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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LATVIA

OPINION

**ON THE RECENT AMENDMENTS TO THE LEGISLATION
ON EDUCATION
IN MINORITY LANGUAGES**

**adopted by the Venice Commission on 18 June 2020
by a written procedure
replacing the 123rd Plenary Session**

on the basis of comments by

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I. Introduction

1. By letter of 13 December 2019, the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the recent amendments to the legislation on education in minority languages in Latvia.

2. Ms Bilkova (Czech Republic), Ms Kiener (Switzerland), Mr Velaers (Belgium) and Mr Vermeulen (Netherlands) acted as rapporteurs. Mr Hofmann (Germany), DG II expert, joined the rapporteur group tasked with this opinion.

3. On 20-21 February 2019, a delegation of the Commission composed of Ms Bilkova, Mr Velaers, Mr Vermeulen, Mr Hofmann and accompanied by Mr Bedirhanoglu, legal officer at the Secretariat of the Venice Commission, visited Riga and had meetings with the President of the Republic, the Minister of Foreign Affairs, the Ministry of Education and Science, the Ministry of Culture, the Advisory Council for Ethnic Minority Education, the Constitutional Court, the Ombudsman, representatives of some parliamentary parties, the relevant parliamentary committees, and representatives of the civil society, including some of Latvia's national minorities. The Commission is grateful to the Latvian authorities for the excellent organisation of this visit. The Commission wishes to thank all interlocutors for the fruitful discussions which took place on this occasion.

4. This opinion was prepared in reliance on the English translation of the following texts provided by the authorities: Education Law and Report on the Initial Impact Assessment of the Draft Law on Amendments to the Education Law ([CDL-REF\(2020\)008](#)), General Education Law and Report on the Initial Impact Assessment of the Draft Law on Amendments to the General Education Law ([CDL-REF\(2020\)009](#)), Law on Higher Education Institutions ([CDL-REF\(2020\)010](#)), Cabinet Regulation No. 716 on Guidelines for State Pre-School Education and Model Pre-School Education Programmes and Cabinet Regulation No. 747 for the National Basic Education Standard, with Sample Basic Educational Programmes ([CDL-REF\(2020\)011](#)). The translation may not always accurately reflect the original version on all points, therefore certain issues raised may be due to problems of translation.

5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the visit to Riga. It was adopted by the Venice Commission on 18 June 2020, through a written procedure which replaced the 123rd Plenary session in Venice, due to the COVID-19 disease.

II. Preliminary remarks

A. Scope of the present opinion

6. The Venice Commission was asked to assess the recent amendments to the legislation on education in minority languages. It was made clear to the Commission that as the amendments adopted before 2018 had already been examined by the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter: "ACFC" or "Advisory Committee"), in its [third opinion on Latvia](#), adopted in February 2018, the Commission's opinion should focus on more recent amendments. Therefore, this opinion covers only the provisions of the following amendments related to the education in minority languages and described below in §§ 36-57:

- Amendments adopted on 22 March 2018 to the Law on Education and the Law on General Education;
- Amendments adopted on 21 June 2018 to the Law on Higher Education Institutions;

- Amendments adopted on 21 November 2018 by Cabinet Regulation No. 716 on Guidelines for State Pre-School Education and Model Pre-School Education Programmes;
- Amendments adopted on 27 November 2018 by Cabinet Regulation No. 747 for the National Basic Education Standard, with Sample Basic Educational Programmes.

7. Thus limited, this opinion does not constitute a full and comprehensive review of the entire legal framework governing the education in minority languages.

8. The Commission also underlines that, prior to the aforementioned amendments, the Latvian authorities had introduced a number of changes in the legislation on education in minority languages. These changes – the most relevant of which are described below in §§ 15-19 – are out of the scope of this opinion.

9. Finally, it should be recalled that, by its judgments of [23 April 2019](#), [13 November 2019](#) and 11 June 2020, the Constitutional Court of Latvia examined the constitutionality of the March and June 2018 amendments. Cases regarding the constitutionality of Cabinet Regulation No. 716 are currently pending before the Constitutional Court. In deference to the Constitutional Court and following its usual practice, the Venice Commission will avoid commenting on the compatibility of those amendments with the Latvian Constitution. Instead, it will base its analysis on the international standards applicable in this area.

B. Background information

1. Linguistic situation in Latvia

10. According to the 2011 population census of Latvia, the ethnic Latvian population makes up 62.1% of the total population, which is approximately 2 million. The largest ethnic groups are Russians (26.9%), Belarusians (3.3%), Ukrainians (2.2%), Poles (2.2%) and Lithuanians (1.2%).¹

11. According to data collected in 2017 by the Central Statistical Bureau of Latvia,² Latvian was the mother tongue of 60.8% of the inhabitants followed by Russian (36%) and other languages (3.2%) such as Belarusian, Ukrainian, Polish and Liv(onian). The same data reveals that the share of population mainly using Latvian at home accounts for 61.3%, while that of people using Russian constitutes 37.7%. Around 217,000 or 10.4% of Latvia's population hold the status of the former citizens of the USSR. They are so-called "non-citizens" as they are not citizen of Latvia or any other state.³

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

12. Throughout history, Latvian – similarly as several other languages in Central and Eastern Europe – was actively suppressed and sometimes voluntarily abandoned in favour of languages considered more sophisticated or more international. This was the case of German in the 18-19th century and Russian in the 19-20th century. The situation of the Latvian language became critical after the occupation and unlawful annexation of Latvia by the Soviet Union in 1940, even more

¹ ["On key provisional results of Population and Housing Census 2011"](#). Central Statistical Bureau of Latvia. 18 January 2012.

² ["Indicators characterising languages used by the population of Latvia"](#), Central Statistical Bureau of Latvia. 2017

³ Upon ratifying the [Framework Convention for the Protection of National Minorities](#) (hereinafter: "the Framework Convention") on 26 May 2005, Latvia stated, in a Declaration concerning the personal scope of application it intended to give the Convention, that "[p]ersons who are not citizens of Latvia or another State but who permanently and legally reside in the Republic of Latvia, who do not belong to a national minority within the meaning of the Framework Convention for the Protection of National Minorities as defined in this Declaration, but who identify themselves with a national minority that meets the definition contained in this Declaration, shall enjoy the rights prescribed in the Framework Convention, unless specific exceptions are prescribed by law."

after the Soviet re-occupation of the country in 1944-1945 that led to large-scale migration from the other parts of the USSR into Latvia⁴ as well as mass deportations of the local population. The Soviet authorities relentlessly pursued semi-official policy of Russification. The Russian language was promoted as the means of inter-ethnic communication, other languages did not have an equal status, and this fully applied to occupied Latvia.⁵

13. The restored Latvian state inherited from the Soviet system a segregated schooling system, in which Russians and other minorities attended schools with Russian as the language of instruction, while Latvians went to Latvian schools, but where Russian was a mandatory part of the curriculum. As a result, at the restoration of the independence of Latvia in 1991 the largest minority language – Russian – had in fact a more prominent place in schooling than the newly re-established state language Latvian. In 1991, most Latvians were bilingual, i.e. Latvian and Russian speakers, while Russians and other ethnic groups living in Latvia generally did not speak Latvian. On the other hand, other ethnic groups – Polish, Ukrainian, Belorussian and Jewish – did not have access to education in the language of their ethnicity, since they had been subject to the same policy of Russification as the titular ethnic group. Only since the restoration of Latvian independence were minority schools other than Russian schools re-established (they had existed in independent Latvia before World War II) – Polish, Jewish, Ukrainian and Estonian at first, to be joined by a Belarussian and a Lithuanian school some three to four years later.⁶

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

15. The reform of education contents in state schools implementing minority education programmes was introduced and developed gradually, starting from 1995. On 10 August 1995, the Education Law was amended, providing that in schools where the instruction was not in Latvian, the language of instruction shall be Latvian in grades 1 to 9, in at least two subjects, and in grades 10 to 12, in at least three humanities or science subjects.

16. In 1998, for basic education⁷ (grades 1 to 9), four models of national minority education were elaborated, which determined the proportion of subjects taught in Latvian, bilingually and/or in a minority language. Each state school could choose one or several of such models or develop their own education programme, i.e. a fifth model, complying with the proportions required by legislation in connection with the teaching language;⁸ the selection and implementation of these models were carried out gradually until 2002.

⁴ The number of Russians in Latvia grew from 8.8% of the total population in 1935 to 34% in 1989. It started to decrease again after Latvia regained independence in 1991 falling to 25.2% at the beginning of 2018. See Ministry of Foreign Affairs of the Republic of Latvia, [“Ethnic Composition and the Protection and Promotion of the Cultural Identity of National Minorities”](#) (15 January 2015); and Central Statistical Bureau of Latvia, [“In 2017, usually resident population of Latvia declined by 15.7 thousand”](#) (28 May 2018).

⁵ The implementation of the policy of Russification during Soviet period and its consequences on the linguistic situation in Latvia are explained in details in the judgments of [23 April 2019](#) and [13 November 2019](#) of the Constitutional Court of Latvia.

⁶ [Analytical Report PHARE RAXEN_CC Minority Education](#), study compiled by RAXEN_CC National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC), Vienna, 2004, p. 6.

⁷ Basic education is obligatory, and consists of primary education (grades 1 to 6) and lower secondary education (grades 7 to 9).

⁸ Five education programme models were the following: Model 1 – approximately 80% of the subjects taught in Latvian. Model 2 – 50% taught in Latvian and 50% in a minority language. Model 3 – every year an additional subject taught in Latvian is added. Model 4 – from 1 to 4 grade subjects are mostly taught in a minority language. Model 5 – a school-tailored model. In 2014, Model 2 was chosen by 42% of schools, Model 3 by 35%, Model 5 by 13%, each Model 1 and 4 by around 5% of schools. See [Language situation in Latvia: 2010–2015](#), Latvian Language Agency, 2017, p. 80.

17. The 1998 Education Law provided that in 2004 upper secondary education (grades 10 to 12) would switch to the Latvian language only. However, after protests in 2003 and 2004, the Law was amended, imposing on state and local government schools⁹ an obligation to ensure education in Latvian for not less than three fifths of the total number of lessons in a school year, which means that up to 40% of the curriculum in grades 10 to 12 could be taught in a minority language (Sub-paragraph 3 of paragraph 9 of the Transitional Provisions of the Education Law). By its judgment of [13 May 2005](#), the Constitutional Court declared the constitutionality of the provisions of the Education Law introducing this requirement.

18. As from 2007, schools implementing minority education programmes started to receive grade 12 state examination materials in Latvian, but pupils studying in such programmes could choose to complete the examination in either Latvian or in a minority language. According to information provided by the Ministry of Education, the number of graduates of minority education programmes who chose to take the state examinations in Latvian increased gradually. In the school year 2013/2014, 76% of graduates made such a choice, while in the school year 2016/2017, this choice was already made by 92%.¹⁰

19. On 8 August 2017 the Cabinet of Ministers amended its Regulations Nos 1510 and 335 providing for the exclusive use of Latvian in state examinations of grade 9, starting from the school year 2019/2020, and in state examinations of grade 12 starting from the school year 2017/2018. It should be noted that the results of grade 12 state examinations are crucial for obtaining state-sponsored higher education.

3. Current situation of the education in minority languages

20. According to the information shared on the website of the Ministry of Foreign Affairs of Latvia¹¹ as of June 2018, minority education programmes existed in seven languages: Russian, Polish, Hebrew, Ukrainian, Estonian, Lithuanian, and Belarusian. The state provided funding to 104 schools implementing minority education programmes (among them, 94 schools implement education programmes in Russian and bilingually, 4 – in Polish and bilingually, 1 – in Ukrainian and bilingually, 2 – in Hebrew and bilingually, 1 – in Latvian and Lithuanian, and 1 – in Latvian and Estonian) as well as 68 schools that offer both Latvian and minority education programmes (“dual stream schools”). For the 2017/2018 school year, a total of 49 380 students were registered in basic minority education programmes (grades 1 to 9) (out of 176 675 students at this education level in total) and 9 271 students were registered in upper secondary minority education programmes (grades 10 to 12) (out of 36 693 students at this education level in total).

21. Education in other languages of instruction than Latvian may be acquired in private schools as well. However, the number of private basic and secondary schools using other languages is insignificant. According to data provided to the rapporteurs by the Ministry of Education, in 2018/2019 58 private basic and secondary schools operated in Latvia (grades 1 to 12): 6 were international schools, 11 schools were teaching in Russian, 8 in Latvian and Russian, 2 in English, 1 in German, 1 in Latvian and French, 1 in Hebrew and the rest only in Latvian. In the same school year, the total number of students enrolled in ethnic minorities education programmes (bilingual Russian-Latvian) of private schools was 1 484.

⁹ In Latvia most of public schools are established by local authorities – municipalities. For the sake of clarity and simplicity, the present opinion uses the term “state schools” for all state and municipal institutions of education.

¹⁰ See Report on the Initial Impact Assessment of the Draft Law “Amendments to the Education Law” ([CDL-REF\(2020\)008](#)) and Report on the Initial Impact Assessment of the Draft Law “Amendments to the General Education Law” ([CDL-REF\(2020\)009](#)).

¹¹ <https://www.mfa.gov.lv/en/policy/society-integration/minority-education-in-latvia/minority-education-statistics-and-trends>

4. Statistical data regarding proficiency in Latvian

22. The gradual introduction of the state language in minority education programmes improved Latvian language proficiency substantially. While in 1989, in the last years of the Soviet Union, only 23% of the non-Latvians living in Latvia could communicate in Latvian, already in 2000 this indicator reached 53% and in 2009 over 90%.¹² Research carried out at the request of the Latvian Language Agency, through opinion polls and in-depth interviews with experts, and published in 2012, revealed that the proportion of non-Latvian inhabitants with command of Latvian (92%) was still lower than that of Latvian-speaking inhabitants with command of Russian (98%). It however indicated that proficiency in Russian was decreasing, especially in the youngest generation, whereas the popularity of Latvian was raising. Statistics indicated that among young people (aged 17-25) there were more speakers of Latvian than Russian.¹³

23. The follow-up research, published in 2017, confirmed these trends: *“Among Latvia’s young people (aged 15-24) Latvian is more widespread than Russian and, according to their self-assessment, their level of Latvian language proficiency is considerably higher than that of their Russian language proficiency. 87.3 % of Latvia’s young people aged 15-24 say that they speak Latvian very well or well, but 58.5 % say the same about their Russian language proficiency.”*¹⁴ This shows that around 13% of Latvia’s young people assess their knowledge of Latvian as not good.

24. The same research indicates that the language used for communication in society still is more often Russian than Latvian (p. 54), but it also indicates a tendency among members of ethnic minority communities to send their children to schools with Latvian as the language of instruction, specifically in order to ensure that they learn Latvian at a good level. As a result, the proportion of all schoolchildren in Latvia studying in schools implementing minority education programmes slowly but continually decreases (it was 33% in 1999 and 27% in 2010) (p. 79). This tendency was confirmed as well by certain interlocutors met in Riga.

25. Notwithstanding the abovementioned developments, the Latvian educational system still does not guarantee a sufficient proficiency in Latvian of all students. As for the students attending minority education programmes, the 2017 research indicates that *“ethnic minority students who received their secondary education in a school with Latvian as the medium of instruction have Latvian language proficiency that is somewhat higher than those who continued to attend schools implementing the ethnic minority educational program.”* (p. 82) The Ministry of Education provided the rapporteurs with the results of the grade 9 Latvian language exam of the students of the schools implementing minority education programmes for the period from 2016 to 2019. The results indicate that most of the students of those schools have B1 or B2 level of proficiency and only around 10% of them attained C1 level and almost 0% C2 level. The Ministry also provided comparative data regarding the results of the grade 12 Latvian language exam for years 2012 to 2019. They indicate that the results of the students of the schools with Latvian language are approximately 15% higher than the results of the students of the schools implementing minority education programmes. The results have remained almost the same for both two categories of students from 2012 to 2019.

26. These data demonstrate that in Latvia there is an issue of lack of proficiency in the state language amongst students enrolled in schools implementing minority education programmes.

¹² https://valoda.lv/wp-content/uploads/aktual/Val_sit_informat_lapa_3.pdf

¹³ *Language situation in Latvia: 2004–2010*, Latvian Language Agency, 2012, pp. 19-20.

¹⁴ *Language situation in Latvia: 2010–2015*, Latvian Language Agency, 2017, pp. 53, 55, 88.

5. Constitutional and legal framework for education in minority languages

27. There are a number of constitutional provisions which are of relevance for this opinion. The Preamble to the Constitution (the *Satversme*) contains several references to the Latvian language. First, the existence and development of the Latvian language is set as one of the objectives for which the state of Latvia was established. Second, the Preamble stresses that the Latvian language is part of the identity of Latvia. Finally, it declares that “*the Latvian language as the only official language*” is one of the foundations of a cohesive society. The Preamble also “*recognises and protects fundamental human rights and respects ethnic minorities*”.

28. Article 4 of the Constitution states that “*the Latvian language is the official language in the Republic of Latvia*”. Article 18 requires those elected to Parliament (the *Saeima*) to swear *inter alia* to strengthen “*the Latvian language as the only official language*”. Article 21 adds that “*the working language of the Saeima is the Latvian language*”. By virtue of Article 101, Latvian is also the working language of local governments. Article 104, relating to submissions addressed to state and local government institutions, indicates that “*everyone has the right to receive a reply in the Latvian language*”. Article 114 recognises the right of “*persons belonging to ethnic minorities [...] to preserve and develop their language and their ethnic and cultural identity*”.

29. The use of languages throughout the country is regulated in the State Language Law which indicates, in its Article 14, that “[t]he right to acquire education in the official language is guaranteed [...]. The use of the official language in regard to education shall be determined by the laws regulating education”. The laws regulating education encompass the 1998 Education Law, the 1999 General Education Law, the 1995 Law on Higher Education Institutions, the 1999 Vocational Education Law, and the 2005 Law on Scientific Activity, and several Regulations adopted by the Cabinet of Ministers. These legal acts have been repeatedly amended.

6. Latvia’s international obligations

30. Latvia has ratified various human rights treaties¹⁵ containing prohibition of discrimination on the ground of language: Article 14 of the [European Convention on Human Rights](#) (hereinafter: “the ECHR”), in connection with Article 2 of the [First Protocol](#);¹⁶ Article E of the [Revised European Social Charter](#); Article 26 of the [International Covenant on Civic and Political Rights](#); Article 2 para. 2 of the [International Covenant on Social, Cultural and Economic Rights](#); Article 2 para. 1 of the [Convention on the Rights of the Child](#); Article 21 para. 1 of the [Charter of Fundamental Rights of the European Union](#).

31. Furthermore, Article 27 of the International Covenant on Civic and Political Rights and Article 30 of the Convention on the Rights of the Child require that in states, in which ethnic or linguistic minorities exist, a person or a child belonging to such a minority shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture or to use his or her own language.

32. Latvia is also party to the Framework Convention. By ratifying the Framework Convention, Latvia has undertaken, in terms of language protection in education, to recognise that every

¹⁵ According to Article 89 of the Constitution of Latvia “[t]he State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.”

¹⁶ See e.g. the European Court of Human Rights (hereinafter: “ECtHR”), Case “[relating to certain aspects of the laws on the use of languages in education in Belgium](#)” v. *Belgium* (merits). Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64), 23 July 1968, pp. 29-30: “According to Article 14 (art. 14) of the Convention, the enjoyment of the rights and freedoms set forth therein shall be secured without discrimination (“sans distinction aucune”) on the ground, *inter alia*, of language; and by the terms of Article 5 of the Protocol (P1-5), this same guarantee applies equally to the rights and freedoms set forth in this instrument. It follows that both Article 2 of the Protocol (P1-2) and Article 8 (art. 8) of the Convention must be interpreted and applied by the Court not only in isolation but also having regard to the guarantee laid down in Article 14 (art. 14+P1-2, art. 14+8).”

person belonging to a national minority has the right to learn his or her minority language (Article 14 para. 1) and, in areas traditionally or substantially inhabited by national minorities, if there is sufficient demand, to make efforts “*to ensure, as far as possible and within the framework of [its] education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language*” (Article 14 para. 2). Article 14 para. 3 further provides that such support measures “*shall be implemented without prejudice to the learning of the official language or the teaching in this language.*”

33. Under Article 12 of the Framework Convention, the state shall take appropriate measures to promote equal opportunities for access to all levels of education and to foster knowledge of the history, culture, and religion of both the minorities and the majority, including by providing adequate opportunities for teacher training and access to textbooks. Latvia has also committed itself to recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments under Article 13 of the Framework Convention.

34. The promotion of the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve the essential elements of their identity including their language (Article 5) constitutes a further important obligation deriving from the Framework Convention for Latvia. Finally, as a party to this Convention, Latvia must ensure effective participation of persons belonging to national minorities in public affairs, in particular those affecting them (Article 15).

35. Latvia has also ratified the [UNESCO Convention Against Discrimination in Education](#) under which it agreed that “[i]t is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language”, provided however that “this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities [...]” (Article 5 para. 1 (c)).

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

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

36. On 22 March 2018, the *Saeima* adopted amendments to the Education Law and the General Education Law, which foresee a gradual transition to instruction in Latvian in both state and private schools of upper secondary education (grades 10 to 12) and an increase of the proportion of the Latvian language applied in minority education programmes implemented in state schools at the level of pre-school and basic education (grades 1 to 9).

37. Section 30 of the General Education Law provides for a possibility for a school to combine a basic education programme with a minority education programme, by including therein the native language of a national minority and other contents related to the identity of national minorities. This Section remains unchanged. However, Section 2 of the Law amending the General Education Law repeals the second paragraph of Section 42 of the General Education Law, which states that the secondary education programme (grades 10 to 12) may be combined with a minority education programme. Instead of the repealed paragraph, a second paragraph is added to Section 43 of the General Education Law, which will therefore be read as follows:

“Section 43. *The compulsory content of general secondary education programmes*

(1) *The compulsory content of general secondary education programmes shall be determined by the state general secondary education standard.*

(2) *Without exceeding the number of lessons per week defined in Section 44 of this Law and the number of lessons per day, an institution of education may additionally include*

*in the programme of general secondary education study subjects which are not referred to in the state general secondary education standard, including learning content linked to the minority native language and minority identity and integration into the Latvian society*¹⁷

38. In other words, these amendments significantly modify the bilingual education system model implemented at the level of basic (grades 1 to 9) and upper secondary education (grades 10 to 12).

39. These amendments enter into force on 1 September 2020 with respect to grades 10 and 11, and on 1 September 2021 with respect to grade 12 (Transitional Provisions of the General Education Law, para. 25).

40. On 1 September 2020, Cabinet Regulation No. 416 on Regulations Regarding the State General Secondary Education Standard and Sample Education Programmes of 3 September 2019 will enter into force. Pursuant to this Regulation, schools are entitled to offer and implement in grades 10 to 12, in addition to the basic and advanced courses in the general secondary education programme, a specialised course on “Minority Language and Literature” and other specialised courses related to the minority language, identity and culture.¹⁸

41. Pursuant to Sections 9 and 41 of the Education Law and Section 43 of the General Education Law, as amended in March 2018, the mandatory proportions in the Latvian language will be as follows:

Grades 1-6: instruction will be offered in accordance with 3 models of education included in the guidelines for the state pre-school education or state basic education standard (see below § 55). In the minority education programme the minimum share of Latvian will be 50% of the total number of lessons in a school year.

Grades 7-9: in the minority education programme the minimum share of Latvian will be 80% (previously 60%) of the total number of lessons in a school year.

Grades 10-12: instruction will be offered exclusively in Latvian (previously 60%), with the exception that a school may include in the programme learning content linked to the minority native language and minority identity.

42. The transition is gradual (see the Transitional Provisions of the Education Law, para. 66):

School year 2019/2020: 50% share will be introduced for grades 1-6
80% share will be introduced only for grade 7

School year 2020/2021: 80% share will be introduced also for grade 8
100% share will be introduced only for grades 10-11

School year 2021/2022: 80% share will be introduced also for grade 9
100% share will be introduced also for grade 12

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

¹⁷ According to the Transitional Provisions of the General Education Law, para. 25, “*the abovementioned amendments shall be included in the wording of the Law as of 1 September 2020 and 1 September 2021*”. Therefore, the English translation of the General Education Law ([CDL-REF\(2020\)009](#)) provided by the authorities does not include those amendments. However, the amendments are described in the first paragraph of the judgment of [23 April 2019](#) of the Constitutional Court.

¹⁸ The authorities have not provided the translation of this Regulation, but its content is described in the judgment of [13 November 2019](#) of the Constitutional Court (see § 14.3).

44. Pursuant to Section 33 para. 2 of the Education Law, the founder of the school (state authority or municipality for state schools, individuals for private schools) will decide whether to combine the basic education programme with a minority education programme and/or to include in the upper secondary education programme lessons linked to the minority native language and minority identity. However, by virtue of Section 31 of the Education Law, the school council, where representatives of parents “*shall be in majority*”, can provide proposals to the head of the school regarding the implementation of educational programmes.

45. In addition to state schools implementing minority education programmes on the level of pre-school and basic education in accordance with Section 41 of the Law on Education, the amended version of Section 9 para. 2 of the Education Law defines three types of institutions where “*education may be acquired in another language*:

1) *in educational institutions which are implementing educational programmes according to the bilateral or multilateral international agreements of the Republic of Latvia;*

[...]

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

3) *in educational institutions specified in other laws.”¹⁹*

46. Section 9 para. 2 of the Education Law therefore envisages differential treatment of learners, who belong to national minorities and whose native language is not one of the EU official languages, compared to learners belonging to national minorities whose native language is one of the EU official languages. It appears to also envisage differential treatment of learners belonging to national minorities, who attend schools implementing minority education programmes, compared to learners belonging to national minorities, who attend schools implementing minority education programmes in accordance with international agreements binding upon Latvia.

47. By its judgments of [23 April 2019](#) (with regard to state schools) and [13 November 2019](#) (with regard to private schools) the Constitutional Court of Latvia declared that the March 2018 amendments comply with the Constitution.

2. June 2018 amendments to the Law on Higher Education Institutions

48. On 21 June 2018, the *Saeima* adopted amendments to the Law on Higher Education Institutions, which impose on private higher education institutions and colleges an obligation to implement their study programme in Latvian. This obligation was previously applied only to state-founded higher education institutions. Nevertheless, Section 56 para. 3 of the Law on Higher Education Institutions – as well as Section 9 para. 3¹ of the Education Law – provides for exceptions to this general rule:

“[...] *The use of foreign languages in the implementation of study programmes shall be possible only in the following cases:*

1) ***study programmes which are acquired by foreign students in Latvia, and study programmes, which are implemented within the scope of co-operation provided for in European Union programmes and international agreements may be***

¹⁹ In Latvia, in addition to educational establishments providing general education, persons belonging to ethnic minorities have also the right to establish and operate private non-formal education institutions, such as summer schools and Sunday schools, which provide training tailored to the needs of persons belonging to ethnic minorities, with the aim of preserving and developing their language, culture and identity. See the judgment of [13 November 2019](#) of the Constitutional Court of Latvia, § 15.2.

implemented in the **official languages of the European Union**. For foreign students the acquisition of the official language shall be included in the study course compulsory amount if studies in Latvia are expected to be longer than six months or exceed 20 credit points;

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

3) study programmes the implementation of which in foreign languages is necessary for the achievement of the aims of the study programme in conformity with the educational classification of the Republic of Latvia for such educational programme groups: **language and cultural studies and language programmes**. The licensing commission shall decide on the conformity of the study programme with the educational programme group;

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

49. In accordance with these provisions, in state and private higher education institutions, instruction is possible only in Latvian and other EU official languages. Other languages which are not official languages of the EU such as Russian, Belarusian, Ukrainian and Yiddish can be the instruction language only in language and culture studies.

50. Pursuant to para. 49 of the Transitional Provisions of the Law on Higher Education Institutions, these amendments entered into force on 1 January 2019. Nonetheless, the higher education institutions and colleges, the language of implementation of study programmes of which fails to comply with Section 56 para. 3, have the right to continue the implementation of study programmes in the relevant language until 31 December 2022. After 1 January 2019, admission of students into study programmes which fail to comply with this provision is not allowed. However, the Latvian authorities informed the Venice Commission that by a judgment of 11 June 2020 the Constitutional Court of Latvia declared unconstitutional the June 2018 amendments to the Law on Higher Education Institutions.

3. November 2018 amendments – Regulations Nos 716 and 747 of the Cabinet of Ministers

51. On 21 November 2018, the Cabinet of Ministers adopted **Regulation No. 716** on Guidelines for State Pre-School Education and Model Pre-School Education Programmes. Annex 2 to this Regulation presents a model programme for minority pre-school educational institutions. Annex 2 states, in its para. 9, that "[l]earning of the Latvian language is promoted throughout the entire pre-school education period by using a bilingual approach, which, depending on the child's development, is implemented in collaboration between teachers, specialists and other staff of the educational institution, as well as using the Latvian language in everyday communication. **For children aged five and above, Latvian is the main means of communication in play-based lessons, except specially organised activities with the aim of learning the national minority's language and ethnic culture**" (emphasis added). Pursuant to para. 8 of annex 2, the mandatory education content shall be planned and organized regardless of the child's age ensuring that education content of the Latvian language is taught on a daily basis.

52. In Latvia, pre-school education is available for children between the ages of 1.5 and 7 years. Pre-school enrolment is, however, mandatory at the age of 5 and play-based lessons (game activities) constitute the main form of learning at this educational level (see para. 11.2 of Regulation No. 716).

53. Regulation No. 716 came into force on 1 September 2019. It replaced a relatively more inclusive Regulation No. 533, which prescribed a "bilingual approach" in play-based lessons for

the whole length of pre-school education covering children aged 1.5 to 7 years and encouraged the creation of a “*supportive environment for the acquisition of the official language*”.²⁰

54. Additionally, on 27 November 2018, the Cabinet of Ministers adopted **Regulation No. 747** for the National Basic Education Standard, which enters into force on 1 September 2020. The Regulation includes examples of basic educational programmes that comply with this standard. Its annex 12 contains a sample programme for basic minority education.

55. According to para. 7 of annex 12, schools are entitled to choose one of the following models and determine subjects to be studied in Latvian and in a minority language. The proportion of Latvian (which includes teaching of foreign languages) for each model are as follows:

- Model 1: at least 80% of subjects in Latvian in grades 1 to 9
- Model 2: at least 50% of subjects in Latvian in grades 1 to 6 and at least 80% of subjects in Latvian in grades 7 to 9
- Model 3: the same proportions as Model 2 with more emphasis to ethnic identity of students. This model is an educational programme developed by the school itself, which may include other subjects than the standard. It allows the school to create its own programme and such an opportunity is provided only to minority schools.

56. Each school can reduce or increase the number of lessons in a subject without exceeding 10% of the total number of lessons within three years in the subject where the number of lessons is being changed. However, when increasing or decreasing the number of lessons in a subject, the school should also respect the minimum proportions provided in the three abovementioned models.

57. It should be noted that a minority language may also be taught in state and private schools as a foreign language. Each school decides on the languages to be taught as a foreign language. However, the first foreign language can only be an EU official language. The non-EU languages can be taught only as the second foreign language (see Regulation No. 747, Annex 12, para. 12, p. 76). According to data provided by the Ministry of Education, in the school year 2018/2019 there were 177 731 students in obligatory general education in grades 1 to 9. 95.64% of these students chose English, 1.30% German and 0.55% French as the first foreign language. In the same school year, 26.07% of these students chose Russian as the second foreign language. There were 37 069 students in upper secondary education in grades 10 to 12 where the learning of two foreign languages is mandatory. 97.52% of the students chose English as the first foreign language and 54.50% of them chose Russian as the second foreign language.

58. Several international organisations have expressed concerns over the recent amendments to the legislation on education due to the risk of causing undue restrictions on access to education in minority languages.²¹

²⁰ See the joint letter of [24 September 2019](#) of the Special Rapporteur on the right to education, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on minority issues.

²¹ See ACFC, [Third Opinion on Latvia](#), 23 February 2018, §§ 23 and 151; UN Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined sixth to twelfth periodic reports of Latvia](#), CERD/C/LVA/CO/6-12, 30 August 2018, §§ 16-17; [Letter](#) of 29 August 2019 of the Chair of the UN Committee on the Elimination of Racial Discrimination; Joint letters of [26 January 2018](#) and [24 September 2019](#) of the Special Rapporteur on the right to education, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on minority issues; Human rights comment of 29 October 2019 of the CoE Commissioner for Human Rights: [Language policies should accommodate diversity, protect minority rights and defuse tensions](#); [Letter](#) of 1 March 2019 of the Chair of the Committee on Culture and Education of the European Parliament to the Prime Minister of Latvia.

III. Analysis

A. Public consultation

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

60. These allegations were rejected by the representatives of the authorities, who provided detailed information on the public consultation organised by the Ministry of Education and on each step of the legislative procedure followed until the adoption of the draft amendments. The reform of the minority education programmes was announced in October 2017 at a press briefing held by the Ministry of Education, where information about the content of the planned changes as well as the timeframe of their implementation was provided. The proposals were discussed in the Advisory Council for Ethnic Minority Education²² on 10 November 2017, which gave a positive opinion on the proposed changes. On the basis of all the opinions collected from all interested parties, the Ministry of Education prepared and submitted to the Cabinet of Ministers an informative report on the proposed changes as well as the timeframe and necessary support measures for their implementation. The Ministry also prepared an infographic on the substance of the planned changes and published it on its website and on social media profiles. The informative report was discussed in an open meeting of the Government on 5 December 2017. Both draft laws and their explanatory notes were announced for public consultation on 7 December 2017 in accordance with the regular procedure in order to allow all interested parties to submit their opinions for consideration at the ministry level before the submission of the draft texts to the Government. Opinions and questions received from other ministries and NGOs were discussed in a meeting organised by the Ministry with their authors. The draft laws were submitted to Parliament on 23 January 2018 and were examined in a number of meetings in February and March 2018 by the Parliamentary Committee of Education, Culture and Science. Those meetings were open to the public, including the parents' representatives and NGOs. The consultation with the relevant associations and public institutions (especially with schools implementing minority education programmes, etc.) continued in the process of the preparation of the relevant Cabinet Regulations in the framework of the [Project Skola2030](#).

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

62. Unlike the Constitutional Court, the Venice Commission does not have access to all the materials and relevant information to ascertain whether representatives of national minorities were sufficiently and adequately consulted in the legislative process. However, the information on the proposed amendments that the Ministry of Education has provided, the number and variety of public meetings devoted to the discussion of the proposals inside and outside

²² This Advisory Council to the Ministry of Education was established in 2001 and is composed of representatives delegated by educational institutions, local authorities, NGOs and various state institutions.

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

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

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

B. Compliance with international standards

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

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

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

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

67. Data referred to earlier in the present opinion (§ 25) suggest that there might be a need to foster proficiency in the Latvian language in schools, especially amongst children attending minority education programmes. Therefore, the Commission is ready to accept that the measures adopted by the Latvian authorities to increase proficiency in Latvian serve legitimate aims.

68. In its previous opinions related to the legislation on languages in Slovakia and Ukraine, the Venice Commission has repeatedly held that "*it is a legitimate and commendable aim for States to promote the strengthening of the State language and its command by all citizens, and*

to take action for its learning by all, as a way to address existing inequalities and to facilitate more effective integration of persons belonging to national minorities into society".²³ Based on the comparative analysis of laws applicable in European countries, the Commission noted that "state authorities are perfectly entitled to promote the knowledge and use of the official language and to ensure its protection".²⁴ This is in line with § 78 of the Explanatory Report to the Framework Convention which recognises that "knowledge of the official language is a factor of social cohesion and integration". The legitimacy of the protection of the state language has, moreover, been stressed by the Advisory Committee.²⁵

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

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

70. The necessity to improve the Latvian teaching especially in schools implementing minority education programmes was also highlighted by certain minority representatives in Riga. Nevertheless, in their view, the main problems are the insufficient number of qualified teaching staff and the shortage of educational resources, which cannot be solved by increasing the Latvian language proportion in education.

71. The insufficient command of Latvian amongst students attending minority education programmes may in part be explained by reasons such as lack of high-quality teachers, inadequate methodology of teaching the Latvian language, low quality and insufficiency of educative support for language teaching as well as ineffective implementation of the compulsory proportions for the use of Latvian. Many interlocutors complained about the poor level of the Latvian language proficiency of the teachers in general but especially the teachers of schools implementing minority education programmes. Furthermore, some interlocutors claimed that the mandatory proportions of the teaching in Latvian were not always properly implemented.

72. However, the Latvian authorities assured the rapporteurs that they had in the past undertaken significant efforts to improve the language proficiency of the teachers of schools implementing minority education programmes and to develop language-teaching aids for the students enrolled in those schools. Since 1996, the Latvian Language Agency (LLA), which is a body subordinated to the Ministry of Education, has been regularly organising Latvian language and methodology combined courses for professional needs of the teachers of ethnic minority schools and pre-school educational institutions. Until 2017, 19 054 teachers from these institutions participated in free courses. In the framework of an ongoing project "Approach to Competencies in the Learning Content" (2018-2021), the LLA is currently providing comprehensive support to educators, ensuring the development of Latvian language skills for professional needs.²⁶ The objective is to train 8 000 teachers under this project. The LLA has

²³ [CDL-AD\(2019\)032](#), Opinion on the Law ensuring the Functioning of the Ukrainian language as State Language, § 30 (hereinafter: "2019 opinion on Ukraine"). See also [CDL-AD\(2017\)030](#), Opinion on the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education, § 118 (hereinafter: "2017 opinion on Ukraine"); and [CDL-AD\(2010\)035](#), Opinion on the Act on the State Language of the Slovak Republic, §§ 41-42.

²⁴ [CDL-AD\(2010\)035](#), Opinion on the Act on the State Language of the Slovak Republic, § 40.

²⁵ ACFC, [Thematic commentary no 3](#) - The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, § 31; ACFC, [First Opinion on Estonia](#), 14 September 2001, § 39; ACFC, [Second Opinion on Estonia](#), 24 February 2005, § 90.

²⁶ For more details on the efforts of the authorities to improve proficiency in state schools implementing minority education programmes and the relevant current projects, see Committee on the Elimination of Racial Discrimination, "[Combined sixth to twelfth periodic reports submitted by Latvia under article 9 of the Convention](#),"

also developed methodologies, produced and published textbooks and methodological literature for Latvian language acquisition and bilingual studies.

73. Nevertheless, according to the Latvian education authorities, more than ten years after the introduction of bilingual education in minority education programmes (in 2004) it became clear that, despite the abovementioned efforts, many primary and secondary school graduates were not well prepared for using the state language for further studies or their working lives, where a good command of Latvian is essential. They claim that this situation creates a systemic inequality between citizens and difficulties for societal integration at national level. Therefore, based on their experts' opinions, the authorities came to the conclusion that, in addition to continuing to provide supportive measures, there is a need to increase the proportion of the use of Latvian in the process of general education. The authorities underlined the specific conditions of Latvia, where the development of Latvian language skills amongst the Russian-speaking persons is still hindered by the linguistic self-sufficiency of this part of the population. As a result, in the Latvian authorities' assessment, improving Latvian teaching methodologies and providing specific support for teaching Latvian in minority schools are not equally effective means of achieving Latvian proficiency, but can only be used as additional means.²⁷

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

c. Are the means proportionate?

75. The Commission recalls that Latvia has committed itself, under the Framework Convention, to recognise that every person belonging to a national minority has the right to learn his or her minority language (Article 14 para.1) and to make efforts, in areas traditionally or substantially inhabited by national minorities, if there is sufficient demand, to ensure that "*persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language*" (Article 14 para. 2). Pursuant to para. 3 of this provision, para. 2 "*shall be implemented without prejudice to the learning of the official language or the teaching in this language*".

76. According to data published by the Ministry of Education, in the school year 2017/2018 around 28% of all students attended minority education programmes.²⁸ This clearly shows that, while a part of minority families (around 37.7% of Latvia's population use Russian at home) choose education in the Latvian language only, most still choose bilingual minority programmes. This indicates the existence of a sufficiently high numerical demand for instruction in minority languages.

77. As noted in the Explanatory Report to the Framework Convention (§§ 75-79), Article 14 leaves the state parties a wide margin of discretion in shaping their policies with regard to providing for instruction of or in minority languages in their education system. There must be (i)

[due in 2007](#)", p. 15, §§ 76-77, 121, 2 March 2020; ACFC, [Third Opinion on Latvia](#), 23 February 2018, §§ 159-160; Latvia's [comments](#) on the third opinion of ACFC received on 21 September 2018, § 114.

²⁷ The same explanation was also provided to the Constitutional Court: see the judgment of [13 November 2019](#) of the Constitutional Court, §§ 11 and 22.2.

²⁸ See <https://www.mfa.gov.lv/en/policy/society-integration/minority-education-in-latvia/minority-education-statistics-and-trends>

a sufficient demand and (ii) sufficient resources, and there is (iii) a choice between teaching *in* the minority language and teaching *of* the minority language. Furthermore, (iv) these policies shall be implemented without prejudice to the learning of the official language or the teaching in this language, which may put limitations to using the minority language as the language of instruction.

78. However, this does not imply that a state party always can fulfil its duties under Article 14 of the Framework Convention by merely providing for instruction *of* minority languages. This is in particular true in a situation where for a long time education *in* minority languages has been an essential element of the education system. Although the segregated school system in Latvia was introduced during the illegal Soviet occupation, after the restoration of the Latvian state in 1991, the state gradually developed a bilingual education system. As observed before, the Framework Convention implies that the member states have to *strike a fair balance* between the preservation and promotion of the state language as a tool for social cohesion and integration within society, on the one hand, and the protection of the linguistic rights of persons belonging to national minorities, on the other hand. In order to ensure such a balance, in determining whether changes are proportionate to the aim sought, regard should be given to the existing, historically grown education system and the interests and expectations flowing therefrom. Of particular relevance, in this context, is also the judgment of 10 May 2001 of the ECtHR in the [Cyprus v. Turkey](#) case (Application no. 25781/94) where the Court concluded that the failure to make continuing provision for Greek language schooling at the secondary school level must be considered to be a denial of the substance of the right to education, as protected by Article 2 of Protocol No. 1 ECHR (§ 278).

79. Furthermore, the commitments undertaken by Latvia under Article 14 of the Framework Convention should be interpreted in conjunction with its Articles 5 and 12, pursuant to which Latvia should promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture and to preserve their language (Article 5), as well as take measures in the field of education to foster knowledge of the language of its national minorities (Article 12).

80. In the opinion of the Latvian authorities, the bilingual education system established in Latvia in 2004 was offering ample opportunities for students enrolled in such programmes to attain a good command of their mother tongue, but was not adequate for students to attain proficiency in Latvian. For that reason, the amendments subject to the present opinion were introduced, significantly reducing the proportion of teaching through a minority language in order to achieve the legitimate aim of full state language proficiency.

81. The Commission recalls that, in the context of the Framework Convention monitoring mechanism, changes from one model to another have been accepted in the past as (possibly) being justified by the legitimate goal of any state to support and (re)vitalize its state language(s) in the case of e.g. Estonia and Latvia.²⁹ That said, as the Commission underlined in its 2017 opinion on Ukraine (§ 96), *“in pursuing a legitimate public policy objective, to satisfy the proportionality requirement, the policy option chosen should be the one with the least degree possible of adverse impact on the legitimate interests of those concerned.”*

82. In its 2017 opinion on Ukraine, the Commission examined the proportionality of a significant reduction in the amount of teaching in the minority language in favor of the state language. Taking into account the existence of century-old minority schools which are part of the minorities' cultural heritage, the Commission concluded that *“only a solution providing for teaching both in the state language and the minority language may be justified”* (§§ 100 and 103). In particular, it underlined that, for the sake of the proportionality, it has to *“be ensured that,*

²⁹ See ACFC, [First Opinion on Estonia](#), 14 September 2001, §§ 50-54; ACFC, [First Opinion on Latvia](#), 9 October 2008, §§ 143 and 146.

alongside the increased teaching in Ukrainian, sufficient room is left for a teaching in the minority language which will enable the students belonging to the minority to attain a sufficiently high level of oral and written proficiency in the language, enabling them to also address complex issues in their native language” (§ 103).

83. This conclusion is also valid in the case of Latvia, where there are century-old Russian schools, and where there has been a system of public schools teaching in the Russian language alongside Latvian schools since the first period of Latvian independence (1918-1940). Although under the Soviet occupation the segregated schooling system was the result of the unlawful annexation, after the restoration of the Latvian state, a bilingual education system was gradually developed to protect the rights of persons belonging to national minorities in line with the principles laid down in the Framework Convention. The Advisory Committee has also interpreted provisions of Article 14 of the Framework Convention in the sense that there should be no mutually exclusive choice between the learning of a minority language or the state language.³⁰ In other words, parents and students should not be obliged to choose between acquiring proficiency either in the minority language or in the state language.³¹

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

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

86. Cases concerning the compatibility of this Regulation with the Latvian Constitution are pending before the Constitutional Court. The Venice Commission should not and does not give an opinion on these constitutional issues. However, in the view of the Venice Commission, this Regulation is problematic from the point of view of proportionality and coherence of the structure of the education system. The Commission recalls that the importance of early learning in the mother tongue for the cognitive development of children, including the subsequent learning of other languages, is widely recognised by international organisations,³² and stressed by the Advisory Committee.³³ According to the Hague Recommendations, “[t]he first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language.”³⁴

³⁰ See ACFC, [Thematic commentary no 3](#) - The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, § 72.

³¹ ACFC, [Fourth Opinion on the Republic of Moldova](#), 25 May 2016, § 81.

³² For instance, the first principle of UNESCO's [Principles of Language and Education](#) is that “the Mother tongue instruction is essential for initial instruction and literacy and should ‘be extended to as late a stage in education as possible’”. One of the components of this principle is that “every pupil should begin his [or her] formal education in his [or her] mother tongue”.

³³ See for instance ACFC, [Second Opinion on Latvia](#), 18 June 2013, § 114.

³⁴ The [Hague recommendations regarding the education rights of national minorities](#), OSCE-HCNM, October 1996, § 11. Studies carried out in many countries prove that “[m]other tongue based bilingual (or multilingual) education approaches, in which a child's mother tongue is taught alongside the introduction of a second language, can improve performance in the second language as well as in other subjects. [...] [R]ecent evidence now claims that at least six years of mother tongue instruction [...] is needed to sustain improved learning in later grades for minority language speakers and reduce learning gaps”. See UNESCO, Global Education Monitoring Report: [If you don't understand, how can you learn?](#), Policy Paper 24, February 2016, pp. 3-4.

87. In a joint letter of 24 September 2019 addressed to the Latvian Government, three UN Special Rapporteurs expressed concern that Cabinet Regulation No. 716 “*will harm minority’s children’s equal enjoyment of their human right to education in Latvia. The exclusion of their mother tongue from pre-school learning activities may hinder these minorities children’s learning.*”³⁵ The Venice Commission shares these concerns. In its view, by imposing Latvian at the mandatory pre-school (5-7 years) level as the main communication and instruction language, the state does not leave enough room for schools to adapt their education programme and teaching methods to the needs of pupils and for pupils belonging to minorities to preserve and develop their mother tongue. It is also not consonant with the bilingual approach in the legislation as amended, which allows schools 50% of mother tongue instruction in grades 1-6. The Latvian authorities informed the Venice Commission that in pre-school education it is not strictly regulated that the teaching process is implemented only in the state language and that a bilingual approach can be used, as well as several activities are provided in the minority language. Given the importance of early learning in the mother tongue, the Commission is of the opinion that the legislation should be clear and unambiguous. The Commission, therefore, recommends that the Government should amend Cabinet Regulation No. 716 in order to return to the previous “bilingual approach” in play-based lessons applied to the whole period of pre-school education.

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

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

90. In the view of the Venice Commission, this system offers sufficient discretion and flexibility for schools to implement a programme adapted to the needs of students belonging to national minorities. It may also ensure the existence of a sufficient number of schools providing a minority education programme, especially in the areas where the minorities are strongly represented in the decision-making bodies of local authorities. Furthermore, it might be argued that even though in the future the number of state schools implementing such programmes may fall short of demand, the need for education in a minority language can always be met by the establishment of private schools implementing a minority education programme. However, it should be noted that many minority groups do not have the possibility of setting up their own private schools in sufficient numbers to meet the needs of their respective community.³⁶ Therefore, in order to ensure that the right to minority language instruction is implemented adequately throughout Latvia, it is preferable that the legislation impose a clear obligation for a presence of sufficient state schools offering a minority education programme whenever there is enough demand for it.³⁷ As to the maximum share of the teaching in minority languages at the level of basic education,

³⁵ Letter of [24 September 2019](#) of the Special Rapporteur on the right to education, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on minority issues.

³⁶ In the same direction, see 2019 opinion on Ukraine, § 79.

³⁷ In the same sense, see ACFC, [Second Opinion on Latvia](#), 18 June 2013, § 113.

for grades 1-6 it is quite adequate (50%), and for grades 7-9 it does not seem to be unreasonably low (20%).

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

92. The Venice Commission recalls its assessment regarding secondary education made in its 2017 opinion on Ukraine: “*if the law were implemented in a manner that minority languages could only be taught as a subject and there would no longer be the possibility to teach other subjects in the minority language, this could clearly be a disproportionate interference with the existing rights of minorities*” (§ 122). However, it could be acceptable if the law enables the teaching of some subjects in minority languages on condition that “*the scope of this teaching will be sufficient to enable the students to attain a high level of oral and written proficiency, enabling them also to address complex issues*” (§ 123). This recommendation is also valid in the case of the upper secondary education in Latvia. The authorities should ensure that each school will have a possibility to implement a sufficient proportion of education at upper secondary level in the minority language in order to enable students to attain an adequate level of proficiency in their mother tongue.

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

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

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

96. As to the application to **primary and secondary private schools** of the mandatory Latvian language proportions, which were previously applicable only to state schools, the Venice Commission recalls that it examined a similar situation in its 2017 opinion on Ukraine where it pointed out that the application of the principle of compulsory education in the state language to private schools is in breach of Article 13 of the Framework Convention (§ 105). In its 2019 opinion on Ukraine, the Venice Commission welcomed Article 5 of the draft law on Complete Secondary Education as it confers on private schools the right to choose the language of education with the obligation for them to provide their students with proficiency in Ukrainian. It stated that “*this*

provision implements a recommendation of the 2017 opinion (§ 105) and ensures the compliance with Article 13 of the Framework Convention under which Ukraine committed [itself] to recognise that persons belonging to a national minority have the right to set up and to manage their own private educational establishments.” (§ 79). The Commission does not see any reason to depart from these observations in the case of Latvia. The Commission recalls that, in addition to the Framework Convention, Latvia has also ratified the UNESCO Convention Against Discrimination in Education under which it recognises the right of persons belonging to national minorities to carry on their own educational activities which include not only the maintenance of schools but also the use or the teaching of minority language (Article 5 para. 1 (c)). Therefore, to be in line with their international commitments, the authorities are advised to exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes.

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

98. Regarding **tertiary education**, the Commission notes that before the June 2018 amendments, minorities had the right to set up private institutions of higher education providing instruction in a minority language. Following the revision of the Law on Higher Education Institutions, the language of implementation of study programmes in both state and private higher education shall be in Latvian with the exception of EU official languages and language and culture studies.

99. In its [Thematic commentary on the language rights of persons belonging to national minorities](#), the Advisory Committee highlighted the importance of the continuity in “access to teaching and learning of and in minority languages at all levels of the education system, from pre-school to higher and adult education. [...] Lack of incentives or insufficient possibilities at pre-school, secondary or higher level can seriously reduce the attractiveness of minority language learning at primary level” (§ 75). In its opinions, the Advisory Committee has repeatedly welcomed provisions on access to university education in minority languages as an important contribution to the development and prestige of minority languages in the country.³⁸ Furthermore, in its [2008 opinion on Latvia](#), the Advisory Committee criticised a draft text on higher education providing for the compulsory use of Latvian as the teaching language in private universities that benefit from state subsidies. The Advisory Committee considered that “the arguments put forward by the authorities in support of the envisaged measures – state subsidies – are insufficient to justify such interference in the private sphere” (§§ 148-149).

100. The Latvian authorities informed the Venice Commission on the one hand that so far there has been no higher education institution offering a whole study programme only in a minority language, and on the other hand that there are currently no obstacles to study different minority languages, literature and cultures at the tertiary level in study programmes of philology and

³⁸ See, ACFC, [Thematic commentary no 3](#) - The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, § 75 and ACFC, [Third Opinion on Romania](#), 21 March 2012, § 170. The necessity for access to tertiary education in minority languages is stressed also by other organisations. See for instance the [Hague recommendations regarding the education rights of national minorities](#), OSCE-HCNM, October 1996, § 17 and Special Rapporteur on minority issues, [Language Rights of Linguistic Minorities: A Practical Guide for Implementation](#) (2017), p. 16.

culture (for example, Russian philology). In the light of the above-mentioned recommendation of the Advisory Committee and underlining its importance for the preservation of the minority languages, the Venice Commission recommends the Latvian authorities to consider enlarging the possibilities for persons belonging to national minorities to have access to higher education in their minority language, either in their own higher education institutions, or at least in state higher education institutions. This recommendation is consistent with the very recent judgment of 11 June 2020 whereby the Constitutional Court of Latvia declared the June 2018 amendments unconstitutional on the ground that the legislator had not properly assessed the existence of alternative means, which would be less restrictive of the autonomy and academic freedom of higher education institutions, in order to achieve the legitimate aim sought by the amendments.

101. Finally, and in general, it is also advisable that the education authorities constantly monitor the **quality of education received by pupils attending minority education programmes** in order to ensure not only that the new language proportions are implemented effectively, but also that the changes introduced to the education system do not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of their mother tongue. This is crucial in order to identify in a timely manner possible adverse effect of the new amendments on the quality of education including the teaching of and in a minority language and to make the necessary adjustments in due course.³⁹

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

2. Compliance with the principle of non-discrimination

103. Under Article 4 of the Framework Convention, Latvia has undertaken “*to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law.*” This provision prohibits “*any discrimination based on belonging to a national minority*”. Discrimination on grounds of language or belonging to a national minority is also prohibited by other international instruments ratified by Latvia, especially by Article 14 of the ECHR. However, these instruments do not impose an obligation on state authorities to grant an identical protection to every single minority group. Nevertheless, in order not to be deemed discriminatory, any differential treatment of national minorities should be duly justified.

104. The ECtHR stated, regarding Article 14, that “*discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. ‘No objective and reasonable justification’ means that the distinction in issue does not pursue a ‘legitimate aim’ or that there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realised’.*”⁴⁰ At the same time, states enjoy “*a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject-matter and its background*”.⁴¹

³⁹ The Advisory Committee has also stressed the need for a regular monitoring of the quality of education during the reform process in the context of educational reforms, in particular those aimed at promoting increased official language teaching in minority language schools. ACFC, [Thematic commentary no 3](#) - The language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, § 80.

⁴⁰ ECtHR, [Sejdić and Finci v. Bosnia and Herzegovina](#), nos. 27996/06 and 34836/06, 22 December 2009, § 42.

⁴¹ ECtHR, [Rasmussen v. Denmark](#), no. 8777/79, 28 November 1984, § 40. It should also be noted that although Article 14 has an accessory character, it has also a relative autonomy. The prohibition of discrimination not only applies to rights explicitly guaranteed in the ECHR but also to those “*additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide*”. See [Fábián v. Hungary](#) [GC], no. 78117/13, 5 September 2017, § 112; [Biao v. Denmark](#) [GC], no. 38590/10, 24 May 2016, § 88; [İzzettin Doğan and Others v. Turkey](#) [GC], no. 62649/10, 26 April 2016, § 158.

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

a. Differential treatment based on bilateral or multilateral international agreements

106. Section 9 para. 2 of the Education Law defines four types of institutions where “*education may be acquired in another language*” than Latvian. One of these exceptions is “*educational institutions which are implementing educational programmes according to the bilateral or multilateral international agreements of the Republic of Latvia*”. It follows from the Constitutional Court’s judgment of [23 April 2019](#) that as of January 2019, Latvia had concluded in the field of cultural, scientific and educational cooperation bilateral agreements with Poland (29.03.2006), Ukraine (29.09.2017), Israel (27.02.1994), Belarus (13.05.2004) as well as a multilateral agreement with Estonia and Lithuania (10.07.1998). The Venice Commission is not in a position to verify the content of these agreements. However, the Constitutional Court, in its judgment of 23 April 2019, states that “*with the aim of developing and safeguarding ethnic, cultural and linguistic identity, the Parties [to these agreements] commit themselves to ensure to ethnic minorities, living in the territory of the Republic of Latvia, teaching of the native language, history and culture as well as education in the native language in accordance with the system of education of the Republic of Latvia. None of these agreements provide for the right to special proportion of using the language of ethnic minority in the process of education, different from the one defined in the Education Law.*”

107. This information was confirmed by the authorities during the visit of the delegation to Riga. They explained that this provision is solely for the objective of developing cooperation with foreign countries in the fields of culture, science and education in order to better promote minorities’ identity and culture. They assured the rapporteurs that this provision is in no way understood as providing for a possibility to establish schools implementing an education programme with a proportion of teaching in a minority language different from that laid down by Section 41 of the Education Law. According to the information provided in the Advisory Committee’s [third opinion on Latvia](#) (2018), by virtue of these bilateral agreements, support to minority schools is provided by Belarus, Estonia, Israel, Lithuania, Poland and Ukraine, which assist them with teaching aids, the organization of student summer camps, the participation of guest teachers and the renovation of school buildings (§ 153).

108. The Commission wishes to underline the importance of the interstate cooperation and support from kin-states in the field of education as a useful and effective means of promoting the efforts to preserve and develop minorities’ language and culture. Bilateral and multilateral agreements with kin-states may be used to provide subsidies for the maintenance of school premises and to provide schools implementing minority education programmes with teaching staff, textbooks and other teaching and learning materials. They may also serve to set up exchange programmes between schools of different countries. The conclusion of such agreements, therefore, pursues a legitimate aim. The Commission is also convinced that the authorities would avoid introducing in the future unjustified differences in treatment between minorities on the basis of such agreements.

b. Differential treatment between EU and non-EU languages

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

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

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

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

112. The authorities met in Riga explained to the rapporteurs that, as Latvia is an EU member, it is its duty to provide its citizens with sufficient opportunities to acquire knowledge of EU languages. The acquisition of other EU languages, especially English, is important for citizens, as it allows them to live and work in other EU countries. It is also important for consolidating the European integration of Latvian citizens and forging a European identity amongst citizens. Furthermore, in its judgments of [23 April 2019](#) and [13 November 2019](#), the Constitutional Court pointed out that the promotion of the learning of EU languages is an objective of Latvia, which follows from the Preamble of the *Satversme* (“*Latvia protects its national interests and promotes sustainable and democratic development of a united Europe*”) and the principle of good faith in international law. Finally, in the view of the authorities and the Constitutional Court, unlike minority education programmes, the possibility of exceptionally obtaining education in an EU official language is not intended to develop the culture and identity of the students concerned, but to foster the learning of a foreign language in depth.

113. In view of the importance of improving the knowledge of EU official languages amongst Latvian citizens in order to facilitate their free movement and residence in the EU as well as their access to the EU labour market, the Venice Commission considers that the provisions mentioned in § 109 pursue a legitimate aim. The Venice Commission considers moreover that the principle of proportionality is respected to the extent that the state offers adequate opportunities for persons belonging to minorities whose mother tongue is not an EU language to attain a sufficiently high level of oral and written proficiency in their language. If this condition is fulfilled, the Commission is of the opinion that the differential treatment in question would not be unacceptable from the point of view of the principle of non-discrimination, taking into account the margin of appreciation the state enjoys in this field.⁴²

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

IV. Conclusion

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

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

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

⁴² See ECtHR, [Leyla Şahin v. Turkey](#) [GC], no. 44774/98, 10 November 2005, § 154. See also ECtHR, Case “[relating to certain aspects of the laws on the use of languages in education in Belgium](#)” v. Belgium (merits). Application no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64), 23 July 1968, p. 40: “Article 14 (art. 14) does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention.”

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

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

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

- amend Cabinet Regulation No. 716 in order to return to the previous “bilingual approach” in play-based lessons applied to the whole period of pre-school education;
- take the necessary legislative and other measures to ensure that state schools offer a minority education programme whenever there is sufficient demand for it;
- exempt private schools from the mandatory proportions of the use of the Latvian language applied to state schools implementing minority education programmes;
- consider enlarging the possibilities for persons belonging to national minorities to have access to higher education in their minority language, either in their own higher education institutions, or at least in state higher education institutions;
- constantly monitor the quality of education received by pupils attending minority education programmes in order to ensure that the changes introduced into the education system do not undermine the quality of education and disproportionately reduce the opportunity for pupils to have good command of their minority language. The education authorities should also provide schools implementing minority education programmes with the necessary teaching materials and the teachers of these schools with adequate opportunities to continue to improve their Latvian and minority language skills in order to ensure their ability to implement the study process in Latvian, minority language and bilingually.

121. The Venice Commission remains at the disposal of the Latvian authorities and the Parliamentary Assembly for further assistance in this matter.