



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

FIFTH SECTION

CASE OF DJERI AND OTHERS v. LATVIA

(Applications nos. 50942/20 and 2022/21)

JUDGMENT

Art 14 (+ Art 2 P1) • Discrimination • Right to education • Non-discriminatory legislative amendments increasing the use of the only State language, Latvian, in compulsory second stage of public and private pre-school education (children aged five to seven), and thus reducing the use of Russian as the language of instruction • Russian-speaking and Latvian-speaking pupils in a relevantly similar situation • Legitimate aims of protecting and strengthening the Latvian language, ensuring the unity of the education system and preparing children for primary education • Conclusions reached in *Valiullina and Others v. Latvia* and *Džibuti and Others v. Latvia* fully relevant to Court's analysis on pre-school education which was also part of the State educational system • Somewhat wider margin of appreciation afforded to States with respect to pre-school education • Legislative amendments implemented gradually, considering stakeholders' views and with sufficient scope for adaptation to the needs of those affected • Margin of appreciation not overstepped • Difference in treatment on grounds of language consistent with legitimate aims pursued and proportionate • Non-compulsory first stage of pre-school education (children aged one and a half to five) not "within the ambit" of Art 2 P1 taken together with Art 14 and, in any event, inadmissible for non-exhaustion of domestic remedies

Art 14 (+ Art 2 P1) • Discrimination • Right to education • No discrimination between Russian-speaking children with special needs and Russian-speaking children without special needs at the second stage of pre-school education as alleged by the first and second applicants • State provided support mechanisms, general and individualised, for children with special needs • Bilingual approach ensured throughout pre-school education • Failure to substantiate allegations

Art 2 P1 • *Ratione materiae* • Application of conclusions drawn in *Valiullina and Others v. Latvia* and *Džibuti and Others v. Latvia* • Art 2 P1 does not include the right to access education in a particular language • Latvian being the only official language, applicants could not complain about decreased use of Russian as the

language of instruction in Latvian schools *per se* • Constitutional Court's findings that the right to education under the Constitution comprised both stages of pre-school education did not expand scope of Art 2 P1 • Broader interpretation entailing stronger protection in the domestic legal system than the Convention consistent with Art 53

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 July 2024

FINAL

18/10/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Djeri and Others v. Latvia,

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

Mattias Guyomar, *President*,

Lado Chanturia,

Carlo Ranzoni,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,

Mykola Gnatovskyy,

Stéphane Pisani, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 50942/20 and 2022/21) 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 seven Latvian nationals and two “permanently resident non-citizens” of Latvia (“the applicants”), on various dates indicated in the appended table;

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

the parties’ observations;

Having deliberated in private on 25 June 2024,

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

INTRODUCTION

1. The case concerns amendments to the domestic law adopted in 2018 (“the 2018 amendments” or “the 2018 reform”) whereby the use of the State language, that is, Latvian, was increased in all pre-schools and the use of Russian was consequently reduced. The applicants relied on Article 2 of Protocol No. 1 and Article 8 of 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 13-16 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).

6. Statistical data on the main ethnic groups in Latvia have been described in *Valiullina and Others v. Latvia* (nos. 56928/19 and 2 others, §§ 6-10, 14 September 2023), as has information about immigration rates in Soviet times and the use of Latvian and Russian and minority groups' knowledge of Latvian in Soviet times and following the restoration of Latvia's independence.

7. The historical background of education, "Russification" policies and minority schools in Soviet times has been described in *Valiullina and Others* (ibid., §§ 11-12).

B. Overview of the education reform

8. An overview of the education reform pursued by the Latvian authorities following the restoration of the country's independence has also been described in *Valiullina and Others* (ibid., §§ 13-20).

9. According to the applicants, the education reform prior to 2018 did not establish any specific requirements in relation to the language to be used in pre-schools. While a bilingual approach had to be used at pre-school for pupils aged five and over, there were no specific requirements for pre-school programmes in Latvian or in minority languages. The applicants agreed with the Government that children aged two to five should have Latvian lessons at least twice a week, and children aged five and over should have Latvian lessons every day (see paragraph 10 below). However, they submitted that the language requirements laid down in Regulation no. 533 (2012) were not mandatory for private educational institutions.

10. According to the Government, from 18 April 2012 onwards the Education Law provided that the Cabinet of Ministers set the guidelines for State pre-school education. Those guidelines included models and templates for pre-school education. From 17 August 2012 until 1 September 2019 that issue was regulated by Regulation no. 533 (2012) entitled "Regulation on State pre-school education guidelines". Specific models and templates outlining requirements in pre-school education programmes were annexed to that Regulation (Annex 2 contained the model for the general pre-school education programme for minorities, and Annex 4 contained the model for the special pre-school education programmes for minorities). In accordance with those programmes, both languages – the minority language and Latvian – had to be developed. A bilingual approach was recommended for the

learning of Latvian. Play-based lessons whereby children aged two to five could learn Latvian had to take place at least twice a week, but children aged five and over had to have such lessons every day. At the same time, the learning of Latvian through play-based lessons and in day-to-day communication had to take place on a daily basis throughout a child's pre-school education, whilst a supportive environment was ensured and a variety of learning methods were implemented.

11. On 21 November 2018 the Cabinet of Ministers adopted a new regulation (Regulation no. 716 (2018) entitled "Regulation on State guidelines for pre-school education and model pre-school education programmes"). It provided that as of 1 September 2019 the learning of Latvian had to be facilitated throughout a child's pre-school education in an integrated learning process, by using a bilingual approach adapted to children's development and by using Latvian in day-to-day communication. For children aged five and over, the main language of communication in play-based lessons had to be Latvian, except for in targeted activities organised to help children master the minority language and ethnic culture. Those requirements applied to general pre-school education programmes for minorities and special pre-school education programmes for minorities (see paragraph 54 below).

12. Further legislative amendments to the relevant provisions of the Education Law and the General Education Law were passed in 2022. They have been described in *Valiullina and Others* (cited above, § 31).

II. PARTICULAR CIRCUMSTANCES OF THE CASE

A. Family circumstances

1. *Djeri and Others* (application no. 50942/20)

13. The first applicant is the mother of the second applicant. They were born in Latvia and consider themselves ethnic Russians. They are Latvian citizens. Russian is the main language used within the family.

14. The third applicant is the mother of the fourth applicant. They were born in Latvia and consider themselves ethnic Russians. The third applicant is a "permanently resident non-citizen" of Latvia, while the fourth applicant is a Latvian citizen. Russian is the main language used within the family.

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

2. *Gomajunova and Livdāne* (application no. 2022/21)

16. The eighth applicant is the mother of the ninth applicant. They were born in Latvia and consider themselves ethnic Russians. The eighth applicant

is a “permanently resident non-citizen” of Latvia, while the ninth applicant is a Latvian citizen. Russian is the main language used within the family.

B. Education pursued by the applicant children

1. Djeri and Others (application no. 50942/20)

17. In the 2018/19 and 2019/20 school years – at the age of three and four – the second applicant was at a public pre-school in Jūrmala. In the 2020/21 and 2021/22 school years – at the age of five and six – she was in a preparatory group (*pirmsskolas grupa*) in the same school; from the age of five she received an education there in accordance with the special minority pre-school education programme for children with speech impairments (*speciālā mazākumtautību izglītības pirmsskolas izglītības programma izglītojamajiem ar valodas traucējumiem*). No further details have been provided as to the nature of the second applicant’s language impairment. Since 1 September 2022 she has been in class one at a public school.

18. The applicants indicated that the first applicant’s son (born in 2012), who is not an applicant in the present case, had also received an education in accordance with the special pre-school education programme. Subsequently, he had pursued an education in accordance with the general primary education programme for minorities.

19. In the 2016/17, 2017/18 and 2018/19 school years – at the age of two, three and four – the fourth applicant was in a public pre-school in Riga. In the 2019/20 and 2020/21 school years – at the age of five and six – he was in the same pre-school. He received an education in accordance with the general pre-school education programme for minorities (*vispārējā mazākumtautību pirmsskolas izglītības programma*). In the 2021/22 and 2022/2023 school years he was in class one and two at a public school.

20. In the 2019/20 and 2020/21 school years – at the age of three and four – the sixth applicant was in another public pre-school in Riga. In the 2021/22 and 2022/23 school years – at the age of five and sixth – she was in the same public pre-school. She received an education in accordance with the general pre-school education programme for minorities.

21. At the time the application was lodged the seventh applicant (born in 2020) was not at pre-school. A request had been made to register her at another public pre-school in Riga from 1 September 2021, but not all children who had been registered could obtain a place. There is no precise information as to when the seventh applicant started attending pre-school, but it appears that in the 2022/23 and 2023/24 school years – at the age of two and three – she was at the same pre-school as her sister and received an education in accordance with the general pre-school education programme for minorities.

2. *Gomajunova and Livdāne (application no. 2022/21)*

22. In the 2020/21, 2021/22 and 2022/23 school years – at the age of two, three and four – the ninth applicant was at a private pre-school in Riga. She received an education in accordance with the general pre-school education programme for minorities. There is no precise information in that regard, but it appears that in the 2023/24 school year – at the age of five – she was at the same pre-school.

C. Review by the Constitutional Court

1. *Application to the Constitutional Court*

23. The domestic legislation concerning the use of Latvian in all pre-schools (certain provisions contained in Regulation no. 716 (2018) – paragraph 9 of Annex no. 2 and paragraph 9 of Annex no. 4, “the impugned provisions”, see paragraph 54 below) was reviewed by the Constitutional Court (*Satversmes tiesa*) in proceedings brought by the first, second, third, fourth, fifth and sixth applicants and by eight other individuals who were either children enrolled in or attending public or private pre-schools or the parents of those children (case no. 2019-20-03).

24. Initially, an application lodged solely by parents was refused on the basis that there had been a failure to provide proper legal reasoning. However, upon receiving a newly formulated application, on 25 September 2019 the Constitutional Court instituted proceedings in relation to children and their parents as concerns the compatibility of the impugned provisions with Article 64 of the Constitution (*Satversme*) (the legislative power), Article 91 (the equal treatment and non-discrimination principles), the first sentence of Article 112 (the right to education) and Article 114 (the rights of minorities). The Constitutional Court refused to institute proceedings as concerns the compatibility of the impugned provisions with Article 110 of the Constitution (the right to family life), on the basis that there had been a failure to provide legal reasoning as to whether Article 110 enshrined any additional rights in the field of education. While the applicants in those proceedings had referred to the principle of good governance arising under Article 1 of the Constitution, they had failed to provide legal reasoning as to how their fundamental rights had been affected in that regard. Thus, the Constitutional Court held that the applicants had failed to comply with the requirements laid down in section 18(1)(4), section 19²(1) and 19²(6)(1) of the Law on the Constitutional Court: the obligation to provide legal reasoning, the right to submit an application if a person considered that his or her fundamental rights had been affected; and the obligation to substantiate a contention that fundamental rights had been affected. The Constitutional Court refused to institute proceedings, referring to section 20 of the Law on the Constitutional Court (see paragraph 50 below). In their application to the Constitutional

Court, the applicants did not ask the court to examine the compatibility of the impugned provisions with the right to private life.

2. *The Constitutional Court's judgment*

25. On 19 June 2020 the Constitutional Court issued its judgment. It examined the compatibility of the impugned provisions with the first sentence of Article 112 of the Constitution (the right to education), Article 114 (the rights of minorities), Article 64 (the legislative power), and Article 91 (the equal treatment and non-discrimination principles).

(a) **General observations as regards the right to education**

(i) *Two stages of pre-school education in Latvia*

26. At the outset the Constitutional Court examined the Government's argument that the applicants' right to education had not been affected and that the proceedings should be terminated. The court reiterated that the right to education, by its very nature, called for regulation by the State, and that it might vary in time and place according to the needs and resources of society (they referred to *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits) (23 July 1968, p. 32, § 5, Series A no. 6 – the "*Belgian linguistic case*", among other authorities). It followed that the State had a certain margin of appreciation in establishing an education system. Taking into account the needs and resources of society at its particular stage of development, Article 112 of the Constitution enshrined an obligation to respect, protect and ensure the right to education. Taking into account the evolving nature of understanding the development needs of a child, the legislature, under Article 112 of the Constitution, had a margin of appreciation when regulating access to the education system from a young age. Referring to international material (the United Nations Convention on the Rights of the Child, the United Nations International Covenant on Economic, Social and Cultural Rights, the Council of Europe Framework Convention for the Protection of National Minorities ("the Framework Convention"), see also General Comment no. 7 (2005) quoted in paragraph 63 below), the Constitutional Court held that in relation to pre-school education, the practice of international human rights bodies did not specify a particular age from which a child should enjoy the right to education. It had been recognised, however, that a child had the right to education from a young age. The ways in which that right could be exercised varied depending on the capability of the State and the traditions and values of the particular society.

27. As to the Latvian education system, the Constitutional Court noted that children had access to a pre-school educational institution from the age of one and a half, but pre-school education from that age was not compulsory. Parents could choose to use the services provided by pre-school educational institutions. Pre-school education was compulsory from the age of five, as

children had to be prepared for primary education. Thus, the Constitutional Court held that the State, in fulfilling its obligation to support parents, had established a pre-school education level – the first level in the education system. In Latvia, the pre-school education level was divided into two stages.

28. The Constitutional Court noted that the first stage of pre-school education was for young children, namely those aged one and a half to five. Parents played a primary role in pre-school education at that stage, and such an approach was in line with international standards. At that stage, parents could choose to ensure a child's education and development within a family or some other close network, or by additionally and partially entrusting their duties to a pre-school educational institution, its teachers and staff. By creating a stage of pre-school education which a child could enter from the age of one and a half, the State had created a support mechanism for parents to ensure their children's education and development. It followed that the first stage of pre-school education (for children aged one and a half to five) could not be viewed in isolation from the general education system; it formed an integral part of the general education system. The second stage of pre-school education was compulsory for children aged five to seven. The aim of that stage was to prepare a child for primary education.

29. The Constitutional Court concluded that the right to education as enshrined in the first sentence of Article 112 of the Constitution included both stages of pre-school education in Latvia.

(ii) Scope of protected rights

30. The applicants argued that the impugned provisions restricted the right to receive a quality education in their mother tongue, as well as the right of parents to participate in the educational process. The Constitutional Court concluded that the first sentence of Article 112 of the Constitution comprised the applicants' right to expect that the system of education established by the State would be available, accessible, acceptable and adaptable. At the same time, the Constitutional Court stated that this Article did not include the right to an education in a language of one's choice. Therefore, the Constitutional Court examined the applicants' arguments in so far as they pertained to the right to receive an education which was compatible with the objectives of education, that is, a quality education. In that regard, the applicants argued (i) that the changes provided for by the impugned provisions would decrease the quality of education; (ii) that the State had not provided sufficient training and retraining opportunities for teachers; and (iii) that the right of parents to participate in the educational process had not been respected. In that regard, the Constitutional Court had to assess whether the State had complied with its obligations as regards making education available, accessible, acceptable and adaptable (it referred to its ruling in case no. 2018-12-01, see *Valiullina and Others*, cited above, § 46). The first sentence of Article 112 of the Constitution included the applicants' right to request that the State comply

with its obligations in that regard. Consequently, the Constitutional Court did not terminate the proceedings and examined the applicants' submissions in that regard.

(b) Article 112 of the Constitution

(i) Positive obligations

31. In relation to the substance of the right to education, the Constitutional Court held that the case concerned the State's positive obligations and not the alleged interference with the applicants' rights. It proceeded to examine their arguments in that regard (see paragraph 30 above).

(ii) Quality of pre-school education

32. The Constitutional Court noted that the impugned provisions provided that throughout a child's pre-school education, that is, from the age of one and a half to seven, the learning of Latvian was facilitated by an integrated education process, using a bilingual approach. However, as regards the pre-school education stage for children aged five to seven, the main language of communication in play-based lessons was Latvian (see paragraph 54 below). As the applicants had doubted the true meaning of the second sentence of the impugned provisions – which was an exception to the general rule – the Constitutional Court went on to clarify the meaning and purpose of the impugned provisions in so far as they applied to children aged five to seven. The Constitutional Court examined the drafting history of the impugned provisions and other provisions adopted in the context of the education reform. One of the aims of the relevant Amendments to the General Education Law of 21 June 2018 (see paragraph 52 below) was to introduce a competency-based approach to the curriculum at all levels of education. Those amendments had to be viewed together with the relevant Amendments to the Education Law of 22 March 2018 (see section 9(2)(2) of the Education Law as regards pre-school education, quoted in *Valiullina and Others*, cited above, § 59), which indicated that one of the stages of the education reform was the transformation of minority education programmes and the reform of the curriculum, in relation to pre-school education as well. However, the Constitutional Court noted that those changes did not mean that bilingual education had been abandoned (they referred to views expressed at parliamentary debates indicating that those amendments had been aimed at ensuring that all pupils had equal chances, that the bilingual education model had to be improved to keep up with the times, and that the bilingual education model had been maintained at pre-school level). The Constitutional Court concluded that those amendments had been made within the framework of the reform of the general education curriculum, and a competency-based curriculum had been created and implemented following that reform; the acquisition and use of the State language had been one of the main features

of that curriculum. In order to implement a competency-based curriculum at pre-school level, the Cabinet of Ministers had adopted new pre-school education guidelines (Regulation no. 716 (2018)); they had been in effect as of 1 September 2019 (see paragraphs 53-54 below). Regulation no. 716 (2018) had ensured the transition from an unclear and fragmented education model in the previously applicable regulation (Regulation no. 533 (2012)) to a model in which the curriculum was implemented in a unified process. Namely, to provide competency-based education, a model had been introduced within which all areas of education, including languages, were taught systematically and in an integrated manner as part of the overall curriculum.

In accordance with the second sentence of the impugned provisions, the main language of communication in play-based lessons for children aged five and over had to be Latvian. The Constitutional Court also emphasised that for children aged five to seven, teaching became more intensive, since it was at that age that they were being prepared for primary education. In line with a pre-school education programme developed by the National Centre for Education, in the area of languages, for example, one of the aims of the education programme for minorities was that a child would be able to ask and reply to short, simple questions about daily life in the State language. However, that did not mean that the requirement to use Latvian as the main language of communication in play-based lessons could be viewed in isolation from the rest of the legal framework, especially the general rule that a bilingual approach had to be used throughout pre-school. The Constitutional Court concluded that the second sentence of the impugned provisions aimed to establish new content for play-based lessons that corresponded to the common aims of the education reform. By strengthening the role of play-based lessons in Latvian, the accessibility and acceptability of education was ensured, since every child was prepared for the next level of education. The applicants had alleged that teachers could not use a bilingual approach in respect of children aged five to seven, and the Constitutional Court found that allegation unsubstantiated.

The Constitutional Court further emphasised that pre-school education had to ensure that every child, by the time he or she completed pre-school and started primary school, was able to acquire the content of the curriculum in the State language to the extent required by law for that level of education. This approach was in line with the findings of the United Nations Committee on the Rights of the Child that high-quality, developmentally appropriate and culturally inclusive education programmes had a positive impact on young children's successful transition to primary school (see paragraph 63 below). The competency-based education introduced by the impugned provisions and the use of the bilingual approach also ensured that education was accessible and acceptable to children belonging to a minority. As regards pre-school education, the option of using two or more languages had been preserved not

only for children aged one and a half to five, but also children aged five to seven. The Constitutional Court then ascertained whether there was a mechanism by which changes in the quality of education could be determined; such changes had to be actively monitored (they referred to the judgment in case no. 2004-18-0106, summarised in *Valiullina and Others*, cited above, § 71). It found that the State had established a mechanism for monitoring the quality of education.

(iii) *Training for teachers*

33. As regards training for teachers, the Constitutional Court noted that since 1996 the Latvian Language Agency had offered free courses designed for teachers in minority schools and pre-schools who wished to improve their Latvian language skills. Since 1999 teachers had been required to have the highest degree of proficiency in the State language, and since 2013 that requirement had also applied to pre-school teaching assistants. Courses offered by the Latvian Language Agency had been further improved since 2015, and since 2018 a project entitled “A competency-based approach to the curriculum” had been in place, offering complex support measures for teachers – improving their Latvian language skills and professional ability to work in a linguistically heterogeneous environment (see also *Valiullina and Others*, cited above, § 79). Measures to promote and increase the professional skills of teachers had been organised by the State in line with its budgetary resources, and also by involving municipal authorities. Thus, teachers had been provided with the necessary support measures. Whether they used the opportunities offered to them was a matter for them, bearing in mind that they had to meet certain requirements and be able to fulfil the task entrusted to them, namely educating children. Moreover, university education programmes for pre-school teachers had been adapted to meet the requirements of Regulation no. 716 (2018); a new study course called “Bilingualism and the basis of bilingual education” had also been designed. Practical traineeships were closely connected to the requirements of Regulation no. 716 (2018). Hence, the Constitutional Court concluded that the State had ensured an acceptable standard of education in that regard. There was no indication that the impugned provisions had led to a decrease in the quality of education in so far as its adaptability to the needs of children was concerned. However, the Constitutional Court emphasised that the State had a duty to monitor the quality of education on an ongoing basis, making effective use of the State’s quality control mechanism for the educational process to detect possible changes in the quality of education (it referred to the judgment in a case concerning private schools, see *Džibuti and Others v. Latvia*, nos. 225/20 and 2 others, § 37, 16 November 2023).

(iv) Right of parents to participate in the educational process

34. As to the right of parents to participate in the educational process, the Constitutional Court observed that the Education Law provided that both the public and parents could participate in that process. The public participated in the organisation and development of education by popularising all types of education, providing education and improving the quality of education, creating education programmes, protecting the rights and interests of pupils and teachers in the process of learning and teaching, and establishing educational and educational support institutions, associations and foundations (section 21(1) of the Education Law). Parents pursued their interests by participating in the work of councils attached to educational institutions, where parent representatives formed a majority; councils were authorised to submit proposals regarding the implementation of education programmes (section 31 of the Education Law). The Constitutional Court held that the impugned provisions ensured the applicants' right to participate in the pre-school educational process. It also concluded that, when adopting the impugned provisions, the State had complied with the requirements of accessibility, adaptability and acceptability (availability was not contested). Given that Article 112 of the Constitution included an obligation to provide a unified education system in the State language, the Constitutional Court held that the right to receive an education in the State language was being ensured in minority pre-school educational institutions through the use of a bilingual approach in the study process. To ensure that right, the State had set appropriate pre-school education content which was compulsory. The Constitutional Court declared that the impugned provisions were compatible with the first sentence of Article 112 of the Constitution.

(c) Article 114 of the Constitution

35. As regards Article 114 of the Constitution, the applicants argued before the Constitutional Court that the impugned provisions restricted their right to learn and use Russian – their mother tongue – freely and without interference, and the right of children and parents to preserve their Russian ethnic, cultural and linguistic identity. At the same time, they admitted that pre-school education for children aged one and a half to five was based on a balanced bilingual approach, whose aim was to develop a child's Russian and Latvian language skills in various fields of study equally. The applicants alleged that the right to use Russian was restricted in the second stage of pre-school education for children aged five to seven, especially in day-to-day communication in a pre-school educational institution. Referring to its earlier case-law (the judgment in case no. 2004-18-0106, summarised in *Valiullina and Others*, cited above, § 70), the Constitutional Court held that Article 114 of the Constitution required positive action from the State to protect and ensure the right of minorities to preserve and develop their language and

ethnic and cultural uniqueness; it examined the applicants' arguments from the standpoint of the positive obligations contained in Article 114 of the Constitution.

36. The Constitutional Court reiterated that the impugned provisions provided for a bilingual approach in education as regards the first stage of pre-school education for children aged one and half to five, in that the provisions provided for the use of both the State language and a minority language in every area of education. Moreover, the Constitutional Court noted that the applicants in that case had not expressed any objections about this stage of pre-school education. Therefore, there was no dispute that the rights enshrined in Article 114 of the Constitution were being ensured as regards the first stage of pre-school education.

The Constitutional Court then proceeded to examine the impugned provisions in so far as they related to the second stage of pre-school education for children aged five to seven. It reiterated that the use of a minority language in the educational process had to ensure not only the formal acquisition of that language, but also the development of the identity of a person belonging to that minority. Thus, a legal regulation that completely excluded the use of a minority language from the educational process or reduced it to the extent that the minority language was used as a language of instruction only in lessons where that language was being taught would not be compatible with Article 114 of the Constitution (they referred to the judgment in a case concerning private schools, summarised in *Džibuti and Others*, cited above, § 38).

That said, the Constitutional Court held that when regulating the use of a language of instruction in pre-school educational institutions, the legislature had ensured the right of pupils belonging to the Russian minority to safeguard and develop their identity and culture. In accordance with the impugned provisions and other related provisions, pupils who belonged to the Russian minority could use Russian at the second stage of pre-school education when they were aged five to seven. Even though there was a different approach towards that stage of pre-school education, in that the education programme did not expressly provide for a bilingual approach, it nevertheless ensured that pupils who belonged to the Russian minority could learn Russian and learn about Russian culture. In accordance with the relevant provisions of Regulation no. 716, the implementation of the compulsory curriculum had to be planned and organised to include various events, such as those related to public holidays, annual customs, traditions and the acquisition of ethnic culture, in order to achieve the intended results of the compulsory curriculum. The Constitutional Court affirmed that the organisation of various events was also related to the above-mentioned planned learning outcomes relating to the acquisition of skills in minority music (folk songs), visual arts (illustrations by Russian artists for Russian folk tales), literature (Russian folk tales, short poems), and drama (the staging of fairy tales). In addition, the second

sentence of the impugned provisions expressly provided that the main language of communication in play-based lessons was Latvian, with the exception of activities which had been organised to facilitate the acquisition of a minority language and learning about ethnic culture. That exception gave minority pre-school educational institutions a discretion as regards annual festivities or the preservation of traditions, for instance. In the instant case, for example, children could prepare for a holiday and celebrate Maslenitsa, Easter, the Day of Slavic Writing and Culture, and the Feast of Alphabet in Russian, and thus learn about and maintain Russian culture. Moreover, it also had to be taken into consideration that the concept of education also included educational activities outside the education system established by the State, such as minority Sunday schools or summer camps. This was in line with the findings of the Advisory Committee (the court referred to Thematic Commentary No. 1 on Education (ACFC/25DOC(2006)002), adopted on 2 March 2006 by the Advisory Committee on the Framework Convention). Thus, the applicants could strengthen their identity outside of the education system established by the State, for example by establishing their own ethnic and cultural centres or private weekend schools.

37. The Constitutional Court also examined recommendations by the Advisory Committee on the Framework Convention to the Latvian authorities “to continue their endeavours to ensure an appropriate bilingual curriculum at the level of pre-school education and provide adequate funding for quality teaching of the Latvian language in pre-schools” (some parts of the Executive Summary of the Third Opinion on Latvia of the Advisory Committee on the Framework Convention and the subsequent Resolution on the Implementation of the Framework Convention in Latvia adopted by the Committee of Ministers of the Council of Europe have been quoted in *Valiullina and Others*, cited above, §§ 89-91) and recommendations by United Nations Special Rapporteurs (referred to in paragraph 87 of the opinion issued by the European Commission for Democracy through Law (Venice Commission) entitled “On the recent amendments to the legislation on education in minority languages in Latvia”, quoted in *Valiullina and Others*, cited above, § 93). The court referred to a previous case concerning public schools and noted that there were no grounds to consider that under the Framework Convention, the State had to ensure the preservation and development of language and ethnic and cultural singularity by providing education only in a minority language or in line with certain proportions relating to its use within the State education system (see *Valiullina and Others*, cited above, § 52). In determining the most appropriate way to use the rights contained in Article 114 of the Constitution in conjunction with Article 14 of the Framework Convention, it was necessary to take into account the specific circumstances and historical context of society and the minority in question. The Advisory Committee also pointed out that the specific circumstances of each country had to be taken into account. It had

also recognised that specific methods and instruments used in the States Parties could be adapted to the specific needs of the country, region or minority in question. As to the concerns raised by the United Nations Special Rapporteurs regarding Regulation no. 716, the Constitutional Court found that they did not have access to comprehensive information about the scope of that Regulation; the Constitutional Court explained the scope of that Regulation in its judgment. It found that the State, in regulating the use of language in pre-school educational institutions, had ensured the right of Russian minority pupils to preserve and develop their identity and culture in a way that corresponded to the conditions which characterised the Russian minority in the historical context of Latvia. In accordance with the impugned provisions and related provisions, pupils aged five to seven could use Russian during the second stage of pre-school education. For those reasons, the Constitutional Court declared that the impugned provisions were compatible with Article 114 of the Constitution.

(d) Articles 91 and 64 of the Constitution

(i) Russian-speaking pupils compared with Latvian-speaking pupils

38. As regards the second sentence of Article 91 of the Constitution, the Constitutional Court analysed an argument raised by the applicants, namely that as a result of the impugned provisions, children who received a pre-school education in a minority language were subjected to a difference in treatment in comparison with children who received a pre-school education in Latvian. In this regard, the Constitutional Court referred to its conclusion in the judgment of 23 April 2019 in case no. 2018-12-01 and reiterated that pupils whose native language was not the State language were not in a comparable situation to pupils whose native language was (see *Valiullina and Others*, cited above, § 48).

(ii) Russian-speaking pupils with special needs compared with Russian-speaking pupils without special needs

39. Furthermore, the Constitutional Court analysed an argument raised by the applicants that the impugned provisions provided for the equal treatment of groups of persons who were in different situations, that is, children with special needs and children without special needs. The applicants had argued that, given their special needs, children with special needs should have the right to an education in their mother tongue. Referring to domestic and international material, it held that while Article 91 prohibited discriminatory treatment on the grounds of a child having special needs, it also included an obligation on the State to take additional measures in so far as possible to ensure that children with special needs were not prevented from exercising their fundamental rights enshrined in the Constitution, including the right to education. In order to ensure the right to education for children with special

needs, a separate target group was recognised in Latvia (persons with special needs), and special education programmes were created for them. Consequently, children with special needs were in a different situation from children without such needs; children with special needs required special care. In analysing whether the impugned treatment of those two groups of children complied with Article 91 of the Constitution, the Constitutional Court established as follows.

40. At the outset, it noted that when assessing whether regulations issued by the Cabinet of Ministers complied with Article 64 of the Constitution (the legislative power) and Article 91 of the Constitution, it was necessary to examine several elements. Those elements included: (i) whether the legislature had given special authorisation to the Cabinet of Ministers to issue a regulation, and the fact that such authorisation had to be laid down in a statutory provision (*likuma norma*); (ii) the fact that regulations could not contradict the Constitution and other laws; (iii) the fact that regulations had to be published and sufficiently clearly formulated; and (iv) the fact that any equal or differential treatment had to be established during the process of creating legal provisions (*tiesību normas*) that complied with the principle of proper law-making (*labas likumdošanas princips*), a principle which applied not only to laws, but also regulations issued by the Cabinet of Ministers.

41. The Constitutional Court then proceeded to examine the applicants' arguments as to whether: (i) the impugned provisions had been adopted within the limits of the authorisation given by the legislature; (ii) the impugned provisions had been adopted in accordance with the procedure laid down in law; and (iii) the rights of minorities in relation to public participation had been respected in the law-making process.

42. As regards the limits of the authorisation, it held that within the framework of the education reform, the legislature had decided that a new concept should be introduced in Latvia, namely a competency-based curriculum. That curriculum also covered the regulation of the acquisition of the State language and other languages, so that from the first stage of the education system every pupil could acquire the State language at an appropriate level and subsequently use the opportunities provided by all levels of the education system.

43. As regards compliance with the domestic law, the Constitutional Court accepted one of the applicants' arguments that the requirement to request and receive the approval of the Latvian National Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO) had not been complied with in the process of adopting the impugned provisions. However, referring to its above conclusions that the State had ensured the right to education of children who belonged to minorities, as well as their right to preserve and develop their identity and culture (see paragraphs 35 and 37 above), there were no grounds to consider that the Cabinet of Ministers would have made a different decision even if the Latvian

National Commission for UNESCO had been consulted about the draft regulation before it had been adopted. The Constitutional Court dismissed the applicants' allegation that the relevant procedure for adopting the impugned provisions had not been followed, and therefore did not find a breach of the principle of proper law-making.

44. As regards the rights of minorities in relation to public participation, it noted that as early as 2014 a working group on "Opportunities for improving the pre-school education curriculum" had supported the acquisition of basic Latvian language skills at pre-school level. The working group had included representatives from various educational institutions (including pre-schools offering education programmes for minorities) and domestic authorities (including the Advisory Council for Minority Education, a body consisting of representatives from various minority educational establishments). As of 2016, experts from several pre-school educational institutions (including pre-schools offering education programmes for minorities) had been participating in the project entitled "A competency-based approach to the curriculum". The new approach and curriculum had been tested in several pre-schools in different regions of Latvia (including pre-schools offering education programmes for minorities). In 2018 the Advisory Council for the General Education Curriculum had been established, which included representatives from non-governmental organisations (For Mothers and Fathers, and the Latvian Autism Association) and from the education boards of the cities of Riga, Jelgava and Daugavpils (bodies in charge of implementing educational policy at municipal level). The Advisory Council had been consulted about the draft regulation, had discussed it and had agreed to proceed with it. Other elements of public participation had also been described in the annotation to the impugned regulation (several events had been organised in which pre-school teachers, heads of pre-schools, various experts in the field of education, and representatives from trade unions and parents' associations could participate). Moreover, the draft regulation had been discussed at another Advisory Council called "Education for all", and consequently it had been decided that the principles related to inclusive education should be included in the draft regulation. A public consultation (*sabiedriskā apspriešana*) had taken place from 25 September 2017 to 1 February 2018. About 11,400 experts had participated in that discussion, that is to say, more than a quarter of those working in the field of education, as well as children's parents, representatives from public organisations, and other interested parties. The Constitutional Court reiterated that the principle of proper law-making in the area of the rights of minorities did not guarantee a particular outcome preferable to a group of persons (see *Valiullina and Others*, cited above, § 52). It concluded that the principle of proper law-making had been respected in the present case. This had been ensured by setting up working groups and councils, inviting experts to participate, carrying out other

activities and announcing a public consultation. It could not be established that the applicants had taken the opportunity to take part in those consultations and express their views, or that they had been denied such an opportunity. The Constitutional Court concluded that the impugned provisions had been adopted in accordance with the procedure laid down in law and complied with Article 64 of the Constitution.

45. Furthermore, it assessed whether there was any legitimate aim of the equal treatment of persons in different circumstances. Reference was made to the need to respond to diversity and the need to promote the successful inclusion of children with special needs in the education system. Referring to international material (Article 23 § 1 of the United Nations Convention on the Rights of the Child, quoted in paragraph 67 below, and General Comment no. 9 of the United Nations Committee on the Rights of the Child), the Constitutional Court noted that the measures taken in respect of children with special needs had to be aimed at maximum inclusion in society. The drafting material of the relevant Amendments to the General Education Law of 21 June 2018 indicated that the legislature had decided on issues related to the provision of education for children with special needs. Thus, extending the requirement to promote the acquisition of the Latvian language to children with special needs was aimed at including such children in the education system. The legitimate aim was the protection of the rights of other persons, that is, children with special needs.

46. The Constitutional Court also assessed proportionality. It concluded that the equal treatment of those two groups of persons was appropriate for the purposes of achieving the legitimate aim. Namely, it was not possible to achieve the legitimate aim as effectively by means of an alternative and less intrusive measure. It dismissed the applicants' argument that pre-schools offering special education programmes for minorities should not be subject to the requirement to use the Latvian language. Children with special needs also had to have the opportunity to learn the State language. Otherwise, children with special needs would have little or no knowledge of the Latvian language after completing pre-school, and would find themselves even more exposed to exclusion and isolation from society. Thus, in the education of children with special needs, the use of only a child's mother tongue at pre-school education level would not achieve the legitimate aim as effectively. That said, observations made by one expert in the proceedings before the Constitutional Court had addressed the use of a bilingual approach in accordance with the individual abilities of each child. As the Constitutional Court had already established, that was one of the methods used throughout a child's pre-school education.

47. The Constitutional Court emphasised that moreover, inclusive education was one of the rights enshrined in the Constitution, under Article 91 taken in conjunction with Article 112. Inclusive education was undoubtedly the aim of educating children with special needs. That meant not

only formally applying the same requirements to all children, but also genuinely integrating children with special needs into the education system. The legislature had a positive obligation to ensure that children with special needs were not excluded from the general education system on the basis of language, among other things. The legislature had to prescribe the type and form of inclusion that would meet the individual educational needs of each child and promote his or her effective education to the greatest extent possible. The Constitutional Court referred to the principle of reasonable accommodation in this regard (they referred to *Stoian v. Romania* [Committee], no. 289/14, §§ 102-03, 25 June 2019, see also paragraph 158 below). Inclusive education was a set of values, principles and practices aimed at providing a meaningful, effective and high-quality education for all pupils, organised in such a way as to ensure the diversity of learning conditions and requirements. That goal could be achieved by various organisational means, while respecting the needs of the child. In Latvia, children with special needs may follow a special education programme: (i) a general education class; (ii) in a special class or group at a general educational institution; or (iii) in a special educational institution. Children with special needs may also be admitted to general education programmes. In such cases, appropriate support measures had to be made available (see paragraph 57 below).

48. The Constitutional Court proceeded to analyse the impugned regulation and other related provisions in detail, and concluded that they did not provide for the Latvian language to be used without regard for the special needs of children. On the contrary, at both stages of pre-school education, support, a special and individualised approach and treatment were to be provided to children with special needs in order to ensure that they received an education on an equal basis with other children. The individualised approach was also employed in ensuring access to the education system and the learning of Latvian. Therefore, although the legislature had provided for the equal treatment of children with special needs and children who did not have such needs in so far as the legitimate aim was concerned, in practice, the children were treated differently for the purposes of achieving that legitimate aim. Namely, positive measures were taken to ensure that children with special needs were integrated into the Latvian education system and therefore also society in the best possible way, by being taught how to master the Latvian language within the limits of their abilities. For those reasons, the Constitutional Court concluded that the impugned provisions were compatible with Article 91 of the Constitution.

III. SUBSEQUENT DEVELOPMENT

49. 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 2022 amendments (see paragraph 12 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 and provisions concerning the use of language in education

50. The relevant provisions of the Latvian Constitution (*Satversme*), the Education Law and the General Education Law, and domestic material on support measures provided for teachers and pupils have been quoted and/or summarised in *Valiullina and Others* (cited above, §§ 21-27, 57-61, 78-80).

B. Provisions concerning pre-schools

51. Pre-school education is a level of education when multidimensional development of a child's personality, strengthening of health and preparation for primary education take place (section 1 of the Education Law). From the age of five, children must be prepared for primary education (section 4 of the Education Law) and follow a pre-school education programme (section 20¹ of the General Education Law). Education in Latvia is therefore compulsory from the age of five. Although municipal authorities must ensure equal access to pre-school education for children from the age of one and a half (section 21(1) of the General Education Law), that stage of pre-school education is not compulsory in Latvia.

52. In accordance with section 20(1) of the General Education Law (as worded following the 21 June 2018 amendments), pre-school education programmes must prepare children for primary education. The content of such programmes should include personality development; mental, physical and social development; the development of skills such as initiative, curiosity, independence and creativity; the strengthening of health; psychological preparation for primary education; and the acquisition of basic skills relating to the use of the State language. The pre-school education programme is set to be completed by the age of seven (section 20(2) of the General Education Law). By legislative amendments of 14 May 2020, a new section (section 20(3)) was inserted into the General Education Law, providing that pre-school educational institutions had to provide support for children who needed help in relation to learning Latvian, including children for whom Latvian was not their mother tongue. Under the same amendments, municipal authorities had to ensure that all pre-schools under their authority offered a

pre-school education programme in the State language (section 21(2) of the General Education Law). This had to be done by 1 September 2021.

53. On 21 November 2018 the Cabinet of Ministers adopted Regulation no. 716 (2018) entitled “Regulation on State guidelines for pre-school education and model pre-school education programmes”, which replaced the previously applicable Regulation no. 533 (2012) (see paragraph 10 above). The new regulation was set to be effective as of 1 September 2019 (see *Valiullina and Others*, §§ 63-64, cited above). The objective of the pre-school education content was to produce a curious, creative and joyful child who led a healthy, safe and active life; acted independently; learned with interest and joy; and gained experience of himself or herself, others and the world through reciprocal interactions therein (paragraph 2 of Regulation no. 716 (2018)). The pre-school education content was to promote a child’s comprehensive development; develop his or her social and emotional skills, critical thinking and cooperation; ensure basic learning skills (in areas such as languages, social and civic skills, cultural awareness and the art of self-expression, natural science, mathematics, technology, health and physical activity); and prepare him or her for primary education (paragraph 3 of Regulation no. 716 (2018)). The content and process of pre-school education had to include values such as life, human dignity, freedom, family, work, nature, the Latvian language and the State of Latvia, and other values (paragraph 5 of Regulation no. 716 (2018)).

54. At the material time (from 1 September 2019 to 1 September 2023), Annex 2 of Regulation no. 716 (2018) contained a model for general pre-school education programmes for minorities, and Annex 4 of the same Regulation contained a model for special pre-school education programmes for minorities. Both Annexes contained paragraph 9, which was worded as follows:

“Throughout [a child’s] pre-school education, 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 language of communication for children in play-based lessons 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.”

C. Provisions concerning inclusive education and education for children with special needs

55. Following legislative amendments introduced on 8 April 2021, section 3(1) of the Education Law now provides that everyone has the right to a quality and inclusive education.

56. By legislative amendments introduced on 14 May 2020, a new section (section 20¹(1¹)) was inserted into the General Education Law, providing that

educational institutions had to assess the special needs of every child who started compulsory education on the pre-school education programme, in compliance with the methodology for assessing children's special needs provided by the Cabinet of Ministers, and had to ensure the necessary support measures and assistance in teaching the content of the curriculum to children with special needs. That provision was set to be effective as of 1 September 2021. The Cabinet of Ministers adopted Regulation no. 453 (2021), which was also set to be effective as of 1 September 2021. In accordance with that regulation, a designated teacher had to assess the special needs of a child who had reached five years of age. In carrying out that assessment, the designated teacher assessed the child's basic learning skills and his or her behaviour. If a specialist assessment (for example, an assessment by a psychologist or speech therapist) was necessary, it had to be carried out.

57. In accordance with section 51(1) of the General Education Law, children with special needs may follow a special education programme: (i) in a general education class; (ii) in a special class or group at a general educational institution; or (iii) in a special educational institution. Section 53(1) of the same Law provides that children with special needs may also be enrolled in general education programmes. Since 1 September 2020 the requirements for educational institutions to have children with special needs enrolled in their education programmes have been set out in Regulation no. 556 (2019) issued by the Cabinet of Ministers. Section 53(2) of the General Education Law provides that educational institutions must ensure the availability of appropriate support measures for children with special needs who have been enrolled in a general education programme. They must also draw up an individual learning plan for each enrolled child with special needs.

D. The Constitutional Court's right to decline to institute proceedings for lack of legal reasoning, and the requirements necessary for submitting a constitutional complaint

58. The relevant provisions of the Law on the Constitutional Court have been summarised in *Ēcis v. Latvia* (no. 12879/09, §§ 28-31, 10 January 2019).

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

59. The relevant provisions of the Law on the Constitutional Court have been summarised in *Valiullina and Others* (cited above, §§ 68-69).

F. The Constitutional Court's case-law concerning the language of instruction

60. The Constitutional Court's judgment of 19 June 2020 in case no. 2019-20-03 as regards the language of instruction in public and private pre-schools has been summarised in paragraphs 25-48 above.

61. As regards the Constitutional Court's case-law concerning the language of instruction in public schools and universities, see *Valiullina and Others* (cited above, §§ 44-54, 70-71, 75-77), and for private schools, see *Džibuti and Others* (cited above, §§ 29-43).

II. INTERNATIONAL LAW AND PRACTICE

62. The relevant international and comparative material has been summarised in *Valiullina and Others* (cited above, §§ 81-96). As regards pre-school education in particular, see the opinion issued by the Venice Commission (paragraphs 85-87 and 119 of that opinion quoted in *Valiullina and Others*, cited above, § 93) and the Hague Recommendations regarding the Education Rights of National Minorities (paragraph 11 of those recommendations quoted in *Valiullina and Others*, cited above, § 95).

A. International material on early education

63. In General Comment no. 7 (2005) on implementing child rights in early childhood, published on 20 September 2006 (CRC/C/GC/7/Rev.1), the United Nations Committee on the Rights of the Child sought to encourage the States Parties to recognise that young children were holders of all rights enshrined in the United Nations Convention on the Rights of the Child, and that early childhood was a critical period for the realisation of those rights. In particular, the Committee stated as follows:

“3. **Young children are rights holders.** The Convention on the Rights of the Child defines a child as ‘every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier’ (art. 1). Consequently, young children are holders of all the rights enshrined in the Convention. They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights. The Committee is concerned that in implementing their obligations under the Convention, States parties have not given sufficient attention to young children as rights holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The Committee reaffirms that the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights.

4. **Definition of early childhood.** Definitions of early childhood vary in different countries and regions, according to local traditions and the organization of primary school systems. In some countries, the transition from preschool to school occurs soon after 4 years old. In other countries, this transition takes place at around 7 years old. In

its consideration of rights in early childhood, the Committee wishes to include all young children: at birth and throughout infancy; during the preschool years; as well as during the transition to school. Accordingly, the Committee proposes as an appropriate working definition of early childhood the period below the age of 8 years; States parties should review their obligations towards young children in the context of this definition.

...

15. A crucial role for parents and other primary caregivers. Under normal circumstances, a young child's parents play a crucial role in the achievement of their rights, along with other members of family, extended family or community, including legal guardians, as appropriate. This is fully recognized within the Convention (especially article 5), along with the obligation on States parties to provide assistance, including quality childcare services (especially article 18). ...

16. Parents/primary caregivers and children's best interests. The responsibility vested in parents and other primary caregivers is linked to the requirement that they act in children's best interests. Article 5 states that parents' role is to offer appropriate direction and guidance in 'the exercise by the child of the rights in the ... Convention'. This applies equally to younger as to older children. Babies and infants are entirely dependent on others, but they are not passive recipients of care, direction and guidance. They are active social agents, who seek protection, nurturance and understanding from parents or other caregivers, which they require for their survival, growth and well-being. Newborn babies are able to recognize their parents (or other caregivers) very soon after birth, and they engage actively in non-verbal communication. Under normal circumstances, young children form strong mutual attachments with their parents or primary caregivers. These relationships offer children physical and emotional security, as well as consistent care and attention. Through these relationships children construct a personal identity and acquire culturally valued skills, knowledge and behaviours. In these ways, parents (and other caregivers) are normally the major conduit through which young children are able to realize their rights.

...

18. Respecting parental roles. Article 18 of the Convention reaffirms that parents or legal guardians have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern (arts. 18.1 and 27.2). States parties should respect the primacy of parents, mothers and fathers ... The Committee urges States parties to take all necessary steps to ensure that parents are able to take primary responsibility for their children; to support parents in fulfilling their responsibilities ...

...

28. Early childhood education. The Convention recognizes the right of the child to education, and primary education should be made compulsory and available free to all (art. 28). The Committee recognizes with appreciation that some States parties are planning to make one year of preschool education available and free of cost for all children. The Committee interprets the right to education during early childhood as beginning at birth and closely linked to young children's right to maximum development (art. 6.2). Linking education to development is elaborated in article 29.1: 'States parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential'. General comment No. 1 on the aims of education explains that the goal is to 'empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence' and that this must be

achieved in ways that are child-centred, child-friendly and reflect the rights and inherent dignity of the child (para. 2). States parties are reminded that children's right to education include all children, and that girls should be enabled to participate in education, without discrimination of any kind (art. 2).

29. Parental and public responsibilities for early childhood education. The principle that parents (and other primary caregivers) are children's first educators is well established and endorsed within the Convention's emphasis on respect for the responsibilities of parents (sect. IV above). They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding (art. 5). The Committee invites States parties to make this principle a starting point for planning early education, in two respects:

(a) In providing appropriate assistance to parents in the performance of their child-rearing responsibilities (art. 18.2), States parties should take all appropriate measures to enhance parents' understanding of their role in their children's early education, encourage child-rearing practices which are child-centred, encourage respect for the child's dignity and provide opportunities for developing understanding, self-esteem and self-confidence;

(b) In planning for early childhood, States parties should at all times aim to provide programmes that complement the parents' role and are developed as far as possible in partnership with parents, including through active cooperation between parents, professionals and others in developing 'the child's personality, talents and mental and physical abilities to their fullest potential' (art. 29.1 (a)).

30. The Committee calls on States parties to ensure that all young children receive education in the broadest sense (as outlined in paragraph 28 above), which acknowledges a key role for parents, wider family and community, as well as the contribution of organized programmes of early childhood education provided by the State, the community or civil society institutions. Research evidence demonstrates the potential for quality education programmes to have a positive impact on young children's successful transition to primary school, their educational progress and their long-term social adjustment. Many countries and regions now provide comprehensive early education starting at 4 years old, which in some countries is integrated with childcare for working parents. Acknowledging that traditional divisions between 'care' and 'education' services have not always been in children's best interests, the concept of 'Educare' is sometimes used to signal a shift towards integrated services, and reinforces the recognition of the need for a coordinated, holistic, multisectoral approach to early childhood.

31. Community-based programmes. The Committee recommends that States parties support early childhood development programmes, including home- and community-based preschool programmes, in which the empowerment and education of parents (and other caregivers) are main features. States parties have a key role to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of particular groups and individuals and to the developmental priorities of particular age groups, from infancy through to transition into school. They are encouraged to construct high-quality, developmentally appropriate and culturally relevant programmes and to achieve this by working with local communities rather by imposing a standardized approach to early childhood care and education. The Committee also recommends that States parties pay greater attention to, and actively support, a rights-based approach to early childhood programmes, including initiatives surrounding transition to primary

school that ensure continuity and progression, in order to build children's confidence, communication skills and enthusiasm for learning through their active involvement in, among others, planning activities."

B. International material on early education specifically as regards Latvia

64. On 1 July 2016 Latvia deposited its instrument of accession to the Convention on the Organisation for Economic Co-operation and Development (OECD), thereby becoming a full member of the OECD. As part of the process of Latvia's accession to the OECD, the latter undertook a review of Latvia's education policies and practices in comparison with OECD member countries. In 2016 the OECD published a report in that regard (OECD (2016), *Education in Latvia*, Reviews of National Policies for Education, OECD Publishing, Paris). The relevant parts of it read as follows (references omitted):

Chapter 2

Early childhood education and care in Latvia

Introduction

"High-quality early childhood education and care is positively associated with the cognitive, social and emotional development of children, and achievement among all children ... In Latvia early childhood education and care (ECEC) covers all institutional arrangements providing care and education for children under primary school age – 1 to 7 years of age. Some countries make a distinction between 'child care' – looking after children while their parents are at work – and 'early education' – enhancing child development and preparing children for formal schooling. In practise, the division is not clear, as there are opportunities to learn in settings labelled 'care' and 'educational' settings provide care for children. The use of the term ECEC supports an integrated and coherent approach to policy and provision which is inclusive of all children and all parents regardless of their employment or socio-economic status ... Although ECEC in Latvia is often referred to as 'pre-school education', which would suggest a primary focus on early education, it recognises that ECEC arrangements fulfil a wide range of objectives, including care, learning and social support.

Most of today's rising generation in Latvia will have spent part of their early childhood in some form of ECEC programme. After a period of contraction in the early 1990s, service provision began to recover later that decade and the recovery has continued ever since. Nowadays around 90% of 5- and 6-year-olds are enrolled in ECEC ... Still the transition to universal enrolment is incomplete as participation in ECEC, especially for children under the age of three, remains relatively low and unequal throughout the country. There are calls for greater investment in the quality of ECEC workforce and better monitoring of educational quality in general. Current government governance and financing arrangements also hamper equal access to high quality ECEC.

...

Context and main features

Governance and financing

...

To ensure a certain length of participation in ECEC programmes, many countries provide legal entitlements to ensure access to affordable, high-quality ECEC. Since 2011, all children in Latvia have had a legal entitlement to ECEC from 1.5 years of age. Latvia thus belongs to a small group of EU countries in which children have a legal entitlement to ECEC from a very early age, although in countries like Denmark, Finland and Sweden, entitlement starts earlier: from their first year onwards. In addition, since 2002 the last two years of ECEC, i.e. for children aged 5 and 6, have been compulsory in Latvia.

In Latvia ECEC is defined comprehensively encompassing the cognitive, socio-emotional and health development of the child. The Education Law ..., for example, states that ECEC, or ‘pre-school education’ as it is often referred to in Latvia, is ‘an education level in which multi-dimensional development of the child as an individual, in the strengthening of health and preparation for the acquisition of primary education takes place’ ...

...

in Latvia, municipalities are obliged to ensure that children who have declared residence in the administrative territory of the municipality are able to access ECEC in the institution closest to their home. ECEC is largely the responsibility of municipalities.

The founders of public ECEC institutions are municipalities, while private institutions can be founded by people or legal entities such as foundations and non-governmental organisations (NGO’s). Municipalities may establish an ECC institution upon the request of parents of at least ten children living in their administrative territory. In case of children with special needs this number is eight. Children are enrolled when parents have submitted all necessary documents and if there is a place available. Entrance tests are prohibited and parents and guardians are in principle free to choose among different types of ECEC institutions, i.e. those offering general programmes, programmes in minority languages (e.g. Russian or Polish), programmes for children with special education needs, and programmes for children with both special education needs and in minority languages.

In reality, however, the low population density in some parts of the country may limit choices, despite municipalities providing free bus transportation to children in remote areas. In the larger cities, shortage of places similarly limits parents’ and guardians’ choices.

...

As in many OECD countries, both parents and community members play an important role in the governments of ECEC institutions in Latvia, including through participating in school boards. For example, the school boards have a decision-making role in the rules governing the daily life in the ECEC institution, and have a consultative role on issues related to the choosing of educational content, methods and materials ...

...

Organisation of ECEC services and learning

In Latvia integrated ECEC settings (*pirmsskolas izglītības iestādes*) are available to children from the age of 1.5 to 7 ... with no breaks or transfers between ECEC institutions until the start of primary school. All institutions and programmes fall under the responsibility of [the Ministry of Education and Science]. Such an integrated approach is rather uncommon among EU and OECD countries, and is mainly found in the Scandinavian countries ...

There is some distinction between ECEC for very young children (1 to 4 years) and those about to enter primary education. As mentioned, from the age of 5 ECEC is compulsory and children have to follow a specific programme (*pirmsskolas izglītības vadlīnijas*) that is in accordance with the Guidelines for Pre-school Education ... The guidelines offer examples of programmes but teachers also have the right to develop their own programmes as long as they are in accordance with the guidelines ... It is also possible for children to receive their compulsory ECEC outside the integrated setting, for example in a primary school or another type of education centre (*skolas un citas izglītības iestādes*). Other service providers include day nurseries, playgroups, day care centres and institutions of interest-related education that provide activities for children under primary school age.

ECEC programmes either follow the school model, grouping children together by age, or the family model, grouping children of different ages. It is also possible to group children according to the language of instruction which can be Latvian or a minority language, depending on the demands made by their parents. While most minority languages such as Polish play only a minor role in ECEC provision, a considerable share of children are taught in Russian: close to 22,000 children, about 23%, were enrolled in Russian language ECEC institutions in 2013 ... From the age of five, however, the Latvian language is a compulsory subject for children in ECEC.

It is also possible for families to provide ECEC at home. For this, parents may receive pedagogical and methodological support at consultative ECEC centres. Municipalities are obliged to provide such support but not all are able to due to budgetary constraints, particularly the smaller ones. They therefore sometimes commission these services from institutions or individual specialists ... Whether parents' demands for such support are fully met is not known.

...

National ECEC curriculum

Having an explicit curriculum matters at all stages of education including ECEC. A well-defined curriculum articulates purposes, goals, learning content and approaches to learning, and takes into account the needs of all relevant stakeholders. Critical learning areas for young children include literacy, numeracy, science, information and communications technology (ICT), art and music, and physical and health development ... Curricula are influenced by many factors, including a society's values, content standards, research findings, community expectations, culture and language."

C. Comparative material on early education

65. In 2021/22, in most European education systems, compulsory education started at the beginning of primary education, often at the age of six. However, completing at least the last year of pre-primary education was compulsory in twenty-one education systems out of thirty-nine European

education systems covering thirty-seven countries participating in the EU's Erasmus+ programme (twenty-seven EU member States, Albania, Bosnia and Herzegovina, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Switzerland and Türkiye). France and Hungary reported the earliest starting age for compulsory education at the age of three. In Greece, Luxembourg and Switzerland, compulsory education started at the age of four. In Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Latvia, Malta, the Netherlands, Romania and Slovakia, it started at the age of five. In Albania, Bosnia and Herzegovina, Denmark, Finland, Germany, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Montenegro, North Macedonia, Norway, Poland, Portugal, Serbia, Slovenia, Spain, Sweden and Türkiye, it started before or at the age of six. Estonia and Croatia reported the latest start of compulsory education at the age of seven (European Commission/EACEA/Eurydice, 2021. *Compulsory Education in Europe – 2021/22*. Eurydice Facts and Figures. Luxembourg: Publications Office of the European Union). In other member States of the Council of Europe not covered above (Andorra, Armenia, Azerbaijan, Georgia, Moldova, San Marino, the United Kingdom and Ukraine), compulsory education started at the age of six, except for the United Kingdom (with regard to England, Scotland and Wales), where it started at the age of five, while in Northern Ireland, it started earlier for some children, at the age of four. Out of the countries in that group (Andorra, Armenia, Azerbaijan, Georgia, Moldova, San Marino, the United Kingdom and Ukraine), it appears that one year of pre-primary education was compulsory in Moldova and Ukraine.

D. International material on children with disabilities

66. The United Nations Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008 and was signed by Latvia on 18 July 2008 and ratified on 1 March 2010. The relevant parts provide as follows:

Article 2 – Definitions

“For the purposes of the present Convention:

...

‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; ...”

Article 7 – Children with disabilities

“1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.”

Article 24 - Education

“1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual’s requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

...”

67. The relevant parts of Article 23 of the United Nations Convention on the Rights of the Child, which entered into force on 2 September 1990 and was acceded to by Latvia on 14 April 1992, provide as follows:

“1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

...”

THE LAW

I. JOINDER OF THE APPLICATIONS AND SCOPE OF THE CASE

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

69. 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 all pre-schools had been increased and instruction in their mother tongue, Russian, had been reduced, whereas previously this had been widely available.

70. Taking into account the principle of subsidiarity and the requirement to exhaust domestic remedies as enshrined in Article 35 § 1 of the Convention, the Court can examine only those issues which were raised before and examined by the Latvian Constitutional Court in conformity with the applicable admissibility requirements under Latvian law (see paragraphs 25-48 above). Considering that the relevant domestic legislation concerned

all pre-schools and that the Latvian Constitutional Court examined the case concerning pre-schools in one judgment which covered both public and private pre-schools (see paragraphs 11, 23 and 54 above), the Court considers it appropriate to examine the present case concerning public and private pre-schools in one judgment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE

71. The applicants argued that the limitations on the use of their mother tongue in pre-schools might interfere with their right to respect for their privacy, in breach of Article 8 of the Convention. They submitted that those limitations prevented the preservation of the children's ethnic, cultural and linguistic identity, which were values protected by Article 8. They argued that the parents had the right to preserve those traits in the next generation by choosing an appropriate education, and alleged that they had been deprived of that right. The Government contested that argument.

72. 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*

73. As regards the first, second, third, fourth, fifth and sixth applicants, the Government submitted that in their applications to the Constitutional Court they had not raised issues pertaining to the right to respect for their private and family life, or, if they had raised those issues, they had failed to provide legal reasoning and their complaints in that regard had been rejected for failure to comply with the domestic law requirement to provide reasoning (see paragraph 24 above). The applicants had not even invoked those rights in substance before the Constitutional Court. Their reference to Article 8 of the Convention had been used as an instrument for interpreting Article 2 of Protocol No. 1 to the Convention. Namely, Article 8 of the Convention had not been invoked separately. Their complaint under Article 110 of the Constitution (the right to family life) had been refused for failure to provide proper legal reasoning. Lastly, their reference to Article 114 of the Constitution (the rights of minorities) had been linked to interpreting and strengthening their arguments under Article 112 (the right to education).

Hence, the applicants had not invoked the rights of minorities to safeguard their cultural identities as such (see paragraph 71 above).

74. As regards the seventh, eighth and ninth applicants, the Government submitted that they had failed to exhaust domestic remedies, as they had not submitted a constitutional complaint to the Constitutional Court themselves.

2. The applicants

75. The first, second, third, fourth, fifth and sixth applicants were of the view that they had referred to Article 8 of the Convention in their applications to the Constitutional Court and had also invoked in substance the rights protected by it (they referred to *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 53 and 56-57, 20 January 2020). However, the Constitutional Court had refused to institute proceedings (see paragraph 24 above) to examine the compatibility of the 2018 amendments with what the applicants considered to be Article 8 of the Convention in essence, as it had done in previous cases concerning public and private schools. Furthermore, non-interference with ethnic identity, which, in their view, enjoyed protection under Article 8 of the Convention, was also covered by Article 114 of the Constitution, and the compatibility of the 2018 amendments with that provision had been examined by the Constitutional Court.

76. The eighth and ninth applicants noted that by the time they had lodged their application with the Court, the Constitutional Court had already examined the 2018 amendments in case no. 2019-20-03 and had held that they were compatible with the Constitution. The judgment of the Constitutional Court had been final and mandatory for all Latvian institutions and courts, therefore a constitutional complaint had not been an effective remedy for them. Lastly, they noted that the seventh applicant had been born in 2020.

B. The Court's assessment of admissibility

77. 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. In such cases, proceedings should, in principle, be brought before the Constitutional Court. The Court refers to the summary of its case-law regarding the exhaustion requirement in proceedings before the Constitutional Court which appears in *Džibuti and Others* (cited above, §§ 76-77).

1. The seventh, eighth and ninth applicants

78. The Court notes that unlike the first, second, third, fourth, fifth and sixth applicants in the present case, the seventh, eighth and ninth applicants did not lodge any complaints with the Constitutional Court. At the same time,

the Court observes that the seventh applicant had not yet been born when the other applicants lodged their constitutional complaints. The 2018 amendments were examined in the proceedings instituted by the first, second, third, fourth, fifth and sixth applicants and eight other individuals who were parents and children. However, the Constitutional Court instituted proceedings in relation to the compatibility of the 2018 amendments with the principle of legislative power, the equal treatment and non-discrimination principles, the right to education and the rights of minorities as enshrined in the Constitution (see paragraph 24 above). In those proceedings, the Constitutional Court did not examine the compatibility of the 2018 amendments with the right to respect for private and family life, either because such issues were not raised before it, or because insufficient legal reasoning was provided in that regard (see paragraph 80 below). If the seventh applicant (after her birth) and the eighth and ninth applicants considered that their right to respect for private and family life had been affected by the 2018 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.

79. It follows that the seventh, eighth and ninth applicants' complaint under Article 8 must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The first, second, third, fourth, fifth and sixth applicants

80. In the present case, being mindful of its own subsidiary role, the Court is prepared to accept that the constitutional complaints lodged by the first, second, third, fourth, fifth and sixth applicants contained no reasoning at all, even in substance, as regards the right to respect for private life in itself, as a self-standing right. As regards the right to respect for family life, they did not comply with the formal requirements laid down in law. As to the latter issue, the Constitutional Court listed points in respect of which the constitutional complaint lodged by the applicants lacked the necessary legal reasoning. In particular, the Constitutional Court found that the applicants had failed to provide legal reasoning showing that Article 110 (the right to family life) provided additional rights in the field of education and that their fundamental rights had been affected (see paragraph 24 above). According to the established case-law of the Constitutional Court, the applicants were obliged to include an analysis of all those elements when lodging their constitutional complaints (see *Džibuti and Others*, cited above, § 80). Those applicants thus failed to provide legal reasoning in line with the requirements set out in the Constitutional Court's case-law. The Court notes that the applicants have not pointed to any elements in the Constitutional Court's decisions indicating that that court expressed its position on the substance of their complaint as regards

the right to respect for private and family life (compare and contrast *Ēcis*, cited above, §§ 52-53).

81. It follows that the first, second, third, fourth, fifth and sixth applicants' complaint under Article 8 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 8 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

82. In their application forms, the applicants also relied on Article 8 taken in conjunction with Article 14 of the Convention. They did not, however, provide any separate arguments in that regard, apart from those formulated under Article 8 taken alone (see paragraph 71 above) and Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 (see paragraphs 88 and 97 below). The Government contested the applicants' argument.

A. The parties' submissions on admissibility

83. The parties' submissions on admissibility have been summarised in the paragraphs addressing the respective provisions of the Convention (see paragraphs 73-76 above and paragraphs 91-92, 99-104 below).

B. The Court's assessment of admissibility

84. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), and taking into account the applicants' submissions as a whole, considers that the crux of their complaint in the present case falls under Article 2 of Protocol No. 1 taken in conjunction with Article 14 of the Convention (see, for a similar approach, *Valiullina and Others*, cited above, § 147).

85. In addition to their main complaint (see paragraph 84 above and paragraphs 97 et seq. below), the applicants also referred to Article 8 taken in conjunction with Article 14 of the Convention in their application forms, without providing any separate arguments in that regard (see paragraph 82 above).

86. The Court notes, however, that this complaint is also inadmissible for non-exhaustion of domestic remedies for the same reasons as indicated above: some of the applicants did not bring proceedings before the Constitutional Court at all (see paragraphs 78-79 above), and those who did bring such proceedings did not raise the relevant arguments or comply with the formal requirements in that regard (see paragraphs 80-81 above).

87. It follows that the applicants' complaint under Article 8 taken in conjunction with Article 14 of the Convention must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

88. The applicants alleged that the 2018 amendments had restricted their right to education. In their view, Article 2 of Protocol No. 1 protected all levels of education, including pre-school. They argued that the children had the right to continue their education in Latvia in the language which they had been using when they had started it, namely Russian. The right to education also protected the effectiveness of education, including its quality, and the quality of education depended on how much a person's mother tongue was used. The applicants alleged that the restriction of their rights had not been foreseeable and had been disproportionate. This had amounted to a breach of Article 2 of Protocol No. 1 to the Convention, which should be read in the light of Article 8 of the Convention.

89. 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."

90. The Government contested that argument.

A. The parties' submissions on admissibility

91. The Government's submissions, which were centred on their position that the complaints were incompatible *ratione materiae*, have been summarised in *Valiullina and Others* (cited above, §§ 113-17). The Government's further arguments specific to the present case concerning pre-school education have been summarised below (see paragraphs 99-101 below).

92. The applicants' submissions regarding compatibility *ratione materiae* have been summarised in *Valiullina and Others* (cited above, §§ 118-21). Their further arguments specific to the present case concerning pre-school education have been summarised below (see paragraphs 102-104 below).

B. The Court's assessment of admissibility

93. The Court notes that a similar complaint has already been examined in *Valiullina and Others* (cited above, §§ 128-36) and *Džibuti and Others* (cited above, §§ 93-97). In those cases, which concerned the language of

instruction in public and private schools, the Court concluded that the rights enshrined by Article 2 of Protocol No. 1 did not include the right to access education in a particular language. Given that Latvian was the only official language in Latvia, the Court held that the applicants could not 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*. In those cases, the Court noted that the applicants had not put forward any specific arguments regarding the restrictions on the use of Russian in the Latvian education system having adverse consequences on their possibility to obtain an education (see *Valiullina and Others*, cited above, § 135, and *Džibuti and Others*, cited above, § 93). The Court considers that the same conclusion should be reached *a fortiori* in the present case, which concerns the language of instruction in pre-schools. As in *Valiullina and Others* and *Džibuti and Others*, the applicants in the present case did not put forward any specific arguments as regards the adverse consequences on their possibility to obtain an education; accordingly, the Court sees no reason to reach a different conclusion in the present case.

94. In this regard, the Court observes that the Latvian Constitutional Court has examined whether the 2018 amendments interfered with Article 112 of the Constitution (the right to education). In its judgment of 23 April 2019 in the case concerning public schools, the Constitutional Court concluded that the 2018 reform had not affected the right to education and terminated the proceedings in that regard (see *Valiullina and Others*, cited above, § 46 *in fine*). However, in its judgment of 13 November 2019 in the case concerning private schools, the Constitutional Court concluded that the rights enshrined in Article 112 taken in conjunction with Article 114 of the Constitution (the rights of minorities) had been restricted by the 2018 reform and proceeded to examine the merits of that complaint (see *Džibuti and Others*, cited above, § 34 *in fine*). Lastly, in its judgment of 19 June 2020 in the case concerning pre-schools, the Constitutional Court noted that the Constitution did not include the right to an education in a language of one's choice. Nevertheless, in so far as that the applicants' arguments came within the scope of Article 112 of the Constitution (the right to education) taken alone, it concluded that the right to education as enshrined in Article 112 of the Constitution comprised both stages of pre-school education – both were part of the general education system in Latvia (see paragraphs 28-29 above) – and examined them from the standpoint of the State's positive obligations in relation to providing a quality education (see paragraphs 30-31 above). The Court takes note of this development in the domestic case-law. It appears that as regards minorities' right to education, the Latvian Constitution affords a higher level of protection than the Convention, which does not include a specific provision concerning minority rights, apart from the prohibition of discrimination under Article 14 of the Convention.

95. The approach taken by the Constitutional Court was perfectly consistent with Article 53 of the Convention, which allows the State Parties to adopt a broader interpretation entailing stronger protection of the rights and freedoms in question within their respective domestic legal systems. However, this does not affect the Court's finding that Article 2 of Protocol No. 1 to the Convention is not applicable in the circumstances of the present case; the Constitutional Court's findings cannot be taken to expand the scope of the relevant provision under the Convention, which does not include the right to access education in a particular language. Moreover, the Court adds that not all services related to early education or care provided to children at a very young age by the State or municipal authorities come within the scope of Article 2 of Protocol No. 1 – it depends on the age of the children concerned, the aim which those services seek to achieve, and whether they are compulsory or voluntary in the country concerned (see paragraphs 106-122 below).

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

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

97. The applicants alleged that Russian-speaking pupils in pre-schools were treated differently from Latvian-speaking pupils following the 2018 amendments, even though those groups of pupils were on an equal footing as regards the benefit derived from an education in their mother tongue. The first and second applicants also alleged that Russian-speaking pupils with special needs – such as the second applicant, who was enrolled in a special minority pre-school education programme for children with speech impairments – were treated in the same way as Russian-speaking pupils without special needs even though their situation was different, since the scope for accommodating the limitations of those groups of pupils was different. The applicants considered that the alleged difference in treatment between those groups of pupils was contrary to Article 14 taken in conjunction with Article 2 of Protocol No. 1 to the Convention. Those provisions read 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.”

Article 2 of Protocol No. 1 (right to education)

“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.”

98. The Government contested that argument.

A. Admissibility

1. The parties' submissions

(a) The Government

99. The Government firstly considered that this complaint was incompatible *ratione materiae* (see *Valiullina and Others*, cited above, §§ 113-16 and 139). Furthermore, they argued that the applicants' complaint which specifically concerned pre-school education was also incompatible *ratione materiae*, as Article 2 of Protocol No. 1 did not cover pre-school education. They submitted that the latter Article essentially dealt with primary, secondary and higher education (they referred to *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 136, ECHR 2005-XI, and also cited cases such as *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 139, ECHR 2012 (extracts); *Velyo Velevev v. Bulgaria*, no. 16032/07, § 31, ECHR 2014 (extracts); and *Çam v. Turkey*, no. 51500/08, § 43, 23 February 2016). They further relied on some older cases where the Convention organs had stated that Article 2 of Protocol No. 1 was primarily concerned with elementary education, remaining silent on the matter of pre-school education (for example, *Georgiou v. Greece* (dec.), no. 45138/98, 13 January 2000, and *X. v. the United Kingdom*, no. 5962/72, Commission decision of 13 March 1975, Decisions and Reports (DR) no. 2). The Government were mindful of the case of *40 Mothers v. Sweden* (no. 6853/74, Commission decision of 9 March 1977, DR no. 9), where the Commission had concluded that the education provided in public nurseries had to conform to the conditions set out in Article 2 of Protocol No. 1, in spite of its non-compulsory nature. However, that conclusion was drawn in the specific context of that case, which concerned complaints under the second sentence of Article 2 of Protocol No. 1, and related to the right of parents to have their children educated in a manner corresponding to their religious and philosophical convictions where those children had reached six years of age. The conclusion reached in that case was not directly applicable to all stages of pre-school education in Latvia, in particular the first stage of pre-school education (for children aged one and a half to five), which was voluntary.

100. Secondly, the Government submitted that the seventh, eighth and ninth applicants had failed to exhaust domestic remedies, as they had not submitted a constitutional complaint to the Constitutional Court themselves.

Furthermore, those applicants who had instituted proceedings before the Constitutional Court had not considered that there had been a breach of the rights of parents and children as regards the first stage of pre-school education (aged one and a half to five years), and they had not complained before the Constitutional Court that the 2018 amendments in relation to that stage of pre-school education would breach their fundamental rights. Accordingly, the Constitutional Court had not examined the first stage of pre-school education (the Government referred to the Constitutional Court's conclusions summarised in paragraphs 35-36 above).

101. Thirdly, they argued that the first, third, fifth and eighth 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 (see *Valiullina and Others*, cited above, § 141). Furthermore, the Government submitted that the ninth applicant had been born six months after the adoption of the 2018 amendments. Neither she nor her mother (the eighth applicant) had been affected by them or could claim to be a victim. Similarly, the seventh applicant (born in 2020) could not claim to be a victim. At the time of lodging her application the seventh applicant had not yet reached pre-school age (eighteen months) and had not started attending pre-school. Thus, she had not been affected by the 2018 amendments. The Government reiterated that in Latvia, the first stage of pre-school education (for children aged one and a half to five) was voluntary, but parents could enrol their children at a pre-school at any time.

(b) The applicants

102. The applicants firstly noted that their complaint was compatible *ratione materiae* (see *Valiullina and Others*, cited above, §§ 118-21 and 142). Furthermore, as to their complaint specifically concerning pre-school education, they relied on *Leyla Şahin* (cited above, § 138) to emphasise that in that case the Court had referred to the “*Belgian linguistic case*” to reiterate that although the scope of the right protected by Article 2 of Protocol No. 1 was not defined or specified in the Convention, it included, “for the purposes of examining the present case”, “entry to nursery, primary, secondary and higher education”. Therefore, it was enough to conclude that nursery, that is, pre-school education came within the scope of Article 2 of Protocol No. 1. The applicants alleged that the application in the above-cited case of *40 Mothers v. Sweden* had been found inadmissible largely because in Sweden private kindergartens could provide teaching which had not been subject to the relevant contested restrictions, whereas in Latvia the contested restrictions in question were the same for public and private educational institutions. Lastly, the applicants noted that the Convention and its Protocols had to be interpreted in harmony with other rules of international law, including the United Nations Convention on the Rights of the Child (they referred to *Catan and Others*, cited above, § 136). According to the UN

Committee on the Rights of the Child, the right to education applied to pre-school education (see paragraph 63 above).

103. Secondly, the applicants submitted that by the time they had lodged the present applications with the Court, the Constitutional Court had already examined the 2018 amendments in case no. 2019-20-03 and had held that they were compatible with the Constitution (see, for more details, *Valiullina and Others*, cited above, § 143). Furthermore, the applicants emphasised that among those parents and children who had instituted proceedings before the Constitutional Court (see paragraph 23 above) there had been six children under five years of age at the time when their application had been lodged. They submitted that their application to the Constitutional Court had contained allegations that their rights had been restricted not only as regards the second stage of pre-school education (for children aged five to seven), but also the first stage of pre-school education (for children aged one and a half to five). However, the applicants did not make further submissions to the Court about the Constitutional Court's findings to the effect that the applicants had not expressed any objections in respect of pre-school education for children aged one and a half to five and that there had been no dispute in that regard (see paragraph 36 above).

104. Thirdly, the applicants' submissions as regards the standing of parents to lodge complaints under Article 2 of Protocol No. 1 in conjunction with Article 14 have been summarised in *Valiullina and Others* (cited above, § 144). Furthermore, the applicants emphasised that the Constitutional Court, in the case concerning pre-schools, had held that both parents and children had been affected by the 2018 amendments. As regards young children under five years of age, the applicants submitted that they were potential victims of the restrictions imposed on children who were older (children over five years of age and school pupils). The applicants noted that the ninth applicant had been born in 2018 and had been attending a pre-school since 2020 (see paragraph 22 above). Similarly, the seventh applicant had been born in 2020 and had been registered at a pre-school with a view to attending it when the present application had been lodged (see paragraph 21 above).

2. The Court's assessment

(a) Objections examined and dismissed in other cases

105. The Court examined the majority of the above-mentioned objections (whether the facts of the case fell "within the ambit" of Article 2 of Protocol No.1, the exhaustion requirement in relation to those applicants who had not instituted proceedings before the Constitutional Court, and the victim status of parents) and dismissed them in cases concerning public and private schools (see *Valiullina and Others*, cited above, §§ 145-53, and *Džibuti and Others*, cited above, § 102). The Court considers that the same conclusion should be reached *a fortiori* in the present case, which concerns pre-schools. In

particular, the Court finds that the eighth and ninth applicants in the present case were not required to bring proceedings before the Constitutional Court, as that court had already held on 19 June 2020 in case no. 2019-20-03, prior to the applicants lodging their applications with the Court, that the relevant domestic provisions were compatible with the right to education, the rights of minorities and the principles of equal treatment and non-discrimination as enshrined in the Latvian Constitution (see paragraphs 25-48 above). The Government's objections are accordingly dismissed, save for those specifically relating to pre-school education, which follow below.

(b) Objections specifically relating to pre-school education and the victim status of some applicants

(i) *Whether the facts of the case fall "within the ambit" of Article 2 of Protocol No. 1 taken together with Article 14 as regards pre-school education in Latvia*

(α) Preliminary remarks about pre-school education in general

106. The Court observes that the Government argued that the applicants' complaint specifically concerning pre-school education was incompatible *ratione materiae*, since early education was not covered by the Convention. The Court has pointed out in another context that the education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development (see *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 33, Series A no. 48).

107. As noted by the Latvian Constitutional Court, international standards do not provide for a specific age when a child enjoys the right to education. However, it is recognised that children have the right to education from a young age (see paragraph 26 above). In 2005 the United Nations Committee on the Rights of the Child reported that definitions of early childhood varied in different countries and regions, and the transition from pre-school to school took place at different times – in some countries it was soon after four years of age, while in others it took place at around seven years of age (see paragraph 63 above). According to more recent reports of State practice in 2021/22, in many European countries compulsory education starts at the beginning of primary education, often at the age of six. Completing at least one year of pre-primary education is compulsory in twenty-three member States of the Council of Europe. In twenty-seven member States compulsory education starts just before or at the age of six, while in eleven member States it starts around the age of five. In a small number of member States compulsory education starts earlier or later – in two member States it starts at the age of three, in three States it starts at the age of four, and in two member States it starts at the age of seven (see paragraph 65 above). Given the lack of a European consensus as regards early education, the starting point of the

Court's analysis is that the States have a wide margin of appreciation in organising their pre-school education systems (see also paragraphs 111 and 148 below).

108. The Court reiterates that the Convention does not require States to “establish at their own expense, or to subsidise, education of any particular type or at any particular level”, but rather to guarantee to persons subject to their jurisdiction “the right, in principle, to avail themselves of the means of instruction existing at a given time” (see the “*Belgian linguistic case*”, cited above, p. 31, § 3, and, more recently, *Valiullina and Others*, cited above, § 122). In the context of the present complaint under Article 2 of Protocol No. 1 taken in conjunction with Article 14, the Court has to satisfy itself that the applicants' situation as regards their allegations of discrimination in early childhood falls “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 93 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, and, more recently, *Valiullina and Others*, cited above, § 146).

(β) Pre-school education and care of young children

109. The Court observes that in normal circumstances, parents or other primary caregivers are the first educators of young children and play a primary role in that regard. They are expected to provide appropriate direction and guidance to young children in the exercise of their rights, and provide an environment of reliable and affectionate relationships based on respect and understanding. The States, for their part, have undertaken to provide appropriate support and assistance complementing the role of parents in relation to children's education, care and development. The traditional line drawn between “care” and “education” services provided by the State has not always been in children's best interests – those services are interlinked and a coordinated, holistic and multisectoral approach to early childhood is required (see paragraphs 28 and 63 above). To achieve their full potential, young children need care and nutrition, protection from harm and a sense of security, and opportunities for early learning and responsive care where parents or other primary caregivers create a secure attachment to them.

110. Some States have chosen to provide support mechanisms for parents of young children by ensuring some form of early education, and such support mechanisms may also be combined with childcare services for working parents (see paragraph 63 above) and tools aimed at socialising young

children and integrating them into society. Such support mechanisms and tools are undeniably in the interests of children and their parents; parents, in exercising their parental rights and duties, may choose to rely on services and assistance provided by the State or municipal authorities, or to rely on support provided within the family or otherwise available to them (such as individual or group childcare). Latvia is among those States that have chosen to ensure access to certain support mechanisms in respect of children from the age of one and a half. As noted by the Latvian Constitutional Court, this is the first stage of pre-school education (see paragraph 28 above). However, that does not mean that those States have undertaken to ensure access to certain support mechanisms in respect of children from a young age, or that any allegations concerning early education and care in the context of the provision of such services would automatically fall “within the ambit” of Article 2 of Protocol No. 1. The Court emphasises that the role of parents or other primary caregivers is particularly important in relation to the education, care and development of young children. While the States must provide support mechanisms and other services in that regard, 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 of the community and on the available resources (see *Leyla Şahin*, cited above, § 136).

(γ) Pre-primary compulsory education

111. The Court notes that quality pre-primary education has long-term benefits for children’s cognitive, social and emotional development, successful transition to primary school, later educational progress and long-term social adjustment (see paragraph 63 above). At the same time, the Court observes that the practice of the member States of the Council of Europe is diverse on the issue of whether to provide pre-primary education and the starting age of compulsory education (see paragraphs 65 and 107 above). In particular, only half of the member States of the Council of Europe have chosen to introduce at least one year of compulsory pre-primary education. Those States have reached a stage where they not only recognise the fundamental role and positive impact of early childhood education on the development of children’s full potential, but are also committed to finding the necessary resources to ensure that all children within their jurisdiction have some pre-primary education.

112. Latvia is among those States that have introduced compulsory pre-primary education. Before starting formal schooling, children in Latvia have to attend at least the last two years of pre-school education. Accordingly, compulsory education in Latvia starts as early as five and pre-school element of that lasts for about two years. As noted by the Latvian Constitutional Court, this is the second stage of pre-school education (see paragraph 28 above).

(δ) Comparison of two stages of pre-school education in Latvia

113. The Court notes that, according to the Constitutional Court, pre-school education forms part of the general education system in Latvia. It consists of two separate stages. The first stage of pre-school education is for young children, namely those aged one and a half to five. The second stage of pre-school education is for children aged five to seven. While children have access to the first stage of pre-school education from the age of one and half, only the second stage of pre-school education (for children aged five to seven) is compulsory in Latvia (see paragraphs 27, 28 and 51 above).

114. Against that background, the Court will examine the complaint under Article 2 of Protocol No. 1 taken together with Article 14 as regards the two stages of pre-school education in Latvia. In doing so, the Court will take into account the factual and legal features that characterise the situation in Latvia, where Latvian is the only official language (compare and contrast the “*Belgian linguistic case*”, pp. 35-36, § 12, cited above, which concerned a plurilingual State comprising several linguistic areas).

115. The Court observes that the first and second stages of pre-school education in Latvia have some common features and certain distinguishing elements. As to their common features, both stages are considered to form part of the general education system in Latvia. Overall, pre-school education is aimed at preparing young children for primary education and more formal schooling. At the same time, each pre-school education stage is also aimed at fulfilling specific aims and goals to be achieved at the end of each stage, and the Court will analyse those further below.

116. As to the distinguishing features of both stages, the Court notes the following elements. Firstly, the first stage of pre-school education is for children aged one and a half to five, and the second stage is for children aged five to seven. The differences between children in the first stage of pre-school and those in the second stage can therefore be rather significant in terms of their cognitive, social and emotional development.

117. Secondly, the Court finds it important to note that the first stage of pre-school education is not compulsory, even though it is considered to form part of the general education system, whereas the second stage of pre-school education is compulsory. Although the State and municipal authorities have to ensure that children have equal access to the first stage of pre-school education from the age of one and a half, parents can also rely on other public or individual support mechanisms; they can be very flexible as to the manner in which they ensure their child’s education, care and development at a young age (see paragraphs 21, 28, and 110 above). As to the second stage of pre-school education, however, the State has undertaken to ensure that children have access to pre-school education from the age of five, and that stage is compulsory. From the age of five, the State education system in Latvia formally complements the role of parents and other primary caregivers in respect of children’s education, care and development.

118. Thirdly, the Court observes that the specific aims and goals to be achieved by the end of each stage of pre-school education in Latvia are different. On the one hand, the Court finds that the first stage of pre-school education is primarily concerned with providing care for young children, allowing them to begin to develop their individual personalities and their mental, physical and social abilities, and, overall, providing a bridge between their home environment and the more formal school environment. This is so, given the young age of the children concerned, the purely voluntary nature of the first stage of pre-school education in Latvia and the flexibility afforded to parents in that regard (see paragraphs 51-52 above). Although children are also prepared for primary education during the first stage of pre-school education, at that stage, the emphasis is on their care and overall development. On the other hand, the Court observes that the second stage of pre-school education is particularly important for young children, since at that stage the aim is for children to be given the specific knowledge and cognitive skills that are necessary for them to be properly prepared for primary education and able to benefit from it. Children have to follow a pre-school education programme whose content is set by the State, and guidelines for pre-school education are laid down by the Cabinet of Ministers (see paragraphs 51-53 above). During the second stage of pre-school education, children continue to be prepared for primary education. They continue to develop their individual personalities, and also gain more social, emotional and learning skills that are crucial for a smooth transition into more formal schooling. That stage is more concerned with the acquisition of the specific skills and knowledge that are necessary for children to benefit from formal education, including basic skills relating to the use of the State language which facilitate equal access to the State education system for all children (see paragraphs 27, 28, 51-53 above). As emphasised by the Constitutional Court, teaching became more intensive for children aged five to seven, since it was at that age that they were being prepared for primary education (see paragraph 32 above).

119. In view of the above-mentioned information, the Court finds that the applicants' situation as regards their allegations of discrimination during the first stage of pre-school education in Latvia does not fall "within the ambit" of Article 2 of Protocol No. 1 taken together with Article 14, but their situation as regards their allegations of discrimination during the second stage of pre-school education does.

120. That being said, even assuming that the applicants' situation as regards their allegations of discrimination during the first stage of pre-school education fell "within the ambit" of Article 2 of Protocol No. 1 for the purposes of the present case, the Court notes the following. The first, second, third, fourth, fifth and sixth applicants lodged constitutional complaints, but either those complaints did not include proper legal reasoning as regards the first stage of pre-school education, or those applicants did not maintain their

complaints throughout the proceedings before the Constitutional Court, if the complaints were properly raised at all. In particular, the Constitutional Court, in its judgment of 19 June 2020, noted that the applicants had themselves admitted that the first stage of the pre-school education programme for minorities was based on a balanced bilingual approach, and they had not argued that their rights had been restricted during that stage of pre-school education (see paragraph 35 above). In fact, there was no dispute that their rights as enshrined in the Constitution had been ensured during the first stage of pre-school education, and the applicants themselves accepted that (see paragraph 36 above). Therefore, in those proceedings (case no. 2019-20-03), the Constitutional Court was not called upon to examine the first stage of pre-school education in Latvia, as there had been no dispute about it. The Court further notes that the applicants' arguments before it also indicated that they did not take issue with the first stage of pre-school education in Latvia, where a bilingual approach – their preferred approach – was in fact used (see paragraphs 103 above and 129 below). If the first, second, third, fourth, fifth and sixth applicants considered that their rights had been restricted in relation to the first stage of pre-school education, they should have brought those issues to the Constitutional Court's attention and maintained their complaints in that regard throughout the proceedings. Similarly, if the other applicants considered that their rights had been restricted in relation to the first stage of pre-school education, they should have instituted new proceedings in that regard before the Constitutional Court, as that court had not dealt with such issues before.

- (e) Conclusion as to whether the first and second stage of pre-school education in Latvia fall “within the ambit” of Article 2 of Protocol No. 1 taken together with Article 14

121. The Court concludes that the first stage of pre-school education in Latvia (for children aged one and a half to five) does not fall “within the ambit” of Article 2 of Protocol No. 1 taken together with Article 14. That being said, even assuming that the applicants' situation fell “within the ambit” of Article 2 of Protocol No. 1 for the purposes of the present case, their complaints as regards the first stage of pre-school education must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. It follows that the Government's objection in this regard must be upheld.

122. However, the Court finds that the second stage of pre-school education in Latvia (for children aged five to seven) falls “within the ambit” of Article 2 of Protocol No. 1 taken together with Article 14. It follows that the Government's objection in this regard must be dismissed.

(ii) *Whether the seventh, eighth and ninth applicants can claim to be victims of the alleged violation with regard to the second stage of pre-school education*

123. In order to be able to lodge a petition in pursuance of Article 34 of the Convention, a person must be able to claim “to be a victim of a violation ... of the rights set forth in the Convention ...”. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct or risks being prosecuted or if he or she is a member of a class of people who risk being directly affected by the legislation (see, among other authorities, *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 120-21, 7 July 2020; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 96 and 101, ECHR 2014; *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010; and *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33-34, ECHR 2008).

124. On the one hand, the Court observes that although the ninth applicant started attending pre-school in the school year 2020/21, it was only in the school year 2023/24, at the age of five, that she was in the second stage of pre-school education (see paragraph 22 above). Accordingly, the Court considers that the ninth applicant and her mother (the eighth applicant) have been directly affected by the 2018 amendments as regards the second stage of pre-school education, and can be considered victims of the alleged violation in the present case. The Court dismisses the Government’s objection as to the ninth applicant’s victim status.

125. On the other hand, the Court notes that the seventh applicant (born in 2020) was not at pre-school when the application was lodged. Although it appears that she started attending pre-school in the school year 2022/23, she is not yet in the second stage of pre-school education in Latvia (see paragraph 21 above). Accordingly, the Court considers that the seventh applicant has not yet been directly affected by the 2018 amendments as regards the second stage of pre-school education, and cannot be considered a victim of the alleged violation in the present case. The Court observes that by the time the seventh applicant is five years of age and in the second stage of pre-school education in Latvia, that is, by the start of the school year 2025/26, another set of amendments passed in 2022 will be applicable to pre-school education, among other things (see paragraph 12 above, with further reference to *Valiullina and Others*, cited above, § 31). The 2022 amendments do not form part of the present case (see paragraphs 69-70 above). The Court accepts the Government’s objection as to the seventh applicant’s victim status. That being said, the Court notes that the fifth applicant, the mother of the seventh

applicant, can claim to be a victim of the alleged violation on account of the alleged violation in respect of her other daughter (the sixth applicant), who has been in the second stage of pre-school education in Latvia since the school years 2021/22 and 2022/23 (see paragraph 20 above).

(iii) Conclusion on admissibility

126. It follows that the first, second, third, fourth, fifth, sixth, eighth and ninth applicants' complaint concerning Article 14 taken together with Article 2 of Protocol No. 1 as regards the second stage of pre-school education 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

127. The applicants' views on the scope and implementation of the education reform and the allegedly insufficient discussions which had taken place with various stakeholders have been summarised in *Valiullina and Others* (cited above, §§ 155 and 164). As regards pre-school education, the reform itself had been unexpected, as had the change in priorities set for the use of language. The change in priorities had affected public pre-schools, while private pre-schools had unexpectedly been asked to comply with the rules on the use of the State language – rules which had not applied to them previously, when they had been free to choose the language of instruction (see paragraph 9 above). Moreover, there had been no discussions at all in Parliament as the impugned regulation relating to pre-schools had been adopted by the Cabinet of Ministers; it had been discussed very briefly and had been approved at only one Cabinet meeting.

128. As to the alleged difference in treatment between Russian-speaking and Latvian-speaking pupils in pre-school education, the grounds for the difference in treatment were language and ethnicity (association with a national minority). Those groups of pupils were on an equal footing as regards the benefit which they derived from an education in their mother tongue, but the attitude towards them was different. The applicants' submissions as to the legitimacy of aims pursued have been summarised in *Valiullina and Others* (cited above, §§ 157-61). They further submitted that another legitimate aim of pre-school education had been to prepare children for school, where restrictions on the use of a person's mother tongue in education already applied. They referred to the findings by the Venice Commission that the restrictions imposed in pre-school education were more stringent than those imposed in primary school and fell outside the general

education system. They doubted that the stated aim could be achieved by the restrictions imposed, and supposed that following the impugned reform, the quality of pre-school education would inevitably decline, impeding children's full development and reducing their ability to continue their school education.

129. The applicants considered that a return to a bilingual approach in pre-school education would be an alternative means of achieving the aim. In that regard, they referred to the recommendations made by the Advisory Committee (see paragraph 37 above) and the Venice Commission (paragraphs 86-87 and 119 of its opinion quoted in *Valiullina and Others*, cited above, § 93). They noted that the Constitutional Court had been well aware of the relevant international material when it had examined the case concerning pre-schools (see paragraph 37 above). Lastly, the applicants emphasised that according to the Hague Recommendations regarding the Education Rights of National Minorities, "educational research suggest[ed] that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language" (see paragraph 11 of the Hague Recommendations quoted in *Valiullina and Others*, cited above, § 95). Thus, like the applicants in *Valiullina and Others* (cited above, §§ 165 and 167), they considered that Latvia had overstepped the margin of appreciation afforded to it and that there was no reasonable basis for the difference in treatment.

130. As to the alleged difference in treatment between Russian-speaking pupils with special needs and Russian-speaking pupils in pre-school education, the applicants alleged that the restrictions were applied equally to children with special needs and those without, even though the scope for accommodating both groups was different. The applicants argued that neither Regulation no. 716 nor its annotation provided justification for the equal treatment of both groups. Nor had the Government provided such justification in the present case. In the proceedings before the Constitutional Court, some teachers had expressed their disagreement with the equal treatment of both groups. The applicants further relied on Article 23 of the United Nations Convention on the Rights of the Child to argue that children with special needs had to be treated differently (see paragraph 67 above).

(b) The Government

131. The Government's submissions concerning the legitimacy of the aims pursued, the State's margin of appreciation, the gradual implementation of the education reform, the gradual increase in the use of Latvian as the language of instruction, the public consultation process, the support measures provided for teachers and pupils, and the alleged grounds of discrimination have been summarised in *Valiullina and Others* (cited above, §§ 168-76).

132. The Government explained that children could learn new languages more easily at an early age, therefore the use of Latvian in pre-school education, with the assistance of a bilingual approach, was necessary to

effectively begin to develop their understanding of Latvian, so that it would be easier for them to adapt in higher levels of education. Such an approach ensured that children's education in the early stages of pre-school education was aimed at their development and well-being and, overall, the quality of the education process. The Government noted that unlike in primary education, in pre-school, the domestic legal framework did not set a minimum proportion of the curriculum that had to be taught in Latvian, contrary to the applicants' allegation that the requirements relating to the use of Latvian in pre-school education were more stringent than those applied in primary education (in class one to six). Instead, the early stages of pre-school education maintained a bilingual approach, and although Regulation no. 716 did provide that Latvian was to be used as the primary language of instruction, play-based lessons on minority issues – language, culture and history – still had to be in the minority language. It followed that teachers could decide how many play-based lessons on minority issues they wished children to have. The applicants' arguments in that regard were misleading.

133. The Government's submissions as to the alleged difference in treatment between Russian-speaking pupils and Latvian-speaking pupils have been summarised in *Valiullina and Others* (ibid., §§ 177-80). In addition, this aspect of the case was reviewed by the Constitutional Court in the case concerning pre-schools (see paragraph 38 above). The Government emphasised that minority languages continued to be used in pre-school education.

134. As to the applicants' argument that the impugned regulation had been discussed very briefly at a Cabinet meeting, the Government emphasised that the amount of time spent on a decision at a formal meeting was not a decisive factor. In that regard, they referred to the findings of the Constitutional Court that the impugned regulation had been adopted following a proper law-making process and that several councils and working groups had been established to discuss various issues (see paragraph 44 above). They emphasised that the entire drafting process, including (but not limited to) the adoption of the impugned regulation, had been prepared with sufficient diligence, and members of minority groups had been allowed to voice their concerns and debate. The principle of proper law-making required that the views of stakeholders be duly considered, but did not guarantee a particular outcome preferable to a person or group of persons. 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 2018 amendments.

135. As to the alleged difference in treatment between Russian-speaking pupils with special needs and Russian-speaking pupils, the Government did not make any specific submissions, apart from referring to the Constitutional Court's ruling in that regard (see paragraphs 39-48 above).

2. *The Court's assessment*

(a) **Alleged discrimination against Russian-speaking pupils compared with Latvian-speaking pupils**

(i) *General principles*

136. The Court has summarised the applicable principles in *Valiullina and Others* (cited above, §§ 182-89) and *Džibuti and Others* (cited above, §§ 125-27).

(ii) *Application to the present case*

137. Taking into account the diverse backgrounds and ethnicities of the applicants, their emphasis on Russian as the main language used within their families (see paragraphs 13-16 above), the Constitutional Court's ruling in the case concerning pre-schools (see paragraphs 38 above), and the applicants' submissions to the Court (see paragraphs 97 and 128 above), the Court will examine this complaint solely on the basis of language as the grounds for the alleged difference in treatment (see, for a similar conclusion, *Valiullina and Others*, cited above, § 190, and *Džibuti and Others*, cited above, § 128).

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

138. The Court observes that the Government largely relied on the Constitutional Court's reasoning to argue that Russian-speaking pupils and Latvian-speaking pupils were not in a relevantly similar situation (see paragraph 133 above). The applicants, however, argued that both groups were on an equal footing as regards the benefit which they derived from an education in their mother tongue, but the attitude towards them was different.

139. The Court reiterates 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 on the difference in treatment between landowners' 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* [GC], request no. P16-2021-002, French *Conseil d'État*, § 64, 13 July 2022 ("Advisory opinion P16-2021-002")). 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, particularly 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).

140. The Court has noted that when bringing a complaint under Article 14 of the Convention, applicants have to show that they have been treated differently from another person or group of persons placed in a relevantly similar situation, or in the same way as a group of persons placed in a relevantly different situation. Depending on the context in which Article 14 has been invoked, the Court may examine allegations of discrimination from different angles. On the one hand, it can be argued that the State has a positive obligation to treat different groups of pupils differently, chiefly on the grounds that their mother tongue is different. On the other hand, it can be argued that all pupils – irrespective of their mother tongue – are in a relevantly similar situation in so far as they wish to have access to education in a particular country. While those aspects are so intertwined that one could say that they are two sides of the same coin, the Court considers that the present case has to be examined from the latter perspective, that is, from the perspective of the right to have access to the education system in Latvia as a whole, given that the domestic law does not give any language other than Latvian a particular status and the Convention does not contain a specific provision on the rights of minorities, and the applicants rely on Article 2 of Protocol No. 1 taken in conjunction with Article 14 of the Convention, but Article 2 of Protocol No. 1 does not include the right to access education in a particular language (see *Džibuti and Others*, cited above, § 131).

141. Taking into account the subject matter and purpose of the 2018 amendments, the Court observes that they concerned children enrolled in all public and private pre-schools and aimed to restore the use of Latvian as the language of instruction and the unity of the education system in Latvia, in order to facilitate equal access for pupils to the State education system; in addition, from a broader perspective, they aimed to eliminate the consequences of the segregation in education that had existed under the Soviet regime (see *Valiullina and Others*, cited above, §§ 193-201, and *Džibuti and Others*, cited above, § 134). However, the Court is bound to look not only at the subject matter and object 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 P16-2021-002, cited above, § 68).

142. In assessing whether the situations were comparable, the Court notes that the *de facto* effect of the 2018 amendments was that Russian-speaking pupils, such as the present applicants' children, who were enrolled in pre-school education programmes, could no longer pursue an education where substantial parts of the curriculum were taught in Russian, whereas Latvian-speaking pupils could continue to pursue their education in Latvian. Thus, following those amendments, Russian-speaking pupils and Latvian-speaking pupils at the same stage of pre-school education – irrespective of which school they attended or which education programme they followed – were required to follow a curriculum which put an emphasis on the use of Latvian. Although the pre-school curriculum did not lay down specific proportions as regards the use of Latvian as the language of instruction (like those which had been implemented in primary and secondary education), Latvian was to be “the main language of communication in play-based lessons” in pre-school education from the age of five (see paragraphs 11 and 54 above). Looking at the comparable situations as a whole, and taking into account that the exceptions which the applicants claimed that they had had previously were no longer available to Russian-speaking pupils enrolled in pre-school education programmes, the Court considers that Russian-speaking pupils and Latvian-speaking pupils were in a relevantly similar situation as regards pursuing their pre-school education following the 2018 amendments. In arriving at this conclusion, the Court has taken into account that the alleged discrimination in the present case was on the grounds of “language”, and that the aim pursued by the legislature, which was the basis for the alleged difference in treatment, remains fully pertinent to the proportionality analysis which follows below.

(β) The legitimacy of the aims pursued

143. As to the legitimacy of the aims pursued, the Court has already accepted that the need to protect and strengthen the Latvian language was a legitimate aim. Another legitimate aim was the restoration of the 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 *Valiullina and Others*, cited above, §§ 195-201). Considering that private schools were considered to form part of the State education system, the Court has furthermore accepted that those aims also applied in respect of private schools (see *Džibuti and Others*, cited above, §§ 135-39).

144. The Court notes that the applicants in the present case also emphasised another aim: preparing children for primary education. The Constitutional Court acknowledged that by strengthening the role of the Latvian language in pre-school education, children were indeed prepared for primary education (see paragraph 32 above). The Court agrees that in the

context of the present case, this is an additional legitimate aim for the 2018 reform with respect of pre-school education.

(γ) Proportionality of the alleged difference in treatment

145. As to proportionality, the Court refers to its findings in *Valiullina and Others*, which concerned public schools, where it concluded that: (i) the State could take steps to correct factual inequalities so that Latvian-speaking individuals could regain their rights, but also had to ensure that minority groups could learn their language and preserve their culture and identity; (ii) the amendments in question did not amount to sudden and unexpected changes in the education system; (iii) the amendments did not remove the use of Russian as the language of instruction in its entirety; (iv) the education programmes in question offered a range of different possibilities; (v) there was no common European or international consensus as regards the language of instruction; and (vi) the States had a wide margin of appreciation in organising their education systems, particularly as regards the language of instruction (see *Valiullina and Others*, cited above, §§ 204-14).

146. The Court refers to its findings in *Džibuti and Others*, which concerned private schools, where it found that the above conclusions were fully relevant to private schools, taking into account that: (i) private schools were considered to form part of the State education system; (ii) general education standards applied to both public and private schools, in so far as those schools issued pupils with State-approved certificates attesting to the completion of their studies; (iii) the State was justified in being rigorous in the regulation of the private sector in the field of education, for example in the context of private schools; (iv) the domestic legislation concerning the language of instruction had applied to private schools prior to the 2018 legislative amendments, and had required that some parts of the curriculum be taught in the State language; (v) the 2018 reform had not completely stopped Russian from being used as the language of instruction in the curriculum of private schools; and (vi) private schools in Latvia received State and/or municipal funding (see *Džibuti and Others*, cited above, § 149).

147. The Court considers that the above-mentioned elements are fully relevant to its analysis in the present case, which concerns pre-schools, since pre-school education, in particular the second stage of pre-school education (for children aged five to seven), also forms part of the State education system.

148. The Court has held that the States have a wide margin of appreciation in organising their education systems, particularly as regards the language of instruction (see *Valiullina and Others*, cited above, § 212). However, the Court notes as follows with regard to pre-school education. On the one hand, international recommendations emphasise the importance of early learning in the mother tongue for children's overall personal and cognitive development (see paragraph 62 above and the relevant paragraphs of those

recommendations quoted in *Valiullina and Others*, cited above, §§ 93 and 95). Those recommendations may be seen as calling for the States to be afforded a narrower margin of appreciation, in view of the importance of young children's mother tongue when they are being prepared for primary education. On the other hand, in the context of pre-school education for young pupils aged five to seven, the practice of the member States of the Council of Europe is rather diverse (see paragraphs 65 and 107 above). It is true that primary education, which provides basic literacy and numeracy skills and a child's integration into and first experiences of society, is compulsory in most countries (see *Ponomaryovi v. Bulgaria*, no. 5335/05, § 56, ECHR 2011). However, the same cannot be said of pre-primary education, which although intended to prepare pupils for primary education, appears to be compulsory in only half of the member States of the Council of Europe. Consequently, the Court considers that the margin of appreciation afforded to the States is somewhat wider with respect to pre-school education.

149. The Court does not accept the applicants' assertion that the 2018 reform with regard to pre-school education was introduced unexpectedly and was not sufficiently discussed (see paragraph 127 above). The Court notes that the parties to the present case agreed that a bilingual approach at the second stage of pre-school education (for children aged five to seven) had, at least to a certain extent, been required under the previously applicable regulation, which had introduced unified models and templates for pre-school education (see paragraphs 9-10 above). Accordingly, as early as 2012 – six years before the 2018 reform – the Government had already taken certain steps with a view to ensuring that young children (from five to seven years of age) were exposed to and developed knowledge of not only their mother tongue, but also Latvian, which they had to learn on a daily basis (see paragraph 10 above).

150. Moreover, the Court considers that the use of the State language in pre-school education must be viewed in the wider context of the efforts made to improve the curriculum designed for pre-school education in Latvia. The Court refers to the Constitutional Court's findings to the effect that since 2014 several working groups and councils had been set up, and questions that related not only to the curriculum but also to the acquisition of Latvian at pre-school level had been discussed. A new approach and curriculum had been tested in several pre-schools in different regions prior to being formally put before the Cabinet of Ministers and adopted in the form of a regulation (see paragraph 44 above). In that regard, it is significant that during those consultations in 2014-2016 and the public discussions that followed in 2017-2018, the relevant stakeholders – minority groups, children's parents, representatives of public organisations and educational institutions offering pre-school education programmes for minorities – could participate and express their views (*ibid.*). In such circumstances, it is not relevant that the

impugned regulation was only briefly discussed and was adopted at one meeting of the Cabinet of Ministers, as pointed out by the applicants.

151. Besides, as noted by the Constitutional Court, even after the 2018 amendments, a bilingual approach (as referred to in the first sentence of the impugned provisions, quoted in paragraph 54 above) could be used throughout a child's pre-school education – not only in relation to children aged one and a half to five years, but also those aged five to seven. As explained by the Constitutional Court, the second sentence of the impugned provision, in accordance with which “the main language of communication for children in play-based lessons [had to] be the Latvian language”, had to be seen in the wider context of those amendments, which had also been intended to improve the curriculum and place emphasis on play-based lessons (see paragraphs 32, 34, 36 and 54 above). The Court takes note of the fact that the emphasis on play-based lessons in Latvian and on a competency-based education overall is particularly important. This is because the second stage of pre-school education is aimed at preparing young children for primary education and more formal schooling, which would be difficult without sufficient knowledge of the State language. For example, at the material time, no less than 50% of the teaching in classes 1 to 6 of primary school had to be in Latvian. However, as emphasised by the Constitutional Court, those changes did not mean that bilingual education had been abandoned. As regards pre-school education, the option of using two or more languages had been preserved not only for children aged one and a half to five, but also for those aged five to seven (see paragraph 32 above).

152. Furthermore, the Court also notes that pre-school educational institutions were specifically tasked with providing support for children who needed help in relation to learning Latvian (see paragraph 52 above). Thus, additional support measures were envisaged for those children who might need to adapt to the new situation and take extra measures to improve their knowledge of the State language. The Court concludes that the 2018 legislative amendments in relation to pre-schools were implemented gradually, the views of the stakeholders were heard and there was sufficient scope for those amendments to be adapted to the needs of those affected.

153. The Court further finds that the applicants' allegations about the decreasing quality of pre-school education lack any substance. The Constitutional Court established that there was a mechanism for monitoring the quality of education in Latvia (see paragraph 32 *in fine* above). The Court has not been presented with any evidence enabling it to depart from the findings of the Constitutional Court in that regard.

154. As to less restrictive means of ensuring the legitimate aim, the Court notes that the applicants in the present case did not specifically insist on children being able to receive their entire pre-school education in their mother tongue, and instead they preferred a “return” to a bilingual approach in pre-school education (see paragraph 129 above). In this context, they also

referred to the Advisory Committee's recommendation to the Latvian authorities "to continue their endeavours to ensure an appropriate bilingual curriculum at the level of pre-school education". However, the Court has already established above that a bilingual approach could still be used throughout a child's pre-school education, even after the 2018 amendments. As regards the recommendation by the Venice Commission "to return to the previous 'bilingual approach' in play-based lessons applied to the whole period of pre-school education", the Court takes note of the fact that when the Venice Commission's opinion was adopted on 18 June 2020, the judgment concerning pre-schools had not been handed down by the Constitutional Court. On 19 June 2020 the Constitutional Court issued its judgment, in which it explained the scope of the impugned regulation and, in particular, clarified that a bilingual approach could also be used throughout a child's pre-school education (see paragraphs 32, 34, 36, 54 and 151 above). If indeed, as implied by the Venice Commission, the impugned provisions were not sufficiently clear, by issuing its judgment of 19 June 2020, the Constitutional Court provided an interpretation of the relevant provisions of the domestic law; that interpretation was binding on all domestic authorities and natural and legal persons (see, as to the binding effect of the interpretation given by the Constitutional Court, *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, §§ 110 and 161, 25 November 2014).

155. As noted above (see paragraph 148 *in fine*), the Court considers that the States have a somewhat wider margin of appreciation as regards pre-school education which is intended to prepare pupils for primary education. The respondent State, in restoring the use of Latvian as the language of instruction and gradually implementing the education reform with respect to pre-school education, has not overstepped its margin of appreciation, as it has maintained Russian-speaking pupils' ability to learn their language and preserve their culture and identity at the second stage of pre-school education (see, in particular, paragraph 36 above). 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 at the second stage of pre-school education.

156. 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 did not amount to discrimination on the grounds of language.

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

(b) Alleged discrimination against Russian-speaking pupils with special needs compared with Russian-speaking pupils

(i) General principles

158. The general principles governing the application of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the Convention as regards the education of people with disabilities were set out in detail in *Çam* (cited above, §§ 52-54 and 64-67), *Sanlısoy v. Turkey* ((dec.), no. 77023/12, §§ 58-61, 8 November 2016), *Enver Şahin v. Turkey* (no. 23065/12, §§ 52-55 and 60-61, 30 January 2018) and *G.L. v. Italy* (no. 59751/15, §§ 49-54, 57 and 62-63, 10 September 2020). In that context, the Court considers it sufficient to emphasise that:

(a) Article 14 of the Convention prohibits discrimination on grounds of disability, which falls under the rubric “other status”;

(b) Such discrimination can consist not only in less favourable treatment on grounds of a disability without a reasonable and objective justification, but also in a failure to provide “reasonable accommodation” for someone with a disability;

(c) The notion of “reasonable accommodation” in this context must be understood in the sense ascribed to it by Article 2 of the United Nations Convention on the Rights of Persons with Disabilities (see paragraph 66 above);

(d) “Reasonable accommodation” in the field of education can take different material or non-material forms – for instance, teacher training, curricular adaptation or appropriate facilities, depending in particular on the disability in question – and it is not for the Court to define the practical arrangements for this in a given case, the national authorities being much better placed to do so, it being emphasised however that those authorities must take great care with the choices that they make in this regard.

159. It must also be emphasised that a disability may consist in or result from not only a physical impairment, but also a mental or behavioural one (see *T.H. v. Bulgaria*, no. 46519/20, § 105, 11 April 2023). Lastly, Article 14 of the Convention requires reasonable accommodation, rather than all possible adjustments which could be made to alleviate the disparities resulting from someone’s disability regardless of their costs or the practicalities involved (*ibid.*, § 122).

(ii) Application to the present case

160. The only applicants in the present case who raised a separate claim under Article 2 of Protocol No. 1 taken in conjunction with Article 14 on account of the alleged discrimination against children with special needs were the first and second applicants, that is, a child who attended a preparatory group in the school years 2020/21 and 2021/22 where she was in a specially designed pre-school education programme for children with speech

impairments, and her mother. The Court observes that they alleged discrimination on account of the fact that the Latvian education system did not provide for special regulation of the use of the State language in the education of children with special needs. The ability of those children to learn the State language was different from that of children who did not have any particular impairments. The Court notes, however, that those applicants did not provide further information about the first applicant's health impairment, personal situation or any particular difficulties she faced in the State education system (see paragraph 130 above).

161. The Court is aware that all children have their own specific educational needs, especially children with disabilities. In the educational sphere, the Court has acknowledged that reasonable accommodation may take a variety of forms, whether material or non-material, educational or organisational, in terms of the architectural accessibility of school buildings, teacher training, curricular adaptation or appropriate facilities. That being the case, the Court emphasises that it is not its task to define the resources to be implemented in order to meet the educational needs of children with disabilities. The national authorities, by reason of their direct and continuous contact with the vital forces of their countries, are in principle better placed than an international court to evaluate local needs and conditions in this regard (see *Çam*, cited above, § 66).

162. In the context of the present case, the Court notes that all children may have specific educational needs, irrespective of their mother tongue and whether they belong to a minority. Reasonable accommodation in the field of education may take different forms, and it is not for the Court to define the practical arrangements for this in a given case; the national authorities are better placed to do so, but must take great care with the choices that they make in this regard (see paragraph 158 above).

163. In so far as the applicants relied on Article 14 taken in conjunction with Article 2 of Protocol No. 1, the Court will contain its analysis of the allegations of discrimination in the present case by examining specific allegations made by the applicants which may vary depending on their individual situation, and by considering such factors as the particular disability, impairment or other difficulties faced by the person concerned. Indeed, reasonable accommodation, as understood in the sense ascribed to it by Article 2 of the United Nations Convention on the Rights of Persons with Disabilities, consists of "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a *particular case*" (emphasis added) (see paragraph 66 above). In that regard, the present case is to be distinguished from those cases where the Court has examined 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, who, in the majority of cases, did not necessarily suffer from any particular

disabilities (see, for example, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007-IV; *Oršuš and Others v. Croatia* [GC], no. 15766/03, ECHR 2010; and *Sampanis and Others v. Greece*, no. 32526/05, 5 June 2008).

164. The Court observes that, in contrast to the above-mentioned cases, the Latvian legal system secures the right of education for children with special needs in the form of inclusive education (see paragraph 55 above). In Latvia, children with special needs may receive an education by following a special education programme or a general education programme. A special education programme may take one of the following forms: (i) a general education class; (ii) a special class or group at a general educational institution; or (iii) a special educational institution. If a child with special needs is enrolled in a general education programme, the educational institution must provide appropriate support measures and draw up an individual learning plan (see paragraphs 47 and 57 above).

165. It appears that in the school years 2020/21 and 2021/22 the second applicant was enrolled in and attended a special pre-school education programme designed for children with speech impairments. Therefore, she received a form of pre-school education which was tailored to the specific needs of children with speech impairments like her. The applicants have not provided any further information or evidence about the second applicant's personal situation. There is no information in the case file about her particular speech impairment or other difficulties which she has faced. Nor has it been suggested that any such difficulties have not been addressed by the domestic authorities (see paragraphs 17 and 130 above). There is also no allegation that the State has failed in its duty to provide for "reasonable accommodation", or that the first and second applicants could not receive support from the State to which they were entitled (contrast *G.L. v. Italy*, cited above, §§ 56-72).

166. To conclude, the Court does not exclude the possibility that there may be some specific circumstances where the principle of reasonable accommodation could require the State to ensure that pupils with special needs have some parts of their pre-school education in their mother tongue, in view of the legitimate aim to effectively prepare children for primary education (see paragraph 144 above). However, the Court considers that the first and second applicants have failed to substantiate their allegations of discrimination in the present case. The respondent State has taken a number of steps to provide support mechanisms for children with special needs. Such mechanisms were not limited to general measures and forms of support (such as special programmes for children with special needs), but also included individualised approaches (such as individual learning plans) to accommodate any specific educational needs (see paragraphs 47-48 and 57 above). It is true that the requirement to use Latvian as "the main language of communication in play-based lessons" in pre-school education from the age of five (see paragraphs 11 and 54 above) applied to all children enrolled in

general and special education programmes, including those with individual learning plans. However, as the Court has already concluded above, this did not mean that the mother tongue of children who belonged to minorities could not be used. Instead, a bilingual approach was ensured throughout pre-school education, including at the stage when children were five to seven years of age (see paragraph 151 above). In this context, the Court notes that both groups of pupils (Russian-speaking children with special needs and Russian-speaking children without special needs) could learn their mother tongue within the education system in Latvia.

167. Accordingly, there has been no discrimination, and therefore no violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the first, second, third, fourth, fifth, sixth, eighth and ninth applicants' complaints concerning Article 14 taken together with Article 2 of Protocol No. 1 as regards the second stage of pre-school education 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 as regards the second stage of pre-school education in respect of the first, second, third, fourth, fifth, sixth, eighth and ninth applicants.

Done in English, and notified in writing on 18 July 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Mattias Guyomar
President

APPENDIX

List of cases:

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality
1.	50942/20 Djeri and Others v. Latvia 04/11/2020	Inna DJERI 1978 Jūrmala Latvian Jeļena DJERI 2015 Jūrmala Latvian Jūlija SOHINA 1977 Riga “Permanently resident non-citizen” Ratmirs ČUBAROVŠ 2014 Riga Latvian Aļona GRIGORJEVA KUĻINOKA 1990 Riga Latvian Aļisa KUĻINOKA 2016 Riga Latvian Marianna KUĻINOKA 2020 Riga Latvian

DJERI AND OTHERS v. LATVIA JUDGMENT

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality
2.	2022/21 Gomajunova and Livdāne v. Latvia 18/12/2020	Jeļena GOMAJUNOVA 1976 Riga “Permanently resident non-citizen” Anna LIVDĀNE 2018 Riga Latvian