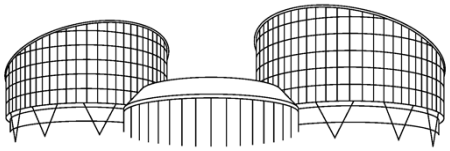

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VALIULLINA AND OTHERS v. LATVIA

(Applications nos. 56928/19 and 2 others)

JUDGMENT

Art 14 (+ Art 2 P1) • Discrimination • Right to education • Non-discriminatory legislative amendments increasing the proportion of subjects taught in public schools in the only State language, Latvian, and thus reducing the use of Russian as the language of instruction • Russian-speaking and Latvian-speaking pupils in a relevantly similar situation • Impugned difference in treatment justified by the legitimate aims of protecting and strengthening the Latvian language - one of the State's fundamental constitutional values - and ensuring the unity of the education system • Importance of specific historical context of unlawful occupation and annexation significantly restricting use of Latvian for more than fifty years as well as difficult choices following restoration of independence • Legislative amendments implemented gradually and flexibly, with sufficient scope for adaptation to the needs of those affected • Wide State margin of appreciation not overstepped • Education system in place ensured the use of minority languages in varying proportions • Objective and reasonable justification • Difference in treatment on grounds of language consistent with legitimate aims pursued and proportionate
Art 2 P1 • *Ratione materiae* • Application of conclusions drawn in *"Belgian linguistic case"* • Art 2 P1 does not include the right to access education in a particular language but only guarantees the right to education in one of the national or official languages of the country concerned • Latvian being the only official language, applicants could not complain about decreased use of Russian as the language of instruction in Latvian public schools *per se*

STRASBOURG

14 September 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

Contents

INTRODUCTION **3**

THE FACTS **3**

I. GENERAL BACKGROUND TO THE CASE 4

A. Historical background 4

B. Overview of education reform 6

II. PARTICULAR CIRCUMSTANCES OF THE CASE 9

A. Family circumstances 9

B. Education pursued by the applicant children 10

C. The Constitutional Court's review 12

III. SUBSEQUENT DEVELOPMENT 17

RELEVANT LEGAL FRAMEWORK AND PRACTICE **17**

I. DOMESTIC LAW AND PRACTICE 17

A. Constitutional provisions 17

B. The impugned legislative amendments 18

C. The Constitutional Court's ability to refuse to examine a case which has already been decided 22

D. The Constitutional Court's case-law 22

E. Other domestic material 25

II. INTERNATIONAL LAW AND PRACTICE 26

A. International treaties under the auspices of the United Nations 26

B. Reports by United Nations treaty bodies 26

C. Treaties within the Council of Europe 28

D. Reports and resolutions within the Council of Europe 30

E. Case-law of the Court of Justice of the European Union 47

F. Recommendations adopted under the auspices of the Organisation for Security and Cooperation in Europe ("OSCE") 49

G. Comparative material 51

THE LAW **51**

I. JOINDER OF THE APPLICATIONS AND SCOPE OF THE CASE 51

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION 51

A. The parties' submissions on admissibility 52

B. The Court's assessment on admissibility 52

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION TAKEN ALONE 54

Admissibility 54

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION 61
A. Admissibility 62
B. Merits 66

APPENDIX 85

In the case of Valiullina and Others v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mattias Guyomar,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 56928/19 and 2 others) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Latvian nationals and five "permanently resident non-citizens" of Latvia ("the applicants"), on various dates indicated in the appended table;

the decision to give notice of the applications to the Latvian Government ("the Government");

the parties' observations;

Having deliberated in private on 11 July 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns legislative amendments of 2018 ("the 2018 amendments" or "the 2018 reform") whereby the proportion of subjects to be taught in the State language, that is, Latvian, was increased in public schools, and the use of Russian as the language of instruction was consequently reduced. The applicants relied on Article 2 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 14 of the Convention.

THE FACTS

2. The applicants are parents and children who identify themselves as belonging to the Russian-speaking minority in Latvia (see, for more detail, paragraphs 32-34 below). They were represented by Mr A. Kuzmins and subsequently Mr D. Gorba, who were granted leave to represent them.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case may be summarised as follows.

I. GENERAL BACKGROUND TO THE CASE

A. Historical background

5. The historical background has been described most recently in *Savickis and Others v. Latvia* ([GC] no. 49270/11, §§ 12-16, 9 June 2022), with further references.

1. Ethnic groups and languages spoken in Latvia

6. The Latvian Constitutional Court in judgments of 13 May 2005 and 23 April 2019 (see paragraphs 45 and 70 below) and parties in the present case provided statistical data on the main ethnic groups in Latvia, on the basis of the population censuses of 1935, 1959, 1989 and 2011.

(i) In 1935 77% of the total population were ethnic Latvians, 8.8 % were ethnic Russians, 4.9% were ethnic Jews, 3.3% were ethnic Germans and 2.5% were ethnic Poles. Other ethnicities constituted less than 2% of the population.

(ii) In 1959 62% of the total population were ethnic Latvians, 26.6% were ethnic Russians, 2.9% were ethnic Belarusians and 2.9% were ethnic Poles. Other ethnicities constituted less than 2% of the population.

(iii) In 1989 52% of the total population were ethnic Latvians, 34% were ethnic Russians, 4.5% were ethnic Belarusians, 3.5% were ethnic Ukrainians and 2.3% were ethnic Poles. Other ethnicities constituted less than 2% of the population.

(iv) In 2011 62.1% of the total population were ethnic Latvians, 26.9% were ethnic Russians, 3.3% were ethnic Belarusians, 2.2% were ethnic Ukrainians and 2.2% were ethnic Poles. Other ethnicities constituted less than 2% of the population.

7. According to the Government, during the Soviet occupation of Latvia, migrants in large numbers from territories of the other former USSR republics arrived in Latvia. In 1951-90 immigration rates exceeded emigration rates in Latvia, and during certain periods, the increase in migration was one of the highest in the world (the Constitutional Court also referred to such statistical data in case no. 2018-12-01). Consequently, during the Soviet occupation of Latvia, the proportion of people of Latvian ethnicity decreased significantly.

8. The applicants provided further information about the use of Latvian and Russian, on the basis of the population censuses of 1970, 1989, 2000 and 2011 in Latvia:

(i) in 1970 64.4% of the total population spoke Latvian, while 66.86% spoke Russian;

(ii) in 1989 61.69% of the total population spoke Latvian, while 81.23% spoke Russian;

(iii) in 2000 72.02% of the total population spoke Latvian, while 81.19% spoke Russian;

(iv) in 2011 62.07% of the total population used Latvian within the family, and 37.23% used Russian.

On the basis of the results of the latest population census in 2011, the applicants concluded that a large proportion of minorities who were not ethnic Russians also used Russian within the family.

9. The applicants also submitted statistical data on minority groups' knowledge of Latvian. They relied on the population census of 1989 and 2000:

(i) in 1989 20.3% of people who were not ethnic Latvians knew Latvian;

(ii) in 2000 49.2% of people who were not ethnic Latvians knew Latvian.

10. Further comprehensive data from the population censuses were not available – since the 2011 population census, a wider question about knowledge of languages had been replaced with a question about which language was used within the family (see paragraph 8 above). The applicants relied, among others, on a survey carried out in 2014 (with 801 randomly selected adult participants from minority groups), the results of which were as follows: 20.7% of the participants rated their knowledge of Latvian as very good, 27.6% rated it as good, 27.5% rated it as satisfactory, 18.8% rated it as poor, 4.2% had little or no knowledge of it, and 1.2% found it difficult to say.

2. Overview in field of education

11. According to the Government, because of the migration organised by the USSR as the occupying power, the use of languages became a significant political issue. Although many migrants arriving in Latvia from other former USSR territories were not of Russian ethnicity, the only language in which they communicated in Latvia was Russian. During Latvia's occupation by the USSR, the issue of communication was resolved by imposing vast "Russification" policies that established the Russian language as the language for daily communication without any restrictions, and by imposing its use in State institutions and schools. In the field of education, Russification was achieved by paying special attention to teaching Russian in schools which had Latvian as the language of instruction, and by establishing schools which had Russian as the only language of instruction, thereby creating a segregated education system (the Constitutional Court also referred to this information in case no. 2018-12-01).

12. According to the applicants, public schools which taught in Russian had existed alongside Latvian schools for the last 100 years, that is, even before the Soviet period. During that time, Latvian had been a compulsory subject in Russian schools, in the same way that Russian had been compulsory in Latvian schools. They considered that in Soviet times there had been a "parallel" education system of Russian and Latvian schools. They alleged that people who had attended Latvian schools continued to demonstrate an excellent knowledge of Russian. However, when Russian had

become an optional subject in Latvian schools, knowledge of it among the Latvian youth had deteriorated.

B. Overview of education reform

13. After the restoration of Latvia's independence, in order to promote the use of Latvian as the official language of the State and to facilitate integration, Latvia started to gradually implement an education reform by increasing how much Latvian was used as the language of instruction in educational programmes for minorities.

1. Historical overview (1991-2015)

14. On 19 June 1991 the Supreme Council (*Augstākā Padome*) enacted the Law on Education, which stated that everyone had the right to receive an education in the State language (section 5), that is, in Latvian. However, the language of instruction in public schools continued to be Latvian or Russian, which was a practice inherited from Soviet times.

15. On 10 August 1995 the Law on Education was amended with a view to gradually introducing teaching in Latvian in schools where the language of instruction was not Latvian. The Law provided that starting from the 1996/1997 school year, in classes one to nine, at least two subjects had to be taught in the State language, that is, Latvian, and in classes ten to twelve, at least three subjects had to be taught in Latvian.

16. On 29 October 1998 Parliament adopted a new Education Law, which took effect on 1 June 1999, aiming to establish a unified education system. The Law provided that the only language of instruction in all public schools would be the State language, that is, Latvian. It also provided that the language of instruction might be different in private schools, in public schools implementing minority education programmes, and in other educational establishments as provided for by law. As regards public schools implementing minority education programmes, it was for the Ministry of Education to set out specific subjects to be taught in the State language (section 9(1) and (2)). At the same time, everyone had to learn the State language and take the State language proficiency test in order to complete their primary and secondary education (section 9(3)).

17. Schools that had previously taught in a minority language had the right to choose one of the education programmes adopted by the domestic authorities, depending on their pupils' knowledge of Latvian. According to the applicants, these "minority schools" had the right to use their own educational programmes and a free choice as regards how much a particular language was used in teaching. According to the Government, all schools that chose to implement minority education programmes in classes one to nine completed that stage of the education reform by 2002.

18. Furthermore, in accordance with the transitional provisions of the Education Law, from 1 September 2004 onwards all public secondary schools had to ensure instruction in the State language for pupils enrolled in class ten (paragraph 9, part 3 of the transitional provisions).

19. After several sizable meetings and demonstrations against the education reform in 2003 and 2004, Parliament adopted amendments to the Education Law on 5 February 2004.

20. Following those amendments, from 1 September 2004 (the 2004/2005 school year) onwards all public secondary schools implementing educational programmes for minorities had to ensure instruction in the State language for pupils enrolled in class ten, in accordance with the general standard on secondary education set by the State. That standard specified that no less than three-fifths (60%) of the curriculum, including foreign languages, had to be taught in the State language; however, a curriculum relating to a minority language, identity and culture had to be taught in the minority language (paragraph 9, part 3 of the transitional provisions). It followed that in the 2005/2006 school year pupils enrolled in classes ten and eleven were affected by these changes, and in the 2006/2007 school year all pupils enrolled in secondary school (classes ten, eleven and twelve) were affected. According to the Government, this essentially prolonged the transitional period by three years.

2. Impugned legislative amendments

21. The impugned legislative amendments to the relevant provisions of the Education Law and the General Education Law were passed on 22 March 2018. They provided that the proportion of subjects to be taught in the State language, that is, Latvian, was to be increased in public schools. Some exceptions were provided for schools established in accordance with international agreements, as well as schools providing instruction in official languages of the European Union (EU), in order to ensure the learning of those languages (see paragraph 59 below).

22. According to the Annotation to the 2018 amendments, they had been prepared to ensure implementation of the principle of the use of the State language in education. Those amendments complied with the National Development Plan of Latvia for years 2014-2020 (approved by Parliament in 2012). That plan had set goals and objectives of the State language policy. It had emphasised the need to increase the use of Latvian in society and strengthen the position of Latvian in everyday communication. There had also been the need to expand the possibilities of integration in the society by developing attractive forms of learning of the Latvian language. The creation of a modern, coordinated learning system of the Latvian language for children and adults, promoting the use of the Latvian language in society, had also been set as a priority. The impugned amendments were also designed to

ensure a legal basis for the implementation of the curriculum and foreign language integrated learning approach in general education institutions.

(a) Public primary and secondary schools

23. In accordance with those legislative amendments, over a transitional period from 1 September 2019 (the 2019/2020 school year) to 1 September 2021 (the 2021/2022 school year) the following changes relating to how much teaching was in the official language of the State were to be implemented:

(i) no less than 50% of the teaching should be in Latvian in classes one to six;

(ii) no less than 80% of the teaching should be in Latvian in classes seven to nine;

(iii) 100% of the teaching should be in Latvian in classes ten to twelve.

24. In addition to those requirements, primary schools were authorised to combine a primary education programme with a minority education programme by including a minority language and other subjects related to minority identity and the integration of minorities into Latvian society.

25. However, secondary schools were no longer authorised to combine a secondary education programme with an education programme for minorities. Instead, they were authorised to include subjects linked to minority languages, and minority identity and the integration of minorities into Latvian society. In particular, from 1 September 2020 onwards secondary schools were authorised to offer a specialised minority language and literature course, and other specialised subjects related to minority languages, identity, and culture.

26. These changes were introduced gradually:

(i) 2019/2020 school year: no less than 50% of the teaching was to be in Latvian for classes one to six, and no less than 80% of the teaching was to be in Latvian for class seven only;

(ii) 2020/2021 school year: no less than 80% of the teaching was to be in Latvian for class eight as well, and 100% of the teaching was to be in Latvian for classes ten to eleven only;

(iii) 2021/2022 school year: no less than 80% of the teaching was to be in Latvian for class nine as well, and, in addition, 100% of the teaching was to be in Latvian for class twelve.

(b) Private primary and secondary schools

27. The above-mentioned requirements were also applicable to private primary and secondary schools (see paragraph 59 below), which had until then enjoyed a broader discretion in choosing the language of instruction (see paragraphs 16-17 above).

(c) Pre-schools

28. In accordance with Regulation no. 716 (issued on 21 November 2018), from 1 September 2019 onwards, in pre-schools for children from the age of five, the main language of communication during play-based lessons was set to be Latvian, except for special activities related to learning minority languages and learning about ethnic cultures (see paragraph 64 below). For younger children, daily Latvian lessons were envisaged.

(d) Universities

29. Following the legislative amendments to the Law on Higher Educational Institutions passed on 21 June 2018, the official language of the State also had to be used in higher education, with some exceptions (see paragraph 65 below). The changes were effective as of 1 January 2019.

30. This rule was not applicable to two higher education institutions established by international agreements with other countries. Their operation was governed by special laws, allowing them to offer courses of study in English or, in some circumstances, another official language of the European Union (see paragraphs 77-78 of the preliminary ruling quoted in paragraph 94 below).

3. Subsequent legislative amendments

31. On 29 September 2022 Parliament passed further legislative amendments to the relevant provisions of the Education Law and the General Education Law. Those amendments provided that all schools at pre-school and primary level had to ensure instruction in the official language of the State over a transitional period from 1 September 2023 to 1 September 2025. At the same time, municipal authorities were tasked with ensuring that pupils belonging to minorities could learn their language and preserve their culture through extracurricular educational programmes which were free of charge. The State also had to participate in financing these educational programmes (including by financing teachers' remuneration and study materials), within the limits set by the Cabinet of Ministers.

II. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Family circumstances

1. Valiullina and Truši (application no. 56928/19)

32. The first applicant is the mother of the second, third and fourth applicants. The first applicant was born in Kazan, Russia, and the other applicants were born in Latvia. They are all "permanently resident non-citizens" of Latvia. The family consider themselves ethnically mixed – the first applicant submits that she is an ethnic Tatar. The second, third and

fourth applicants present themselves as ethnic Russians. Russian is the main language used within the family.

2. Neronovas (application no. 7306/20)

33. The fifth applicant is the mother of the sixth and seventh applicants. All the applicants were born in Latvia and consider themselves ethnic Russians. They are all Latvian citizens. Russian is the main language used within the family.

3. Raizere-Rubcova and Rubcovas (application no. 11937/20)

34. The eighth applicant is the mother of the ninth and tenth applicants. All the applicants were born in Latvia. The eighth applicant is a "permanently resident non-citizen" of Latvia. The ninth and tenth applicants are Latvian citizens. The family consider themselves ethnically mixed – the eighth applicant submits that she is an ethnic German. The ninth and tenth applicants present themselves as ethnic Russians. Russian is the main language used within the family.

B. Education pursued by the applicant children

1. Valiullina and Truši (application no. 56928/19)

35. During the 2019/2020 school year the second, third and fourth applicants were in class three at two different public schools. In the 2020/2021 and 2021/2022 school years they were in classes four and five. Since 1 September 2022 they have all been in class six at the same public school. They have been receiving an education in accordance with the primary education programme for minorities (*mazākumtautību izglītības programma pamatizglītības pakāpē*).

36. In the school attended by the second applicant, from 1 September 2019 onwards the curriculum was as follows. In class three, out of 24 weekly lessons, 15 were in Latvian and 9 were in the minority language (Minority Language and Maths lessons). In class four, out of 26 weekly lessons, 17 were in Latvian and 9 were in the minority language (Minority Language, Literature and Maths lessons). More complex subjects could also be taught bilingually in classes three and four (Natural Science lessons). In class five, out of 28 weekly lessons, 16 were in Latvian and 12 were in the minority language (Minority Language, Maths, Computer Science and Literature lessons). It follows that Latvian was used as the language of instruction approximately 63% of the time in class three, 65% of the time in class four, and 57% in class five.

37. In the school attended by the third and fourth applicants, the curriculum was similar. In class three, out of 24 weekly lessons, 12 were in Latvian and 12 were in the minority language (Minority Language, Maths,

Natural Science and Social Science lessons). In class four, out of 26 weekly lessons, 15 were in Latvian and 11 were in the minority language (Minority Language, Maths, Natural Science and Literature lessons). In class five, out of 28 weekly lessons, 16 were in Latvian and 12 were in the minority language (Minority Language, Maths, Computer Science and Literature lessons). In class six, out of 30 weekly lessons, 16 were in Latvian and 14 were in the minority language (Minority Language, Maths, Computer Science, Latvian History, World History and Literature lessons). It follows that Latvian was used as the language of instruction approximately 50% of the time in class three, 58% of the time in class four, 57% of the time in class five, and 53% of the time in class six.

2. Neronovas (application no. 7306/20)

38. In the 2019/2020 school year the sixth and seventh applicants were at a public school, in classes seven and three respectively. In the 2020/2021, 2021/2022 and 2022/2023 school years the sixth applicant was in classes eight, nine and ten, and the seventh applicant was in classes four, five and six. They received an education in accordance with the primary educational programme for minorities; the sixth applicant subsequently received a secondary education where 100% of the teaching was in Latvian.

39. In the school attended by the sixth applicant, from 1 September 2019 onwards the curriculum was as follows. In class seven, out of 32 weekly lessons, 27 were in Latvian and 5 were in the minority language (Minority Language and Literature lessons). From 1 September 2020 onwards, in class eight, out of 34 weekly lessons, 30 were in Latvian and 4 were in the minority language (Minority Language and Literature lessons). From 1 September 2021 onwards, in class nine, out of 34 weekly lessons, 31 were in Latvian and 3 were in the minority language (Minority Language and Literature lessons). More complex subjects could also be taught bilingually (Foreign Language, History and Chemistry lessons). It follows that Latvian was used as the language of instruction approximately 84% of the time in class seven, 88% of the time in class eight, and 91% of the time in class nine.

40. In the school attended by the seventh applicant, the curriculum was similar to that of the second, third and fourth applicants (see paragraphs 36-37 above), but more emphasis was placed on bilingual lessons.

3. Raizere-Rubcova and Rubcovas (application no. 11937/20)

41. In the 2019/2020 school year the ninth applicant was enrolled in class five of a public school in Latvia, but did not fully attend. On 8 November 2019 her mother informed the school that the ninth applicant would no longer attend school and would instead follow a distance-learning programme based at a private school in Russia. She asked for her daughter not to be excluded from the school and for her place to be kept for the next school year.

According to the applicants, in the 2020/2021 school year the ninth applicant pursued her studies through the distance-learning programme based in Russia. According to the Government, she remained enrolled in class six in Latvia.

42. In the 2019/2020 school year the tenth applicant was in class one at a public school in Latvia. In the 2020/2021 and 2021/2022 school years she was in classes two and three. She received an education in accordance with the primary educational programme for minorities. On an unspecified date the tenth applicant was also enrolled in a distance-learning programme based at a private school in Russia.

43. In the school attended by the tenth applicant, from 1 September 2019 onwards the curriculum was as follows. In class one, out of 22 weekly lessons, 11 were in Latvian and 11 were in the minority language or bilingual (Minority Language, Maths, Natural Science and Social Science lessons). In class two, out of 23 weekly lessons, 12 were in Latvian and 11 were in the minority language or bilingual (Minority Language, Maths and Natural Science lessons). In class three, out of 24 weekly lessons, 13 were in Latvian and 11 were in the minority language or bilingual (Minority Language, Maths and Natural Science lessons). It follows that Latvian was used as the language of instruction approximately 50% of the time in class one, 52% of the time in class two, and 54% of the time in class three.

C. The Constitutional Court's review

1. Application to the Constitutional Court

44. The domestic legislation concerning the language of instruction in public primary and secondary schools was reviewed by the Constitutional Court (*Satversmes tiesa*) in proceedings instituted by twenty members of parliament (case no. 2018-12-01).

2. The Constitutional Court's judgment

45. On 23 April 2019 the Constitutional Court adopted its judgment. It examined the compatibility of the 2018 amendments with Article 112 of the Constitution (*Satversme*) (the right to education), the second sentence of Article 91 (the principle of non-discrimination), and Article 114 (the rights of minorities). In those proceedings, the Constitutional Court was not called upon to address the compatibility of the impugned legislative amendments with Article 96 of the Constitution (the right to private life) or Article 110 of the Constitution (the right to family life), or Article 8 of the Convention, as the parties had not raised any complaints in that regard. In so far as the contested domestic provisions related to the language of instruction in private schools, the Constitutional Court decided, for the sake of efficiency, to

examine those issues in a separate case no. 2018-22-01 (see paragraph 73 below).

46. As regards Article 112 (the right to education), the Constitutional Court concluded that it required the State to establish and maintain an education system that would ensure that each and every pupil had the benefit of an education. The mandatory nature of primary education, established in the third sentence of Article 112 of the Constitution, which was based on an educated person being able to obtain information independently, to reason, to think critically and to adopt rational decisions, followed from the principle of a democratic State governed by the rule of law. Education was one of the prerequisites for a person's choice to continue his or her self-improvement throughout his or her lifetime. Hence, education was one of the most important preconditions for consolidating a free and democratic society. The aim of Latvia's system of education was enshrined in section 2 of the Education Law, which provided for every resident of Latvia having the opportunity to develop his or her mental and physical potential, in order to become an independent and fully developed individual, and a member of the democratic State of Latvia and its society. That aim – to ensure pupils' right to receive such an education and have an upbringing that would allow them to develop and reinforce their feeling of affiliation with Latvia – was recognised by the Constitutional Court as being compatible with the interests of not only the pupils themselves, but those of society in general. At the same time, the Constitutional Court held that the right to education as guaranteed in Article 112 of the Constitution did not comprise the right of pupils or their parents to choose the language of instruction in public schools if that contradicted the principle of unity of the education system and did not facilitate equal access for pupils to the State education system which allowed them to achieve the objectives set by the education system. The Constitutional Court further concluded that Article 112 of the Constitution did not require the State to ensure that, in addition to the official language, it was possible to receive an education in another language in a proportion which pupils and their parents desired at primary and secondary level. The Constitutional Court held that within the framework of a unified education system, the State had ensured the right to receive an education in the official language in public schools, as required by Article 112 of the Constitution, which obliged the State to create an education system that was available, accessible, acceptable and adaptable. The Constitutional Court concluded that there was no proof that the contested provisions of the domestic legal framework that governed the language of instruction in schools affected the right to education as enshrined in Article 112 of the Constitution. For this reason, the Constitutional Court terminated the part of the proceedings concerning the compatibility of the 2018 amendments with Article 112 of the Constitution.

47. As regards the second sentence of Article 91 of the Constitution (the principle of non-discrimination), the Constitutional Court concluded that the

groups of persons identified by the twenty members of parliament in those proceedings – pupils whose native language was Latvian, the official language; pupils whose native language was another language; pupils who received an education in an EU language; and pupils who received an education in accordance with the bilateral or multilateral treaties which Latvia had concluded in the field of education – were not, for the purposes of an analysis of possible differential treatment and discrimination, in a comparable situation to pupils who acquired an education through the minority education programmes in Latvia. The court based its conclusion on the following reasons.

48. Firstly, the Constitutional Court held that pupils whose native language was not the State language of Latvia, but another language, were not in a comparable situation to those pupils whose native language was the State language. That conclusion was based on the constitutional status and significance of the Latvian language for the functioning of the democratic State. It relied on the preamble to and Article 4 of the Constitution, and its earlier case-law (case no. 2001-04-0103, quoted in *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII). It also relied on the fact that neither the Constitution nor binding norms of international law imposed an obligation on the State to ensure that pupils could use a language that was not the State language as a language of instruction in a proportion which they desired. Instead, there was an obligation for the State to create an education system that would facilitate inclusion and integration, and would eliminate the consequences of the segregated education system that had existed during Latvia's occupation by the USSR.

49. Secondly, the Constitutional Court held that in Latvia, pupils who received an education and acquired, *inter alia*, an in-depth knowledge of one of the official languages of the EU, were not in a comparable situation to pupils who chose to receive a general education in an educational institution that implemented an educational programme for minorities. In this regard, the Constitutional Court reiterated that the study of official languages of the EU was an objective for Latvia that derived from the preamble to the Constitution and the principle of good faith provided for under international law. Namely, the Constitutional Court emphasised that unlike the educational programmes for minorities, the opportunity to receive an education in one of the official languages of the EU had been created in order to facilitate the in-depth learning of foreign languages, and not to safeguard the culture and identity of a respective group of individuals. This related to educational institutions such as the Riga French Lycée, the Riga English Grammar School and the Grammar School of Nordic Languages.

50. Thirdly, the Constitutional Court held that in Latvia, pupils who received an education in schools which implemented the educational programmes for minorities in accordance with the bilateral or multilateral agreements concluded by Latvia in the field of education were not in a

comparable situation to pupils who chose to receive a general education in an educational institution that implemented an educational programme for minorities. In this case, the following international agreements were relevant: agreements with Israel (in 1994), Estonia and Lithuania (in 1998), Belarus (in 2004), Poland (in 2006), and Ukraine (in 2017). With the aim of developing and safeguarding ethnic, cultural and linguistic identity, by concluding those agreements, the parties had committed themselves to ensuring that minorities living in the territory of Latvia could be taught about their mother tongue, history and culture, and could receive an education in their mother tongue in accordance with the education system in Latvia. None of those agreements provided for persons in Latvia who belonged to minorities having the right to use a particular minority language as a language of instruction in education in a proportion that was different from the one specified in the Education Law.

51. In the light of the above, the Constitutional Court held that pupils who received an education in accordance with an education programme for minorities were not in a comparable situation to the above-mentioned groups of persons for the purposes of an analysis of possible differential treatment and discrimination. Thus, the Constitutional Court declared that the contested provisions of the domestic legal framework were compatible with the second sentence of Article 91 of the Constitution (the principle of non-discrimination).

52. As regards Article 114 of the Constitution (the rights of minorities), the Constitutional Court firstly assessed the scope of the rights of minorities under the Constitution and the protection afforded to minorities under international law. It referred, for example, to the United Nations International Covenant on Civil and Political Rights, the Council of Europe Framework Convention for the Protection of National Minorities ("the Framework Convention") and reports made by treaty bodies, for example, the Advisory Committee on the Framework Convention and the UN Committee on the Elimination of Racial Discrimination (see paragraphs 84 and 89 below). It noted that there were no grounds to consider that under the Framework Convention the State had to ensure such form of preserving and developing the language, ethnic and cultural singularity as acquiring education in the minority language or in certain proportion without taking into account the national constitutional system. It then went on to examine whether the principle of good legislation had been complied with and concluded that it had been. The proposed amendments had been discussed within the Advisory Council for Minority Education (consisting of representatives of various minority educational establishments). They had also been discussed at the sessions of the relevant Parliamentary Committee, which had heard the views of the Minster for Education and Science, as well as representatives of several other ministries, the representative of the *Saeima* Legal Bureau, the Ombudsman's representative, as well as other social partners, representatives

of the sector and parents' representatives. Various proposals had been examined and voted on. The impugned amendments had been passed in Parliament at three readings. The Constitutional Court emphasised that the principle of good legislation, *inter alia*, in the area of the rights of minorities, did not guarantee a particular outcome preferable to a group of persons; however, it ensured that the particular matter was democratically debated – different opinions were expressed and analysed – and the best possible balance between various conflicting rights and interests was found.

53. As to the question of whether the State had ensured the substance of the rights of minorities within its education system, the Constitutional Court noted that even after the restoration of Latvia's independence, the Russian language had continued to be widely used in society. Content in Russian was available in the cinema, on television and in the press. No other minorities in Latvia were in such a situation. Some parties to the proceedings expressed the view that Russian was a self-sufficient language – that it was possible to use only Russian in daily life in Latvia, without having any knowledge of the State language. The Constitutional Court held that the State had an obligation to create preconditions for the participation of minorities in a public debate inherent in a democratic society. At the same time, members of minority groups should take the initiative to participate in such discourse in the State language. The Constitutional Court stated that every person who permanently resided in Latvia had to have a level of Latvian which allowed his or her full participation in the life of a democratic society (it referred, *inter alia*, to case no. 2001-04-0103, paragraph 3.2., quoted in *Mentzen*, cited above). A precondition for the existence and successful operation of a democratic State governed by the rule of law was the existence of members of society who understood and respected the values on which the Constitution was based. Referring to the preamble to the Framework Convention, the Constitutional Court emphasised that alongside the State's obligations, the principle of mutual enrichment of a democratic society required that each and every person's actions be directed towards the enrichment of society. In order to facilitate the mutual enrichment of society, Article 114 of the Constitution required that these principles be implemented in the field of education, like in any other aspect of a democratic society. Namely, the State had to safeguard, respect and ensure the development of the cultural uniqueness of minorities within the framework of a unified education system by facilitating the development of a common identity of a democratic society, and not by contrasting the rights of minorities with the common interests of society. The State's obligation was to ensure that people had an opportunity to receive an education that reinforced the common identity of a democratic society. It was the obligation of a democratic State governed by the rule of law to ensure that the rights of each person were respected and to create a harmonious framework for the development of a free and educated personality. The right contained in Article 114 of the Constitution was only one element of this

framework, that had to be balanced with the general values of society and its constitutional foundations. The Constitutional Court held that it had not been shown that the impugned amendments prohibited persons belonging to minorities from exercising their rights. Namely, the education system created by the State provided for content which ensured the opportunity to learn a minority language and preserve minority culture and identity, and also created equal opportunities for pupils belonging to minorities to become fully-fledged members of Latvia's society. The impugned amendments also did not restrict the ability of pupils belonging to minorities to safeguard and maintain their language and ethnic and cultural identity.

54. Thus, the Constitutional Court held that the contested legal provisions were compatible with Article 114 of the Constitution (the rights of minorities).

55. Judge Neimanis expressed a separate opinion, disagreeing with the majority on the following points. Firstly, he considered that the issues relating to private schools had to be examined in the same case. Secondly, in his view, since minority rights had not been affected by the impugned legislative amendments, the part of the proceedings concerning the amendments' compliance with Article 114 of the Constitution should also have been terminated.

III. SUBSEQUENT DEVELOPMENT

56. On 6 January 2023 the Court received a request by the applicants to indicate interim measures to the Government under Rule 39 of the Rules of Court to suspend the entry into force of the 29 September 2022 amendments (see paragraph 31 above). On 10 January 2023 the Court (the competent duty judge) decided that the applicants' request was outside the scope of Rule 39.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. Constitutional provisions

57. The relevant provisions of the Latvian Constitution (*Satversme*) are worded as follows:

Article 1

"Latvia is an independent democratic republic."

Article 4

"The Latvian language is the official language in the Republic of Latvia ..."

Article 91

"All persons in Latvia shall be equal before the law and the courts. Human rights shall be exercised without discrimination of any kind."

Article 112

"Everyone has the right to education. The State shall ensure that everyone may receive primary and secondary education without charge. Primary education shall be compulsory."

Article 114

"Persons belonging to minorities shall have the right to preserve and develop their language and their ethnic and cultural identity."

B. The impugned legislative amendments

58. The impugned legislative amendments have been summarised above (see paragraphs 23-26). Full extracts from the relevant domestic laws and regulations have been reproduced below.

1. Public and private primary and secondary schools

59. The relevant provisions of the Education Law, as of 1 September 2019, read as follows:

Section 9. Language in which an Education is Acquired

"(1) An education at State [educational institutions], municipal educational institutions and State higher educational institutions shall be acquired in the official language.

(1^1) In private educational institutions, a general education and vocational education at the level of primary education and secondary education shall be acquired in the official language.

(2) An education may be acquired in another language:

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

2) in educational institutions which are implementing minority educational programmes at the level of pre-school education and primary education in conformity with the provisions of section 41 of this Law;

2^1) in educational institutions in which the subjects of general education programmes are completely or partially implemented in a foreign language in order to ensure the learning of other official languages of the European Union in conformity with the conditions of the relevant State standard on education;

3) in educational institutions specified in other laws.

(2^1) In educational institutions implementing special education programmes for students with hearing impairments, and in other educational institutions in which a

learning environment suitable for the acquisition of an education in Latvian sign language is ensured, an education may also be acquired in Latvian sign language.

(3) In order to acquire a primary or secondary education, each student shall learn the official language and take examinations testing his or her proficiency in the official language, to the extent and in accordance with the procedures stipulated by the Cabinet [of Ministers].

[new paragraph 3^1 inserted with the Law of 15 April 2021, effective as of 1 May 2021]

(3^1) The study programmes of higher educational institutions and colleges shall be implemented in the official language. The implementation of a study programme in a foreign language shall be laid down in the Law on Higher Educational Institutions."

Section 41. Educational Programmes for Minorities

"(1) Educational programmes for minorities shall be developed by an educational institution selecting any of the model educational programmes included in the guidelines for the State standard on pre-school education or primary education.

(1^1) In educational programmes for minorities, from class 1 to 6, [teaching] in the official language shall account for no less than 50% of the total lessons in an academic year, including [lessons in] foreign languages.

(1^2) In educational programmes for minorities, from class 7 to 9, [teaching] in the official language shall account for no less than 80% of the total lessons in an academic year, including [lessons in] foreign languages.

(2) Educational programmes for minorities shall additionally include the content necessary for learning about the relevant ethnic culture[s] and the integration of minorities in Latvia."

Paragraph 66 of Transitional Provisions

"Amendments to this Law as regards section 9(1^1) and section 9(2)(2), and amendments to section 41(1) ... and section 41(1^1) and 41(1^2), shall enter into force:

1) on 1 September 2019 – in relation to the implementation of pre-school education programmes and the implementation of primary education programmes in classes 1-7;

2) on 1 September 2020 – in relation to the implementation of primary education programmes in class 8 and the implementation of secondary education programmes in classes 10 and 11;

3) on 1 September 2021 – in relation to the implementation of primary education programmes in class 9 and the implementation of secondary education programmes in class 12."

60. The relevant provisions of the General Education Law, as of 1 September 2020, read as follows:

Section 43. Content of General Secondary Education Programmes

"(1) The mandatory content of general secondary education programmes shall be established in the State general standard on secondary education.

(2) An educational institution may, while not exceeding the weekly lesson load and the daily number of lessons specified in section 44 of this Law, additionally include in a general secondary education programme subjects not specified in the State general

standard on secondary education, including native languages of minorities and educational content related to the identity and integration of national minorities into Latvian society."

61. These amendments took effect on 1 September 2020 with respect to pupils in classes 10 and 11, and on 1 September 2021 with respect to pupils in class 12.

62. The amendments are not applicable to educational institutions which have implemented an education programme recognised by another member State of the EU or the North Atlantic Treaty Organisation (NATO), the Supreme Council of European Schools or the International Baccalaureate Organisation in an official language of an EU member State or a NATO member State. Their operation is governed by a special Law which came into force on 11 July 2020 (the International School Law). In the 2019/2020 school year there were six international schools in Latvia which implemented educational programmes established by the above-mentioned countries or international organisations (the International School of Latvia; the International School of Riga; the King's College, the British School of Latvia; the Riga German School (a private pre-school), the Jules Verne Riga French School, and Exupéry International School). The aim of this Law is to ensure that a general education in Latvia is accessible to the children (family members) of persons employed and serving in foreign and international organisations (in particular, the authorities of the EU and the armed forces of NATO and EU member States), and thus to promote the operation of such authorities and organisations in Latvia and to contribute to international cooperation in matters related to economics, politics and education (section 2).

2. Pre-schools

63. The Education Law provides that the Cabinet of Ministers shall determine the guidelines for State pre-school education. Since 18 April 2012 those guidelines have included models and templates for pre-school education. From 17 August 2012 to 1 September 2019 those guidelines were laid down in Regulation no. 533 (2012) by the Cabinet of Ministers.

64. On 21 November 2018 the Cabinet of Ministers adopted Regulation no. 716 (2018), which was in force from 1 September 2019 onwards. The relevant paragraphs of that Regulation and its Annexes read as follows:

Paragraph 5

"The content and process of pre-school education shall include values such as life, human dignity, freedom, family, work, nature, the Latvian language and the State of Latvia, and also other values referred to in the Constitution and Cabinet regulations regarding the guidelines for the upbringing of pupils and the procedures for evaluating information, teaching aids, materials, and upbringing methods."

Paragraph 9 of Annex 2 (general minority educational programme)

"Throughout the entire pre-school education stage, the learning of the Latvian language must be facilitated by an integrated education process, using a bilingual approach that is implemented by teachers, specialists and other employees of the educational institutions, taking into account the development of the child, and the Latvian language must be used in day-to-day communication. From five years of age, the main communication tool for children shall be the Latvian language, except when children take part in activities with the purpose of learning a minority language and [about] an ethnic culture."

3. Universities

65. Section 56(3) of the Law on Higher Educational Institutions, with legislative amendments passed on 21 June 2018, read as follows:

"In higher educational institutions and colleges, study programmes shall be taught in the official language. Study programmes may be pursued in a foreign language only in the following circumstances:

1) Study programmes pursued by foreign students in Latvia and study programmes organised as part of the cooperation provided for by European Union programmes and international agreements may be taught in official languages of the European Union. Where the study programme to be followed in Latvia lasts more than six months or represents more than 20 credits, the number of compulsory class hours to be completed by foreign students must include the learning of the official language;

2) Classes taught in official languages of the European Union may not account for more than one-fifth of the credits for the study programme; final exams, State exams, assessed coursework and dissertations for a bachelor's or master's degree will not be taken into account for the purposes of that calculation;

3) In the following categories of courses, study programmes may be followed in a foreign language where necessary, in order to achieve their objectives ... : linguistic and cultural studies or language courses ...;

4) Joint study programmes may be taught in official languages of the European Union."

66. These amendments took effect on 1 January 2019, but higher educational institutions could continue to provide study programmes in a particular language, firstly until 31 December 2022, and then until 31 December 2025. After 1 January 2019, however, the enrolment of new students in such programmes was not allowed (paragraph 49 of the transitional provisions).

67. Section 56 of the Law on Higher Educational Institutions was repealed and replaced in its entirety, and since 1 May 2021 it has read as follows:

"...

(3) The study programmes of higher educational institutions and colleges shall be implemented in the official language. In a study programme which is implemented in the official language, no more than one-fifth of the credits for the study programme may be [available through classes] taught in other official languages of the European Union,

taking into account that final and State examinations, as well as the writing of ... a bachelor's or master's thesis may not be included in this part.

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

1) if this is provided for in international agreements or within the scope of the 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 taught in an official language of the European Union have received a good or excellent evaluation in the accreditation process of the field of study;

3) if they are joint study programmes.

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

...

(7) For foreign students, acquisition of the official language shall be included in the [number of] compulsory [class hours] of the study course if [their] studies in Latvia are expected to be longer than six months or exceed 20 credits."

C. The Constitutional Court's ability to refuse to examine a case which has already been decided

68. Section 20 of the Law on the Constitutional Court sets out the grounds on which a panel examining a constitutional complaint may refuse to examine a case. Section 20(5)(4) provides that when examining applications, the panel dealing with the application may refuse to examine the matter if the application has been submitted in relation to a claim that has already been decided (*par jau izspriestu prasījumu*).

69. The Constitutional Court has often refused to examine cases on such grounds (see, for example, decision of 22 May 2018 in relation to application no. 67/2018, decision of 28 May 2018 in relation to application no. 68/2018 and decision of 26 March 2020 on application no. 21/2020).

D. The Constitutional Court's case-law

1. Language of instruction in public secondary schools (judgment of 13 May 2005)

70. The domestic legislation from 2004 concerning the language of instruction in public secondary schools (providing that at least 60% of the curriculum had to be taught in the State language) was reviewed by the

Constitutional Court in proceedings instituted by twenty members of parliament (case no. 2004-18-0106). In its judgment of 13 May 2005, the Constitutional Court held that the contested provisions were compatible with Article 114 of the Constitution (the rights of minorities), as minorities could maintain and develop their language, and their ethnic and cultural uniqueness. Setting out how much a language of instruction could be used in schools pursued the legitimate aims of protection of the State language and protection of the rights of others. The impugned restrictions were compatible with Article 114 of the Constitution.

71. In reaching that conclusion, the Constitutional Court established that the range of rights enjoyed by minorities in Europe in the field of education differed considerably, and there was no common approach. In this regard, it relied on the education programmes and languages of instruction used in several European countries. In addition, it was not established that the impugned reform would decrease the quality of education and educational processes. However, a monitoring mechanism had to be established, particularly with respect to the quality of education and educational process. That mechanism had to be objective, comprehensive, professional, regular, and based on scientific knowledge and methods. The State had to ensure that data was collected in such a way that informed decisions could be made on the basis of an analysis, and that the public, pupils and their parents were provided with information about changes in the quality of education and the progress of the educational process.

2. Language of instruction in public primary and secondary schools (judgment of 23 April 2019)

72. See paragraph 45 et seq. above.

3. Language of instruction in private primary and secondary schools (judgment of 13 November 2019)

73. The domestic legislation concerning the language of instruction in private primary and secondary schools was reviewed by the Constitutional Court in proceedings instituted by twenty members of parliament (see paragraph 45 above) and fourteen pupils (case no. 2018-22-01). It examined the compatibility of the 2018 amendments with Article 1 of the Constitution (the principle of legal certainty), the second sentence of Article 91 (the principle of non-discrimination), the first sentence of Article 112 (the right to education) and Article 114 (the rights of minorities), and in its judgment of 13 November 2019 it held that the contested legal provisions were compatible with those provisions.

4. Language of instruction in pre-schools (judgment of 19 June 2020)

74. The domestic legislation concerning the language of instruction in public and private pre-schools was reviewed by the Constitutional Court in proceedings instituted by fourteen individuals (case no. 2019-20-03). It examined its compatibility with Article 91 of the Constitution (the principle of equality), the first sentence of Article 112 (the right to education) and Article 114 (the rights of minorities), and in its judgment of 19 June 2020 it held that the contested legal provisions were compatible with those provisions.

5. Language of instruction in universities (judgment of 11 June 2020)

75. The domestic legislation concerning the language of instruction in universities was reviewed by the Constitutional Court in proceedings instituted by twenty members of parliament (case no. 2019-12-01). It examined its compatibility with Article 112 of the Constitution (the right to education), taken in conjunction with Article 113 (freedom of scientific research, artistic and other creative activity), and in its judgment of 11 June 2020 it held that some of the relevant provisions complied with those Articles. By contrast, other relevant provisions (section 56(3) of the Law on Higher Educational Institutions and paragraph 49 of the transitional provisions) did not comply with Articles 112 and 113 in so far as they applied to private universities, their teaching staff and students, because the legislature had not considered the possibility of using less restrictive means to achieve the legitimate aim sought. As the legislature needed time to prepare regulations on the use of language by private universities, those provisions were to be repealed as of 1 May 2021.

76. In so far as the proceedings related to the compatibility of the contested provisions with Article 1 of the Constitution (the principle of legal certainty) and Article 105 (the right of property), the Constitutional Court instituted new proceedings (case no. 2020-33-01) and within those proceedings it made a request for a preliminary ruling by the Court of Justice of the European Union (CJEU). The Constitutional Court asked the following questions:

> "1) Does legislation such as that at issue in the main proceedings constitute a restriction on the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union ["TFEU"], or, in the alternative, on the freedom to provide services guaranteed in Article 56 of the TFEU, and on the freedom to conduct a business recognised in Article 16 of the Charter of Fundamental Rights of the European Union?
>
> 2) What considerations should be taken into account when assessing whether the legislation in question is justified, suitable and proportionate with regard to its legitimate purpose of protecting the official language as a manifestation of the national identity?"

77. Upon receipt of the preliminary ruling by the CJEU (see paragraph 94 below), on 14 September 2022 the Constitutional Court resumed the proceedings and decided to examine the case in its full composition. In its judgment of 9 February 2023, the Constitutional Court held that the contested legal provisions, in so far as they concerned official languages of the European Union, were not necessary for the pursuit of legitimate aims, were not proportionate and did not ensure harmony with European Union law. Those provisions were declared incompatible with the Constitution as of the date when they had been enacted. However, in so far as the contested provisions concerned languages which were not official languages of the European Union, the Constitutional Court held that they were compatible with the Constitution.

E. Other domestic material

78. According to extensive information submitted by the Government, support measures have been provided for teachers and pupils for more than twenty years. The Ministry of Education and Science offered training, seminars and courses to improve teachers' Latvian language skills; it also issued relevant methodological and study materials, including digital materials available online. Since 1996 more than 20,000 pre-school and schoolteachers have taken part in various training programmes and courses offered by the Latvian Language Agency, with a view to improving their Latvian language skills.

79. Various projects have been implemented in the framework of EU co-funded programmes and projects, such as "Learning the Latvian language" (2006-2008, covering training, cooperation models and study materials), "Support for learning the State language and bilingual education" (2008-2012, covering the reform of the curriculum), "Development of the professional competence of teachers of Latvian and [Latvian] literature, and teachers teaching bilingually" (2010-2012, covering the professional development of teachers), and "A competency-based approach to the curriculum" (2018-2021, updating the curriculum and providing new study materials in relation to subjects such as minority languages and literature, and also providing support to teachers to improve their Latvian language skills).

80. The applicants stated that the domestic authorities had not sufficiently monitored the quality of the education received by pupils attending minority education programmes; their representatives had prepared alternative monitoring reports. According to them, it was unclear how the deterioration in the quality of education could be prevented by training teachers and improving study materials. Although the quality of education in minority schools had deteriorated as instruction in the State language had increased, the level of education remained very high in those establishments.

II. INTERNATIONAL LAW AND PRACTICE

A. International treaties under the auspices of the United Nations

81. The right to education and the right to use a minority language are enshrined in various international treaties to which Latvia is a party, although the scope of those rights may vary depending on the treaty in question. Those rights are included, for example, in treaties such as the United Nations International Convention on the Elimination of all forms of Racial Discrimination (Article 5) and the United Nations International Covenant on Civil and Political Rights (Article 27).

82. In addition, the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two Articles to the right to education (Articles 13 and 14). According to the United Nations ("UN") Committee on Economic, Social and Cultural Rights, Article 13 is the most wide-ranging and comprehensive provision on the right to education in international human rights law. It recognises the right of everyone to free education (free for primary level only, and "the progressive introduction of free education" for secondary and higher levels). Article 13 § 2 lists a number of specific steps States Parties are required to take to ensure the right to education. These include the provision of primary education which is compulsory, "generally available and accessible", secondary education in different forms, and "equally accessible" higher education. States Parties must also develop a school system, establish an adequate fellowship system and improve the material conditions of teaching.

B. Reports by United Nations treaty bodies

1. In general

83. The UN Committee on Economic, Social and Cultural Rights, in General Comment No. 13 (8 December 1999, E/C.1.12/1999/10) on Article 13 of the ICESCR (the right to education), stated as follows (footnotes omitted):

> **1. Normative content of Article 13**
>
> "...
>
> **Article 13 (2): The right to receive an education - some general remarks**
>
> 6. While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:
>
> (a) *Availability*. Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they

require to function depends upon numerous factors, including the developmental context within which they operate ... ;

(b) *Accessibility.* Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds ...;

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a 'distance learning' programme);

Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available 'free to all', States parties are required to progressively introduce free secondary and higher education;

(c) *Acceptability* - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) *Adaptability* - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

...

2. States parties' obligations and violations

43. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to education, such as the 'guarantee' that the right 'will be exercised without discrimination of any kind' (art. 2 (2)) and the obligation 'to take steps' (art. 2 (1)) towards the full realization of article 13. Such steps must be 'deliberate, concrete and targeted' towards the full realization of the right to education.

44. The realization of the right to education over time, that is 'progressively', should not be interpreted as depriving States parties' obligations of all meaningful content. Progressive realization means that States parties have a specific and continuing obligation 'to move as expeditiously and effectively as possible' towards the full realization of article 13.

45. There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.

46. The right to education like all human rights imposes three types or levels of obligations on States parties: the obligation to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both and an obligation to facilitate and an obligation to provide.

47. The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.

48. In this respect, two features of article 13 require emphasis. First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the 'development of a system of schools at all levels shall be actively pursued' (art. 13 (2) (e)). Secondly, given the differential wording of article 13 (2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party's obligation to fulfil (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced obligation to fulfil (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. The Committee observes that this interpretation of the obligation to fulfil (provide) in relation to article 13 coincides with the law and practice of numerous States parties."

2. Country-specific

84. Concluding observations on the combined sixth to twelfth periodic reports of Latvia (CERD/C/LVA/CO/6-12), adopted on 23 August 2018 by the UN Committee on the Elimination of Racial Discrimination, contain the following recommendations:

"17. The Committee recommends that the State party take measures to ensure that its language policy and laws do not create direct or indirect discrimination or restrict the rights of ethnic minorities to access education ... and:

(a) Ensure that there are no undue restrictions on access to education in minority languages. Reconsider the necessity of amendments to the Law on Education that create further restrictions on the number of lessons of minority language in public and private schools;

..."

C. Treaties within the Council of Europe

85. The Framework Convention for the Protection of National Minorities ("the Framework Convention") is the first legally binding multilateral instrument devoted to the protection of national minorities and is regarded as the most comprehensive international standard in the field of minority rights.

Thirty-eight current member States of the Council of Europe have ratified the Framework Convention, whereas four member States have signed but not ratified it (Belgium, Greece, Iceland and Luxembourg), and four member States have neither signed nor ratified it (Andorra, France, Monaco and Türkiye). The Framework Convention itself does not define a "national minority". Several parties, including Austria, Estonia, Germany, Latvia, North Macedonia, Poland, Slovenia, Sweden and Switzerland, set out their definition of a "national minority" when they ratified the Framework Convention. Some of these declarations exclude non-citizens from protection under the Framework Convention, and some identify the specific groups to whom the Framework Convention will apply.

86. The Framework Convention entered into force in respect of Latvia on 1 October 2005. When ratifying the Framework Convention, Latvia made the following declaration:

> "The Republic of Latvia,
>
> ...
>
> - Taking into account the specific historical experience and traditions of Latvia, declares that the notion 'national minorities' which has not been defined in the Framework Convention shall, in the meaning of [this Convention], apply to citizens of Latvia who differ from Latvians in terms of their culture, religion or language, who have traditionally lived in Latvia for generations and consider themselves to belong to the State and society of Latvia, who wish to preserve and develop their culture, religion or language. Persons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority ... as defined in this declaration, but who identify themselves with a national minority that [otherwise] meets the definition contained in this declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law."

87. The relevant provisions of the Framework Convention read as follows:

Article 3

> "1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
>
> ..."

Article 4

> "1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
>
> 2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the

majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination."

Article 5

"1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

..."

Article 12

"1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities."

Article 13

"1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties."

Article 14

"1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language."

D. Reports and resolutions within the Council of Europe

1. In general

88. In Thematic Commentary No. 3 concerning language rights (ACFC/44DOC(2012)001 rev), adopted on 24 May 2012, the Advisory

Committee on the Framework Convention noted as follows (footnotes omitted):

"PART VI: LANGUAGE RIGHTS AND EDUCATION

...

2. Adequate opportunities for teaching and learning of and in minority languages

2.1. Open and inclusive approach to minority languages in education

70. Authorities are encouraged to adopt detailed legislative guarantees for the protection and promotion of minority languages in formal and informal education and to monitor regularly the implementation of legal provisions in practice ... Special attention must be paid to the languages of numerically smaller minorities, such as those of indigenous groups, as their languages are often particularly threatened ...

...

72. The right to learn and to develop one's minority language, as contained in Article 14.1 of the Framework Convention, is not only linked to the preservation of individual identity, but also forms an important basis for the development of the individual linguistic repertoire and the acquisition of additional languages. The possibility of being taught in a minority language can also be an important factor in ensuring equal access to education and contributing towards full and effective participation in society. Nevertheless, it is equally important, as stressed in Article 14.3, that proper knowledge of the official language(s) is acquired, as the lack thereof seriously restricts opportunities for persons belonging to national minorities to effectively participate in public life, and may inhibit their access to university education ...

73. The possibilities for teaching and learning of and in minority languages vary according to the specific parameters of local situations: bi- or multilingual schools may offer minority language education in parallel to that in the official language; minority language classes may be included in the public education system; or there may be private minority language schools or 'Sunday classes' organised by communities, with or without support from neighbouring states or the State Party. The Advisory Committee encourages the inclusion of minority languages in the public school system and in the mandatory curriculum, including languages of numerically smaller minorities...In addition, the Advisory Committee also welcomes private or community initiatives which are supported by the authorities.

74. A number of particular problems may be encountered as regards opportunities for minority language learning, including the insufficient number of teaching hours of or in a minority language or the organisation of classes outside normal school hours, high numerical thresholds for establishing minority language classes, lack of teachers and teaching or learning materials, or insufficient availability of classes due to the closure or merger of village schools. This raises questions of compatibility with Article 14.2 ...

75. In order to develop minority language skills as an added value for their speakers, whether belonging to a minority or not, there must be continuity in access to teaching and learning of and in minority languages at all levels of the education system, from pre-school to higher and adult education. Particular weaknesses in the offer of minority language education are often observed at pre-school as well as at secondary school level. Lack of incentives or insufficient possibilities at pre-school, secondary or higher

level can seriously reduce the attractiveness of minority language learning at primary level ...

2.2. Means to enable the full enjoyment of educational rights

76. In order to ensure the quality of education in and of minority languages, adequate school curricula and standards must be developed and teaching methodology, as well as material, adapted. A particularly important aspect in ensuring the quality of education in and of minority languages, however, is teacher training ...

2.3. Striking a balance between majority and minority languages in education

79. Article 12 of the Framework Convention calls for concrete measures to promote knowledge about minority and majority languages. Language plays an important role in promoting integration, mutual respect among groups, and social solidarity. This implies not only providing language education for members of national minority communities, but also education about and of minority languages for the benefit of the majority language speakers and society as a whole. ... Where states have introduced measures to promote the official language(s), it is particularly important that these go hand in hand with measures to protect and develop the languages of minorities, as otherwise such practices may lead to assimilation rather than integration.

80. On the other hand, lack of knowledge of the official language(s) can limit possibilities of equal participation in society, of access to higher education and access to employment. Parents may as a result opt for enrolling their children in mainstream schools as these seem to offer better opportunities to integrate into society and obtain gainful employment. Therefore, minority language schools must provide an adequate development of the speakers' proficiency in the official language(s). However, care must be taken in this regard to prevent a lowering of general education standards as a result of policies that suddenly introduce more official language learning. This can be a risk when minority language teachers are called upon to teach in the official language, without proper support and preparation. Education reforms that aim at promoting increased official language teaching in minority language schools must be implemented gradually and flexibly to allow for adaptation to the needs of the teachers and the students concerned. In this context, it is important to monitor regularly the quality of education provided throughout the reform process. This should be carried out in close consultation with representatives of the school board, teacher and parents' organisations.

81. The Advisory Committee encourages the development of bi- or multilingual teaching models as part of the mandatory school curriculum. Ideally, if the situation so allows, dual-medium approaches may be adopted in which minority and majority languages are present in equal proportions. In specific situations, however, it can also be useful to promote one or another language in order to counterbalance differentials in language prestige, to guarantee the rights of speakers of numerically small minority languages, and to meet the legitimate needs of parents and children as protected under the Framework Convention. Dual-medium approaches can achieve their aim by alternating the languages, based on weekdays or subject, or by applying the one-teacher-one-language model. When languages are determined by subject, minority languages should not be limited to cultural or historical subjects. The Advisory Committee recommends that the authorities, in close consultation with persons belonging to national minorities, develop a comprehensive long-term strategy in order to promote multiple language development in education policies."

2. Country-specific

(a) The Advisory Committee on the Framework Convention

89. The Third Opinion on Latvia of the Advisory Committee on the Framework Convention (ACFC/OP/III (2018) 001 REV), adopted on 23 February 2018, contains the following in its Executive Summary:

> "A large number of schools offering instruction in minority languages continue to operate in Latvia, and the proportion of children studying national minority programmes has remained stable in the last decade, at over 25% of the total number of children. Schools using lesser-spoken national minority languages, such as Belarusian, Estonian, Hebrew, Lithuanian, Polish and Ukrainian, receive increased subsidies on account of higher costs. Notwithstanding these positive steps, measures have been taken to increase the use of Latvian in teaching in schools using national minority languages as languages of instruction. All students, including those who have studied in national minority programmes, are obliged to sit centralised exams in a large variety of subjects in the Latvian language. Plans to narrow the scope of national minority language teaching in grades 7 to 9 to 20% of lesson hours within a week and in grades 10 to 12 only to lessons of minority languages and ethno-cultural subjects are of particular concern.
>
> ...
>
> Issues for immediate action:
>
> - promote the integration of society as a two-way process, in particular encouraging active participation of all segments of society in all relevant fields, such as education ... and enhance intercultural contacts with society as a whole, beyond the promotion of proficiency in Latvian ...
> - ensure continued availability of teaching and learning in languages of national minorities throughout the country with a view to meeting existing demand; representatives of national minorities, including parents, should be consulted closely to ensure that their interests and concerns with regard to languages of instruction in minority language schools are effectively taken into account ..."

90. On 3 March 2021, the Committee of Ministers of the Council of Europe adopted a Resolution on the Implementation of the Framework Convention in Latvia (CM/ResCMN(2021)9), which contains the following conclusions:

> "[As regards positive developments] Latvia has maintained a consistent policy based on an open approach with regard to the personal scope of application of the Framework Convention, albeit restricted to persons holding Latvian citizenship. ...
>
> Sustained efforts have continued to provide persons belonging to national minorities with opportunities for minority language instruction. The proportion of children studying national minority programmes has remained stable in the last decade, at over 25% of the total number of children. There are no obstacles in Latvia to setting up private schools and a number of faith-based and civic organisations of national minorities make use of such possibilities. Financial support for such initiatives, based on the "money follows student" principle, guarantees the equal treatment of all schools regardless of whether they are public or private.

Funding for schools teaching bilingually in Latvian and Belarusian, Estonian, Hebrew, Lithuanian, Polish or Ukrainian has, since September 2017, been increased to take into account the higher costs incurred by schools with small numbers of students learning less spoken languages in Latvia, and the higher cost of acquiring teaching and learning materials and training qualified teachers. On the basis of bilateral agreements signed with a number of countries, textbooks and other teaching and learning materials from abroad can be used in schools in Latvia and guest teachers are authorised to work in such schools.

[As regards issues of concern] ... Society in Latvia continues to struggle with the consequences of past divisions, with the principal national groups – the Latvian majority and the Russian minority – holding different geopolitical viewpoints and cultural identities. Persons belonging to each of these groups have significantly different perceptions of history and of the State in which they would wish to live. Attempts to create a cohesive society based on civic identity have not advanced significantly in recent years ...

...

Schools using national minority languages have come under increased pressure to increase the use of the Latvian language in teaching. As of the 2017-2018 school year, all students, including those who had studied in national minority programmes, are obliged to sit the centralised exams in subjects such as mathematics, chemistry, biology, physics, information technology, geography and economics, in the Latvian language. Additionally, children taking grade 9 exams no longer benefit from having a choice of language in which the tasks are presented. Plans to reduce the scope of national minority language teaching to 20% of lesson hours per week by the 2020/2021 school year in grades 7 to 9 and to reduce teaching only to lessons of minorities' own languages and ethno-cultural subjects in grades 10 to 12 are of particular concern ..."

91. The Resolution contained, among other things, the following recommendation as regards issues for immediate action:

"[to] ensure the continued availability of teaching and learning in languages of national minorities throughout the country with a view to meeting existing demand; representatives of national minorities, including parents, should be consulted closely to ensure that their interests and concerns with regard to the languages of instruction in minority language schools are effectively taken into account."

(b) The European Commission against Racism and Intolerance (ECRI)

92. The ECRI Report on Latvia within the fifth monitoring cycle (CRI(2019)1), adopted on 4 December 2018 and published on 5 March 2019, contains the following passage (although no specific recommendations were made in this regard, because of the ECRI's mandate):

"**Integration**

- **General overview**

...

54. With regard to some specific issues concerning historical ethnic and national minorities, such as expressions of a separate identity (for example mother tongue education or minority language media) or their participation in public and political life, ECRI refers to the 3rd Opinion of the Council of Europe's Advisory Committee on the

Framework Convention for the Protection of National Minorities (FCNM), which carried out its last visit to Latvia in parallel to ECRI's visit. The work of both monitoring bodies is based on mutual complementarity. The Advisory Committee also examined the situation of national minorities which are not covered in ECRI's report.

...

- **Minority schools**

61. While ECRI does not examine issues concerning the right to use minority languages in education (see § 54 above), it is concerned with aspects of regulating minority schools that might have an impact on the integration of minority pupils, such as teaching-standards and educational outcomes. It should be noted that this does not only affect 'non-citizens', as many members of the Russian minority, for example, are Latvian citizens. In addition, persons belonging to minorities originating from other parts of the former USSR might also opt for education in the Russian language for their children. In this respect, legal status, ethnicity and linguistic identity are not necessarily identical.

62. The Latvian authorities plan to make, with effect from 2021 onwards, Latvian the compulsory language of instruction in grades 10-12 across all bi-lingual schools. The only exceptions allowed will be the teaching of minority languages and cultures. In this context, ECRI would like to remind the authorities of the need to ensure that sufficient and adequate training is provided to teachers in minority schools in order to avoid any decrease in the quality of teaching provided to minority children as a result of the envisaged changes.

63. The authorities pointed out to ECRI that they decided to increase the number of subjects to be taught in Latvian in grades 7-9 in bilingual schools to further improve learning of the Latvian language before 2021. They also emphasise that while in 2010, 40% of minority pupils opted for the use of Russian in their exams, this number had fallen to only 8% in 2016, indicating high levels of Latvian language proficiency. In spite of these developments, ECRI encourages the authorities to assess the need for additional Latvian language tuition for minority pupils on an on-going basis in order to avoid them being put at a disadvantage with respect to educational outcomes and school results, which in turn could have a negative impact on their potential for successful socio-economic integration."

(c) The European Commission for Democracy through Law (Venice Commission)

93. The opinion issued by the Venice Commission entitled "On the recent amendments to the legislation on education in minority languages in Latvia" (CDL-AD(2020)012, 18 June 2020), in so far as relevant, reads as follows (references omitted):

"**II. Preliminary remarks**

...

B. Background information

...

2. Historical overview of the amendments in the field of the education in minority languages

12. Throughout history, Latvian – similarly as several other languages in Central and Eastern Europe – was actively suppressed and sometimes voluntarily abandoned in favour of languages considered more sophisticated or more international. This was the case of German in the 18-19th century and Russian in the 19-20th century. The situation of the Latvian language became critical after the occupation and unlawful annexation of Latvia by the Soviet Union in 1940, even more after the Soviet re-occupation of the country in 1944-1945 that led to large-scale migration from the other parts of the USSR into Latvia as well as mass deportations of the local population. The Soviet authorities relentlessly pursued semi-official policy of Russification. The Russian language was promoted as the means of inter-ethnic communication, other languages did not have an equal status, and this fully applied to occupied Latvia.

13. The restored Latvian state inherited from the Soviet system a segregated schooling system, in which Russians and other minorities attended schools with Russian as the language of instruction, while Latvians went to Latvian schools, but where Russian was a mandatory part of the curriculum. As a result, at the restoration of the independence of Latvia in 1991 the largest minority language – Russian – had in fact a more prominent place in schooling than the newly re-established state language Latvian. In 1991, most Latvians were bilingual, i.e. Latvian and Russian speakers, while Russians and other ethnic groups living in Latvia generally did not speak Latvian. On the other hand, other ethnic groups – Polish, Ukrainian, Belorussian and Jewish – did not have access to education in the language of their ethnicity, since they had been subject to the same policy of Russification as the titular ethnic group. Only since the restoration of Latvian independence were minority schools other than Russian schools re-established (they had existed in independent Latvia before World War II) – Polish, Jewish, Ukrainian and Estonian at first, to be joined by a Belarusian and a Lithuanian school some three to four years later.

14. The developments since the restoration of the independence of Latvia in 1991 have been aimed at reintroducing the Latvian language as the main language of communication and of public debate in the country. The Latvian language has therefore been granted constitutional protection and has been and continues to be actively promoted in all areas of public life, including in education.

...

4. Statistical data regarding proficiency in Latvian

...

26. [The above-mentioned] data demonstrate that in Latvia there is an issue of lack of proficiency in the state language amongst students enrolled in schools implementing minority education programmes.

...

C. Recent amendments to the legislation on education in minority languages

1. March 2018 amendments to the Education Law and the General Education Law

...

43. Prior to the March 2018 amendments, education in the state language was mandatory only in state schools. With the Law of 22 March 2018 amending the Education Law, the mandatory proportions regarding the use of Latvian are also applied to private schools of basic and secondary education.

...

III. Analysis

A. Public consultation

59. During the meetings in Riga, the representatives of the Russian community complained that no adequate consultations with representatives of ethnic minorities had been conducted in the process of drafting and adopting the amendments increasing the proportion of Latvian as the language of instruction in minority education programmes.

60. These allegations were rejected by the representatives of the authorities, who provided detailed information on the public consultation organised by the Ministry of Education and on each step of the legislative procedure followed until the adoption of the draft amendments. The reform of the minority education programmes was announced in October 2017 at a press briefing held by the Ministry of Education, where information about the content of the planned changes as well as the timeframe of their implementation was provided. The proposals were discussed in the Advisory Council for Ethnic Minority Education on 10 November 2017, which gave a positive opinion on the proposed changes. On the basis of all the opinions collected from all interested parties, the Ministry of Education prepared and submitted to the Cabinet of Ministers an informative report on the proposed changes as well as the timeframe and necessary support measures for their implementation. The Ministry also prepared an infographic on the substance of the planned changes and published it on its website and on social media profiles. The informative report was discussed in an open meeting of the Government on 5 December 2017. Both draft laws and their explanatory notes were announced for public consultation on 7 December 2017 in accordance with the regular procedure in order to allow all interested parties to submit their opinions for consideration at the ministry level before the submission of the draft texts to the Government. Opinions and questions received from other ministries and NGOs were discussed in a meeting organised by the Ministry with their authors. The draft laws were submitted to Parliament on 23 January 2018 and were examined in a number of meetings in February and March 2018 by the Parliamentary Committee of Education, Culture and Science. Those meetings were open to the public, including the parents' representatives and NGOs. The consultation with the relevant associations and public institutions (especially with schools implementing minority education programmes, etc.) continued in the process of the preparation of the relevant Cabinet Regulations in the framework of the Project Skola2030.

61. The allegations regarding the insufficiency of the consultation were examined in detail by the Constitutional Court in its judgments of 23 April 2019 and 13 November 2019. Based on audio recordings and minutes of four meetings of the Committee of Education, Culture and Science, the Constitutional Court observed that those meetings were attended, in addition to the relevant state authorities, by representatives of the opposition parties, social partners, parents' associations, etc. who expressed their opinions. [The Constitutional Court] concluded that all proposals, including the opinion of the Advisory Council and the proposals of the applicants, were duly examined. [The Constitutional Court] explained that after that, the *Saeima* examined both draft laws in three readings, debated and voted on each proposal and that the amendments were elaborated and adopted in accordance with the procedure established by the Constitution and the *Saeima* Rules of Procedure, observing the principle of good legislation.

62. Unlike the Constitutional Court, the Venice Commission does not have access to all the materials and relevant information to ascertain whether representatives of national minorities were sufficiently and adequately consulted in the legislative process. However, the information on the proposed amendments that the Ministry of Education

has provided, the number and variety of public meetings devoted to the discussion of the proposals inside and outside Parliament as well as the evaluation of the Constitutional Court create the presumption that there has been sufficient room for national minorities to voice their opinions and criticisms, a presumption that has not been rebutted by information that representatives of national minorities and others have provided to the rapporteurs.

63. Furthermore, it is relevant that the amendments were not unexpected. They are part of a continuous process of more than twenty-five years since the restoration of Latvia's independence, in which the legislator has aimed to protect and promote the Latvian language as the main language of communication and education. Some elements have already been proposed earlier: the 1998 Education Law initially provided that in 2004 upper secondary education (grades 10 to 12) would switch to the Latvian language only. However, after protests the Law was softened, and allowed schools to teach up to 40% of the curriculum in minority languages.

64. Nevertheless, the Venice Commission wishes to underline the importance of creating conditions for effective participation of persons belonging to national minorities in public affairs, in particular those affecting them, in order to ensure that their needs are understood and taken into consideration. As pointed out in the Explanatory Report to the Framework Convention (§ 80), this requirement, which follows from Article 15 of the Framework Convention, involves *inter alia* consultation with these persons when states are contemplating legislative or other measures likely to affect them directly, as well as involving them in the assessment of the possible impact that planned measures might have on them. Therefore, the Commission invites the authorities to involve or continue to involve civil society, especially representatives of national minorities, in the actual implementation of the adopted changes as well as in the process of possible future changes affecting minorities' rights.

B. Compliance with international standards

1. Fair balance between promotion of the state language proficiency and protection of the linguistic rights of the national minorities

a. Is the aim to strengthen proficiency in the state language legitimate?

65. The aim of the amendments, as explained by the authorities, is to strengthen the Latvian language proficiency of the students enrolled in minority education programmes in order to promote their integration into society and effective participation in the democratic processes as well as to combat language-based segregation in the Latvian society.

66. The authorities also highlighted that proficiency in Latvian would have a number of advantages for persons belonging to minorities: it would allow them to acquire vocational or higher education in state-run institutions, which is available in Latvian only, to improve their competitiveness in the labour market, – especially to gain access to employment in public administration where proficiency in Latvian is a precondition for recruitment –, to have access to information sources (e.g. channels, newspapers, information blogs, etc.) in the Latvian language, to facilitate their communication with public institutions, etc.

67. Data referred to earlier in the present opinion ... suggest that there might be a need to foster proficiency in the Latvian language in schools, especially amongst children attending minority education programmes. Therefore, the Commission is ready to accept that the measures adopted by the Latvian authorities to increase proficiency in Latvian serve legitimate aims.

68. In its previous opinions related to the legislation on languages in Slovakia and Ukraine, the Venice Commission has repeatedly held that 'it is a legitimate and commendable aim for States to promote the strengthening of the State language and its command by all citizens, and to take action for its learning by all, as a way to address existing inequalities and to facilitate more effective integration of persons belonging to national minorities into society'. Based on the comparative analysis of laws applicable in European countries, the Commission noted that 'state authorities are perfectly entitled to promote the knowledge and use of the official language and to ensure its protection'. This is in line with § 78 of the Explanatory Report to the Framework Convention which recognises that 'knowledge of the official language is a factor of social cohesion and integration'. The legitimacy of the protection of the state language has, moreover, been stressed by the Advisory Committee.

69. At the same time, the Framework Convention implies that the member states have to strike a fair balance between the preservation and promotion of the state language as a tool for integration within society, on the one hand, and the protection of the linguistic rights of persons belonging to national minorities, on the other hand. In order to ensure a fair balance, the changes introduced by the Latvian authorities have to be appropriate to reach the aim sought to be realized, and they must also be proportionate.

b. Are the means appropriate to realise the legitimate aim?

...

74. In view of the limited information at its disposal, the Venice Commission is not in a position to determine the weight of the various causes and reasons behind the lack of proficiency of the students attending minority education programmes or to verify the explanations provided by the Latvian authorities. Therefore, the Commission is ready to accept that increasing the proportion of the teaching in Latvian in minority education programmes may be an appropriate means to achieve the legitimate aim, i.e. raise proficiency in Latvian amongst students attending such programmes, provided this reform is accompanied by additional measures to be taken by the authorities in order to provide the schools concerned with appropriate teaching methodologies, educational materials as well as teachers who are proficient in Latvian.

c. Are the means proportionate?

...

77. As noted in the Explanatory Report to the Framework Convention (§§ 75-79), Article 14 leaves the state parties a wide margin of discretion in shaping their policies with regard to providing for instruction of or in minority languages in their education system. There must be (i) a sufficient demand and (ii) sufficient resources, and there is (iii) a choice between teaching in the minority language and teaching of the minority language. Furthermore, (iv) these policies shall be implemented without prejudice to the learning of the official language or the teaching in this language, which may put limitations to using the minority language as the language of instruction.

78. However, this does not imply that a state party always can fulfil its duties under Article 14 of the Framework Convention by merely providing for instruction of minority languages. This is in particular true in a situation where for a long time education in minority languages has been an essential element of the education system. Although the segregated school system in Latvia was introduced during the illegal Soviet occupation, after the restoration of the Latvian state in 1991, the state gradually developed a bilingual education system. As observed before, the Framework Convention implies that the member states have to strike a fair balance between the preservation and promotion of the state language as a tool for social cohesion and

integration within society, on the one hand, and the protection of the linguistic rights of persons belonging to national minorities, on the other hand. In order to ensure such a balance, in determining whether changes are proportionate to the aim sought, regard should be given to the existing, historically grown education system and the interests and expectations flowing therefrom. ...

...

81. The Commission recalls that, in the context of the Framework Convention monitoring mechanism, changes from one model to another have been accepted in the past as (possibly) being justified by the legitimate goal of any state to support and (re)vitalize its state language(s) in the case of e.g. Estonia and Latvia. That said, as the Commission underlined in its 2017 opinion on Ukraine (§ 96), 'in pursuing a legitimate public policy objective, to satisfy the proportionality requirement, the policy option chosen should be the one with the least degree possible of adverse impact on the legitimate interests of those concerned.'

...

84. The question is whether the new education system is adequate to provide pupils enrolled in minority education programmes with proficiency in both their mother tongue and Latvian. The mandatory proportion of the state language as the language of instruction at each level of education should be assessed separately in the light of this criterion.

85. As regards **pre-school education**, pursuant to Cabinet Regulation No. 716, the Latvian language is promoted in minority pre-school institutions (kindergartens) available for children between the ages of 1.5 and 7 years by using a bilingual approach. For children aged 5 and older (when pre-school education is mandatory), Latvian is the main means of communication in play-based lessons, except in specially organised activities with the aim of learning the national minority's language and ethnic culture.

86. Cases concerning the compatibility of this Regulation with the Latvian Constitution are pending before the Constitutional Court. The Venice Commission should not and does not give an opinion on these constitutional issues. However, in the view of the Venice Commission, this Regulation is problematic from the point of view of proportionality and coherence of the structure of the education system. The Commission recalls that the importance of early learning in the mother tongue for the cognitive development of children, including the subsequent learning of other languages, is widely recognised by international organisations, and stressed by the Advisory Committee. According to the Hague Recommendations, '[t]he first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language.'

87. In a joint letter of 24 September 2019 addressed to the Latvian Government, three UN Special Rapporteurs expressed concern that Cabinet Regulation No. 716 'will harm minority's children's equal enjoyment of their human right to education in Latvia. The exclusion of their mother tongue from pre-school learning activities may hinder these minorities children's learning.' The Venice Commission shares these concerns. In its view, by imposing Latvian at the mandatory pre-school (5-7 years) level as the main communication and instruction language, the state does not leave enough room for schools to adapt their education programme and teaching methods to the needs of pupils and for pupils belonging to minorities to preserve and develop their mother tongue. It is also not consonant with the bilingual approach in the legislation as amended, which allows schools 50% of mother tongue instruction in grades 1-6. The

Latvian authorities informed the Venice Commission that in pre-school education it is not strictly regulated that the teaching process is implemented only in the state language and that a bilingual approach can be used, as well as several activities are provided in the minority language. Given the importance of early learning in the mother tongue, the Commission is of the opinion that the legislation should be clear and unambiguous. The Commission, therefore, recommends that the Government should amend Cabinet Regulation No. 716 in order to return to the previous 'bilingual approach' in play-based lessons applied to the whole period of pre-school education.

88. As for **basic education** (grades 1 to 9), the instruction will be offered in accordance with three models of education: a school which chooses the first model will teach in grades 1 to 9 at least 80% of the subjects in Latvian; a school which opts for the second model will teach in grades 1 to 6 at least 50% and in grades 7 to 9 at least 80% in Latvian; a school which chooses the third model will obey the proportions of 50 and 80% but with more emphasis on the ethnic identity of students (see § 55 above).

89. As described above (§ 44), it is the founder of the school (public authorities – local governments and the state – for the state school, private founders for the private school) that will decide, by virtue of Section 33 para. 2 of the Education Law, whether to combine a basic education with a minority education programme and, if so, which model to choose. It is clear that in private schools the founders would take account of the requests of the parents regarding the model to be implemented in order to attract more students to their school. The proportion of the teaching in a minority language would therefore change according to the decision of each school. It will vary in grades 1 to 6 between 50% and 20% and in grades 7 to 9 it will be approximately 20%.

90. In the view of the Venice Commission, this system offers sufficient discretion and flexibility for schools to implement a programme adapted to the needs of students belonging to national minorities. It may also ensure the existence of a sufficient number of schools providing a minority education programme, especially in the areas where the minorities are strongly represented in the decision-making bodies of local authorities. Furthermore, it might be argued that even though in the future the number of state schools implementing such programmes may fall short of demand, the need for education in a minority language can always be met by the establishment of private schools implementing a minority education programme. However, it should be noted that many minority groups do not have the possibility of setting up their own private schools in sufficient numbers to meet the needs of their respective community. Therefore, in order to ensure that the right to minority language instruction is implemented adequately throughout Latvia, it is preferable that the legislation impose a clear obligation for a presence of sufficient state schools offering a minority education programme whenever there is enough demand for it. As to the maximum share of the teaching in minority languages at the level of basic education, for grades 1-6 it is quite adequate (50%), and for grades 7-9 it does not seem to be unreasonably low (20%).

91. As regards **upper secondary education** (grades 10 to 12), pursuant to Section 43 para. 2 of the General Education Law and Cabinet Regulation No. 416, it will be offered exclusively in Latvian, with the exception that a school may additionally include in the programme of general secondary education a specialised course, namely 'Minority Language and Literature', as well as non-standard subjects related to minority language, identity and integration into Latvian society.

92. The Venice Commission recalls its assessment regarding secondary education made in its 2017 opinion on Ukraine: 'if the law were implemented in a manner that minority languages could only be taught as a subject and there would no longer be the possibility to teach other subjects in the minority language, this could clearly be a

disproportionate interference with the existing rights of minorities' (§ 122). However, it could be acceptable if the law enables the teaching of some subjects in minority languages on condition that 'the scope of this teaching will be sufficient to enable the students to attain a high level of oral and written proficiency, enabling them also to address complex issues' (§ 123). This recommendation is also valid in the case of the upper secondary education in Latvia. The authorities should ensure that each school will have a possibility to implement a sufficient proportion of education at upper secondary level in the minority language in order to enable students to attain an adequate level of proficiency in their mother tongue.

93. In the case of Latvia, the Law does not clarify whether the above-mentioned course 'Minority Language and Literature' and other non-standard subjects related to minority language, identity and integration into Latvian society may or may not be in a minority language. The only condition expressly laid down by the Law (i.e. Section 43 of the General Education Law) is that by including these subjects the school cannot exceed the number of lessons per week (36 lessons) and per day (8 lessons) defined in Section 44 of the General Education Law.

94. This specific question was examined by the Constitutional Court in its judgment of 13 November 2019. Based on the preparatory work of the provision concerned, the Court came to the conclusion that the course 'Minority Language and Literature' and other specialised subjects that are not mentioned in the standard education programme are to be taught directly in the minority language. Therefore, according to the Constitutional Court, the use of minority languages in the context of general education provides persons belonging to national minorities with sufficient opportunity for the proper acquisition of their minority language and the preservation of their identity.

95. As interpreted by the Constitutional Court, Section 43 para. 2 of the General Education Law does not appear to constitute a disproportionate interference with the rights of persons belonging to minorities to learn their language, as it allows the teaching of some subjects in minority languages. The question of whether the scope of this teaching would be sufficient to enable students to attain a high level of oral and written proficiency would depend on the quality of the teaching, which should be ensured through administrative measures, e.g. monitoring, availability of the training courses, access to the teaching materials of high quality, etc.

96. As to the application to primary and secondary private schools of the mandatory Latvian language proportions, which were previously applicable only to state schools, the Venice Commission recalls that it examined a similar situation in its 2017 opinion on Ukraine where it pointed out that the application of the principle of compulsory education in the state language to private schools is in breach of Article 13 of the Framework Convention (§ 105). In its 2019 opinion on Ukraine, the Venice Commission welcomed Article 5 of the draft law on Complete Secondary Education as it confers on private schools the right to choose the language of education with the obligation for them to provide their students with proficiency in Ukrainian. It stated that 'this provision implements a recommendation of the 2017 opinion (§ 105) and ensures the compliance with Article 13 of the Framework Convention under which Ukraine committed [itself] to recognise that persons belonging to a national minority have the right to set up and to manage their own private educational establishments.' (§ 79). The Commission does not see any reason to depart from these observations in the case of Latvia. The Commission recalls that, in addition to the Framework Convention, Latvia has also ratified the UNESCO Convention Against Discrimination in Education under which it recognises the right of persons belonging to national minorities to carry on their own educational activities which include not only the maintenance of schools but also the use or the teaching of minority language (Article 5 para. 1 (c)). Therefore, to

be in line with their international commitments, the authorities are advised to exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes.

97. That said, pursuant to the Convention Against Discrimination in Education, the right of the members of national minorities to carry on their own educational activities should not be 'exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities' (Article 5 para. 1 (c) i)). As to the Framework Convention, nothing in the wording of its Article 13, read in conjunction with its Article 14 para. 3, prevents the state parties from imposing an obligation on private schools to ensure that their students acquire proficiency in the state language to the same degree as in state schools. This means that the state parties are entitled to revoke a license to run a private school fulfilling the obligation of compulsory schooling if the school does not meet the condition of proficiency in the state language.

...

101. Finally, and in general, it is also advisable that the education authorities constantly monitor **the quality of education received by pupils attending minority education programmes** in order to ensure not only that the new language proportions are implemented effectively, but also that the changes introduced to the education system do not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of their mother tongue. This is crucial in order to identify in a timely manner possible adverse effect of the new amendments on the quality of education including the teaching of and in a minority language and to make the necessary adjustments in due course.

102. For the same reasons, it is also necessary that the education authorities spare no effort to provide the schools concerned with the necessary teaching materials and the teachers with opportunities to continue to improve both their Latvian and minority language skills in order to ensure their ability to implement the study process in Latvian, the minority language and bilingually.

2. Compliance with the principle of non-discrimination

...

105. As described earlier in this opinion, Section 9 of the Education Law provides for differential treatment in education between persons belonging to national minorities whose native language is not one of the EU official languages and persons belonging to national minorities whose native language is one of the EU official languages. It appears also to envisage differential treatment of persons belonging to national minorities, who attend schools which implement minority education programmes, compared to persons belonging to national minorities, who attend schools which implement minority education programmes in accordance with bilateral or multilateral international agreements binding upon Latvia. These two cases should be examined separately.

a. Differential treatment based on bilateral or multilateral international agreements

...

108. The Commission wishes to underline the importance of the interstate cooperation and support from kin-states in the field of education as a useful and effective means of promoting the efforts to preserve and develop minorities' language and culture. Bilateral and multilateral agreements with kin-states may be used to

provide subsidies for the maintenance of school premises and to provide schools implementing minority education programmes with teaching staff, textbooks and other teaching and learning materials. They may also serve to set up exchange programmes between schools of different countries. The conclusion of such agreements, therefore, pursues a legitimate aim. The Commission is also convinced that the authorities would avoid introducing in the future unjustified differences in treatment between minorities on the basis of such agreements.

b. Differential treatment between EU and non-EU languages

109. In the Latvian education system, there are at least four cases where there is differential treatment between EU and non-EU languages:

- Section 9 of the Education Law provides for a possibility to establish schools of basic and secondary education in which study subjects are completely or partially implemented in a foreign language in order to ensure the learning of other official languages of the EU in conformity with the conditions of the relevant state education standard;
- Pursuant to Cabinet Regulation No. 747, in both state and private schools of basic and secondary education, unlike the EU languages which can be taught as the first foreign language, the non-EU languages can be taught only as the second foreign language (Annex 12, para. 12);
- Pursuant to Section 56 para. 3 (1) and (2) of the Law on Higher Education Institutions and Section 9 para. 31 (1) of the Education Law, 'study programmes which are acquired by foreign students in Latvia, and study programmes, which are implemented within the scope of co-operation provided for in European Union programmes and international agreements may be implemented in the official languages of the European Union.' 'Not more than one-fifth of the credit point amount of a study programme may be implemented in the official languages of the European Union';
- Pursuant to Section 56 para. 3 (4) of the Law on Higher Education Institutions, in higher education institutions 'joint study programmes may be implemented in the official languages of the EU'.

110. The Venice Commission stresses that it is in the sovereign power of a state to decide - within the limits set by its international obligations, especially those stemming from the Framework Convention and the ECHR - which foreign languages (or other courses) will be included into the obligatory school curriculum. The preference given to certain foreign languages, for instance other EU languages, is *not per* se a violation of the Framework Convention as long as the rights granted by this Convention are respected and more specifically as long as members of national minorities have sufficient opportunities to learn (in) their minority language. The Commission refers in this context to the different recommendations made in §§ 87, 90, 96, and 100-102.

111. This preferential treatment is neither a violation of Article 14 of the ECHR, if there is an 'objective and reasonable justification' for it, which implies that it pursues a 'legitimate aim' and that there is a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised.

112. The authorities met in Riga explained to the rapporteurs that, as Latvia is an EU member, it is its duty to provide its citizens with sufficient opportunities to acquire knowledge of EU languages. The acquisition of other EU languages, especially English, is important for citizens, as it allows them to live and work in other EU countries. It is also important for consolidating the European integration of Latvian citizens and

forging a European identity amongst citizens. Furthermore, in its judgments of 23 April 2019 and 13 November 2019, the Constitutional Court pointed out that the promotion of the learning of EU languages is an objective of Latvia, which follows from the Preamble of the Satversme ('*Latvia protects its national interests and promotes sustainable and democratic development of a united Europe*') and the principle of good faith in international law. Finally, in the view of the authorities and the Constitutional Court, unlike minority education programmes, the possibility of exceptionally obtaining education in an EU official language is not intended to develop the culture and identity of the students concerned, but to foster the learning of a foreign language in depth.

113. In view of the importance of improving the knowledge of EU official languages amongst Latvian citizens in order to facilitate their free movement and residence in the EU as well as their access to the EU labour market, the Venice Commission considers that the provisions mentioned in § 109 pursue a legitimate aim. The Venice Commission considers moreover that the principle of proportionality is respected to the extent that the state offers adequate opportunities for persons belonging to minorities whose mother tongue is not an EU language to attain a sufficiently high level of oral and written proficiency in their language. If this condition is fulfilled, the Commission is of the opinion that the differential treatment in question would not be unacceptable from the point of view of the principle of non-discrimination, taking into account the margin of appreciation the state enjoys in this field.

114. In this regard, the Venice Commission recalls that it examined in its 2017 opinion on Ukraine an analogous differential treatment in the Ukrainian legislation. In that opinion the Commission stated that the less favourable treatment of the Russian language (and other languages which are not official languages of the EU) was not justifiable in the light of the principle of non-discrimination unless a more convincing justification is provided (§ 114). The Commission wishes however to underline two important differences that exist between Latvia and Ukraine in this regard. In the first place, and most importantly, unlike Ukraine, Latvia is member of the EU, which is a crucial element to be taken into consideration when assessing the legitimacy of the differential treatment. Moreover, unlike the Constitution of Ukraine where there is a clear reference to the 'free development, use and protection of Russian' (Article 10), the constitutional order of Latvia does not give specific recognition to any minority language.

IV. Conclusion

115. The Venice Commission examined the recent amendments to the Latvian legislation on education in minority languages, which are presented by the authorities as part of a long-standing reform of the education system, comprising gradual changes in the use of the state language and minority languages – especially Russian − in favour of the state language.

116. The Commission is aware of the specific historical developments that Latvia has gone through over the past decades and centuries and the impact on the linguistic situation in the country that these developments have had, resulting in a state of asymmetric bilingualism. The statistical data and other information provided by the education authorities of Latvia suggest that there might be a need in Latvia to foster mastering of the state language in particular amongst pupils attending minority education programmes. The Commission stresses that increasing the proportion of the use of the Latvian language in minority education programmes in order to improve proficiency of pupils attending such programmes is a legitimate aim.

117. Even though the Venice Commission is not in a position to determine the weight of the various reasons behind the lack of proficiency of pupils enrolled in minority education programmes, increasing the proportions of the use of Latvian in those programmes does not appear to be inappropriate to achieve the legitimate aim, i.e. to raise proficiency in Latvian amongst pupils concerned by the reform. That said, the reform can reach its objective only if it is coupled with additional measures necessary to provide schools implementing minority education programmes with appropriate teaching methodologies, educational materials as well as teachers who are proficient in Latvian.

118. While increasing the mandatory proportion of the Latvian language, the new legislation leaves ample room for instruction in minority languages at the level of [primary] education, and some room for such instruction in secondary education. This is to be welcomed. The answer to the question of whether the minority education system as redesigned by the recent amendments will or will not enable persons enrolled on these programmes to attain a high level of proficiency in their mother tongue depends on several factors, especially the availability and quality of teachers and teaching materials, etc.

119. However, the system introduced by the recent legislation for pre-school education needs to be reconsidered in order to ensure that persons belonging to national minorities will continue to enjoy the possibility of acquiring proficiency in their language, which is essential for the protection and promotion of the identity of minorities as well as for the preservation of the linguistic diversity within the Latvian society. In the opinion of the Commission, as long as Latvia ensures this possibility for all national minorities, it would be acceptable to privilege the teaching in some languages – i.e. EU official languages – which are at the same time languages of some national minorities. Furthermore, private schools should be allowed to provide education in minority languages. The Commission recalls that securing the right of persons belonging to minorities to preserve and develop their language and their ethnic and cultural identity is an obligation for Latvia stemming from its international commitments.

120. Even though the overall direction of the recent amendments subject to the present opinion is not a reason for concern, some of the changes are, nevertheless, open to criticism as they do not strike a fair balance between the protection of the rights of minorities and their languages and the promotion of the state language. In order to ensure such a balance, the Venice Commission recommends to:

- amend Cabinet Regulation No. 716 in order to return to the previous ‘bilingual approach’ in play-based lessons applied to the whole period of pre-school education;
- take the necessary legislative and other measures to ensure that state schools offer a minority education programme whenever there is sufficient demand for it;
- exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes;
- consider enlarging the possibilities for persons belonging to national minorities to have access to higher education in their minority language, either in their own higher education institutions, or at least in state higher education institutions;
- constantly monitor the quality of education received by pupils attending minority education programmes in order to ensure that the changes introduced into the education system do not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of

their minority language. The education authorities should also provide schools implementing minority education programmes with the necessary teaching materials and the teachers of these schools with adequate opportunities to continue to improve their Latvian and minority language skills in order to ensure their ability to implement the study process in Latvian, minority language and bilingually."

E. Case-law of the Court of Justice of the European Union

94. On 7 September 2022 the Grand Chamber of the CJEU, in a preliminary ruling on request from the Latvian Constitutional Court in the context of proceedings concerning language of instruction in universities, assessed whether Articles 49 and 56 of the TFEU and Article 16 of the Charter of Fundamental Rights of the European Union ("the Charter") must be interpreted as precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State (case of *Boriss Cilevičs and Others*, C-391/20, EU:C:2022:638) (see paragraph 76 above). It held as follows (references omitted):

"*The justification for the restriction on the freedom guaranteed by Article 49 TFEU*

65. According to well-established case-law, a restriction on the freedom of establishment is permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it ...

– *The existence of an overriding reason in the public interest*

...

70. Accordingly, the objective of promoting and encouraging the use of one of the official languages of a Member State must be regarded as being a legitimate objective which, in principle, justifies a restriction on the obligations imposed by the freedom of establishment enshrined in Article 49 TFEU ...

– *The suitability of the restriction concerned for ensuring the attainment of the objective pursued*

71. As is apparent from paragraph 65 above, it is still necessary to assess whether the legislation at issue in the main proceedings is suitable for securing the attainment of that legitimate objective and does not go beyond what is necessary to achieve it.

72. In that regard, is ultimately for the referring court, which has sole jurisdiction to assess the facts of the main proceedings and interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions ...

73. However, the Court of Justice, which is called on to provide answers of use to that court, may provide guidance based on the documents relating to the main proceedings and on the written observations which have been submitted to it, in order to enable the court in question to give judgment ...

74. In the present case, a Member State's legislation which provides for an obligation on higher education institutions to use, in principle, the official language of that Member State appears to be suitable for attaining the objective of defending and promoting that language. That legislation encourages the use of the language in question by the whole of the population concerned and ensures that the same language is also used in education at university level.

75. That said, it must be pointed out that the legislation in question can be regarded as capable of ensuring that objective only if it genuinely reflects a concern to attain it and is implemented in a consistent and systematic manner ...

76. In view of their limited scope, the exceptions laid down in the same legislation are not such as to hinder attainment of the objective of defending and promoting the official language of the Member State in question.

77. Furthermore, it should be noted that, in the present case, as the referring court states, the Latvian legislation provides that the compulsory use of Latvian does not relate to two private higher education institutions, whose operation is governed by special laws, thus allowing those two institutions to continue to offer courses of study in English or, in some circumstances, in another official language of the European Union.

78. As is apparent from the Latvian Government's written reply to questions from [the CJEU], those two institutions were established by international agreements entered into between the Republic of Latvia and the Kingdom of Sweden. It is apparent from the request for a preliminary ruling that [section 56(3)(1) of the Law on Higher Educational Institutions] specifically provides that a course taking place in Latvia may be provided in an official EU language other than Latvian where that course is organised in the framework of international agreements.

79. In those circumstances, although it is true that the two higher education institutions whose operation is governed by special laws enjoy a special status, since education is provided there in English or, in some circumstances, in another official EU language, there is nothing, however, to prevent other institutions from being able to provide education in an official EU language other than Latvian, provided that their operation comes under an international agreement entered into between the Republic of Latvia and other States.

80. It follows that the derogation arrangement applicable to those two institutions could apply to any institution in a similar situation. Moreover, that category of institution is significantly different from those establishments subject to the basic obligation in the present case to teach in the Latvian language, since the former category of institution forms part of a special kind of international university cooperation. Consequently, having regard to the specific objective which they pursue and in view of their limited scope, the existence of provisions which allow certain higher education institutions to benefit from a derogation arrangement, in the context of cooperation provided for by EU programmes and by international agreements, is not such as to render the legislation at issue in the main proceedings inconsistent.

– *The necessity and proportionality of the restriction concerned*

81. It must be borne in mind that measures which restrict a fundamental freedom may be justified only if the objective pursued cannot be attained by less restrictive measures ...

82. Furthermore, it is not indispensable for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member

States as regards the precise way in which the fundamental right or legitimate interest in question is to be protected. On the contrary, the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted in another State ...

83. It is true that Member States enjoy broad discretion in their choice of the measures capable of achieving the objectives of their policy of protecting the official language, since such a policy constitutes a manifestation of national identity for the purposes of Article 4(2) TEU ... However, the fact remains that that discretion cannot justify a serious undermining of the rights which individuals derive from the provisions of the Treaties enshrining their fundamental freedoms ...

84. It must be stated that legislation of a Member State which would require, with no exceptions, that higher education courses of study be provided in the official language of that Member State would exceed what is necessary and proportionate for attaining the objective pursued by that legislation, namely the defence and promotion of that language. In actual fact, such legislation would lead to the outright imposition of the use of that language in all higher education courses, to the exclusion of any other language and without taking account of reasons that may justify different higher education courses of study being offered in other languages.

85. On the other hand, Member States may introduce, in principle, an obligation to use their official language in those courses, provided that such an obligation is accompanied by exceptions that ensure that a language other than the official language may be used in the context of university education.

86. In the present case, such exceptions should, in order not to exceed what is necessary for that purpose, allow the use of a language other than Latvian, at least as regards education provided in the context of European or international cooperation, and education relating to culture and languages other than Latvian.

87. In the light of all the foregoing considerations, the answer to the questions referred is that Article 49 TFEU must be interpreted as not precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State, in so far as such legislation is justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued."

F. Recommendations adopted under the auspices of the Organisation for Security and Cooperation in Europe ("OSCE")

95. The relevant parts of the Hague Recommendations regarding the Education Rights of National Minorities (recommended by the OSCE High Commissioner on National Minorities, published on 1 October 1996) read as follows:

"**THE SPIRIT OF INTERNATIONAL INSTRUMENTS**

1) The right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process. At the same time, persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language.

2) In applying international instruments which may benefit persons belonging to national minorities, States should consistently adhere to the fundamental principles of equality and non-discrimination.

3) It should be borne in mind that the relevant international obligations and commitments constitute international minimum standards. It would be contrary to their spirit and intent to interpret these obligations and commitments in a restrictive manner.

...

PUBLIC AND PRIVATE INSTITUTIONS

8) In accordance with international law, persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions in conformity with domestic law. These institutions may include schools teaching in the minority language.

9) Given the right of persons belonging to national minorities to establish and manage their own educational institutions, States may not hinder the enjoyment of this right by imposing unduly burdensome legal and administrative requirements regulating the establishment and management of these institutions.

10) Private minority language educational institutions are entitled to seek their own sources of funding without any hindrance or discrimination from the State budget, international sources and the private sector.

MINORITY EDUCATION AT PRIMARY AND SECONDARY LEVELS

11) The first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language.

Wherever possible, States should create conditions enabling parents to avail themselves of this option.

12) Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Towards the end of this period, a few practical or non-theoretical subjects should be taught through the medium of the State language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

13) In secondary school, a substantial part of the curriculum should be taught through the medium of the minority language. The minority language should be taught as a subject on a regular basis. The State language should also be taught as a subject on a regular basis, preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Throughout this period, the number of subjects taught in the State language, should gradually be increased. Research findings suggest that the more gradual the increase, the better for the child.

14) The maintenance of the primary and secondary levels of minority language education depends a great deal on the availability of teachers trained in all disciplines in the mother tongue. Therefore, ensuing from their obligation to provide adequate opportunities for minority language education, States should provide adequate facilities for the appropriate training of teachers and should facilitate access to such training."

G. Comparative material

96. The following member States of the Council of Europe have enshrined in their Constitution only one official language of that State: Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Estonia, France, Hungary, Latvia, Liechtenstein, Lithuania, Moldova, Monaco, Poland, Portugal, Romania, Slovakia, Türkiye and Ukraine (source: Elkins, Zachary, Tom Ginsburg, James Melton. *Constitute: The World's Constitutions to Read, Search, and Compare* (consulted at constituteproject.org)).

THE LAW

I. JOINDER OF THE APPLICATIONS AND SCOPE OF THE CASE

97. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

98. The Court notes at the outset that the applicants complained specifically about the 2018 amendments whereby the use of Latvian as the language of instruction in public schools had been increased and instruction in their mother tongue, Russian, had been reduced, whereas this had previously been widely available. The applicants raised various issues relating to what they considered significant restrictions on the use of their mother tongue (Russian) while the applicants who were school pupils at the relevant time had been pursuing an education in Latvia. They argued in particular that the high proportion of subjects to be taught in Latvian had disproportionately affected them.

99. Taking into account the principle of subsidiarity and the requirement to exhaust domestic remedies as enshrined in Article 35 § 1 of the Convention, in the present case, the Court can examine only those issues which were raised before and examined by the Latvian Constitutional Court (see paragraphs 45-54 above).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

100. The applicants alleged that the 2018 amendments had restricted their rights protected under Article 8 of the Convention. In their view, those amendments did not pursue a legitimate aim within the meaning of Article 8 § 2 of the Convention. The Government contested that argument.

101. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions on admissibility

1. The Government

102. The Government argued that the applicants had failed to exhaust domestic remedies, as they had not submitted constitutional complaints to the Constitutional Court themselves. The Government explained that the proceedings at the domestic level were instituted by members of parliament and not by individuals. Members of the parliament did not have an obligation to prove that the contested provisions had affected their rights; they merely had to show that there had been a public interest and discontent with the impugned provisions. Thus, in the context of those proceedings leading to a judgment of 23 April 2019 (see paragraph 45 above) the Constitutional Court was called to examine the impugned legislation *in abstracto*, without examining particular circumstances of the applicants or their complaints and submissions. The Government noted that the present applicants had never argued before the domestic authorities that their right to private and/or family life had been affected by the impugned provisions.

2. The applicants

103. The applicants noted that at the time when they had lodged the present applications with the Court, the Constitutional Court had already examined the impugned legislative amendments in case no. 2018-12-01 (see, for more details, paragraph 143 below). The applicants did not provide more details as to the Government's argument about their alleged failure to bring before the domestic authorities any complaints as regards the right to private and/or family life.

B. The Court's assessment on admissibility

104. The Court reiterates that a complaint or "claim" – which is the term used in Article 34 of the Convention – comprises two elements, namely factual allegations, that is, to the effect that the applicant is the "victim" of an act or omission, and the legal arguments underpinning them, that is, that the said act or omission entailed a "violation by [a] Contracting Party of the rights set forth in the Convention or the Protocols thereto". These two elements are intertwined because the facts complained of ought to be seen in the light of the legal arguments adduced and vice versa (see, most recently, *Grosam v. the Czech Republic* [Grand Chamber], no. 19750/13, §§ 51 and 88, 1 June 2023).

105. In order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or

she was directly affected by the measure complained of. The Court can base its decision only on the facts complained of. It is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto. This means that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (ibid., §§ 90-91, with further references).

106. In the present case, in their applications to the Court the applicants simply referred to the rights protected under Article 8 of the Convention and alleged that the aim pursued by the education reform was not legitimate within the meaning of Article 8 § 2 of the Convention. The Court notes that they did not provide any legal arguments as to whether their Article 8 rights taken alone were directly affected in the present case. Nor did they claim that the pupils' and their parents' right to have respect for their private and/or family life has been interfered with.

107. That being said, in the specific circumstances of the present case, the Court considers that it is not necessary to address the question as to whether the applicants have properly raised a complaint or "claim" under Article 8 of the Convention, whether that Article is applicable and whether there has been an interference with any of the rights protected under that Article because this complaint is, in any event, inadmissible for the reasons set out below.

108. In the present case, the parties agreed that the alleged breach had emanated from the relevant provisions of the domestic law, namely the 2018 amendments. As the Court has consistently held, where the source of an alleged breach of a Convention right is a provision of Latvian law, proceedings should, in principle, be brought before the Constitutional Court prior to being brought before the Court (see, for example, *Grišankova and Grišankovs v. Latvia* (dec.), no. 36117/02, ECHR 2003 II (extracts), and *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, §§ 142-43 and 167, 25 November 2014).

109. The Court notes that the impugned legislative amendments were examined in the proceedings instituted by members of parliament. However, in those proceedings the Constitutional Court was called upon to examine the compatibility of the 2018 amendments with the right to education, the principle of non-discrimination, and the rights of minorities as enshrined in the Latvian Constitution. In those proceedings, the Constitutional Court was not called to address the compatibility of those amendments with the right to private and/or family life (see paragraph 45 above). If the applicants considered that their right to private and/or family life had been affected by the legislative amendments even in substance they should have brought those issues before the Constitutional Court themselves as that court had not dealt with those issues before.

110. It follows that this complaint must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION TAKEN ALONE

111. The applicants alleged that the 2018 amendments had restricted their right to education. They did not deny that the children in question could continue to receive an education in Latvian. Nor did they contest that some subjects continued to be taught in Russian. Instead, they argued that the use of Russian had been significantly reduced in Latvia and that schools could even decide to decrease its use further. In their submission, this situation amounted to a breach of Article 2 of Protocol No. 1 to the Convention, which should be read in conjunction with Article 8 of the Convention. Article 2 of Protocol No. 1 reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

112. The Government contested that argument.

Admissibility

1. The parties' submissions

(a) The Government

113. The Government argued that this complaint was incompatible *ratione materiae*. They emphasised that linguistic freedom as such was not one of the rights and freedoms guaranteed by the Convention. The Convention did not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice (they referred, *inter alia*, to *Mentzen*, cited above). Unlike Article 5 § 2 and Article 6 § 3 (a) and (c) of the Convention, Article 2 of Protocol No. 1 did not specify the language in which education had to be conducted. In *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits) (23 July 1968, p. 31, § 4, Series A no. 6 – the "*Belgian linguistic case*"), the Court had already concluded that the right to education did not include the right to access education in a particular language, but merely the right to access educational institutions existing at a given time.

114. The Government admitted that the Convention was a living instrument, but emphasised that the conclusions drawn in the "*Belgian linguistic case*" were also valid today. The Court's case-law, the practice of

the Contracting Parties and other developments in the applicable rules of international law did not allow for the drawing of a different conclusion. As to the Court's case-law, they distinguished the circumstances in *Catan and Others v. the Republic of Moldova and Russia* [GC] (nos. 43370/04 and 2 others, ECHR 2012 (extracts)), and *Cyprus v. Turkey* [GC] (no. 25781/94, ECHR 2001-IV) from the those in the present case. While those cases concerned very specific situations where occupying powers had drastically changed the education system in the occupied territories in question, the present case concerned the education reform implemented in Latvia after the end of its illegal occupation and annexation by the USSR. As to the practice in other States, there was no European consensus on the obligation to ensure an education in a language other than the State language. Giving one example, the Government referred to a decision of the Constitutional Council of France of 21 May 2021 (case no. 2021-818 DC) which had found domestic provisions on the use of regional languages as languages of instruction unconstitutional. There was nothing to suggest that the Contracting States would have accepted an obligation to ensure the right to choose the language of instruction under the Convention.

115. As to other international treaties, the Government emphasised that they did not guarantee an autonomous right to choose a language other than the State language of the State concerned as the language of instruction (see, for example, the treaties referred to in paragraphs 81-82 above). This also applied in the context of the rights of minorities – the State's obligation was confined to providing an opportunity to obtain an education and access to that education (they referred, *inter alia*, to General Comment No. 13 by the UN Committee on Economic, Social and Cultural Rights, cited above in paragraph 83). As to the Framework Convention within the Council of Europe, the Government emphasised that it left a wide margin of discretion to the Parties regarding the teaching of minority languages and teaching in such languages. Not all Contracting Parties to the Convention were Parties to the Framework Convention. Moreover, a number of those Parties had submitted interpretative declarations (see paragraph 85 above).

116. The Government concluded by submitting that neither the Convention nor its Protocols guaranteed a right to education in a language other than the official language of the State. Finding otherwise would contravene not only the Court's case-law, but also general considerations concerning the need to facilitate the integration of minorities through education and to strengthen the ability of each and every member of society to meaningfully participate in the democratic processes of the State.

117. The Government also raised arguments in relation to the exhaustion of domestic remedies and victim status. Those are summarised in paragraphs 140-141 below.

(b) The applicants

118. As to compatibility *ratione materiae*, the applicants argued that the choice of a language of instruction in education was covered by the Convention and its Protocol No. 1. Referring to *Catan and Others* (cited above), they submitted that in that case, the parents' wish for their children to be educated in their mother tongue had been held to be a philosophical conviction under Article 2 of Protocol No. 1. In their submission, that was not limited to official languages under Article 14 (they referred to *Ádám and Others v. Romania*, nos. 81114/17 and 5 others, § 106, 13 October 2020). Besides, the wish of parents to have their children's schooling completed in a particular language was also important (they referred to *Cyprus v. Turkey*, cited above, § 278).

119. In their submission, the Court's approach taken in the "*Belgian linguistic case*" had been reconsidered and clarified in *Catan and Others* and *Ádám and Others* (both cited above). Furthermore, the circumstances in the "*Belgian linguistic case*" were to be distinguished from the circumstances in the present case, since in Belgium one could access education in a particular language in another region of the same State. Also, the "*Belgian linguistic case*" pre-dated the entry into force of the Framework Convention, the Convention on the Rights of the Child and the International Convention on the Elimination of all forms of Racial Discrimination. The applicants argued that Article 2 of Protocol No. 1 had to be interpreted in harmony with other rules of international law (see *Catan and Others*, cited above, § 136).

120. As to the Court's case-law, when criticising restrictions on linguistic freedom in education, the Court had not restricted its observations about the specific circumstances of *Catan and Others* and *Cyprus v. Turkey* (both cited above) to those cases. Moreover, the Court's stance as regards the use of a person's mother tongue in education had also been confirmed by its case-law outside the context of occupation (see *Ádám and Others*, cited above, § 94). As to the practice in other States, the applicants considered that the French case given as an example was irrelevant, as France had not ratified the Framework Convention, and that case concerned a new practice of immersion education in a minority language. The present case concerned both the reduction in use of a minority language which had previously been widely used and the non-regression principle, which had to be applied by the Court.

121. As to other international treaties, their applicability to education in minority languages had been confirmed by numerous treaty bodies in respect of Latvia (the applicants referred to a number of country-specific reports, one of which has been cited in paragraph 84 above). The applicants alleged that the Framework Convention contained the relevant rules of international law, and that the Court had acknowledged this (they referred to *Ádám and Others*, cited above, § 94) and by recognising that the right to free self-determination, contained in Article 3 § 1 of the Framework Convention, was the cornerstone of international law (they referred to *Molla Sali v. Greece* [GC],

no. 20452/14, § 157, 19 December 2018). They noted that the Advisory Committee had expressed "particular concerns" about the 2018 amendments and called for "the continued availability of teaching and learning in languages of national minorities throughout the country with a view to meeting existing demand"; in addition, in that regard, the Committee of Ministers had made recommendations in relation to issues for "immediate action" (cited in paragraphs 89 and 90 above).

2. The Court's assessment

(a) General principles as to the scope of Article 2 of Protocol No. 1

122. The Court refers to the interpretation of the scope of Article 2 of Protocol No. 1 which it provided in the "*Belgian linguistic case*". In that case, the Court held that the Convention did not require States to establish any particular education system, but rather to guarantee to persons subject to their jurisdiction the right to avail themselves of the means of instruction which existed at a given time. The Convention did not lay down any "specific obligations concerning the extent of these means and the manner of their organisation or subsidisation". The Court concluded that the first sentence of Article 2 of Protocol No. 1 did not "specify the language in which education [had to] be conducted in order that the right to education should be respected". However, "the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be" (see the "*Belgian linguistic case*", cited above, p. 31, § 3).

123. Consequently, in that case, the Court held that the first sentence of Article 2 of Protocol No. 1 guaranteed "a right to access to educational institutions existing at a given time", but that such access constituted only a part of the right to education. For that right "to be effective, it [was] further necessary that, *inter alia*, the individual who [was] the beneficiary should have the possibility of drawing profit from the education received, that [was] to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he [had] completed" (see the "*Belgian linguistic case*", cited above, p. 31, § 4).

124. The Court held that the right to education guaranteed by the first sentence of Article 2 of the Protocol 1 "by its very nature call[ed] for regulation by the State, regulation which [might] vary in time and place according to the needs and resources of the community and of individuals". However, "such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention" (see the "*Belgian linguistic case*", cited above, p. 31, § 5).

125. The second sentence of Article 2 of Protocol No. 1 did not "require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical

convictions". Moreover, the "preparatory work" confirmed that "the object of the second sentence of Article 2 (P1-2) was in no way to secure respect by the State of a right for parents to have education conducted in a language other than that of the country in question" (see the "*Belgian linguistic case*", cited above, p. 32, § 6).

126. The above-mentioned interpretation of the scope of Article 2 of Protocol No. 1 has subsequently been confirmed in other cases (see, most notably, *Cyprus v. Turkey*, § 277, and *Catan and Others*, § 137, both cited above).

127. The Court does not lose sight of the fact that the development of the right to education, whose content varies from one time or place to another according to economic and social circumstances, mainly depends on the needs and resources of the community. However, it is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. Moreover, the Convention is a living instrument which must be interpreted in the light of present-day conditions (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 136, ECHR 2005-XI, with further references).

(b) Application of those principles to the present case

128. The Court notes that the parties' views differ on the interpretation of the scope of Article 2 of Protocol No. 1. The Government, referring to the "*Belgian linguistic case*", contended that neither the Convention nor its Protocols guaranteed the right to education in a language other than the official language of the State, whereas the applicants, relying on more recent case-law and other international material, considered that the choice of a language of instruction in education was now covered by Article 2 of Protocol No. 1 to the Convention.

129. Accordingly, the Court is called upon to determine whether the conclusions drawn in the "*Belgian linguistic case*" – which were set out more than five decades ago – are applicable to the present case. Taking into account that the Convention is a living instrument which should be interpreted in the light of present-day conditions, the Court has to consider whether there has been any further development of the Court's case-law or any other applicable rules of international law or practice which may have an impact on the meaning and scope of Article 2 of Protocol No. 1.

130. The Court will begin its analysis by highlighting the specific context of the cases referred to by the present applicants. Accordingly, the applicants in the case of *Catan and Others* were Moldovans who lived in Transdniestria, an area within the territory of the Republic of Moldova governed by the separatist Trandsniestrian authorities (the "Moldavian Republic of Transdniestria" – the "MRT"), over which Russia was held to exercise effective control; the "MRT" was not recognised as a State by the international community (cited above, §§ 13 and 122). The applicants

complained of the closure of their schools and their harassment by the "MRT", which had forbidden the use of the Latin alphabet in schools and required all schools to register and start using an "MRT"-approved curriculum and the Cyrillic script. The crux of *Catan and Others* was not, as claimed by the present applicants, the applicants' right to access educational institutions in a language of their choice, but in the "national language". In that case, it was Moldovan/Romanian written in the Latin alphabet which had been the first "official language of their country" since 1989, and was also the applicants' "mother tongue" (cited above, §§ 10 and 143).

131. Similarly, the case of *Cyprus v. Turkey* related to an area within the territory of the Republic of Cyprus governed by the "Turkish Republic of Northern Cyprus" (the "TRNC"), over which Turkey was held to have effective control; the "TRNC" was not recognised as a State by the international community (cited above, §§ 14 and 76-77). The applicant Government argued that Greek Cypriot children living in northern Cyprus had been denied both a secondary education in the Greek language and the opportunity to be educated in accordance with Greek-Cypriot religious and philosophical convictions. While they had previously received a primary education in the Greek language, they were obliged to go to school in the south of the country if they wished to pursue a secondary education in that language. That, in effect, was a denial of the substance of the right to education (cited above, §§ 277-80). However, the crux of *Cyprus v. Turkey* was not, as claimed by the present applicants, the applicants' right to access educational institutions in a particular language of their choice merely because that language had previously been available. It is important to clarify that *Cyprus v. Turkey* concerned access to secondary education in the national language of the country concerned, as Greek had been one of the official languages of the country since 1960.

132. It was in this context that the Court, in both cases, held that the relevant pupils and their parents could claim protection under the first and second sentences of Article 2 of Protocol No.1 as regards education in one of the national languages of the country concerned. The Court concludes that in *Catan and Others* and *Cyprus v. Turkey* it merely confirmed the conclusions drawn in the "*Belgian linguistic case*" in so far as they related to the right to education in one of the national languages or, in other words, official languages of the country concerned (see paragraphs 122 and 125 above). Therefore, in those cases, the Court did not expand the scope of the right to education to include the right to access educational institutions in a language of one's choice.

133. Furthermore, the Court finds that the applicants' reference to *Ádám and Others* is misguided, as that case concerned a complaint under Article 1 of Protocol No. 12 and Latvia has not ratified that Protocol. In any event, the Court found no violation of Article 1 of Protocol No. 12 in that case and did not suggest that the scope of the right to education should be expanded. The

Court's reference to the special needs of minorities in that case cannot be taken to imply that a State has to guarantee rights which are not protected by the Convention or its Protocols. On the contrary, the Court emphasised that the Framework Convention recognised that the protection and encouragement of minority languages should not be to the detriment of official languages and the need to learn them (see *Ádám and Others*, cited above, § 28, see also Article 14 § 3 of the Framework Convention, quoted in paragraph 87 above).

134. The Court observes that the applicants contended that the entry into force of the Framework Convention had had an effect on the scope of the right to education under the Convention and its Protocols. Whilst the Framework Convention is indeed regarded as the most comprehensive international standard in the field of minority rights and the majority of the member States of the Council of Europe have ratified it, a number of member States are yet to ratify or even sign it (see paragraph 85 above). Those member States which have ratified the Framework Convention have undertaken to preserve the essential elements of the identity of persons belonging to national minorities, including their language (Article 5), to foster those persons' knowledge of their language (Article 12), and to recognise their right to learn in their language (Article 14) (all quoted in paragraph 87 above). However, it has been recognised that under the Framework Convention, opportunities to teach in minority languages may vary according to the specific parameters of local situations – for example, bilingual or multilingual schools may offer education in a minority language alongside education in an official language; minority language classes may be included in the public education system; and private minority language schools or "Sunday classes" may be organised by communities – and a balance has to be sought between proficiency in the official language of the State and proficiency in minority languages (see paragraphs 88 and 93 above). As noted in the Explanatory Report to the Framework Convention (§§ 75-79), its Article 14 leaves the State Parties a wide margin of discretion with regard to providing for the teaching of minority languages or teaching in such languages in their education system. Factors such as a sufficient demand, sufficient resources, and a choice between teaching a minority language or teaching in it have to be taken into account. Also, those policies have to be implemented "without prejudice to the learning of the official language or the teaching in this language" (see paragraph 77 of the Opinion by the Venice Commission, quoted in paragraph 93 above). Accordingly, the Court does not find that there is sufficient international material to warrant the conclusion that the right to education as enshrined in Article 2 of Protocol No.1 to the Convention includes the right to access educational institutions in a language of one's choice. In this regard, the Court also takes note of the findings made by the Latvian Constitutional Court in 2005 which noted that there was no European consensus with respect to minorities' rights in the field of education (see paragraphs 70-71 above). Moreover, in 2019 the Constitutional Court

interpreted the scope of the Framework Convention and held that there were no grounds to consider that the States would have to ensure such form of preserving and developing the language, ethnic and cultural singularity as acquiring education in the minority language or in certain proportion without taking into account the national constitutional system (see paragraph 52 above). The Court finds that the applicants' submissions as to the allegedly wider scope of Article 2 of Protocol No. 1 are unsubstantiated. It follows that their arguments in that regard are dismissed.

135. Taking into account the above-mentioned factors, the Court concludes that the right enshrined by Article 2 of Protocol No. 1 does not include the right to access education in a particular language; it guarantees the right to education in one of the national languages or, in other words, official languages of the country concerned. Given that the Latvian language is the only official language in Latvia (see paragraph 57 above), the applicants cannot complain under Article 2 of Protocol No. 1 about the decreased use of Russian as the language of instruction in schools in Latvia *per se*. The Court notes that the applicants in the present case have not put forward any specific arguments alleging that the restrictions on the use of Russian in the Latvian education system would have had adverse consequences on them having a possibility to obtain an education. Therefore, the Court upholds the Government's objection on the grounds of incompatibility *ratione materiae* in the present case, without there being a need to address the other objections raised by the Government.

136. It follows that the applicants' complaint must be rejected for being incompatible *ratione materiae* with the provisions of the Convention, in accordance with Article 35 §§ 3 (a) and 4.

IV. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

137. The applicants alleged a difference in treatment between Russian-speaking and Latvian-speaking pupils, on account of the fact that the use of Latvian as the language of instruction had been increased in public schools and the use of Russian had consequently been reduced. Unlike in the proceedings before the Constitutional Court leading to its judgment of 23 April 2019 (see paragraphs 45, 49-50 above), the applicants in the present case did not complain to the Court of any difference in treatment in comparison with other groups of pupils (such as pupils who studied in an EU language or in accordance with international agreements concluded by Latvia). The applicants considered that the alleged difference in treatment between Russian-speaking and Latvian-speaking pupils was contrary to Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention. The Government contested that argument.

138. Article 14 reads as follows:

Article 14 (prohibition of discrimination)

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. The parties' submissions

(a) The Government

139. The Government firstly considered that this complaint was incompatible *ratione materiae* (their arguments have been set out in paragraphs 113-116 above).

140. Secondly, the Government argued that the applicants had failed to exhaust domestic remedies, as they had not submitted constitutional complaints to the Constitutional Court themselves.

141. Thirdly, they submitted that the first, eighth and twelfth applicants, who were parents, could not themselves claim to be direct victims of an alleged violation of Article 2 of Protocol No.1 in conjunction with Article 14, as those provisions, in the sphere of education and teaching, did not require States to respect parents' linguistic preferences.

(b) The applicants

142. The applicants firstly argued that their complaint was compatible *ratione materiae* (they referred to the arguments set out in paragraphs 118-121 above). They further emphasised that the application of Article 14 did not presuppose a violation of one of the substantive rights guaranteed by the Convention. It was sufficient for the facts of the case to fall within the wider ambit of one or more of the Convention Articles. They submitted that the prohibition of discrimination applied to those additional rights for which the State had voluntarily decided to provide protection (they referred to *Fábián v. Hungary* [GC], no. 78117/13, § 112, 5 September 2017).

143. Secondly, at the time when they had lodged the present applications with the Court, the Constitutional Court had already examined the impugned legislative amendments in case no. 2018-12-01 and had held that they were compatible with the Constitution. The judgment of the Constitutional Court was final and mandatory for all Latvian institutions and courts; the Constitutional Court would refuse to accept any applications about issues that had previously been decided. Accordingly, that was not an effective remedy for the applicants.

144. Thirdly, they alleged that the status of parents as victims of a violation of the rights protected by Article 2 of Protocol No. 1 to the

Convention, where their children had been restricted in receiving an education in their mother tongue, had been recognised in the Court's case-law (they referred to *Cyprus v. Turkey*, and *Catan and Others*, both cited above, and *Iovcev and Others v. the Republic of Moldova and Russia* [Committee], no. 40942/14, § 60, 17 September 2019).

2. The Court's assessment

(a) Whether the facts of the case fall "within the ambit" of Article 2 of Protocol No. 1

145. The Court notes that its conclusion that the scope of Article 2 of Protocol No. 1 does not include the right to access education in a particular language, and the fact that the applicants' complaint is incompatible *ratione materiae* in that regard, cannot be taken to imply that the facts of the case do not fall within the ambit of Article 2 of Protocol No. 1. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, most recently, *Savickis and Others*, cited above, § 120, with further references).

146. It must therefore be determined whether the applicants' situation fell within the ambit of Article 2 of Protocol No. 1, which, as noted above, does not guarantee the right to an education in a language other than the official language of the State (see paragraph 135 above). The Court has already held that Article 14, even when read in conjunction with Article 2 of Protocol No. 1, does not have the effect of guaranteeing children or their parents the right to instruction in a language of their choice. The object of these two Articles, read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the grounds, for instance, of language (see the "*Belgian linguistic case*", pp. 30-31, § 11).

147. It is precisely that aspect – the right to education, which should be secured without discrimination on the grounds of language – that is the crux of the applicants' complaint to the Court in the present case. The Russian-speaking children in question were enrolled in and attended public schools set up and run by the Latvian State or municipal authorities. The applicants

alleged that the 2018 amendments had been discriminatory, in that they had provided for the increase in the use of the State language as the language of instruction, and accordingly the decrease in the use of Russian. Prior to those amendments being passed, Russian-speaking pupils had been able to pursue an education in Latvia where some or even substantial parts of the curriculum had been taught in Russian (see paragraphs 17-20 above). Accordingly, as in the "*Belgian linguistic case*", the Court has competence to examine whether there was an unjustified difference in treatment in the present case (see also, in another context, *Ponomaryovi v. Bulgaria*, no. 5335/05, § 49, ECHR 2011). The Court concludes that the facts of the case, as alleged by the applicants, fall "within the ambit" of Article 2 of Protocol No. 1 taken together with Article 14, and dismisses the Government's objection as to incompatibility *ratione materiae*.

(b) Exhaustion of domestic remedies

148. In the present case, the parties agreed that the alleged breach had emanated from the relevant provisions of the domestic law, namely the 2018 amendments. As noted above, in such circumstances proceedings should, in principle, be brought before the Constitutional Court prior to being brought before the Court (see paragraph 108 above).

149. However, in the particular circumstances of the present case the Court considers that the applicants were not required to avail themselves of that remedy for the following reasons. On 23 April 2019 – prior to the applicants lodging their applications with the Court – the Constitutional Court had already held, in case no. 2018-12-01, that the relevant domestic provisions were compatible with the principle of non-discrimination and the rights of minorities as enshrined in the Latvian Constitution (see paragraphs 45-54 above). Bearing in mind that the Constitutional Court would have refused to examine proceedings on a subject matter which it had already decided (see paragraphs 68-69 above), and in the absence of any indications to the contrary, the Court concludes that the applicants did not have any prospects of success in such circumstances and were not required to lodge individual applications with the Constitutional Court prior to bringing a case before the Court. In this regard, it is of no relevance that the proceedings in case no. 2018-12-01 were instituted by twenty members of parliament and not the applicants, as the Constitutional Court examined the allegations concerning a difference in treatment between Russian-speaking pupils and Latvian-speaking pupils, which is the subject matter of the present case. Accordingly, the Court dismisses the Government's objection as regards the exhaustion requirement.

(c) Victim status

150. The Court observes that in some cases it has distinguished between the rights of pupils who were children and the rights of their parents, depending on whether the complaint under Article 2 of Protocol No. 1 concerned the first or second sentence of that Article (for example, *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 40, Series A no. 48, and *Catan and Others*, cited above, § 143). However, the present case does not concern solely the first or second sentence of Article 2 of Protocol No. 1, but also Article 2 of Protocol No. 1 taken in conjunction with Article 14.

151. In that regard, the Court notes that the "*Belgian linguistic case*" was lodged by parents on their own behalf and on behalf of their minor children (see the "*Belgian linguistic case*", cited above, § 2). The Court did not call into question the parents' victim status in that case.

152. Furthermore, in a number of cases concerning allegedly discriminatory measures implemented in the field of education, the Court has recognised the status of "victim" in relation to applicants who were minors (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007-XII, and *Oršuš and Others v. Croatia* [GC], no. 15766/03, 16 March 2010) and adult applicants who were the parents of minor children (see *Sampanis and Others v. Greece*, no. 32526/05, 5 June 2008; *Sampani and Others v. Greece*, no. 59608/09, § 54, 11 December 2012; and *Lavida and Others v. Greece*, no. 7973/10, § 51, 30 May 2013). Moreover, in *Grišankova and Grišankovs* (cited above), the Court did not question the victim status of a mother who had, together with her son, lodged a complaint about the first stage of the education reform in Latvia (see paragraph 16 above), but dismissed their complaint on other grounds. More recently, the Court did not question the victim status of parents who had, together with their children, lodged complaints of school segregation with respect to a complaint under Article 1 of Protocol No. 12 concerning the general prohibition of discrimination (see *X and Others v. Albania,* nos. 73548/17 and 45521/19, 31 May 2022).

153. In the present case, in the light of the above-mentioned factors, the Court finds that the applicants who are parents can claim to be victims in respect of their complaint of discriminatory measures implemented in the field of education. Accordingly, the Court dismisses the Government's objection under this head.

(d) Conclusion

154. The Court notes that the applicants' complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

155. The applicants argued that the education reform had set only the upper limit on the right to use their mother tongue in education; that limit could be further decreased by the Government or even by schools themselves. In their view, the Government had failed to provide evidence in respect of their allegation that the education reform had been implemented gradually. They saw it as the deliberate destruction of education in minority languages. They also argued that the transitional period was intended to give educational institutions, rather than children and parents, time to adapt to the changes.

156. The applicants submitted that the grounds for the difference in treatment were both language and ethnicity. As to the difference in treatment between Russian-speaking pupils and Latvian-speaking pupils, the applicants alleged that the first group consisted mainly of native Russian speakers, and the second group consisted mainly of ethnic Latvians. Also, the majority of non-Russian minorities chose Russian as the main language to use within the family, and accordingly they also chose to pursue an education in Russian. The applicants submitted that both groups were in comparable situations; there was a need to ensure the children's holistic development, their individual characteristics, the preservation of their ethnic identity and other benefits gained from an education in their mother tongue. In the case in question, the Constitutional Court, having concluded that the groups were not in comparable situations, had refused to examine the issue on the merits. The applicants had suffered precisely because their mother tongue (Russian) was not the official language of the State. In their view, this was incompatible with the Convention and its Protocols.

157. The applicants submitted that the education reform did not pursue any legitimate aims. They noted that the Constitutional Court, in its previous cases dealing with certain linguistic restrictions, had analysed the linguistic situation and demographics in Latvia during the fifty years of Soviet rule, and had relied on special protection of the Latvian language and even protection of the democratic order of the State as legitimate aims (they referred, *inter alia*, to case no. 2001-04-0103, paragraph 3.2., quoted in *Mentzen*, cited above).

158. The Constitutional Court, in the case concerning previous stages of the education reform, had formulated the following legitimate aims: the need to strengthen the use of the State language, and the need to protect the rights of others (see paragraph 70 above).

159. As concerns the 2018 education reform, the applicants noted that the twenty members of parliament who had brought the case concerning public schools had not referred to any legitimate aims. However, the Constitutional

Court had noted that the restrictions complied with the aim of the Latvian education system, which had to ensure that everyone had the opportunity to develop his or her mental and physical potential in order to become an independent and a fully developed individual, a member of the democratic State and society. The Constitutional Court had also stated that the alleged right of students and their parents to choose the language of instruction contradicted the principle of unity of the education system (see paragraph 46 above).

160. The applicants admitted that the legitimate aims as formulated by the Constitutional Court in its judgment concerning public schools, as well as the above-mentioned need to strengthen the State language and need to protect the rights of others (see paragraphs 158-159 above), formally complied with Convention-related criteria. However, such aims could only be relevant if pupils who had completed their education in minority schools had demonstrated a knowledge of the State language which was insufficient for their full integration into society, which had not been the case. The applicants alleged that the real aim had been to increase the number of Russian-speaking school leavers with a good command of the Latvian language from 98% to 100%. In fact, 80% of young people had a high level of Latvian and did not have problems integrating into society. The remaining 20% had problems, but their level of language proficiency was high enough not to interfere with "the right of persons belonging to the State nation (*valstsnācija*) to freely use the official language in all spheres of life throughout the territory of the State".

161. As to protection of the democratic order of the State, while the Government had not sufficiently explained the need to protect it, the applicants understood that the Government had emphasised the need to protect Latvian as the only State language. In their view, the education reform, if based on the protection of Latvian speakers as a result of the Russification policy, no longer served a purpose, because the consequences of that policy had been overcome – the linguistic situation and demographics had radically changed in the twenty-eight years following the restoration of Latvia's independence (they referred to the statistical data provided in paragraphs 8 and 9 above). As to protection of the rights of others, the applicants understood the Government's argument in that regard as the need to protect minorities themselves and also the Latvian majority. As to the interests of speakers of minority languages, it was their submission that the policy of reducing the use of Russian in education was aimed at undermining the competitiveness of schoolchildren who did not have Latvian as their mother tongue. In any event, the legitimacy of aims was for the Government to prove, which they had failed to do.

162. As to proportionality, the applicants argued that even if the legitimate aim of the restrictions was to strengthen the use of the Latvian language, it was questionable whether it could be achieved by the chosen

means. They relied on the education system in Estonia, which was similar to that of Latvia in 2004 (no less than 60% of the curriculum in secondary schools had to be taught in the State language). They argued that there were alternative means of ensuring the legitimate aim, in particular, education in a pupil's mother tongue with in-depth study of the State language as a separate lesson. This had been the system in Latvia until it had been abolished.

163. Moreover, in relation to support for such a system, there had been consensus among various international bodies at least, if not among all member States of the Council of Europe. The applicants referred to particular non-binding international material: the 1992 European Charter for Regional or Minority Languages (not signed by Latvia); the 1996 Hague Recommendations regarding the Education Rights of National Minorities by the OSCE High Commissioner on National Minorities; the 2009 Recommendations by the UN Forum on Minority Issues; the 2017 Practical Guide for Implementation, Language Rights of Linguistic Minorities, by the UN Special Rapporteur on minority issues; the European Parliament Resolution of 13 November 2018 on Minimum Standards for Minorities in the EU; and views expressed by Unesco in various position and policy papers. They also relied on reports by international bodies in respect of Latvia (see paragraphs 83 and 88 above).

164. The applicants alleged that the impugned legislation had not been appropriately discussed within Parliament, and the views of various stakeholders had not been considered. They alleged that the impugned legislation had not been supported by the relevant consultative councils or other minority language associations. They disagreed with the Venice Commission's conclusion that the views of minorities had been taken into account, and referred to the recommendations made by the Committee of Ministers of the Council of Europe in respect of the Framework Convention that the representatives of minorities "be consulted closely" to ensure that their interests were taken into account (see paragraph 91 above).

165. The applicants submitted that by increasing how much Latvian was used as the language of instruction, Latvia had overstepped the margin of appreciation afforded to it. They were of the opinion that the restriction of the existing right to education required serious justification (they referred to paragraph 45 of General Comment No. 13, quoted in paragraph 83 above). In their view, the Government had not provided such justification. Moreover, the applicants argued that the restrictions on the use of Russian in education had been applied equally in all regions in Latvia, even in those regions where the Russian-speaking minority constituted the majority of the population.

166. The applicants proceeded to compare the impugned legislation with the 1996 Hague Recommendations (see paragraph 95 above), and concluded by submitting that it did not comply with those recommendations: (i) research indicated that in primary school, the curriculum should "ideally" be taught in the relevant minority language; the minority language and the

official State language should be taught as subjects on a regular basis; (ii) only a few practical or non-theoretical subjects should be taught in the State language, not 80% of the subjects to be taught in Latvian, as was envisaged for classes 7 to 9 by the 2018 education reform; (iii) in secondary school, a substantial part of the curriculum should be taught using the minority language, not 100% of the curriculum to be taught in Latvian, as was envisaged by the 2018 education reform; (iv) in secondary school, the number of subjects taught in the State language should be gradually increased, but instead the same language-teaching methodology was used for minorities and Latvian pupils, as was a common exam.

167. The applicants considered that the difference in treatment between Russian-speaking pupils and Latvian-speaking pupils had had no reasonable basis in the present case and had therefore been discriminatory. In their opinion, the different attitude towards particular languages, established at constitutional level, should not be an obstacle to the substantive assessment of each specific difference in the attitude towards the speakers of those languages. They relied on the above-cited judgment in *Ádám and Others* to argue that the different status of the languages in that case (Romanian and Hungarian) had not been an obstacle to the Court considering the substance of the applicants' allegations of a difference in treatment. They claimed that there had been consensus among the Council of Europe member States, excluding Latvia and Ukraine, against interference with the choice of the language of instruction in public schools.

(b) The Government

168. The Government firstly emphasised that the education reform had been commenced immediately following the restoration of Latvia's independence, and had been implemented gradually. The intention had been to significantly increase how much Latvian was used as the language of instruction. It had been clear from the outset that the use of other languages in the education process would be reduced.

169. The Government submitted that the education reform and the increase in the use of Latvian pursued two legitimate aims: protection of the rights of others, and protection of the democratic order of the State. In addition, they referred to the Venice Commission's conclusion that the increase in the use of Latvian as the language of instruction in minority programmes to improve proficiency in the State language was a legitimate aim (quoted in paragraph 93 above).

170. As to protection of the democratic order of the State, the Government pointed out that following the restoration of its independence, Latvia had inherited a segregated education system that reflected the Russification policy pursued by the USSR which had resulted in a state of asymmetric bilingualism. Such a segregated system was manifestly incompatible with the requirements of effective political democracy, as it had prevented a large

group of children from learning Latvian, which was necessary for their meaningful participation in political processes and effective exercise of their human rights and fundamental freedoms. The Government reiterated that knowledge of the State language was a condition *sine qua non* for everyone's participation in the State's democratic processes. The Constitutional Court had held that an individual's ability to freely use the State language was the foundation of his or her participation in society and social processes, and of his or her opportunities to choose from sources of information. An individual who knew the State language could compare and critically assess the information he or she obtained and participate in qualitative public discourse, which was indispensable in a democratic society (see paragraph 53 above).

171. As to protection of the rights of others, the Government referred to the Constitutional Court's judgment as regards private schools (referred to in paragraph 73 above). Persons belonging to minorities having knowledge of the State language also protected the right of persons belonging to the State nation to freely use the official language in all spheres of life throughout the territory of the State. That conclusion was in line with the Court's conclusions in *Mentzen* (cited above; conclusions cited below in paragraph 188).

172. The Government argued that the States had a wide margin of appreciation in organising their education system (they relied on the "*Belgian linguistic case*", p. 31, § 5, and *Lautsi and Others v. Italy* [GC], no. 30814/06, § 61, ECHR 2011 (extracts)). That margin grew progressively wider at every level of education – it was wider with respect to higher education than with respect to primary and secondary education (they referred, *mutatis mutandis*, to *Ponomaryovi*, cited above, § 56). The measures adopted by the State would be in line with the margin of appreciation if persons belonging to minorities could maintain their cultural uniqueness, develop and communicate in their language, and learn about their culture, history and language, and if the underlying aim was intended to ensure effective political democracy and pluralism, including but not limited to the prevention of the emergence of parallel societies (they referred to *Konrad v. Germany* (dec.), no. 35504/03, ECHR 2006-XIII).

173. The Government emphasised that overall the education reform had been implemented gradually, and the views of domestic stakeholders had been considered. The 2018 amendments had not been unexpected. From the early stages of the education reform it had been clear that the use of Latvian as the language of instruction would be increased. This had also been accepted by the Venice Commission. A sufficiently long transitional period had been provided at each stage of the reform.

174. The 2018 amendments had provided for a gradual increase in the use of Latvian as the language of instruction – at primary level (classes 1 to 6) the use of Latvian was equal to the use of a minority language (50%); in classes 7 to 9 there was a slight increase in the use of Latvian (80%); and only at secondary level (classes 10 to 12) was Latvian the only language of

instruction. Children in minority education programmes could study their culture, language and history throughout their education. That was in line with the conclusions by UN treaty bodies as regards the necessity to protect minority languages from extinction and to ensure the rights of minority groups to maintain their unique culture and language. Specifically, as regards the Russian language, pupils could choose to learn that language as their second foreign language. This option was available not only to pupils belonging to minorities, but any pupils wishing to learn that language.

175. As to the public consultation process, the Government submitted that the Constitutional Court had examined that issue extensively in the cases concerning public and private schools. The Constitutional Court had concluded that the principle of good legislation had been observed. The legislature had not only sought the views of various State or governmental authorities, but had sufficiently consulted the representatives of opposition parties, social partners and parents' associations and had sought and discussed their views about the proposed amendments. In addition, the views of the Advisory Council for Minority Education had been sought and discussed. The impugned amendments had been discussed at three readings before being passed by Parliament (see paragraph 52 above). The Government also referred to the findings of the Venice Commission concluding that there had been sufficient scope for minorities to voice their opinion and criticism as regards the impugned amendments.

176. Referring to the domestic material (summarised in paragraphs 78-79 above), the Government were of the opinion that sufficient support had been provided to teachers and pupils in the framework of the education reform. The State authorities had taken all reasonable measures to ensure that educational institutions were properly equipped to ensure compliance with the statutory requirements.

177. As to the alleged discrimination, the Government contended that the applicants were not in fact alleging discrimination in the exercise of a right guaranteed by the Convention or its Protocols, but rather demanding that a minority language be used in a specific proportion in education.

178. As regards the alleged discrimination on the grounds of "language", the Government reiterated that this aspect of the case had been extensively reviewed by the Constitutional Court. Given the constitutional status of the Latvian language and its role as the language of public discourse in the democratic society that was Latvia, those pupils whose native language was not the State language of Latvia were not in a comparable situation to those pupils whose native language was the State language (see paragraphs 46-47, and 51 above). Furthermore, the Government relied on the Venice Commission's assessment concluding that the impugned amendments had not been discriminatory.

179. In relation to the ground of "association with a national minority", there was no difference in treatment when the situation was viewed from the

perspective of the use of language, as there was no right to education in a language other than the official language of the State. If the situation was viewed from the perspective of the right of a minority to maintain its unique culture and language, then the applicants' complaint about the use of Russian was entirely misplaced, as the use of Russian would not ensure that the unique culture and language of non-Russian ethnic groups would be maintained. Holding otherwise would be tantamount to regressing back to the Russification policy, which was evidently incompatible with the Convention and the values of the Council of Europe.

180. As to the alleged discrimination against Russian-speaking pupils in comparison with Latvian-speaking pupils, the Government emphasised that those two groups were not in a comparable situation. That stemmed from the constitutional status of the Latvian language and its function as the language of democratic discourse in ensuring an effective political democracy (see paragraphs 47 and 53 above). They also referred to the Court's conclusion in *Mentzen* as regards the existence of certain subjective rights for speakers of the official language of the State (see paragraph 188 below). The applicants' argument that other languages should *de facto* enjoy a status similar to that of the Latvian language (paragraph 156 above) was ill-founded, since they had failed to provide any substantive arguments in support of such a claim, from the perspective of either international or domestic law.

181. In sum, the Government submitted that the choice as regards exactly how much the State language and minority languages were used in education fell within the margin of appreciation of the State. Latvia had acted within this margin of appreciation by ensuring that the 2018 education reform had been implemented gradually and adopted in line with the principles of due process and good legislation. The education reform had pursued two legitimate aims which were still relevant. While the linguistic situation and demographics had improved since the restoration of Latvia's independence, the adverse consequences of the policies pursued by the occupying power remained. This had been emphasised by various parties in the proceedings before the Constitutional Court. Many children had no knowledge of Latvian at all when starting school. The Government emphasised that the practice that the applicants desired was applied in only a handful of other member States of the Council of Europe. Nothing in the education reform had constituted discrimination.

2. The Court's assessment

(a) The general principles

182. The Court has recently clarified the criteria for determining whether a difference in treatment concerned persons in analogous or relevantly similar situations (see *Advisory opinion on the difference in treatment between landowner associations "having a recognised existence on the date of the*

creation of an approved municipal hunters' association" and landowners' associations set up after that date (Request no. P16-2021-002, *French Conseil d'État*, §§ 64-71, 13 July 2022)). In particular, in that Advisory opinion, the Court noted as follows:

> "64. In order for an issue to arise under Article 14 of the Convention, there must be a difference in treatment of persons in analogous or relevantly similar situations (see, among many other authorities, *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017; *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, 24 January 2017; and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012 (extracts)). The national authorities, and particularly the domestic courts, are in principle best placed to assess, on the basis of the information provided by the appellant and other evidence submitted by the parties in the context of adversarial proceedings in the case, whether or not several persons or several categories of persons are in such situations.
>
> ...
>
> 66. ... It does not appear unreasonable for a national court to require the person alleging that he or she has been subjected to discriminatory treatment contrary to Article 14 to demonstrate that, having regard to the particular nature of his or her complaint (see *Fábián*, cited above, § 113), he or she was in an analogous or relevantly similar situation to other persons who had been treated more favourably. It is for this person to gather, in so far as possible, appropriate information concerning both his or her personal situation and the legal regime applicable to that situation (see *Fábián*, § 113, and *Clift*, § 66, both cited above; see also *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV). The factual and legal elements thus obtained must then make it possible for the domestic court in question to assess whether the situations referred to are analogous or relevantly similar.
>
> 67. These elements must be assessed in the light of the subject matter and purpose of the measure which makes the distinction in question and the context in which this measure is imposed (see *Fábián*, cited above, § 121).
>
> 68. Moreover, and as evidenced by the Court's long-standing practice, this assessment must be based on elements of an objective nature (see, for example, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 86-90, ECHR 2010; *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008; *Frantzeskaki and Others v. Greece* (dec.), no. 57275/17, 12 February 2019; and *Panfile v. Romania* (dec.), no. 13902/11, 20 March 2012), which excludes from their scope factors that are not objectively verifiable, such as presumed intentions, untested fears or mere suppositions (see, in particular, *Konstantin Markin*, cited above, §§ 114-116 and 133, and *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 52, 25 July 2017).
>
> 69. In assessing the comparability of situations, it is appropriate to consider them in their totality and to avoid singling out marginal aspects, which would lead to an artificial analysis (see *Van der Mussele v. Belgium*, § 46, 23 November 1983, Series A no. 70; to the same effect, see also *Allesch and Others v. Austria*, no. 18168/91, Commission decision of 1 December 1993, and *Liebscher and Others v. Austria*, no. 25170/94, Commission decision of 12 April 1996).
>
> 70. Given that the existence of an 'analogous situation' does not require that the comparator groups be identical, it is appropriate to establish whether the two categories

> ... although in apparently different situations, do not, with regard to the complaint made by [the applicant], bear similarities which would outweigh their differences ...
>
> 71. Lastly, concerning the weight to be attached in this context to the aim pursued by the legislature when it enacted a measure giving rise to a difference in treatment, the Court considers that if the criterion of differentiation chosen were in itself to be sufficient to prevent a finding of relevant similarities or analogies between the situations being compared under Article 14 of the Convention, this could deprive that provision of its substance, in that it would then suffice for a State to adopt laws or measures placing the two elements to be compared in different situations with regard to the aim pursued in order to preclude any scrutiny of whether these situations were compatible with the Convention. Nonetheless, the legislature's aim remains fully pertinent at the stage of analysing whether there is a 'legitimate and reasonable' justification for the difference in treatment (see, *mutatis mutandis*, *Khamtokhu and Aksenchik*, cited above, §§ 67-68; see also *Naidin v. Romania*, no. 38162/07, §§ 47-51, 21 October 2014; *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, nos. 7819/03, §§ 37-42, ECHR 2012; *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, §§ 73-74, 31 May 2011; and *Grande Oriente d'Italia di Palazzo Giustiniani*, cited above, §§ 51-56)."

183. The Court reiterates that even when they concern persons or categories of persons in analogous or relevantly similar situations, differences in treatment are not all discriminatory, and consequently are not all necessarily contrary to Article 14 of the Convention. Only differences in treatment which do not have an "objective and reasonable justification" are discriminatory (see, among other authorities, *Molla Sali*, cited above, § 135, and *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts)). Thus, a difference in treatment "lacks objective and reasonable justification" if it does not pursue a "legitimate aim" and/or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *Molla Sali*, § 135, and *Fabris*, § 56, both cited above).

184. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background. Thus, for example, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances, a failure to attempt to correct inequality through different treatment may, in the absence of an objective and reasonable justification, give rise to a breach of Article 14 (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011). Also, a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group. Such a situation may amount to "indirect discrimination", which does not necessarily require a discriminatory intent (see *Biao v. Denmark* [GC], no. 38590/10, § 103, 24 May 2016).

185. Irrespective of the scope of the State's margin of appreciation, the final decision as to the observance of the Convention's requirements rests

with the Court (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012).

186. As regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment between persons in relevantly similar situations, it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic*, cited above, § 177). However, not all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (ibid., §§ 179-81).

187. The Court further notes that most of the Contracting States have chosen to accord one or more languages the status of official language or State language, and have recorded them as such in their respective Constitutions. That being so, the Court acknowledges that an official language is, for these States, one of the fundamental constitutional values in the same way as the national territory, the organisational structure of the State and the national flag (see *Mentzen*, cited above, and *Kuharec v. Latvia* (dec.), no. 71557/01, 7 December 2004).

188. By making a language its official language, the State undertakes in principle to guarantee its citizens the right to use that language both to impart and to receive information without hindrance, not only in their private lives, but also in their dealings with the public authorities. In the Court's view, it is first and foremost from this perspective that measures intended to protect a given language must be considered. In other words, implicit in the notion of an official language is the existence of certain subjective rights for the speakers of that language (see *Mentzen* and *Kuharec*, both cited above).

189. By reason of their direct and continuous contact with the vital forces of their countries, the authorities, especially the national courts, are in principle in a better position than the international judge to give an opinion on the need for interference in an area as special and sensitive as the preservation and development of an official language such as Latvian, which faced oppression over the course of more than fifty years of Soviet rule. That being so, it is in the first instance for the Latvian authorities, not the Court, to assess the true situation of the Latvian language in Latvia and to gauge the seriousness of factors that could place it at risk. The Court could only call that assessment into question if it was arbitrary (see *Mentzen* and *Kuharec*, both cited above).

(b) Application to the present case

(i) Alleged ground of discrimination

190. The Court observes that the parties commented on this point in some detail. Taking into account the diverse backgrounds and declared ethnicities of the applicants, their emphasis on Russian being the main language used within their families (see paragraphs 32-34 above), the Constitutional Court's

ruling in the case concerning public schools (see paragraph 48 above), and the applicants' submissions to the Court (see paragraphs 137, 156, 161, and 167 above), the Court will examine the present case solely on the basis of language as the grounds for the alleged difference in treatment.

(ii) Whether Russian-speaking pupils are in a relevantly similar situation to Latvian-speaking pupils and, consequently, whether there is a difference of treatment

191. The Court observes that the applicants consider that Russian-speaking pupils were treated differently than Latvian-speaking pupils on account of the fact the latter could pursue education in their mother tongue whereas the former were given only limited and decreasing access to education in their mother tongue. The Government largely relied on the Constitutional Court's reasoning in the case concerning public schools to argue that Russian-speaking pupils and Latvian-speaking pupils were not in a relevantly similar situation, on the grounds of the constitutional status of the Latvian language as the only State language in Latvia. The applicants, however, argued that there was a need to preserve the development, individual characteristics and ethnic identity of both groups, and that both groups were in comparable situations.

192. The Court reiterates at the outset that the national authorities, and particularly the domestic courts, are in principle best placed to assess whether or not several categories of persons are in analogous or relevantly similar situations (see *Advisory opinion*, cited above, § 64). However, the Court has clarified that the elements which characterise different situations and determine their comparability must be assessed in the light of the subject matter, the objective of the impugned provision and the context in which the alleged discrimination is occurring. The assessment of the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination is both specific and contextual; it can only be based on objective and verifiable elements, and the comparable situations must be considered as a whole, avoiding isolated or marginal aspects which would make the entire analysis artificial (ibid., §§ 67-70). The Court is not precluded from arriving at a different conclusion if the domestic courts have not given due consideration to those elements, in particular where the weight attached in this context to the aim pursued by the legislature could have the effect of depriving Article 14 of its substance, bearing in mind that the legislature's aim remains fully pertinent when analysing the proportionality of the alleged difference in treatment (ibid., § 71).

193. Taking into account the subject matter and purpose of the impugned legislative amendments, the Court observes that they concerned pupils enrolled in all public schools with the aim of restoring the use of Latvian as the language of instruction and the unity of the educational system in Latvia,

in order to facilitate equal access for pupils to the State educational system and, from a broader perspective, the need to eliminate the consequences of the segregation in education that had existed under the Soviet regime (see paragraphs 7, 11, 21-22, 46, 48, 70, 168-170 and 181 above). However, the Court is bound to look not only at the subject matter and objective of the impugned measures, but also the comparable situations as a whole, and to assess them in the light of objective elements, not presumed intentions or mere suppositions (see *Advisory opinion*, cited above, § 68) such as those alleged by the applicants (for example, as regards the undermining of the competitiveness of Russian-speaking pupils and their high level of Latvian).

194. In assessing the comparable situations, the Court notes that the effect of the impugned legislative amendments was that Russian-speaking pupils, such as the present applicants who were pupils, who were enrolled in educational programmes for minorities, could no longer pursue an education where substantial parts of the curriculum were taught in Russian (their main family language or mother tongue), whereas Latvian-speaking pupils could continue to pursue their education in Latvian (their main family language or mother tongue). Thus, following those amendments, Russian-speaking pupils and Latvian-speaking pupils in the same class – irrespective of which school or education programme they were enrolled in – were required to follow a similar curriculum which clearly defined how much Latvian would be used as the language of instruction. Looking at the comparable situations as a whole, and taking into account that exceptions were no longer available with respect to Russian-speaking pupils enrolled in educational programmes for minorities, the Court considers that Russian-speaking pupils and Latvian-speaking pupils were in a relevantly similar situation when pursuing their education in public schools following the impugned legislative amendments. In arriving at this conclusion, the Court has taken into account that the ground of the alleged discrimination in the present case is "language", and that the aim pursued by the legislature through the alleged difference in treatment is fully pertinent for the proportionality analysis (see *Advisory opinion*, cited above, § 71), which follows below.

(iii) The legitimacy of the aims pursued

195. In a recent Grand Chamber case, *Savickis and Others*, the Court accepted that a difference in treatment in a State pension calculation in respect of Latvian citizens and "non-citizens" had pursued at least two legitimate aims. The first aim had been safeguarding the constitutional identity of the Republic of Latvia, which was one of the State's constitutional foundations. The aim in that context had been to avoid retrospective approbation of the consequences of the immigration policy practised during the period of unlawful occupation and annexation of the country. Such an aim had been consistent with the efforts to rebuild the nation's life following the restoration of independence and – in that specific context – had been legitimate. The

second legitimate aim had been protection of the country's economic system (see *Savickis and Others*, cited above, § 198).

196. In the present case, the Government argued that the increase in the use of Latvian and the impugned difference in treatment pursued at least two legitimate aims: protection of the rights of others and protection of the democratic order of the State. They also relied on the need to improve proficiency in the State language in Latvia.

197. At the outset, the Court observes that Latvia, like some other member States of the Council of Europe (see paragraph 96 above) has chosen to accord the status of an official language to one particular language and has recorded this in its Constitution (see paragraph 57 above). The Latvian language, as the only official language in the Republic of Latvia, is one of the State's fundamental constitutional values, like the national territory and the national flag (see paragraph 187 above).

198. The Court notes that the Latvian Constitutional Court has handed down several judgments analysing various stages of the education reform as regards the increased use of Latvian as the language of instruction (see paragraphs 44-54 and 70-77 above). As the applicants pointed out, the Constitutional Court, in earlier cases, had relied not only on the need to protect the rights of others and the democratic order of the State, but also the need to afford special protection to the Latvian language and the need to strengthen its use as the State language (paragraphs 157-159 above). In the case brought by twenty members of parliament, the Constitutional Court referred to its previous case-law and further expanded on the reasons why it considered that everyone living in Latvia should have a sufficient level of Latvian to be able to participate in the life of a democratic society (paragraphs 7, 11, 53 and 181 above).

199. The Constitutional Court's assessment as regards the need to protect the Latvian language appears to be consonant with the Venice Commission's opinion (with respect to Latvia) and the Advisory Committee's view (with respect to other countries) that the need to improve proficiency in a State language could be considered a legitimate aim (see paragraph 93 above). In this context, it is relevant to note that the CJEU – in its preliminary ruling concerning the language of instruction in universities in Latvia – held that the objective of promoting and encouraging the use of one of the official languages of a member State must be regarded as being a legitimate objective in respect of the freedom of establishment as enshrined in EU law (see paragraph 70 of the CJEU judgment, quoted in paragraph 94 above).

200. Against this background, and in particular taking into account historical factors which caused the use of Latvian to be significantly restricted for more than fifty years during the unlawful occupation and annexation of Latvia by the Soviet regime, when Russian was imposed in many spheres of daily life, the Court considers that the need to protect and strengthen the Latvian language was a legitimate aim pursued in the present case.

201. Another legitimate aim, as established by the Constitutional Court, was the principle of unity of the education system in order to facilitate equal access for pupils to the State education system, and, from a broader perspective, the need to eliminate the consequences of the segregation in education that had existed under the Soviet regime (see paragraphs 11, 46 and 170 above). This latter aspect of the present case – the need to ensure the unity of the education system in Latvia – is one element that differentiates the instant case from other cases examined by the Court as regards allegations of discrimination in access to education stemming from the existence of segregated schools or classes for members of historically and socially disadvantaged groups such as Roma people (see, for example, the above-cited cases of *D.H. and Others v. the Czech Republic*; *Oršuš and Others*; and *Sampanis and Others*). Quite to the contrary, one of the aims of the impugned legislation was securing equal chances to all pupils.

(iv) Proportionality of the alleged difference in treatment

202. The Court has noted above that the objective of the impugned legislative amendments was to increase the use of Latvian as the language of instruction in the education system, and that one of the legitimate aims pursued was the protection and strengthening of the Latvian language, the use of which had been significantly restricted for more than fifty years (see paragraphs 193 and 200). Following the restoration of its independence, Latvia was faced with a difficult choice with respect to organising its education system in such a way to ensure the right to education to everyone within its jurisdiction, a population which included not only Latvian-speaking residents, but also an unusually high number of Russian-speaking residents of various ethnicities who had moved or been transferred to the Latvian territory under the Soviet regime (see paragraphs 6-9 and 11 above).

203. The 2018 amendments also pursued another legitimate aim – to ensure the unity of the education system. All children in the same class, irrespective of which school or education programme they were enrolled in, were required to follow a similar curriculum which clearly defined how much Latvian would be used as the language of instruction. The Constitutional Court emphasised that all children had to be given equal access to the State education system, which was available, accessible, acceptable and adaptable (see paragraph 46 above and the international material quoted in paragraph 83 above). Education was one of the most important preconditions for consolidating a free and democratic society (see paragraph 46 above).

204. Against the historical background and demographics, the Court can accept, on the one hand, that the State had to take steps to correct factual inequalities so that Latvian-speaking individuals could regain their right to use Latvian in all spheres of daily life, including their right to an education in the official language of the State. On the other hand, the State also had to ensure that minority groups could still learn their language and preserve their

culture and identity. In doing so, however, it also had to ensure that the minority groups acquired a sufficient level of the State language, otherwise their ability to effectively participate in public life and have access to higher education might be restricted (see the Constitutional Court's judgment in the case concerning public schools summarised in paragraph 45 et seq. above; see also paragraph 72 of Thematic Commentary No. 3 concerning language rights, quoted in paragraph 88, and paragraph 68 of the opinion by the Venice Commission quoted in paragraph 93 above).

205. Having established that the 2018 legislative amendments concerned pupils enrolled in all public schools, the Court must nevertheless establish whether the implemented measures had disproportionately prejudicial effects on the applicants so as to constitute "indirect discrimination", which is also prohibited (see paragraph 184 above).

206. The Court notes that the 2018 legislative amendments were adopted twenty-eight years after the restoration of Latvia's independence. It cannot be said that they were sudden and unexpected changes in the education system. As early as 1991, the principle that everyone should receive an education in the State language was enshrined in Latvian law. Subsequently, more changes were introduced in the relevant laws to ensure the gradual increase in the use of Latvian as the language of instruction in public schools. The relevant legislative amendments were widely debated in society during all stages of the education reform (see paragraphs 14-20 above). The applicants' allegations that the impugned 2018 amendments had not been adequately discussed were examined in detail and dismissed by the Constitutional Court (see paragraph 52 above, see also the assessment by the Venice Commission in that regard, quoted in paragraph 93 above). The Court does not see any reason to question those findings.

207. In so far as the present case concerns the 2018 reform, the Court observes that the 2018 amendments did not remove Russian as the language of instruction in its entirety. They allowed instruction in Russian at primary school level (up to 50% of the teaching for pupils in classes 1 to 6, and up to 20% of the teaching in classes 7 to 9), whereas at secondary school level, special subjects related to the Russian language and Russian identity and culture could still be taught in Russian (see paragraphs 23-25 above). Contrary to the applicants' allegations, this stage of the education reform was implemented gradually, as the changes were introduced over the course of three years (see paragraph 26 above). Therefore, pupils who might have needed to adapt to the new situation and take extra measures to improve their knowledge of the State language if necessary were given three additional years. The Court concludes that the 2018 legislative amendments were implemented gradually and flexibly, with sufficient scope for adaptation according to the needs of those affected by the 2018 legislative amendments (see paragraph 80 of Thematic Commentary No. 3 concerning language rights, quoted in paragraph 88 above).

208. As to the applicants' allegation that the younger generation of Russian-speaking pupils had a sufficient level of Latvian and that there had been no need to improve that knowledge within the education system, the Court has not been provided with sufficiently reliable statistical data. That submission seems to contradict the contention that Russian speakers in Latvia appear to be able to go about their daily life without any knowledge of the State language (see paragraph 53 above). If, indeed, Russian-speaking pupils had such a good knowledge of Latvian, as was alleged by the applicants, then the Court does not see any grounds for the applicants' argument that they had been seriously affected by the increase in the use of Latvian as the language of instruction. If Russian-speaking pupils did not have a sufficiently good command of Latvian, as argued by the Government, then the measures implemented by the State to protect and strengthen the use of Latvian and to ensure a unified education system may indeed have been necessary. In that regard, the Court refers to the Venice Commission's opinion indicating that there might be a need to improve people's knowledge of Latvian, especially the knowledge of children attending minority education programmes (see paragraph 93 above). The Constitutional Court, in the case concerning public schools, assessed the available statistical data on ethnic groups, language proficiency and the consequences of the migration policy during the Soviet occupation (see paragraphs 6-7 and 11 above). It stressed that the consequences of the Soviet occupation continued to have a negative impact on the use of the Latvian language in society and in the education system. Many pupils who started school did not know the Latvian language at all (see paragraph 181 above). The Court considers that the questions pertaining to the need to protect and strengthen the State language go to the heart of the constitutional identity of the State, and it is not the Court's role to question the assessment made by the Constitutional Court in that regard unless it was arbitrary, which the Court does not find in the present case.

209. As a rule, the Court applies the principle of *affirmanti incumbit probatio* – the burden of proof is on the applicants to show that there has been a difference in treatment (see paragraph 186 above). In this regard, the Court cannot discern from the applicants' submissions any arguments to the effect that the 2018 legislative amendments would have had disproportionately prejudicial effects on them as regards the right to education (see paragraph 135 above as regards their complaint under Article 2 of Protocol No. 1 taken alone). Nevertheless, as regards the applicants' complaint under Article 14 taken in conjunction with Article 2 of Protocol No. 1 the Court can accept that the applicants were affected by those legislative amendments, and the effects on their personal situation varied depending on their level of Latvian and in which educational programme the applicant children were enrolled. The Court also notes that the educational programmes offered by public schools, even following the 2018 reform, were varied and offered a range of different options. For example, in class three,

the school attended by the second applicant offered 63% of its instruction in Latvian (see paragraph 36 above), meaning that the remaining 37% of the weekly lessons could be taught in Russian. At the same time, in class three, the school attended by the third and fourth applicants offered 50% of its instruction in Latvian (see paragraph 37 above), allowing as much as 50% of the weekly lessons to be taught in Russian. It follows that it was possible for the families to choose the educational programme that most suited their needs.

210. As to less restrictive means of ensuring the legitimate aim, the applicants suggested that the State language could be strengthened and protected by ensuring education in a person's mother tongue and in-depth learning of the State language. However, the Court observes that the principle of instruction in one's mother tongue, which the applicants referred to, is far from being the rule among the member States of the Council of Europe. The Government emphasised that such a practice existed in only a handful of other member States. In this respect, the Court takes note of the findings made by the Latvian Constitutional Court in 2005 that there was no European consensus with respect to minorities' rights in the field of education (see paragraphs 70-71 above). Moreover, in 2019 the Constitutional Court interpreted the scope of the Framework Convention and held that there were no grounds to consider that the States would have to ensure such form of preserving and developing the language, ethnic and cultural singularity as acquiring education in the minority language or in certain proportion without taking into account the national constitutional system (see paragraph 52 above). The Court notes that the principle of mother tongue instruction has been recommended by some international bodies, however, it does not seem to represent a common European consensus in the field of education. The 1996 Hague Recommendations, on which the applicants relied, are non-binding recommendations seeking to provide guidance to participating States of the OSCE on how to best ensure the education rights of national minorities within their borders. Those recommendations acknowledge that "the right of persons belonging to national minorities to maintain their identity can only be fully realised if they acquire a proper knowledge of their mother tongue during the educational process". At the same time, they also emphasise that persons belonging to national minorities "have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language" (see paragraph 95 above). For the purpose of the present case, it is important to emphasise the wider context in which education in Russian became widespread in Latvia. Latvia (as well as the neighbouring Baltics States of Lithuania and Estonia) was a victim of aggression, unlawful occupation and annexation on the part of the former Soviet Union, starting from 1940, and its independence was forcibly interrupted *de facto* for a half-century as a result of a blatant breach of international law (see *Savickis and Others*, cited above, § 104). During that

period, the ethnic composition of Latvian inhabitants underwent significant changes as a result of large-scale migration policies pursued by the former Soviet Union (see paragraphs 6-7 and 11 above) and mass deportations of local population (see *Larionovs and Tess*, cited above, §§ 8-21). In education, Russification policies were pursued by establishing schools in which Russian was the only language of instruction in parallel to the schools that offered instruction in Latvian, thereby creating a segregated education system and further dividing the society (see paragraphs 11 and 48 above, see also the Venice Commission's Opinion, § 13, quoted in paragraph 93 above). After the restoration of independence, Latvia started to gradually implement the education reform to restore the use of Latvian as the only language of instruction in schools. There is no suggestion in the present case that the applicants would have been unable to learn their mother tongue and maintain their identity. On the contrary, the measures taken by the Latvian authorities in the present case were aimed at protecting the Latvian language as the only State language and ensuring the unity of the education system, and, from a broader perspective, were guided by the need to eliminate the consequences of unlawful occupation and annexation by the former Soviet Union.

211. Within the Council of Europe, the Framework Convention has not been signed and/or ratified by all member States. Even in respect of those States which have ratified that Convention, its Article 14 does not contain an unequivocal principle regarding minorities receiving an education in their mother tongue. While encouraging States to ensure teaching in minority languages and the learning of those languages, the Framework Convention allows for this to be provided in several ways: bilingual or multilingual education; classes in minority languages in public schools; and private minority language schools or "Sunday classes" organised by communities themselves (see paragraph 73 of Thematic Commentary No. 3, quoted in paragraph 88 above). In the wider framework of international human rights law, it appears to be accepted that the normative content of the right to education will depend on the conditions prevailing in a particular State, including financial considerations, but that in any event an education system should be available, accessible, acceptable, and adaptable (see the International Covenant on Economic, Social and Cultural Rights and General Comment No. 13, quoted in paragraphs 82-83 above).

212. Accordingly, the Court considers that as regards the right to education the States have a wide margin of appreciation in organising their education systems, particularly as regards the language of instruction in public schools. The respondent State, in restoring the use of Latvian as the language of instruction and gradually implementing the education reform, has not overstepped its margin of appreciation, as it has maintained a possibility for Russian-speaking pupils to learn their language and preserve their culture and identity. The Court concludes that the State has put in place an education system in the official language of the State, while also ensuring the use of

minority languages in varying proportions, depending on the school and class in which a pupil is enrolled.

213. The Court is well aware that several international and European bodies have issued recommendations with respect to the implementation of the language policy in the education system in Latvia and its possible impact on minority rights as established in other international or European legal instruments (see, for example, paragraphs 84, 89-93 above). However, as regards the applicants' complaint under Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention, the Court considers that the Government have provided objective and reasonable justification for the need to increase the use of Latvian as the language of instruction in the education system in Latvia.

214. The foregoing considerations are sufficient to enable the Court to conclude that the impugned difference in treatment was consistent with the legitimate aims pursued and proportionate and that it did not amount to discrimination on the grounds of language.

215. There has accordingly been no violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning Article 14 taken together with Article 2 of Protocol No. 1 admissible, and the remainder of the applications inadmissible;

3. *Holds* that there has been no violation of Article 14 taken together with Article 2 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 14 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President

APPENDIX

List of cases:

No.	Application no. Case name Introduction date	Applicant's name Year of Birth Place of Residence Nationality
1.	56928/19 Valiullina and Truši v. Latvia 22/10/2019	**Dina VALIULLINA** 1975 Riga "Permanently resident non-citizen" **Timurs TRUŠS** 2009 Riga "Permanently resident non-citizen" **Milana TRUŠA** 2009 Riga "Permanently resident non-citizen" **Jeļizaveta TRUŠA** 2009 Riga "Permanently resident non-citizen"
2.	7306/20 Neronovas v. Latvia 28/01/2020	**Natālija NERONOVA** 1976 Riga Latvian **Ksenija NERONOVA** 2006 Riga Latvian **Oļesja NERONOVA** 2010 Riga Latvian
3.	11937/20 Raizere-Rubcova and Others v. Latvia	**Diāna RAIZERE-RUBCOVA** 1980

	13/02/2020	Riga “Permanently resident non-citizen” **Sofija RUBCOVA** 2008 Riga Latvian **Jeļisaveta RUBCOVA** 2012 Riga Latvian