. 2018-12-01, the contested provisions have no legitimate aim.

In the case No. 2018-12-01, the contested provisions do not comply with Article 114 of the *Satversme*, as the reduction of the use of ethnic minority languages deprives students of an essential precondition for the preservation and development of national identity. Pursuant to Para 2 of Article 14 of the Framework Convention for the Protection of National Minorities (hereinafter also – the Minorities’ Convention), state must act to ensure effective protection to ethnic minorities, in case of necessity implementing reasonable adjustment measures. In case No. 2018-12-01 the contested provisions do not provide for measures such as exceptions to allow for adaptive measures regarding the availability of teachers, the interests of certain pupils and parents, such as pupils with poor Latvian language skills, including compliance with the interests of asylum seekers, refugees and recent immigrants.

Both in the application and during the court hearing, the twenty members of the 12th *Saeima* also referred to the findings regarding the implementation of the Convention in Latvia included in the opinions of the Advisory Committee of the Minorities’ Convention (hereinafter – the Advisory Committee). Allegedly, it follows from these that the Advisory Committee expresses concern regarding the decreasing possibilities to acquire education in languages of ethnic minorities.

3. The Applicants — Davids Džibuti and Dana Džibuti (hereinafter — the Applicants) — hold that Part 1 of Section 1 of the Amendments to the Education Law do not comply with Article 1, second sentence of Article 91, first sentence of Article 112 and Article 114 of the *Satversme*.

Part 1 of Section 1 of the Amendments to the Education Law allegedly does not comply with Article 1 of the *Satversme*, as it has allegedly been adopted without observing the principle of legitimate expectations. Part 1 of Section 1 of the Amendments to the Education Law allegedly introduces a completely new legal order, excluding the provision of the Education Law, which generally stipulated that education in another language might be acquired in private educational institutions. At the time of conclusion of agreements on education and care of the Applicants in private institution of education, Para 1 of Part 2 of Section 9 of the Education Law allegedly provided that education in private institutions of education could be acquired in a language other than the official language. The Applicants have reasonably relied on the fact that their education would be provided in accordance with that contested provision and in accordance with the educational programme accredited in compliance with it, at least by the end of the programme accreditation period. That expectation is to be protected, since changing the educational establishment during the course of the education process creates difficulties for the child and the educational institution meeting the parents' requirements cannot be selected without a time-consuming assessment of circumstances and opportunities. In addition, when the education programme changes due to Part 1 of Section 1 of the Amendments to the Education Law, the fee for acquiring education may allegedly also change.

Part 1 of Section 1 of the Amendments to the Education Law allegedly does not comply with Article 112 of the *Satversme*, as it allegedly does not ensure the acceptability of education and its adaptation to the needs of persons belonging to ethnic minorities. The restriction provided for in Part 1 of Section 1 of the Amendments to the Education Law allegedly cannot be considered as part of the minimum educational standards, as it allegedly does not refer to the result to be achieved in the educational process. This restriction allegedly narrows down the choices of parents when deciding on their children's education and allegedly ignores the principle of the acceptability of education. Part 1 of Section 1 of the Amendments to the Education Law also allegedly restricts the academic freedom of teachers regarding the choice of means to achieve educational goals. Part 1 of Section 1 of the Amendments to the Education Law may allegedly

impede access to education for children of ethnic minority. In addition, the use of native language allegedly plays an important role in the child's cognitive development. Consequently, Part 1 of Section 1 of the Amendments to the Education Law also allegedly restricts the right of a child to receive qualitative education.

Part 1 of Section 1 of the Amendments to the Education Law allegedly is contrary to Article 114 of the *Satversme* in conjunction with Part 1 of Article 13 of the Minorities' Convention, which foresees the rights of persons belonging to ethnic minorities to establish and manage private educational institutions that offer educational programmes in ethnic minority languages. The explanations provided by international institutions and their representatives regarding the Part 1 of Article 13 of the Minorities' Convention also emphasise the right of persons belonging to ethnic minorities to establish private educational institutions in which the language of instruction is the minority language. It has also allegedly been acknowledged that the state should refrain from creating obstacles to the use of ethnic minority languages in the educational process, but should support it. Ethnic minority schools with a minority language used for education are allegedly essential for the preservation of ethnic minority identities.

The restriction of the fundamental rights included in Part 1 of Section 1 of the Amendments to the Education Law is not provided by a law adopted in due procedure, as persons belonging to ethnic minorities are allegedly not properly involved in the process of its adoption. The rights of persons belonging to ethnic minorities to participate and to be heard in the process of decision-making relevant to them allegedly follows from Article 15 of the Minorities' Convention and are allegedly recognised in the case law of the Constitutional Court. The Advisory Council on Minority Education Affairs (hereinafter — the Advisory Council), which discusses the proposals of the Ministry of Education for the transition to teaching in Latvian at secondary school level, does not include any founders of private schools, principals, students or their parents. In addition, the information in the annotation to the General Education Law that the Advisory Council has expressed conceptual support to these proposals is misleading.

The persons belonging to ethnic minorities have allegedly objected to Part 1 of Section 1 of the Amendments to the Education Law, but their objections have allegedly not been taken into account. The proper participation of minorities was not either ensured during the legislative process in the *Saeima*. Part 1 of Section 1 of the Amendments to the Education Law has allegedly been

drafted and adopted on the basis of imperfect, inadequate and insufficient data on the official language proficiency and usage among persons belonging to ethnic minorities; besides these data have allegedly not been properly analysed. Data on private institutions of education were allegedly not obtained in the course of legislative process. The legislative process was allegedly neither scientifically grounded nor based on research and evidence. Moreover, it allegedly does not take into account the opinions of international institutions regarding Latvia's legal framework in the sphere of education in connection with ethnic minority rights. Such a legislative process allegedly does not ensure trust in the state and rights, nor does it allegedly give the public confidence that the solution chosen is necessary, well-considered and just. Moreover, Part 1 of Section 1 of the Amendments to the Education Law is allegedly contrary to the quality requirements of legal norms as it conflicts with other laws.

The restriction of the fundamental rights established in Part 1 of Section 1 of the Amendments to the Education Law allegedly does not reach its legitimate aim — to strengthen the use of the official language and promote integration of society — but, on the contrary, allegedly endangers its achievement. Elimination of minority education programmes where education was provided in a minority language allegedly endangers the ability of the minorities concerned to integrate into society. Moreover, this legitimate aim can allegedly be achieved by other means less restrictive of the rights and legal interests of persons belonging to ethnic minorities, of the same or higher quality, namely by preserving the legal framework for the use of the former languages of instruction and availability of national language teachers.

The benefit of society from the restriction of the fundamental rights provided for in the Part 1 of Section 1 of the Amendments to the Education Law is allegedly not greater than the damage caused to the rights and interests of the person, as it is allegedly aimed at the assimilation of minorities. There is allegedly no benefit to society from this restriction of fundamental rights because it is in its interest to have an education system that meets the needs of minorities and at the same time enables their representatives to learn the official language and integrate into society. It should also be taken into account that Part 1 of Section 1 of the Amendments to the Education Law prohibits the acquisition of education in another language in private institutions of education, the number of which is insignificant.

Part 1 of Section 1 of the Amendments to the Education Law allegedly does not comply with the principle of prohibition of discrimination included in the second sentence of Article 91 of the *Satversme* in several aspects. Firstly, persons belonging to ethnic minorities and persons belonging to the existing nation in that country are allegedly in different circumstances. The difference lies with the language and, indirectly, with nationality. Consequently, the principle of non-discrimination allegedly requires different treatment of those groups of persons. However, Part 1 of Section 1 of the Amendments to the Education Law allegedly significantly reduces or even does not provide for different treatment of them. Secondly, all Latvian ethnic minorities are allegedly in comparable conditions. However, in respect of certain ethnic minorities, Paras 1, 2¹ and 3 of Part 2 of Section 9 of the Education Law allegedly provide for exceptions, that is to say, different treatment, as opposed to ethnic minorities not covered by those exceptions. The Applicants repeatedly emphasise that Part 1 of Section 1 of the Amendments to the Education Law allegedly does not comply with the opinions and views of various international institutions.

After examination of the materials of the case, the Applicants submitted a written opinion to the Constitutional Court with objections against the opinions expressed by the *Saeima* and the invited persons, as well as repeated and expanded certain arguments already mentioned. In addition, it is emphasised in the written opinion that the conclusions which the Constitutional Court has expressed in the judgment in case No. 2018-12-01 cannot be used in the case under examination. Unlike state institutions of education, private institutions of education allegedly do not implement state-guaranteed education and the choice in their favour is the choice of parents. Pursuant to Article 112 of the *Satversme*, private institutions of education have wide discretion in determining the organisation of their work, teaching methods and subjects, as they are mainly financed by parents of students. The choice of the language of instruction is a method of teaching, therefore private institutions of education are free to determine the language of instruction to be used there. In turn, the State should allegedly refrain from regulating the language of instruction in private institutions of education. The Applicants emphasise that prior to the coming into force of Part 1 of Section 1 of the Amendments to the Education Law, private institutions of education were allegedly not subject to state requirements regarding the use of study languages in the process of general education. It also allegedly follows from Article 114 of the *Satversme*, read in conjunction with

Article 13 of the Minorities' Convention, that there is a right of ethnic minorities to establish private institutions of general education in which education in the minority language would be fully provided. Part 1 of Section 1 of the Amendments to the Education Law allegedly deprives persons belonging to ethnic minorities of the right to acquire general education in such private institutions of education arising from Article 114 of the *Satversme*. These rights of persons belonging to ethnic minorities should also be allegedly taken into consideration when assessing the compliance of Part 1 of Section 1 of the Amendments to the Education Law with the second sentence of Article 91 of the *Satversme*. As private institutions of education were not allegedly previously subject to requirements regarding the proportion of the use of the official language, Part 1 of Section 1 of the Amendments to the Education Law allegedly violates the principle of legitimate expectations. The Applicants state that they had a legitimate expectation that they could complete the entire primary education process by using a minority language as the language of instruction, in accordance with the legal framework in force before the reform of the particular education system. The legislator has not ensured a sufficiently lenient transition to the new legal framework.

4. The Applicants — Timurs Jareško, Mila Šteina, Edvards Šmits, Aleksandrs Fominovs, Vladislavs Kuļikovs, Vlada Elīza Ševšeļova, Jelizaveta Kotova, Anna Lisa Čmihova, Agnija Busila, Marija Busila, Mihails Zaslavskis and Aleksandrs Zaslavskis (hereinafter — the Applicants) believe that Part 1 of Section 1 of the Amendments to the Education Law does not comply with the second sentence of Article 91 and the first sentence of Article 112 of the *Satversme*.

The content of the first sentence of Article 112 of the *Satversme* shall be allegedly ascertained in conjunction with Article 114 of the *Satversme*, which protects the rights of ethnic minorities, as well as Part 1 of Section 13 and Part 2 of Section 14 of the Minorities' Convention. Namely, the right to education allegedly includes, *inter alia*, the requirement of acceptability of education to individuals. The acceptability of education should allegedly be assessed, *inter alia*, by observing the right of persons belonging to ethnic minorities to preserve their identity, included in Article 114 of the *Satversme*. One of the elements of an ethnic minority identity is allegedly its language. Therefore, in order for ethnic minorities to retain their identities, the state must allegedly allow ethnic

minority educational institutions (which in most cases are private) to exist and provide them with support.

Part 1 of Article 13 of the Minorities' Convention allegedly provides for the right of persons belonging to ethnic minorities to establish and manage private institutions of education of ethnic minorities and to receive education there. Whereas Part 2 of Article 14 of the Minorities' Convention allegedly envisages the right of persons belonging to ethnic minorities to receive education directly in the language of the ethnic minority. These minority rights have allegedly long been recognised in international law as well as emphasised in the interpretations provided by various international institutions regarding the rights of persons belonging to ethnic minorities in the field of education.

The Applicants hold that Part 1 of Section 1 of the Amendments to the Education Law does not comply with the prohibition of discrimination included in the second sentence of Article 91 of the *Satversme*, as it allegedly envisages equal treatment of groups of persons in different circumstances — individuals belonging to the nation and individuals belonging to ethnic minorities. In order to ensure the right of persons belonging to ethnic minorities to equal quality education, the educational process should allegedly be adaptable, allowing them to receive education in their native language. However, the equal treatment provided for in Part 1 of Section 1 of the Amendments to the Education Law allegedly denies persons belonging to ethnic minorities the right to equal quality education. Thus, Part 1 of Section 1 of the Amendments to the Education Law allegedly allows for the discrimination of persons on the basis of their nationality.

The restriction of the fundamental rights of the Applicants has allegedly not been established by a duly adopted law. Part 1 of Article 1 of the Amendments to the Education Law has allegedly been adopted and promulgated in accordance with the procedure prescribed by regulatory enactments but the relevant draft law has allegedly not been properly discussed and coordinated. Moreover, Part 1 of Section 1 of the Amendments to the Education Law allegedly does not comply with the requirements of the content quality of the legal norm, as well as it is not sufficiently clear, as it contradicts other regulatory enactments.

The restriction of the fundamental rights of the Applicants allegedly has a legitimate aim of the protection of the official language and strengthening of its use, as well as promotion of the integration of persons belonging to ethnic

minorities. However, the restriction of the fundamental rights in question is allegedly obviously disproportionate.

Part 1 of Section 1 of the Amendment to the Education Law would allegedly restrict access to qualitative education for persons belonging to ethnic minorities due to the restriction of the fundamental rights. The views of these Applicants are allegedly supported by the Hague Recommendations of the High Commissioner for Security and Cooperation in Europe and several studies on the impact of the language of instruction on the quality of education, as well as the Advisory Committee's opinion on Latvia. By restricting the access of persons belonging to ethnic minorities to quality education, their integration into society, contrary to their legitimate aim, may allegedly be jeopardised. Part 1 of Section 1 of the Amendments to the Education Law is allegedly not suitable for reaching the legitimate aim, as it actually provides for the forced assimilation of persons belonging to ethnic minorities. The ethnic minority education system that existed before the adoption of Part 1 of Section 1 of the Amendments to the Education Law could have allegedly ensured the proper achievement of the legitimate aim. International legal provisions allegedly guarantee the right of persons belonging to ethnic minorities to receive education in a minority language.

Even if one could allegedly consider that Part 1 of Section 1 of the Amendments to the Education Law is suitable for reaching the legitimate aim, there are other means that also allegedly allow reaching of the legitimate aim, but restricting the rights and interests of persons less. The legitimate aim can allegedly be achieved just as effectively by introducing additional measures to strengthen Latvian language skills in private educational institutions providing education in the minority language, setting more stringent requirements for the accreditation of these institutions, as well as providing a sufficient number of highly qualified Latvian language teachers. It was allegedly possible to achieve the legitimate objective effectively by properly consulting minority representatives before the reform and implementing the reform gradually.

The public benefit from the restriction of the fundamental rights established in Part 1 of Article 1 of the Amendments to the Education Law is allegedly not greater than the harm done to persons belonging to ethnic minorities. Namely, the society allegedly does not benefit from the forced assimilation of children of ethnic minorities provided for in Part 1 of Section 1 of the Amendments to the Education Law. The sharp reaction of persons

belonging to ethnic minorities to the adoption of Part 1 of Section 1 of the Amendments to the Education Law is allegedly evidence of the division of society. Part 1 of Section 1 of the Amendments to the Education Law allegedly denies children belonging to ethnic minorities the possibility to obtain a quality education and thus also the possibility to successfully integrate into society. It is allegedly in the interests of the whole society to have an education system that respects the needs and interests of ethnic minorities, while ensuring that persons belonging to ethnic minorities have the opportunity to learn the official language and integrate into society.

After reading the materials of the case, the applicants Timurs Jareško, Aleksandrs Fominovs, Vlada Elīza Ševšeļova, Agnija Busila and Marija Busila submitted the Constitutional Court a written opinion, expanding on the arguments set out in the application and expressing their opinion regarding the statements of the *Saeima*. In addition, the Applicants, in their written submission, emphasise the alleged inconsistency of Part 1 of Section 1 of the Amendments to the Education Law with arguments of a similar nature to those of the Applicants Davids Džibuti and Dana Džibuti in this regard.

5. The institution, which passed the contested act — the *Saeima* — holds that Part 1 of Section 1 of the Amendments to the Education Law complies with Article 1, second sentence of Article 91, first sentence of Article 112 and Article 114 of the *Satversme*.

Although the Constitutional Court in its judgment in case No. 2018-12-01 did not evaluate the compliance of Part 1 of Section 1 of the Amendments to the Education Law with the *Satversme*, its conclusions and findings may be applied to the case under review. In the judgment in case No. 2018-12-01 the Constitutional Court has already evaluated the process of adoption of Part 1 of Section 1 of the Amendments to the Education Law and declared it to be in compliance with the principle of good legislation. In the above-mentioned judgment the Constitutional Court has also recognised that the proportion, established in Part 2 of Section 3 of the Amendments to the Education Law, of the use of the official language and ethnic minority language ensures education that complies with the principles of accessibility, acceptability and adaptation and ensures the rights of ethnic minorities to maintain and develop their language, culture and identity, including at the upper secondary level.

The *Saeima* points out that Part 1 of Section 1 of the Amendments to the Education Law is part of a broader regulation implementing the reform of the education system. Therefore, in its analysis it is important to take into account the historical conditions of Latvia, the changes in the proportion of the use of study languages, geopolitical tendencies and other current circumstances. It is important that children who are currently attending educational institutions are born in Latvia after the year of 2000, that is, at least nine years after the restoration of Latvia's independence, and started their studies after the 1999 transition to the bilingual education model in ethnic minority education programmes. Thus, at least from grade 7, these students were educated in accordance with one of the five ethnic minority educational programme models included in the Cabinet of Ministers Regulation of 12 August 2014 No. 468 "Regulations on State Standard in Basic Education, Subjects of Study Standards in Basic Education and Model Basic Educational Programmes". These programmes take into account the child's previous education, experience and language skills, and provide for the possibility of adjusting the curriculum to ensure an in-depth learning about ethnic culture. Section 2 of the Amendments to the Education Law also allegedly gives the educational institution the freedom to include the content related to the ethnic minority language, identity and integration into the Latvian society in the curriculum.

Part 1 of Section 1 of the Amendments to the Education Law does not prohibit persons belonging to ethnic minorities from establishing and running private institutions of education but establishes a general principle that the language of instruction in Latvia in all private institutions of education is the official language. While interpreting Part 1 of Section 1 of the Amendments to the Education Law, account must be taken of the exceptions provided for in Part 2 of Section 9 of the Education Law, in particular Para 2, which provides that education in another language than the state language can be acquired in institutions of ethnic minority education that offer pre-school and basic level educational programme, respecting the language usage proportions set by the Education Law. The rights of ethnic minorities to preserve their language and to develop their identity and culture were previously fully guaranteed in state and municipal institutions of education. The Constitutional Court in its judgment in the case No. 2018-12-01 acknowledged that these rights will be ensured after the amendments to the Education Law enter into force in full. The relatively small number of private institutions of minority education demonstrates that the rights

and interests of persons belonging to ethnic minorities are adequately protected within the public education system.

The *Saeima* emphasises that even before the adoption of Part 1 of Section 1 of the Amendments to the Education Law, study programmes in private institutions of education were implemented bilingually, namely, these institutions of education could offer only licensed and accredited educational programmes, respecting the proportion of the use of the official and ethnic minority languages set by Para 9 (3) of the transitional provisions of the Education Law. Education in private institutions of education will be provided within the framework of the ethnic minority education programme, taking into account the proportion of the use of the official language and the ethnic minority language as prescribed by law. Private institutions of education are also involved in the overall long-term language policy and the reform process regarding minority education programmes. Therefore, the viewpoint of the Applicants, that Part 1 of Section 1 of the Amendments to the Education Law has significantly changed the rules of language usage in private institutions of education and that they have a legitimate expectation that private institutions of education have significantly different regulations on the use of the state language, is not justified. The education reform regarding the expansion of the use of the official language has been implemented gradually and carefully over a period of more than 20 years. The Amendments to the Education Law also envisage a gentle transition to increasing the proportion of the official language in the basic education process.

5.1. The right of minorities to preserve their native language and identity and to maintain their culture primarily derives from Article 114 of the *Satversme*. Such conclusion is also indicated in the Constitutional Court judgment in the case No. 2018-12-01. Minority rights are specific rights related to guaranteeing the rights of a specific group or collective rights. The provisions of the Minorities' Convention are not directly applicable but are to be understood as principles to be implemented in the national legal system. Private institutions of education are an additional instrument for implementation of the right of minorities to preserve their identity. The importance of this instrument should be assessed in the light of all available tools for the enforcement of the rights of ethnic minorities. The Minorities' Convention sets out principles to be respected by States but leaves a wide margin of appreciation to implement specific measures, taking into account the country's historical circumstances, the

prevalence of minority languages, the official language proficiency among minorities and measures already provided by the State. The State has wide margin of appreciation in determining the most appropriate regulation suitable for its situation in accordance with the principles of the Minorities' Convention. Thus, the implementation of certain minority rights depends on specific circumstances of each country. In this respect, *inter alia*, the level of prevalence of ethnic minority language in question, the position and global competitiveness of the official language of the country, as well as the geopolitical situation and its impact on the achievement of educational objectives are significant.

Although the right of persons belonging to ethnic minorities to set up and run private institutions of education is closely linked to the right of ethnic minorities to preserve their identity, including their language, these rights are inherently different. The right under Article 13 of the Minorities' Convention to establish and run private institutions of education is to be regarded as an instrument for the preservation of the cultural identity of ethnic minorities, especially if the State does not provide sufficient opportunities for this purpose in public or municipal institutions of education. Consequently, the right of persons belonging to ethnic minorities to set up private institutions of education is not designed to provide them with choice but to ensure that the minority language, culture and identity are preserved in a situation where it might be endangered by another language or cultural dominance. On the other hand, under Article 14 of the Minorities' Convention, the regulation of the use of the official language and the language of the ethnic minority must enable persons belonging to ethnic minorities to learn their native language either as a subject or as a language of instruction.

The rights conferred Article 13 of the Minorities' Convention are to be exercised within the educational system existing in the State. The State is not obliged to provide persons with access to education only in the ethnic minority language and to adjust the general education supervision mechanisms for this purpose. However, the State should ensure that the curricula implemented in private institutions of education also meet the quality standards set by the state and achieve all educational goals, including guaranteeing the ability of students to participate effectively in public life and to continue their education.

Ethnic minority education has been and will be provided in state and municipal institutions of education. Until now, most private institutions of education have implemented minority education programmes in accordance with

the proportion of languages provided for by the Education Law. On the other hand, statistics on students' choice of language in which they pass national tests, testify to the growing tendency to choose the official language as the language of instruction. Thus, Part 1 of Section 1 of the Amendments to the Education Law does not envisage significant changes in the implementation of the study programmes offered by private institutions of education. Changes in the proportion of the use of the official language and the ethnic minority language are provided for in other legal provisions. Part 1 of Section 1 of the Amendments to the Education Law does not prohibit the implementation of ethnic minority education programmes and the preservation and development of ethnic minority language, culture and identity.

Prior to the entry into force of the Amendments to the Education Law, Para 1 of Part 2 of Section 9 of the Education Law provided that education in a private institution of education may take place in a language other than the official language. However, that provision has never been interpreted and applied in such a way so as to allow the full implementation of educational programmes in a language other than the official language. In Latvia, private institutions of education, including private institutions of education implementing ethnic minority education programmes, are included in the general education system of the State, therefore they are subject to the same standards of study content and language acquisition as state and municipal institutions of education. In the future, private institutions of education will be able to implement ethnic minority educational programmes in compliance with the requirements of the laws regarding the content of teaching and the use of languages. These requirements do not preclude the acquisition of a minority language and culture or the use of a minority language as an appropriate language of instruction. Part 1 of Section 1 of the Amendments to the Education Law does not prohibit persons belonging to ethnic minorities from the possibility to receive education in the minority language in accordance with the proportion of the use of languages established by the Education Law.

It is not substantiated by the Applicants' statement that Part 1 of Section 1 of the Amendments to the Education Law will implement a forced assimilation of children belonging to ethnic minorities. Minority children in Latvia are mostly aware and fluent in their mother tongue. At the most important stages of the child's development, the acquisition and use of the mother tongue is ensured, that is, the child's mother tongue is used in pre-primary education and also as the

main language of instruction in primary education. Moreover, it should be taken into account that the Russian language in Latvia is not considered endangered. It is widely used in everyday life and is self-sufficient, and this fact hinders the use of the official language.

5.2. The right to education is an invaluable tool for the realisation of other human rights. Pursuant to Article 112 of the *Satversme* and the norms of international law, the state has a duty to ensure accessible and high-quality education for children. The educational process should be aimed at securing the students and their rights and interests. However, the educational process aims not only to provide a student with academic knowledge and skills, but also to teach respect for parents, cultural identity, language and values, the national values of the country in which the child lives, and respect towards the national values of their country of origin, as well as towards other cultures. Thus, the educational process is also aimed at the development of the child's own identity and personality. The aim of the educational process is also to prepare the child for a conscious life in the community in a spirit of understanding, peace and tolerance. On the other hand, independent and conscientious living in Latvian society is impossible without sufficient knowledge of the state language. The official language is the language of public communication and democratic participation. Therefore, the education process should ensure that the child, after compulsory primary education and, even more, after secondary education, knows the Latvian language to such a degree that he or she can participate fully in public life and in democratic processes. The State has a duty to ensure that these objectives are also achieved in private institutions of education.

In accordance with Article 112 of the *Satversme*, the state shall ensure the availability of both basic and secondary education to every student. The Constitutional Court has acknowledged that, in certain cases, increasing the proportion of the state language in the educational process, taking into account linguistic factors, could be regarded as a restriction on the accessibility of education. Minority language should be used in the education process in order to ensure the acquisition of their mother tongue and ethnic culture by the minority students and to provide conditions for the gradual expansion of the use of the state language in the further education process to minimise the negative impact on the quality of education. However, Article 112 of the *Satversme* does not, either separately or in conjunction with Article 114 of the *Satversme*, oblige the state to ensure the possibility for minority children to receive education in the

language of the minority only. In addition, measures aimed at learning the official language at a sufficient level to participate in the democratic processes of the country and to continue education should not restrict the rights of the learner.

The amendments to the language use ratio provided for in the Education Law will be applicable to basic education as of from 1 September 2019 and to secondary education from the beginning of the 2020/2021 school year. Therefore, it is currently not possible to determine whether these changes will affect the ability of minority children to obtain qualitative secondary education. However, in this respect it should be taken into account that even now the need for a purposeful state language protection policy has not disappeared. The state should create an education system that ensures effective teaching of the Latvian language, namely the state language, to every new generation, including persons whose mother tongue is different. This obligation also extends to private institutions of education.

Latvia's obligation to provide every child with access to qualitative education derives from the *Satversme* as well as from several international legal acts. However, the educational process allegedly aims not only at providing a child with specified academic knowledge and skills but also at teaching a child respect for parents, cultural identity, language and values, the national values of the country in which the child lives, and respect towards the national values of their country of origin, as well as towards other cultures. Also, the aim of the educational process is to prepare a child for a conscious life in the community in a spirit of understanding, peace and tolerance. On the other hand, independent and conscientious living in Latvian society is impossible without sufficient knowledge of the official language. The Constitutional Court has also acknowledged that the task of the education system is to ensure that every learner knows the state language to such an extent that he or she can participate in the life of society and participate in the democratic processes of the state of his or her choice. These objectives are also achievable with regard to students of private institutions of education. The state is not obliged to recognise the right to establish and operate private institutions of education, which would guarantee the acquisition of a state-recognised educational document but would not ensure the achievement of all educational goals. Therefore, it cannot be accepted that private institutions of general education have the freedom to choose any language of instruction.

The aim of the education reform is to facilitate opportunities for young people belonging to ethnic minority to continue their studies and find work in Latvia. These opportunities are ensured by the gradual increase of the share of the state language in the educational process. The fact that the transition to competence-based learning content has begun is also relevant. As a result, institutions of education will be given greater freedom in designing educational programmes, allowing them to include additional subjects related to minority language, identity and integration. In order to ensure successful implementation of the requirements for the use of the state language and transition to the new curriculum, support measures are planned for all teachers, as well as planned measures to increase the amount of teaching aids and to improve professional skills of teachers. Thus, the academic freedom and choice of educators will be expanded rather than narrowed. Consequently, there is no reason to believe that Part 1 of Article 1 of the Amendments to the Education Law will definitely restrict the right of persons to qualitative education.

Latvia has an extensive network of state and municipal educational institutions providing both minority language education and minority language education, and thus the ability of minorities to preserve their language, culture and identity. Besides, it should be taken into consideration that Russian is widely used in Latvian society. In those circumstances, the state, in the exercise of its margin of appreciation, has struck a fair balance between the public interest and the rights of ethnic minorities. The State is entitled to determine the proportion of the use of languages that would most effectively ensure the acquisition of the state language at a level appropriate to the educational objectives. It does not follow from Article 91 of the *Satversme* that minorities have the right to provide education in their private institutions of education only in the minority language or in the proportion of the language chosen by the parents of the students. Thus, students whose mother tongue is not the official language but who are not in a comparable situation to those whose mother tongue is the official language.

6. The summoned person — the Ministry of Foreign Affairs — expressed its opinion mainly regarding basic education, as it is mandatory according to the third sentence of Article 112 of the *Satversme*. However, secondary education in Latvia is not compulsory; therefore, it is possible that the Part 1 of Article 1 of the Amendments to the Education Law, insofar as it relates to the acquisition of secondary education, will not apply to the Applicants.

Furthermore, even if the Part 1 of Section 1 of the Amendments to the Education Law were to apply to the Applicants, it would not have any particularly negative consequences for them.

The case-law of the European Court of Human Rights provides for relatively wide discretion of the state in defining the objectives for the restriction of the right to education insofar as the respective objective is legitimate and in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the case law of the European Court of Human Rights, neither Article 8 of the Convention nor Article 2 of Protocol No. 1 of the Convention guarantees a person the right to establish or subsidise schools in which education is provided in a particular language. The conclusions of the European Court of Human Rights in cases assessing the rapid change of the language of instruction by the occupation authorities, replacing the official state language with another language and not ensuring a proper transition or the possibility to continue studying in mother tongue cannot be applied to the situation in Latvia. The provisions of international treaties binding upon Latvia cannot be interpreted as implying a person's subjective right to education in a language other than the official or state language. The state, by establishing that education is compulsory, has a duty to design curricula and monitor the quality of implementation so that a student can obtain a diploma upon graduation. Also, private institutions of education that implement state-recognised education programmes in the compulsory education phase have to comply with the state-defined education standards. The European Court of Human Rights has refrained from assessing nationally developed education models but has positively assessed alternative education options in the event that parents are dissatisfied with the content of the curriculum and constantly emphasised the importance of the education system in building a cohesive democratic society.

It follows from the practice of the United Nations (UN) Human Rights Committee that, under Article 27 of the International Covenant on Civil and Political Rights, which guarantees the rights of minorities, the limits of national discretion in the choice of language of instruction could only be narrower if the use of any language would decrease to such an extent that its existence would be endangered. Thus, a person has no subjective right to education in the minority language. Education in the minority language is merely an instrument for preserving the identity and language of the minority. Likewise, the right to set up private institutions of education providing education in a minority language is to

be regarded as a means of preserving a minority language and culture only, which would be of particular importance if the state failed to secure these objectives within its own education system. As regards the preservation of the uniqueness of ethnic minorities in Latvia, first it must be taken into account that the Russification policy of the Soviet authorities artificially formed the so-called Russian-speaking population and representatives of other nationalities were forced to become one of them. Secondly, given the predominance of the Russian language in Latvia and the possibility of acquiring it as a foreign language in many institutions of general education, no threat to the preservation of the Russian language is apparent. Moreover, it is important that even after the entry into force of the Part 1 of Article 1 of the Amendments to the Education Law, the acquisition of minority education programmes in Latvia will be ensured in accordance with the statutory language use proportions. The norms of the Minorities' Convention are deliberately formulated in a flexible manner, and the state should design its education system, taking into account, inter alia, its historical circumstances, cultural and political context, available resources, knowledge of the mother tongue and national language of minority children, and other factors.

7. The summoned person — the Ministry of Education and Science — holds that Part 1 of Article 1 of the Amendments to the Education Law complies with Article 1, Article 91, second sentence, Article 112, first sentence, and Article 114 of the *Satversme*.

Part 1 of Article 1 of the Amendments to the Education Law is part of the gradual reform of the education system regarding the use of the state language in minority education programs implemented in general education institutions over many years.

When evaluating the compliance of Part 1 of Article 1 of the Amendments to the Education Law with the second sentence of Article 91 of the *Satversme*, the status of the Latvian language — the official language — enshrined in Article 4 of the *Satversme*, must be taken into account. Part 1 of Article 1 of the Amendments to the Education Law envisages an equal treatment of groups of persons in different circumstances — persons belonging to the state nation and persons belonging to ethnic minorities. However, such equal treatment has a legitimate aim and complies with the principle of proportionality. Namely, by developing ethnic minority education policy, increasing the

proportion of Latvian as the language of instruction at primary level and ensuring the acquisition of the state language at secondary level, greater use of the official language and thus more effective integration of society and participation of minority children and youth in society.

Private institutions of education that implement minority education programmes at primary and secondary level issue educational certificates recognised in Latvia and have integrated into the common educational system of Latvia, as well as in the curriculum and language reform process. All institutions of education providing education in a language other than the official language pursuant to Para 1 of Part 2 of Section 9 of the Education Law and in accordance with international treaties entered into by the Republic of Latvia, issue educational certificates recognised by Latvia and have integrated into the educational system of Latvia. Consequently, these institutions of education, as well as private institutions of education implementing minority education programmes, must comply with the language use ratios set out in the Education Law and the basic and secondary education standard. Even after the entry into force of Part 1 of Section 1 of the Amendments to the Education Law, private institutions of education will be able to implement ethnic minority education programmes, observing the use of language proportions set by the law. In addition, they will be able to include additional subjects in the curriculum, including minority language and curriculum related to minority identity and integration into Latvian society.

The restriction of the fundamental rights included in Part 1 of Section 1 of the Amendments to the Education Law has allegedly been established by a law adopted in due procedure, namely, Part 1 of Section 1 of the Amended Education Law has allegedly been adopted and proclaimed in accordance with the procedure set by the law and it is also clearly formulated. This restriction has a legitimate aim — to promote the use of the Latvian language in society, in the educational process and in the labour market, and it is proportionate to the above legitimate aim, since it is the acquisition of formal education in the official language that is the most effective means.

The Minorities' Convention does not imply the right of persons belonging to ethnic minorities to education in their mother tongue only. Namely, according to the third paragraph of Article 14 of the Minorities' Convention, the state has the right to impose stricter requirements for the acquisition of the state language, while ensuring the acquisition of minority language, identity and cultural

content. The Latvian education system ensures the acquisition of the Latvian language so that every student becomes an independent and developed member of the democratic state and society of Latvia. At the same time, persons belonging to ethnic minorities have the opportunity to receive education within the framework of the ethnic minority education programme and thus to preserve their identity, language and culture.

The legislator has established a reasonable transition period for the introduction of the proportion of the use of the official language provided for in the Amendments to the Education Law and has chosen lenient means for preparing the students for these changes. In turn, the right of parents to participate in the education process of their children is not restricted by Part 1 of Section 1 of the Amendment to the Education Law. Part 1 of Section 1 of the Amendments to the Education Law does not prevent persons belonging to ethnic minorities from using their mother tongue and developing their culture on a daily basis.

8. The summoned person — the Latvian Private School Association — stated that it was not invited to participate in the process of drafting the Part 1 of Section 1 of the Amendments to the Education Law. At the meeting of the Board of the Association on 16 May 2018, it was decided not to give an opinion on the Part 1 of Section 1 of the Amendment to the Education Law, taking its political importance into account.

9. The summoned person — the Latvian State Language Centre — holds that Part 1 of Article 1 of the Amendments to the Education Law complies with Article 1, Article 112, second sentence, Article 114, first sentence, and Article 114 of the *Satversme*.

Part 1 of Article 1 of the Amendments to the Education Law should be supported from the point of view of language policy, and extension of the use of the official language is a natural continuation of the processes already started in the field of education. Full integration of ethnic minorities into a united society should take place on the basis of the state language and there is no reason to postpone the specific amendments to the regulation of the Education Law disproportionately.

10. The summoned person — the Ombudsman — holds that Part 1 of Section 1 of the Amendments to the Education Law complies with Article 1, Article 112, second sentence, Article 114, first sentence, and Article 114 of the *Satversme*.

Implementation of the regulation established in Part 1 of Section 1 of the Amendments to the Education Law is the final stage of the reform of the education system, which will end the transition to a unified education system. The transition to education in the state language in Latvia has been implemented gradually since 1998. Consequently, the transitional period has lasted for more than 20 years and should be considered proportionate. Article 112 of the *Satversme* does not include the right of parents to choose the language of instruction of their child. Therefore, the viewpoint of the Applicant that the Part 1 of Section 1 of the Amendments to the Education Law restricts the right to education guaranteed in Article 112 of the *Satversme* is ungrounded. The state is under an obligation under Article 30 of the Convention on the Rights of the Child not to deny a child belonging to an ethnic, religious or linguistic minority the right to enjoy, with his or her other members, cultural values, conversion and practice in his or her religion. It is the duty of the state to provide opportunities for the acquisition of minority language and culture, also within the education system. The Latvian education system has ensured these opportunities.

Pursuant to Article 13 of the International Covenant on Economic, Social and Cultural Rights, the State, when designing its education system, must develop uniform requirements for all educational institutions, both state and municipal, and private. A systematic interpretation of the legal framework in the field of education applicable to minority education programmes leads to the conclusion that the legislator has always envisaged uniform requirements for the implementation of education in state and municipal educational institutions and private educational institutions. Consequently, the Applicants could not rely on the fact that private educational institutions would not be included in the common educational system and would be subject to different regulations regarding the language in which the educational process is implemented.

However, in the context of the principle of legitimate expectations, the drafting history of Para 9 of the Transitional Provisions of the Education Law must be taken into account. An important precondition for observance of the principle of legitimate expectations is a gentle transition to the newly adopted legal framework and the unambiguous wording of this legal framework. It is

significant that Para 9 of the Transitional Provisions of the Education Law, which provided for the transition to the regulation adopted, as the *Saeima* pointed out, within the framework of the gradual reform of the language of instruction for more than 20 years, the state's intention to apply the same reform to private institutions of education is not clear. This inconsistency casts doubt on the legislator's compliance with the principle of legitimate expectations.

11. The summoned person — *Dr habil. philol. prof. Ina Druviete* — holds that Part 1 of Section 1 of the Amendments to the Education Law complies with Article 1, Article 112, first sentence, and Article 114 of the *Satversme*.

The Education Law and the General Education Law not only regulate education as a process and result of acquiring knowledge and skills and forming attitudes but also as an instrument for the implementation of state language policy. The aim of state language policy is to protect the unified means of communication necessary for the existence of the state — the state language.

Part 1 of Section 1 of the Amendments to the Education Law should be evaluated taking into account the existing language competition in Latvia. The protection of the official language is a legitimate objective, the means of which are best suited to a particular situation. From a sociolinguistic point of view, the Latvian language does not correspond in many respects to the status of the state language. This is mainly due to the linguistic self-sufficiency of the Russian-speaking population, which in turn hinders the development of Latvian language skills among these persons. Therefore, in order to ensure a high level of Latvian language learning, it is not enough that Latvian is taught as a subject, but it is necessary to use it as a teaching aid. Improving national language teaching methodologies and teacher access, as well as specific support for teaching the national language in minority schools, are not equally effective alternative means of achieving this goal, but can be used as additional means.

There is no reason to question the reasoning of Part 1 of Section 1 of the Amendments to the Education Law. It is irrelevant that the number of students in private institutions of education is relatively small, as all children must have equal opportunities for work and education. Moreover, the mere fact that the number of students in private education is insignificant at present does not mean that it cannot increase in the future. Part 1 of Section 1 of the Amendments to the Education Law is not in conflict with Article 114 of the *Satversme*, as the education system of Latvia at the same time ensures stability, development and

competitiveness of the state language and preservation of minority languages. Therefore, the use of the Latvian language in the educational process cannot be regarded as forced assimilation. In addition, the family and the minority community concerned maintain the mother tongue and culture. Nowadays, cross-cultural and multilingual skills are a common trend. The belief that the second language or culture can only be acquired at the expense of the mother tongue and culture is outdated. In every country where users of different languages live, the official or official language is required for communicating with the state and other groups of people. It is scientifically proven that learning a second language and obtaining education in said language positively influences the child's intellectual development and does not hinder the accumulation of knowledge.

The need to ensure that minorities are adequately taught the official language and the importance of the official language as the language of instruction are also emphasised in the programming documents developed by the Council of Europe and the EU. Countries enjoy discretion in choosing a particular education model. However, most countries choose a model where students receive education in the national language. The only exceptions are the regional or minority languages, which have the status of official languages in the countries concerned.

There is no universal solution to the question of the language of instruction. Each country can choose the model best suited to its official language as a means of social integration, according to its language situation. The experience of the Baltic States shows that the universal application of EU standards, based solely on the current situation in the Member States and without taking into account their history, does not promote social integration but, on the contrary, complicates it. In Latvia, teaching in the official language is, in fact, the only way to ensure social integration.

The Findings

12. Part 1 of Section 1 of the Amendments to the Education Law supplements Part 1¹ of Section 9 of the Education Law in the following wording:

“(1¹) In private educational establishments, general and vocational education at the primary and secondary level shall be acquired in the official language.”

Amendments to the Education Law also provide for the addition of Para 66 of the transitional provisions of the Education Law, according to which Part 1 of Section 1 of the Amendments to the Education Law and several other norms included in these amendments shall enter into force gradually: 1 September 2019 with respect to the implementation of pre-school and primary education programmes in Grades 1-7; on 1 September 2020 with respect to the implementation of the basic education programmes in Grade 8 and with respect to the implementation of the secondary education programmes in Grades 10 and 11, and on 1 September 2021 with respect to the implementation of the basic education programmes in Grades 9 and 12.

The present case was initiated on 12 November 2018 when the foreseen amendments of Part 1¹ of Section 9 of the Education Law to Part 1 of Section 1 of the Amendments to the Education Law had not entered into force yet. At the time of the court hearing, Part 1¹ of Section 9 of the Education Law has entered into force only in part, namely, pursuant to Section 66 of the transitional provisions of the Education Law, it is currently applicable to the implementation of basic education of ethnic minorities in Grades 1-7.

In this case, the constitutionality of Part 1¹ of Section 9 of the Education Law (hereinafter — the contested provision) will be evaluated, given the fact that the contested provision shall enter into force gradually.

13. If one disputes the conformity of a legal norm to several norms of the *Satversme*, the Constitutional Court, taking into account the essence of the case under examination, shall determine the most effective approach for the assessment of this conformity (*see Para 23 of the judgment of 26 April 2018 of the Constitutional Court in the case No. 2017-18-01*).

The Applicants ask the Constitutional Court to recognise the contested provision being contrary to the principle of legitimate expectations that derives from the basic rule of a democratic, on rule of law based state as provided for in Article 1 of the *Satversme*, with the second sentence of Article 91, as well as Articles 112 and 114 of the *Satversme*.

In the light of the factual circumstances of the case and the arguments expressed by the Applicants regarding the alleged non-compliance of the contested provision with the *Satversme*, first it is necessary to clarify the content of the contested provision and to then successively evaluate its conformity with Article 112 of the *Satversme* taken in conjunction with Article 114 of the

Satversme, then to the second sentence of Article 91 of the *Satversme* and finally – the principle of legitimate expectations contained in Article 1 of the *Satversme*.

14. The contested provision governs the language of instruction in private institutions of education, which implement general education and vocational education at a basic and secondary education level. The Applicants consider the contested provision being contrary to the *Satversme* because the legal regulation adopted within the framework of the reform of the particular education system has adversely affected the rights of persons belonging to ethnic minorities in the process of general education in private educational institutions for basic and secondary education.

The regulation on the use of minority languages in the process of general education in private institutions of education is included in several legal acts and legal norms, and the contested norm has been implemented along with other provisions of the Amendments to the Education Law and Amendments to the General Education Law. Therefore, in the case under review, in order to ascertain the content of the contested norm and assess its constitutionality, this norm must be analysed in the context of the legal regulation adopted within the framework of the reform of the particular education system.

14.1. Part 1 of Section 9 of the Education Law provides that education in state, municipal and state higher education institutions shall be provided in the state language. According to the contested provision, in private institutions of education, general education and vocational education at basic and secondary level shall be acquired in the official language.

On the other hand, Paras 1 to 3 of Part 2 of Section 9 of the Education Law provides for exceptional cases where education in both state and municipal and private institutions of education may nevertheless be acquired in another language. This is possible:

“1) in institutions of education implementing educational programmes in accordance with bilateral or multilateral international agreements of the Republic of Latvia;

2) in institutions of education implementing minority education programmes at the pre-school and basic education level, in compliance with the provisions of Section 41 of this Law;

2¹) in institutions of education where the subjects of the general education programmes are wholly or partly implemented in a foreign language

in order to ensure the acquisition of other official languages of the European Union under the conditions of the respective national standard of education;

3) in other institutions of education provided by law."

Thus, the contested provision establishes the general procedure, which shall be applied to those private institutions of education, which are not subject to exceptions specified in Paras 1 to 3 of Part 2 of Section 9 of the Education Law.

14.2. At primary education level, both state and municipal as well as private institutions of education are entitled to implement general education programmes for ethnic minorities in accordance with Para 2 of Part 2 of Section 9 of the Education Law, by providing education in the official language in accordance with Part 1¹ and 1² of Section 41 of the Education Law in the amount of no less than 50 percent for Grades 1 to 6, but for Grades 7 to 9 — not less than 80 percent of the total study lessons during the school year.

The Cabinet of Ministers Regulations No. 379 of 20 August 2019 “Amendments to the Cabinet of Minister Regulations No. 468 of 12 August 2014 “Regulations Regarding the State Standard in Basic Education, the Subjects of Study Standards in Basic Education and Model Basic Educational Programmes”” expressed Annex 25 to the Cabinet of Ministers Regulations No. 468 of 12 August 2014 “Regulations Regarding the State Standard in Basic Education, the Subjects of Study Standards in Basic Education and Model Basic Educational Programmes” (hereinafter — Cabinet Regulation No. 468) in a new version which includes a model for the basic ethnic minority education programme. Accordingly, currently Annex 25 to Cabinet Regulation No. 468 sets out three models of study subject and study lesson plans to be implemented in the primary education curriculum, specifying the procedures for the implementation of the proportions of the language of instruction used, provided for in Parts 1¹ and 1² of Section 41 of the Education Law.

On 1 September 2020, the Cabinet of Ministers Regulation No. 747 “Regulations Regarding the State Standard in Basic Education and Model Basic Educational Programmes” of 27 November 2018 (hereinafter — Cabinet Regulation No. 747) will enter into force. Annex 12 to Cabinet Regulation No. 747 provides for three models of language of instruction to be implemented in ethnic minority educational programmes, specifying the procedures for the implementation of the proportions of the language of instruction used as provided for in Parts 1¹ and 1² of Section 41 of the Education Law. An

institution of education is entitled to choose one of these models, as well as independently determine which subjects should be taught in Latvian, minority language or bilingual. However, the provisions of Para 27 of Regulation No. 747 provides that, with respect to Grade 9, the requirements concerning the proportion of use of instructional languages shall enter into force on 1 September 2021, but until that date the legal framework for the use of instructional languages applicable prior to the date of entry into force of these provisions shall apply.

Consequently, both the current legal framework and the legal framework adopted in the context of the reform of the particular education system, but not in force yet, provide for the right of private institutions of education to implement minority education programs at primary level, subject to the statutory proportion of languages used.

14.3. At a secondary level, the Amendments to the General Education Law provide for the elimination of the Part 2 of Article 42 of the General Education Law, which states that the general secondary education programme may be combined with a minority education programme. Respectively, with the Cabinet of Ministers Regulations No. 364 “Amendments to the Cabinet of Ministers Regulations of 21 May 2013 No. 281 “Regulations on the National Standard for General Secondary Education, Subject Standards and Model Curricula”” of 13 August 2019, the regulation on the implementation of minority education programmes at the secondary education level has been excluded from the Cabinet of Ministers Regulations No. 281 “Regulations Regarding the State General Secondary Education Standard, Subject Standards and Sample Education programmes” of 21 May 2013 (hereinafter — Regulation No. 281), as well as the transitional regulation outlining the terms during which educational institutions are eligible to continue the implementation of ethnic minority education programmes in Grades 10, 11 and 12 have been incorporated in accordance with the provisions of these regulations that were in force until 31 August 2019.

The amendments to the General Education Law provide for the wording of Section 43 of the General Education Law in a new version, which states, *inter alia*, that an institution of education, within the limits of study lessons per week and the number of study hours per day, may in addition include non-statutory study subjects in the general secondary education programme, including those referred to in the National General Secondary Education Standard, the content of

the native language of the ethnic minority and of educational content related to the identity and integration of minorities in the Latvian society.

On 1 September 2020, the Cabinet of Ministers Regulations No. 416 “Regulations Regarding the State General Secondary Education Standard and Sample Education programmes” of 3 September 2019 (hereinafter — Cabinet Regulation No. 416) will enter into force. Subject to Regulation No. 416 private institutions of education are entitled to offer and implement in addition to the basic and advanced courses in the general secondary education programme, in addition to the specialised course "Minority Language and Literature", other specialised courses not related to the minority language, identity and culture. Regulation No. 416 authorises a private institutions of education to establish a secondary education programme which provides a significant proportion of the total teaching load for the provision of specialised courses not covered by the standard. This legal framework thus allows private institutions of education at a secondary level the freedom to provide, in addition to the compulsory secondary education content, their own specific profile as well as curriculum content appropriate to the wishes and interests of students, including minority language, identity and culture.

14.4. It follows from the above that, once the whole legal framework adopted in the context of the reform of the education system in question has entered into force, general education in private schools will be provided in the state language. However, the contested provision does not prohibit the use of minority languages in the process of general education. Namely, private institutions of education implementing general education programmes will be entitled:

1) to implement the minority education programme at the basic education level in accordance with the proportions of the use of the language of instruction specified in regulatory enactments, independently determining which subjects shall be taught in Latvian, the minority language or bilingually;

2) to include in the general secondary education programmes, a specialised course “Minority Language and Literature” in secondary education and to devote a part of the secondary education load to non-standard subjects related to minority language, identity and integration into Latvian society.

Consequently, the legal framework introduced as a result of the reform of the educational system provides for the possibility of teaching ethnic minority language subjects at primary level in private institutions of

education and the opportunity to learn ethnic minority language and literature, as well as educational content related to the identity of the ethnic minority at secondary education level.

15. Article 112 of the *Satversme* provides: “Everyone has the right to education. The state provides free access to primary and secondary education. Primary education is compulsory.

Unlike the second sentence of Article 112 of the *Satversme*, which applies to primary and secondary education, the first sentence of this Article defines the fundamental right to education in the broadest sense of the term and applies to educational programmes of all levels and types (*see Para 11.1 of the judgment of 6 May 2011 of the Constitutional Court in the case No. 2010-57-03*).

In the case No. 2018-12-01, twenty members of the 12th *Saeima* asked the Constitutional Court to declare the contested provision contrary to Article 112 of the *Satversme*. In turn, the present case has been initiated regarding compliance of the contested provision with the first sentence of Article 112 of the *Satversme*. However, the Applicants have expressed arguments regarding the possible incompatibility of the contested provision with the right of a person to education included in the first sentence of Article 112 of the *Satversme*. At the same time, when assessing the compliance of the contested provision with the first sentence of Article 112 of the *Satversme*, the Constitutional Court, in accordance with the principle of unity set by the *Satversme*, must also take into account the general principles of law and other rights contained in the provisions of the *Satversme* (*for comparison, see Para 18.3 of the judgment of 18 December 2018 of the Constitutional Court in the case No. 2016-04-03*).

15.1. Article 89 of the *Satversme* provides that the state shall recognise and protect fundamental human rights in accordance with the *Satversme*, laws and international agreements binding on Latvia. The Constitutional Court has recognised that the duty of the state to fulfil international human rights obligations binding on Latvia follows from this Article of the *Satversme*. As it has been noted in the judgment, the aim of the constitutional legislator has been to achieve the harmony of the human rights norms included in the *Satversme* with international human rights norms (*see, for example, Para 16 of the judgment of 19 December 2017 of the Constitutional Court in the case No. 2017-02-03*). When clarifying the content of the first sentence of Article 112 of the *Satversme*, in accordance with Article 89 of the *Satversme*, the case-law of the

European Court of Human Rights regarding the interpretation of Article 2 of Protocol No. 1 shall be taken into account.

The right to education, by its very nature, is a right which must be regulated by the State (*see Para 5 of Paragraph I B of the judgment of 23 July 1968 of the European Court of Human Rights in the case ““Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium”, applications Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64*). Namely, it is for the state to establish a legal framework for education that allows one to achieve all its goals according to the particular level and type of education. One of the means which the state uses to regulate education, the education standards — documents which, according to educational level and type of educational programmes of the main aims and objectives of compulsory basic education, learning evaluation criteria and general arrangements (*see Para 27 of Section 1 of the Education Law*). In addition, it should be noted that the content of education consists not only of the knowledge acquired by the student in the educational process, but also of the teaching methods and study process (*see Para 33 of the judgment of 25 February 1982 of the European Court of Human Rights in the case “Campbell and Cosans v. the United Kingdom”, applications Nos. 7511/76 and 7743/76*). Thus, the state should not only set the subjects to be acquired in the education standards, but also the appropriate requirements for the educational process necessary to achieve the educational goals.

The present case concerns the regulation of general education in private schools at the level of primary and secondary education. Pursuant to Article 1 (29) of the Education Law, general education covers the process of cognition of the diversity and unity of man, nature and society, the process of formation of a humane, free and responsible personality and its result. General education is of fundamental importance because it determines the ability of the individual to function independently in the country and in society. The purpose of general education is not only to provide the learner with certain knowledge and skills, but also to provide it with the social skills it needs.

Namely, as the Constitutional Court has previously recognised, the duty of the state to ensure general education is not limited only to the acquisition of knowledge and skills corresponding to state-defined educational standards. The aims of general education must be seen in the broader context, and it must simultaneously achieve a number of social objectives. This also follows from

Article 29 (c) of the Convention on the Rights of the Child, which states that the purpose of education is to foster respect for parents, their cultural identity, their language and values, the constitutional values of the country in which the child lives and for the national values of the country of origin, as well as for other cultures (*for comparison, see Para 20 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

General education is a framework in which the state not only provides the students with the knowledge and skills necessary for independent and healthy living, but also facilitates the development of their personality and ensures the transmission of national values to future generations. Accordingly, it is the state's responsibility to determine the requirements for the subjects to be covered in general education, as well as the teaching methods and learning process, so that the objectives of general education can be fully achieved.

Every student needs the ability to use the official language fluently in order to be able to function successfully in society after completing general education. Therefore, the state is entitled to specify in the standard of general education, such requirements as to the content of the general education and the learning process necessary to ensure that the students are able to use the state language fluently. The Constitutional Court has recognised that every person permanently residing in Latvia must have a command of the language of that country, and at such a level as to be able to participate fully in the life of a democratic society. Members of the public who understand and respect the values on which the *Satversme* is based are a prerequisite for the existence of a democratic state under the rule of law (*see Para 24.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

A democratic state governed by the rule of law is based on an educated person who is able to independently obtain information, to judge, to think critically and to make rational decisions. Education is one of the prerequisites for a person to choose to continue his or her self-improvement throughout his or her life. Thus, education is one of the essential preconditions for the consolidation of a free democratic society (*see Para 20 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). Consequently, the state has a duty to ensure that the legal framework in the field of general education allows it to achieve its objective. This state obligation is not limited to state and municipal educational institutions, but also applies to private educational institutions providing general education.

15.2. However, it should be taken into account that, based on Article 114 of the *Satversme*, it follows that ethnic minorities have the right to preserve and develop their language, ethnic and cultural identity. Article 114 of the *Satversme* discloses the content of the principle of respect for ethnic minorities included in the introduction to the *Satversme*. Thus, the uniqueness of ethnic minorities is also protected in Latvia. Unlike other articles of Chapter 8 of the *Satversme*, Article 114 covers not only the right of a person to preserve his or her language and culture, but also the collective right with the same purpose - to ensure the preservation and development of persons belonging to the relevant ethnic minority (*see Paras 23 and 23.1 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

The content of the rights included in Article 114 of the *Satversme* shall be disclosed in conjunction with international legal instruments binding on Latvia in the field of protection of minority rights, in particular the Minorities' Convention. The Minorities' Convention recognises that the protection of the rights and freedoms of ethnic minorities and persons belonging to them is an integral part of the international system for the protection of human rights and specifies the scope of protection of minority rights. The Minorities' Convention contains certain principles to be observed by the Member States in the fulfilment of its general objective of creating an atmosphere of tolerance and dialogue in a pluralistic society, and at the same time gives the Member States discretion in the implementation of specific measures (*see Para 23 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

Part 1 of Section 13 of the Minorities' Convention provides for the right of persons belonging to ethnic minorities to establish and manage private educational institutions of ethnic minorities and to receive education there. It is clear from the explanatory report of the Minorities' Convention that persons belonging to ethnic minorities are to be set up in accordance with the requirements of the public education system, including the provisions concerning compulsory education, and may be subject to the same forms of supervision as other educational institutions, including education standards. On the other hand, the state is obliged to formally recognise the education received at these private educational institutions, provided that all relevant educational standards are met (*see Para 72 of the explanatory report on the Minorities' Convention*).

The obligation of the state to ensure the rights of minorities to the preservation of their identity and culture within the educational process is also provided for in other international legal acts binding on Latvia. Article 30 of the Convention on the Rights of the Child establishes the right of children belonging to ethnic minorities to practice and use their mother tongue. Article 13 (3) and (4) of the International Covenant on Economic, Social and Cultural Rights provide for the right of persons to freely set up private educational establishments and the right of parents to have their children educated in private educational establishments, so long as these private educational institutions conform to the minimum requirements set by national legislation. By contrast, under Article 5 (1) of the Convention against Discrimination in Education, a State is to recognise the right of persons belonging to ethnic minorities to pursue their own educational activities, including the maintenance of private educational establishments and set standards.

International institutions have also stated that the state has a duty to ensure the right of persons belonging to ethnic minorities to establish and receive education in their educational institutions insofar as these rights do not exclude them from the common language and culture of society and state-defined educational standards (*see, for example, A Human Rights-Based Approach to Education For All. United Nations Children's Fund, United Nations Educational, Scientific and Cultural Organization, 2007, p. 79. Available at: <https://unesdoc.unesco.org/>*).

The right of persons belonging to ethnic minorities to establish and manage private educational institutions aimed at the acquisition, preservation and development of the language and culture of ethnic minorities follows from the first sentence of Article 112 and Article 114 of the *Satversme*. The right of persons belonging to ethnic minorities to set up and run their own educational institutions is covered by different types of educational institutions. In particular, persons belonging to ethnic minorities have the right to establish non-formal education institutions, such as summer schools and Sunday schools, which provide training tailored to the needs of persons belonging to ethnic minorities, with the aim of preserving and developing their language, culture and identity. Persons belonging to ethnic minorities are also entitled, under national law, to establish and operate private educational establishments providing general education.

However, the Constitutional Court in Para 15.1. of this judgment already concluded that the state has not only the right, but also the obligation, to lay down requirements for the content of the education and training to be pursued in order to achieve the objectives of general education, which should apply to both public and municipal and private educational institutions. In order for a private institution to issue a state-recognised certificate of education, its general education programmes must meet the requirements of national standards, just as general education programmes implemented by state and municipal educational institutions. In other words, general education provided by private educational institutions established by persons belonging to ethnic minorities can only be formally recognised if it meets the requirements of the state-defined general education standards. Thus, private educational institutions, including those of persons belonging to ethnic minorities, whose founders have chosen to provide them with general education and provide students with a state-recognised diploma of education, are integrated into the state education system and subject to the uniform requirements of state-defined general education standards.

Article 114 of the *Satversme* provides for the recognition and respect of the values and rights of ethnic minorities. Accordingly, the State, in accordance with Article 114 of the *Satversme*, has the duty to respect and guarantee the right of persons belonging to ethnic minorities to preserve and develop their identity by preserving and developing their language, as well as their ethnic and cultural identity. These fundamental rights of persons belonging to ethnic minorities are complex and include several elements. An integral part of the fundamental rights of those persons belonging to ethnic minorities is the right to learn the language of that particular minority and to use it as a language of instruction in the educational process. However, this right is not absolute. Namely, the relationship between the nation of a state and the minorities is based on the mutual recognition of values. The rights of persons belonging to ethnic minorities, arising from Article 114 of the *Satversme*, are aimed at maintaining balance in society, creating a favourable environment for the preservation of minority language, ethnic and cultural identity, while ensuring due respect for constitutional values and social cohesion. This objective can be achieved if both persons belonging to ethnic minorities and society as a whole perceive the exercise of minority rights as an enrichment of the whole society. The implementation of minority rights must not be aimed at segregation of society and endanger the unity of society. The resignation of persons of different

identities within each of their identity spaces threatens the possibility of democratic discourse and joint action in a united society (*see Para 23.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

15.3. It follows from the above that, according to the first sentence of Article 112 of the *Satversme*, the right to education includes the freedom of persons to choose general education not only in state and municipal but also in private educational institutions. The state must ensure that general education provided in private schools also achieves its objectives. Therefore, the state is obliged to develop the general education standards (rules on curriculum, methods, process and discretion scope of educational institutions) necessary to achieve the goal of general education and apply them to public and municipal and private educational institutions, and to officially accept only such education obtained in private educational institutions that meets these standards.

The language of instruction is one of the essential elements of the general education process and the state is entitled to regulate it. The state, when regulating the language of instruction in the process of general education implemented in private educational institutions, shall observe the rights of persons belonging to ethnic minorities, which are derived from Article 114 of the *Satversme*. In particular, the state must strike the right balance between the need to ensure that every person belonging to a ethnic minority has access to the general language at a level sufficient to enable him or her to integrate into the life of the minority concerned, and to preserve their linguistic and cultural identity, but not to cause language-based segregation. In addition, the state must take care to ensure that the regulation of the language of instruction does not render the right to the education of persons belonging to ethnic minorities ineffective. In particular, the State must not allow persons belonging to ethnic minorities to suffer, or be denied access to, education because of language barriers.

Therefore, according to the first sentence of Article 112 and Article 114 of the *Satversme*, the state should set forth such a framework for the teaching languages to be used in the general education process, which ensures a balance conforming to the circumstances of that state between the learning of the official language and the protection of minority rights in the general education process in private educational institutions established by persons belonging to ethnic minorities.

16. For the right to education to be effective, the learner must be able to benefit from his or her education. This implies, inter alia, that a learner has the right to have its education officially recognised by the state in the form of a diploma (*see the European Court of Human Rights judgment of 23 July 1968 in the case “Relating to Certain Aspects of Laws on the Use of Languages in Education in Belgium” v. Belgium”, applications Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, Part IB4*). By regulating the content and teaching process of general education in private educational institutions, including the use of the national language and minority languages, the state restricts the freedom of persons belonging to ethnic minorities to private educational institutions where they can acquire general education while preserving their identity. Namely, the choice of students for private education institutions is limited to those private minority education institutions that implement general education programmes with state-compliant curriculum content and the use of language of instruction and are therefore eligible to issue a state-recognised certificate of general education.

Thus, the norms of the state general education standards, which determine the permissible proportion of curriculum related to minority culture and identity or regulate the acquisition or use of minority languages in general education in private educational institutions, restrict persons belonging to ethnic minorities from the first sentence of Article 112 of the *Satversme* and the right to education and the right to preserve and develop one's language and identity following Article 114 of the *Satversme*.

The contested provision, in conjunction with other systemically related norms, regulates the use of the state language and minority languages in the process of general education in private educational institutions.

Hence, the contested provision restricts the fundamental rights established in the first sentence of Article 112 of the *Satversme* taken in conjunction with Article 114 of the *Satversme*.

17. The Constitutional Court must verify whether the restriction of the fundamental rights of persons belonging to ethnic minorities, established in the contested provision, is established by law, has a legitimate aim and is proportionate (*for comparison see Para 15 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in case No. 2004-18-0106*).

In order to assess whether the restriction of fundamental rights is statutory, it is necessary to examine: 1) whether the law has been adopted in accordance with the procedures prescribed by regulatory enactments; 2) whether the law has been promulgated and is publicly available in accordance with the requirements of regulatory enactments; 3) whether the law is sufficiently clearly drafted to enable a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of its application (*see, for example, Para 13 of the judgment of 7 June 2019 of the Constitutional Court in the case No. 2018-15-01*).

The arguments of the Applicants regarding the process of elaboration and adoption of the contested provision do not essentially differ from the arguments, which have already been examined by the Constitutional Court in the case No. 2018-12-01. The Applicants further emphasise that in this particular case the direct founders of private educational institutions, students, their parents and the Latvian Private School Association, were not heard.

The Constitutional Court has previously stated that, in line with the principle of good legislation, the legislator has a duty to assess the conformity of the legal provisions of the draft law with the rules of higher legal force in the legislative process, including the *Satversme*, international and EU law, and to harmonise the legal provisions of the draft law and the legal norms already existing in the legal system. In addition, the legislator must ensure that during the legislative process the opinion of all interested parties is identified and objections to the legal provisions to be included in the draft law are taken into account either directly or indirectly (*see Para 18.1 of the judgment of 6 March 2019 of the Constitutional Court in case No. 2018-11-01*). The legislator may also provide for the hearing of interested parties by hearing the representatives of the groups concerned.

The Constitutional Court in the case No. 2018-12-01 has already concluded that not only the Advisory Council, but also the social partners, representatives of the industry and representatives of the parents of the students were heard in the process of drafting and adopting the contested provision (*see Para 24.1 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). In particular, it appears from the materials of the case that, at the meeting of the *Saeima* Education, Culture and Science Commission on 14 February 2018, the opinion of the representative of the parents of ethnic minority students, Elizabete Krivcova, as well as that of the author of the

collective application for the preservation of the bilingual education model, Jeļena Bačinska were heard (*see Meeting Minutes of the 12th Saeima Education, Culture and Science Commission of 14 February 2018 with Annexes Case material Vol. 4, pp. 2-36 and audio file material No. 2018-12-01 of the specified hearing Vol. 3*).

After the adoption of the draft law during the first reading, members of the *Saeima* Andris Morozovs, Jeļena Lazareva, Jānis Tutins and Igors Pimenovs, who spoke in the *Saeima* in defence of the interests of persons belonging to ethnic minorities, submitted several proposals regarding the contested norm (*see Verbatim Report of Proceedings of the 12th Saeima on 8 March and 22 March 2018 and the proposals of the members of the Saeima A. Morozovs, J. Lazareva, J. Tutins and I. Pimenovs for the draft law "Amendments to the Education Law" (1128 / Lp12) for the 2nd and 3rd reading. Available at: www.saeima.lv.*). During the legislative process, both during the session of the responsible committee - the *Saeima* Education, Culture and Science Committee - and during the session of the *Saeima* plenary, the initiators of amendments were heard; also the objections of the *Saeima* members against the legal framework adopted within the framework of education reform, including private schools, were examined. The opinion of the *Saeima* Legal Bureau was also heard during the legislative process and the proposals submitted by the Bureau were evaluated (*see Minutes of the meetings of the 12th Saeima Education, Culture and Science Commission of 14 and 28 February 2018 and 1 and 14 March 2018 with annexes to the case file Vol. 4, pp. 2-162 and Vol. 5, pp. 1-15, and the audio recordings of the said Commission meetings in the case No. 2018-12-01 Materials Vol. 3*).

The Constitutional Court, within the framework of the case No. 2018-12-01 already assessed whether the Amendments to the Education Law, which, *inter alia*, also include the contested provision, and the Amendments to the General Education Law were elaborated and adopted in accordance with the procedure prescribed by regulatory enactments, observing the principle of good legislation. In the judgment in case No. 2018-12-01, the Constitutional Court concluded that in the process of adoption of the above mentioned normative acts the principle of good legislation has been observed (*see Para 24.1 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

In the light of the above, it can be concluded that the legislator has properly listened to the views and objections of the interested parties and respected the principle of proper legislative process. The Constitutional Court has no doubts that the contested norm has been adopted in accordance with the procedure established in the *Satversme* and in the *Saeima* Rules of Procedure, has been promulgated and made publicly available in accordance with the requirements of regulatory enactments, and is sufficiently clear to foresee the consequences of its application.

The Applicants point out that no effective mechanism for monitoring the quality of education has been established in the country, the necessity of which has been emphasised by the Constitutional Court in the case No. 2004-18-0106. The Constitutional Court has acknowledged that, when assessing the constitutionality of a legal norm, it is necessary, *inter alia*, to verify whether the legislator has observed the previous opinions of the Constitutional Court regarding the respective issue (*see Paras 22-22.3 of the judgment of 12 April 2018 of the Constitutional Court in the case No. 2017-17-01*). The judgment also indicates that the findings of the Constitutional Court in the case No. 2004-18-0106 refer to the question of the quality of education received by students, i.e. ensures that there is no decrease of quality. Therefore, in the case under review, the question regarding observance of the aforementioned Constitutional Court findings shall be assessed by assessing the proportionality of the restriction of the fundamental rights established in the contested provision.

The Constitutional Court does not establish such circumstances for the development and adoption of the contested provision, which could be the basis for making different conclusions regarding observance of the principle of proper legislative process in the case under review.

Hence, the restriction of the fundamental rights established in the contested provision is provided for by law.

18. The Applicants admit that the restriction of the fundamental rights included in the first sentence of Article 112 and Article 114 of the *Satversme*, established in the contested provision, has a legitimate aim — promotion of the use of the state language and integration of society. The *Saeima* also points out that the contested provision and its systemically related legal regulation are necessary in order to provide persons belonging to ethnic minorities with education that would enable them to fully use the state language, to cultivate

respect for the national culture and values in such persons; strengthen these persons' sense of belonging to Latvia (*see Case Materials, Vol. 6, p. 28*).

The Latvian language is an integral part of Latvia's constitutional identity. The introduction to the *Satversme* reveals the values that underpin the development of an inclusive democratic society. The Latvian language is one of these values (*see Para 24.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). For an individual to be willing and able to participate in society, he or she needs appropriate knowledge of the official language. In this respect, the constitutional status of the Latvian language and the fact that the use of the state language in the education system is the basis for a person's future opportunities to fully use the state language and thereby integrate into society and benefit from his or her education.

Namely, fluency in the use of the state language is necessary for each member of Latvian society in order to participate effectively in the democratic processes of the state. Moreover, this skill enables a person to derive maximum benefit from the education system existing in the country by being able to continue his or her education in the state language and successfully joining the labour market after graduation (*for comparison see Para 18 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*). It should also be taken into account that knowledge of the official language and sufficient knowledge of its use is necessary for the learner to also continue his or her education at the higher education level in state-run higher education institutions. The above considerations apply equally to students enrolled in general education in state and municipal schools and students in private institutions of general education.

Knowledge of the official language is also a prerequisite for the participation of any person in democratic processes of the country. Namely, the ability to use the official language fluently is the basis of a person's social activity and choices regarding the available information space. An individual who knows the state language has an opportunity to compare and critically evaluate the obtained information and participate effectively in public discourse, which is an integral part of a democratic society (*see Para 24.3 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). In addition, the state language, along with its other social functions, also performs specific tasks of national importance, that is, ensures the functioning of the state and communication between the person and the state (*see also Para 24.2*).

The constitutional status of the state language implies the function of the state language to be the common language of communication and democratic participation of the public. The Latvian language is the only official language, i.e. it is the language of communication among all inhabitants of Latvia – the persons belonging to the state nation and persons belonging to ethnic minorities – and the language uniting democratic societies. The knowledge of official language by persons belonging to ethnic minorities also protect the right of persons belonging to the state nation to freely use the official language in all spheres of life throughout the territory of the state (*see Para 16 of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*).

Consequently, every person permanently residing in Latvia must have a command of the language of that country, and at such a level to be able to participate fully in the life of a democratic society. Members of the public who understand and respect the values on which the *Satversme* is based are a prerequisite for the existence of a democratic state under the rule of law (*see Para 24.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). Thus, direct denial of using the official language at an adequate level in their study process to those ethnic minorities who wish so would not only violate their right to education, including state-funded higher education, but also their ability to participate fully in the processes of a democratic state (*for comparison see Para 16 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in case No. 2004-18-0106*). Thus, the regulation that provides for the strengthening of the state language also protects the democratic system of the state.

The contested provision envisages mandatory use of the official language in the study process. The use of the official language in the whole study process, in addition to its learning in the course of special subject, ensures its deeper acquisition. Namely, by studying other subjects in everyday life and using the state language as the language of instruction, the student acquires practical experience of using the state language as well as learns the relevant terminology in the state language. Thus, the contested provision facilitates the inclusion of persons belonging to ethnic minorities in the society of Latvia, namely, it is aimed at strengthening the use of the state language by ensuring that every student not only learns the state language as a subject but also uses it every day and is able to participate in democratic processes.

Hence, the restriction of the fundamental rights established in the contested provision has a legitimate aim — protection of the democratic system and the rights of other persons.

19. In order to ascertain whether the restriction of the fundamental rights established in the contested provision is proportional, the Constitutional Court must verify: 1) whether it is suitable for achieving legitimate objectives; 2) whether there are more lenient means to achieve these legitimate objectives; 3) whether the actions of the legislator are appropriate (*see Para 17 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*). On the other hand, when assessing whether the legislative action is appropriate, the Constitutional Court should examine, firstly, whether the contested provision will undermine the quality of education and, secondly, whether there is a balance between the objective of promoting the use of the official language and the objective of protecting the rights of ethnic minorities.

20. The restriction of the fundamental rights established in the contested provision facilitates the use of the official language. As a result, students not only learn the state language as a subject, but also use it in their daily learning process and gain experience in using it. Thus, the contested provision facilitates development of the state language proficiency. Thus, every person belonging to an ethnic minority is provided with an opportunity to participate fully in the democratic processes of the state and society (*for comparison, see Para 18 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*).

Hence, the restriction of the fundamental rights established in the contested provision is appropriate for the reaching of legitimate objectives.

21. The Applicants consider that there are less stringent means by which the legitimate aim of the restriction of fundamental rights can be achieved. Namely, the state may maintain the proportions of the use of the language of instruction, which were set in the laws prior to the reform of the particular education system, but support the teaching of the national language within the minority education programmes.

Only such means that can achieve the legitimate aim to at least the same quality can be considered less stringent alternative means for reaching the

legitimate aim (*see, for example, Para 21.3.2 of the judgment of 26 April 2018 of the Constitutional Court in the case No. 2017-18-01*). The alternative means indicated by the Applicants are aimed at the increased acquisition of the official language as a specific subject. However, the Constitutional Court has previously acknowledged that teaching of the state language as a separate subject is not effective and that the ability to use the state language is also necessary, but this skill can be acquired by using the state language primarily in the acquisition of study content (*see Para 19.1 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*). In the present case, the summoned person I. Druviete also points out that it is not enough to adequately learn the official language if it is only taught as a subject, but a study process, which is generally organised in the official language, is necessary (*see case material Vol. 2, pp. 24-32*).

Acquisition of the official language as a separate subject cannot ensure the understanding of its practical use, as well as the vocabulary acquired by the student using the official language as the language of instruction in other subjects as well. No other alternative means can be identified that would enable the general education process to reach the level of the state language that the student can achieve by using the state language as the language of instruction. In turn, the proportion of the state language as the language of instruction in the process of general education shall be assessed by examining whether the activity of the legislator, when establishing the restriction of the fundamental rights established in the contested provision, is appropriate.

Hence, there are no alternative means for achieving the legitimate aim of the restriction of fundamental rights to the same quality.

22. To ascertain whether the actions of the legislator, when determining the restriction of fundamental rights set by the contested provision, are appropriate, the Constitutional Court, firstly, must ascertain whether the amendments to the Education Law introduced, in regards to the proportion of the language of instruction to be used in minority education programmes, do not impair the learning quality of the education content (*for comparison, see Para 20 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*). Second, the Constitutional Court must verify whether a reasonable balance has been struck between the promotion of the use of the official language and the implementation of minority

rights in the general education process (*see Paras 22-24.3 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

22.1. Although the Constitutional Court does not have the competence to decide on the effectiveness of implementation of the contested provision and other legal norms it systemically related thereto, the Constitutional Court, in the case No. 2018-12-01, already established that the Ministry of Education and Science, in implementing the education reform, has constantly provided the necessary support - teaching materials, opportunities for teachers to continue their education and professional development (*see Para 20.3 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). Moreover, it must be taken into account that even before the entry into force of the contested provision a significant proportion of general education content could be acquired in the state language or bilingually. Thus, the contested provision does not introduce a completely new legal order, but increases the proportion of the use of the state language in the process of general education.

In the judgment in the case No. 2004-18-0106 the Constitutional Court noted that the state has a duty to ensure an effective mechanism for the quality control of education (*see Para 20.2.3 of the Findings part of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*). In order to promote quality and competitive education, in 2009 the State Education Inspectorate was transformed into the State Education Quality Service (hereinafter — the Service). In accordance with the Cabinet of Ministers Regulations No. 225 of 23 April 2013 “Regulations on the State Education Quality Service”, the Service performs, *inter alia*, the following functions: obtains, collects and analyses information necessary for the formation and implementation of education policy, ensures the quality assessment of general and vocational education, except higher vocational education, as well as supervises the education process and makes recommendations on shortcomings. Thus, the state has established a mechanism for monitoring and controlling the quality of education, encompassing both state and municipal as well as private general education institutions.

The Ministry of Education in its written submissions, and the representatives of the Ministry of Education at the court hearings in the case No. 2018-12-01, pointed out that appropriate methodological and teaching materials were provided to both teachers and students in order to improve the Latvian language skills and ensure the ability to implement the study process in Latvian

or bilingually (*see Case Materials, Vol. 2, p. 10*). It is also apparent from the additional written information provided by the Ministry of Education and Science that, in cooperation with the Latvian Language Agency, methodological tools have been prepared to promote the acquisition and use of the official language in the study process. In addition, teachers from both state and municipal institutions of education and private institutions of education were provided with the opportunity to participate in specialised Latvian language courses aimed at improving the state language skills and professional development offered by the Latvian Language Agency. Teacher from private institutions of education have made use of this opportunity (*see Case Materials, Vol. 7, pp. 29-36*).

The Constitutional Court also bases its judgment in the Judgment, stating that at the moment there is no reason to conclude that the contested provision and the systematically related legal norms would cause a decrease in the quality of education. However, the Constitutional Court emphasises that the state has a duty to constantly monitor the quality of education by effectively using the quality control mechanism established in the state in order to identify possible changes in the quality of education (*for comparison, see Para 20.2.3 of the judgment of 13 May 2005 of the Constitutional Court in the case No. 2004-18-0106*).

22.2. The notion “national minorities” according to Article 2 of the Law on Minorities’ Convention apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Ethnic minorities have close ties with Latvia, enrich the Latvian society and form an integral part thereof (*for comparison, see Para 23.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*). In accordance with the first sentence of Article 112 and Article 114 of the *Satversme*, the State shall ensure that persons belonging to ethnic minorities have an adequate opportunity to preserve their identity in the process of general education in private educational institutions.

The acquisition of the official language and the implementation of minority rights are not mutually exclusive objectives, and the implementation of minority rights must not hinder the effective and full acquisition of the official language. If a person does not learn the official language sufficiently in the

course of general education to be able to use it freely, the education provided to that person cannot be considered to be of good quality. Therefore, when assessing whether a reasonable balance has been observed between the promotion of the use of the official language and the exercise of minority rights in the general education process in private general education institutions, it is necessary to take into account, on the one hand, the importance of minority languages and the rights, that arise from the first sentence of Article 112 and Article 114 of the *Satversme*, of persons belonging to ethnic minorities, and on the other hand, the specific historical conditions of Latvia, which have occurred as a result of long-term occupation and russification of the country, as well as the current situation in the context of the use of the official language.

Language is an essential element of the identity of any person, and in particular of an ethnic minority (*see: Pierce J. J. Minority Rights. Between Diversity and Community. Cambridge: Polity Press, 2005, pp 129–130*). Therefore, the acquisition and use of a minority language in the educational process must ensure not only the formal acquisition of that language but also the development of the identity of the person belonging to the ethnic minority. This means that a legal regulation which would completely exclude the use of the minority language from the educational process or reduce the use of the minority language as the language of instruction, only by acquiring the language itself as a particular subject, could not be considered compatible with Article 114 of the *Satversme* (*for comparison, see Clause 99 of Opinion No. 902/2017 of 9 December 2017 of the Council of the Europe Council for Democracy through Law*).

The contested provision and other legal norms systemically related thereto do not prohibit the acquisition of education in the minority language, and the state-defined general education standards include guarantees to preserve the native language and identity of persons belonging to ethnic minorities. In particular, in Paras 14 to 14.4 of this judgment it has already been concluded that, following the entry into force of the contested provision and other legal norms systemically related thereto, private institutions of education are still entitled to carry out minority education programmes at basic level, providing a substantial part of the basic educational content in minority languages and thus providing adequate opportunities for persons belonging to ethnic minorities to use the minority language in study process.

In turn, private institutions of education are entitled to include a specialised course on “Minority Language and Literature” in secondary education and to devote a significant part of their workload to non-minority subjects aimed at preserving and developing identity and integration of persons belonging to ethnic minorities. The legal norms do not provide for special regulations concerning the language in which this specialised course and subjects related to the identity of ethnic minorities, though not mentioned in the standard, should be taught. However, it is clear from the drafting documents of the contested provision that this specialised course and specialised subjects not mentioned in the standard are to be taught directly in the minority language (*see Transcript of the 12th Saeima sitting of 22 February 2018. Available at: www.saeima.lv.*).

The Constitutional Court considers, taking into consideration the discretion left to private institutions of education regarding the provision of general education at secondary education level, as well as the importance of minority languages in preserving minority identity, the contested provision and the legislation adopted within the framework of education reform cannot be interpreted in the manner to conclude that persons belonging to ethnic minorities should study the subjects on minority culture and identity in the state language.

Accordingly, it can be concluded that the contested provision and the legal framework related thereto shall be interpreted in the manner that both the specialised course “Minority Language and Literature” and other specialised courses on minority identity and culture, though not listed in the Education Standard, are to be taught in the minority language. Such use of minority languages in the context of general education provides persons belonging to ethnic minorities with the minimum of rights necessary for the proper acquisition of the minority language and the preservation of their identity. Thus, the conditions included in the contested provision and legal framework systemically related thereto on the use of study languages in general education at secondary education level in private institutions of education, ensure the persons belonging to ethnic minorities with the rights enshrined in the first sentence of Article 112 of the *Satversme* in conjunction with Article 114 of the *Satversme*.

The question of language usage became topical due to the migration facilitated by the occupation power. Although part of the Soviet-era migrants were not Russian, their only language of communication in Latvia was Russian. General Russification was carried out, allowing the use of Russian in

unrestricted everyday communication and imposing its use on public authorities. In the field of education, Russification was carried out by paying special attention to the teaching of the Russian language in schools with Latvian as the language of instruction, and by setting up schools where the language of instruction was Russian only, thus creating a segregated education system. As a result, the use of the language in society, including in the education system, has long resulted in the privilege of the Russian language and its spread throughout society has increased rapidly. Even after the restoration of independence, the Russian language is still widely used in society. Many children upon commencing their schooling do not speak Latvian at all and therefore have difficulty in learning in the state language. Teachers whose mother tongue is not Latvian still have serious difficulties to communicate in the state language, including ensuring that school programmes are taught in the state language (*see Para 24.2 of the judgment of 23 April 2019 by the Constitutional Court in the case No. 2018-12-01*).

In Para 15.2 of this judgment, the Constitutional Court has already concluded that private institutions of education, which choose to provide general education to students, are included in the state general education system. As a result, such private institutions of education have always been subject to state-set general education standards. The legal framework adopted within the education system reform, which includes the contested provision and legal norms related thereto, is part of the broader education system reform implemented in Latvia for more than 20 years with the aim to gradually ensure that each student has access to an unified education system and ensure the use of state language in state and municipal institutions of education, taking into account the possibilities of the students, their parents and teachers to adjust (*see Para 20.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

The summoned person I. Druviete points out that from a sociolinguistic point of view the Latvian language still does not correspond to the status of the state language in several aspects. The main reason for this situation is the linguistic self-sufficiency of Russian speakers, which hinders the development of Latvian language skills among them (*see Case Materials, Vol. 2, pp. 24-32*). In turn, according to the information provided by the Ministry of Education and Science, evaluated in the process of the adoption of the contested provision, 22 percent or more than one fifth of the minority students evaluated their state language skills as low (*see Case Materials, Vol. 3, pp. 1-6*). Significant problems

with the knowledge of the official language have also been identified in the study on the quality of education in institutions of general education for ethnic minorities (see: *Springe I. (Sprīņģe I.), Unequal Education. Fourth version. Do not possess an understanding of Latvian. Available at: www.rebaltica.lv*).

One should reiterate the conclusions of the Constitutional Court, as set out in Para 18 of this judgment, that an adequate capacity to use the official language allows people belonging to ethnic minorities to continue their education successfully, to compete freely in the national labour market, and to participate fully in democratic discourse in society, while protecting the right of other members of society to use the official language in any field of life. The ability of all persons belonging to ethnic minorities to communicate freely on any matter in the official language is invaluable in the context of preserving the democratic order and equally important to persons belonging to ethnic minorities and society as a whole, to communicate with the state.

Taking into account the aforementioned circumstances, the Constitutional Court concludes that the legislator, when regulating the use of study languages in the process of general education in private institutions of education, has ensured a balance between the promotion of the official language and the rights of persons belonging to ethnic minorities.

Hence, the contested provision complies with the first sentence of Article 112 and Article 114 of the *Satversme*.

23. The Applicants hold that the contested provision does not comply with the principle of prohibition of discrimination included in the second sentence of Article 91 of the *Satversme*.

Article 91 of the *Satversme* provides that: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.” This Article contains two closely related principles: the principle of equality in the first sentence and the principle of non-discrimination in the second sentence. The principle of equality, enshrined in the first sentence of Article 91 of the *Satversme*, allows and even requires the different treatment of persons who are in different circumstances, as well as allows the different treatment of persons who are in equal circumstances if it has an objective and reasonable basis (see *Para 9 of the judgment of 29 June 2018 of the Constitutional Court in the case No. 2017-28-0306*).

The prohibition of discrimination contained in the second sentence of Article 91 of the *Satversme* is an aspect of the principle of equality which, in certain situations, clarifies this principle and assists in its application. The purpose of the prohibition of discrimination is to eliminate unequal treatment if it is based on an unacceptable criterion, which reflects the decision on what features in society should not in principle be allowed as the basis for different treatment (*see Para 21 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

The second sentence of Article 91 of the *Satversme* includes a general prohibition of discrimination, but does not list the criteria of prohibition. These criteria have to be "read" in the Article, using the methods of interpretation of legal norms, and also based on the principle characterising the Latvian legal system, namely, that it is open to international law. Consequently, attention must also be paid to human rights developments in the world. Article 26 of the International Covenant on Civil and Political Rights states that all people are equal before the law and are entitled to the same protection of the law without any discrimination. The law should prohibit discrimination in all its forms and provide all persons with equal and effective protection against any form of discrimination, regardless of race, skin colour, gender, language, religion, political or other beliefs, national or social origin, financial status, birth or other circumstances. Thus, according to the international human rights norms binding on Latvia, language and nationality are criteria on the basis of which discrimination is prohibited. Consequently, the mentioned criteria are also included in the content of the second sentence of Article 91 of the *Satversme* (*see Para 21 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

However, a difference in treatment based on one of those criteria is only to be regarded as discrimination if it is not justified. The admissibility of justification for a particular criterion depends on the nature of that criterion and the context in which it is used (*see: Levits E. Commentary on Article 91. Book: Balodis R. (scient. ed.) Comments on the Satversme of the Republic of Latvia. Chapter VIII. Fundamental human rights. Riga: Latvijas Vēstnesis [Latvian Herald], 2011, p. 105*).

In order to assess whether there is discrimination in a particular case, it is first necessary to determine which groups of persons are, under certain criteria, in comparable circumstances.

23.1. In the case under examination, the arguments of the Applicants regarding the possible non-compliance of the contested provision with the second sentence of Article 91 of the *Satversme* do not differ in essence from the arguments already analysed by the Constitutional Court in the case No. 2018-12-01. The Applicants hold that the contested provision does not comply with the principle of prohibition of discrimination in various aspects.

The Applicants hold that the contested provision establishes equal treatment of two groups of persons, who are in different circumstances — persons belonging to the ethnic minority and ethnic minority. However, in this particular case Article 91 of the *Satversme* requires ensuring the different treatment of these groups of persons.

With regard to the mentioned groups of persons, the Constitutional Court concluded that persons, whose mother tongue is not the state language, do not derive the right from the second sentence of Article 91 of the *Satversme* to request different treatment regarding the state language in state and municipal institutions of education. In Latvia, students whose native language is not the official language, but any other language, shall not be in comparable circumstances with students whose native language is the official language. This conclusion of the Constitutional Court is based on the constitutional status and role of the official language in the functioning of a democratic state, as well as the fact that neither the *Satversme* nor the international legal norms binding on Latvia impose a duty on the state to ensure that the student may use another language, which is not the official language, in the education process (*see Para 21.1 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

The circumstances of the present case are different because the contested provision is applicable, not to state and municipal, but to private institutions of education. However, the Constitutional Court has already concluded in Paras 15.1 to 15.3 of this judgment that the state has an obligation under the first sentence of Article 112 of the *Satversme* to extend the standards of general education to private institutions of education, so that the education obtained in private institutions of education can be officially recognised by the state by issuing an education certificate. One of the elements of the standard minority education programme in Latvia is the use of the language of instruction. Given the constitutional rank and importance of the state language in the daily life of the community, persons belonging to ethnic minorities are not entitled to require

that the education process leading to a state-issued certificate of education be fully or partially provided in the ethnic minority language. Therefore, the second sentence of Article 91 of the *Satversme* does not imply the right of persons belonging to ethnic minorities to demand different treatment regarding the language of education in private institutions of education that implement formal education programmes and at the end of education issue a state-recognised education certificate.

Thus, students whose native language is not the official language, are not in a comparable situation with those whose native language is the official language.

23.2. The Applicants hold that the contested provision provides for discriminatory treatment also towards students belonging to ethnic minorities and to those whose native language is not one of the official languages of the EU, when compared to those students belonging to ethnic minorities whose native language is one of the official languages of the EU. Moreover, the contested provision allegedly provides for the discriminatory treatment of students belonging to minorities who acquire education within the framework of the minority education programme, compared with those of students belonging to minorities who acquire education in institutions of education, which implement minority education programmes in accordance with bilateral or multilateral international agreements binding on the Republic of Latvia.

As regards the possibility to implement the general education programme in the official EU languages, the Constitutional Court has already pointed out that strengthening of the EU language learning is an objective of Latvia, which follows from the introduction of the *Satversme* and the principle of good faith in international law. The Constitutional Court stressed that, unlike ethnic minority education programmes, the possibility of exceptionally obtaining education in one of the official languages of the EU, Para 2¹ of Part 2 of Section 9 of the Education Law is not intended to develop the culture and identity of the country concerned, but to promote the learning of a foreign language in depth. Thus, the Constitutional Court concluded that students who acquire general education in state and municipal institutions of education, among other things, by deepening one of the EU languages, are not comparable to students who have chosen to receive general education in state and municipal institutions of education (*see Para 21.2 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

Having reviewed the international treaties concluded by Latvia in the field of education and relating to the issue under examination in the framework of the case No. 2018-12-01, the Constitutional Court concluded that none of these international treaties provide for the right of persons belonging to ethnic minorities existing in Latvia to a special proportion of the use of a minority language in the educational process different from the proportions specified in the Education Law. Consequently, the Constitutional Court concluded that these groups are not located according to a certain criterion in comparable circumstances (*see Para 21.3 of the judgment of 23 April 2019 of the Constitutional Court in the case No. 2018-12-01*).

The above conclusions, which the Constitutional Court has made in the case No. 2018-12-01, are based directly on comparisons between specific groups of individuals and do not depend on whether education is available in public and municipal or private educational institutions. The Applicants point out that in the present case the contested norm is applicable to private institutions of education. However, it does not follow from the foregoing that there are any circumstances which would lead to different conclusions as to whether the groups of persons themselves are of a particular character in comparable circumstances. The above-mentioned conclusions of the Constitutional Court regarding the comparable groups of persons are equally applicable to the case under examination. Thus, there is no violation of the prohibition of discrimination established in the second sentence of Article 91 of the *Satversme* in the aspects indicated by the Applicants.

Hence, the contested provision complies with the second sentence of Article 91 of the *Satversme*.

24. The Applicants Davids Džibuti and Dana Džibuti hold that the contested provision does not comply with the principle of legitimate expectations.

The Constitutional Court has recognised that the scope of Article 1 of the *Satversme* includes the principle of legitimate expectations derived from a basic provision of a democratic state under the rule of law, which protects only such rights, based on the realisation of which could have resulted in a legal, justified and a reasonable expectation, which is the core of the relevant general legal principle. The state, in turn, is obliged to observe this principle in its activities

(see Para 16.2 of the judgment of 8 March 2017 of the Constitutional Court in the case No. 2016-07-01).

The principle of legitimate expectations is linked to the principle of legal certainty and provides the stability it requires by prohibiting inconsistent state action. This principle is based on the following idea: the individual can count on the state to act legally and consistently, while the state must protect the trust it is given. The existence of the principle of the protection of legitimate expectations as one of the general principles of law is linked not only to trust in the power of the state but also to the exercise of the discretion of the addressees of the provision itself. The principle of the protection of legitimate expectations protects the rights once acquired by a person, i.e. the person can rely on the fact that the rights acquired under the law in force will be maintained and effectively exercised for a certain period. However, the principle of the protection of legitimate expectations does not exclude that the rights once acquired by an individual may be amended in a lawful and legal manner. In particular, this principle does not give reason to believe that the legal situation will never change once defined. It is important that in such a case the legislator determines a “lenient” transitional period or adequate compensation (*see Para 16.2 of the judgment of 8 March 2017 of the Constitutional Court in the case No. 2016-07-01*).

24.1. The Applicants Davids Džibuti and Dana Džibuti consider that they had a protected legitimate expectation that their education at a private school would be carried out in accordance with the education programme licensed and accredited by that school at the time their education contracts were concluded. In their written submissions they add that they had a legitimate expectation that the entire basic education process could be completed in accordance with the legal framework in force prior to the reform of the education system in question; the legal framework adopted as part of the reform of the education system.

The *Satversme* is an integral whole and the legal norms included in it are closely interrelated. Each constitutional norm has its own definite place in the constitutional system (*see Para 15.3 of the judgment of 8 November 2006 of the Constitutional Court in the case No. 2006-04-01*). When assessing the conformity of a provision of law with the general principles of law derived from the basic norms of a democratic legal state, which fall within the scope of Article 1 of the *Satversme*, it should be noted that the expression of these principles may vary in different areas of law. Also, the nature of the contested provision, its

connection with other norms of the *Satversme* and its place in the legal system influence the control exercised by the Constitutional Court (*see Para 11 of the judgment of 30 March 2011 of the Constitutional Court in the case No. 2010-60-01*).

Pursuant to Article 1(11) of the Education Law licensing of an educational programme means that the institution of education or other institution specified in this Law is granted the right to implement a certain educational programme. Pursuant to Section 38, Part 2, Para 1 and Section 40, Para 2 of the Education Law, general education programmes and special types of programmes, including minority education programmes, shall be licensed in accordance with the procedures prescribed by the Cabinet of Ministers. The Part 2 of Section 25 of the Education Law, in turn, provides that an educational institution is entitled to implement the licensed education programme specified in this Law, except for the interest education programme, only after licensing of the relevant education programme.

In turn, accreditation of an educational programme according to Section 1 (10) of the Education Law is a process which evaluates the quality of the implementation of the relevant educational programme and programme-related education. Pursuant to the Cabinet of Ministers Regulation No. 831 of 20 December 2016 “Procedure for the Accreditation of Educational Institutions, Examination Centres, Other Institutions Determined by the Education Law, General and Vocational Education Programmes and Evaluation of the Professional Activities of the Heads of Educational Institutions” depending on its assessment, a particular educational programme may be accredited for up to six years.

Students or their parents may take into account, *inter alia*, the time period for which a particular education programme is accredited when making a choice in favour of a particular educational establishment. Thus, students enrolled in a particular education programme may have a protected legitimate expectation that they will be able to complete their education at the appropriate level, in accordance with the legal framework and curriculum in force at the time the agreement is concluded, or at least its expiration.

However, this does not in itself mean that the legislature is not empowered to make changes to the legal framework affecting these educational programmes, insofar as the changes in question do not have a significant effect on the educational process, or, if deemed significant, lenient transitional

arrangements. Consequently, compliance of the contested provision with the principle of legitimate expectations shall be assessed in conjunction with the rights of persons belonging to ethnic minorities, which follow from the first sentence of Article 112 and Article 114 of the *Satversme*. In order to assess compliance of the contested provision with the principle of legitimate expectations, the Constitutional Court must first determine whether the changes introduced by the contested provision are to be regarded as substantial and, if the changes are significant, whether the legislator has established a lenient transition to the new legal regulation.

24.2. In the Para 22.2 of this judgment, the Constitutional Court has already established that the contested provision and legal provisions related thereto, which have been introduced within the framework of the reform of the particular education system, form a part of the broader reform of the education system, which has been gradually implemented over a period of more than 20 years, gradually strengthening a joint educational system and use of the official language available to every student, by taking into account the adaptability of students, their parents and teachers.

The Ombudsman is concerned that the explicit intention to expand the use of the state language has only been expressed in relation to state and municipal institutions of education in Para 9 of the Transitional Provisions of the Education Law (*see case materials, Vol. 1, p. 136*). In this respect, it should be borne in mind that private educational institutions that have chosen to provide general education have always been integrated into the national general education system. Namely, private institutions of education, if they wanted to provide students with a general education certificate after completing the general programme of minority education, had to comply with the legal framework in force at the relevant time, which determined, among other things, the proportions of the official language and minority languages. The first sentence of Para 9(3) of the Transitional Provisions of the Education Law only expressly mentions state and municipal educational establishments. However, the second sentence of this paragraph provides for the amendment of secondary education standards. In turn, these standards also had to be met by private institutions of education that chose to provide general education and wanted to provide their graduates with a formal education certificate.

Thus, there is no reason to believe that the reference included in first sentence of Para 9(3) of the Transitional Provisions of the Education Law to

public and municipal schools would create rights for the private institutions of education, that offer general education programmes, to offer educational programmes with such use of education languages that do not conform to the General Secondary Education Standard set by the State.

24.3. Until 31 August 2019, Part 1 of Section 41 of the Education Law determined that minority education programmes shall be developed by an institution of education, selecting one of the models of educational programmes included in the State pre-school education guidelines or the relevant national education standard. However, the provisions of Annex 25 to Cabinet Regulation No. 468 contained several models of minority education curricula, which include a syllabus of subjects, lessons and languages of instruction. Each model provided for a different proportion of the language of instruction and a broader or narrower discretion for the institution of education, while also allowing certain institutions of education to choose whether certain subjects should be taught exclusively in the national language or bilingually. The specific model of the minority education programme could be chosen by the institution of education depending on the student's knowledge of the state language and experience of using the state language. Subject to the provisions of Regulation No. 468, an educational institution, when implementing a minority education programme, was entitled to determine that more than half of the subjects were taught in the minority language or bilingually.

On the other hand, at the level of secondary education in accordance with Paras 7 and 8 of Cabinet Regulation No. 281, within the framework of the minority education programme, the study content in the minority language was to be provided for not more than two fifths of the total study workload per year; moreover, in addition to learning the Latvian language and literature, students had to learn at least five subjects in the state language per year. As a result, in the minority education curriculum, up to 40 per cent of the total annual workload was allowed in the minority language curriculum.

Paras 14 to 14.4 of this judgment already describe the changes in the proportion of languages used for teaching as a result of the reform of the education system in question at the level of primary and secondary education. The Constitutional Court concludes that the changes provided for in the contested provision and related legal norms regarding the use of study languages in minority education programmes are significant. However, when assessing whether the principle of legitimate expectations has been respected in this case,

it must be reiterated that under this legal framework, private institutions of education at a primary level are entitled to implement a minority education programme in accordance with statutory proportions of language use and to determine independently which subjects shall be taught in Latvian, in minority language or bilingually; whereas at the secondary level of education private institutions of education have the right to include a specialised course in the general secondary education programme “Minority Language and Literature” as well as non-standard subjects related to minority mother tongue and identity and integration of minority into the Latvian society. Para 22.2 of this judgment already concludes that subjects related to ethnic minority language and identity are also taught at the secondary level, using the minority language as the language of instruction.

Taking into account the aforesaid, the Constitutional Court must verify whether the legislator has envisaged a lenient transitional regulation for the implementation of these changes, also in relation to private institutions of education.

24.4. The Amendments to the Education Law and the Amendments to the General Education Law were adopted on 22 March 2018, promulgated on 2 April 2018 and entered into force on 16 April 2018. Both the Amendments to the Education Law and the Amendments to the General Education Law provide for supplementing the respective laws with transitional provisions, which specify the time period for the contested provisions and related norms to come into effect. Also, the regulation set by the Cabinet of Ministers Regulations as specified in Paras 14.2 and 14.3 of this judgment on the language of education in the general education process, adopted within the framework of the reform of the particular education system, shall enter into force at the same time as the contested norm and related legal norms. Accordingly, the contested provision and related legal provisions shall enter into force — on 1 September 2019 with respect to the implementation of primary education programmes in Grades 1-7; on 1 September 2020 with respect to the implementation of basic education programmes in Grade 8 and of secondary education programmes in Grades 10 and 11; on 1 September 2021 with respect to the implementation of primary education programmes in Grade 8; the implementation of primary education programmes in Grade 9 and the implementation of secondary education programmes in Grade 12. Consequently, all regulations on the use of languages of instruction adopted in the context of the reform of the education system in

question enter into force gradually and the deadlines for entry into force are mutually consistent.

The contested provision and related legal norms regarding the implementation of basic education programmes in Grades 1-7 have entered into force after one year and five months, whereas for Grades 8, 10 and 11 it will take effect after about two years and five months and for Grades 9 and 12 after about three years and five months from the day of announcement.

The possibility of completing the education acquisition process at the basic level in accordance with the legal framework in force prior to the reform of the education system, will be available for those students who started Grades 8 or 9 on 1 September 2019 and for those students who started their studies in Grades 11 or 12 on 1 September 2019 at the secondary level. For the rest of the students, the legal framework adopted as part of the reform of the education system is intended to enter into force on 1 September 2019, except for students who commence their studies in Grade 10 on 1 September 2019, 1 September 2020, when they will begin their studies in Grade 11.

24.5. Consequently, the legal framework adopted in the context of the reform of the education system in question envisages significant changes in the proportion of minority language use in the general education process in private institutions of education. However, while the changes in the proportion of language use are considered to be significant, it should also be taken into account that, prior to the reform of the particular education system, the majority of classes in the private institutions of education implementing minority education programmes were in the national language.

The legal framework adopted in the context of the reform of the particular education system maintains the use of minority languages as the language of instruction in the general education process. At a primary level, the minority language can still be used as the language of instruction within the prescribed proportions, and it is up to the private institution of education to determine which subjects are wholly or partly taught in the minority language. In secondary education, however, minority language can be used as the language of instruction for teaching the same language as the subject, as well as for other subjects related to national identity and culture.

By adopting the contested provision and legal norms related thereto, the legislator provided private institutions of education and their students with a transition period of at least one year and five months from the date of the

promulgation of the said legal regulation until its coming into force. During this period they were able to adjust the study process and provide students with the opportunity to improve their language skills. In addition, the legislature has made it possible for those students whose studies at the relevant level of general education is coming to an end to complete it in accordance with the legal framework in force before the reform of the particular education system.

Taking into account the aforesaid, it can be concluded that the legislator has established a lenient transition to the legal regulation included in the contested provision and legal norms related thereto.

Hence, the contested provision complies with the principle of legitimate expectations and thus also with Article 1 of the *Satversme*.

The Substantive Part

On the basis of Sections 30-32 of the Constitutional Court Law, the Constitutional Court

held:

to declare Part 1¹ of Section 9 of the Education Law to be in compliance with Article 1, the second sentence of Article 91, first sentence of Article 112 and Article 114 of the *Satversme*.

The judgment is final and not subject to appeal.

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

Chairperson of the court hearing

I. Ziemele