THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT
on Behalf of the Republic of Latvia
in Riga on 11 June 2020
in Case No. 2019-12-01

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

with the participation of sworn advocate Inese Nikuļceva, the authorised representative of the applicant – twenty members of the 13th Convocation of the *Saeima*: Boriss Cilevičs, Valērijs Agešins, Vjačeslavs Dombrovskis, Vladimiris Nikonovs, Artūrs Rubiks, Ivans Ribakovs, Nikolajs Kabanovs, Igors Pimenovs, Vitālijs Orlovs, Edgars Kucins, Ivans Klementjevs, Inga Goldberga, Evija Papule, Jānis Krišāns, Jānis Urbanovičs, Ļubova Švecova, Sergejs Dolgopolovs, Andrejs Klementjevs, Regīna Ločmele-Luņova and Ivars Zariņš,

and sworn advocate Sandis Bērtaitis, the authorised representative of the institution, which issued the contested act, – the *Saeima*,

and Anna Elizabete Šakare as the secretary of the court hearing,

on the basis of Article 84 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 3 of Section 17 (1) and Section 28 of the Constitutional Court Law,

examined at an open court hearing in Riga on 23, 28 April and 5, 12 May 2020 the case

"On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 1, Article 105 and Article 112 of the *Satversme* of the Republic of Latvia".

The Facts

1. On 2 November 1995, the *Saeima* adopted the law "On Institutions of Higher Education", which entered into force on 1 December 1995.

1.1. Initially, Section 5 of the law "On Institutions of Higher Education" defined the obligation of institutions of higher education to cultivate and develop science and art. By the law of 21 June 2018 "Amendments to the Law "On Institutions of Higher Education"" (hereafter – Amendments to the law "On Institutions of Higher Education" of 21 June 2018), the third sentence of Section 5 of the law "On Institutions of Higher Education" was recast in a new wording: "In their activities they shall cultivate and develop science, arts, and the official language."

1.2. By the amendments to the law "On Institutions of Higher Education" of 21 June 2018, Section 56 of the law "On Institutions of Higher Education" also was amended. In the introductory part of the third part of this Section, the words "institutions of higher education, established by the State" were replaced by the words "institutions of higher education and colleges". Thus, since 1 January 2019, when these amendments entered into force, Section 56 (3) of the law "On Institutions of Higher Education" is in effect in the following wording:

"The study programmes of institutions of higher education and colleges shall be implemented in the official language. The use of foreign languages in the implementation of study programmes shall be possible only in the following cases:

1) study programmes which are acquired by foreign students in Latvia, and study programmes, which are implemented within the scope of co-operation provided for in European Union programmes and international agreements may be implemented in the official languages of the European Union. For foreign students the acquisition of the official language shall be included in the study course compulsory amount if studies in Latvia are expected to be longer than six months or exceed 20 credit points;

2) not more than one-fifth of the credit point amount of a study programme may be implemented in the official languages of the European Union, taking into account that in this part final and State examinations may not be included, as well as the writing of qualification, bachelor and master's thesis;

3) study programmes, which are implemented in foreign languages are necessary for the achievement of the aims of the study programme in conformity

with the educational classification of the Republic of Latvia for such educational programme groups: language and cultural studies and language programmes. The licensing commission shall decide on the conformity of the study programme to the educational programme group; and

4) joint study programmes may be implemented in the official languages of the European Union."

1.3. The amendments of 21 June 2018 to the law "On Institutions of Higher Education" added to the Transitional provisions Para 49, expressed as follows:

"Amendments to Section 56 (3) of this Law with respect to the implementation of the study programmes in the official language shall enter into force on 1 January 2019. Institutions of higher education and colleges, where the language in which study programmes are implemented does not comply with the provisions set out in section 56 (3) of this Law, shall have the right to continue implementing study programmes in the respective language until 31 December 2022. After 1 January 2019, enrolment of students in study programmes, the language of implementation of which is incompatible with provisions set out in Section 56 (3) of this Law, shall not be permitted."

2. The applicant – twenty members of the 13th Convocation of the *Saeima* (hereafter – the Applicant) – holds that the third sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" (hereafter – the contested norms) are incompatible with Article 1, Article 105 and Article 112 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

2.1. It is noted in the application that Article 112 of the *Satversme* envisages the right of the founders of private institutions of higher education to establish and to manage institutions of education. It is alleged that the contested norms, by establishing the obligation to cultivate and develop the Latvian language, impose disproportional restrictions on the freedom of the founders of a higher educational institution in setting the objectives for the higher educational institution. Institutions of higher education have limited possibilities to implement independently study programmes in the official languages of the European Union and, likewise, the possibilities to cooperate with other higher educational institutions are made difficult. The contested norms also limit the academic freedom of the faculty members of higher educational institutions to choose a

foreign language as a means for acquiring the study course and the students' right to select a programme that meets their needs. At the court hearing, Inese Nikuļceva, the Applicant's representative, pointed out that the right to education comprised also the right of those wishing to study to acquire higher education in any language if such is offered. The contested norms are said to restrict this right. At the court hearing, the Applicant's representative subscribed to the statement made by the *Saeima*'s representative Sandis Bērtaitis that, currently, the graduates of secondary schools were proficient in the official language and were able to acquire higher education in Latvia; however, urged to take into account that the contested norms restricted the right to choose studies in another language. Moreover, it should be taken into account that, until now, private institutions of higher education had ensured the possibility to acquire higher education to persons, who had obtained secondary education earlier – before the reform of the official language was implemented in education. At the court hearing, the Applicant's representative did not uphold the interpretation of Section 56 (3) of the law "On Higher Education", offered by the representative of the Ministry of Education and Science, i.e., that Latvia's nationals could acquire higher education in study programmes intended for foreign students. The Applicant's representative pointed out that such interpretation should be regarded as being interpretation *contra legem*.

The restriction on the aforementioned rights, allegedly, had not been established by a law, adopted in due procedure. Firstly, in August of 2017, when the Cabinet had submitted to the *Saeima* the draft law "Amendments to the Law "On Institutions of Higher Education"", it did not include the contested norms. These had been submitted together with the proposals for the third reading of the draft law on 1 June 2018. Thus, a general discussion on the restriction's impact on the rights of private persons and society's interests did not take place. Secondly, the contested norms are said to be contrary to research and policy planning documents, for example, the Guidelines on Education Development for 2014-2020, approved by the *Saeima*, and the Bologna Declaration, binding upon Latvia.

The Applicant admits that the aims of the contested norms – the cultivation of the official language and accessibility of higher education – are to be considered as being compatible with the *Satversme*. However, the contested norms are not an effective measure for reaching these aims because the new regulation, instead of providing incentives for studying the official language, has led to a situation, where the local students leave Latvia and foreign students do not want to study

here. In this context, also the much more liberal rules on language use in secondary schools should be taken into account. At the court hearing, the Applicant's representative Inese Nikuļceva also pointed to the fact that the contested norms allowed foreign students to obtain higher education in private institutions in the official languages of the European Union but not in other languages. It is not clear why it is considered that those studying in the official languages of the European Union are more motivated to master the Latvian language compared to those, who acquire higher education in other languages.

Likewise, the legitimate aims could be reached by more lenient measures, for example, fulfilling positive obligations to promote the use of the official language, increasing the state budget financing for linguistic study and research programmes, granting it also to private institutions of higher education, or by setting the mandatory number of credit points to be obtained in studies in Latvian, or envisaging an obligation to participate in conferences held in Latvia. Another alternative would be applying the language rules to institutions of higher education, by taking account their achievements, as is currently already done with respect to the Stockholm School of Economics in Riga and the Riga Graduate School of Law.

Also, the benefit gained by society from the contested norms is said to not outweigh the restriction on persons' rights since society is losing the possibilities opened by the international environment of higher education. Likewise, the autonomy of institutions of higher education and academic freedom have been decreased to the lowest level in Europe. With the decreasing autonomy of institutions of higher education, the quality of higher education will also suffer. At the court hearing, the Applicant's representative noted that the limits of academic freedom extended insofar they did not jeopardise other essential interests. In this context, it is impossible to separate the research and pedagogical work conducted at private institutions of higher education, in which both the institutions of higher education, their faculty members and students are involved.

2.2. The Applicant notes that the contested norms restrict the right of private institutions, established in Article 105 of the *Satversme*, to engage in commercial activities, obtained on the basis of an acquired licence, and provide education services for a fee. Likewise, it is alleged that the contested norms violate also the principle of the rule of law, included in Article 1 of the *Satversme*, pursuant to which the founders of private institutions of education have developed legitimate expectations that they would be able to benefit from using their property.

It has been concluded in various studies that higher education services in foreign languages, which are not the official languages of the European Union, constitute approximately one-third of the services provided by private institutions of higher education. Allegedly, the contested norms will prohibit from engaging in this commercial activity in the future. Likewise, private institutions of higher education will not be able to implement in full the already accredited programmes in English.

Since private institutions of higher education have obtained the respective licences and accredited study programmes they had expected to be able to continue the commenced commercial activities. Neither a more lenient transition to the new regulation nor a mechanism of compensation has been envisaged. The technical infrastructure of institutions of higher education had been created by relying on the already granted licences. Thus, with the decrease in the number of students, the profitability of private institutions of higher education would be jeopardised. The transitional period is said to be too short to allow private institutions of higher education to take measures that are necessary for redirecting their activities and for attracting potential students to other study programmes that they deliver.

The contested norms should be examined in interconnection with Article 101 and Article 107 of the Treaty on the Functioning of the European Union, which prohibit the Member States from distorting competition, and Section 19 of the law "On the Riga Graduate School of Law", which creates for this institution of higher education advantages in attracting students, compared to other private institutions of higher education. The contested norms, by creating a barrier for entering into the market of higher education and prohibiting from providing services of higher education in foreign languages to citizens of other Member States, are said to affect the rights, guaranteed in the sources of the European Union law, to the freedom of establishment, free movement of services, which are guaranteed in Article 49 and Article 56 of the Treaty on the Functioning of the European Union, as well as the freedom to conduct a business, which is established in Article 16 of the Charter of Fundamental Rights of the European Union

The restriction on the right to property, allegedly, has not been adopted by a law because, in adopting the contested norms, neither their impact on the property right of private institutions of higher education nor the European Union law had been examined. The restriction is said to be inappropriate for reaching the legitimate aim because, due to it, students would flow away from Latvia's private

institutions of higher education. Alternative measures for reaching the legitimate aim exist, for example, paying compensation to institutions of higher education for the investments they have made and the foregone profit.

3. The institution, which issued the contested act, – **the *Saeima*** – holds that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme*.

3.1. The *Saeima* notes that the compliance of the language policy and education reform with the *Satversme* has been repeatedly examined by the Constitutional Court, for example, in case No. 2004-18-0106 and case No. 2018-12-01. In addition to the findings expressed in these cases regarding the context of and the need for the reform, the *Saeima* also underscores that the education reform, to be implemented for the transition to education in the official language, is united and encompasses all institutions of education and all levels of education. The ability to use the official language is said to be of particular importance for the graduates of institutions of higher education – future leaders and the creators of civil society.

Policy planning documents also point to the need to protect and promote the use of the Latvian language. Already since 1991, when the Education Law of the Republic of Latvia entered into force, the legislator has continuously and consistently implemented policy aimed at protecting and reinforcing the use of the Latvian language, *inter alia*, also in higher education. The contested norms are said to be the next step in the reform of education, following from the conclusion that as the result of reform, implemented in the previous years, the proficiency of the graduates from institutions of secondary education, in general, has improved. The valid regulation already envisages taking the secondary school exams in Latvian. The *Saeima* also notes that the majority of students, who study in private institutions of education with Russian as the language of education, have acquired their previous education in Latvia.

3.2. The *Saeima* holds that Article 112 of the *Satversme* is aimed at the protection of the rights of those wishing to study and of students. Therefore it does not envisage the freedom for the founders of institutions of higher education and teachers with respect to the management of institutions of higher education, curriculum development and scientific activities. It is contended that the right to education cannot be properly exercised unless the autonomy of institutions of higher education and academic freedom are ensured; however, these rights are not

restricted without grounds because the contested norms are said to comply with the language policy of the State of Latvia and the core of the *Satversme* but the law "On Institutions of Higher Education" guarantees the autonomy of institutions of higher education and academic freedom in other respects. At the court hearing, Sandis Bērtaitis, the *Saeima's* representative, noted that the academic freedom and autonomy of institutions of higher education have not been written into the *Satversme expressis verbis*. Likewise, the *Saeima's* representative noted that the right to education had been guaranteed only to natural persons but not to legal persons. Thus, the *Satversme* does not protect the right of private institutions of higher education to education.

The State is said to have different obligations in ensuring the accessibility of various levels of education. Private persons have the right to higher education if they have appropriate abilities and experience, *inter alia*, also the knowledge of the official language. The State does not have the obligation to guarantee higher education in a language, which is not the official language. The principle of the unity of the system of education provides that uniform basic requirements regarding the language are applicable to various types and levels of education. Therefore, a restriction on the right established in Article 112 of the *Satversme* is said to be ruled out.

The *Saeima* argues that institutions of higher education are not totally prohibited from delivering courses in foreign languages. The legislator, within the framework of its discretion, has granted this right to some private institutions of education by special laws. Likewise, Section 56 (4) of the law "On Institutions of Higher Education" envisages the possibility for institutions of higher education to organise special courses for foreigners to prepare for studies in Latvia. At the court hearing, the *Saeima*'s representative, adding to the previous statements, noted that this norm did not prohibit private institutions of higher education from cooperating with other institutions of education outside the European Union if only the jointly created study programmes were delivered in any of the official languages of the European Union. Likewise, this norm does not deprive those wishing to study the possibility to obtain education ensured by foreign institutions of higher education, for example, in the form of distance learning.

Even if the contested norms restrict the right to education, this restriction has been established by law. On 17 July 2017, member of the Parliament Ilze Viņķele had submitted proposals for the second reading of draft law No. 923/Lp12 and, *inter alia*, had recommended amending Section 5 of the law "On Institutions of

Higher Education", establishing the obligation for the institutions of higher education to cultivate and develop the official language, amend Section 5 of the law "On Institutions of Higher Education", envisaging the possibility for institutions of higher education to determine independently the language of instruction, and delete the third part from Section 56 of the law.

The Education, Science and Culture Committee of the *Saeima* (hereafter – the Committee) examined these proposals at the sitting of 21 February 2018. The proposal to amend Section 5 of the law "On Institutions of Higher Education" was supported but other proposals were dismissed. The Ministry of Education and Science, having concluded that the *Saeima* will not manage to review the draft law in the third reading before its spring session ended, submitted the draft amendments, related to the language issues, for the draft law No. 998/Lp12, the examination of which in the third reading was scheduled before the end of the *Saeima's* spring session. The Rules of Procedure of the *Saeima* allows this kind of practice.

Amendments to Section 5 and Section 56 to the law "On Institutions of Higher Education" and the transitional provisions regarding the new regulation had been discussed in several sittings of the Committee, hearing both the members of the *Saeima* and representatives of private institutions of education and other interest groupings. At the court hearing, the *Saeima*'s representative Sandis Bērtaitis noted that it should be taken into account that the contested norms were part of the education reform that had been commenced decades ago, thus, the discussion on the use of languages in higher education had been on-going for a long time. Moreover, the contested norms do not comprise an entirely new regulation because prior to their coming into force the same language requirements had been applied to the State institutions of higher education.

Even if the legislator had committed a procedural violation, the *Saeima* holds that it had not been substantiated in the application that this violation had been so substantial that would allow recognising the adopted act as being legally void.

The aim of the contested norms is to reinforce language use and to protect other persons' rights. The *Saeima* holds that the contested norms do not create a disproportional restriction. They are appropriate for reaching the legitimate aim because the number of students studying in Latvian will grow and foreigners will have more possibilities for mastering the official language.

The Constitutional Court's competence to examine the availability or effectiveness of alternative measures is said to be limited. However, the *Saeima*

notes that an increase in the State financing cannot be considered to be an alternative measure because it requires additional investment. Whereas the establishment of alternative study programmes in the official language should not be supported because the impact of this alternative measure on the number of students studying in Latvian is questionable. Likewise, the quality of institutions of education, founded by private persons, is assessed already now; however, the legitimate aim cannot be reached in the same quality by this alternative measure.

The restriction created by the contested norms is said to be proportional because students are not entirely denied the possibility to obtain higher education in foreign languages. Likewise, the founders of the institutions of higher education and the academic staff have retained the possibility, within the framework of autonomy and academic freedom, to implement studies and engage in research in accordance with the regulation established by regulatory enactments.

3.3. As regards Article 105 of the *Satversme*, the *Saeima* notes that it does not envisage legal protection for a person's right to gain profit. The Applicant's claim is said to be based on future profits, which can be linked only to potential students, who have not concluded a study agreement with the respective institutions yet. Moreover, institutions of higher education, in any case, cannot rely on revenue after the term of accreditation of the study programmes developed by them has expired. Hence, financial interest, falling within the scope of Article 105 of the *Satversme*, cannot be identified.

Even assuming that the contested norms cause a restriction on the rights established in Article 105 of the *Satversme*, it is said to be proportional. It should be taken into account that private institutions of higher education and colleges engage in business activities in an area, which has special regulation, and perform functions of national and social importance. Such business activities are subordinated to reaching the objectives set by the legislator. A private person, who wishes to establish an institution of higher education, should be aware of the special regulation in this area.

In addition to the arguments, expressed in examining the compliance of the contested norms with Article 12 of the *Satversme*, the *Saeima* notes that private institutions of higher education will have the possibility to continue their commercial activities by offering such study programmes that comply with the requirements of legal acts. Likewise, they have the possibility to deliver programmes of non-formal education and provide research services in foreign languages.

The *Saeima* holds that the contested norms comply with the principle of legitimate expectations. Private persons could not have developed legitimate expectations regarding the constancy of legal regulation. Education reform aimed at the transition to studies in the Latvian language had been implemented in the state for decades. Moreover, Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" envisages a lenient transition to the new regulation, allowing institutions of higher education and colleges to continue delivering the study programmes that have been commenced and to adapt to the new requirements.

The Saeima holds that the contested norms do not restrict the rights established in Article 113 of the *Satversme* either. Everyone has the right to engage in scientific creativity – to search, compare and systematise sources of information freely, using a language that the person understands. If the Constitutional Court were to conclude that the contested norms restricted the rights envisaged in Article 113 of the *Satversme* this restriction should be recognised as being appropriate and proportional.

4. The summoned person – the Ministry of Education and Science – holds that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme.*

The contested norms are said to be a part of the language reform implemented in the area of education for a long time already. In the context of Article 112 of the *Satversme*, the Ministry of Education and Science, underscoring the importance of the official language and the need to safeguard it, notes that institutions of higher education should not foreground the cultivation and development of the official language as a separate line of activity. However, institutions of higher education should organise their work in accordance with society's interests, should cultivate, in their academic and professional activities, terminology, computer linguistics, culture and euphony of the language, searching for and creating new terms in the official language rather than using these in foreign languages.

The law "On Institutions of Higher Education" safeguards the academic freedom; however, this freedom is not absolute and exists within the framework of the national law; moreover, the academic freedom does not depend on the language, in which a study programme is delivered. Private institutions of education cannot have total autonomy in issues related to language use. Moreover,

the requirements regarding the language do not impact the scientific activities of institutions of higher education.

The requirements and criteria set regarding accreditation of study directions and implementation of study programmes are said to be the same both for institutions of higher education founded by the State and for institutions of higher education founded by private persons. Hence, there are no grounds for establishing differential treatment regarding the language, in which study programmes are implemented. Moreover, even after the term, set in the Transitional Provisions of the law "On Institutions of Higher Education", foreign and Latvian students will be able to obtain education in the official languages of the European Union, in cases stipulated in Section 56 of the law "On Institutions of Higher Education". Para 1 of Section 56 (3) of the law "On Institutions of Higher Education", if interpreted in interconnection with Section 45 of this law, allows, *inter alia*, to enrol into study programmes, the basic audience of which are the foreign students, also the permanent residents of Latvia. At the court hearing, the Ministry's representative Dace Jansone noted that the proportion of foreigners and Latvian nationals, studying in these programmes, was not regulated. This interpretation of the provisions of the law had been provided to several institutions of higher education.

Also, the Applicant's statement regarding the legitimate expectations to gain profit, developed by the founders of institutions of higher education, is said to be unfounded. There are no legal grounds to assume that the once granted accreditation of a study direction would be extended automatically for the next term. Likewise, the principle of legitimate expectations does not create the right to assume that the legal situation, once established, will never change. The legislator has the obligation to follow the actual situation and, if necessary, adjust the legal regulation to it. This, exactly, had been done by the contested norms. It is also essential that, in this case, the legislator has established such a lenient transitional period, which is sufficiently long and allows the students to complete the studies they have already commenced. Moreover, currently, none of the institutions of higher education has such active study programmes, the only language of instruction of which was the Russian language.

To ensure the quality of higher education, the State has the obligation to define criteria for the implementation of study programmes. Hence, the State also has legal grounds for defining the use of the official language for both the State and private institutions of higher education.

The contested norms are said to be compatible with Article 105 of the *Satversme* because higher education cannot be regarded as being regular business service and specific regulation of the field is applicable to it. The Ministry's representatives at the court hearing pointed out that the official language and economic interests cannot be placed on the same scales.

The contested norms had been established by law and have a legitimate aim – reinforcing the use of the official language and protection of other person's rights. In view of the essential need for reinforcing the use of the official language and the fact that, currently, the State examinations in secondary school are held in Latvian, the restriction on rights, caused by the contested norms, should be recognised as being proportional.

5. The summoned person – the Ministry of Justice – holds that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme*.

The Ministry of Justice upholds the opinion expressed by the *Saeima* and contests the statement that the contested norms restrict the rights established in Article 112. The State enjoys broad discretion in the area of higher education. Moreover, the contested norms do not deny the possibility to obtain higher education but envisage additional provisions in the process of acquiring this education.

Even if a restriction were established, the contested norms had been discussed sufficiently to consider that they had been established by a law, adopted in due procedure. At the court hearing, the Ministry's representative Iveta Brīnuma noted that the Ministry had not been involved in the process of drafting the contested norms because it is not involved in the drafting of every norm.

The legitimate aim of the contested norms is the strengthening of the Latvian language. This obligation is imposed also by the overarching principle of the nation-state.

Amendments to the law "On Institutions of Higher Education" of 21 June 2018 are said to be proportional and necessary to decrease the inequality that arises in the labour market due to the lack of proficiency in the official language. It should be taken into account, in particular, that the persons, who have obtained higher education, wish to take positions that require the highest level of proficiency in the official language. Currently, it cannot be established that different requirements regarding the language proficiency had been set for those

working in the private and the public sector. Therefore the absence of such a difference in the area of higher education is said to proportional and necessary in a democratic society to prevent segregation due to language proficiency.

Proficiency in the official language is said to be a part of qualitative higher education. Moreover, on the level of higher education, just like on the level of basic and secondary education, the State does not have the obligation to ensure the possibility to obtain education in another language, in addition to the official language.

The Ministry of Justice upholds the arguments stated in the written reply by the *Saeima* that the contested norms do not infringe upon the rights established in Article 105 of the *Satversme*. Stable profit, gained as the result of commercial activities, could fall within the scope of the right to property only in some cases; however, the Applicants have pointed to the too abstract possibility of institutions of higher education to gain profit. In addition to the statements made, the Ministry notes that, in examining this right in interconnection with the principle of legitimate expectations, it should be taken into account that the State has been consistently moving towards reinforcing the use of the official language in the area of education already for several years. Therefore the private institutions of higher education could not have developed grounds for considering that the legal regulation would remain unchanged. The legislator had envisaged a sufficiently long transitional period to allow institutions of education to prepare for meeting the new requirements. At the court hearing, the Ministry's representative noted that private institutions of higher education have the possibilities to redirect their activities and deliver study programmes in other languages, using also the acquired facilities and equipment in the study process. Likewise, it should be taken into account that the Ministry of the Interior has urged to pay more attention to foreigners studying in Latvia, who, possibly, are trying to circumvent immigration rules by this. The transitional period allows completing studies to persons, who genuinely wish it, and restrict only those who are studying for a long time.

Likewise, the contested norms do not affect the freedom of scientific creativity, included in Article 113 of the *Satversme*, since they do not regulate the content of studies but only the langue for expressing it. Also, it should be taken into account that this Article should be interpreted in interconnection with Article 4 of the *Satversme*, which provides that, in Latvia, the official language is Latvian.

Article 112 of the *Satversme* establishes the right to qualitative education, and qualitative education, in turn, includes the use of both Latvian and the official languages of the European Union. However, in Latvia, the permanent residents of Latvia should definitely study in the official language. With respect to Para 1 of Section 56 (3) of the law "On Institutions of Higher Education", the Ministry of Justice notes: the understanding of this norm that the institutions of higher education could enrol Latvian nationals in study programmes, set up especially for foreign students, is not obvious.

In the context of the European Union law, the Ministry's representative noted at the court hearing that, pursuant to Article 165 of the Treaty on European Union, the European Union respects the diversity of cultures and languages. Hence, the matters of language in education fall with the competence of the Member States rather than into that of the European Union. A restriction of Article 49 or Article 56 of the Treaty on the Functioning of the European Union cannot be discerned because all requirements are equally applicable to all subjects. However, if the Constitutional Court were to raise questions regarding the application of the European Union law it should refer a question for a preliminary ruling to the Court of Justice of the European Union.

6. The summoned person – the Ministry of Foreign Affairs – notes that the issue of the language of instruction in education, in the context of Article 112 of the *Satversme* in interconnection with Article 2 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention), had been examined by the Constitutional Court already in its judgement of 13 May 2015 in case No. 2004-18-0106 and the judgement of 23 April 2019 in case No. 2018-12-01. The Ministry of Foreign Affairs had provided information about Latvia's commitments that followed from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in its opinions in Case No. 2018-12-01 and Case No. 2018-22-01.

The issue of the right to education and studies in institutions of higher education is said to be regulated in a very fragmented way in the Framework Convention for the Protection of National Minorities, leaving to the States very broad discretion in this area. Article 13 of the International Covenant of Economic, Social and Cultural Rights guarantees the right to education. However, higher education should not be accessible to all but only in accordance with each

person's abilities or knowledge and experience. The right to education does not envisage the right to higher education in a particular language.

The academic freedom of faculty members and students, which comprises also the autonomy of institutions of higher education, is said to be an important aspect of the right to education. However, the right to academic freedom does not envisage the right to establish and manage private institutions of higher education in languages of ethnic minorities.

The rather limited jurisdiction of the European Court of Human Rights in the area of education thus far indicates that the State has the obligation to ensure certain standards of education also in private institutions of education. The State has relatively broad discretion to determine the language of instruction, upon the condition, that the aim of the requirements is legitimate and the requirements are commensurate to it.

As regards the issue of Article 105 of the *Satversme*, the Ministry of Foreign Affairs upholds the statements made in the *Saeima*'s written reply that the contested norms do not infringe upon the right to property.

Hence, the State's obligation to ensure persons' rights to establish and to manage private institutions of higher education with the language of education of their own choosing does not follow from Latvia's international commitments. The State, in turn, has the obligation to set and ensure a certain standard of education.

7. The summoned person – **the Ombudsman** – holds that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme*.

The Ombudsman notes that the principle of legitimate expectations follows from Article 1 of the *Satversme*. The compliance of the contested norms with this principle should be examined in interconnection with the compliance thereof with the right to property, enshrined in Article 105 of the *Satversme*. This right can be restricted if the restriction has been established for the sake of a legitimate aim and is commensurate with the legitimate aim.

The members of the *Saeima* had had the possibility to express their opinions about the contested norms. Hence, the contested norms had been established by a law, adopted in due procedure. Protection of public welfare and democratic state order is their legitimate aim. It should be taken into account that public welfare includes also such intangible aspects as the dominance of the Latvian language in society. Increasing the impact of the Latvian language would facilitate societal integration and ensure harmonious functioning of society.

The contested norms are said to be appropriate for reaching the legitimate aim. Likewise, the Ombudsman upholds the conclusions presented in the *Saeima's* written reply regarding the need to reinforce the role of the official language. Hence, the contested norms, which constitute the reform of higher education in the framework of the national language policy, are necessary to protect and strengthen the use of Latvian. Also, the benefit that society gains from the contested norms is said to outweigh the damage inflicted upon the rights and lawful interests of the founders of private institutions of higher education. It should be taken into account that the contested norms set the criteria, the meeting of which allows implementing study programmes in foreign languages.

The right to education, defined in Article 112 of the *Satversme*, comprises also higher education. In view of the right of institutions of higher education to academic freedom, included in Article 6 of the law "On Institutions of Higher Education", compliance of the contested norms with Article 112 of the *Satversme* should be examined in interconnection with their compliance with Article 113 of the *Satversme*.

The contested norms are said to be appropriate for reaching the legitimate aim also in the context of the right to education. They ensure that the graduates of institutions of higher education may fully participate in a democratic society, have mastered on a professional level and use the Latvian terminology appropriate for everyone's chosen profession. Using the Latvian language only in a part of the study process would not reach the legitimate aim in the same quality as by the legal regulation established by the contested norms.

However, it should be taken into account that the decisions on protecting values of national importance, *inter alia*, the language, should be qualified as political decisions. The legislator may decide that more extensive use of the official language is more important than the possibility to implement policy for attracting foreign students. Likewise, only the legislator can decide, whether the attraction of foreign students is desirable as a measure for promoting the commercial activities of institutions of higher education or its aim is to attract highly qualified labour force, proficient in the Latvian language.

In examining the proportionality of the restriction, caused by the contested norms, it should be verified, whether the balance between the society's legitimate expectations regarding the use of the official language and the academic freedom of private institutions of higher education has not been disrupted. The Ombudsman agrees that qualitative scientific activity includes, *inter alia*, a dialogue with

scientists from the entire world working in related fields and that self-isolation from global research processes lead to stagnation in scientific activities. The contested norms, however, define exceptions for implementing study programmes in foreign languages in order to not exclude institutions of higher education from international circulation. Section 6 of the law "On Institutions of Higher Education" guarantees the academic freedom; however, it is not applicable to the language of instruction. The contested norms do not restrict the freedom of institutions of higher education, the faculty members and students thereof to conduct scientific research, to transfer and gain knowledge or to express their opinions and convictions.

Hence, the benefit that the society gains from the contested norms outweighs the damage inflicted on individuals' rights. Democracy requires common official language for everybody in the state. The Ombudsman, referring to the Constitutional Court's case law, underscored that the knowledge of the official language was necessary so that all persons could participate in the life of a democratic state. The official language ensures the functioning of the State and communication between the person and the State. Hence, all persons who reside permanently in Latvia should know the official language of this State.

8. The summoned person – the Competition Council – notes that the contested norms comply with the regulation of the Latvian and the European Union's competition law.

The regulation of the competition law is not applicable to State institutions of higher education, which, primarily, are financed from the State budget resources because the aim of their economic activities is not gaining profit. After the commercial operators have been identified, the market, in which they operate, must be defined.

In defining the market, mainly, the demand should be followed, however, the supply also should be examined. In the case of higher education, the market, most probably, would be defined by the subject of studies and also the language of studies.

Pursuant to Article 106 of the Treaty on the Functioning of the European Union, a situation, where certain subjects of the market are granted the right to provide a certain service either as the only providers or to provide this service in special circumstances, can be allowed. An infringement of the competition law

would occur if a market participant, who has been awarded this status, would act contrary to the competition law.

The language of the study programme, however, most probably, should be considered as a requirement that constitutes the market and must be complied with by all market participants. The validity of such a requirement is to be verified by examining the compliance of the requirement with the right, recognised in the Treaty on the Functioning of the European Union, to establishment and the freedom to provide services. Hence, the Competition Council also would not examine the validity of the language requirement but whether in the market, which is formed on the basis of this requirement, all have equal possibilities to work.

The legislator has to ensure the compliance of the national regulation with the European Union law; however, what kind of assessment is used to ensure this compliance is said to be a matter of the legislative process.

9. The summoned person – **the Council of Higher Education** – holds that Para 5 of the law "On Institutions of Higher Education" is compatible but Section 56 (3) and Para 49 of the Transitional Provisions are incompatible with Article 1, Article 105 and Article 112 of the *Satversme* and that Article 112 should be examined in interconnection with Article 113 of the *Satversme*.

At the court hearing, Jānis Vētra, the representative of the Council of Higher Education, noted that higher education differed from other stages of education because the acquisition of it was not mandatory, it was closely linked to research and also academic freedom that both the faculty members and students were endowed with. It is impossible to separate language, scientific activities of institutions of higher education and education.

The Council of Higher Education holds that the general obligation to develop and cultivate the Latvian language, included in Section 5 of the law "On Institutions of Higher Education", in no way restricts the autonomy of institutions of higher education and the academic freedom of the employees of these institutions. This obligation should be fulfilled, for example, by developing terminology and facilitating the use of the official language in the academic environment. At the court hearing, the Council's representative noted, however, that this norm had been created together with the proposal to delete the third part of Section 56 of the law "On Institutions of Higher Education" and not with the intention to include also private institutions of higher education in the regulation of this Section.

The proposal to apply Section 56 (3) of the law "On Institutions of Higher Education" to private institutions of higher education had been unexpected because, initially, this norm had been applied only to the State institutions of higher education due to the involvement of the State financing. The regulation on language use should be the same with respect to the State and private institutions of higher education; however, the detailed regulation on the use of the official language, included in this norm, is said to restrict significantly the diversity of the study process both in terms of the composition of students and faculty members as well as the facilities and equipment needed for studies. The need for language use could differ, depending on the academic years and programmes. Therefore this matter should be resolved within the framework of the autonomy of institutions of higher education rather than by certain proportions set in the legal regulation. The State may create criteria for assessing the quality of the study process and research work; however, it should not decide in lieu of institutions of higher education on such matters, for the solution of which it lacks sufficient competence or the ability to create a flexible regulation.

Moreover, Section 56 (3) of the law "On Institutions of Higher Education" cannot be applied in practice because it is impossible to follow, in which language students do their independent work or develop their research work. The Council holds that Section 56 (3) of the law "On Institutions of Higher Education" prohibits from establishing joint programmes for foreign students and students who are Latvia's nationals.

At the court hearing, the Council's representative noted additionally that, currently, society no longer needed the strict language regulation because the situation in general education had changed. Answering to the question about how the contested norms had influenced the operations of private institutions of education, the Council's representative stated that, contrary to the provisions of the law, institutions of higher education create joint programmes for Latvia's nationals and foreign students but their possibilities to invite guest professors from countries outside the European Union were hindered, likewise, the possibilities to implement alone or jointly with foreign universities such study programmes that would require knowledge of foreign languages.

10. The summoned person – the Association of Private Universities – holds that the contested norms are incompatible with Article 1, Article 105 and Article 112 of the *Satversme*.

The contested norms are said to be incompatible with Article 1 of the *Satversme* because the process of adoption thereof had not complied with the principle of good legislation. The draft of these norms, which, contrary to the requirements of the law "On Institutions of Higher Education" had not been coordinated with the representatives of the area, had been submitted to the *Saeima* only for the third reading of the amendments to the law "On Institutions of Higher Education". The contested norms had not been substantiated by research by experts of the area and are incompatible with the internationalisation of education processes within the framework of the Bologna process.

The contested norms are said to be incompatible also with Article 105 of the *Satversme* because dishonest competition is created and the right of owners of private institutions of higher education to use their property, by engaging in commercial activities, is infringed upon. This article should be examined in interconnection with the principle of legitimate expectations, which follows from Article 1 of the *Satversme*, and Latvia's international commitments.

In 2018, the Law on the Riga Graduate School of Law and the law "Amendments to the Law "On Stockholm School of Economics in Riga"", which ensure to the institutions of higher education, referred to in the titles of these laws, the right to implement, as an exception, programmes of higher education in English or another official language of the European Union. These laws are said to be not only contrary to a united system of education and the policy for reinforcing the official language but also cause unfair competition by the two aforementioned institutions of higher education to other institutions of higher education.

Section 5 of the law "On Institutions of Higher Education" is said to be incompatible with Article 112 of the *Satversme* because it restricts the autonomy of private institutions of education and their freedom to choose the language of studies, accordingly, restricting also the students' possibilities to choose the language of studies. Academic freedom is necessary for ensuring the right to education, by fostering the quality of education and increasing the contribution made by institutions of higher education to reinforcing democracy, human rights and the rule of law

Section 56 (3) of the law "On Institutions of Higher Education" is said to be incompatible with Article 112 of the *Satversme*. The number of students in Latvia's institutions of higher education will decrease because of this norm, leaving a negative impact of the competitiveness of Latvia's institutions of higher education within the European Union and will intensify Latvia's economic

recession because the tax revenue from foreign students and private institutions of higher education will decrease. It should be also taken into account that other states of the European Union do not have so strict restrictions with respect to the language of instruction in higher education.

The restrictions on fundamental rights caused by the contested norms are disproportional because, in view of the example of the Riga Graduate School Law and the Stockholm School of Economics in Riga, the legitimate aim can be reached by measures that restrict the rights of an institution of higher education to a lesser extent. The arguments stated above also prove that the damage caused by the contested norms outweighs the benefit that society gains from them.

11. The summoned person – **the Association of Latvian Universities** – is of the opinion that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme*.

The contested norms are said to ensure a united State's control over the State and private institutions of higher education. This, in turn, complies with the principle of the unity of the education system, pursuant to which uniform language requirements and other basic requirements are applicable to different types of educational institutions. Section 56 (3) of the law "On Institutions of Higher Education" envisages restrictions also for State institutions of higher education but they have been able to adjust to them.

The regulation on languages does not infringe upon the autonomy and academic freedom of institutions of higher education. The objective of legal regulation is not to guarantee to institutions of higher education the right to gain profit by organising studies in Russian. The norms that are currently in force do not deny the possibility to organise studies in English.

The objectives defined in the third sentence of Section5 (1) of the law "On Institutions of Higher Education" should be examined in interconnection with *Magna Charta Universitatum.* The universities of Latvia consider it to be their duty to cultivate and develop the official language, for example, by developing terminology in Latvian, publishing, etc.

12. The summoned person – **the Latvian Centre for Human Rights** – noted that the protection of the official language in the context of academic freedom was a relevant human rights issue both in Latvia and in the entire European Union. Latvia needs a basic strategy in the area of higher education.

Disproportionate pressure on the autonomy of institutions of higher education could leave a negative impact upon the successive generations in society. It would not be far-sighted to implement policy of higher education that would be similar to the current direction taken by Hungary, which might result in the application of the procedure established in Article 7 of the Treaty on the European Union. Therefore the contested norms should be interpreted systemically, in interconnection with Article 1 of the *Satversme* and the values and principles derived from it.

13. The summoned person – ***Dr. iur.* Jānis Rozenfelds, Professor at the Faculty of Law, the University of Latvia** – notes that, in assessing the impact of the contested norms on the implementation of already licenced programmes, the terminated nature of these programmes should be taken into account as well as the fact that the term of operation of these programmes depends on the ability of the persons implementing them to meet the requirements set for granting the licence. Although not granting a licence restricts a person's ability to engage in commercial activities, a restriction like that should not be considered as being a violation of the right to property. However, the rights granted by a valid licence are to be considered as being the right to property, in the meaning of Article 105 of the *Satversme*.

Only the potential rather than the actually expected impact of the contested norms on the scope of the right to property could be discussed. Licences are granted, when concrete provisions are met. If the licence-holder does not comply with the provisions, on which the licence has been granted, it has no legal grounds to expect that it would be able to continue its commercial activities.

14. The summoned person – ***Dr. habil. philol.* Ina Druviete, Professor at the University of Latvia,** – holds that the contested norms comply with Article 1, Article 105 and Article 112 of the *Satversme*.

The law "On Institutions of Higher Education" should be considered as being a tool for implementing the policy on the official language. One of the aims of the language policy and also of the contested norms is safeguarding the united means of communication, necessary for the State's existence, – the official language. A situation of acute competition between languages is said to be characteristic of Latvia, therefore reinforcing of the Latvian language in the *Satversme* and other legal acts is necessary.

Private institutions of education, similarly to the rest of society, should be responsible for the development of the Latvian language. Pursuant to Section (5) of the law "On Institutions of Higher Education", which, as to its nature, is declarative, institutions of higher education should act in the interests of society, which include also retaining of the Latvian language in science and higher education. This does not require additional resources because this does not mean a mandatory obligation for institutions of higher education to set up study programmes in linguistics or conduct research in this area.

Section 56 of the law "On Institutions of Higher Education" ensures that the dominant role of the official language is retained in Latvia's higher education, at the same time providing the possibility to master also the skills of other languages necessary for the professional qualification. More liberal rules in language use would cause undesirable consequences in other stages of education, for example, would decrease motivation for mastering the official language in institutions of general education.

Protection of the official language is said to be the legitimate aim of the contested norms. In several socio-linguistic functions, the position of the Latvian language does not correspond to the status of the official language, mainly, exactly because of the linguistic self-sufficiency of the Russian speakers. In this situation, the contested norms help to ensure a high level of Latvian language proficiency among the specialist of various fields.

The contested norms are said to be proportional because they ensure to the graduates of private institutions of higher education equal education and employment opportunities as well as the ability to participate in the life of society. Several recent guidance documents of the European Union also point to the need for more effective acquisition of the language of instruction and the official language. They also recommend involving students with a different language of the family in the general flow of education.

However, each State, according to its own linguistic situation, should choose a model that ensures, best of all, the acquisition of the official language as a mechanism for societal integration. Although in some areas of language, the situation in Latvia has improved, in other areas, due to the conditions of language competition, also a regressive trend is observed. Therefore, the Latvian language will always need protection. Regulation that would ensure only teaching of Latvian to students would not be effective because, in order to master a language, it should be not only studied but also used.

The contested norms do not restrict the possibility to use materials in various languages or to participate in international conferences. Thus, multilingualism is retained. Likewise, perhaps the discussion on the minimum requirements regarding the use of foreign languages in the study process should be renewed. However, a solution, according to which languages are divided into groups and the use of the official languages of the European Union rather than of other foreign languages in higher education is supported, is acceptable.

15. The summoned person – ***D. M. soc.*** **Aigars Rostovskis, the owner of Ltd. "Turība University" and the chairperson of the Latvian Chamber of Commerce and Industry,** – notes that the national policy should be oriented towards providing incentives for using the Latvian language rather than the prohibition of other languages. Latvia as a State should safeguard, reinforce and develop its sovereignty and independence as well as the national traditions, culture and language. The Latvian language should be reinforced and developed, at the same time expanding its usability. Latvia should be both patriotic and inclusive at the same time, but its system of education – free, creative, and international.

Regulation on private and State institutions of higher education should be the same. *Inter alia*, private institutions of higher education should have the same possibilities for obtaining the financing of the European Union or other financing as the State institutions of higher education. Currently, this is not the case.

However, not only the aims to be attained but also the methods used for reaching them are said to be important. A trend is said to be typical of the Latvian legislator to incorporate into legal acts unsubstantiated mechanisms of prohibition, hoping to protect or develop something by this. However, such mechanisms do not function in the contemporary world, which is open and in constant development. To reinforce the official language, incentives should be provided for the wish to use the Latvian language, its use in new technologies should be supported, and the interest of foreigners to learn Latvian should be stimulated.

The language of studies is said to be part of academic freedom. The decision on the choice of the language of studies at an institution of higher education is made as the result of interaction between students, faculty members and owners or founders. The choice of the language of studies should be allowed in Latvia to prevent the flowing away of potential students to other countries. Moreover, studies in a multicultural environment allow acquiring inter-cultural competence during the period of studies. Latvia should promote the involvement of foreign

institutions of higher education that would give additional potential for society's development. Experts who are proficient in several languages are said to be in very high demand in Latvia. If the great role of the Russian language causes concern, it should be noted that the trend for the Russian speakers to study in Russian is already decreasing. In general, Latvia should make greater effort to integrate foreigners. Studies in languages that are not the official languages of the European Union should be permitted as a niche service since it would open broader possibilities for students and entrepreneurs. It is hard to say what the losses that the private institutions of higher education currently incur are because the contested norms, which prohibit from delivering study programmes in Russian, are applied to them, but these could be estimated to be in the amount of approximately 10 million euros.

None of the restrictions that affect entrepreneurship, including operation of private institutions of higher education, promote economic development. Administrative restrictions are not beneficial for education since the interaction of cultures and languages and diversity provide more extensive possibilities for cognition, which is not contrary to the development of Latvian. Currently, higher education in Latvia, allegedly, is too regulated, unstable and excessively politicised.

Basically, Latvian should be learnt in families, kindergartens and schools. Whereas the use of Latvian in higher education should be promoted by economic incentives, for example, offering subsidised study places in programmes of education, delivered in Latvian, or financial support to institutions of higher education, where foreign students learn Latvian.

16. The summoned person – ***Dr. iur.*** **Edvīns Danovskis, a docent at the Faculty of Law, the University of Latvia,** – notes that, in the present case, the substantial issue is whether the restriction, included in the contested norms, to implement study programmes in foreign languages, restricts the right to education, established in Article 112 of the *Satversme*.

Allegedly, academic freedom does not follow from the right, enshrined in the first sentence of Article 112 of the *Satversme*. However, the restriction on implementing study programmes in foreign languages, *inter alia*, in Russian, included in the contested norms, restricts the right to access to higher education, included in Article 112 of the *Satversme*. The contested norms restrict the possibilities of a large part of Russian-speaking inhabitants of Latvia to acquire

higher education in their native language. The right to demand that education were ensured to persons in the form and language of their preference, except the right to access to education in the official language in State institutions of education, does not follow from Article 112 of the *Satversme*. The contested norms, however, do not require ensuring anything but deny the possibility to create study programmes in foreign languages.

Academic freedom is said to be the main reason why State institutions of higher education have been established as derived public persons. It is self-evident in the activities of institutions of higher education and needed for the entire humanity to create an environment, in which knowledge can be acquired and passed on to successive generations. However, academic freedom is not fully enshrined in the *Satversme*. Only one of its aspects – the scientific and creative freedom – has been embedded in Article 113 of the *Satversme*. This aspect comprises the prohibition for the State to set the directions regarding the content of scientific activities as well as, in interconnection with Article 112 of the *Satversme*, imposes upon the State the obligation to create such system of higher education where this freedom would be respected. Other aspects of the academic freedom, for example, the right to freely choose teaching methods, cannot be "read into" any article of the *Satversme*.

17. The summoned person – former Minister for Education and Science Kārlis Šadurskis – noted at the court hearing that the official language should be used in all fields of life, *inter alia*, in higher education. The State, in delegating to a private educator the right to issue documents of higher education, recognised by the State, that grant equal rights in the labour market to the graduates of the State and private institutions of higher education, has not only the right but also the obligation to ensure equivalence of this education, *inter alia*, also with respect to proficiency in the official language. In accordance with statistical data, the majority of adolescents belonging to ethnic minority have poor proficiency in the official language, but this is inadmissible for persons who have acquired higher education. These data prove that the regulation, established by the contested norms, continues to be necessary.

Section 5 of the law "On Higher Institutions of Education" comprises a general task to reinforce the official language but does not impose specific duties upon institutions of higher education. For Latvia, the priority protection is aimed at the official language, followed by the official languages of the European Union,

and only afterwards – other foreign languages. Allegedly, Latvia has no need for guest professors who are unable to work in the international language of science – English, because they cannot approbate their work internationally. Section 56 (3) of the law "On Institutions of Higher Education" has been created in accordance with this principle.

The interpretation of Para 1 of Section 56 (3) of the law "On Institutions of Higher Education", offered by the Ministry of Education and Science, should be respected, it provides that also Latvian nationals can be enrolled in programmes created for foreign students. However, this interpretation cannot be clearly discerned in the text of the norm.

Although it is necessary to reinforce the official language in the area of higher education, it would inconceivable that higher education could be implemented and mastered solely in the Latvian language, as, in such a case, it would not be able to compete globally. Therefore, probably, the minimum proportion of study programmes to be delivered in a language of the European Union should be defined. The regulation with respect to various study programmes could differ, taking into account their particularities; however, it should be the same for both State and private institutions of higher education. It would not be enough to teach Latvian in private institutions of higher education to reach the aim of the contested norms because this teaching would not be as effective as using the language in the study process.

Inclusion of the contested norms in the law had been a logical continuation of the *Saeima*'s decision on the requirements regarding the official language to be met in institutions of basic and secondary education. Since the European Union does not have competence in the area of education, the compliance of the contested norms with the European Union law was not examined in the course of adopting them

The contested norms do not affect the academic freedom because they do not limit the content of education or the study methods, also, they do not restrict the possibilities of students and faculty members to use materials in foreign languages in the study process. Likewise, the contested norms do not regulate that part of students' work, which takes place outside the auditoriums of the institution of higher education and, hence, cannot be controlled.

18. The summoned person – sworn advocate *L. L. M.* Uģis Zeltiņš – is of the opinion that the contested norms do not violate the competition law regulation but restrict the right to conduct business, recognised in the European Union.

Uģis Zeltiņš notes that three groups, with respect to whom an infringement has been caused by the contested norms, could be identified, i.e., students, faculty members and institutions of higher education.

Institutions of higher education are commercial operators in the meaning of the competition law. Although it would not be correct to assess any restriction on competition as a restriction on fundamental rights, established in the *Satversme*; nevertheless, aspects of competition play a certain role in the assessment of proportionality. In such a case, first of all, the particular market should be examined, moreover, assessed primarily from the consumers' perspective. In the present case, it should be assessed, whether the audience, which is addressed by the Riga Graduate School of Law and the Stockholm School of Economics in Riga, perceives these two institutions of higher education as such that could be substituted by other private institutions of higher education. Secondly, market players should be assessed. In this case, the Stockholm School of Economics in Riga and the Riga Graduate School of Law should be considered as being such. Thirdly, in assessing, whether the contested norms prohibit a market player from entering or staying in the market, it can be concluded that it is not the case.

It cannot be considered that the State aid would be provided to the Riga Graduate School of Law and the Stockholm School of Economics in Riga, in the meaning of Article 107 of the Treaty on the Functioning of the European Union, because the State does not provide any financial support to them. Likewise, most probably, an infringement on Article 106 of the Treaty on the Functioning of the European Union will not arise because the State has not envisaged any exclusive rights to these institutions of higher education. Moreover, to identify an infringement of this Article, it is not enough to establish that exclusive rights had been granted, unless they are exercised in a way that distorts competition. In the present case, restrictive practice is ruled out; i.e., an agreement that is prohibited by Article 101 of the Treaty on the Functioning of the European Union.

In the present case, the main issue in the context of the European Union law is said to be the freedom of establishment or to conduct business, which is protected by Article 49 of the Treaty on the European Union. Regulation on language use in higher education could be regarded as an obstacle for the right to conduct business. Therefore it should be verified, whether the obstacle has a

legitimate aim and whether the restriction is commensurate with the encumbrance caused by it.

Protection of the official language could be recognised as being the legitimate aim of the restriction. The Court of Justice of the European Union also recognises such an aim as acceptable. In examining the proportionality of the restriction, the constitutional role of the Latvian language in Latvia should be taken into account. Uģis Zeltiņš notes that, in his opinion, the restriction caused by the contested norms is proportional but, since highly abstract norms need to be interpreted in the present case, it cannot be stated, what would the Court of Justice of the European Union rule in a situation like this.

In adopting norms that may affect the fundamental rights of the European Union the legislator should consider the compliance thereof with the European Union law; however, no quality or quantity standards have been set for such considerations.

19. The summoned person – **sworn advocate *L. L. M.* Jūlija Jerņeva** – is of the opinion that the contested norms do not violate the competition law but it should be assessed, whether they are compatible with the freedom of establishment, enshrined in the European Union law.

Jūlija Jerņeva notes that the competition law is not applicable in the present case. The right to deliver study programmes in the languages of the European Union is vested both in institutions of private education, which have been permitted to do so by special laws, and in other institutions, within the framework of Section 56 (3) of the law "On Institutions of Higher Education". Likewise, the provision on prohibited state aid is out of the question because the State's financial resources are not used.

However, a restriction on the freedom of establishment and the freedom to provide services, enshrined, respectively, in Article 49 and Article 56 of the Treaty on the European Union, should be examined. In this case, most probably, the freedom of establishment has been restricted.

In drafting the contested norms, the legislator, first of all, had to verify who had the competence to regulate the respective matter. Since the contested norms impact also the internal market of the European Union, the legislator had to examine, secondly, the compliance of these norms with the Treaty on the Functioning of the European Union. As regards persons outside the European Union, the legislator, prior to adopting the contested norms, had to abide also by

the General Agreement on Trade in Services because these norms could impact the common commercial policy of the European Union.

Although the matters of the official language and education are within the competence of the Member States of the European Union, this does not exclude the obligation to verify the compliance of draft laws, prepared in these areas, with Article 49 and Article 56 of the Treaty on the Functioning of the European Union. Section 56 of the law "On Institutions of Higher Education" creates a restriction on these norms because it constitutes a barrier for entering into the market of higher education, which is hard for foreigners to overcome. The development of the official language in the interests of society could be recognised as being the aim of this restriction. Although the Member States have extensive competence in this matter, the restriction is said to be disproportional. In analysing proportionality, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (hereafter – the Services Directive) should be taken into account. Likewise, the Charter of Fundamental Rights of the European Union, which, *inter alia*, protects academic freedom, the right to property and freedom of establishment, should be examined.

20. The summoned person –*D. M.* Uģis Gruntmanis, Professor at Southwestern University, Texas, – notes: the fact that, in the countries of the European Union, education can be acquired in the official languages of the European Union, is self-evident. However, to ensure the quality of higher education, attract foreign faculty members and facilitate staying of the students who are Latvia's nationals in Latvia, it would be necessary to allow obtaining education at least in English. The regulation on languages on different levels of higher education could differ due to the different aims of these levels. With respect to master and doctoral level study programmes, the requirements regarding the official language, introduced by the contested norms, are said to be unsubstantiated.

Likewise, Latvia has to compete with other countries in attracting foreign students. It would be more important to provide incentives to these students to learn the official language rather than create a situation, where they do not want to come to Latvia because studies are delivered in a language, incomprehensible to them.

The Findings

21. The Applicant requests assessing the compatibility of several norms of the law "On Institutions of Higher Education" with the principle of legitimate expectations, which falls within the scope of Article 1 of the *Satversme* and is derived from the basic norm of a democratic state governed by the rule of law, as well as with Article 105 and Article 112 of the *Satversme*.

If the compliance of a contested norm with several provisions of the *Satversme* is contested, the Constitutional Court, in view of the merits of the case, must determine the most effective approach to reviewing this compliance (*see Judgement of 26 April 2018 by the Constitutional Court in Case No. 2017-18-01, Para 23*).

It follows from the application that the case involves two basic issues – regarding the right of private institutions of higher education to engage in commercial activities and regarding the delivery of study programmes of higher education in foreign languages in private institutions of higher education. In view of the facts of the case and the arguments stated by the Applicant regarding the possible incompatibility of the contested norms with the *Satversme*, to ensure more effective examination of the case, the Constitutional Court, first and foremost, will examine their compatibility with Article 105, in interconnection with the principle of legitimate expectations, included in Article 1 of the *Satversme*, and afterwards – with Article 112 of the *Satversme*.

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22. The Applicant has noted that the contested norms infringe upon the right to property and legitimate expectations of the private institutions of higher education, which are included in Article 1 and Article 105 of the *Satversme*.

Article 1 of the *Satversme* provides that Latvia is an independent democratic republic. The Constitutional Court has recognised that the scope of Article 1 of the *Satversme* comprises the principle of legitimate expectations, derived from the basic norm of a democratic state governed by the rule of law, which protects such rights, with respect to the exercise of which a person could develop legitimate, valid and reasonable expectations, which is the core of this general principle of law. The State, in turn, is obliged to abide by this principle.

The principle of legitimate expectations is linked to the principle of legal certainty and ensures the stability, required by it, prohibiting inconsistent actions by the State. This principle is based on the fact that an individual may expect the State to act legally and consistently, whereas the State must protect the trust given to it. The existence of the principle of legitimate expectations, i.e., one of the general legal principles, is linked not only to trusting the State power but also to the possibilities of the addressees of legal norms to exercise their discretion. The principle of legitimate expectations protects the rights that a person has once gained, i.e., the person may expect that the rights, which have been acquired in accordance with a valid legal act, would be retained and exercised for a certain period of time. However, the principle of legitimate expectations does not exclude the possibility that an individual's rights, once acquired, may be amended in a legal way. Namely, this principle does not give the grounds to expect that the legal situation that has been established once would never change. It is also essential that, in such a case, the legislator sets a "lenient" transitional period (*see Judgement of 8 March 2017 by the Constitutional Court in Case No.2016-07-01, Para 16.2.*).

In assessing the compliance of a legal norm with the general legal principles, derived from the basic norm of a democratic state governed by the rule of law, which fall within the scope of Article 1 of the *Satversme*, it should be taken into account that these principles may manifest themselves differently in different areas of law. Likewise, the nature of the contested norm, link to other norms of the *Satversme* and its place within the legal system also influence the review conducted by the Constitutional Court. If the compliance of a legal norm with both the principle of legitimate expectations and Article 105 of the *Satversme* is contested in the case, the compliance of the contested norm with Article 1 of the *Satversme* must be assessed in interconnection with Article 105 of the *Satversme* (*see, for example, Judgement of 6 December 2010 by the Constitutional Court in Case No. 2010-25-01, Para 4, and Judgement of 19 October 2011 in Case No. 2010-71-01, Para 15*).

In the present case, the principle of legitimate expectations is closely linked to a possible restriction on the right to property. I.e., private institutions of higher education had expected that the legislator had envisaged concrete rules regarding the commercial activities they engaged in – provision of higher education services – and that they, in compliance with these rules, would be able to continue these activities. Thus, in reviewing the possible restriction on a person's right to

property, also the principle of legitimate expectations should be taken into account (*compare, see Judgement of 12 February 2020 by the Constitutional Court in Case No. 2019-05-01, Para 16.2.*).

Hence, the compliance of the contested norms with the principle of legitimate expectations must be examined in interconnection with Article 105 of the *Satversme*.

23. It is noted in the application that the contested norms violate the right to property of private institutions of higher education, included in Article 105 of the *Satversme*.

To examine the compliance of the contested norm with Article 105 of the *Satversme*, it must be established, whether the contested norm restricts the fundamental rights of the respective person, *inter alia*, what, in the present case, should be considered the object of the right to property and whether the contested norm restricts this right (*see Judgement of 18 December 2018 by the Constitutional Court in Case No. 2016-04-03, Para 19*).

23.1. Article 105 of the *Satversme* establishes a comprehensive guarantee for rights of financial nature. "The right to property" should be understood as all rights of financial nature, which the person, entitled to this right, may exercise to their benefit and may use according to their wishes (*see, for example, Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 17.1. , and Decision of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03, Para 8.2.*). This includes the owner's right to use the property in their ownership in order to gain maximum possible economic benefit (*see Judgement of 12 November 2008 by the Constitutional Court in Case No. 2008-05-03, Para 7*). The Constitutional Court has recognised that a person's right to engage in commercial activities on the basis of a licence falls within the scope of the right to property (*see, for example, Judgement of 12 December 2014 by the Constitutional Court in Case No. 2013-21-03, Para 10.1.*).

Pursuant to Article 89 of the *Satversme*, the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws and international treaties binding upon Latvia. On the level of constitutional law, international norms of human rights and the practice of application thereof serve as a means of interpretation to determine the content and scope of fundamental rights and general legal principles, insofar this does not lead to decreasing or restricting the fundamental rights, included in the *Satversme* (*see, for example,*

Judgement of 24 November 2017 by the Constitutional Court in Case No. 2017-07-01, Para 19).

Article 68 of the *Satversme*, in turn, provides and the Constitutional Court has recognised that, with the ratification of the Treaty on Latvia's Accession to the European Union, the European Union law has become an integral part of the Latvian legal system. Hence, in establishing the content of national regulatory enactments and in applying them, Latvia must take into account the legal acts of the European Union that reinforce democracy and the interpretation thereof, enshrined in the judicature of the Court of Justice of the European Union (*see Judgement of 6 March 2019 by the Constitutional Court in Case No. 2018-11-01, Para 16.2.*).

Hence, also the interpretation of Article 105 of the *Satversme* is influenced by the European Union law and the practice of application thereof.

At the court hearing, the Applicant's representative Inese Nikuļceva noted that the contested norms violated the rights established in Article 105 of the *Satversme* since they were incompatible with Article 49 of the Treaty on the Functioning of the European Union (*see Transcript of the Court Hearing of 23 April 2020, Case Materials, Vol. 3, p. 105.*). Summoned person Jūlija Jerņeva also noted that the obligation to interpret the norms of the *Satversme* in interconnection with the fundamental rights and freedoms, established in the European Union law, followed from the European Union law (*see Transcript of the Court Hearing of 23 April 2020, Case Materials, Vol. 5, p. 19.*).

Article 49 of the Treaty on the Functioning of the European Union defines the freedom of establishment for the citizens of the Member States of the European Union. Substantially, the freedom of establishment envisages that the companies of a Member State of the European Union have the right to operate and offer their services in any other Member State of the European Union. The freedom of commercial activities or of establishment prohibits the Member States of the European Union from placing unfounded obstacles to the commercial activities by the companies of other Member States within their territory (*see: Potaičuks A. Brīvība veikt uzņēmējdarbību. In: Schewe C. (zin. red.). Eiropas Savienības tiesības. II daļa. Materiālās tiesības. Rīga: Tiesu namu aģentūra, 2016, 258. lpp.*). The freedom of establishment is linked to the freedom to conduct business, enshrined in Article 16 of the Charter of Fundamental Rights of the European Union. The Court of Justice of the European Union has recognised that this norm comprises a reference to Article 49 of the Treaty on the Functioning of

the European Union and the freedom included therein (*see Judgement of 13 February 2014 by the Court of Justice of the European Union in Case C-367/12, Para 22*).

The right to property, included in Article 105 of the *Satversme*, comprises everyone's right to use their property, *inter alia*, engage in the commercial activities that have been commenced. Hence, it follows from the commitments that Latvia has assumed with its membership in the European Union that Article 105 of the *Satversme* must be specified in interconnection with the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union. This must be done, in particular, because Latvia, since its accession to the European Union, has become the participant of the internal market of the European Union.

Thus, it follows from the commitments that Latvia has assumed with its membership in the European Union that Article 105 must be specified in interconnection with the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union.

23.2. The Applicant holds that the contested norms restrict the rights of private institutions of higher education to engage in commercial activities on the basis of the acquired licence because they prohibit from providing higher education services in foreign languages as well as restrict the right to create new study programmes in foreign languages, on the basis of the investments already made. It is alleged that the restrictions, included in the contested norms, with respect to languages of study programmes in higher education violate the right to freedom of establishment, included in Article 49 of the Treaty on the European Union, and the freedom to provide services, included in Article 56, because they restrict the possibilities of companies from the Member States of the European Union to provide higher education services in Latvia by establishing branches and providing education services in foreign languages. At the court hearing, the Applicant's representative Inese Nikuļceva noted that such a restriction on the European Union law was disproportional (*see Transcript of the court hearing of 23 April 2020, Case Materials, Vol. 3, p. 105*). In addition to that, the contested norms, allegedly, do not envisage a sufficiently lenient transition to the new regulation or a compensation mechanism.

The Applicant also notes that the contested norms restrict competition in the market of services provided by private institutions of higher education. Hence, it is alleged that they violate Article 101 and Article 107 of the Treaty on the

Functioning of the European Union. Para 1 of Section 56 (3) of the law "On Institutions of Higher Education", in interconnection with Section 19 of the law "On Stockholm School of Economics in Riga", grants to this private institution of higher education the right to offer study programmes in English also to students who are Latvia's nationals.

The *Saeima* has stated in its written reply that the contested norms do not restrict the right, included in Article 105 of the *Satversme*, since this right does not envisage legal protection for persons' right to gain profit. Moreover, it should be taken into account that private institutions of higher education operate in an area of commercial activities with special regulation, which is subject to reaching the aims, set by the legislator, and may be linked to gaining profit only after that. Even if it were recognised that the contested norms restricted the right, defined in Article 105 of the *Satversme*, this restriction is proportional because private institutions of higher education still may deliver study programmes that comply with the requirements of the law "On Institutions of Higher Education", offer courses of non-formal education and provide research services. Moreover, Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" envisages a sufficiently long transitional period.

At the court hearing, the *Saeima*'s representative Sandis Bērtaitis argued that the European Union law did not restrict the possibilities of the Member States to adopt, in the area of education, such legal regulation that was necessary for the protection of national values. Likewise, special regulation on study programmes in the languages of the European Union is envisaged in Section 56 (3) of the law "On Institutions of Higher Education", thus, without isolating from the educational area of the European Union (*see Transcript of the Court Hearing of 23 April 2020, Case Materials, Vol. 3, p. 127*).

At the court hearing, several of the summoned persons noted that the contested norms, possibly, restricted the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union. For example, Jūlija Jerņeva argued that Section 56 of the law "On Institutions of Higher Education" created an obstacle, hard to overcome, for a foreign company's entrance into Latvia's market of higher education. Uģis Zeltiņš also agreed that the regulation on language use in higher education, included in the contested norms, could be considered as being an obstacle to the right to engage in commercial activities.

The Constitutional Court finds that the opinions on whether the contested norms restrict the right to property of private institutions of higher education, included in Article 105 of the *Satversme*, differ. Pursuant to the judicature of the Court of Justice of the European Union, delivery of study programmes in higher education for remuneration falls within the area of application of the freedom to establishment if a national of one Member States carries out these activities, on a stable and continuous basis, from a principal or secondary establishment of the entrepreneur's Member State. All measures, which prohibit, impede or render less attractive the exercise of this freedom must be regarded as a restriction on this freedom, in the meaning of the first part of Article 49 of the Treaty on the Functioning of the European Union (*see Judgement of 13 November 2003 by the Court of Justice of the European Union in Case C-153/02, Para 39 and 41*). On 5 March 2020, the Advocate General of the Court of Justice of the European Union Juliane Kokott in her opinion assessed the regulation of Hungary, which provides that foreign institutions of higher education, wishing to engage in economic activities in Hungary, could do so only if the institution of higher education provided higher education services in the country of its registration and an international agreement had been concluded between Hungary and the respective country. Although the government of Hungary noted that this regulation was necessary for the protection of public order and for ensuring the quality of higher education, the Advocate General concluded that it was incompatible with Article 49 of the Treaty on the Functioning of the European Union, in interconnection with its Article 54 (*see Opinion of Advocate General of the Court of Justice of the European Union Juliane Kokott in Case C-66/18, Para 153–161*).

23.3. The Constitutional Court already noted that, in specifying Article 105 of the *Satversme*, it must take into account the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union, and the practice of application thereof. Since the Court of Justice of the European Union currently is examining a case, which, although is not identical with this case, reviewed by the Constitutional Court, it, nevertheless, is linked to matters of law, which could be of substantive importance in specifying Article 105 of the *Satversme* in the context of the present case, the Constitutional Court is of the opinion that there are substantive matters that need to be clarified for the adjudication of the present case, *inter alia*, also the matter of possible obligation to request the Court of Justice of the European Union to deliver a preliminary ruling.

The present case is being adjudicated within the framework of abstract constitutional control; i.e., it was initiated on the basis of an application by twenty members of the 13th Convocation of the *Saeima*. However, the norms contested in this case already impact and also will impact a significant number of natural and legal persons. Following the principle of effectiveness, the principle of legal certainty and the principle that the protection of fundamental rights takes the priority, the Constitutional Court considers as undesirable a situation, in which the issue of the compliance of the contested norms with the *Satversme* would not be resolved at least partially for a longer period of time, while the Constitutional Court considered the matter of the need to turn to the Court of Justice of the European Union, requesting a preliminary ruling, or, if the decision were made to turn to the Court of Justice of the European Union, until the moment when the answers to the referred questions were received from the Court of Justice of the European Union.

Section 22 (6) of the Constitutional Court Law provides that the division of a case into two or several cases is admissible for the purpose of facilitating comprehensive and speedy adjudication. The Constitutional Court recognises that all essential issues, significant for the adjudication of the case, have been clarified with respect to the compliance of the contested norms with Article 112 of the *Satversme*; therefore the judgement can be delivered in this part. Hence, in accordance with the principle of effectiveness, the principle of legal certainty and the principle that the protection of fundamental rights takes the priority, within the framework of the present case, the Constitutional Court should separate the assessment of the compliance of the contested norms with Article 1 and Article 105 of the *Satversme*.

Hence, case No. 2019-12-01 shall be divided into:

1) case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 112 of the *Satversme* of the Republic of Latvia" and

2) case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia".

23.4. The Constitutional Court has recognised that the procedural principle is applicable in the legal proceedings before the Constitutional Court – resuming

hearing the case on its merits to assess comprehensively and objectively all facts of the case and legal reasoning, necessary for adjudicating the case on its merits (*see Decision of 10 December 2013 by the Constitutional Court on Resuming the Hearing of the Case No. 2013-04-01, Para 3.2.*).

To facilitate comprehensive and speedy adjudication of the divided cases as well as to decide on referring a question to the Court of Justice of the European Union for a preliminary ruling, in the case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia", reviewing the case on its merits should be resumed. Whereas in the case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 112 of the *Satversme* of the Republic of Latvia", a judgement shall be delivered.

II

24. The Applicant requests the Constitutional Court to review the compliance of the contested norm with Article 112 of the *Satversme*, noting that these norms violate the autonomy of private institutions of education as well as the academic freedom of the faculty members and students of private institutions of higher education.

Conflicting opinions on the connection of the contested norms with the right to education have been expressed in the present case. The Applicant and the Council of Higher Education note that the contested norms restrict the right, included in Article 112 of the *Satversme*. The Ombudsman notes that the compliance of the contested norms with Article 112 of the *Satversme* should be examined in interconnection with the compliance thereof with Article 113 of the *Satversme.* The *Saeima* and the persons summoned in the case – the Ministry of Justice and the Ministry of Foreign Affairs – express the opinion that the contested norms do not directly affect exercising the right to education, included in Article 112 of the *Satversme*. To assess, whether the contested norms infringe upon the rights, established in Article 112 of the *Satversme,* the scope and the content of the rights included in the first sentence of the respective article must be established.

24.1. Article 112 of the *Satversme* provides: "Everyone has the right to education. The State shall ensure that everyone may acquire primary and

secondary education without charge. Primary education shall be compulsory." In difference to the second sentence of Article 112 of the *Satversme*, which is applicable to the basic and secondary education, the first sentence of this article establishes the right to obtain education in the broadest meaning of it and is applicable to education programmes of all levels and types (*see Judgement of 6 May 2011 by the Constitutional Court in Case No. 2010-57-03, Para 11.1.*).

The Constitutional Court has already recognised that an appropriate level of education and science is an indispensable pre-requisite for the successful development of every state (*see Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 3.2. of the Findings*). The State-financed basic and secondary education, which is included in the second sentence of Article 112 of the *Satversme*, is the basic means for ensuring the right to education. To facilitate the sustainable development of knowledge-based society, pursuant to the first sentence of Article 112 of the *Satversme,* the State may establish also other, higher levels of education. The legislator has created such a system, which creates the possibilities for a person to obtain higher education. The studies in such programmes of higher education fall with the scope of the first sentence of Article 112 of the *Satversme* (*see Judgement of 24 October 2019 by the Constitutional Court in Case No. 2018-23-03, Para 11.1. and 11.2.*).

24.2. In clarifying the content of human rights, included in the *Satversme*, Latvia's international commitments in the area of human rights must be respected. Article 112 of the *Satversme* must be specified and applied in interconnection with Article 2 of the First Protocol to the Convention, the first sentence of which provides: "No person shall be denied the right to education" (*see, for example, Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 20*). Thus, with respect to the content of Article 112 of the *Satversme,* the Constitutional Court takes into account the judicature of the European Court of Human Rights regarding the application of Article 2 of the First Protocol to the Convention. In the application of Article 112 of the *Satversme*, in turn, Article 13 of the International Covenant on Economic, Social and Cultural Rights, which protects the right to education, should be taken into account.

The European Court of Human Rights has noted that Article 2 of the First Protocol to the Convention applies to the basic and secondary education and has recognised that higher education is essential for the acquisition and improvement of knowledge. It is an important cultural and scientific value both for the person and the society, hence, Article 2 of the First Protocol to the Convention applies to

any institution of higher education, established by the State (*see Judgement of 10 November 2005 by the European Court of Human Rights in Case "Leyla Şahin v. Turkey", Application No. 44774/98, Para 134–142*).

Likewise, Article 13 of the International Covenant on Economic, Social and Cultural Rights recognises the right of each person to education, and the second part of this Article refers to the right to access to higher education. Hence, the right to higher education is to be recognised as one aspect of the right to education.

24.3. The Applicant has noted that Article 112 of the *Satversme* comprises the academic freedom and autonomy of institutions of higher education.

In the Constitutional Court's judicature, arguments regarding the academic freedom of faculty members have been examined in the framework of Article 113 of the *Satversme*. The Constitutional Court has already noted that, in setting requirements with respect to the activities of academic staff members, for example, establishing a fixed-term employment contract, the rights defined, *inter alia*, in Article 113 of the *Satversme* must be respected (*see, compare, Judgement of 7 June 2019 by the Constitutional Court in Case No. 2018-15-01, Para 11.3.*).

Magna Charta Universitatum underscores that education and research in universities are inseparably linked and that research cannot be separated from teaching (*see: Magna Charta Universitatum, 1988*). The Committee of Ministers of the Council of Europe has explained that close coordination of education and research is necessary for improving knowledge (*see: Recommendation No. R(2000)8 of the Committee of Ministers to member states on the research mission of universities*).

Likewise, the summoned persons – Jānis Vētra, the representative of the Council of Higher Education, and Uģis Gruntmanis noted at the court hearing that the activities of institutions of higher education in the area of education could not be separated from their scientific activities. Summoned person Edvīns Danovskis argued that the autonomy and academic freedom of institutions of higher education had to be linked not only to the right to education but also to the freedom of scientific creativity.

The finding has been enshrined in the Constitutional Court's judicature that the *Satversme* is a unified whole and the norms, included therein, should be interpreted systemically (*see Judgement of 22 October 2002 by the Constitutional Court in Case No. 2002-04-03, Para 2 of the Findings, and Judgement of 2 November 2006 in Case No. 2006-07-01, Para 14*). In view of the principle of the *Satversme's* unity and the principles of legal proceedings before the Constitutional

Court, the Constitutional Court may review the compliance of the contested act also with such norms of the *Satversme*, with respect to compatibility with which a case has not been initiated (*see, for example, Judgement of 19 December 2001 by the Constitutional Court in Case No. 2001-05-03, Judgement of 22 October 2002 in Case No. 2002-04-03, and Judgement of 2 November 2006 in Case No. 2006-07-01, Para 14*).

Higher education unites harmoniously both the process of education and scientific activities and research. These aspects of higher education are inseparable. Hence, in view of the close connection between higher education and the freedom of scientific, artistic and other creativity, in the present case, in addition to the compliance of the contested norms with Article 112 of the *Satversme* also the compliance thereof with Article 113 of the *Satversme* need to be examined.

Therefore, the Constitutional Court will review the compliance of the contested norms with Article 112 of the *Satversme*, in interconnection with Article 113 of the *Satversme*.

25. To establish, whether the contested norms restrict the autonomy and academic freedom of institutions of higher education, the Constitutional Court must, initially, clarify the content of these concepts.

25.1. The global experience shows that the pre-condition for the development of any contemporary society is a system of education, which includes also the level of higher education. It is exactly on this level, where, taking into account the importance of scientific creativity in ensuring higher education, new ideas are generated and the accrued scientific findings are transmitted, promoting public welfare and sustainable development. Science-based higher education ensures free and creative discussions, which are necessary for reinforcing democratic debates, acceptance of the diversity of opinions as well as for conducting important research.

This is exactly why, as noted by the UN Committee on Economic, Social and Cultural Rights, the right to education, in particular, higher education, cannot be exercised in the absence of the academic freedom of the faculty members and students and the autonomy of educational institutions (*see UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The Right to Education (Art.13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, Para 38*). The European Parliament

also has noted that the right to education can be enjoyed only in such an environment where the academic freedom rules, providing the possibility to engage in knowledge-based debates (*see: European Parliament recommendation to the Council, the Commission and the Vice-President of the Commission/ High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU's External action (2018/2117(INI))* Therefore, it is recognised that the State has the obligation to respect and defend academic freedom and facilitate exercising thereof (*see: Vrielink J., Lemmens P., Parmentier S., LERU Working Group on Human Rights. Academic Freedom as a Fundamental Right. Available: https://www.sciencedirect.com/*).

The Constitutional Court has noted previously that the State, in drafting regulation, which affects aspects of the faculty members' professional activities, has the obligation to exercise and defend, as well as to ensure the right of the respective persons to the freedom of scientific, artistic and other creativity (*compare, see, Judgement of 7 June 2019 by the Constitutional Court in Case No. 2018-15-01, Para 11.3.*). Article 13 of the Charter of Fundamental Rights of the European Union also provides that arts and scientific research must be free of constraint, i.e., that a researcher's academic freedom is respected.

It is explained in Article 1 of the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education that academic freedom is the freedom of a person, individually or in community, to pursue, develop and transmit knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing. All persons who teach, study, conduct research or work in an institution of higher education have this right (*see: World University Service, The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, 1988*).

The United Nations Educational, Scientific and Cultural Organisation (hereafter – UNESCO) has noted in its Recommendation concerning the Status of Higher-Education Teaching Personnel that the academic freedom comprises the freedom of the teacher to, without constriction by prescribed doctrine, teaching and discussions, the freedom in carrying out research and disseminating and publishing the results thereof, the freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship as well as the freedom to participate in professional or representative academic bodies. The possibility to communicate openly findings, hypotheses and opinions is needed to ensure quality higher education and objectivity and accuracy of

scholarship and research (*see: United Nations Educational, Scientific and Cultural Organisation, Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997*).

Academic freedom should be linked to the right of faculty members to conduct freely, both individually and in community, research in the areas of their interest, to disseminate the results of this research and other knowledge, to share ideas and express their opinions, *inter alia* in the framework of study process, for example, by conducting classes and advising scientific research work.

Likewise, academic freedom comprises the students' right to engage in scientific creativity and to choose study directions and programmes within the framework of the system of education, established by the State. Academic freedom requires science and education to be protected against censorship, allowing the students and faculty members of institutions of higher education to exercise their freedom of expression in the context of academic work.

Thus, it can be concluded that academic freedom is an aspect of the right to education and freedom of scientific creativity. Higher education could be characterised as "a bridge", linking education and scientific research. In this context, a person's right to the freedom of scientific, artistic and other creativity is protected by Article 113 of the *Satversme*, whereas the right to education – by Article 112 of the *Satversme* (*see Judgement of 24 October 2019 by the Constitutional Court in Case No. 2018-23-03, Para 11.2.*). Hence, both Article 112 and Article 113 of the *Satversme* comprise academic freedom.

25.2. Institutions of higher education are needed for a successful embodiment of the collective aspects of academic freedom. Institutions of higher education are to be regarded as not only educational institutions, preparing for work specialists in various areas, but also as the centres of academic education and science. Linking the pedagogical work with research, institutions of higher education unite students, faculty members and researches. To protect the academic freedom of students and academic staff, institutions of higher education need autonomy (*see: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The Right to Education (Art.13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, Para 40*). As underscored in *Magna Charta Universitatum*, to meet the needs of the surrounding world, science and education in universities should be morally and intellectually independent from the political power (*see: Magna Charta Universitatum. Fundamental principles*). Likewise, the autonomy of universities ensures the

constant adaptation of the systems of education and science to the changing needs, public demands and most recent scientific achievements (*see: Bologna Declaration. European Higher Education Area. 19.06.1999.*).

Institutions of higher education, in the framework of their autonomy, insofar it is necessary to ensure the academic freedom of their faculty members and students and insofar they comply with the principles of a democratic state governed by the rule of law and the *Satversme*, may adopt decisions, free from external pressure, to ensure academic freedom.

Also, pursuant with the opinion of UNESCO, the autonomy of institutions of higher education – both public and private institutions of higher education – is the freedom to make decisions on their academic work, standards and other related issues (*see: United Nations Educational, Scientific and Cultural Organisation, Recommendation concerning the Status of Higher-Education Teaching Personnel, 1997, p. 17*). The autonomy of institutions of higher education comprises the autonomy also in other aspects in the management of the institution of higher education, for example, recruitment of faculty members (*see: Matei L., Iwinska J. University Autonomy-A Practical Handbook. Budapest: Central European University. Higher Education Observatory, 2014, p. 27*). The European University Association has noted that the autonomy of institutions of higher education comprises also the right of an institution of higher education to develop its own institutional strategy, defining its aims and missions as well as ways for reaching and implementing thereof, *inter alia*, choosing the language, in which the study programmes are implemented (*see: European University Association, Lisbon Declaration, 2010, p. 26; Estermann T., Nokkala T. University Autonomy in Europe I: Explanatory study. Brussels: European University association, p. 32*).

The Constitutional Court concludes that freedom – one of the values, included in the *Satversme*, – is the foundation of academic freedom and the autonomy of institutions of higher education, required to exercise it. The autonomy of institutions of higher education includes, *inter alia*, the right of institutions of higher education to make decisions regarding their academic activities and strategy. Therefore, the autonomy of institutions of higher education cannot be examined separately from their academic freedom. Thus, in the framework of the autonomy of institutions of higher education, institutions of higher education must ensure the academic freedom of their students and academic staff.

However, the autonomy of institutions of higher education, required to ensure academic freedom, similarly to other rights included in Article 112 and Article 113 of the *Satversme*, is not absolute. It may be necessary to restrict this right to protect other fundamental rights, included in the *Satversme* and other documents of international law, binding upon Latvia.

26. The legal reasoning provided in the application applies to private institutions of education, faculty members and students thereof. Likewise, the *Saeima* in its written response and the summoned persons have provided opinions on the compliance of the contested norms with the *Satversme*, insofar they are applicable to the activities of private institutions of higher education and persons connected to them.

The Constitutional Court has repeatedly noted: if the contested norm applies to a broad totality of different situations, the extent, to which this norm will be reviewed, needs to be specified (*see Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6, and Judgement of 19 December 2011 in Case No. 2011-03-01, Para 13*).

Also in the present case, it should be specified, with respect to which persons the compliance of the contested norms with the *Satversme* must be examined. The Applicant and several persons summoned in the case, for example, the Council of Higher Education and the Association of Private Institutions of Higher Education, point out that institutions of higher education should be granted the freedom to choose the language, in which study programmes are implemented. Whereas the *Saeima* as well as the summoned persons – Ministry of Education and Science, Kārlis Šadurskis and Ina Druviete – note that the State should regulate the use of languages in higher education. However, all persons summoned in the case agree that the regulation on the private and State institutions of higher education should be the same.

The Constitutional Court notes that the autonomy and academic freedom of institutions of higher education are applicable both to the State and private institutions of higher education. However, in view of the arguments presented in the application and other materials in the case, the Constitutional Court will review the compliance of the contested norms with the rights, included in the *Satversme*, of the faculty members and students of private institutions of higher education as well as of the private institutions of education.

27. Section 5 of the law "On Institutions of Higher Education" defines the objectives of institutions of higher education. A new objective – to cultivate and develop the official language – was added to them by Amendments to the law "On Institutions of Higher Education" of 21 June 2018.

The first sentence of Article 112 of the *Satversme* comprises the right to make full use of all possibilities provided by the system of education, *inter alia*, higher education. This means, respectively, that the State's obligation is to create a system of education that is accessible to all learners (*see Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 20*). In view of the importance of higher education in the sustainability of society and the development of national science, the State has the obligation, respecting the autonomy and academic freedom of institutions of higher education, to create such a system of higher education that would ensure that these institutions of education act in the interests of society in general.

As noted above, the autonomy and academic freedom of institutions of higher education are necessary so that society would benefit from the academic activities of institutions of higher education and their faculty members. Section 5 (4) of the law "On Institutions of Higher Education" imposes an obligation upon institutions of higher education to organise their work in the interests of society. Similarly to the objectives of institutions of higher education, which were included in Section 5 (1) of the law "On Institutions of Higher Education" before the amendments to the law "On Institutions of Higher Education" of 21 June 2018, to cultivate and develop arts and science, also the objective to cultivate and develop the official language underscores that institutions of higher education act in the interests of society.

Article 4 of the *Satversme* provides that Latvian is the official language in Latvia. The function of the official language to be the society's common language of communication and democratic participation follows from the constitutional status of the official language. The Constitutional Court has recognised that all persons, permanently residing in Latvia, must understand the language of this State. Members of society, who understand and respect the values, on which the *Satversme* is based, is the pre-condition for the existence of a democratic state governed by the rule of law (*see Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 24.2.*). Hence, the State has a positive obligation to promote the use of the official language on all levels of education. Cultivation and development of the official language are one of the tasks that

follow from the general obligation of institutions of higher education to act in the interests of society.

The autonomy of institutions of higher education and the right, following from it, to make decisions regarding their academic activities, similarly to the State's obligation to ensure quality higher education and to facilitating the use of the official language, is aimed at promoting and protection of society's interests. Hence, both the autonomy and academic freedom of institutions of higher education and the words "and the official language" of Section 5 (1) of the law "On Institutions of Higher Education" are aimed at protecting the interests of society.

Thus, the Constitutional Court finds that, by the obligation to cultivate and develop the official language, established in Section 5 of the law "On Institutions of Higher Education", the legislator has specified the positive obligation of the State to create such regulation on higher education that ensures that institutions of higher education act in the society's interests. Moreover, it should be taken into account that the contested norms grant broad discretion to institutions of higher education in performing this task.

Hence, the third sentence of Article 5 (1) of the law "On Institutions of Higher Education" complies with Article 112 of the *Satversme*, in interconnection with Article 113 of the *Satversme*.

28. Section 56 (3) of the law "On Institutions of Higher Education" provides that all institutions of higher education, *inter alia*, private institutions of higher education, implement study programmes in the official language. The use of foreign languages in the implementation of study programmes is permitted only in the cases, envisaged in the respective norm. Institutions of higher education may implement study programmes in the official languages of the European Union in the programmes, which foreign students acquire in Latvia, study programmes, which are delivered in the framework of co-operation envisaged in programmes of the European Union and international agreements (*see Para 1 of Section 56 (3) of the law "On Institutions of Higher Education"*), joint study programmes (*see Para 4 of Section 56 (3) of the law "On Institutions of Higher Education")* and study programmes of languages and culture (*see Para 3 of Section 56 (3) of the law "On Institutions of Higher Education).* Also, no more than one-fifth of the amount of credit points of any study programme may be implemented in the official languages of the European Union (*see Para 2 of Section 56 (3) of the law*

"On Institutions of Higher Education"). Only study programmes of language and culture studies may be implemented in languages, which are not the official languages of the European Union (*see Para 3 of Section 56 (3) of the law "On Institutions of Higher Education").* In other cases, the use of foreign languages in the study process is not allowed.

28.1. At the court hearing, Dace Jansone, the representative of the Ministry of Education and Science, noted that, interpreting Para 1 of Section 56 (3) of the law "On Institutions of Higher Education" in interconnection with Section 45 (2) of the law "On Institutions of Higher Education", also students, who are Latvia's nationals, may be enrolled in study programmes, which foreign students acquire in Latvia. Several summoned persons, including Jānis Vētra, the representative of the Council of Higher Education, and Irina Cvetkova, the representative of the Association of Private Institutions of Higher Education, questioned the outcome of such interpretation. Iveta Brīnuma, the representative of the Ministry of Justice, and summoned person Kārlis Šadurskis noted that, although the Ministry of Education and Science interpreted these norms like this, it could not be considered that such interpretation clearly followed from Para 1 of Section 56 (3) of the law "On Institutions of Higher Education".

Pursuant to Para 1 of Section 56 (3) of the law "On Institutions of Higher Education", only those study programmes, which foreign students master in Latvia, as well as the study programmes, which are implemented in the framework of co-operation envisaged in the European Union's programmes and international agreements, may be delivered in the languages of the European Union. The Constitutional Court has noted: to determine the compliance of the contested norms of the *Satversme*, the aims and the genuine meaning of these norms and other closely related norms must be established (*see, for example, Decision of 2 March 2015 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2014-16-01, Para 9*). Pursuant to the principle of a state governed by the rule of law, the person applying the law is subject to legal acts and the law, therefore, it may found its conclusions only on legal rather than law policy arguments. I.e., the party applying the law must decide on the legal dispute by relying on arguments of law [legal arguments], separating these from law policy arguments. Legal reasoning is based, first and foremost, on using legal methods, *inter alia*, the interpretation of legal norms (*see Decision of 20 January 2009 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2008-08-0306, Para 12*). In the present case, using all methods for interpreting legal norms,

the Constitutional Court does not gain confirmation that the text of Para 1 of Section 56 (3) of the law "On Institutions of Higher Education" should be interpreted to mean that students who are Latvia's nationals could be enrolled in study programmes, which foreign students master in Latvia. Hence, in the study programmes, in which Latvia's nationals are enrolled, foreign languages may be used only in the cases referred to in Para 2, Para 3 and Para 4 of Section 56 (3) of the law "On Institutions of Higher Education" as well as in one of the cases referred to in Para 1 of the third part of this Section – in implementing study programmes in the framework of co-operation envisaged by the European Union's programmes and international agreements.

28.2. Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" are interconnected legal norms. Since the coming into force of amendments to the law "On Institutions of Higher Education" of 21 June 2018, Section 56 (3) of the law "On Institutions of Higher Education" regulates the possibilities of private institutions of higher education to use foreign languages in the study process. A transitional period for the implementation of this regulation has been defined in Para 49 of the Transitional Provisions. Hence, the Constitutional Court, in reviewing the compliance of Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" with Article 112 of the *Satversme*, in interconnection with Article 113 of the *Satversme*, will examine the contested norms as united regulation.

29. The Applicant has noted that the rights, established in the *Satversme*, of several subjects are restricted – the faculty members and students of private institutions of higher education as well as of the private institutions of higher education themselves. The Constitutional Court will examine separately each of the possible restrictions on rights with respect to each of the aforementioned subjects.

29.1. It is noted in the application that the contested norms restrict the academic freedom of faculty members to use foreign languages in teaching study courses.

As noted above, higher education comprises both the area of education and science. The State, in setting requirements with respect to the professional activities of the faculty members of institutions of higher education, has the obligation to both respect and defend and also ensure the right of the respective persons to the freedom of scientific, artistic and other creativity (*compare*, *see*,

Judgement of 7 June 2019 by the Constitutional Court in Case No. 2018-15-01, Para 11.3.). This obligation follows both from Article 112 of the *Satversme*, which comprises the right to education, and also Article 113 of the *Satversme*, which comprises the freedom of scientific creativity.

Thus, academic freedom must be linked to the right of faculty members of institutions of higher education to conduct freely research in the areas of their interest, disseminate the results of this research and other scholarship, to share ideas and to express their opinions. Moreover, pedagogical work cannot be separated from scientific research.

Section 56 (3) of the law "On Institutions of Higher Education" regulates the language, in which study programmes are implemented in institutions of education that issue State recognised diplomas of higher education. This norm does not restrict the possibilities of the faculty members of institutions of higher education and of other persons to conduct research or share ideas in foreign languages; however, it influences the possibilities of the academic staff of institutions of higher education to participate in the implementation of study programmes in foreign languages. Study programmes may be delivered in the European Union's languages only in the cases referred to in Para 1-4 of Section 56 (3) of the law "On Institutions of Higher Education". Thus, the provisions of Section 56 (3) of the law "On Institutions of Higher Education" allow faculty members to create joint study programmes in languages, which are not the languages of the European Union, only in the directions of language and culture studies. Hence, this norm restricts the possibilities of faculty members of private institutions of higher education to co-operate with foreign colleagues in the implementation of study courses and programmes.

Hence, Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" restrict the academic freedom of faculty members of private institutions of higher education to develop and teach study courses in foreign languages in private institutions of higher education in Latvia.

29.2. The Applicant notes that the contested norms restrict the students' right to choose such study programmes that are delivered in foreign languages and, hence, restrict the students' academic freedom.

Section 56 (3) of the law "On Institutions of Higher Education" provides that an institution of higher education may implement study programmes in languages of the European Union only if these are study programmes that foreign students master in Latvia, which are implemented in the framework of co-operation

envisaged by the European Union's programmes and international agreements, in which the use of foreign languages is necessary for reaching the aims of the study programmes in the studies of language and culture or which are implemented as joint study programmes. Institutions of higher education may implement study programmes in other foreign languages only if the use of foreign languages is necessary for reaching the aims of the study programmes in the studies of language and culture. After the contested norms enter into force, students may choose to study only in such study programmes that comply with this regulation. Hence, the contested norms influence the possibilities of students to choose study programmes delivered in foreign languages, after the completion of which the institution of higher education issues a State recognised diploma on the acquisition of higher education.

However, Section 56 (3) of the law "On Institutions of Higher Education" does not restrict the possibilities to receive other educational services in foreign languages, for example, courses or training. Hence, the Constitutional Court must establish, whether the State's obligation to ensure the possibility to acquire the diploma of higher education for successful completion of a study programme implemented in a foreign language follows from the right to education and the freedom of scientific creativity.

As to its nature, the right to education is a right that the State must regulate (*see Judgement of 23 July 1968 by the European Court of Human Rights in Case ""Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium", Applications No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 un 2126/64, Para 5 of Part I B*). I.e., the State must establish such legal regulation on education that allows reaching all of its aims appropriate for the particular level and type of education (*see Para 27 of Section 1 of the Education Law*).

In examining the norms, which regulate the use of the official language on the level of general education, the Constitutional Court has recognised that the right to education, established in Article 112 of the *Satversme*, comprises neither the right of learners nor of their parents to choose the language of instruction at an institution of education if this is contrary to the principle of the unity of the system of education, established by the State, and does not foster such approach to the State's education system, which would allow reaching the aims of education with respect to all learners. Neither does Article 112 of the *Satversme* envisage the State's obligation to guarantee that, within the framework of the system of

education established by it, on the level of basic and secondary education, the possibility to acquire education also in another langue, parallel to the official language, would be ensured (*see Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 20.5.*). These findings are applicable also to higher education.

Thus, the right to demand the accreditation of a study programme to be implemented in the language of one's preference and to receive a State recognised diploma of higher education for successful completion of such a study programme does not follow from Article 112 and Article 113 of the *Satversme* either.

29.3. Although students do not have the right to demand the State to issue diplomas of higher education for programmes completed in foreign languages, it must be verified, whether Section 56 (3) of the law "On Institutions of Higher Education", in interconnection with Para 49 of the Transitional Provisions, does not restrict the rights of those students, who have been enrolled in institutions of higher education before the coming into force of the contested norms into study programmes to be implemented in foreign languages.

Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" provides that the students, who have been enrolled in study programmes, which, following the Amendments to the law "On Institutions of Higher Education" of 21 June 2018, are incompatible with Section 56 (3) of this law, have the right to continue mastering this study programme in the respective language until 31 December 2022. Studies in such programmes may be commenced until 1 January 2019. This means that approximately four years and six months are allocated for those students, who have commenced their studies prior to 21 June 2018, but for those students, who have commenced their studies prior to 1 January 2019, – four years for mastering the respective study programme.

Section 57 (1) of the law "On Institutions of Higher Education" provides that the duration of a full-time bachelor's study programme is three to four years, whereas the duration of a full-time master's study programme is one or two years. Section 50 of the law "On Institutions of Higher Education" defines the students' right to suspend and resume studies in a certain procedure. The procedure for granting the break in studies as well as its minimum and maximum duration is defined by the institution of higher education. Thus, if students exercise their right to suspend studies, due to Section 56 (3) and Para 49 of the Transitional Provisions

of the law "On Institutions of Higher Education", a situation may arise where they could not receive the diploma of higher education.

Academic freedom comprises the students' right to choose the direction and programme of studies within the framework of the State's system of education. The law "On Institutions of Higher Education" envisages the students' right to suspend and resume studies; hence, this right also falls within academic freedom. In choosing a study programme, the students could expect that, if necessary, they would be able to suspend and, later, resume their studies. Academic freedom could not be interpreted to mean that a student has the right to suspend and then resume studies for an unlimited number of times or for an unlimited period of time. Likewise, the Constitutional Court noted that the legislator could change the legal regulation, in particular, to ensure fulfilment of its positive obligation with respect to the quality of education.

However, Section 56 (3) of the law "On Institutions of Higher Education", in interconnection with Para 49 of the Transitional Provisions, causes a situation, in which some students, who exercise the right to suspend their studies, may not receive the diploma of higher education because, upon the expiry of the term set in the Transitional Provisions, the institution of higher education will no longer have the right to issue such a diploma. For example, a student, who, in 2018, has commenced studies in a bachelor's level study programme, which is incompatible with the provisions of Section 56 (3) the law "On Institutions of Higher Education" and the duration of which is four years, and who, during this period, has not chosen to suspend the studies, would have to receive the diploma of higher education in 2022. However, if they exercised their right to suspend the studies for one year, the duration of studies would increase. This means that the institution of higher education could issue to them the diploma only in 2023; however, Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" provides that private institutions may implement study programmes, which are incompatible with the requirements set in Section 56 (3) of this law, only until 31 December 2022. Thus, after the expiry of this term, private institutions of higher education will not be able to continue educating students in these study programmes and issue diplomas on their completion.

Hence, Section 56 (3) of the law "On Institutions of Higher Education", in interconnection with Para 49 of the Transitional Provisions, restricts the academic freedom of those students of private institutions of higher education, who have

commenced studies in study programmes that are incompatible with Section 56 (3) the law "On Institutions of Higher Education" before 1 January 2019.

29.4. As noted above, the autonomy of institutions of higher education is, *inter alia*, a means for ensuring the academic freedom of the faculty members and students of institutions of higher education. It also ensures the right to make decisions related to the academic activities of the institution of higher education.

Section 56 (3) of the law "On Institutions of Higher Education" restricts the right of institutions of higher education to adopt decisions on their academic activities and strategy. This contested norm comprises rules on the development of study programmes to be implemented in foreign languages. These rules restrict the freedom of private institutions of higher education to develop study programmes to be implemented in foreign languages because this can be done only in certain cases, for example, in developing a joint study programme with another institution of higher education. Likewise, Section 56 (3) of the law "On Institutions of Higher Education" restricts the possibilities of private institutions of higher education and the faculty members thereof to develop autonomously their institutional strategy, to make decisions on co-operation with other institutions of higher education and to decide on other matters related to the organisation of their work. Only study programmes of language and culture may be delivered in foreign languages, which are not the languages of the European Union. Therefore private institutions of higher education must take this into account, in developing their strategy, *inter alia*, deciding on the aims and target audience of the institution of higher education. Para 1 and Para 4 of Section 56 (3) of the law "On Institutions of Higher Education" allow institutions of higher education to develop study programmes, in co-operation with other institutions of higher education. However, such study programmes may be delivered only in the languages of the European Union.

As noted by summoned person Aigars Rostovskis, private institutions of higher education, in choosing the language for implementing their study programmes, also choose the strategy of their future activities. Irina Cvetkova, the representative of the Association of Private Institutions of Higher Education, noted that, prior to the coming into force of the contested norms, several private institutions of higher education had organised their activities, *inter alia*, by developing study programmes to be delivered in foreign languages and by attracting foreign students.

Pursuant to the data provided by the Ministry of Education and Science, in 2018, 20 per cent of the students attending private institutions of higher education were studying in English, 30 per cent – in Russian, but 10 per cent – bilingually, using Latvian and Russian or Latvian, Russian and English. In three private institutions of higher education more than 80 per cent of the students were studying in foreign languages (on average, 19 per cent of the students attending these institutions of higher education studied in English, 48 per cent – in Russian, but 22 per cent – bilingually).

Section 56 (3) of the law "On Institutions of Higher Education" restricts the possibilities of private institutions of higher education to develop and implement such study programmes because it is possible only in the cases defined in this norm.

Hence, Section 56 (3) of the law "On Institutions of Higher Education" and Para 49 of the Transitional Provisions restrict the academic freedom of the faculty members and students of private institutions of higher education, included in Article 112 of the *Satversme,* in interconnection with Article 113, and the autonomy of private institutions of higher education related to it.

30. The Constitutional Court must examine, whether the restriction on the autonomy of private institutions of higher education and on the academic freedom of the faculty members and students of these institutions, caused by the contested norms, complies with Article 112, in interconnection with Article 113 of the *Satversme*. The right to education, defined in Article 112 of the *Satversme*, and the right to the freedom of scientific creativity, included in Article 113, may be restricted. To establish, whether the restriction is justifiable, it must be verified, whether: 1) it has been established by law; 2) it has a legitimate aim; 3) it is proportional (*see, for example, Judgement of 24 October 2019 by the Constitutional Court in Case No. 2018-23-03, Para 13*).

31. To assess, whether the restriction on fundamental rights has been established by law, it must be verified: 1) whether the law has ben adopted in compliance with the procedure set out in regulatory enactments; 2) whether the law has been promulgated and is publicly accessible, in compliance with the requirements set in regulatory enactments; 3) whether the law has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from it and forecast the consequences of application

thereof (*see, for example, Judgement of 7 June 2019 by the Constitutional Court in Case No. 2018-15-01, Para 13*).

31.1. Certain requirements with respect to the legislative procedure also follow from the principle of a democratic state governed by the rule of law. The general principles of law, procedural prerequisites and requirements regulated in the *Satversme* and the Rules of Procedure of the *Saeima* must be complied with in the legislative process. The legislator examines a draft law openly at the sittings of the *Saeima* and its Committees, ensuring that debates are possible and the members of the *Saeima* may exercise their freedom of speech and the right to vote. Likewise, if necessary, the envisaged legal regulation must be duly substantiated by explanatory studies. It is the discussion of the proposals that gives the opportunity to assess, whether an alternative to the envisaged legal regulation exists. In a democratic state governed by the rule of law, the legislator has also the obligation to inform, in due time and appropriately, society and involve it – directly or indirectly – into the legislative process as well as to consult with stakeholders (*see Judgement of 6 March 2019 by the Constitutional Court in Case No. 2018-11-01, Para 18.1*.).

The Applicant notes that the restriction has not been established by a law adopted in due procedure because the proposal to amend Section 56 (3) of the law "On Institutions of Higher Education", applying it also to private institutions of higher education, had been included in the draft amendments to the law "On Institutions of Higher Education" only before the third reading. Hence, the restriction on fundamental rights and the proportionality thereof, *inter alia*, compliance of the contested norms with the European Union law, had not been duly assessed, and also the stakeholders' representatives had not been sufficiently heard.

The *Saeima* has noted in its written reply that Section 56 (3) of the law "On Institutions of Higher Education" has been applied to private institutions of higher education in the framework of education reform, implemented in the State for more than 20 years already. Moreover, the Committee, in examining the proposals for several amendments to the law "On Institutions of Higher Education", had discussed various issues linked to the use of languages in higher education.

Several of the summoned persons, *inter alia*, the Ministry of Education and Science, Ina Druviete and Aigars Rostovskis, noted that discussions had taken place repeatedly, within the framework of the language reform, on the need to reinforce the use of the official language in higher education. The Ombudsman

and the Ministry of Justice also underscore in their opinions, submitted to the Constitutional Court, that the proposal to apply Section 56 (3) of the law "On Institutions of Higher Education" had been discussed sufficiently.

Jānis Vētra, the representative of the Council of Higher Education, stated at the court hearing that the proposal to apply Section 56 (3) of the law "On Institutions of Higher Education" had been a surprise. Irina Cvetkova, the representative of the Association of Private Institutions of Higher Education, also is of the opinion that the contested norm had not been sufficiently discussed prior to its adoption.

31.2. The proposal to apply Section 56 (3) of the law "On Institutions of Higher Education" also to private institutions of higher education was submitted to the *Saeima* on 1 June 2018. The Committee examined and supported it at the sitting of 6 June 2018. At the sitting of 13 June 2018, the Committee resumed discussions on this matter as well as the transitional provisions for the respective regulation. The *Saeima* approved of all the contested norms, *inter alia*, Section 5 of the law the law "On Institutions of Higher Education", the initial wording of which had been submitted to the *Saeima* already in 2017, at the sitting of 21 June 2018.

The fact *per se* that the proposal regarding the amendments to Section 56 of the law "On Institutions of Higher Education" and Para 49 of the Transitional Provisions linked to it was submitted to the *Saeima* only before the third reading of the draft law does not mean that the law, in which this proposal was incorporated, would not be adopted in due procedure. Pursuant to the Rules of Procedure of the *Saeima*, in the course of examining a draft law, a respective section, a part thereof or amendments may be included in a legal norm both during the second and third reading (*see Judgement of 16 December 2008 16 by the Constitutional Court in Case No. 2008-09-0106, Para 6.5., and Judgement of 19 October 2011 in Case No. 2010-71-01, Para 18.1.*).

However, the Constitutional Court draws attention to the fact that certain requirements with respect to the legislative process also follow from the principle of a state governed by the rule of law. Pursuant to the principle of good legislation, it is the legislator's duty to examine, during the legislative process, the compliance of the envisaged legal norms with the legal norms of higher legal force, *inter alia*, the *Satversme*, the norms of international and the European Union law, as well as to harmonise the legal norms, envisaged in the draft law, with the legal norms already existing within the legal system. Moreover, the legislator should ensure

that, in the legislative process, the opinions of all stakeholders are identified, to the extent possible, and the objections against the legal regulation, envisaged in the draft law, are heard either directly or indirectly (*see Judgement of 13 November 2019 by the Constitutional Court in Case No. 2018-22-01, Para 17*). Also in the case, where the proposals have been submitted to the *Saeima* only before examining the draft law in the third reading, the legislator is obliged to respect the principle of good legislation.

The Rules of Procedure of the *Saeima* entrust a significant part of the work in preparing the draft law to the Committees of the *Saeima*. The responsible Committee ensures that the draft law is fully prepared for examination at the *Saeima*'s sitting (*see Judgement of 16 December 2008 by the Constitutional Court in Case No. 2008-09-0106, Para 6.4., and Judgement of 30 October 2009 in Case No. 2009-04-06, Para 11.2.*).

At the Committee's sittings, where the proposals regarding the contested norms were examined, an opportunity to speak was given to the stakeholders, who used it actively. At the Committee's sitting of 13 June, Jānis Bernāts, the Secretary General of the Rector's Council, Jānis Vētra, the Chairperson of the Council of Higher Education, and Aldis Baumanis, the Chairpersons of the Association of Private Institutions of Higher Education, several members of the *Saeima* and other persons present spoke about draft Section 56 (3) of the law "On Institutions of Higher Education" on its merits, *inter alia*, in the context of the principle of legitimate expectations. It was pointed out during the discussion that this principle was not respected and it was decided to express Para 49 of the Transitional Provisions in the wording that is currently in force. Thus, as the result of the discussions taking place in the Committee, the initial proposal regarding this paragraph of the Transitional Provisions, submitted by the Ministry of Education and Science, was amended.

Moreover, as noted by the *Saeima's* representative Sandis Bērtaitis, the representatives of the Ministry of Education Dace Jansone and Daiga Dambīte as well as other summoned persons, the contested norms should be considered as being part of the education reform, commenced more than 20 years ago. At the court hearing, the *Saeima's* representative argued that the discussions regarding the use of language in higher education had taken place both 20 years ago, when the language reform in education was launched, and in 2006, when the contested regulation was applied to the State institutions of higher education. Ina Druviete also reminded that such discussions had taken place. Thus, the subject of the

regulation of the contested norms had been discussed before the proposal had been submitted to the *Saeima* to add the contested norms to the law "On Institutions of Higher Education".

31.3. The Applicant and several of the persons summoned in the case have noted that the *Saeima,* in adopting the contested norms, has not reviewed their compliance in the context of the European Union law regulation on the freedom to conduct business; i.e., has not examined their compliance with Article 49 and Article 56 of the Treaty on the Functioning of the European Union, Article 16 of the Charter of Fundamental Rights of the European Union, and secondary sources of law in this area.

The Constitutional Court concludes that there are no materials in the case that would indicate that the legislator, in adopting the contested norms, had examined the compliance thereof with the European Union law. Former Minister for Education and Science Kārlis Šadurskis also noted at the court hearing that at the time, when the proposals, comprising the contested norms, had been submitted to the *Saeima,* he had not considered that these norms would pertain to matters of the European Union law. Iveta Brīnuma, the representative of the Ministry of Justice, noted that the Ministry of Justice had not been requested to provide an opinion on the compliance of the contested norms with the European Union law, but underscored: the Ministry was not of the opinion that Section 56 (3) of the law "On Institutions of Higher Education" would be incompatible with norms of the Treaty on the Functioning of the European Union.

Pursuant to Article 165 of the Treaty on the Functioning of the European Union, the European Union respects the responsibility of the Member States for the content of teaching and organisation of education systems as well as their cultural and linguistic diversity. Hence, the contested norms, which regulate the activities of institutions of education with the aim of promoting cultivation and development of the official language, have been adopted in the area that is within the competence of the European Union's Member States.

The Constitutional Court notes that the principle of good legislation imposes an obligation upon the legislator to examine the compliance of legal norms, included in a draft law, with the norms of the European Union law. However, the Constitutional Court also has recognised that not every violation of the parliamentary procedure are sufficient grounds for considering that the adopted act is legally void. In order to recognise an act as being void due to a violation of the parliamentary procedure there should be valid doubts whether the *Saeima* would

have adopted the same decision if the procedure had been followed (*see Judgement of 13 July 1998 by the Constitutional Court in Case No.03-04(98), Para 3 of the Findings*). I.e., a norm can be deemed to be unlawful only because of substantive procedural violations (*see Judgement of 7 June 2019 by the Constitutional Court in Case No. 2018-15-01, Para 13.2.*).

In its judgement of 6 March 2019 in case No. 2018-11-01, the Constitutional Court recognised that the principle of good legislation had been violated because it identified in the procedure of adopting the contested norm several procedural violations, which, in particular, in their interconnection, were substantial. Whereas in the judgement of 7 June 2019 in case No. 2018-15-01, the Constitutional Court concluded that the legislator had not examined the compliance of the contested norms with the European Union law; however, since no other violations were identified in the procedure of adopting the contested norms and two of the contested norms had been adopted before Latvia's accession to the European Union, the contested norms were recognised as being compatible with the principle of good legislation.

Similarly to case No. 2018-15-01, also in the present case, the Constitutional Court has not identified other violations in the procedure of adopting the contested norms. In the context of the present case, the contested norms regulate an area, which is within the competence of the European Union's Member States. Also after hearing the summoned persons, the Constitutional Court has no grounds to recognise that if the compliance of the contested norms with the European Union law had been examined before the adoption thereof the *Saeima* would have adopted a different decision in the area of education.

In view of the above, it can be concluded that the legislator has heard the stakeholders' opinions and has not violated the principle of good legislation. The Constitutional Court holds that the contested norms were adopted in the procedure, established by the *Satversme* and the Rules of Procedure of the *Saeima*, had been promulgated and are publicly accessible in accordance with the requirements of regulatory enactments and, also, are worded with sufficient clarity, allowing a person to understand the content of the rights and obligations following from them and forecast the consequences of application thereof.

Thus, the restriction on fundamental rights, included in Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education", has been established by law.

32. The Applicant acknowledges that the contested norms have legitimate aims – cultivation and development of the official language as well as accessibility of higher education to all graduates of Latvia's secondary schools. The *Saeima* also notes that the contested norms share the same legitimate aim with other norms, which have been implemented as part of the education reform. I.e., they are aimed at reinforcing the use of the official language and protecting the rights of other persons.

The Ministry of Education and Science, upon submitting to the *Saeima* the proposals, which included the contested norms, has noted that they are necessary for setting clear conditions with respect to the language, in which study programmes are implemented in institutions of higher education and colleges, and ensuring that these conditions were the same for institutions of higher education established by the State and by private persons. Moreover, these are said to be necessary for promoting the possibilities of persons who have obtained secondary education to acquire higher education (*see Case Materials, Vol. 2, p. 139*). Summoned person Ina Druviete notes that the use of the official language in higher education also facilitates preservation of the official language in science (*see Case Materials, Vol. 2, p. 22*).

The Constitutional Court has concluded previously that the legitimate aim of the norm, which increased the proportion of classes to be delivered in the official language in private institutions of general education and established teaching in secondary school only in the official language, was the protection of the democratic order and other persons' rights. Each member of Latvia's society needs the skill to use the official language freely to gain maximum benefit from the system of education, established in the State, to integrate successfully in the labour market and participate in democratic society. The regulation, which envisages reinforcing the official language, also safeguards the democratic order of the state (*see Judgement of 13 November 2019 by the Constitutional Court in Case No. 2018-22-01, Para 18*). Moreover, the proficiency in the official language of persons belonging to other ethnicities protects also the right of persons belonging to the title nation to use freely the official language in any area of life throughout the territory of the State (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 16 of the Findings*).

The explanations provided by the Ministry of Education and Science and the *Saeima* allow concluding that the contested norms had been adopted in interconnection with other norms that envisage gradual transition to education in

the official language. They impose an obligation upon private institutions of higher education to cultivate and develop the official language as well as to use it in the study process. Thus, the contested norms reinforce the role of the official language in higher education.

Hence, the aims of the restriction on fundamental rights, included in Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education", is protection of the democratic order and other persons' rights.

33. To establish, whether the restriction on fundamental rights, set out in the contested norms, is proportional, the Constitutional Court must verify: 1) whether it is suitable for reaching the legitimate aims; 2) whether more lenient measures are not available for reaching these legitimate aims; 3) whether the legislator's actions are appropriate (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 17 of the Findings*).

34. The restriction on fundamental rights, established in the contested norms, facilitates the use of the official language in higher education. As the result of it, students in private institutions of higher education use the official language in the daily study process and, thus, gain the experience of using it. The Constitutional Court has recognised previously that the regulation, which determines that the language of instruction in institutions of general education is the official language, promotes the development of the learners' proficiency in the official language (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 18 of the Findings, and Judgement of 13 November 2019 in Case No. 2018-22-01, Para 20)*. Similarly, also the contested norms, by determining that study programmes in private institutions of higher education must be delivered in the official language, except for cases referred to in Section 56 (3) of the law "On Institutions of Higher Education", improve the students' proficiency in the official language as well as reinforce the role of the Latvian language in science and help to cultivate its use in various branches of science.

Hence, the possibility to participate fully in the democratic processes of the State and society is ensured to all persons and the development of the national science is promoted (*compare, see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 18 of the Findings*).

Thus, the restriction on fundamental rights, established in the contested norm, is suitable for reaching the legitimate aims.

35. The Applicant and several of the summoned persons hold that there are more lenient measures for reaching the legitimate aims of the restriction on fundamental rights.

The Constitutional Court has recognised that its task is to examine the compliance of a contested norms with the fundamental rights, established in the *Satversme*, rather than replace the legislator's discretion by its own opinion on the most rational solution. However, the Constitutional Court has the competence to verify, whether the legislator, in restricting a person's fundamental rights, has duly examined the existence of such alternative measures that would be less restrictive on fundamental rights (*see, for example, Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 19*). Likewise, the Court may note that such alternative measures exist (*see Judgement of 4 November 2005 by the Constitutional Court in Case No. 2005-09-01, Para 14.3.*). The Constitutional Court does not have to indicate in its judgement all possible more lenient measures. Upon establishing that even one less restrictive measure exists, there are grounds for recognising that the contested norm places disproportionate restrictions on fundamental rights (*see Judgement of 23 April 2009 by the Constitutional Court in Case No. 2008-42-01, Para 17.2.*).

35.1. The Applicant notes that a comprehensive evaluation of the quality of all private institutions of higher education, on the basis of which permission to implement study programmes in foreign languages would be granted, would be a more lenient measure compared to the provisions of the contested norms.

It follows from the *Saeima*'s written reply that the State already ensures the quality assessment of higher education; hence, the measure indicated by the Applicant is already used. The quality of education provided by private institutions of higher education is assessed by licencing the study programmes and by accreditation of the study directions. It can be concluded from the *Saeima*'s written reply that the legislator, on the basis of information at its disposal on the quality of education in private institutions of higher education, has decided to not apply the requirements of Section 56 (3) of the law "On Institutions of Higher Education" to some private institutions of higher education (*see Case Materials, Vol. 1, pp. 68 –69*). At the court hearing, Sandis Bērtaitis, the *Saeima's* representative, noted that the Stockholm School of Economics in Riga and the

Riga Graduate School of Law had a special profile and high quality of activities and these considerations had determined the possibility to regulate differently, in the special laws, the language use in these institutions of higher education (*see Transcript of the Court Hearing of 12 May 2020 in Case Materials, Vol. 5, p. 88*). Perhaps, in the future, also other private institutions of higher education, on the basis of the quality assessment of the education provided by them, could be granted the right to deliver their study programmes in English (*see Transcript of the Court Hearing of 23 April 2020 in Case Materials, Vol. 3, p. 128*).

Thus, both the Applicant and the *Saeima* agree that the solution, which would envisage granting more extensive rights than the ones currently granted by Section 56 (3) of the law "On Institutions of Higher Education" to deliver study programmes in foreign languages to those institutions of higher education, which are able to attain certain quality criteria, should be considered as an alternative to the regulation set out in Section 56 (3) of the law "On Institutions of Higher Education".

It needs to be noted additionally that, promoting international co-operation in higher education, regulation like this would facilitate internationalisation of higher education and the international competitiveness of the whole area of education. As noted in "Guidelines for the Development of Education for 2014-2020": "With the increase of global competition in higher education and science and, at the same time, the decreasing number of potential students in Latvia, the need to establish a flexible system of higher education, which is internationally flexible, broadly accessible and qualitative, gains relevance." The importance of internationalising higher education has been underscored also in a study of Latvia's system of higher education, conducted by the World Bank, in particular, in the system of higher education, which is as small as in Latvia (*see: World Bank Support to Higher Education in Latvia, Volume 3: Academic Careers, 2018, p. 189. 251. Available: https://www.izm.gov.lv*).

The *Saeima* argues that the alternative measure, indicated by the Applicant, is already being used. The Constitutional Court noted that, pursuant with the legal regulation currently in force, in licencing programmes and granting accreditation to study directions, it is not assessed, whether the particular private institution of higher education ensures higher education of sufficient quality to be allowed to deliver study programmes in foreign languages. Para 15 of Section 1 of the law "On Institutions of Higher Education" provides that the accreditation of a study direction is an inspection to determine the quality of the resources of a higher

education institution or college and the ability to implement a study programme corresponding to a specific study direction in accordance with the laws and regulations. Para 9 of Section 70 of the law "On Institutions of Higher Education" provides that the decision on the accreditation of institutions of higher education falls within the competence of the Council of Higher Education.

Hence, it can be concluded that, in accordance with the law "On Institutions of Higher Education", accreditation of institutions of higher education and study directions is the main pre-requisite for granting to an institution of higher education the status of an institution of higher education recognised by the State and for it to issue State recognised diplomas of higher education. Accreditation does not comprise assessment of whether the delivery of study programmes in foreign languages would be admissible in the particular institution of higher education. Thus, the Council of Higher Education, following the assessment of a private institution of higher education, does not have the competence to decide on the use of foreign languages in this institution of higher education.

Thus, accreditation of institutions of higher education and programmes does ensure the possibility to analyse comprehensively, whether private institutions of higher education comply with the requirements of regulatory enactments; however, this assessment is not linked to granting permission to a particular private institution of higher education to implement study programmes in foreign languages.

Thus, the Constitutional Court concludes that there is an alternative measure for reaching the legitimate aim that would infringe to a lesser extent upon the academic freedom of students and faculty members of private institutions of higher education and to the autonomy of institutions of higher education, related to it; i.e., the right to deliver study programmes of higher educations in foreign languages could be granted to those higher education institutions, which have reached certain quality criteria. Within the framework of the present case, the legislator has not indicated the reasons why the legitimate aim – protection of the democratic order and other persons' rights – could not be reached by assessing the services, provided by all private institutions of higher education, in accordance with certain quality criteria and giving the possibility to deliver study programmes in foreign languages only to those institutions of higher education, which have reached a certain quality level.

35.2. The summoned persons also have pointed to several other measures, which would allow reaching the legitimate aim by restricting other persons' rights

to a lesser extent. Jānis Vētra, the representative of the Council of Higher Education, noted at the court hearing that the need to use foreign languages in various study programmes could differ in different periods. It would be perhaps, very useful to deliver some study programmes, also such that are not linked to language and culture studies, in foreign languages, *inter alia*, in languages that are not the official languages of the European Union. Summoned person Kārlis Šadurskis also noted that in some study directions, for example, in the Baltic philology and mathematics, the need to set proportions for using foreign languages in the study process could be different.

Summoned person Uģis Gruntmanis, in turn, noted that the legitimate aim could be reached by setting differential language requirements on various levels of the study process. The aims of bachelor, master and doctoral level studies are said to be different. Establishing the official language as the compulsory language of instruction could be admissible in delivering bachelor study programmes; however, a large part of the study courses should be mastered in English in master and doctoral study programmes; the restriction caused by the contested norms is said to be unnecessary on these study levels. To develop scientific language, an abstract in Latvian should be prepared for all dissertations written in Latvia; however, in view of the fact that English is the language is science, a doctoral-level student should be allowed to choose to write their dissertations also in English, to be able to approbate their work also in the international environment. Differentiated regulation would not decrease the significance of Latvian but would allow institutions of higher education, faculty members and students to operate in a more flexible way and would expand their horizon.

Taking into consideration the opinions expressed in the case, the Constitutional Court concludes that, by envisaging exceptions to the general regulation of Section 56 (3) of the law "On Institutions of Higher Education", for example, in some branches of science or studies of a certain level, the autonomy of institutions of higher education and the academic freedom of the faculty members and students would be restricted to a lesser extent because, in such exceptional cases, institutions of higher education could implement study programmes in foreign languages needed to improve the quality of their programmes. It does not follow from the preparatory materials of the contested norms that the legislator had assessed such alternative measures. Hence, the legislator has not duly examined the existence of such alternative measures, which would infringe upon

the rights of the students, faculty members and institutions of higher education to a lesser extent.

Thus, Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" are incompatible with Article 112 of the *Satversme,* in interconnection with its Article 113, insofar these norms apply to private institutions of higher education because the legislator has not considered the possibilities of using measures that are less restrictive on persons' rights for reaching the legitimate aim.

36. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, is to be deemed void as of the date when the Constitutional Court's judgement is published, unless the Constitutional Court has provided otherwise. In accordance with Para 11 of Section 31 of the Constitutional Court Law, when the Constitutional Court recognises a legal norm as being incompatible with a legal norm of higher legal force it must define the date as of which the respective legal norm becomes void.

The Applicant has requested the Constitutional Court to recognise the contested norms void as of the date of their adoption.

The Constitutional Court takes into account that the contested norms regulate an important aspect of higher education. If these norms were to be recognised as being void as of the date when the Constitutional Court's judgement was published or a certain past date then no legal norm would regulate the use of foreign languages in implementing study programmes in private institutions of higher education.

The Constitutional Court has recognised that the legislator enjoys broad discretion in choosing the most suitable regulation for enacting the fundamental rights envisaged in the *Satversme*. The Constitutional Court may not substitute the legislator's discretion by its own opinion on the most rational solution (*see, for example, Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 20, and Judgement of 2 May 2012 in Case No. 2011-17-03, Para 16*).

The Constitutional Court recognises that the legislator needs time to draft regulation on the use of languages in private institutions of higher education that would comply with Article 112 and Article 113 of the *Satversme*. In this case, it is necessary and admissible that the norms, which are incompatible with the

Satversme, remain in effect for some time to give the legislator the opportunity to adopt new legal regulation. In view of the fact that the legislator needs a rational period of time for adopting new legal regulation, the contested norms shall be recognised as being void as of 1 May 2021.

The Substantive Part

On the basis of Section 22 (6) and Section 30-32 of the Constitutional Court Law, the Constitutional Court

held :

1. To divide Case No. 2019-12-01:

a) into case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 112 of the *Satversme* of the Republic of Latvia" and

b) case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia".

2. To recognise the third sentence of Article 5 (1) of the law "On Institutions of Higher Education", insofar it applies to private institutions of higher education, faculty members and students thereof as being compatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia.

3. To recognise Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education", insofar these norms apply to private institutions of higher education, faculty members and students thereof, as being incompatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia and void as of 1 May 2021.

4. In the case "On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law "On Institutions of Higher Education" with Article 1 and Article 105 of the

***Satversme* of the Republic of Latvia", resume hearing the case on its merits in written procedure on 14 July 2020.**

The judgement is final and not subject to appeal.

The judgement enters into force on the date of its promulgation.

Chairperson of the court hearing I. Ziemele