



Ombudsman of the Republic of Latvia

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Baznīcas iela 25, Rīga, LV-1010, tel.: 67686768, fax: 67244074, e-mail: tiesibsargs@tiesibsargs.lv, www.tiesibsargs.lv

Rīga

14.12.2018 Our Ref.

To 30.10.2018 Your Ref. 1-04/389-pav

**Attn. Hon. Ineta Ziemele, the Judge  
Constitutional Court of the Republic of Latvia**

Jura Alunāna iela 1  
Rīga, LV - 1010

Re: Opinion on the case No. 2018-12-01

Ombudsman of the Republic of Latvia has received the Order issued by Mrs. Ineta Ziemele, Judge of Constitutional Court of the Republic of Latvia, dated 30 October 2018 whereby the Ombudsman is joined in the capacity of intervener in the case No. 2018-12-01 “On compliance of Section 1, Part One, the words “on the level of pre-school education and primary education subject to the provisions of Section 41 of this Law” in Part Two, the word “basic education” in Section 3, Part Three of the Law “Amendments to the Education Law” of 22 March 2018, and Section 2 of the Law “Amendments to the General Education Law” of 22 March 2018 with Section 91, the second sentence, Section 112 and Section 114 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – Case No. 2018-12-01). The Order contains a request for issuing a written opinion on the matters relevant, in the Ombudsman’s opinion, to the investigated case as regards compliance of the contested norms with Section 91, the second sentence, Section 112, and Section 114 of the Satversme.

The contested norms envisage the introduction of a unified secondary education standard and transfer to education at secondary schools exclusively in the official language, increasing the proportion of Latvian language applied in educational programs for minorities on the level of basic education: at least 50% for grades 1 to 6; at least 80% of the aggregate learning load in academic year for grades 7 to 9, including foreign languages (from 1 September 2019 for grades 1 to 7; from 1 September 2020 for grade 8 and grades 10 to 11, and from 1 September 2021 for grade 12).

The Ombudsman has been focusing on the issue of education for minorities since 2013. In late 2013, the Ombudsman Office of the Republic of Latvia conducted monitoring of the educational establishments that implement minority education programs. Having summarized the results of monitoring, the international regulations, recommendations issued by the international institutions and comments on practical implementation of the international regulation in the Member States, as well as the case law of the European Court of Human Rights (hereinafter referred to as the CEDH) in the matters related to national minorities and language, examples of bilingualism in foreign countries, historical development of the Republic of Latvia as a whole and educational system in particular and the national regulations in the area of education, the Ombudsman published in 2014 the study survey “Bilingual education” including conclusions and proposals for improvement of the education system with the view to ensure protection of the rights and interests of children.<sup>1</sup> The survey would be useful also for the purposes of the case under investigation.

**[1] Compliance of the contested norms with Section 91, the second sentence of the Satversme**

Article 14 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR) prescribes the prohibition of discrimination: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” The CEDH has drawn the following conclusion upon interpretation of Article 14 of the ECHR: “The court reiterates regarding the scope of guarantees prescribed by Article 14 that, according to their case law, any different treatment can be qualified as discriminating where it has “no objective, reasonable grounds”, no “legitimate purpose” or it is “lacks proportionality between the applied measures and the goal to be achieved”. Apart from that, the Member States have certain discretion in assessing whether or not and to what extent the differences identified in similar situations justify different treatment”.<sup>2</sup> In the Ombudsman’s opinion, the contested norms are aimed at a legitimate goal as a part of education reform pursued by the State in transition to unified education system in the official language. Latvian language as the foundation of democratic equality and cohesion is referred to in the fifth paragraph of Preamble to the Satversme of the Republic of Latvia, meaning that Latvian language is the one that unites people with different backgrounds in Latvia. The State should therefore encourage that it virtually becomes the common language of the whole population.<sup>3</sup> Another equally essential goal is facilitation of

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<sup>1</sup>Bilingual education, Ombudsman of the Republic of Latvia, Riga, 2014, available at: <http://www.tiesibsargs.lv/lv/pages/petijumi-un-publikacijas/petijumi>

<sup>2</sup>Award of the CEDH (*Larkos v. Cyprus* [GC], no. 29515/95, para. 29, ECHR 1999-I). Quoted in the award of Constitutional Court of the Republic of Latvia of 13 May 2005 in case No. 2004-18-0106, Paragraph 11.

<sup>3</sup>Comments on the Satversme of the Republic of Latvia, Introduction, Chapter I. General Provisions. Group of authors under scientific guidance of prof. R.Balodis. Riga: Latvijas Vēstnesis 2014., pp.131..

preparedness of the young representatives of national minorities to pursue post-diploma studies and increase their competitiveness at labor market in Latvia.<sup>4</sup>

According to the note in the Informational Report on Transition to Education in the Official Language at General Education Establishments, overall description of the situation should take into consideration the fact that the bilingual model of education system introduced in 2004 stipulating the transition to education process partially in Latvian language for the general education programs for national minorities was proposed as a transitional stage since the State-funded professional education and post-diploma education is currently available exclusively in the official language. Since 2006/2007 academic year already, materials for annual State secondary education examinations are prepared in Latvian language. The students who have received education under education programs for national minorities, may use the minority language at the State examinations for grade 9 and centralized examination, yet only 7.75% of students have taken this advantage in 2016/2017. Along with the results of official language monitoring, the given result demonstrates that the set of preconditions is met for finalization of the transition to unified education system in Latvia.

On 8 August 2017, the Cabinet has already adopted amendments to the Cabinet Regulations No. 335 of 6 April 2020 “Regulations concerning the contents and procedures of centralized examinations” and amendments to the Cabinet Regulations No. 1510 of 17 December 2013 “Procedures of State examinations” stipulating that State examinations and centralized examinations shall be passed in the official language by the graduates of grades 9 and 12. It is envisaged according to the above-stated amendments to the Cabinet Regulations that State graduation examinations for students of grade 9 shall take place exclusively in the official language, starting from academic year 2019/2020, and centralized secondary education examinations shall take place exclusively in the official language, starting from academic year 2017/2018, and the other State examinations shall take place exclusively in the official language, starting from academic year 2018/2019.<sup>5</sup>

Proportionality of the applied means and the goal to be achieved has been ensured because gradual transition to education in the official language is pursued in Latvia since 1998. Further, according to Paragraph 66, Subparagraph 1 of Transitional Provisions of the Education Law, implementation of secondary education programs in Latvian language for grades 10 and 11 shall start from 1 September 2020, and for grade 12 – from 1 September 2021. The transitional period of more than twenty years is considered proportional.

## **[2] Compliance of the contested norms with Section 112 of the Satversme**

Section 9, Part One of the Education Law stipulates: “Education shall be acquired in State and municipal educational establishments in the official language”. The above norm is effective since the enactment of the Education Law on 1 June 1999. On the other hand, the original wording of the Education Law stipulated that

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<sup>4</sup> Bilingual Education, Ombudsman of the Republic of Latvia, Riga, 2014 – Chapter 5.7, Para 2

<sup>5</sup> Informational Report on Transition to Education in the Official Language at General Education Establishments, available at: <http://tap.mk.gov.lv/mk/tap/?pid=40441200>

education may be acquired in another language at private educational establishments<sup>6</sup>; State and municipal educational establishments that implement education programs for national minorities. The Ministry of Education and Science defines the syllabic disciplines in to be taught in the official language as a part of such programs.<sup>7</sup>

In the original wording of the Education Law, Paragraph 9, Subparagraph 3 of the Transitional Provisions stipulated that education shall be pursued exclusively in the official language for students of grade 10 at State and municipal general secondary education schools and for the first year students at State and municipal professional education establishments, starting from 1 September 2004. The legislator had prescribed a transitional period of five years for transition to secondary education in Latvian language. Subsequently, short before the fixed date, the above norm was amended on urgent basis<sup>8</sup> to mitigate the requirements regarding the use of the official language: “From 1 September 2004, at the State and municipal general secondary education establishments that implement education programs for national minorities, education shall be provided in the official language for students of grade 10 and above, in accordance with the national general secondary education standard; at the State and municipal professional education establishments education shall be provided in the official language for students of the first and subsequent years, in accordance with the national vocational education standard or national professional secondary education standard. The national general secondary education standard, the national vocational education standard and the national professional secondary education standard provides that acquisition of the education content shall be provided in the official language for at least three fifths of the overall study loan in an academic year, including foreign languages, and provide for acquisition of education content related to the language, identity and culture of the national minority in the language of the respective national minority.” The summary notes that Paragraph 9, Subparagraph 3 of the Transitional Provisions has been reviewed on the grounds of request filed by the Association for Support of the Schools Teaching in Russian, and the amendments have been introduced due to the negative approach on part of representatives of the national minorities to the provisions of Paragraph Nine of the Transitional Provisions of the Education Law, namely that, starting from 1 September 2004, education shall be provided exclusively in the official language at State and municipal general secondary education schools for students of grade ten and at State and municipal professional educational establishments for students of the first year.<sup>9</sup>

Teaching of Latvian language is mandatory at preschool since 2012. As regards teaching of Latvian language at preschool education establishments, Paragraph 7 of Annex 2 “Template of general preschool education program for national minorities” to the Cabinet Regulations No. 533 of 31 July 2012

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<sup>6</sup> Education Law in the original wording, Section 9, Part Two, Para 1.

<sup>7</sup> Education Law in the original wording, Section 9, Part Two, Para 2.

<sup>8</sup> Cabinet Regulations No. 444 of 12.08.2003 enacted by the virtue of Section 81 of the Satversme “Amendments to the Education Law”, rendered invalid by the Law of 5 February 2004 “Amendments to the Education Law” enacted on 27 February 2004.

<sup>9</sup> Summary of the Cabinet Regulations enacted by the virtue of Section 81 of the Satversme.

“Regulations concerning the guidelines for State preschool education” (hereinafter – Regulations No. 553) stipulates: “Education program for teaching of Latvian Language shall be formed to ensure that the child acquires the fundamentals of colloquial speech and skills of day-to-day language use”. Paragraph 17 stipulates: “Use of bilingual approach is recommended for learning of Latvian language in play-based classes with integrated education content and in day-to-day communication (parallel acquisition of education content and language)”. The preschool education guidelines stipulate regarding the number of classes that “Learning of Latvian language in play-based classes shall be scheduled for two to five years old children at least two times a week, for children over five years – on daily basis” (Subparagraph 18.5 of the Regulations No. 533).

The new preschool education guidelines to be enacted from 1 September 2019<sup>10</sup> shall replace the existing regulation and increase the role of Latvian language in education programs for national minorities. Subparagraph 10.1.2 of the Guidelines prescribe the desired result: “A child who has completed preschool education program for national minorities shall answer questions in Latvian about what he or she has seen or heard, ask questions to collect information, express their needs, can be involved in conversation on topics related to daily life and education process; learn to properly pronounce sounds and know printed letters; read short words most commonly used in daily life situations and in education process”. Learning of Latvian language shall be facilitated throughout the preschool education stage in an integrated education process based on bilingual approach implemented in a manner appropriate to the child’s development by pedagogues in collaboration with specialists and other personnel of education establishments, and Latvian language shall be also used for day-to-day communication. Children over five years shall use Latvian language as the basic means of communication in play-based classes with the exception of targeted activities for learning of the language and ethnic culture of the national minority.<sup>11</sup> The mandatory education content shall be scheduled and organized regardless of the child’s age ensuring that education content of Latvian language is taught on daily basis.<sup>12</sup>

It may be therefore concluded that the State has taken proper care to ensure that national minority children learn Latvian language in preschool already, and teaching of Latvian language to national minority children shall be still improved, starting from 2019, to ensure that children are prepared to pursue basic education in Latvian language.

Latvian language has become an integral part of education process at educational establishments in Latvia. Gradual transition to unified education system and education in Latvian language has been taking place in Latvia during a period of more than twenty years, due to the initially (starting from academic year 1996/1997) prescribed certain number of syllabic disciplines to be taught in the

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<sup>10</sup> Cabinet Regulations No. 716 of 21.11.2018 “Regulations on guidelines for State preschool education” and “Template preschool education programs”.

<sup>11</sup> Paragraph 9 of Annex 2 “Template preschool education program for national minorities” to the Cabinet Regulations No. 716 of 21.11.2018 “Regulations on guidelines for State preschool education” and “Template preschool education programs”.

<sup>12</sup> Ibid, Subparagraph 8.4.

official language<sup>13</sup>, and due to the model education programs for national minorities developed in 1998 and prescribing the proportion of syllabic disciplines to be taught in Latvian language or bilingually, and/or in the language of national minorities. Each school could select one or several of such models or develop their own education program (the fifth model); their selection and implementation took place on gradual basis till 2002<sup>14</sup>, and subsequently – in 2014 selection of language for examination material was made available – Latvian or Russian (except examination language in syllabic disciplines) (for grade 9) or language for writing of tests (for grades 9 and 12) – Latvian or Russian<sup>15</sup>, providing for subsequent transition to centralized examinations exclusively in the official language (from academic year 2019/2020 for grade 9; from academic year 2017/2018 for secondary schools; from academic year 2018/2019 for other State examinations)<sup>16</sup>. During the period of at least six years, starting from their age of two years at preschool, children have mastered the skills of Latvian language use. In academic year 2016/2017, 92% of graduates from education programs for national minorities preferred the passing of State examinations in Latvian language.<sup>17</sup> Their choice demonstrates that young representatives of national minorities are prepared to transition to education in Latvian language. As regards the secondary school, transition to education in the official language is expected from academic year 2020/2021 when the students who have passed all graduation examinations for grade 9 in academic year 2019/2020 exclusively in the official language shall continue their education at grade 10. In addition, the right of parents to select language for education of their children is not enshrined in Section 112 of the Satversme of the Republic of Latvia. Taking into consideration the above-stated, the Ombudsman sees no grounds for treating the contested norms as restricting the right to education guaranteed by Section 112 of the Satversme.

### [3] Compliance of the contested norms with Section 114 of the Satversme

Article 14, Para 2 of the Framework Convention for the Protection of National Minorities stipulates that “In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate

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<sup>13</sup> Section 6 of the Law “Amendments to Education Law of the Republic of Latvia” of 10 August 1995 stipulated: “Section 5 shall be supplemented with Part Six to read as follows: “At general education schools for national minorities where education is not provided in Latvian language, **at least two** humanitarian or science disciplines for grades 1 to 9 and **at least three** humanitarian or science disciplines for grades 10 to 12 shall be taught basically in the official language”. The above norm of law was enacted starting from academic year 1996/97.

<sup>14</sup> Education for national minorities in Latvia, at <https://www.mfa.gov.lv/arpolitika/sabiedribas-integracija-latvija/mazakumtautibu-izglitiba-latvija>

<sup>15</sup> Paragraph 20 and Paragraph 21 of the Cabinet Regulations No. 1510 of 17 December 2013 “Procedures for State examinations”.

<sup>16</sup> Amendments adopted by the Cabinet on 8 August 2017 to the Cabinet Regulations No. 335 of 6 April 2010 “Regulations concerning the contents and procedures of centralized examinations” and amendments to the Cabinet Regulations No. 1510 of 17 December 2013 “Procedures of State examinations” stipulating that State examinations and centralized examinations for students of grade 9 and grade 12 shall be passed in the official language.

<sup>17</sup> Informational report on transition to education in the official language at general education establishments, available at <http://tap.mk.gov.lv/mk/tap/?pid=40441200>

opportunities for being taught the minority language or for receiving instruction in this language”. The legal norm referred to above provided for two alternatives: “opportunities for being taught the minority language” or “receiving instruction in this language”. Article 14, Paragraph 2 shall not be construed to impose obligation on the State to ensure that the two above-listed conditions are met; the State shall implement any one or both of them at their sole discretion. If adequate opportunities for learning the minority language are ensured, the obligations prescribed by Article 14, Paragraph 2 of the Framework Convention for the Protection of National Minorities are duly met.

According to Article 30 of the UN Convention on the Rights of the Child, in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. The use of the child’s own language shall not be limited to school.<sup>18</sup>

If the above-quoted norm is applied with the purpose of education stipulated in Article 29, Part One, Subparagraph c of the UN Convention on the Rights of the Child, namely to develop respect for the child's cultural identity, language and values, it may be concluded that the State also has the duty to enable the acquisition of minority language and culture also within the framework of education system.

Section 2 of the Law on Amendments to the General Education Law of 22 March 2018 supplements Section 43 of the Law with a new Part Two stipulating that an educational establishment has the right to include in the general secondary education programs certain syllabic disciplines apart from those envisaged by the national general secondary education standard including education content related to the minority language, minority identity and integration of national minorities in the society of Latvia. Educational establishments can therefore provide at their sole discretion the teaching of national minority language and culture at secondary school. Significant proportion of use of the person’s native language is preserved at elementary schools as well.

In the Ombudsman’s opinion, education system in Latvia, in particular in early stages – at preschool and elementary school – enables the children who belong to national minorities to preserve and develop the minority language and culture also in the framework of education system, and the contested norms comply with Section 114 of the Satversme.

The Constitutional Court assessed on 13 May 2005 already in case No. 2004-18-0106 the compliance of gradual introduction of Latvian language in education for national minorities with Sections 1, 91, and 114 of the Satversme and with the international obligations binding upon Latvia. According to conclusions part of the award, it had been established in summer 2003 already that educational establishments were not prepared to provide education exclusively in the official

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<sup>18</sup> Hodgina R., Ņūvels P. Konvencijas par bērnu tiesībām ieviešanas praksē rokasgrāmata: UNICEF, pp. 2002-460

language<sup>19</sup>. Fifteen years have passed since the rendering of award, and the Constitutional Court is reviewing again an application with similar content. In the Ombudsman's opinion, the State should put in the best efforts to ensure that education system provides the mastering of Latvian language to the level that enables young people who have completed basic or secondary education are equally and efficiently made a part of and involved in life of the State and the national society, to pursue professional education or post-diploma education funded from the State budget that is currently only available in the official language. The contested norms can be considered from long-term view as a significant contribution to the formation of uniform Latvian society.

**In the Ombudsman's opinion, the contested norms comply with Section 91, the second sentence, Section 112, and Section 114 of the Satversme.**

The Ombudsman

J.Jansons

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<sup>19</sup> Conclusions Part, Para 4 of the award rendered by the Constitutional Court on 13 May 2005 in case No.2004-18-0106.