



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on behalf of the Republic of Latvia

Riga 9 February 2023

Case No. 2020-33-01

The Constitutional Court, composed of Chairperson of the Court Hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa and Jautrīte Briede,

on the basis of an application by twenty Members of the 13th Saeima - Boriss Cilevičs, Valērijs Agešins, Vjačeslavs Dombrovskis, Vladimirs Nikonovs, Artūrs Rubiķis, 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,

with the court recorders of the hearing, Laura Stutāne and Alise Ziemele,

based on Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 1, Section 17, Paragraph One, Clause 3, and Sections 28 of the Constitutional Court Law,

at the hearings on 3 and 10 January 2023, in the presence of the participants of the case, adjudicated the case

"On Compliance of the Third Sentence of Section 5, Paragraph One, Section 56, Paragraph Three, and Paragraph 49 of Transitional Provisions of the Law on Higher Education Institutions with Article 1 and Article 105 of the Constitution of the Republic of Latvia".

Establishing Part

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

1.1 Section 5 of the Law on Higher Education Institutions originally set the task of higher education institutions to cultivate and develop science and arts. By the Law “Amendments to the Law on Higher Education Institutions” of 21 June 2018 (hereinafter referred to as - amendments to the Law on Higher Education Institutions of 21 June 2018), the third sentence of Section 5 of the Law on Higher Education Institutions was reworded as follows: “Through their activities, they shall cultivate and develop science, arts and the official language.”

1.2 By the amendments to the Law on Higher Education Institutions of 21 June 2018, Section 56 thereof was also amended. In the introductory part of the third paragraph of that Section, the words "in state-established higher education institutions" were replaced by the words "in higher education institutions and colleges". Thus, Section 56, Paragraph Three of the Law on Higher Education Institutions in force from 1 January 2019 to 30 April 2021, stipulated as follows: “The study programmes of higher education institutions and colleges shall be implemented in the official language. The use of foreign languages in the implementation of study programmes is only possible in the following cases:

1) Study programmes acquired by foreign students in Latvia and study programmes implemented within the framework of cooperation under European Union programmes and intergovernmental agreements may be implemented in the official languages of the European Union. For foreign students, the compulsory course of studies must include the acquisition of the official language, if the expected period of studies in Latvia exceeds six months or scope exceeds 20 credit points;

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

3) study programmes, the implementation of which in a foreign language is necessary for the achievement of the objectives of the study programme, in accordance with the classification of education of the Republic of Latvia in the following groups of educational programmes: language and cultural studies, language programmes. The Licensing Commission shall decide on the conformity of the study programme with the groups of educational programmes;

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

At the hearing, in the presence of the participants of the case, while adjudicating the Case No. 2019-12-01 "On Compliance of the Third Sentence of Section 5, Paragraph One, Section 56, Paragraph Three, and Paragraph 49 of Transitional Provisions of the Law on Higher Education Institutions with Article 1 and Article 105 of the Constitution of the Republic of Latvia, the Constitutional Court decided to divide this case into two cases: Case No. 2019-12-01 "Third Sentence of Section 5, Paragraph One, Section 56, Paragraph Three, and Paragraph 49 of Transitional Provisions of the Law on Higher Education Institutions with Article 112 of the Constitution of the Republic of Latvia" (hereinafter referred to as - Case No. 2019-12-01) and the present case. This was done to facilitate a comprehensive and speedy proceedings of the cases divided, and to decide whether to refer questions for a preliminary ruling to the Court of Justice of the European Union.

On 11 June 2020, the Constitutional Court adopted a judgement in Case No. 2019-12-01, by which it declared Section 56, Paragraph Three of the Law on Higher Education Institutions (in force from 1 January 2019 to 30 April 2021), insofar as it applied to private higher education institutions, their teaching staff and students, incompatible with Articles 112 and 113 of the Constitution of the

Republic of Latvia (hereinafter referred to as - the Constitution) and null and void as of 1 May 2021.

On 8 April 2021 the Saeima adopted the Law "Amendments to the Law on Higher Education Institutions", which entered into force on 1 May 2021 (hereinafter referred to as - Amendments to the Law on Higher Education Institutions of 8 April 2021), and expressed Section 56 of the Law on Higher Education Institutions as follows:

"(1) Studies in a higher education institution and college shall be conducted in accordance with study programmes developed, approved and licensed in accordance with the procedures prescribed by this Law. Study programmes shall be implemented in full-time and part-time studies.

(2) A higher education institution or a college shall determine in its internal regulatory enactments the content of studies and the requirements to be brought forward in examinations which are related to medicine, sports, arts, police, border guard, fire-fighting and rescue, probation, penitentiary work, national defence, and other specific areas of activities of the relevant higher education institution or college, insofar as it is not in contradiction with the requirements of this Law and other laws and regulations.

(3) The study programmes of higher education institutions and colleges shall be implemented in the official language. In a study programme which is implemented in the official language, not more than one-fifth of the credit point amount of the study programme may be implemented in other official languages of the European Union, taking into account that final and state examinations as well as the writing of a qualification paper, bachelor or master's thesis may not be included in this part.

(4) Study programmes may be implemented in the official languages of the European Union in the following cases:

1) if it is laid down in international agreements or within the scope of cooperation provided for in European Union programmes;

2) if all study programmes which are part of the same thematic area of education as the study programme to be implemented in the official language of

the European Union have received a good or excellent evaluation in the accreditation process of the study field;

3) if they are joint study programmes.

(5) A study programme, including a joint study programme, may be implemented in any of the official languages of the European Union or another foreign language if it is necessary for the achievement of the objectives of the study programme in accordance with the Latvian Classification of Education in the following groups of educational programmes: language and cultural studies, language programmes. In such case, all study programmes should have received a good or excellent evaluation in the accreditation process of the study field. The Higher Education Quality Commission shall decide on the conformity of the study programme with the groups of educational programmes.

(6) A higher education institution or a college shall be entitled to implement preparatory courses in order to prepare entrants for studies in study programmes of the higher education institution or college.

(7) For foreign students the acquisition of the official language shall be included in the compulsory scope of study courses if the expected period of studies in Latvia exceeds six months or scope exceeds 20 credit points."

1.3 By the amendments of 21 June 2018 to the Law on Higher Education Institutions, its Transitional Provisions were supplemented by Paragraph 49, which, as in force until 30 April 2021, stipulated as follows:

"Amendments to Section 56, Paragraph Three of this Law regarding the language of implementation of study programmes shall enter into force on 1 January 2019. Higher education institutions and colleges, the language of implementation of study programmes of which does not comply with the provisions of Section 56, Paragraph Three of this Law, shall have the right to continue implementation of study programmes in the respective language until 31 December 2022. After 1 January 2019, admission of students to study programmes with a language of implementation that does not comply with the provisions of Section 56, Paragraph Three of this Law shall not be allowed."

In its judgement in Case No. 2019-12-01, the Constitutional Court declared Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions (in force from 1 January 2019 to 30 April 2021), insofar as it applied to private higher education institutions, incompatible with Articles 112 and 113 of the Constitution and null and void as of 1 May 2021.

By the amendments to the Law on Higher Education Institutions of 8 April 2021, the Saeima expressed Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions as follows:

"Amendments to Section 56, Paragraph Three of this Law regarding the language of implementation of study programmes shall enter into force on 1 January 2019. Higher education institutions and colleges whose language of implementation of study programmes does not comply with the provisions of Section 56, Paragraph Three of this Law, which was in force until 30 April 2021, shall have the right to continue the commenced implementation of their study programmes in the respective language until 31 December 2025. After 1 January 2019, admission of students to study programmes with a language of implementation that does not comply with the provisions of Section 56, Paragraph Three of this Law shall not be allowed. After 1 May 2021, admission of students to study programmes with the language of implementation that does not comply with the conditions of Section 56, Paragraphs Three and Four of this Law, which shall enter into force on 1 May 2021, shall not be allowed."

2 Applicant - Twenty Members of the 13th Saeima (hereinafter referred to as - the Applicant) - holds that the third sentence of Section 5, Paragraph One, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, here and hereinafter, such as it was in force from 1 January 2019 until 30 April 2021 (hereinafter referred to as - the contested provisions) are incompatible with Article 1 and Article 105 of the Constitution.

The Applicant indicates that the contested provisions restrict the right of private higher education institutions, included in Article 105 of the Constitution,

to carry out commercial activity on the basis of the acquired licence and to provide higher education service for a fee. The contested provisions also allegedly infringe the principle of the rule of law enshrined in Article 1 of the Constitution, according to which the founders of private higher education institutions have acquired legitimate expectations that they will be able to benefit from the use of their property.

Various studies have allegedly found that higher education services in foreign languages other than the official languages of the European Union account for around a third of the services provided by private higher education institutions. The contested provisions will henceforth allegedly prevent from carrying out this commercial activity. Higher education institutions have allegedly invested heavily in creation of foreign language programmes. Likewise, private higher education institutions allegedly will not be able to fully implement already accredited programmes in English. The Applicant states that exceptions have been unjustifiably established for the Riga Graduate School of Law and the Stockholm School of Economics in Riga, which according to special laws are entitled to implement study programmes in foreign languages.

Since the private higher education institutions have obtained the relevant licenses and accredited the study programmes, they have allegedly relied on being able to continue with their commercial activities. There is also no provision for a lenient transition to the new legal framework or compensation mechanism. The technical infrastructure of higher education institutions has been allegedly built relying on the previously issued licenses. Thus, the profitability of private higher education institutions will be allegedly threatened as the number of students declines. The transition period is allegedly too short to allow private higher education institutions to take the necessary measures to reorient their activities and attract potential students to other study programmes implemented by these institutions.

The contested provisions must be allegedly seen in conjunction with Articles 101 and 107 of the Treaty on the Functioning of the European Union, which prohibit Member States from creating distortions of competition, and

Section 19 of the Law on the Stockholm School of Economics in Riga, which gives this higher education institution an advantage in attracting students compared to other private higher education institutions. The contested provisions, by creating a barrier to entry into the higher education market and preventing from providing higher education services in foreign languages to citizens and undertakings of other Member States of the European Union, allegedly affect the right to freedom of entrepreneurship and service provision, guaranteed by the sources of European Union law, which is guaranteed by Articles 49 and 56 of the Treaty on the Functioning of the European Union, and the freedom to conduct a business, stipulated in Article 16 of the Charter of Fundamental Rights of the European Union (hereinafter referred to as - the Charter).

Restriction of the right to own property has not been allegedly established by law, since when the contested provisions were adopted, their impact on the right to property of private higher education institutions, as well as their compatibility with the law of the European Union, allegedly was not assessed. Furthermore, the contested provisions also allegedly contradict researches and policy planning documents, such as the Education Development Guidelines for 2014-2020 approved by the Saeima and the Bologna Declaration binding on Latvia.

The Applicant acknowledges that the objectives of the contested provisions - cultivation of the official language and access to higher education - are to be considered compatible with the Constitution. However, the restriction is not allegedly suitable for achieving the legitimate aims, as it would allegedly lead to an outflow of students from private higher education institutions in Latvia. There are also allegedly alternative means to achieve the legitimate aims, such as compensating higher education institutions for their investments and lost profits. The Applicant considers that there is no public interest that would justify such a significant restriction on the activities and right to own property of private higher education institutions.

At the hearing, the authorised representatives of the Applicant additionally indicated that the legal proceedings in the case should be continued, since the legal dispute on compliance of the contested provisions with Articles 1 and 105 of the

Constitution, as well as with the legal provisions of the European Union law still exists. The authorised representatives of the Applicant pointed at additional alternative means for the achievement of the legitimate aims, for example, to the possibility of allowing an exception to the effect that study programmes in the form of distance education may be implemented in foreign languages. Distance education would enable the export of education services without affecting the official language, as the target audience would be foreign students. The transitional period laid down in the contested provisions is also allegedly incompatible with the principle of the protection of legitimate expectations because it should be aligned with the accreditation period; moreover, establishment of a private higher education institution requires investments, and the period of profitability is approximately ten years.

3 The institution which has issued the contested act – the Saeima – holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

Article 105 of the Constitution allegedly does not provide for legal protection of a person's right to generate profit. The Applicant's claim is allegedly based on future profits, which are attributable only to potential students who have not yet concluded study contracts with the institutions concerned. Moreover, higher education institutions can never rely on income after the expiry of the accreditation period of the study programmes they have developed. Thus, no pecuniary interest falling within the scope of Article 105 of the Constitution could allegedly be established.

Even if it were acknowledged that the contested provisions restrict the right to own property, such restriction has been allegedly established by law. The contested provisions have been allegedly discussed at several meetings of the Saeima Education, Culture and Science Commission, hearing both MPs and representatives of private higher education institutions and other interest groups. It should also be allegedly taken into account that the contested provisions are part of an educational reform that was initiated decades ago, so discussions on the use of languages in the field of higher education have been going on for a long time.

Moreover, the contested provisions allegedly do not include a completely new legal framework, since the same language requirements had already been allegedly applied to state-run higher education institutions before their entry into force. Even if the legislator has committed a procedural irregularity, in the Saeima's opinion, the application does not substantiate that this irregularity was so significant that the adopted act could be declared to have no legal force.

The purpose of the contested provisions is allegedly to strengthen the use of the official language and to protect the rights of other persons. The Saeima holds that the contested provisions do not create a disproportionate restriction. They are allegedly suitable for achieving the legitimate aim, as the number of students studying in Latvian will increase and foreigners will have more opportunities to acquire the official language.

In assessing the proportionality of a restriction on the right to own property, it should allegedly be taken into account that the private higher education institutions and colleges carry out economic activities in especially regulated sector and perform functions of national and social importance. Such economic activity is allegedly subordinated to the fulfilment of the objectives set by the legislator. An individual who wishes to establish a higher education institution should be allegedly aware of the specific legal framework of this sector. Moreover, there is no higher education institution in Latvia that fully implements all the study programmes only in a language that does not comply with the requirements of Section 56, Paragraph Three of the Law on Higher Education Institutions.

The Saeima points out that higher education institutions are not allegedly completely prohibited from implementing courses in foreign languages. The legislator has granted such rights to certain private higher education institutions that allegedly meet enhanced quality criteria, within the framework of its freedom of action, by special laws. It is possible that another private higher education institution could be granted such rights. Furthermore, Section 56, Paragraph Four of the Law on Higher Education Institutions allegedly provides for all higher education institutions to organise special courses to prepare foreigners for studies in Latvia. The contested provisions allegedly do not prohibit private higher

education institutions from cooperating with other educational institutions outside the European Union, provided that the jointly established study programmes are implemented in one of the official languages of the European Union. Finally, higher education institutions have the possibility to implement informal education programmes and provide research services in foreign languages.

The Saeima holds that the contested provisions comply with the principle of protection of legitimate expectations. Individuals allegedly could not have had any expectation that the legal framework would remain unchanged. For decades, the state has been allegedly implementing an education reform to switch to education in Latvian. Moreover, Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions provides for a lenient transition to the new legal framework, allowing higher education institutions and colleges to continue the implementation of the commenced study programmes and to adapt to the new requirements.

At the hearing, representative of the Saeima reiterated the arguments mentioned in the reply and additionally pointed out that there were grounds to terminate the proceedings in the case, as the contested provisions had been amended on the merits and a case on the new legal framework had been initiated. The representative of the Saeima also stressed that the prohibition for private higher education institutions to admit new students to existing study programmes did not restrict the rights included in Article 105 of the Constitution, as these rights had not yet been formulated with sufficient specificity. However, with regard to the already enrolled students, the contested provisions have allegedly provided a reasonable transitional period, and, consequently, in that respect, the right of private higher education institutions to own property allegedly was not restricted.

4 The invited person – the Ministry of Education and Science – holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

The requirements and criteria for the accreditation of fields of studies and the implementation of study programmes are the same for both state-founded higher education institutions and higher education institutions founded by private

persons. Consequently, there are allegedly no grounds for different treatment with regard to the language of implementation of study programmes. Moreover, even after the deadline set in the Transitional Provisions of the Law on Higher Education Institutions, foreign and Latvian students will be allegedly able to receive education in the official languages of the European Union in the cases provided for in the contested provisions. Section 56, Paragraph Three, Clause 1 of the Law on Higher Education Institutions, when interpreted in conjunction with Section 45 of this Law, allegedly allows higher education institutions to admit also permanent residents of Latvia to study programmes whose main audience consists of foreign students. There is no regulation on the proportion of foreign students and students-Latvian nationals in such programmes.

The Applicant's claim regarding the legitimate expectations of profit of the founders of higher education institutions is also allegedly unfounded. There are allegedly no legal grounds to assume that, once accreditation of a field of study has been granted, it will automatically be extended for another term. Nor does the principle of the protection of legitimate expectations create a right to rely on the fact that the legal situation, once established, will never change. The legislator is allegedly obliged to monitor the actual situation and, where necessary, adapt the legal framework. That is precisely what was allegedly done by the contested provisions. It is allegedly important that, in this case, the legislator has established such a lenient transition period, which is allegedly sufficiently long and allows students to complete the studies they have already commenced. Furthermore, there is currently no active study programme at any higher education institution where Russian is the only language of implementation.

In order to ensure the quality of higher education, the state is allegedly obliged to set criteria for the implementation of study programmes. Consequently, the state allegedly also has a legal basis to determine the use of the official language by both public and private higher education institutions.

The contested provisions allegedly do not contravene Article 105 of the Constitution, since higher education is not considered an ordinary business service

and is subject to sector-specific regulation. Official language and economic interests allegedly should not be placed on the same scale.

The restriction of fundamental rights contained in the contested provisions is allegedly established by law and has legitimate aims, i.e., strengthening of use of the official language and protection of the rights of others. Taking into account the essential need to strengthen use of the official language and the fact that state examinations in secondary schools are currently conducted in Latvian, it should be acknowledged that the restriction of the right created by the contested provisions is proportionate.

At the hearing, the authorised representatives of the Ministry of Education and Science pointed out that, during the transitional period, private higher education institutions could add another language of implementation to the already existing study programmes, which complied with the contested provisions, and thus continue the implementation of the study programme. No private higher education institution has allegedly ceased its activities after the adoption of the contested provisions. The number of foreign students has remained almost constant over the last three years, and this has been affected not only by the language of implementation of the programme but also by other factors, including the Covid-19 pandemic. The representatives of the Ministry do not agree with the Applicant's statement that the contested provisions would contravene to the Bologna Process, since they do not affect such issues as the language of implementation of the study programme.

5 The invited person — the Ministry of Justice — holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

The Ministry agrees with the arguments mentioned in the Saeima's reply that the contested provision does not infringe the rights established in Article 105 of the Constitution. While a stable profit derived from a commercial activity could in some cases fall within the scope of the right to own property, the Applicant has pointed to the too abstract possibilities for private higher education institutions to generate income.

With regard to the principle of the protection of legitimate expectations, the Ministry points out that it should be taken into account that the state has been consistently moving towards strengthening the use of the official language in the field of education for several years. Therefore, private higher education institutions could not have had any reason to believe that the regulatory framework would remain unchanged. The legislator has allegedly provided for a sufficiently long transition period to allow educational institutions to prepare for the fulfilment of the new requirements. Private higher education institutions allegedly have the possibility to reorient their activities and implement study programmes in other languages, using the already purchased material and technical base in the study process. It should also be allegedly noted that the Ministry of the Interior has called for more attention to be paid to foreigners studying in Latvia for a long period of time, who may be trying to circumvent the immigration rules. The transition period allegedly allows those who really want to complete their studies to do so, restricting only the long-term students.

Within the context of the European Union law, the Ministry pointed out that, under Article 165 of the Treaty on European Union, the European Union respects cultural and linguistic diversity. Language issues in education are therefore competence of the Member States, not of the European Union. There is no infringement of Articles 49 or 56 of the Treaty on the Functioning of the European Union, since all the requirements equally apply to all subjects.

At the hearing, the representative of the Ministry of Justice pointed out that Article 49 of the Treaty on the Functioning of the European Union affects not only the content of the fundamental rights protected by Article 105 of the Constitution, but also the content of other fundamental rights protected by the Constitution. When assessing the constitutionality of the contested provisions, it should allegedly be taken into account that, in the case under consideration, the official language as a value is more important than the right to carry out commercial activities without restrictions. It should also be allegedly taken into account that the provision of educational services is a commercial activity which is strictly

regulated and requires balancing of such values as generating profit, education and academic excellence.

6 The invited person - the Ministry of Foreign Affairs - agrees with the content of the Saeima's reply that the contested provisions do not affect the right to own property.

7 The invited person — the Ombudsman — holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

Compliance of the contested provisions with the principle of protection of legitimate expectations allegedly should be conceived in conjunction with their compliance with the right to own property enshrined in Article 105 of the Constitution. The Members of the Saeima allegedly have had the opportunity to comment on the contested provisions. Thus, the contested provisions have been established by a duly adopted law. Their legitimate aim is the protection of public welfare and the democratic order of the state. It should be taken into account that the welfare of society also includes such intangible aspects as the dominance of the Latvian language in society. Increasing the influence of the Latvian language would promote the integration of society and ensure the harmonious functioning of society.

The contested provisions are allegedly suitable to achieve the legitimate aim. The Ombudsman also agrees with the conclusions of the Saeima's reply on the need to strengthen the role of the official language. Thus, the contested provisions, which are allegedly aimed at reforming higher education within the framework of the official language policy, are necessary to protect and strengthen the use of the Latvian language. Besides, benefit of the society derived from the contested provisions allegedly outweighs the harm caused to the rights and legitimate interests of the founders of private higher education institutions. It should be allegedly taken into account that the contested provisions provide for criteria, the fulfilment of which makes it possible to implement study programmes in foreign languages.

8 The invited person - the Competition Council - points out that the contested provisions comply with the competition law framework of Latvia and the European Union.

The competition law regulation does not apply to state-run higher education institutions, which are primarily financed from the state budget funds, because the purpose of their economic activity is not generation of profit. Once the economic operators have been identified, the market in which they operate must be allegedly determined. In the case of higher education, the market is likely to be defined by the subject of studies and also by the language of studies.

Article 106 of the Treaty on the Functioning of the European Union allegedly permits certain market players to be granted the right either to provide a service as the sole providers or to provide that service in specific circumstances. An infringement of competition law would arise if the market player which has been granted such status acted in a way that is incompatible with competition law.

However, the language used to implement the study programmes is rather a market-constituting requirement that all market players must respect. Validity of such a claim is allegedly verifiable by assessing its compatibility with the right to entrepreneurship and the freedom to provide services recognised by the Treaty on the Functioning of the European Union. Thus, the Competition Council would also assess not the validity of the language requirement, but whether there is an equal opportunity for all to operate in the market created on the basis of this requirement.

The legislator must allegedly ensure compliance of the national legal framework with the European Union law, but the assessment by which that compliance is ensured is a matter of the legislative process.

9 The invited person — the Council of Higher Education — holds that the contested provisions do not comply with Articles 1 and 105 of the Constitution.

The proposal to extend Section 56, Paragraph Three of the Law on Higher Education Institutions to private higher education institutions was allegedly unexpected, as this provision was initially extended only to state-run higher

education institutions due to the involvement of public funding. The regulation on the use of the language allegedly should be the same for public and private higher education institutions, but the detailed regulation on the use of the official language contained in this norm allegedly significantly limits the diversity of the study process in terms of the composition of students and teaching staff, as well as the material and technical support necessary for studies.

Moreover, Section 56, Paragraph Three of the Law on Higher Education Institutions allegedly cannot be applied in practice, as it is allegedly impossible to track the language in which students carry out their independent work or develop research papers. According to the Council, Section 56, Paragraph Three of the Law on Higher Education Institutions prohibits the establishment of joint study programmes for foreign students and students-Latvian nationals.

Strict language regulation is allegedly no longer necessary in society, as the situation in general education has changed. Contrary to the law, higher education institutions create joint programmes for the foreign students and students-Latvian nationals, however, their possibilities to invite guest professors from outside the European Union, as well as to implement study programmes requiring foreign language skills alone or jointly with foreign higher education institutions are hampered.

10 The invited person — the Association of Private Higher Education Institutions — holds that the contested provisions do not comply with Articles 1 and 105 of the Constitution.

The contested provisions are allegedly incompatible with Article 1 of the Constitution because the process of their adoption was not in compliance with the principle of good legislation. Contrary to the requirements of the Law on Higher Education Institutions, the contested provisions have not been agreed with the representatives of the field, as well as they are not based on the researches of experts in the field and are not in line with the internationalisation of educational processes within the Bologna Process.

The contested provisions are also allegedly incompatible with Article 105 of the Constitution, as they create unfair competition and infringe the right of owners of private higher education institutions to use their property for commercial activities. This Section must be allegedly seen in conjunction with the principle of the protection of legitimate expectations arising from Article 1 of the Constitution and Latvia's international obligations.

In 2018, Law On the Riga Graduate School of Law and the Law “Amendments to the Law on the Stockholm School of Economics in Riga” allegedly entered into force, providing the two higher education institutions with the right to implement higher education programmes in English or another official language of the European Union on an exceptional basis. These laws not only contravene the unified education system and the policy for strengthening the official language, but also lead to unfair competition between the two higher education institutions and other higher education institutions.

The restrictions of fundamental rights caused by the contested provisions allegedly are not proportionate, because, taking into account the example of the Riga Graduate School of Law and the Stockholm School of Economics in Riga, the legitimate aim allegedly can be achieved by means less restrictive of the rights of higher education institutions. The above arguments allegedly also show that the harm caused by the contested provisions outweighs the benefit to society.

11 The invited person — the Latvian Association of Universities — holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

The contested provisions allegedly ensure unified state control over public and private higher education institutions. Whereas, this is allegedly in line with the principle of the unity of the education system, according to which unified language requirements and other basic requirements apply to educational institutions of different kind. Section 56, Paragraph Three of the Law on Higher Education Institutions allegedly provides for restrictions also on state-run higher education institutions, but they have been able to adapt to these restrictions.

The purpose of the legal framework is not to guarantee the right of higher education institutions to generate profit by organising studies in Russian. The applicable norms do not allegedly prevent the possibility of organising studies in English.

The tasks set out in the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions must be allegedly seen in conjunction with the Great Charter of Universities. Latvian universities allegedly consider it their duty to cultivate and develop the official language, for example by developing terminology in Latvian, issuing publications and so on.

12 The invited person - Latvian Centre for Human Rights - points out that the democratic values of Latvia, including the Latvian language, are also the values of higher education institutions. Latvia allegedly needs a core strategy in the field of higher education. It would not be farsightedly to implement a higher education policy similar to Hungary's current course, which could also result in the application of the procedure laid down in Article 7 of the Treaty on European Union.

13 Invited party - Kristīne Līce, Representative of the Cabinet of Ministers to the International Human Rights Institutions - points out that a restriction of the right to own property arises even if a higher education institution can continue its work, but only if it substantially modifies its operating model. Therefore, the contested provisions could restrict the right to own property, as they allegedly set new rules on how higher education institutions can use their property. The legitimate aim of this restriction of the right to own property is the protection of the official language. The state's freedom of action when imposing restrictions of the right to own property is broad, furthermore, it becomes broader as the legitimate aim of the restriction is related to the constitutional identity of the state.

14 The invited person - Jānis Rozenfelds, Dr. iur., Associate Professor, Faculty of Law, University of Latvia - points out that when assessing the impact

of the contested provisions on the implementation of already licensed programmes, it is necessary to take the fixed-term nature of these programmes into account and the fact that the duration of operation of these programmes depends on the ability of the persons implementing them to comply with the requirements set for granting a license. Although the refusal to grant a license restricts a person's ability to carry out commercial activities, such a restriction should not be considered a violation of the right to own property. However, the rights granted by a valid licence are to be allegedly considered the right to property within the meaning of Article 105 of the Constitution.

It is allegedly possible to speak only about the potential of the contested provisions, and not about the actually expected impact on the scope of the right to own property. Licenses are granted subject to certain conditions. If a licence holder fails to comply with the conditions under which the license was granted, it has no legal basis for relying on it to be able to continue its business.

15 Invited party - Ina Druviete, *Dr. habil. philol.*, Professor, University of Latvia – holds that the contested provisions comply with Articles 1 and 105 of the Constitution.

The language of implementation of the programmes of higher education studies allegedly should be subject to state regulation, as the economic interest of private higher education institutions needs to be balanced with the interest of protecting the official language. Higher education is allegedly not only an individual benefit, but also a contribution to the development of the national identity of the society and the state. The Law on Higher Education Institutions is to be allegedly regarded as an instrument for the implementation of the official language policy. One of the objectives of the language policy and also of the contested provisions is allegedly to protect the unified mean of communication necessary for the existence of the state - the official language. Latvia is allegedly characterised by a situation of fierce linguistic competition, therefore it is necessary to strengthen the status of the Latvian language in the Constitution and other laws.

Private higher education institutions, like the rest of society, allegedly should be responsible for the development of the Latvian language. According to Section 5 of the Law on Higher Education Institutions, which is essentially declarative, higher education institutions should allegedly act in the public interests, which include the preservation of the Latvian language in science and higher education. This allegedly does not require additional resources, as it does not imply a compulsory obligation for higher education institutions to develop linguistics study programmes or to conduct research in this field.

Section 56 of the Law on Higher Education Institutions allegedly ensures that the dominant role of the official language in the higher education of Latvia is maintained, at the same time providing the opportunity to acquire other language skills necessary for professional qualification. More liberal rules for language use would have undesirable consequences at other stages of education, such as reducing motivation to learn the official language in the institutions of general education.

Protection of the official language is allegedly a legitimate aim of the contested provisions. Positions of the Latvian language in several sociolinguistic functions allegedly do not correspond to the status of a official language - mostly because of the linguistic self-sufficiency of Russian speaking part of society. The contested provisions allegedly help to ensure a high level of Latvian language proficiency among specialists in various fields in such a situation.

The contested provisions are allegedly proportionate, since they allegedly ensure that graduates of private higher education institutions have equal opportunities for education and employment, as well as the possibility to engage in the life of society. The need for more effective acquisition of the language of studies and of the official language has also been identified in a number of recent European Union documents of recommending nature. They also recommend that students with different family languages should be included in the mainstream education.

However, each country allegedly should choose the model that would ensure acquisition of the official language as a mechanism for social integration to

the highest extent possible according to its own linguistic situation. Although the situation has improved in some language areas in Latvia, other areas allegedly show a retroactive trend due to the competition between languages. That is why the Latvian language will allegedly always be preservable. A regulation that would ensure that students would be taught only Latvian would not be effective, because for any language to be learnt, it must not only be learnt, but also used.

16 Invited person - Aigars Rostovskis, D. M. soc., sole shareholder of the LLC (SIA) “Biznesa augstskola “Turība”” and Chairman of the Latvian Chamber of Commerce and Industry - points out that state policy should be oriented towards stimulating the use of the Latvian language, not banning other languages. Latvia as a state needs to preserve, strengthen and improve its sovereignty and independence, as well as its national traditions, culture and language. Latvian language allegedly must be strengthened and developed, while at the same time expanding its usability. Latvia should be both patriotic and inclusive at the same time, and its education system - free, creative and international.

Regulation of private and state-run higher education institutions allegedly should be the same. Furthermore, private higher education institutions should have the same access to the European Union or other funding as state-run higher education institutions. This is not the case today.

However, not only the set objectives themselves are important, but also the methods used to achieve them. Latvian laws has a tendency to incorporate unjustified prohibition mechanisms into legislation hoping that something will be protected or developed in such a way. However, in today's open and constantly evolving world, such mechanisms allegedly do not work. In order to strengthen the official language, it is allegedly necessary to stimulate the desire to use the Latvian language, to support its use in new technologies, as well as to stimulate the interest of foreigners in learning the Latvian language.

Latvia should encourage the attraction of foreign higher education institutions, which would provide additional potential for the development of

society. Experts who speak several languages are in high demand in Latvia. If the great role of Russian is a cause for concern, it should allegedly be noted that the tendency among Russian speakers to study in Russian is already declining. Latvia should put more effort in the integration of foreigners. Studies in languages other than the official languages of the European Union should be allowed as a niche service, as they would open up more opportunities for students and businesses. It is allegedly difficult to say what losses private higher education institutions are currently incurring as a result of the application of the contested provisions, which prohibit from implementation of study programmes in Russian, but they could be estimated at around EUR 10 million.

Any restrictions affecting entrepreneurship, including the operation of private higher education institutions, do not contribute to the growth of national economy. Administrative restrictions are allegedly not in favour of education, as the interaction and diversity of cultures and languages allegedly provide more opportunities for learning, which is not in conflict with the development of the Latvian language. Currently, the higher education environment in Latvia is over-regulated, unstable and over-politicised.

Latvian should be taught mainly in families, kindergartens and schools. Whereas, in the field of higher education, use of the Latvian language should be promoted through economic incentives, for example, by offering paid study places in educational programmes implemented in Latvian or financial support for higher education institutions where Latvian is studied by foreign students.

17 Invited person - Kārlis Šadurskis, former Minister for Education and Science - noted that the official language should be used in all areas of life, including higher education. By delegating the right to issue state-recognised higher education documents, which give graduates of state and private higher education institutions equal rights in the labour market, to a private educator, the state has not only the right but also the obligation to ensure the equivalence of the acquired education, including in terms of proficiency in the official language. According to statistics, a large proportion of young people from national minorities have poor

knowledge of the official language, which is unacceptable for persons who have acquired higher education. This data also allegedly show that the regulation laid down in the contested provisions is still necessary.

In Latvia, it is allegedly the official language that needs to be protected as a priority, followed by the official languages of the European Union, and only then - by other foreign languages. Latvia allegedly does not need visiting professors who are unable work in the international language of science, English, because they cannot approbate their work internationally. Section 56, Paragraph Three of the Law on Higher Education Institutions is also based according to this principle.

The interpretation of Section 56, Paragraph Three, Clause 1 of the Law on Higher Education Institutions, proposed by the Ministry of Education and Science, according to which Latvian nationals may also be admitted to programmes designed for foreign students, should be respected. However, the possibility of such an interpretation allegedly is not clearly discernible in the text of the norm.

Although it is allegedly necessary to strengthen the official language in the field of higher education, it would be unthinkable that higher education could be delivered and studied exclusively in Latvian, as it would then be unable to compete globally. Therefore, a minimum proportion for the implementation of study programmes in a language of the European Union should probably be set. The regulation of different study programmes could vary according to their specificities, but it should be the same for both public and private higher education institutions. It would not be sufficient to achieve the objective of the contested provisions if the Latvian language was taught in private higher education institutions, as this teaching would not be as effective as the use of the language in the study process.

Proposals to include the contested provisions in the law were allegedly as a logical continuation of the Saeima's decision on the official language requirements for private primary and secondary education institutions. Since the European Union allegedly does not have competence in the field of education, the compatibility of the contested provisions with the European Union law has not been assessed in the course of their adoption.

18 Invited person - Sworn Advocate, LL.M. Uģis Zelčiņš - holds that the contested provisions do not infringe the legal framework of competition law, but restrict the right of establishment recognised in the European Union.

Higher education institutions are allegedly economic operators within the meaning of competition law. Although it would not be correct to assess every restriction of competition as a restriction of fundamental rights enshrined in the Constitution, competition aspects have their place in the assessment of proportionality. The first step would then be to assess the market in question, and primarily from a consumer's perspective. In the present case, it should be assessed whether the audience addressed by the Riga Graduate School of Law or the Stockholm School of Economics in Riga perceives these two higher education institutions as substitutable with other private higher education institutions. Second, market participants should be assessed. In this case, the Stockholm School of Economics in Riga and the Riga Graduate School of Law could be considered as such. Third, in assessing whether the contested provisions prevent a market participant from entering or remaining on the market, it should be concluded that this is not the case.

The Riga Graduate School of Law and the Riga School of Economics cannot be considered to receive state aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union, as the state does not provide them with any financial aid. Likewise, most likely, there is no infringement of Article 106 of the Treaty on the Functioning of the European Union, since the state has not granted any exclusive rights to these higher education institutions. Moreover, it is allegedly not sufficient to establish an infringement of that Article merely to find that exclusive rights have been granted, provided that they are not used in such a way as to distort competition. The present case is also not related to a prohibited agreement, namely, an agreement prohibited by Article 101 of the Treaty on the Functioning of the European Union.

The main issue in the present case within the context of the European Union law is the freedom of establishment or the right of establishment protected by

Article 49 of the Treaty on the Functioning of the European Union. Regulation on the use of languages in higher education allegedly could be considered an obstacle to the right to conduct business. It is therefore allegedly necessary to verify whether that obstacle has a legitimate aim and whether the restriction is proportionate to the burden it imposes.

The aim of the restriction may be considered to be the protection of the official language. This is also an aim recognised as acceptable by the Court of Justice of the European Union. When considering the proportionality of the restriction, the constitutional role of the Latvian language in Latvia allegedly must be taken into account. Uģis Zeltiņš points out that, in his opinion, the restriction caused by the contested provisions is proportionate.

When adopting provisions that may affect fundamental rights of the European Union, the legislator allegedly must consider their compatibility with the European Union law, but there are no quality or quantity standards for such considerations.

19 Invited person - Sworn Advocate, LL.M. Jūlija Jerņeva - believes that the contested provisions do not infringe competition law, but it should be assessed whether they are compatible with the freedom of establishment enshrined in the European Union law.

Jūlija Jerņeva points out that competition law is not applicable in the present case. The right to implement study programmes in the languages of the European Union is allegedly granted both to higher education institutions authorised to do so by special laws and to other higher education institutions within the framework of Section 56, Paragraph Three of the Law on Higher Education Institutions. Nor can there be any concern regarding unauthorised state aid, since no state financial resources are used.

However, it is necessary to assess the restriction of the freedom of establishment and the freedom to provide services enshrined in Articles 49 and 56, respectively, of the Treaty on European Union. In this case, however, it is the freedom of establishment that is most likely to be restricted.

When drafting the contested provisions, the legislator should have ascertained, first of all, whether it had the competence to regulate the matter in question. Secondly, the legislator, taking into account the fact that the contested provisions will also affect the internal market of the European Union, should have assessed compatibility of these norms with the Treaty on the Functioning of the European Union. With regard to the persons located outside the European Union, the legislator should also have complied with the General Agreement on Trade in Services before adopting the contested provisions, since those norms could affect the European Union's common commercial policy.

Although the official language and education issues are matters within the competence of the Member States of the European Union, this allegedly does not exclude the state's obligation to check the compatibility of draft laws in these areas with Articles 49 and 56 of the Treaty on the Functioning of the European Union. Section 56 of the Law on Higher Education Institutions allegedly restricts the functioning of these norms by creating a barrier for foreigners to enter the Latvian higher education market that is difficult to overcome. The development of the official language in the public interest could be considered to be the purpose of this restriction. Although the Member States have a broad competence in this matter, it should be recognised that the restriction is not proportionate. When analysing proportionality, account must be taken of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. The Charter, which allegedly protects the right to own property and freedom of establishment, should also be considered.

20 Invited person - Uģis Gruntmanis, D. M., Professor, Texas Southwestern University - points out: the fact that education in the countries of the European Union is self-evident. Latvia should always provide an opportunity to receive higher education in Latvian. However, in order to ensure the quality of higher education, attract foreign teaching staff and encourage Latvian students to stay in Latvia, it would be necessary to allow students to study at least in English. Language regulation at different levels of higher education could be different

because of the different objectives of these levels. With regard to the master's and doctoral study programmes, the official language requirements introduced by the contested provisions are allegedly not justified.

Besides, Latvia needs to compete with other countries in attracting foreign students. It would be more important to motivate these students to learn Latvian, rather than creating a situation where they do not want to come to Latvia because studies are implemented in a language they do not understand.

21 When examining the case in a written procedure, on 14 July 2020, the Constitutional Court adopted a decision to refer questions for a preliminary ruling to the Court of Justice of the European Union and to suspend the proceedings in the case until the ruling of the Court of Justice of the European Union enters into force.

The Constitutional Court asked following questions the Court of Justice of the European Union:

“1.1 Does the legal framework contested in the main proceedings restrict the freedom of establishment laid down in Article 49 of the Treaty on the Functioning of the European Union or, alternatively, the freedom to provide services provided for in Article 56, as well as the freedom to conduct a business, protected by Article 16 of the Charter of Fundamental Rights of the European Union?

1.2 What considerations should be taken into account when assessing the justification, compliance and proportionality of such a legal framework with its legitimate aim - the protection of the official language as an expression of national identity?”

22 On 7 September 2022, the Court of Justice of the European Union delivered its judgement in Case C-391/20 "Boriss Cilevičs", which was initiated for the purpose of providing answers to the questions referred by the Constitutional Court in the present case in preliminary ruling proceedings.

The Court of Justice of the European Union acknowledged: in order to avoid exceeding what is necessary in order to reach this objective, permission to use a language other than Latvian at least in the training acquired within the framework of European or international cooperation, as well as in the studies of culture and languages other than Latvian should be provided for. Thus, the Court of Justice of the European Union has answered the questions referred by the Constitutional Court that Article 49 of the Treaty on the Functioning of the European Union must be interpreted in such a way as that it does not contravene such a legal framework of a Member State which, in principle, obliges higher education institutions to implement study programmes solely in the official language of that Member State, provided that such a legal framework is justified by considerations related to the protection of the national identity of that Member State, namely, that is necessary to safeguard a legitimate aim and is proportionate thereto.

Concluding Part

23 The Saeima requests that the proceedings in the case be terminated, stating that:

- 1) Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have become null and void;
- 2) the contested provisions do not restrict the right to own property included in Article 105 of the Constitution.

If arguments for the termination of legal proceedings have been presented in the case, the court shall assess them before assessing the constitutionality of the contested provision (*see, for example, Paragraph 13 of the Decision of the Constitutional Court of 15 October 2021 on termination of legal proceedings in Case No 2020-63-01*).

Therefore, the Constitutional Court will first examine whether there are grounds to terminate the proceedings in the case.

24 According to the Saeima, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have been amended on the merits and have become null and void. There are allegedly no circumstances that would require the continuation of proceedings in this part of the case, since the Constitutional Court has initiated a case on whether the aforementioned norms currently in force comply with the Constitution, and private higher education institutions have not been active in protecting their rights. Whereas, the Applicant holds that the proceedings in the case should be continued, since the legal dispute still exists. The amendments allegedly do not eliminate the incompatibility of the above-mentioned norms with the Constitution and the law of the European Union, and the judgement of the Constitutional Court is allegedly essential for the protection of the rights of private higher education institutions.

By its judgement of 11 June 2020 in Case No. 2019-12-01, the Constitutional Court has declared Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to private higher education institutions, their teaching staff and students, incompatible with Articles 112 and 113 of the Constitution and null and void as of 1 May 2021. By the amendments to the Law on Higher Education Institutions of 8 April 2021, the Saeima has amended Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, and the amendments have entered into force on 1 May 2021.

Amendments to Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions may form grounds for the Constitutional Court to decide on termination of proceedings in this part. According to Section 29, Paragraph One, Clause 2 of the Constitutional Court Law, court proceedings of a case may be terminated until delivery of the judgement by the decision of the Constitutional Court, if the contested legal provision has been revoked. This norm is aimed at ensuring the economy of the Constitutional Court proceedings, and prevention of imposing the court to deliver a judgement in cases where dispute no longer exists (*see, for example, Paragraph 5 of the Decision of the Constitutional Court of 18 April 2016 on termination of*

proceedings in Case No. 2015-15-01). However, the law provides for the possibility of the Constitutional Court to terminate proceedings, but not the obligation to do so. Loss of force of the norm contested in the case per se does not always provide grounds for termination of legal proceedings (*see, for example, Paragraph 8 of the Decision of the Constitutional Court of 29 March 2011 on termination of legal proceedings in Case No. 2010-68-01*).

Thus, in order to decide on the termination of proceedings on the basis of Section 29, Paragraph One, Clause 2 of the Constitutional Court Law, the Constitutional Court must ascertain the following: 1) whether the contested provisions have become null and void and 2) whether there are no circumstances that require continuation of the proceedings (*see, for example, Paragraph 8 of the Decision of the Constitutional Court of 3 May 2017 on Termination of Proceedings in Case No. 2018-21-01*).

24.1 If the legislator has amended the contested provision after initiating a case before the Constitutional Court, the Constitutional Court must establish the scope of the changes made to conclude whether the content of the legal provision has changed on the merits (*see Paragraph 9 of the Judgement of the Constitutional Court of 20 May 2019 in Case No. 2018-21-01*).

Section 56, Paragraph Three of the Law on Higher Education Institutions contained a legal framework on the language of implementation of the study programme. By the amendments to the Law on Higher Education Institutions of 8 April 2021, the legislator has amended Section 56 of the Law on Higher Education Institutions, and, thus, language of implementation of the study programme is currently governed by Section 56, Paragraphs Three, Four and Five of the Law on Higher Education Institutions. The amendments stipulate that a study programme may be implemented in the official languages of the European Union also if, during the accreditation process of the study field, all the study programmes which form the same thematic area of education as the study programme to be implemented in the official language of the European Union have received a “good” or “excellent” rating. The legislator also stipulated that study programmes in such groups of educational programmes as language and cultural studies, language programmes

for the achievement of their objectives may be implemented in one of the official languages of the European Union or in another foreign language if all the study programmes have received a "good" or "excellent" rating in the accreditation process of the study field. At the same time, Article 56 of the Law on Higher Education Institutions excludes the right of higher education institutions to implement study programmes in the official languages of the European Union which are studied by foreign students in Latvia. Thus, the legislator has amended the exceptions to the obligation to implement study programmes in the official language. Thus, Section 56, Paragraph Three of the Law on Higher Education Institutions has been amended on the merits and has become null and void.

Also, by the amendments of 8 April 2021 to the Law on Higher Education Institutions, Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions has been amended. The legislator has also retained the prohibition to admit students after 1 January 2019 to study programmes implemented in a language that does not comply with Section 56, Paragraph Three of the Law on Higher Education Institutions also in the current wording of Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions. Thus, Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as it prohibits the admission of students, has not been amended on the merits. However, the transitional period provided for in this provision, during which private higher education institutions may continue the implementation of the commenced study programmes in a language that does not comply with Section 56, Paragraph Three of the Law on Higher Education Institutions, has been extended from 31 December 2022 to 31 December 2025. Thus, Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as it allows for the continuation of the implementation of the commenced study programmes, has been amended on the merits and has become null and void.

Therefore, the Constitutional Court must verify whether there are any circumstances which, would require that the proceedings in the present case be continued.

24.2 The Constitutional Court has recognised that it may be necessary to continue the proceedings in the case in order to prevent a significant threat to the interests of the State, society or individuals (*see Paragraph 5 of the Decision of the Constitutional Court of 20 June 2018 on termination of proceedings in Case No. 2017-19-01*). The abstract control of legal provisions, which aims to protect the public interests, is to be carried out on the basis of an application by MPs. Such an application is to be considered an essential instrument for the protection of important state and public interests (*see Paragraph 9 of the Judgement of the Constitutional Court of 15 November 2016 in Case No. 2015-25-01*).

It follows from the materials of the case that there is still a legal dispute between the Applicant and the Saeima as to whether Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions comply with Articles 1 and 105 of the Constitution and ensure harmony with the European Union law. The legislator has adopted a new legal framework that still restricts the right of private higher education institutions to use foreign languages for the implementation of their study programmes. Furthermore, prohibition to enrol students after 1 January 2019 in study programmes implemented in a language that does not comply with Section 56, Paragraph Three of the Law on Higher Education Institutions remains in force. The Applicant has requested that Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions be declared null and void from the moment of their adoption in order to prevent infringement of the fundamental rights of private higher education institutions.

Thus, there are circumstances which require that the proceedings on the constitutionality of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions be continued.

Therefore, the argument of the Saeima that Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have become null and void cannot be grounds for termination of the proceedings, and the proceedings in this part of the case should be continued.

25 The Saeima has requested to terminate legal proceedings in the case also because the contested provisions allegedly do not restrict the right to own property included in Article 105 of the Constitution.

According to Section 29, Paragraph One, Clause 6 of the Constitutional Court Law, court proceedings of a case may be terminated by the decision of the Constitutional Court in cases not referred to in Paragraph One, Clauses 1-5 of this section, when continuation of court proceedings in a case is impossible. In order to assess compliance of the contested provisions with Article 105 of the Constitution, the Constitutional Court must establish that the contested provisions restrict the relevant right. If such a restriction cannot be established, continuation of court proceedings in the case on compliance of the contested provisions with Article 105 of the Constitution is impossible.

Thus, the Constitutional Court will verify whether the contested provisions restrict the right to own property included in Article 105 of the Constitution.

26 The representative of the Saeima pointed out at the court hearing that the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions regulated the general tasks of higher education institutions, gave private higher education institutions a broad freedom of action in performing this task, and therefore did not restrict the right to own property included in Article 105 of the Constitution. The representatives of the Applicant also acknowledged at the hearing that the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions contained a general regulation from which higher education institutions do not derive specific obligations.

For the purposes of Article 105 of the Constitution, the "right to own property" shall be understood to mean all the rights of a property nature which a person may use for his or her own benefit and which he or she may dispose of at his or her own will(*see Paragraph 15.2 of the Judgement of the Constitutional Court of 28 September 2020 in Case No. 2019-37-0103*). It includes the right of

the owner to use the property belonging to him/her at his/her own discretion, as well as to gain economic benefit from it (*see Paragraph 18 of the Judgement of the Constitutional Court of 20 February 2020 in Case No. 2019-09-03*). The scope of right to own property includes person's right to engage in commercial activity on the basis of a license (*see Paragraph 17.1 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01 and Paragraph 18.1 of the Decision of 28 October 2022 on Termination of Proceedings in Case No. 2019-28-0103*). The Constitutional Court has recognised that interference of the state in the exercise of commercial activity restricts the right to own property (*see Paragraph 10.2 of the Judgement of the Constitutional Court of 12 December 2014 in Case No 2013-21-03*).

When clarifying the content of the fundamental rights included in the Constitution, international obligations of Latvia in the field of human rights, as it follows from Article 89 of the Constitution which aims to achieve harmony of the human rights norms enshrined in the Constitution with the norms of international law (*see Paragraph 25.1 of the Judgement of the Constitutional Court of 23 May 2022 in Case No. 2021--18--01*). Thus, content of Article 105 of the Constitution must be ascertained in conjunction with Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as – the Convention). The right to own property under Article 1 of Protocol No. 1 to the Convention also includes a licence to carry out commercial activity (*see Paragraphs 177-178 of the Judgement of the Grand Chamber of the European Court of Human Rights of 7 June 2012 in the case “Centro Europa 7 S.R.L. and di Stefano v. Italy”, Application No. 38433/09*).

The state has a positive duty to promote the use of the official language at every level of education. The cultivation and development of the official language is one of the tasks arising from the general duty of higher education institutions to act in the public interests. By the obligation to cultivate and develop the official language, set out in the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions, the legislator has specified the positive obligation of the state to create a higher education framework that ensures the functioning of

higher education institutions in the public interests. The third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions grants higher education institutions a broad freedom of action in performing this task (*see Paragraph 27 of the Judgement of the Constitutional Court of 11 June 2020 in Case No. 2019-12-01*).

It follows from the Application that the Applicant attributes the restriction of the right to own property of private higher education institutions to the prohibition to implement licensed and accredited study programmes in foreign languages. However, the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions does not regulate the language of study programmes and gives private higher education institutions a broad freedom of action to choose the ways in which the official language is to be cultivated and developed. Private higher education institutions can do this, for example, by conducting research and organising conferences in the official language. Thus, the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions does not restrict the right of private higher education institutions to carry out commercial activities on the basis of a license by implementing licensed and accredited study programmes, as included in Article 105 of the Constitution, and the grounds for termination of proceedings referred to in Section 29, Clause 6 of the Constitutional Court Law exist.

If compliance of a legal provision with both the principle of protection of legitimate expectations and Article 105 of the Constitution is contested in a case, compliance of the contested provision with Article 1 of the Constitution must be assessed in conjunction with Article 105 of the Constitution (*see, for example, Paragraph 16.3 of the Judgement of the Constitutional Court of 8 March 2017 in Case No. 2016-07-01*). Consequently, in the present case, it is also impossible to assess compliance of the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions with Article 1 of the Constitution, and the grounds for termination of proceedings referred to in Section 29, Paragraph Six of the Constitutional Court Law exists.

Consequently, the proceedings in the case on compliance of the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions with Article 1 and Article 105 of the Constitution should be terminated.

27 The Saeima holds that Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions did not restrict the right of private higher education institutions to own property, as they were provided with the opportunity to complete the study programmes they had commenced. The possibility for private higher education institutions to generate future income by enrolling new students does not constitute a pecuniary interest falling within the scope of Article 105 of the Constitution. Similarly, the right of citizens and companies of the Member States of the European Union who wished to establish private higher education institutions in Latvia to provide higher education services to carry out commercial activities was too abstract to establish a protectable pecuniary interest.

The Applicant, on the other hand, holds that Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricted the right of private higher education institutions, which already provided higher education services, to carry out commercial activities on the basis of a licence, as they were prevented from implementing already licensed and accredited study programmes in foreign languages. Similarly, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restrict the right of citizens and companies of the European Union Member States who wanted to establish private higher education institutions in Latvia to provide higher education services to carry out commercial activities. Namely, the above-mentioned norms have created obstacles to the provision of higher education services in Latvia in foreign languages and restricted the right to freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union, as well as the freedom to conduct a business enshrined in Article 16 of the Charter.

As indicated in Paragraph 26 of this Judgement, in the event that compliance of a legal provision with both the principle of protection of legitimate expectations and Article 105 of the Constitution is contested, the compliance of the contested provision with Article 1 of the Constitution must be assessed in conjunction with Article 105 of the Constitution. It follows from the objections raised by the Applicant and the Saeima that the Constitutional Court should verify whether Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricted the right to own property included in Article 105 of the Constitution to the two following groups: 1) citizens and companies of the Member States of the European Union who wished to establish private higher education institutions in Latvia to provide higher education services, and 2) private higher education institutions which already provided higher education services in Latvia before the contested provisions entered into force. According to the Applicant, Section 56, Paragraph Three of the Law on Higher Education Institutions, insofar as it applied to citizens of the Member States of the European Union and to enterprises wishing to provide higher education services, is incompatible with the right to own property, whereas, insofar as Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions applied to private higher education institutions already providing higher education services in Latvia before the entry of the aforementioned provisions into force, these provisions were not compatible with the right to own property in connection with the principle of protection of legitimate expectations.

Consequently, taking into account the arguments presented in the case and the need to ensure an effective, comprehensive and objective assessment of the constitutionality of the norms, the Constitutional Court will examine whether: 1) Section 56, Paragraph Three of the Law on Higher Education Institutions for citizens of the Member States of the European Union and for companies wishing to provide higher education services in Latvia restricted the right to own property included in Article 105 of the Constitution and 2) Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education

Institutions as a unified legal regulation for private higher education institutions already providing higher education services in Latvia restricted the right to own property included in Article 105 of the Constitution in connection with the principle of protection of legitimate expectations included in Article 1 of the Constitution.

A restriction of fundamental rights shall be established if: first, the person has the specific fundamental rights established in the Constitution, i.e., the contested provision falls within the scope of the specific fundamental rights; second, the contested provision directly restricts the fundamental rights established in the Constitution (*cf. Paragraph 5 of the Decision of the Constitutional Court of 23 November 2016 on Termination of Proceedings in Case No. 2016-02-01*).

27.1 In cases when compliance of a legal provision with the whole Article 105 of the Constitution is contested, but the contested provision does not provide for compulsory expropriation of property for public needs, only compliance of this norm with the first three sentences of Article 105 of the Constitution should be assessed (*see, for example, Paragraph 16.1 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01*).

Since the case under review does not apply to the compulsory alienation of property for public needs on the basis of a separate law, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions must be assessed within the scope of the first three sentences of Article 105 of the Constitution.

27.2 The Constitutional Court will first examine whether Section 56, Paragraph Three of the Law on Higher Education Institutions for citizens and companies of the Member States of the European Union who wished to establish private higher education institutions in Latvia to provide higher education services, restricted the right to own property included in the first three sentences of Article 105 of the Constitution.

Paragraph 26 of this Judgement, taking into account, inter alia, Latvia's international obligations in the field of human rights, recognises that the scope of the right to own property contained in the first three sentences of Article 105 of

the Constitution includes the right of a person to carry out commercial activities on the basis of a license. When specifying the content of fundamental rights included in the Constitution, the laws of the European Union should also be taken into account, insofar as they strengthen Latvia as a democratic state governed by the rule of law and protect fundamental rights, as it follows from Article 68, Paragraph Two of the Constitution, which requires to ensure harmony of the Latvian legal system with the European Union law (*cf. Paragraph 16.2 of the Judgement of the Constitutional Court of 6 March 2019 in Case No. 2018-11-01*).

In accordance with Article 6, Paragraph One of the Treaty on European Union, the European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (hereinafter referred to as – the Charter) and the Charter has the same legal value as the Treaty on European Union and the Treaty on the Functioning of the European Union. Article 16 of the Charter provides for freedom to conduct a business, which protects the freedom to engage in an economic or commercial activity, the freedom to conclude contracts and free competition (*see Paragraph 28 of the Judgement of the Court of Justice of the European Union of 30 June 2016 in Case C-134/16 Lidl*). The aim of the right to freedom of establishment is to ensure that every citizen of the European Union has the right to carry out an activity without discrimination or disproportionate restrictions (*see: European Union Agency for Fundamental Rights. Freedom to conduct business: exploring the dimensions of a fundamental rights, p. 21. Available at: fra.europa.eu*).

Article 16 of the Charter is linked to the freedom of establishment provided for in Article 49 of the Treaty on the Functioning of the European Union. The assessment of the restriction imposed by national regulatory framework in relation to Article 49 of the Treaty on the Functioning of the European Union also applies to alleged restrictions on the right to conduct a business enshrined in Article 16 of the Charter (*see Paragraph 50 of the Judgement of the Court of Justice of the European Union of 20 December 2017 in Case C-322/16 Global Starnet*).

Article 49 of the Treaty on the Functioning of the European Union stipulates the freedom of establishment of citizens of Member States of the European Union

and thus protects citizens and legal persons of Member States of the European Union who wish to pursue their economic activity in another Member State (see *Court of Justice of the European Union of 28 January 1986 Paragraph 14 of Case in C-270/83 Commission vs. France*; see also: Kellerbauer M., Klamert M., Tomkin J. (Eds.) *The EU Treaties and the Charter of Fundamental Rights. The Commentary*. Oxford: Oxford University Press, 2019, p. 658). Namely, Article 49 of the Treaty on the Functioning of the European Union, read in conjunction with Article 54 of that Treaty, implies the right of undertakings established in any Member State to maintain agencies or branches in another Member State, to establish subsidiaries or to acquire shares in existing undertakings (see *Case C-270/83 Commission v France, Paragraph 18, and Case C-212/97 Centros Ltd, Paragraphs 19-20, Judgements of the Court of Justice of the European Union of 28 January 1986*; see also: Geiger R., Khan D. E., Kotzur M. *European Union Treaties. A Commentary*. München: Beck; Oxford: Hart, 2015, pp. 359, 377).

The Court of Justice of the European Union has held that the legal framework contained in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions applies to the freedom of establishment. Legal entities and natural persons, including foreign persons, may establish higher education institutions in Latvia to provide education services, which are usually provided on a permanent and long-term basis. The right of nationals of other Member States to conduct business in Latvia and to pursue higher education programmes is subject to the obligation to implement these programmes in the official language. Such an obligation makes it more difficult to carry out business in the Member State which imposes it and is therefore a restriction on the freedom guaranteed by Article 49 of the Treaty on the Functioning of the European Union. In a situation where these citizens have an establishment in another Member State, they will not be able to use a large part of the administrative staff and teaching staff employed by their establishment and will therefore incur significant costs (see *Paragraphs 54, 55, 62 and 63 of the Judgement of the Court of Justice of the European Union of 7 September 2022 in Case C-391/20 "Boriss Cilevičs"*).

In the present case, the compliance of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions with Article 1 and Article 105 of the Constitution is contested. The first three sentences of Article 105 of the Constitution cover the right of everyone to use his or her property, including for the purposes of commercial activity. Thus, it follows from the obligations assumed by Latvia with its membership in the European Union that the rights included in Article 105 of the Constitution must be specified in conjunction with the freedom to conduct a business, included in Article 16 of the Charter, and the freedom of establishment, included in Article 49 of the Treaty on the Functioning of the European Union (*cf. Paragraph 23.1 of the Judgement of the Constitutional Court of 12 June 2020 in Case No. 2019-12-01*). The freedom to conduct a business enshrined in Article 16 of the Charter, and the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union, may overlap with the right to own property enshrined in the first three sentences of Article 105 of the Constitution, but this does not mean that the content of these norms would overlap. The representative of the Saeima pointed out at the hearing that the content of Article 49 of the Treaty on the Functioning of the European Union and Article 105 of the Constitution may partially overlap, however, it is different - Article 106 of the Constitution also includes freedom of business activity (*see transcript of the hearing of 3 January 2023, volume 6 of the case file, p. 141 and vol. 7 p. 73*). The representative of the Ministry of Justice expressed the opinion at the hearing that the freedom of entrepreneurship may be included in several norms of the Constitution (*see transcript of the hearing of 3 January 2023, volume 7 of the case file, p. 5*).

The Constitutional Court has recognised that the restriction of the right to own property should be manifested in such a way that the contested provision has denied a right that had already been established for the merchant or the scope of the Applicant's right protected by the norms of Constitution has been reduced (*cf. Paragraph 17.3 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01*). Namely, the right to own property contained in the first three sentences of Article 105 of the Constitution protects existing property.

According to the case-law of the Constitutional Court, restriction on the right to own property must be manifested in such a way that a right which has already been established for a merchant is negatively affected. This means that the first three sentences of Article 105 of the Constitution protect the right to engage in a commercial activity that has already begun, but their scope does not include the right to start a commercial activity.

Consequently, the right of citizens and companies of the Member States of the European Union who wished to engage in business by establishing private higher education institutions in Latvia and providing higher education services, right to commence commercial activities does not fall within the scope of the first three sentences of Article 105 of the Constitution.

27.3 The Constitutional Court must also examine whether Section 56, Paragraph and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricted the right to own property for the private higher education institutions which were already providing higher education services in Latvia in conjunction with legitimate expectations.

As recognised in Paragraphs 26 and 27.2 of this judgement, when the first three sentences of Article 105 of the Constitution are specified in conjunction with the Convention, the Charter and the Treaty on the Functioning of the European Union, it can be established that their scope includes the right to continue a commercial activity already commenced on the basis of a license. The Constitutional Court must examine whether Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricted the aforementioned rights.

In order to establish whether the contested provisions interfere with the performance of commercial activity and thus restrict the right of persons to own property, it is necessary to assess whether they affect the relevant commercial activity (*cf. Paragraph 17.2 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01*). It follows from the case-law of the European Court of Human Rights that the right to own property may be restricted not only if the license issued is revoked, but also if restrictions are imposed on the

license (*see Paragraphs 88-90 of the Judgement of the European Court of Human Rights of 8 October 2018 in case O'Sullivan McCarthy Mussel Development Ltd v. Ireland, application No. 44460/16, and the opinion of Kristīne Līce in the transcript of the hearing of 3 January 2023, volume 7 of the case file, p. 39-40, 44*).

Higher education institutions are the institutions of higher education and science that implement academic and professional study programmes, as well as conduct scientific activities and engage in artistic creativity (*see Section 3, Paragraph One of the Law on Higher Education Institutions*). Private higher education institutions are commercial companies or foundations operating in accordance with the Commercial Law or the Law on Societies and Foundations, insofar as this does not contravene the Law on Higher Education Institutions (*see Section 7, Paragraph Three of the Law on Higher Education Institutions*). They may be founded by legal entities and natural persons, including foreign legal entities and natural persons (*see Section 8, Paragraph One of the Law on Higher Education Institutions*). Accreditation of a higher education institution is a verification of the quality of the organisation and resources of a higher education institution, as a result of which it is granted the status of a state-recognised higher education institution (*see Section 1, Paragraph Three of the Law on Higher Education Institutions*).

Higher education institutions are entitled to implement study programmes if they have obtained a study programme license (*see Section 1, Clause 12, Section 46, Paragraph One and Section 55², Paragraph One of the Law on Higher Education Institutions*). Accreditation of a field of study entitles a higher education institution to issue a state-recognised higher education diploma for successful completion of a study programme corresponding to the relevant field of studies (*see Section 1, Clause 16 of the Law on Higher Education Institutions*). Both during the process of licensing a study programme and in the process of accreditation, its compliance with the requirements of the Law on Higher Education Institutions is assessed (*see Section 55², Paragraph Five, Clause 1 of the Law on Higher Education Institutions and Sub-paragraph 16.1 of the*

Regulation of the Cabinet of Ministers No. 793 of 11 December 2018 "Regulations on Opening and Accreditation of Fields of Study"). The study programme license and the accreditation sheet for the field of study shall include information on the language of implementation of the study programme (*see Annex to the Regulation of the Cabinet of Ministers No. 795 of 11 December 2018 "Regulations on Licensing of Study Programmes" and Annex 2 to Regulation No. 793 of 11 December 2018 "Regulations on Opening and Accreditation of Fields of Study")*). Thus, the language of implementation is an essential part of the study programme and necessary for the licensing of the study programme, accreditation of the field of study and the conduct of the commercial activity of private higher education institutions.

By the amendments to the Law on Higher Education Institutions of 21 April 2018, the requirement to implement study programmes in the official language stipulated in Section 56, Paragraph Three of the Law on Higher Education Institutions has been extended also to private higher education institutions, except as specified in the norm. Section 56, Paragraph Three of the Law on Higher Education Institutions provided for the following exceptions from the obligation to implement study programmes in the official language: 1) Study programmes acquired by foreign students in Latvia and study programmes implemented within the framework of cooperation under European Union programmes and intergovernmental agreements may be implemented in the official languages of the European Union; not 2) one-fifth of the credit point amount of the study programme may be implemented in the official languages of the European Union, taking into account that final and state examinations as well as the writing of a qualification paper, bachelor or master's thesis may not be included in this part; 3) study programmes, the implementation of which in a foreign language is necessary for the achievement of the objectives of the study programme, in accordance with the classification of education of the Republic of Latvia in the following groups of educational programmes: language and cultural studies, language programmes; 4) joint study programmes may be implemented in the official languages of the European Union.

Thus, Section 56, Paragraph Three of the Law on Higher Education Institutions provides for provisions that narrow the right of private higher education institutions to implement study programmes in foreign languages and that private higher education institutions must take into account when planning their commercial activities in the field of higher education in the future. According to Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, as of 1 January 2019, private higher education institutions could no longer enrol students in study programmes that did not comply with the requirements of Section 56, Paragraph Three of the Law on Higher Education Institutions. However, with relation to the students already enrolled, a transitional period was set for the completion of the study programme. This means that private higher education institutions can no longer offer programmes in a language that does not meet these requirements and thus benefit economically. Thus, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions affect the right of private higher education institutions to conduct commercial activities in the provision of higher education services.

The Court of Justice of the European Union has also recognised that the regulation contained in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricts the freedom of establishment of citizens of other Member States who, before the entry of those provisions into force, have exercised that freedom and established higher education institutions in Latvia that offer educational programmes in a language other than Latvian. These citizens will have to adapt their educational programmes to the requirements of the Law on Higher Education Institutions, which may entail significant costs, including in relation to large part of their administrative staff and teaching staff (*see Paragraph 64 of the Judgement of the Court of Justice of the European Union of 7 September 2022 in case C-391/20 "Boriss Cilevičs"*).

Consequently, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restricted the right of private higher education institutions that already provided higher education

services to carry out their commenced commercial activities on the basis of a license.

Thus, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions restrict the right of private higher education institutions to own property, included in the first three sentences of Article 105 of the Constitution in conjunction with the principle of protection of legitimate expectations included in Article 1 of the Constitution, and the proceedings in the case must be continued.

28 In order to assess the constitutionality of the restriction of fundamental rights contained in Article 105 of the Constitution, it must be ascertained whether:

- 1) restriction of fundamental rights is imposed by a duly adopted law;
- 2) this restriction has a legitimate aim;
- 3) this restriction is proportionate to its legitimate aim (*see, for example, Paragraph 15 of the Judgement of the Constitutional Court of 7 January 2022 in case No. 01/06/2021*).

29 When assessing whether the restriction of fundamental rights contained in the contested provision has been established by a duly adopted law, the Constitutional Court must verify whether the contested provisions:

- 1) have been adopted in compliance with the procedures provided for in the laws and regulations;
- 2) have been proclaimed and are publicly available in accordance with the requirements of the laws and regulations;
- 3) are sufficiently clearly formulated for a person to be able to understand the content of the rights and obligations arising therefrom and to predict the consequences of the application thereof (*see Paragraph 16 of the Judgement of the Constitutional Court of 7 January 2022 in Case No. 01/06/2021*).

The restriction of fundamental rights must be established in the legislative process which complies with the principle of good lawmaking (*see Judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 15*).

The Constitutional Court has already recognised that the restriction of the fundamental right included in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions has been established by a duly adopted law (*see Paragraph 31 of the Judgement of the Constitutional Court of 12 June 2020 in Case No 2019-12-01*).

Thus, restriction of the fundamental right contained in Section 56, Paragraph Three and in Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions has been established by a duly adopted law.

30 Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, i.e., the restriction must be imposed for the sake of important interests – a legitimate aim (*see, e.g., Paragraph 20 of the Judgement of the Constitutional Court of 30 March 2022 in Case No. 2021-23-01*).

The Applicant acknowledges that the restriction contained in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions has legitimate aims - promotion of use of the official language and preservation of national identity. The Saeima also points out that the aforementioned norms are aimed at strengthening the use of the official language, i.e., the aim of the restrictions contained in these norms is to protect the democratic order and the rights of other persons.

The Constitution establishes the status of the Latvian language as the official language and grants it constitutional value. Article 4 of the Constitution is one of the articles that form the constitutional basis when determining the political-legal nature of the Latvian state system. Thus, the Latvian language is the language of discourse of Latvia's united democratic society. The introduction to the Constitution reveals the values that are the basis for building an inclusive democratic society, and the Latvian language is one of these values. The Latvian language is an integral part of the constitutional identity of the State of Latvia (*see*

Paragraphs 21.1 and 24.2 of the Judgement of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01).

Latvia's belonging to the European cultural space has been acknowledged in the Introduction of the Constitution, and Latvia's identity in this space is formed, inter alia, by the Latvian language. The Latvian language as the official language gives the Latvian state a certain - and specifically Latvian - national-cultural identity. In accordance with the principle of a national state, the state is obliged to ensure by all means that the Latvian language does indeed fulfil its function of an official language - it is the common language of communication and democratic participation of society (*cf. Paragraph 16 of the Decision of the Constitutional Court of 17 November 2017 on Termination of Proceedings in Case No. 2017-01-01*). Common language creates a common worldview, space for information and discussion, which is required for decision-making and mutual interaction in a democratic society. This is the meaning of the status of a official language and, at the same time, a mandatory prerequisite for a united society and a well-functioning democracy (*see: Levits E. The status of official language must be implemented by the state and citizens in everyday life. Book: Levits E. State Will. Ideas and thoughts for Latvia. 1985–2018 Riga: Latvijas Vēstnesis, 2019, p. 799*).

Fluent official language skills are necessary for every member of Latvian society to participate effectively in the state's democratic processes. An individual who speaks the official language has the opportunity to compare and critically evaluate the information obtained and to participate in good quality in the public discourse, which is an integral part of a democratic society (*see Paragraph 18 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*). Therefore, every person permanently residing in Latvia must be able to speak the official language of this country, furthermore - at a level that enables him or her to participate fully in the life of the democratic state. Members of society who understand and respect the values which the Constitution is based on form a prerequisite for the existence of a democratic state governed by the rule of

law (see Paragraph 24.2 of the Judgement of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01).

Taking into account the fact that the Latvian language is an integral part of the constitutional identity and the common language of communication and democratic participation of the society, as well as the fact that, in the conditions of globalisation, Latvia is the only place in the world where the existence and development of the Latvian language and, consequently, of the fundamental nation can be guaranteed, narrowing of the use of the Latvian language as the official language in the territory of the state is also considered as a threat to the democratic state order (cf. Paragraph 3.2 of the Concluding Part of the Judgement of the Constitutional Court of 21 December 2001 in Case No. 2001-04-0103). Thus, the regulation that provides for strengthening of the official language protects the democratic state order (see paragraph 18 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01).

Furthermore, Article 4 of the Constitution has enshrined the right of Latvian nationals to use the Latvian language in their mutual communication (see Paragraph 3.2 of the Judgement of the Constitutional Court of 21 December 2001 in Case No. 2001-04-0103). Thus, every Latvian national has the right to use the official language also in private communication. The European Court of Human Rights has also recognised that by designating a language as a official language, a state undertakes to guarantee its nationals the use of that language in private and public spheres (see the Judgement of the European Court of Human Rights of 7 December 2004 in case "Mentzen v. Latvia", application No. 71074/01). The right of Latvian nationals to freely use the official language in any sphere of life throughout the territory of the state is facilitated not only by the knowledge of the official language of those belonging to the state nationality, but also of those belonging to other nationalities (cf. Paragraph 16 of the Concluding Part of the Judgement of the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106).

The case-law of the European Court of Human Rights recognises that restrictions of fundamental rights may be justified on grounds of constitutional

identity and the protection of the official language (*see the Judgement of the European Court of Human Rights in case "Mentzen v. Latvia" of 7 December 2004, application No. 71074/01, and the Judgement of 9 June 2022 in case "Savickis and Others v. Latvia", application No. 49270/11, Paragraph 198*). The European Union, in accordance with Article 4, Paragraph Two of the Treaty on European Union, respects the national identities of the Member States, which includes the protection of the official language of the Member State concerned (*see Paragraph 86 of the Judgement of the Court of Justice of the European Union of 12 May 2011 in Case C-391/09 "Runevič-Vardyn and Wardyn" and Paragraph 26 of the Judgement of 16 April 2013 in Case C-202/11 "Las"*). The Court of Justice of the European Union has concluded that the objective of promoting and encouraging the use of an official language of a Member State constitutes a legitimate aim for the purpose of restricting the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union. It is an expression of the national identity of the Member States (*see Paragraphs 68, 70 and 83 of the Judgement of the Court of Justice of the European Union of 7 September 2022 in Case C-391/20 "Boriss Cilevičs"*).

Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have been adopted in conjunction with other norms that provide for a gradual transition to education in the official language (*see Paragraph 32 of the Judgement of the Constitutional Court of 12 June 2020 in Case No. 2019-12-01*). The use of the official language in the education system is the basis for a person's future possibilities to fully use the official language and thus integrate into society (*cf. Paragraph 18 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*). Education is essential for the implementation of a policy to protect and promote the use of the official language (*see Paragraph 20 of the Judgement of the Court of Justice of the European Union of 28 November 1989 in Case C-379/87 "Groener"*). Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions oblige private higher education institutions to use the official language in the study process. This

strengthens the role of the official language in higher education and protects the democratic political system. Similarly, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, by providing for the use of the official language in the study process, promote the skills of using the official language and are aimed at protecting the right of Latvian nationals to use the official language.

Consequently, the legitimate aims of the restriction of the fundamental right contained in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions are the protection of the democratic political system of the state and the rights of others.

31 In ascertaining whether the restriction of fundamental rights included in the contested provision is proportionate, the Constitutional Court verifies if:

- 1) the restriction is appropriate to achieve the legitimate aim;
- 2) the restriction is necessary to achieve the legitimate aim;
- 3) the benefit to society of the restriction outweighs the harm caused to the individual.

If, upon assessment of a legal provision, it is recognised that the restriction of fundamental rights contained therein does not comply with at least one of these criteria, then the contested provision does not comply with the principle of proportionality and is unlawful (*see, for example, Judgement of the Constitutional Court of 6 April 2021 in Case No. 2020-31-01, Paragraph 17*).

32 The means selected by the legislator are appropriate for achieving a legitimate aim contained in the contested provision, if the aim is achieved by the specific framework (*see, for example, Judgement of the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Paragraph 13*).

The restriction of the fundamental rights stipulated in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions promoted the use of the official language in higher

education. As a result, students at private higher education institutions use the official language in their everyday studies and cultivate and strengthen their language skills. Thus, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions strengthen the role of the Latvian language in higher education and help to develop its use in various fields of science. Thus, every person is ensured the opportunity to fully participate in the democratic processes of the state and society, the development of national science is promoted and the right of Latvian nationals to use the official language in mutual communication is protected.

The Court of Justice of the European Union has also recognised that rules obliging higher education institutions to use the official language in principle promote the use of that language throughout the population concerned and ensure that it is also used at university level (*see Paragraph 74 of the Judgement of 7 September 2022 in Case C-391/20 "Boriss Cilevičs"*).

Therefore, the restriction of the fundamental rights set out in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions is appropriate to achieve the legitimate aims.

33 When examining whether the selected means are necessary to achieve the legitimate aim, the Constitutional Court assesses whether the legitimate aim cannot be achieved by other, less restrictive means which would be equally effective (*see, for example, Judgement of the Constitutional Court of 6 April 2021 in Case No. 2020-31-01, Paragraph 19*).

33.1 The Applicant has indicated a number of alternatives which, in its opinion, would allow to achieve the legitimate aims by more lenient means. One of such alternatives is to grant private higher education institutions the right to implement study programmes in foreign languages, provided that they simultaneously ensure the availability of an equivalent study programme in the official language.

As pointed out in Paragraph 30 of this Judgement, every person permanently residing in Latvia must have a knowledge of the language of this country - the society's common language of communication and democratic participation. The restriction on the private higher education institutions' right to own property set out in Section 56, Paragraph Three of the Law on Higher Education Institutions is aimed at ensuring that the study process is conducted primarily in the official language, except for the exceptions from the obligation to implement study programmes in the official language provided for in this norm. If, in addition to the exceptions from the obligation to implement study programmes in the official language already provided for in Section 56, Paragraph Three of the Law on Higher Education Institutions, implementation of any study programme in a foreign language would be allowed provided that the higher education institution also implements an equivalent study programme in the official language, the enrolment of students in study programmes implemented in the official language would not be ensured. Namely, there would be a possibility that the study process is mainly conducted in foreign languages. Such an alternative would therefore not encourage Latvian nationals to study in the official language cultivating their official language skills, and neither would it strengthen the role of the official language in higher education at the same quality. Consequently, the legitimate objectives would not be achieved at the same quality, and this measure cannot be regarded as an alternative mean to achieve the legitimate objectives.

33.2 The Applicant has also indicated on another alternative mean, namely that the obligation to establish study programmes in the official language could be linked to the allocation of state budget funding, thus ensuring that study programmes in the official language would be cheaper, more accessible and more popular.

This alternative essentially provides for the allocation of state budget funding to private higher education institutions. State-run higher education institutions receive funding from the state budget, but private higher education institutions are mainly privately funded. Private higher education institutions may

receive state budget funding only in exceptional cases, for example, if the private higher education institution implements a study programme that is not offered by state-run higher education institutions (*see the opinion of the Ministry of Education and Science in the transcript of the hearing of 3 January 2023, volume 7 of the case file, p. 24–25*).

If the legitimate aim pursued can be achieved by such means which restrict the rights of a person less, but at the same time require a disproportionately high investment from the state and society, then it cannot be considered that the state would be obliged to choose such means (*see Paragraph 19.2 of the Judgement of the Constitutional Court of 6 October 2010 in Case No. 2009-113-0106*). Therefore, the Constitutional Court cannot recognise that granting state budget funding to private higher education institutions would be a more lenient measure.

33.3 The applicant has also indicated as a more lenient measure the right to implement study programmes in a foreign language in the form of distance education for foreign students.

At the time when Section 56, Paragraph Three and in Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions were in force, distance education as a form of study programme implementation already existed (*see Section 8 of the Law on Education, Sub-paragraph 12.6 of the Cabinet of Ministers Regulation No. 795 of 11 December 2018 "Regulations on Licensing of Study Programmes" and Annex and the opinion of the Ministry of Education and Science in the transcript of hearing of 3 January 2023, volume 7 of the case file, p. 12*). The legal framework on the language of implementation of the study programme contained in Section 56, Paragraph Three of the Law on Higher Education Institutions was applicable to all forms of implementation of the study programmes, including distance education (*see the opinion of the Ministry of Education and Science in the transcript of the hearing of 3 January 2023, volume 7 of the case file, p. 12*). This norm provided for that the study programmes acquired by foreign students may be implemented in the official languages of the European Union. Thus, the more lenient remedy indicated by the Applicant, insofar as it concerns the official languages of the European Union, was already

available to private higher education institutions at the time of the entry of Section 56, Paragraph Three and in Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions into force.

However, the Constitutional Court must also ascertain whether the right to implement study programmes in the form of distance education in foreign languages other than the official languages of the European Union was not a more lenient measure that the legislator could have established, namely, whether Section 56, Paragraph Three, Clause 1 of the Law on Higher Education Institutions could have been extended to those languages other than the official languages of the European Union.

The Constitutional Court has already recognised that Section 56, Paragraph Three, Clause 1 of the Law on Higher Education Institutions cannot be interpreted in such a way as that Latvian nationals could be admitted to study programmes which foreign students acquire in Latvia (*see Paragraph 28.1 of the Judgement of the Constitutional Court of 12 June 2020 in Case No. 2019-12-01*). However, the Constitutional Court has also recognised that a legal provision cannot be understood outside the practice of its application (*see, for example, Paragraph 16.2 of the Judgement of the Constitutional Court of 15 March 2018 in Case No. 2017-16-01*). It follows from the case materials that, until the adoption of the Judgement of the Constitutional Court in Case No. 2019-12-01, the aforementioned norm was interpreted in such a way that Latvian nationals could also be enrolled in study programmes acquired by foreign students. A number of higher education institutions have allegedly implemented such practices (*see the opinion of the Ministry of Education and Science in the transcript of the hearing of 23 April 2020, volume 3 of the case file, p. 15*). Consequently, Latvian nationals would also be able to acquire the study programmes which would be implemented in the form of distance education and acquired by foreign students in foreign languages. Such an alternative measure would not strengthen the role of the official language in higher education at the same quality, as Latvian nationals would use the official language less in the study process. Consequently, the legitimate

objectives would not be achieved to the same quality and this measure cannot be regarded as an alternative mean for the achievement of the legitimate objectives.

33.4 The Constitutional Court must assess not only the alternative means pointed at by the parties, but also satisfy itself that there are no other, more lenient means.

The Constitutional Court has already recognised that there is an alternative, less restrictive mean for the achievement of the legitimate aims of private higher education institutions, which is to grant the right to implement study programmes in foreign languages to those higher education institutions whose implemented study programmes have achieved certain quality criteria and to provide for exceptions from the general regulation of Section 56, Paragraph Three of the Law on Higher Education Institutions, for example, in certain fields of science or in studies of certain level (*see Paragraph 35 of the Judgement of the Constitutional Court of 11 June 2020 in Case No. 2019-12-01*).

It follows from the case materials that the private higher education institutions implemented study programmes in Latvian, English and Russian (*see the opinion of the Ministry of Education and Science in the transcript of the hearing of 23 April 2020, volume 3 of the case file, p. 9*).

Latvia belongs to the European cultural space, and one of the languages of this space is English. It is also one of the official languages of the European Union and the international language of science (*see, for example, the opinion of Kārlis Šadurskis in the transcript of the hearing of 23 April 2020, volume 3 of the case file, p. 85-86*). Higher education can be described as a "bridge" between education and scientific research (*see Paragraph 25.1 of the Judgement of the Constitutional Court of 12 June 2020 in Case No. 2019-12-01*). The Saeima has pointed out that it established exceptions from the obligation to implement study programmes in the official language specifically in relation to the official languages of the European Union, because Latvia is a Member State of the European Union and was involved in the development and implementation of the European Union education policy, which facilitated the participation of higher education institutions in the implementation of various study programmes (*see the Saeima's*

reply, volume 1 of the case file, p. 37). Similarly, the Ministry of Education and Science has expressed the opinion that Latvia, as a Member State of the European Union, supports the strengthening of the European cultural space(*see the opinion of the Ministry of Education and Science, volume 2 of the case file, p. 13-14).*

The legal framework that, in addition to the existing exceptions from the obligation to implement study programmes in the official language, would grant the right to implement study programmes in the official languages of the European Union to those higher education institutions whose study programmes have reached certain quality criteria and would provide for exceptions from the general regulation of Section 56, Paragraph Three of the Law on Higher Education Institutions, for example, in certain fields of science or certain levels of studies, would strengthen the skills of the official languages of the European Union and Latvia's belonging to the European cultural space, as well as restrict less the private higher education institutions' right to own property. The legislator has not considered use of such an alternative remedy. The legislator, while respecting the need to protect the official language, should promote the learning of the official languages of the European Union so that the Latvian state and society would be able to fully participate in the European cultural space, namely, the European educational and scientific space. Thus, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to the official languages of the European Union, were not necessary for the achievement of the legitimate aims and were therefore not proportionate and did not ensure harmony with the law of the European Union.

However, the Constitutional Court draws attention to the fact that the popularity and use of the English language is growing rapidly (*see: Latvian Language Agency. Language situation in Latvia 2016-2020. Available at: valoda.lv*). The Guidelines of the official language Policy for 2021-2027, developed on the basis of data for 2015-2020, state that the rapid spread of the English language in many areas of society in the world and in Latvia, public and individual beliefs about the necessity of the English language, and the dominant position of the English language in the internet environment affect the

communication habits of young people and reduce the attractiveness of using and learning the Latvian language (*see the Cabinet Order No. 601 of 25 August 2021 "On Guidelines of the Official Language Policy for 2021-2027"*). The legislator should therefore create a legal framework that would preserve the role of the official language in higher education, while promoting the development of higher education and science in the European cultural space.

Consequently, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to the implementation of study programmes in private higher education institutions in the official languages of the European Union, were incompatible with Article 1 and the first three sentences of Article 105 of the Constitution.

34 The Constitutional Court should also satisfy whether granting the right to implement study programmes in foreign languages other than the official languages of the European Union to those higher education institutions whose study programmes have reached certain quality criteria and exceptions from the general regulation of Section 56, Paragraph Three of the Law on Higher Education Institutions, for example, in certain fields of science or at certain levels of studies, which would allow the use of such foreign languages, should be recognised as an alternative means of achieving the legitimate aims. As it was already mentioned before, language other than the official language of the European Union in which the private higher education institutions implemented their study programmes was Russian (*see Paragraph 33.4 of this Judgement*). In study programmes implemented in Russian, majority of students were Latvian nationals (*see the Saeima's reply in volume 1 of the case file, p. 40; see also the opinion of Kārlis Šadurskis and the Ministry of Justice in the transcript of the hearing of 23 April 2020 in volume 3 of the case file, p. 42 and 84*).

Within the historical context of Latvia, the issues of the official language cannot be viewed in isolation from the policy implemented by the Soviet

occupation regime and the resulting complex ethno-demographic situation (cf. *Paragraph 1 of the Concluding Part of the Judgement of the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106*). The European Court of Human Rights in its cases against Latvia also takes into account the historical context, including the period of occupation, noting that the rights included in the Convention cannot be interpreted and applied in a vacuum (see, for example, the *Judgement of the Grand Chamber of the European Court of Human Rights in case “Ždanoka v. Latvia”, Application No. 58278/00 of 16 March 2006; the Judgement of 1 October 2013 in case “Joint-Stock Company under liquidation Selga and Vasiļevska v. Latvia”, Application No. 17126/02, etc., and the Judgement of 9 June 2022 in case “Savickis and Others v. Latvia”, Application No. 49270/11*).

The policy of the Soviet occupation regime was aimed at breaking the identity and state will of the Latvian nation, and it played a significant role in weakening the position of the Latvian language, forced Russification and the promotion of the dominant status of the Russian language. As a result of this policy, the knowledge and use of the Latvian language had significantly decreased (see *Paragraph 3 of the Concluding Part of the Judgement of the Constitutional Court of 5 June 2003 in Case No. 2003-02-0106*). Language use also became an issue because of the migration encouraged by the occupying power. The communication issue was solved by forced Russification, by encouraging the use of Russian in everyday communication, and by enforcing its use in state institutions. In the field of education, forced Russification was implemented, with special attention paid to the learning and use of Russian in the educational process. Thus, Russian was privileged in terms of language use in society, including in the education system, for a long time, and its spread throughout society increased rapidly (see *Paragraph 24.2 of the Judgement of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01*).

Even more than thirty years after the restoration of independence, there is still a need to remedy the consequences of the Soviet occupation, because, at the current stage of the development of society, a significant proportion of Latvian nationals do not know Latvian at a sufficient level to be able to fully integrate into

the society, communicate with the state and other members of society, or choose not to use it. In 2019, minorities used Latvian in public domain in about 39% of situations. In private communication - communication with strangers on the street - this rate was 50% (*see the Cabinet of Ministers Order No. 601 of 25 August 2021 "On the Guidelines for the Official Language Policy 2021-2027"*). According to the Latvian Language Agency's data on the self-assessment of Latvian language proficiency of non-Latvian native respondents in 2019, 5% of respondents admitted that they do not know Latvian, while 26% - that their knowledge in Latvian is poor or very poor (*see: Latvian Language Agency. Language situation in Latvia 2016-2020. Available at: valoda.lv*).

The Guidelines for the Official Language Policy 2021-2027 state that there is an insufficient linguistic environment for the use of the Latvian language - inevitable consequences of the Soviet occupation in the linguistic behaviour of society, including the unjustified demand of Russian for employees, which creates linguistic discrimination in the labour market (*see the Cabinet of Ministers Order No. 601 of 25 August 2021 "On the Guidelines for the Official Language Policy 2021-2027"*). Moreover, the existing separation of Latvian and Russian information spaces is not conducive to the cohesion of society and the protection of the democratic state order (*see: Report of the Policy Expert Group on Community Cohesion, 2016. Available at: president.lv*).

The Saeima points out that the need to strengthen and protect the use of the Latvian language has not lost its relevance and the State should continue to take the necessary actions to achieve this objective (*see the Saeima's reply in volume 1 of the case file, p. 55*). Taking into account the historical experience of Latvia, the fact that, at the moment, the knowledge and use of Latvian as the official language is not sufficient and the transition to education in the official language has not yet been completed, the Constitutional Court concludes that the state needs to take positive measures and strengthen the protection of use of the official language.

However, a legal framework that restricts the use of foreign languages in the study process may affect the protection of minority rights. Arising from Article 114 of the Constitution is the right of national minorities to develop their language,

ethnic and cultural distinctiveness, as well as the preservation and development of national minority identity (*see Paragraph 15.2 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*). Education is essential for the preservation of national minority identity, which is based on language and culture (*see: The Framework Convention for the Protection of National Minorities: a Useful Pan-European Instrument. Antwerp: Intersentia, 2008, pp. 174–177*). Section 56, Paragraph Three of the Law on Higher Education Institutions contained an exception, which allowed to implement study programmes in foreign languages and to issue state-recognised diplomas for their completion, if it was necessary for the achievement of the objectives of the study programme according to the classification of education in the Republic of Latvia in the following groups of educational programmes: language and cultural studies, language programmes. Thus, Section 56, Paragraph Three of the Law on Higher Education Institutions provided for an exception from the obligation to implement study programmes in the official language and ensured the possibility of implementing study programmes aimed at preserving the identity of national minorities.

As already pointed out in Paragraph 30 of this Judgement, it is essential to promote the use of the official language in order to strengthen it. If, in addition to the exceptions from the obligation to implement study programmes in the official language set out in Section 56, Paragraph Three of the Law on Higher Education Institutions, study programmes were allowed to be implemented in Russian on the basis of the quality assessment of study programmes and exceptions in certain fields or levels of study, then Latvian nationals, including those with insufficient knowledge of the official language, would use Russian more and the official language less in the study process. Such a situation would contribute to the segregation of national minorities and weaken the role of the official language in all spheres of society, including higher education, and would not strengthen Latvia's belonging to the European cultural space. Consequently, the legitimate objectives would not be achieved at the same quality, and this measure cannot be regarded as an alternative mean to achieve the legitimate objectives.

Consequently, there are no other, more lenient means of achieving the legitimate aims of the restriction of the fundamental right in so far as it concerns languages other than the official languages of the European Union.

35 In the following part of the present judgement on compliance of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions with Article 1 and the first three sentences of Article 105 of the Constitution, it is necessary to assess only whether the restriction on the implementation of study programmes in foreign languages other than the official languages of the European Union is proportionate.

In order to assess proportionality of restriction of the fundamental rights, one must satisfy also whether the unfavourable consequences incurred by a person as a result of restriction of the fundamental rights thereof outweigh the benefit to society as a whole. Thus, the Constitutional Court must establish which of the interests to be balanced should be given priority (*see, for example, Paragraph 29 of the Judgement of the Constitutional Court of 27 May 2021 in Case No. 2020-49-01*).

The legislator's task when determining the language in which study programmes are to be implemented at private higher education institutions was to balance the right of private higher education institutions to carry out commercial activities and their legitimate expectations with the need to strengthen the use of the official language in higher education. Consequently, the Constitutional Court must examine whether Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have achieved a fair balance between these rights and interests.

35.1 The Applicant considers that there are no public interests which would justify such a significant restriction of the rights of private higher education institutions, namely, a general prohibition to implement study programmes in foreign languages. The legislator has allegedly failed to achieve a fair balance, as private higher education institutions will no longer be able to implement study programmes in foreign languages and will have to close down their relevant study

programmes. The Saeima, for its part, points out that the need for a targeted policy for the protection of the official language has not disappeared or lost its relevance and that the preservation and strengthening of the status and knowledge of the official language should be promoted through active measures. Moreover, private higher education institutions are entitled to continue their commercial activities and are not completely prohibited from implementing study programmes in foreign languages.

The Constitutional Court must assess to what extent Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have affected the commercial activities of private higher education institutions, thus examining whether a fair balance has been achieved between the right to conduct commercial activities and the need to strengthen the use of the official language in higher education (*cf. Paragraphs 17.2 and 24.3 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01 and Paragraphs 116-129 of the Judgement of the European Court of Human Rights of 8 October 2018 in case “O’Sullivan McCarthy Mussel Development Ltd v. Ireland”, Application No. 44460/16*).

Section 56, Paragraph Three of the Law on Higher Education Institutions restricts the right of private higher education institutions to implement study programmes in foreign languages by setting specific cases in which this is permissible. However, Section 56, Paragraph Three of the Law on Higher Education Institutions does not deprive a private higher education institution of the right to operate on the higher education market. Namely, Section 56, Paragraph Three of the Law on Higher Education Institutions does not cancel the accreditation of a higher education institution, and the institution may continue its activities. Private higher education institutions will continue to be able to offer study programmes in foreign languages, if it is necessary to achieve the objectives of the study programme, in the following groups of educational programmes: language and cultural studies, language programmes.

It is evident from the case file that no private higher education institution has ceased its activities after the entry of Section 56, Paragraph Three and

Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions into force. Similarly, no private higher education institution has implemented entirely all the study programmes exclusively in a language that does not meet the requirements of Section 56, Paragraph Three of the Law on Higher Education Institutions. Namely, private higher education institutions were already implementing study programmes in the official language or in a foreign language that complied with Section 56, Paragraph Three of the Law on Higher Education Institutions. Private higher education institutions also mostly implemented study programmes in several languages, such as Latvian, English and Russian. Thus, these study programmes did not have to be closed down and could be further implemented in a language that complied with Section 56, Paragraph Three of the Law on Higher Education Institutions. After the entry of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions into force, higher education institutions applied to the Academic Information Centre to add another language of implementation of study programme to the existing study programme licenses (*see the Saeima's reply in volume 1 of the case file, p. 59, the opinion of the Ministry of Education and Science in the transcript of the hearing of 23 April 2020, volume 3 of the case file, p. 9 and in the transcript of the hearing of 3 January 2023, volume 7 of the case file, p. 10, 16–17*).

When assessing the impact of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions on the commercial activities of private higher education institutions, it is important to take into account that private higher education institutions, as well as state-run higher education institutions, are part of a unified higher education area, including issue of state-recognised diplomas, therefore their separation from the performance of a nationally important task - strengthening the official language - is not permissible (*see the opinion of Ina Druviete in volume 2 of the case file, p. 58, and the opinion of Kārlis Šadurskis in the transcript of the hearing of 23 April 2020, volume 3 of the case file, p. 83*). As an intangible asset and part of a state's

constitutional identity, official language may take precedence over an individual's right to economic gain.

For a person to be able to participate in society, they need to have appropriate knowledge in official language. The official language ensures the functioning of the state and inclusion of persons in the life of society (*cf. Paragraph 24.2 of the Judgement of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01*). The ability of persons belonging to national minorities to communicate freely on any issue in the official language is invaluable within the context of preserving the democratic political system and is equally important for the persons belonging to national minorities themselves and for society as a whole because, thanks to this ability, all the members of society would be able to communicate freely with each other and also with the state (*see Paragraph 22.2 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*). However, the situation of the official language in Latvia is still affected by the consequences of the forced Russification during the Soviet occupation. The position of the Latvian language in a number of sociolinguistic functions does not currently correspond to the status of official language, and this is mainly due to the linguistic self-sufficiency of Russian speakers and its widespread use in the information space (*cf. the opinion of Ina Druvieta in volume 2 of the case file, p. 60*). Taking into account these circumstances, the Constitutional Court recognises that the legislator has ensured a fair balance between the right to carry out commercial activities by implementing licensed and accredited study programmes in foreign languages other than official languages of the European Union and the need to strengthen the use of the official language in higher education.

35.2 The Constitutional Court must also satisfy whether the legislator has balanced the interests of society and the legitimate expectations of private higher education institutions. The Applicant states that Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions did not ensure a lenient transition to the new legal framework for private higher education institutions that were already providing higher education services. Namely, the transitional period

stipulated in the referred to paragraph is allegedly disproportionately short, as it interrupts the operation of accredited programmes and the enrolment of students in them. The Saeima, on the other hand, considers that it has ensured a lenient transition period of several years, during which higher education institutions have the right to continue teaching in a foreign language of those students who were already enrolled in study programmes.

The principle of the protection of legitimate expectations is linked to the principle of legal certainty and provides the stability it requires by prohibiting inconsistent state action. This principle means that an individual can rely on lawful and consistent acts of the state, while the state must protect the trust placed in it. The principle of protection of legitimate expectations does not exclude the possibility that an individual's rights, once acquired, may be subject to legal modification. Namely, this principle does not provide a basis for believing that, once a legal situation has been established, it will never change, but rather allows and, in certain circumstances, even requires amendments to the existing legal framework. Otherwise, the State would not be able to respond adequately to the changing living conditions (*see Paragraphs 10.2. and 22.2.1. of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*). However, when amending the legal framework, the state must take into account the rights to the preservation or enforcement of which expectation may have occurred. The principle of protection of legitimate expectations requires that the state, when changing a normative regulation, observes a reasonable balance between a person's expectations and those interests for the sake of which the regulation is changed (*see Paragraph 4 of the Judgement of the Constitutional Court of 6 December 2010 in Case No. 2010-25-01*).

Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions essentially stipulates two-stage transition period for gradual application of the new regulation. Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions were adopted on 21 June 2018. As of 1 January 2019, when these norms entered into force, private higher education institutions were no longer allowed to enrol new

students in study programmes that did not comply with the requirements of Section 56, Paragraph Three of the Law on Higher Education Institutions. However, implementation of such programmes was allowed until 31 December 2022. Thus, private higher education institutions were allowed to enrol new students in study programmes that did not comply with the new regulation for six months after the adoption of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, and to continue implementing them with the already enrolled students for another three years.

With the amendments to the Law on Higher Education Institutions of 8 April 2021, which entered into force on 1 May 2021, the legislator extended the transitional period during which private higher education institutions may continue implementing the study programmes that do not comply with the provisions on the language of implementation of the study programme contained in Section 56, Paragraph Three of the Law on Higher Education Institutions by three years, i.e., until 31 December 2025. The annotation of the relevant draft law states: in order to ensure that the students who have commenced their studies are able to complete them within a reasonable period of time and obtain a higher education diploma, it is necessary to extend the time limit set for completion of studies (*see the initial impact assessment report (annotation) of the draft law "Amendments to the Law on Higher Education Institutions" (No. 1019/Lp13)*). This means that private higher education institutions are currently entitled to implement the existing study programmes in foreign languages for six years from the moment of entry of Section 56, Paragraph Three of the Law on Higher Education Institutions into force. Such a transition period coincides with the term of accreditation of the field of study (*see the Regulation of the Cabinet of Ministers No. 793 of 11 December 2018 "Regulations on Opening and Accreditation of Fields of Study", Sub-paragraph 29.1*). Thus, the legislator has ensured by the amendments of 8 April 2021 that private higher education institutions can complete the implementation of already accredited study programmes and that the accredited study programmes are not interrupted. The Applicant also agrees that the transitional period should coincide with the accreditation period (*see transcript of the hearing of 3 January 2023*,

volume 7 of the case file, p. 61). Although Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions in its current wording has not been contested in the present case, the Constitutional Court cannot assess the constitutionality of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions in isolation from the legal reality and it must ensure effective protection of the rights included in the Constitution. Therefore, the Constitutional Court cannot disregard the amendments made by the legislator, which ensure a reasonable transitional period.

With regard to the prohibition to admit new students from 1 January 2019, the Constitutional Court draws attention to the interests for the ensuring of which the legislator amended the legal framework. The legislator's aim was to apply the same rules on the language of implementation of the study programme to private higher education institutions as were already applied to state-run higher education institutions. If the legislator would allow that, after the entry of Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions into force, enrolment of new students in study programmes that do not meet the requirements of Section 56, Paragraph Three of the Law on Higher Education Institutions, then the period during which higher education institutions are entitled to implement such programmes would also have to be extended. This would be necessary to ensure that implementation of the study programmes in question is not interrupted before students have had the opportunity to complete them and obtain a state-recognised diploma. This would result in a continuous flow of new students and, consequently, a need to extend the transitional period during which implementation of the study programme is allowed. This would lead to the legislator being unable to implement the transition to the new regulation concerning the language of implementation of the study programme. Whereas, if private higher education institutions were allowed to continue enrolling students as long as the relevant study programmes were still allowed to be implemented, even though it was clear that they would no longer be allowed to be implemented and students would not be able to complete them, students' rights would be affected. Furthermore, as it has already been pointed out

in Paragraph 35.1 of the present Judgement, private higher education institutions already mostly implemented the study programmes in several languages, such as Latvian, English and Russian, thus the admission of students could continue in the existing study programmes in a language which complies with Section 56, Paragraph Three of the Law on Higher Education Institutions.

Thus, Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions ensured a transition to the new legal framework in accordance with the principle of protection of legitimate expectations.

35.3 Taking into account the above, the Constitutional Court concludes that the benefit of the society from the restriction of the fundamental right included in Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions outweighs the adverse consequences that private higher education institutions incur due to the restriction of their fundamental right, namely, the right to conduct commercial activity. The legislator has also balanced the public interests and the legitimate expectations of private higher education institutions.

Consequently, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to the implementation of study programmes in private higher education institutions in foreign languages other than the official languages of the European Union, comply with Article 1 and the first three sentences of Article 105 of the Constitution.

36 Since the Constitutional Court declared Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to the implementation of study programmes in private higher education institutions in the official languages of the European Union, incompatible with Article 1 and the first three sentences of Article 105 of the Constitution, it needed to decide on the moment when these norms would lose their effect.

In accordance with Section 32, Paragraph Three of the Constitutional Court Law, a legal provision that the Constitutional Court has declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the Constitutional Court judgement, unless the Constitutional Court has determined otherwise. Pursuant to Paragraph 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in its judgement the moment from which the contested legal provision declared as not conforming to the provision of higher legal force ceases to have effect.

The legislator has granted in Section 32, Paragraph Three of the Constitutional Court Law a broad freedom of action to the Constitutional Court to decide from which moment a norm declared incompatible with a legal provision of a higher legal effect. In order to declare the contested provision null and void not from the date of publication of the judgement, but from another date, the Constitutional Court must justify its opinion (*see Paragraph 21 of the Judgement of the Constitutional Court of 28 November 2014 in Case No. 2014-09-01 and Paragraph 43 of the Judgement of 27 October 2022 in Case No. 2021-31-0103*).

Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions have already become null and void. However, the Applicant has requested to declare Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions null and void as of the date of their adoption.

When deciding on the moment when the contested provisions lose their force, the Constitutional Court balances the principle of legal certainty, on the one hand, and the fundamental rights of certain persons, on the other. Consequently, the Constitutional Court has to consider whether the case under review contains such circumstances, on the grounds of which Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions are to be declared null and void from a certain moment in the past.

The Applicant has applied to the Constitutional Court with an application for protection of fundamental rights of private higher education institutions. Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of

the Law on Higher Education Institutions were in force for a certain period of time, during which they could have caused adverse legal consequences for the right-holders to which these provisions were applied. Namely, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions could have caused losses to private higher education institutions, which, after 1 January 2019, could no longer enrol students in study programmes which were implemented in the official languages of the European Union and which did not meet any of the exceptions laid down in Section 56, Paragraph Three of the Law on Higher Education Institutions from the obligation to implement study programmes in the official language.

Consequently, Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions, insofar as these norms applied to the implementation of study programmes in private higher education institutions in the official languages of the European Union, should be declared null and void as of the date of their adoption.

Substantive Part

On the basis of Section 29, Paragraph One, Clause 6 and Sections 30-32 of the Constitutional Court Law, the Constitutional Court

decided:

1 To terminate proceedings in the case on compliance of the third sentence of Section 5, Paragraph One of the Law on Higher Education Institutions with Article 1 and Article 105 of the Constitution.

2 To declare Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions (in force from 1 January 2019 to 30 April 2021), insofar as these norms applied to the implementation of study programmes in private higher education institutions in the official languages of the European Union, incompatible with Article 1

and the first, second and third sentences of Article 105 of the Constitution of the Republic of Latvia and null and void from the moment of adoption.

3 To declare Section 56, Paragraph Three and Paragraph 49 of the Transitional Provisions of the Law on Higher Education Institutions (in force from 1 January 2019 to 30 April 2021), insofar as these norms applied to the implementation of study programmes in private higher education institutions in foreign languages other than the official languages of the European Union, compatible with Article 1 and the first, second and third sentences of Article 105 of the Constitution of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement was delivered in Riga on 9 February 2023.

The Judgement shall enter into force as of the moment of its delivery.

Chairperson of the Court Hearing

Aldis Laviņš