



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 4 June 2021

in Case No. 2020-39-02

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs, and Anita Rodiņa,

having regard to an application submitted by twenty-one Members of the 13th convocation of the *Saeima* of the Republic of Latvia – Anda Čakša, Inese Lībiņa-Egnere, Ainars Latkovskis, Rihards Kozlovskis, Ojārs Ēriks Kalniņš, Andrejs Judins, Atis Lejiņš, Arvils Ašeradens, Daniels Pavļuts, Artūrs Toms Plešs, Dace Bluķe, Mārtiņš Šteins, Mārtiņš Staķis, Mārtiņš Bondars, Inese Voika, Marija Golubeva, Dace Rukšāne-Ščipčinska, Vita Anda Tērauda, Inese Ikstena, Andris Skride, and Ilmārs Dūrītis,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 2 of Section 16, Para 3 of Section 17 (1), and Section 28¹ of the Constitutional Court Law,

at the court hearing of 5 May 2021 reviewed in written procedure the case

“On Compliance of Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Council of Europe Convention of 11 May 2011 on Preventing and Combating Violence against Women and Domestic Violence with the Preamble, Article 1, Article 99 and Article 110 of the *Satversme* of the Republic of Latvia and of Para 4 of its Article 4 with Article 91 of the *Satversme*

of the Republic of Latvia and its Article 14 with Article 112 of the Satversme of the Republic of Latvia”.

The Facts

1. On 16 May 2016, the Cabinet issued Order No 292 “On Conceptual Report “On Latvia’s Accession to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence””.

The solution offered in the Conceptual Report “On Latvia’s Accession to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence” to access the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereafter – the Istanbul Convention), by signing it in 2016 and ratifying it by 2018, was approved by this Order.

2. Para “c” of Article 3 of the Istanbul Convention provides that the term “gender” means the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

3. Para 3 of Article 4 of the Istanbul Convention provides: “The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.”

Para 4 of Article 4 of the Istanbul Convention provides that, under the terms of this Convention, special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination.

Para 1 of Article 12 of the Istanbul Convention, in turn, sets out that State Parties take the necessary measures to promote changes in the social and cultural

patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

Article 14 of the Istanbul Convention sets out:

“1. Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

2. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.”

4. The applicant – twenty-one Members of the Saeima (hereafter – the Applicant) – requests:

1) recognising Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Istanbul Convention as being incompatible with the Preamble, Article 1, Article 99 and Article 110 of the *Satversme* of the Republic of Latvia (hereafter– the *Satversme*);

2) recognising Para 4 of Article 4 of the Istanbul Convention as being incompatible with Article 91 of the *Satversme*;

3) recognising Article 14 of the Istanbul Convention as being incompatible with Article 112 of the *Satversme* of the Republic of Latvia”.

4.1. Pursuant to Para 1 of Article 12 of the Istanbul Convention, the State Parties have the obligation to engage in activities to promote changes in the public thought and attitude towards the behavioural models of women and men that exist in society to eradicate prejudices, customs, based on the idea of the inferiority of women and stereotyped roles for women and men. Moreover, the State Parties, in compliance with Para 3 of Article 4 of the Istanbul Convention, must promote changes in the public thought and attitude, without discriminating persons on such grounds as, *inter alia*, also gender, the definition of which is provided in Para “c”

of Article 3 of this Convention. It is alleged that the Parties' obligation to promote changes in public thought and attitude also towards such persons, for whom at the time of birth specific sex had been determined but who do not self-identify with this sex, for example, transgender and transsexual persons, persons who wear clothes of the opposite sex, transvestites and other groups of such persons, who do not conform with the perception that might have developed in society regarding what is proper for a man and a woman, follows from the aforementioned provisions of the Istanbul Convention.

Latvia is said to have the obligation to protect its constitutional identity, which is included in Article 1 of the *Satversme* and the core of the *Satversme*, and which is said to be unchangeable. Latvia's constitutional identity is constituted, *inter alia*, by Christian values and the family as a value, referred to in the fifth paragraph of the Preamble to the *Satversme*. Pursuant to Christian values and the concept of the traditional family it is said to be inconceivable that a person does not self-identify with their sex, determined at birth. Since Para "c" of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Istanbul Convention require changes in the public thought and attitude regarding this matter, undertaking the obligations included in the aforementioned provisions of the Istanbul Convention, substantially, would mean changing Latvia's constitutional identity and the core of the *Satversme*.

The State Parties' obligation, which follows from Para "c" of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Istanbul Convention, to promote changes in thinking and attitude, is said to violate also Article 99 of the *Satversme*. A person has an absolute right to hold a certain conviction or views, and the State is prohibited from imposing upon its inhabitants a certain doctrine or ideology. Moreover, the obligation envisaged in the aforementioned provisions of the Istanbul Convention is said to be contrary to Article 110 of the *Satversme*, from which the State's obligation to protect the traditions family, i.e., a family constituted by a child and his mother and father, and not to decrease the role of such a family follows.

4.2. Pursuant to Para 4 of Article 4 of the Istanbul Convention, the State Parties have a particular obligation to ensure the right to life without violence both in the public and private sphere particularly for women because predominantly they

are victims of gender-based violence. This norm provides for taking special measures for preventing gender-based violence, which are said to apply only to women and, thus, to create differential treatment on the grounds of gender. The legitimate aim of this differential treatment, i.e., protecting other person's rights, could be reached by less restrictive measures, i.e., by envisaging implementation of these measures for a fixed period.

4.3. Article 14 of the Istanbul Convention imposes the obligation upon the State Parties to modify the content of education to include in it study content regarding gender equality and gender roles, which have not been turned into stereotypes. Pursuant to the said provision, the Parties have the obligation to include into educational programmes also matters relating to persons who do not self-identify with their sex determined at birth. By teaching to children about the existence of such persons, proper process of education is not ensured and the rights of children and their parents, included in Article 112 of the *Satversme*, are restricted, i.e., the child's best interests and parents' right to educating their children in accordance with their religious or philosophical conviction are said to be endangered.

5. The institution, the authorised representative of which signed the Istanbul Convention, – the Cabinet – holds that Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 comply with the Preamble to the *Satversme* and its Article 1, Article 99 and Article 110, Para 4 of Article 4 of the Istanbul Convention complies with Article 91 of the *Satversme* but Article 14 of the Istanbul Convention – with Article 112 of the *Satversme*.

5.1. The Christian and family values referred to in the Preamble to the *Satversme* should not be understood to mean that they would be contrary to or incompatible with the efforts made by a democratic state governed by the rule of law to prevent and eradicate violations of human rights, which, in the particular case, are manifested as violence against women and domestic violence, and that they in any way would allow jeopardising women's dignity and lives, humiliation and discrimination of women.

The State's obligation to take general measures to change the behavioural models existing in society is said to apply solely to the aims defined in the Preamble to the Istanbul Convention and implementation thereof, i.e., preventing violence against women and domestic violence and not to imposing certain ideology or stereotypes. Any measures for preventing violence against women and domestic violence as violations of human rights are to be defined only as the fulfilment of the State's positive obligations, which follow, *inter alia*, from the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, rather than from imposed ideology.

The purpose of the Istanbul Convention is not to regulate the institution of marriage or change the understanding of the institution of marriage that follows from the national regulation. Parties must protect victims of violence, who are subject to risk in their home, marriage or family and who are threatened by family members, spouses or partners. The only thing, which really jeopardises family and marriage, is said to be violence – both physical and emotional, and not measures aimed at protecting and supporting victims of violence.

5.2. Equal or neutral treatment of women and men is to be considered as discrimination of women if, as the result of such treatment, women are deprived of the opportunities to exercise their rights because the fact that gender-related unfavourable situation exists for women and that women continue facing inequality is not recognised. In such circumstances, implementation of special measures is said to be admissible.

Allegedly, Para 4 of Article 4 of the Istanbul Convention does not require taking special measures that apply solely to women but determines that if the State implements special measures aimed at protecting women against violence, *inter alia*, domestic violence, such measures are not to be recognised as being discriminatory. Through the application of this provision, the actual inequality between women and men will be prevented, but in no case the equality before law will be abolished, legitimising discrimination of men on the grounds of gender.

The Cabinet draws attention to the fact that in the particular case the necessary measures are to be implemented until the aims of the Istanbul Convention

are attained because, as of that moment, both the actual and legal grounds for implementing further measures disappear.

5.3. Measures envisaged in Article 14 of the Istanbul Convention are said to be compatible with the right to education, included in Article 112 of the *Satversme*. I.e., the purpose of Article 14 of the Istanbul Convention is to achieve that the system of education helps in promoting understanding of equality of men and women, mutual respect, violence-free relationships, non-stereotyped gender roles, the right to personal integrity, violence against women and domestic violence, as well as the need to eradicate it. Moreover, this provision does not restrict the parents' right to educate their children in compliance with their religious or philosophical conviction.

The behavioural models of children are said to develop in early childhood and may be transferred from one generation to the next. However, sometimes the traditions, customs and habits that exist in society are contrary to the interests and rights of girls and women and subject them to the risk of violence. The education that children receive at school substantially influence the way they think and perceive themselves and the way they behave in relationships with persons of another gender. Therefore it would be inadmissible to add to the curriculum anything that could lead to a situation, where children would start perceiving discrimination and violence targeting women as acceptable.

6. The summoned person – the Ombudsman – subscribes to the considerations stated in the Cabinet's written reply and holds that Para "c" of Article 3, Para 3 of Article 4 and Para 1 of Article 12 comply with the Preamble to the *Satversme* and its Article 1, Article 99 and Article 110, Para 4 of Article 4 of the Istanbul Convention complies with Article 91 of the *Satversme* but Article 14 of the Istanbul Convention – with Article 112 of the *Satversme*.

6.1. In addition, the Ombudsman notes that in Latvia the church is separated from the State. Within political ideology, the State rather than the church is the most significant safeguard of legality, fairness and personal security, therefore it is inadmissible that the religiously positioned division of men's and women's roles

and view of their identity would adjust the prohibition of discrimination, enshrined in the constitution of a secular state, and the scope of protection for the diversity of opinion.

The Istanbul Convention does not impose upon the State Parties the obligation to revise the concepts of marriage and family. Firstly, a purpose like this has not been defined in the Istanbul Convention. Secondly, the concept of “marriage” already has been defined in Article 110 of the *Satversme* but the concept of “family”, which is broader, comprises also relationships that are not based on marriage. The State has undertaken to protect both aforementioned unions, *inter alia*, ensuring protection against violence.

6.2. The term of gender is said to be an integral part of the term of discrimination since the majority of discrimination cases are linked exactly to the public understanding of the social roles of genders. Hence, Article 91 of the *Satversme* includes prohibition of sex- and gender-based discrimination, referred to in the Istanbul Convention.

Men will not be placed in a more unfavourable situation due to the Istanbul Convention. Domestic violence is widespread, and it is based on deeply rooted stereotypes regarding a woman’s role in the family and compliance with the expectations of those around them. Particularly striking manifestations of these stereotypes could be observed during the last year, in the circumstances of the pandemic, when women had to undertake particular load in the family and, not infrequently, faced also violence perpetrated against them by their partners. Application of Article 4 of the Istanbul Convention would prevent the actual inequality of men and women.

6.3. Inclusion into the process of education also issues related to persons who do not self-identify with the sex determined at birth ensures qualitative education, aimed at child’s development and welfare. The opinions of various groups of persons regarding studying this issue in the framework of education process could be opposite; however, in such a case it is important to assess, whether such approach, abiding by the principle that the rights and interests of a child take the priority, would be beneficial for the child in the long term.

The young generation of society should be raised by explaining the substance of human rights and the need of respectful dialogue also in cases of conflict. In the long term, such approach promotes the development of harmonious persons who are able to accept and understand the different, thus, ensuring respectful co-existence of different groups of persons. Although parents have the right to bring up their children in accordance with their conviction, this right is not absolute and should be made commensurate with the right to information and prohibition of discrimination.

7. The summoned person – association “Centrs MARTA” – points out that the problem of violence against women and domestic violence is widespread in Latvia.

One of the attributes that characterises violence against women and domestic violence is said to be its latency, i.e., the victims rarely report it to law enforcement institutions. Moreover, comprehensive statistics regarding violence against women is absent, and this lack prevents from assessing the true scope and nature of violence

The reasons, why in the majority of cases violence perpetrated by an intimate partner is not reported, are said to be, *inter alia*, the victim’s sense of helplessness, fear of being stigmatised and that the victim would be blamed, believing in myths about violence, as well as threats expressed by the perpetrator of violence, and these are by far not the only reasons. Pronounced tolerance against violence is said to exist in Latvia, and this tolerance is said to be linked to the insufficient public awareness of domestic violence. Moreover, sometimes the victims do not receive such actions by state and local government institutions that would satisfy their primary needs – instant security and protection against repeated violence, support provided by specialists that would decrease the consequences of physical and psychological traumas, as well as encouragement to start a new life – without violence.

Upon reaching the early teenage years, children start assuming new gender roles, often reinforcing the already socially and culturally accustomed gender roles.

These roles influence the decisions made by teenagers and adolescents in their sexual and other relationships. More specifically – the gender norms with respect to both girls and boys have significant impact on dropping out of school, unwanted pregnancy, the risk of HIV and sexually transmitted infections, health problems and depression, entering violent relationships, falling into the traps of human trafficking, drug abuse, and the risk of suicide.

8. The summoned person – *PhD Irina Schmitt*, senior lecturer at Lund University, Department of Gender Studies of the Faculty of Social Studies– notes that violence is a global problem, which is linked to power, inequality, health, capital, crime and security and is a serious obstacle to gender equality

8.1. “Sex”, “gender” and “gender identity” are separate, yet interlinked terms. The term “sex” applies to a person’s physiological attributes, i.e., chromosomal and endocrinological composition, as well as the body’s appearance. The usual answer to the questions regarding sex is “a woman” or “a man”; however, research conducted in the areas of history, medicine, law and other areas of social sciences indicates that several non-pathological variations of human body exist, which are called intersex.

Gender identity refers to being aware of oneself as a person of certain gender, and, in this regard, it is possible to differentiate between, e.g., women, men and persons outside the binary identity. Gender identity develops within specific social frameworks, which can impact, for example, access to education and health care, participation in the paid labour market, reproductive work. A person’s gender identity may not be linked to the person’s sex in the way it is expected by society, and physiological attributes do not determine a person’s gender identity.

Gender is the way, in which people express their gendered selfhood, gender identity, and such manifestations are, for example, clothes, hairdo, conduct, voice modulation. Gender manifestations are said to follow from the local and regional culture. Some things, which in one social context and moment in history is considered to be masculine, can be perceived differently at another time.

Differentiation according to sex, gender and gender identity is said to be important since it allows taking broader perspective at the normative understanding of gender, which in many societies is considered to be self-evident. Often the view regarding this self-evidentiality is based on a hierarchic model, where privileges are granted to men, thus, enshrining problematic understanding that the male dominance over women and male involvement in various acts of violence is natural. Moreover, due to this opinion society might neglect those persons, who develop relationships outside the heteronormative framework, and ignore the existence of persons with gender variations, *inter alia*, intersex and transgender persons.

8.2. The causes of violence that is related to belonging to a certain group, for example, gender-based violence, should be searched for in a certain social hierarchy, in which some groups of persons are positioned as being less valuable, compared to others. The following, *inter alia*, could be regarded as such hierarchies: homophobia, transphobia, racisms, ageism, including discrimination of children, as well as discrimination of persons with non-normative abilities, *inter alia*, disabled persons. In the case of gender-based violence, such hierarchies develop socially constructed but empirically incorrect understanding of masculinity and femininity, pursuant to which men are strong, emotionally independent and intellectually superior compared to women, but women are physically and intellectually weak, caring creatures who prioritise the needs of others rather than their own.

Gender-based violence is prevalent in all groups and parts of society; however, it is not easy to measure it and compare it to other types of violence existing in society. How victims disclose they experience of violence is linked to conceptualisation of violence, for example, whether rape in marriage and corporal punishment of children is considered to be violence, as well as trust in state institutions and real possibilities to leave the situation of violence, leave one's job or terminate relationships. It is also influenced by the structural stereotypes existing in society, e.g., perceiving physical violence as a sign of masculinity.

8.3. Education cannot resolve all problems linked to discrimination and gender-based violence; however, it can have an important role in explaining society's efforts to prevent discrimination and violence related to gender and gender

identity. Children and adolescents should know that they have the right to not be discriminated against and the right to personal inviolability, and learn, in communication with other persons, to respect their human rights, inviolability and dignity, as well as to learn non-violent conflict resolution.

8.4. Violence against women and gender-based violence influence the State's sustainability. I.e., interpersonal violence is related to high personal and social expenditure, required, for example, for emergency health assistance, sick-leaves, as well as long-term traumas and loss of ability to work. The measures for preventing violence, first and foremost, are targeting a serious violation of human rights, but in the social aspect – also the said costs. Moreover, an opinion exists in social sciences that measures aimed at reinforcing gender equality stabilise birth rate.

9. The summoned person – Docent at the Faculty of Social Studies of the University of Latvia *Dr. sc. comm. Marita Zitmane* – holds that violence against women is a widespread problem in Latvia.

9.1. Differentiation between the terms of “sex” and “gender” is said to be essential to understand fully the causes of violence against women, as well as to work successfully towards improving the situation. The term “sex” is based on biological characterisation, whereas the term “gender”, as a social construction changing over time, has been developed culturally and symbolically.

Sexes are classified according to biological traits. The designation of sex – a man or a woman – is determined by external and internal attributes, e.g., various organs and characterisation of chromosomes. By the age of three, the majority of children are aware of their sex. The awareness of the term of gender develops in the process of socialisation, with the child growing up in a particular society and culture and being aware of the social expectations and demands are that set for them as the representative of the particular sex. For example, young women, understanding societal expectations, often try to be kind and polite rather than aggressive, whereas reciprocal aggression among boys is not being decreased, jostling and even fighting

being perceived as part of games and play. As the result, both boys and girls learn that being aggressive is part of what it means to be a man.

Society, fundamentally, develops perceptions of femininity and masculinity on the basis of traditional gender roles. The traditional gender roles define the female gender as the role of a wife and a mother, subordinating women for life at home and taking care of children. The traditional masculinity, in turn, is constructed by emphasising rationality, competitiveness, athleticism, financial success, aggression, control over emotions, as well as heterosexuality as the mandatory attributes of a man.

9.2. In Latvian society, gender-based stereotypes about the roles of women and men in family and public sphere dominate. The assessments of masculinity and femininity, revealed in public opinion polls, point to the dominant position of the traditional gender roles, as well as link femininity with the expression of emotions, dependence and passivity, whereas masculinity – with domineering, aggressivity and emotional reticence.

In answering the question why the traditional gender roles dominate in the public awareness, the historical context should be taken into account. During the years of Soviet power, gender equality had been levelled out, envisaging that men and women perform similar work in the public sphere, retaining the woman's role as a mother in the private sphere. The beginning of the 1990s, when processes of rapid changes were ongoing in Latvia, was also the time when nationalism reached its culmination. The ideology of nationalism included also a concrete idea regarding gender roles, *inter alia*, perceiving the safeguarding of national culture and transferring it to children as the woman's task, thus denigrating women's involvement in economy and public life and emphasising the seemingly natural role of the mother in the life of the nation.

Although presently the public awareness of inadmissibility of violence against women has grown, nevertheless, prejudiced attitude has taken root in public awareness, for example, that victims themselves have provoked violence against women. Society's high tolerance of violence also is said to influence the current situation significantly.

9.3. It is problematic to obtain data about the number of cases where women have experienced violence because such violence is not always reported to law enforcement institutions and providers of social services or health care services. The reasons why victims do not report on the experience could be, firstly, of structural nature, for instance, not trusting state institutions, lack of information about possibilities to receive assistance, as well as physical and geographical inaccessibility of assistance. Secondly, these could be the perceptions prevailing in society, for example, that victims themselves often provoke violence against women, that statements about perpetration of violence or rape are often fictitious or exaggerated and that domestic violence, in general, is a private matter that the family itself should deal with.

10. The summoned person – Professor at the Faculty of Theology, the University of Latvia, Corresponding Member of the Latvian Academy of Sciences Lat *Dr. phil.* Valdis Tēraudkalns – holds that the State Parties' obligations, set out in the Istanbul Convention, do not contradict Christian values.

Following the establishment of the State of Latvia, the provision that there is no State Church in Latvia had been complied with in practice. To ensure comprehensive functioning of contemporary democracy, it is important that all persons, irrespectively of their religious and other views, irrespectively of whether they belong to the majority or the minority, would feel affiliated with their State and would not be discriminated against. The State can achieve this by not preferring any group of inhabitants and its opinion. In practice, this means that the State does not interfere in the private life of people who practice a religion and in the activities of religious organisations, insofar legal norms are complied with, and theological assumptions of religious organisations cannot be mandatory for all.

Nowadays, the term “Christian values” is often ideologized, linking it to one, i.e., conservative position, for example, in matters of slavery, racism and gender equality however, this position is one of many positions in the broad spectrum of views encountered in the framework of Christianity. Moreover, there are specific no Christian values because values, which are important in Christianity, love,

compassion, human dignity and justice, among others, are supported also by secular humanists and adherents of other religions. These, although understood differently in various contexts, are part of general universal values. The reference to Christian values in the *Satversme* confirms Latvia's belonging to the European cultural space.

Human dignity is a value that is foregrounded in Christian theology. Christianity does not support violence against women and domestic violence. At present, Christian denominations themselves have highlighted the issue of violence and crimes against, *inter alia*, minors in the environment of believers, including priests. The Istanbul Convention is not contrary to these efforts.

11. The summoned person – Docent at the Faculty of History and Philosophy, the University of Latvia Dr. phil. Artis Svece – holds that the values referred to in the Preamble to the *Satversme* cannot be considered as being legally binding precepts

There is no such self-evident and generally recognised list that would enumerate all traditions of Latvians and Livs, referred to in the fifth paragraph of the Preamble to the *Satversme*, as well as universal and Christian values. If any abstract concept, for example, love, compassion or justice, in the interpretation that had existed in the history of Christianity, or any set of values, which the Christians have defended in a certain period of time or geographical area, would be recognised as Christian values, these values could become mutually contradictory.

To ensure that there are no internal contradictions in the *Satversme*, the values referred to in the Preamble to the *Satversme*, cannot be recognised as being such that would determine what is and what is not admissible in the State of Latvia. The reference to Christian values in the particular part of the *Satversme's* text should rather be interpreted as an encouragement to be aware of Latvia's history, including the heritage of values.

The State of Latvia did not start from scratch, and, allegedly, its society is not united only by practical convenience or chance presence in a certain territory. Identity and sense of affiliation is one of the factors that determine the citizen's

loyalty towards the State and society's long-term existence. Identity is shaped by, *inter alia*, also awareness of the past, including the shared history of society.

Christianity, similarly to the pre-Christian culture in Latvia and Europe, ideas of Enlightenment, European modernity and other ideas are part of Latvia's history, and this cultural heritage continues to influence the worldview of many citizens of Latvia. Reflecting on the present and future society of Latvia, this heritage should not be shunned. The Preamble to the *Satversme* indicates coordinates, outlining the space, which has developed over the course of history, for making society's decisions, rather than rails, which once had been installed by someone and that society should now ride on, even though each rail takes its own direction.

The idea that gender exists in addition to sex is said to be neither controversial nor ideological. Historically, male dominated societies had attempted to position as natural such social norms that ascribed to women certain actions or attributes. Many stereotypes regarding what a woman or a man should be like have developed socially, and all of them cannot be explained by heredity.

12. The summoned person – Lecturer at the Faculty of Law, the University of Latvia Mg. iur. Māris Lejnieks – notes that in situations, where women and men, in connection with domestic violence, are in different circumstances, from the perspective of prohibition of discrimination, differential treatment is required.

Para “c” of Article 3 of the Istanbul Convention does not impose particular obligations on the Parties but defines the term of “gender”, to ensure that it would be understood correctly solely for correct application of the successive articles of the Convention and for reaching the aims of the Convention. This definition does not impose an obligation to use the understanding of the term “gender”, used in the Convention, outside the scope of application of this Convention.

Para 3 of Article 4 of the Istanbul Convention sets an obligation for the State Parties to reach a particular aim– to prevent discrimination. To reach this aim, each Party has the right to choose the means for reaching this aim, which could include

both introducing appropriate provisions in the national legal acts and developing concrete action plans on the level of administration, implementation of such plans and control over execution.

Para 1 of Article 12 of the Istanbul Convention does not impose upon the State Parties to attain specific objectives but defines the model of action – to make reasonable effort to eradicate certain prejudices, customs, and traditions.

Article 14 of the Istanbul Convention provides that each State Party, in accordance with its present situation, must examine the need to introduce certain improvements in educational programmes and, if necessary, to introduce these in compliance with the purpose of the Convention. The taking of certain actions is said to depend on the particularities of the situation and organisation of the system of education in each State Party.

As regards domestic violence, it is clear that the absolute majority of victims in such cases are women. If there much more female victims of domestic violence than men it means that, in this respect, men and women are in different situations, which, from the perspective of prohibition of discrimination, allows and even requires differential treatment.

The Findings

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13. The Applicant requests the Constitutional Court to examine the compliance of Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Istanbul Convention with the Preamble to the *Satversme*, its Article 1, as well as with Article 99 and Article 110.

13.1. The Applicant holds that, substantially, Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Istanbul Convention are incompatible with the *Satversme* since they demand changing the thinking and attitude towards persons, who do not self-identify with the sex determined at birth. I.e., the aforementioned norms of the Istanbul Convention are said to be incompatible with the *Satversme* as united regulation.

Hence, the Constitutional Court must verify, whether the aforementioned norms of the Istanbul Convention can be recognised as being united legal regulation.

13.1.1. Pursuant to Article 6 of the Vienna Convention on the Law of Treaties (hereafter – the Vienna Convention), every State possesses the capacity to conclude treaties. In view of the provisions set out in Article 11 of the Vienna Convention, the consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed. Which of the aforementioned forms of consent is applicable to a particular treaty, pursuant to Article 12-15 of the Vienna Convention, depends on, *inter alia*, the type of consent envisaged by the respective treaty.

It follows from Article 75 of the Istanbul Convention that the Istanbul Convention is open for signature by the members States of the Council of Europe, the non-member States of the Council of Europe which have participated in its elaboration and the European Union; however, this Convention enters into effect after ratification, acceptance or approval. Since, in the present case, the

Constitutional Court reviews the compliance of the norms of the Istanbul Convention with the *Satversme* but the Istanbul Convention has not been approved by the *Saeima* yet, the Constitutional Court must verify, whether Latvia has signed the Istanbul Convention in compliance with the requirements set out in the Vienna Convention and the law “On International Treaties of the Republic of Latvia”.

The Constitutional Court does not doubt that, in the particular case, the Cabinet had the right to adopt the decision on signing the Istanbul Convention.

Pursuant to Para 1 of Article 7 of the Vienna Convention, a person is considered as representing a State for the purpose of expressing the consent of the State to be bound by a treaty if the person produces appropriate full powers or if it appears from the practice of the States concerned or from other circumstances that their intention was to consider that persona as representing the State and to dispense with full powers. Whereas Section 6 (2) of the law “On International Treaties of the Republic of Latvia” provides: if the decision to conclude an international treaty is taken by the Cabinet, the authority to negotiate and sign the treaty is issued by the decision of the Cabinet. In view of the above, at the Cabinet’s sitting of 10 May 2016, it was decided to authorise the Minister for Welfare to sign the Istanbul Convention. Thus, the Minister for Welfare had the right to sign the Istanbul Convention on behalf of Latvia.

Therefore, Latvia has signed the Istanbul Convention in accordance with the requirements set out in the Vienna Convention and the law “On International Treaties of the Republic of Latvia”.

13.1.2. The Vienna Convention comprises rules on the interpretation of international treaties. Pursuant to Para 1 of Article 31 of the Vienna Convention, an international treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Whereas, in accordance with Para 2 and Para 3 of the aforementioned Article, for the purpose of interpretation of a treaty, in addition to its text, including its preamble and annexes, any agreement relating to the treaty made between all parties in connection with the conclusion, application and interpretation of the treaty can be used. Moreover, Article 32 of the Vienna

Convention provides that supplementary means of interpretation may be used, *inter alia*, the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from application of Article 31, or to determine the meaning when the interpretation according to Article 31 leaves the meaning ambiguous or obscure, or leads to a result which is manifestly absurd or unreasonable.

Thus, in the present case, in interpreting norms of the Istanbul Convention, the Constitutional Court will take into consideration both the object and purpose of the Istanbul Convention and the text of its respective norms. Moreover, in interpreting the norms of the Istanbul Convention, pursuant to the provisions of Article 32 of the Vienna Convention, the Explanatory Report, adopted simultaneously with the Istanbul Convention, is to be used in the respective case as supplementary means since the Report is to be recognised as the preparatory material of the Istanbul Convention.

13.1.3. It has been recognised in the practice of international law that, to determine the object and purpose of an international treaty, the title of the respective treaty, preamble, the purpose of the respective treaty, postulated in the basic text of the treaty, as well as the preparatory materials of the treaty and its content and essence in general should be taken into account (*see: United Nations. Report of the International Law Commission. Sixty-third session. New York: United Nations, 2011, pp. 360–361*).

It follows from the title of the Istanbul Convention that it is intended for preventing and combatting violence against women and domestic violence. The Preamble to the Istanbul Convention, in turn, provides that State Parties condemn all forms of violence against women and domestic violence, recognise that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women; recognise that violence against women is a manifestation of historically unequal power relations between women and men; recognise that violence forces women into subordinate position, recognise that women and girls are often exposed to serious forms of violence, which constitute a serious violation of human rights and is a major obstacle to gender equality,

recognise that women and girls are exposed to a higher risk of gender-based violence than men, recognise that domestic violence affects women disproportionately, and that men may also be victims of domestic violence, recognising that children are victims and witnesses of domestic violence, as well as aspire to create a Europe free from violence against women and domestic violence.

The purposes of the Istanbul Convention are defined in Para 1 of Article 1. They are as follows:

- 1) protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- 2) contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- 3) design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- 4) promote international co-operation with a view to eliminating violence against women and domestic violence;
- 5) provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

In clarifying the object and purpose of the Istanbul Convention, the substantive scope of its application must be taken into account. I.e., pursuant to Para 1 of its Article 2, the Istanbul Convention is applicable to all forms of violence against women, including domestic violence, which affects women disproportionately. Whereas Para 2 of Article 2 of the Istanbul Convention encourages the Parties to apply the Convention to all victims of domestic violence. Thus, the Istanbul Convention envisages obligations for its Parties for protecting women against violence, *inter alia*, domestic violence. The decision on whether the measures set out in the Istanbul Convention should be applicable to other victims of domestic violence must be adopted by the particular State Party (*see*

also: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Para 37).

Summarising the above, the Constitutional Court concludes that the object and purpose of the Istanbul Convention is eradication of violence against women and domestic violence, thus promoting gender equality. Hence, all obligations imposed upon Parties to the Istanbul Convention apply only to the scope of application of the Istanbul Convention in accordance with its object and purpose – issues related to eradication of violence against women and domestic violence.

13.1.4. Para 1 of Article 12 of the Istanbul Convention envisages the State Parties' obligation to take all necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men. The aim of this provision, being aware of eradication of violence against women and domestic violence as the object and purpose of the Istanbul Convention, is to promote changes in thinking and attitude to decrease gender-based violence, which occurs exactly because of these patterns of behaviour referred to in this norm (*see also: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, paras. 84–85*). Para 3 of Article 4 of the Istanbul Convention defines for the State Parties prohibition of discrimination in performing the obligations included in the Convention, *inter alia*, on the grounds of sex, gender, and gender identity. I.e., the Istanbul Convention prohibits, in performing the obligations included in it, from discriminating against persons who do not self-identify with their sex determined at birth. Whereas Para “c” of Article 3 of the Istanbul Convention explains the term “gender”, understanding by it the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate form women and men. Different opinions regarding the content of this norm are found in the case materials (*see Case Materials, Vol. 1, pp. 4, 53-54, 90-95*). Therefore, to clarify the content of this norm, the Explanatory Report to the Istanbul Convention should be used.

I.e., the term of “gender” is included in the Istanbul Convention to explain that some social roles or stereotypes reproduce unwanted or harmful situations, which contribute to making violence against women acceptable. This term is not intended as a replacement for the terms “women” and “men” (*see: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Para 43*).

The Constitutional Court recognises that, pursuant to Para 3 of Article 4 of the Istanbul Convention, in performing the obligations envisaged in Para 1 of Article 12 of the Istanbul Convention, the State Parties are prohibited from allowing discrimination, *inter alia*, on the grounds of gender identity and gender. The content of the term “gender” is explained in Para “c” of Article 3 of the Istanbul Convention. Thus, the aforementioned norm of the Istanbul Convention defines the State’s obligation to promote changes in thinking and attitude, without discriminating against those persons who do not self-identify with their sex determined at birth. In view of the merits of the claim expressed in the application, Para “c” of Article 3, Para 3 of Article 4, Para 1 of Article 12 of the Istanbul Convention (hereafter – the contested regulation) are to be recognised as being closely interconnected, therefore, in the present case, they cannot be reviewed in isolation.

Hence, the contested regulation is to be reviewed as united legal regulation.

13.2. In cases, where the compliance of united regulation with several norms of the *Satversme* is contested, the Constitutional Court must determine the most effective approach to the assessment of this compliance (*see, for example, Judgement of 28 September 2020 by the Constitutional Court in Case No. 2019-37-0103, Para 14*).

The Applicant holds that the contested regulation would impose an obligation upon Latvia to promote change in public thought and opinion with respect to persons, who do not self-identify with their sex determined at birth. That would be contrary to Latvia’s constitutional identity, which is included in Article 1 of the *Satversme*, and for the revealing of its content the values referred to in the Preamble to the *Satversme* should be used, i.e., the family and Christian values.

Since the contested regulation envisages change in thinking and attitude, in turn, the right, included in Article 99, to freedom of thought and conscience is said to be violated. Moreover, the obligation defined in the contested regulation to promote change in thinking and attitude is said to endanger the understanding of family, comprised of a child and his mother and father, therefore it is, allegedly, incompatible with Article 110 of the *Satversme*.

Since the claim regarding compliance of the contested regulation with the Preamble to the *Satversme* and its Article 1 is linked to the same considerations made by the Applicant with respect to Latvia's constitutional identity, compliance of the contested regulation with the Preamble and Article 1 of the *Satversme* must be examined in conjunction. In view of the actual circumstances of the case and the Applicant's arguments regarding the possible incompatibility of the contested regulation with the *Satversme*, the Constitutional Court, first and foremost, will examine its compatibility with the Preamble to the *Satversme* in conjunction with Article 1, afterwards, in turn, reviewing compliance of the contested regulation with, respectively, Article 99 and Article 110 of the *Satversme*.

14. The Applicant requests the Constitutional Court to review compliance of the contested regulation with the Preamble and Article 1 of the *Satversme*.

The Applicant, substantially, holds that the State's obligation to protect, *inter alia*, that part of the constitutional identity of the Latvian State that is characterised by Christian values and the postulate that family is the foundation of cohesive society, follows from the Preamble to the *Satversme* in conjunction with its Article 1. Christian values, referred to in the Preamble to the *Satversme*, and the postulate that family is the foundation of cohesive society, are said to be the constitutive elements of Latvia's constitutional identity. These elements, in conjunction, require protecting a family that consists of a child and his mother and father. By promoting change in thinking and attitude with respect to Christian values and the aforementioned understanding of the family, in particular, that a person may self-identify only with the sex determined at birth, Latvia's constitutional identity would be changed.

The Cabinet, in turn, notes that the contested regulation does not apply to the Preamble to the *Satversme* and its Article 1. Moreover, Christian values, referred to in the Preamble to the *Satversme*, and the postulate that the family is the foundation of cohesive society cannot be interpreted in a way that disallows efforts made by a democratic state governed by the rule of law to prevent and eradicate human rights violations.

14.1. Each state is characterised by its constitutional identity, which allows differentiating it from other states. The formation of identity, *inter alia*, constitutional identity, is a long process that depends upon historical circumstances (*see: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rīga: Tiesu namu aģentūra, 2020, 27. lpp.; Jacobsohn G. J. Constitutional Identity. The Review of Politics. 2006, Vol. 68, No. 3, p. 363*). It follows from the above, in turn, that the constitutional identity is not static.

The constitutional identity comprises the state law identity that characterises a state and the identity of the state order. It provides an answer both to the question what the particular state is like, i.e., reflects the classical constitutive elements of the state recognised in international law – territory, nation and sovereign state power, and to the question what the particular state order is like. In reflecting the territory of the state, the nation and the state power in the Constitution, such extra-legal factors as history, politics, national, cultural and other factors that identify the respective state are taken into account. Whereas the identity of the particular state order is determined by the general overarching legal principles that characterise this order of the state. Hence, constitutional identity is a broad phenomenon, deep as to its content, consisting of elements that are different as to their nature, of which only a part are generally binding legal norms. Such are, for instance, the overarching principles of democracy, rule of law, nation state and socially responsible state that determine the identity of Latvia's order of the state. Whereas the references included in the constitution to, *inter alia*, the history of the state and the nation, traditions, circumstances in which the state was established, purposes of the state and other elements, which, from the perspective of constitutional law, help to recognise the particular state, ascribes a specific meaning to it, characterise it, are

elements of the state's identity on which the particular state is founded (*compare, see: The Constitutional Law Committee. Opinion on the Constitutional Foundations of the State of Latvia and the Inviolable Core of the Satversme. 17 September 2012, Sections 79, 95, 104, and 105*). These elements comprise both references to the legal principles of the particular state and to values which determined the path in which the constitutional identity of this state evolved; however, *per se*, these are not generally binding legal norms.

14.2. Part of Latvia's constitutional identity is included in the Preamble and Article 1 of the *Satversme*.

Article 1 of the *Satversme* provides that Latvia is an independent democratic republic. It is mentioned in the Preamble to the *Satversme*, *inter alia*, that the identity of Latvia in the European cultural space, since ancient times, has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values. Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are the foundations of a cohesive society. These findings characterise the roots of the cultural identity of the Latvian people – this identity is rooted both in Latvian traditions and folk wisdom and in universal values, which are derived from the ideas of the Enlightenment and Christian values which have influenced the entire European cultural space. Mentioning of Christian values is not a reference to religion but to affiliation with European or Western civilisation. The reference to family, in turn, means that such a form of social life is morally and legally recognisable (*see also Annotation to the Draft Law No. 1075/Lp11 submitted to the 11th Convocation of Saeima "Amendment to the Satversme of the Republic of Latvia; Balodis R. Komentārs Latvijas Republikas Satversmes ievadam. In: Balodis R. (red.) Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Rīga: Latvijas Vēstnesis, 2014, 131.–132. lpp.*).

When the Preamble to the *Satversme* was discussed at the *Saeima*, it was noted that it outlines the foundations of the Latvian State but, in difference to the basic part of the *Satversme*, does not contain any concrete legal regulation (*see Transcript of the Sitting of the 11th Convocation of the Saeima on 5 June 2014*).

This, however, does not mean that general legal principles could not be included in the Preamble to the *Satversme*. Hence, the Preamble to the *Satversme* is a totality of legal norms and values, from which certain constitutional obligations of the State follow (see: Balodis R. *Komentārs Latvijas Republikas Satversmes ievadam*. In: Balodis R. (red.) *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi*. Rīga: Latvijas Vēstnesis, 2014, 93. lpp.). Harmony should be ensured between the values reflected in the Preamble to the *Satversme*, *inter alia*, Christian and universal values and Latvian folk wisdom and the general legal principles included in the *Satversme*, respecting the will of the Latvian sovereign, the people, to live in a democratic state governed by the rule of law.

Christian values and the postulate that the family is the foundation of cohesive society alike are one of the elements shaping Latvia's constitutional identity, which allow identifying the State of Latvia. These elements are extra-legal factors which follow from historical and sociological facts and reflect values; however, *per se* they are not generally binding legal norms. It means that the claim regarding compliance of the contested regulation with Christian values and the postulate that the family is the foundation of cohesive society is not a claim regarding compliance of the contested regulation with legal norms of higher legal force.

14.3. Pursuant to Para 2 of Section 16 of the Constitutional Court Law, the Constitutional Court reviews cases regarding the compliance of international treaties, signed or entered into by Latvia (also before the respective treaties are approved by the *Saeima*), with the *Satversme*. I.e., the Constitutional Court has jurisdiction over cases regarding the compliance of international treaties, signed or entered into by Latvia (also before the respective treaties are approved by the *Saeima*), with legal norms included in the *Satversme*. Since Christian values, referred to in the Preamble to the *Satversme* and the postulate that the family is the foundation of cohesive society are not generally binding legal norms, the claim, stated in the application, regarding compliance of the contested regulation with these constitutive elements of Latvia's constitutional identity does not fall within the jurisdiction of the Constitutional Court.

In view of the consideration presented above and the merits of the claim included in the application, the Constitutional Court concludes that the decision on initiating the case in the part regarding compliance of the contested regulation with the Preamble to the *Satversme* in conjunction with Article 1 of the *Satversme* is incompatible with Para 1 of Section 20 (5) of the Constitutional Court Law and that, in the present case, there are grounds, set out in Para 3 of Section 29 (1) of the Constitutional Court Law, for terminating legal proceedings.

Hence, legal proceedings in the part regarding compliance of the contested regulation with the Preamble to the *Satversme* in conjunction with Article 1 of the *Satversme* shall be terminated.

15. The Applicant notes that the contested regulation is incompatible with Article 99 of the *Satversme*.

The Applicant holds that, on its merits, the contested regulation imposes upon the State the obligation to promote change in thinking of and attitude towards the equality of those persons who do not self-identify with their sex determined at birth and the need to protect these persons against violence. The Cabinet, in turn, notes that the State's obligation to take general measures to change the behavioural models existing in society is applicable only to the purposes defined in the Preamble of the Istanbul Convention and implementation thereof, i.e., prevention of violence against women and domestic violence, instead of imposing certain ideology or stereotypes.

To review compliance of the contested regulation with the right to the freedom of thought, conscience and religion, included in Article 99 of the *Satversme*, first of all it should be established, whether the contested regulation restricts the respective right.

15.1. Article 99 of the *Satversme* provides: "Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State."

The Constitutional Court has recognised that the freedom of thought, conscience and religious conviction is one of the most important values in

democratic society. This freedom comprises all kinds of religious, non-religious and atheistic views, as well as the right to accept religion or to not be affiliated with any religion (*see Judgement of 18 March 2011 by the Constitutional Court in Case No. 2010-50-03, Para 7.1.*).

In specifying the right included in Article 99 of the *Satversme*, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the interpretation thereof, consolidated in the judicature of the European Court of Human Rights, should be taken into account (*compare, see Judgement of 26 April 2018 by the Constitutional Court in Case No. 2017-18-01, Para 18*). The European Court of Human Rights has recognised that a person has the right to maintain and change certain conviction. This right is absolute, therefore the State may not interfere in it, for example, by defining what kind of conviction a person should maintain or by taking coercive measures to make them change it (*see, for example, Judgement of 12 April 2007 by the European Court of Human Rights in Case “Ivanova v. Bulgaria”, Application No. 52436/99, Para 79*). However, this right is not applicable to any opinion, i.e., this right protects only such views that attain a certain level of cogency, seriousness, cohesion and importance (*see Judgement of 15 January 2013 by the European Court of Human Rights in Case “Eweida and Others v. the United Kingdom”, Applications No. 48420/10 , etc., Para 81*).

The participants in the case have not stated objections and neither does the Constitutional Court have doubts that a person’s views on social roles, conduct, activities and attributes that this person deems as being appropriate for women and men may reach the level of cogency, seriousness, cohesion and importance, which characterises the freedom of thought, conscience and religious conviction, falling within the scope of Article 99 of the *Satversme*. In view of the considerations made above, the Constitutional Court concludes that adhering to such views falls within the scope of Article 99 of the *Satversme*.

15.2. Substantially, the contested regulation imposes an obligation on State Parties to the Istanbul Convention to take reasonable efforts to eradicate such prejudices, customs and traditions that facilitate gender-based violation against

women and does not permit discrimination in the fulfilment of this obligation. I.e., the obligation envisaged in the contested regulation does not require from the Parties specific results to be achieved but defines a general model of actions.

The Constitutional Court underscores that, in a democratic state governed by the rule of law, it is inadmissible that the State imposes certain conviction upon an individual. However, being aware of every person's right to the freedom of thought, conscience and religion, the State has the obligation to take extensive and comprehensive measures aimed at decreasing society's tolerance of violence and explaining the consequences of violence to all persons (*compare, see Judgement of 25 March 2021 by the Constitutional Court in Case No. 2020-36-01, Para 19.3.2.*). I.e., the State has the obligation to offer to a reasonable and educated individual information about violence and the factors causing it, thus, preventing violence. This applies also to gender-based violence. Solely the fact that such information is offered to individuals does not mean that they would be imposed the obligation to maintain certain conviction. This conclusion follows, *inter alia*, from the fact that the contested regulation does not envisage applying coercive measures to a person aimed at making them change their conviction.

The Constitutional Court draws attention also to the fact that obligations that are linked to promoting change in thinking and attitude, aimed at reducing human rights violations, are already not set out in several international treaties binding upon Latvia. For example, Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter – the Convention on the Elimination of Discrimination Against Women) imposes an obligation on its State Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Whereas sub-para “b” of Para 1 of Article 4 of the Convention on the Rights of Persons with Disabilities imposes on the State Parties the obligation to take all appropriate measures, including legislation, to modify or abolish existing laws,

regulations, customs and practices that constitute discrimination against persons with disabilities.

Thus, the contested regulation does not restrict a person's right to the freedom of thought, conscience and religious conviction, included in Article 99 of the *Satversme*, and there are grounds, defined in Para 6 of Section 29 (1) of the Constitutional Court Law, for terminating legal proceedings.

Thus, legal proceedings in the case in the part regarding compliance of the contested regulation with Article 99 of the *Satversme* shall be terminated.

16. The Applicant holds that the contested regulation is incompatible also with Article 110 of the *Satversme*.

The Applicant is of the opinion that the State's obligation to protect the family consisting of a child and his mother and father follows from Article 110 of the *Satversme*. Allegedly, the contested regulation reduces such protection. The Cabinet, in turn, underscored that the purpose of the Istanbul Convention was not to regulate or define the term of the terms "marriage" or "family" and it did not promote acceptance or introduction of special forms of marriage or family. .

To examine compliance of the contested regulation with the State's obligation to protect the family, included in Article 110 of the *Satversme*, it has to be established, whether the contested regulation concerns the respective obligation.

16.1. Article 110 of the *Satversme* sets out: "The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence."

The Constitutional Court has already recognised that the first sentence of Article 110 of the *Satversme* includes the State's obligation to ensure legal protection of all families, as well as measures of economic and social protection and support, without allowing discrimination in the performance of this obligation. The legislator's obligation to ensure legal protection to the family requires determining the legal regulation of family relationships existing in the social reality, i.e., to define the personal and property relations of participants in such relationships. The

legislator can fulfil the duty to ensure social and economic support for the family, in turn, by specifying in law the family's right to special protection and support, i.e., by envisaging in law various measures of protection and support for the family (*see Judgement of 12 November 2020 by the Constitutional Court in Case No. 2019-33-01, Para 12.3., and Judgement of 8 April 2021 in Case No. 2020-34-03, Para 9.2.*).

The family is a social institution, based on close personal ties, that can be established in the social reality and are founded on understanding and respect. Even in the absence of a biological link or legally recognised child-parent relationship, actual family relationship may exist between a child and a person who has taken care of the child. The existence of close personal ties follows from a concluded marriage or the fact of kinship; however, in the social reality, close personal ties develop also in other ways (*see Judgement of 5 December 2019 by the Constitutional Court in Case No. 2019-01-01, Para 16.2.2., and Judgement of 12 November 2020 in Case No. 2019-33-01, Para 12.1*). Also the protection of a family, consisting of a child and his mother and father, falls within the scope of the first sentence of Article 110 of the *Satversme*.

Thus, the first sentence of Article 110 of the *Satversme* requires the legislator to ensure the legal protection, as well as measures of social and economic protection and support to all families, including such that consist of a child and his mother and father.

16.2. The obligation, envisaged in the contested regulation, for State Parties to the Istanbul Convention to ensure in a non-discriminatory way the disappearance of such prejudices, customs, traditions and other practices, which are based on the idea of the inferiority of women, *per se* does not pertain to the State's obligation to ensure protection for the family. The State's obligation, included in the first sentence of Article 110 of the *Satversme*, basically applies to protection of the family as a collective social unit, whereas the obligations included in the contested regulation, pursuant to the substantive scope of the Istanbul Convention, defined in its Article 2, are in general aimed at protecting individuals – women – against violence.

The Constitutional Court also draws attention to fact that the scope of application of the Istanbul Convention comprises only eradication of violence against women and domestic violence and does not impose the acceptance or introduction of any special forms of marriage of family. A similar opinion is expressed also by the European Commission for Democracy through Law (*see: Opinion on the constitutional implications of the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) adopted by the Venice Commission at its 120th Plenary Session (Venice, 11–12 October 2019), Para 71*).

Thus, the contested regulation does not pertain to the State's obligation, set out in the first sentence of Article 110 of the *Satversme*, to protect the family and there are grounds, referred to in Para 6 of Section 29 (1) of the Constitutional Court Law, to terminate legal proceedings.

Hence, legal proceedings in the part regarding compliance of the contested regulation with Article 110 of the *Satversme* shall be terminated.

II

17. The Applicant holds that Para 4 of Article 4 of the Istanbul Convention is incompatible with Article 91 of the *Satversme*.

Article 91 of the *Satversme* provides: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.” This article comprises two closely interconnected principle: the equality principle – in the first sentence of the article, and the principle of prohibition of discrimination – in its second sentence (*see, for example, Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-28-0306, Para 9*).

The Constitutional Court has recognised that the equality principle is directed towards the existence of united legal order. Its objective is to ensure implementation of such a requirement of a state governed by the rule of law as comprehensive impact of law on all persons and that law is applied without any

privileges whatsoever (*see Judgement of 7 November 2019 by the Constitutional Court in Case No. 2018-25-01, Para 16*). The principle of prohibition of discrimination, in turn, supplements, specifies the equality principle and helps to apply it in concrete situations. Its aim is to eliminate unequal treatment, which is based on an inadmissible criterion, and to preclude the possibility that in a democratic state governed by the rule of law a person's fundamental rights could be restricted on the basis of an inadmissible criterion (*see Judgement of 29 June 2018 by the Constitutional Court in Case No. 2017-28-0306, Para 9, and Judgement of 10 July 2020 in Case No. 2019-36-01, Para 9*).

Taking into account that both principles included in Article 91 of the *Satversme* are closely interconnected and that the principle of prohibition of discrimination, included in the second sentence of the article, supplements the equality principle, included in the first sentence, the Constitutional Court will review compliance of Para 4 of Article 4 of the Istanbul Convention with Article 91 of the *Satversme*. To do this, the Constitutional Court must establish:

1) whether and which persons (groups of persons) are comparable and whether they are in similar or different circumstances;

2) whether the contested norm envisages similar treatment of persons who are in different circumstances or differential treatment of persons in similar circumstances;

3) whether such treatment has been established by law, adopted in due procedure;

4) whether such treatment is justifiable, i.e., whether it has objective and reasonable grounds (*compare, see Judgement of 9 July 2020 by the Constitutional Court in Case No. 2019-27-03, Para 10, and Judgement of 2 November 2020 in Case No. 2020-14-01, Para 8*).

18. The Constitutional Court has recognised: to determine, whether and which persons are in according to certain criteria comparable circumstances, the main common feature of these groups should be identified. Two situations are never identical, therefore a situation, which has one or several common elements of the

situation under review, should be selected for comparison. The common element should unite both situations under one umbrella term (*see Judgement of 2 November 2020 by the Constitutional Court in Case No. 2020-14-01, Para 9*).

The Applicant, substantially, holds that, in the particular case, men and women are in comparable circumstances. Neither the Cabinet nor persons summoned in the case contest this opinion.

The Constitutional Court has recognised that, in reviewing compliance of a legal norm with Article 91 of the *Satversme*, the legal relationship that is regulated by this norm must be taken into account (*see, for example, Judgement of 16 July 2020 by the Constitutional Court in Case No. 2020-05-01, Para 9*).

Para 4 of Article 4 of the Istanbul Convention specifies the obligation, envisaged in Para 1 of Article 4 of the Istanbul Convention, to promote the right of everyone to live free from violence, and applies to protection of a certain group of persons, i.e., women, against gender-based violence. Pursuant to Para “a” of Article 3 of the Istanbul Convention, such violence includes acts that may result in physical, sexual, psychological or economic harm or suffering, including threats of such acts. Thus, Para 4 of Article 4 of the Istanbul Convention pertains to legal relationship between the State and an individual for the prevention of violence.

The State’s obligation to protect a person’s life against not only actions by the State itself but also actions by other persons follows from the right to life, included in Article 93 of the *Satversme* (*see Judgement of 28 March 2013 by the Constitutional Court in Case No. 2012-15-01, Para 18.2.*). Article 95 of the *Satversme* includes prohibition of torture or other cruel or degrading treatment, which prohibits, *inter alia*, such actions that could cause the feelings of fear, suffering or sense of inferiority to the victim (*see Judgement of 20 December 2010 by the Constitutional Court in Case No. 2010-44-01, Para 8.1.*). Whereas the State’s obligation to protect human health, included in Article 111 of the *Satversme*, means, *inter alia*, the duty to protect a person from the interference by other persons in the exercise of their fundamental rights with respect to both physical and mental health (*compare, see Judgement of 9 March 2010 by the Constitutional Court in Case No. 2009-69-03, Para 8.1.*).

The European Court of Human Rights also has recognised that the State has the duty to act preventively to protect identifiable persons against such actions by other persons that pose a threat to life or are cruel or inhuman (*see, for example, Judgement of 9 June 2009 by the European Court of Human Rights in Case “Opuz v. Turkey”, Application No. 33401/02, Paras 129 and 159–160*). The UN Committee on Economic, Social and Cultural rights, in turn, has noted that the State Parties’ obligation to protect individuals against violence follows from the right, included in Para 1 of Article 12 of the International Covenant on Economic, Social and Cultural Rights, to the highest attainable standard of physical and mental health (*see: CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Para 21 and 35*). The World Health Assembly also has recognised that violence may have consequences affecting a person’s health, including death, disability, bodily injuries, impact on mental, sexual and reproductive health, as well as social consequences (*see: World Health Assembly. Strengthening the role of the health system in addressing violence, in particular against women and girls, and against children. 24 May 2014, A67/VR/9*).

In specifying the provisions of the *Satversme* in conjunction with the human rights provisions included in international treaties, harmony between these provisions must be ensured. Thus, the State’s obligation to protect everyone against violence, which could pose a threat to a person’s life or physical and mental health, as well as subject a person to the risk of torture and cruel or degrading treatment, falls within the scope of Article 93, Article 95 and Article 111 of the *Satversme*. This obligation of the State applies to all persons under the State’s jurisdiction – men and women alike. Thus, in the particular case, the common feature of the group, identified by the Applicant, is the right to protection against violence.

Thus, men and women, who have the right to protection against violence, are in similar and according to concrete criteria comparable circumstances.

19. Para 4 of Article 4 of the Istanbul Convention provides that, under the terms of the Convention, special measures that are necessary to prevent and protect women against gender-based violence are not considered discrimination.

The aforementioned legal norm, with the aim of ensuring women's right to protection against violence, allows implementation of measures that would not be applicable to men. I.e., this norm allows differences in the fulfilment of the State's obligation to ensure to persons protection against violence on the grounds of the person's gender.

The Constitutional Court has already recognised that gender is one of the criteria that could be the grounds for discriminatory differential treatment (*compare, see Judgement of 7 November 2019 by the Constitutional Court in Case No. 2018-25-01, Para 22.3.*). Within Latvia's legal system, prohibition of gender discrimination includes not only prohibition to discriminate a person on the grounds of anatomical sexual characteristics but is applied also to social roles, conduct, activities and attributes that, in society's opinion, are appropriate for women and men (*compare, see: Dupate K. Konvencija atbilst Satversmei un Latvijas tiesību sistēmai. Jurista Vārds, 07.06.2016., Nr. 23, 37.–40. lpp.*).

Thus, differential treatment, on the grounds of gender, of groups of persons in similar circumstances has been allowed by Para 4 of Article 4 of the Istanbul Convention.

20. Upon concluding that the contested norm causes differential treatment of groups of person in similar circumstances, the Constitutional Court must assess, whether this treatment has been established by a legal norm adopted in due procedure.

The participants in the case do not contest that the differential treatment, caused by Para 4 of Article 4 of the Istanbul Convention, has been established by a legal norm adopted in due procedure. However, legal proceedings before the Constitutional Court is characterised by the principle of objective inquiry, pursuant to which the Constitutional Court has the duty to verify, whether the norms contested in the present case comply with the quality criteria of legal norms. This

means that, in conducting preventive constitutional review in the present case, the Constitutional Court must verify:

1) whether the Istanbul Convention has been signed in accordance with requirements set out in the Vienna Convention and the law “On International Treaties of the Republic of Latvia”.

2) whether the wording of Para 4 of Article 4 of the Istanbul Convention is sufficiently clear to allow understanding the content of rights and obligations following from it.

The Constitutional Court already concluded that Latvia had signed the Istanbul Convention in compliance with requirements set out in the Vienna Convention and the law “On International Treaties of the Republic of Latvia (*see Para 13.1. of this judgement*), therefore it has to verify, whether Para 4 of Article 4 of the Istanbul Convention is sufficiently clear.

To clarify the content of the State Parties’ rights and obligations, included in Para 4 of Article 4 of the Istanbul Convention, this norm must be interpreted in accordance with the requirements of the Vienna Convention regarding interpretation of international treaties, taking into consideration the object and purpose of the Istanbul Convention (*see also Para 13.1. of this judgement*). Para 4 of Article 4 of the Istanbul Convention allows concluding: if State Parties decide to implement special measures to protect, particularly, women against gender-based violence, such measures should not be deemed discriminatory in the meaning of the Istanbul Convention (*see also Para 19 of this judgement*). Such approach is compatible with the object and purpose of the Istanbul Convention – to protect women against violence.

The Constitutional Court concludes that Para 4 of Article 4 of the Istanbul Convention is sufficiently clear and that it is possible to understand the content of the rights and obligations following from it.

Thus, the differential treatment of groups of persons in similar circumstances has been established by a legal norm adopted in due procedure.

21. Upon establishing that the differential treatment has been defined by a legal norm adopted in due procedure, the Constitutional Court must verify, whether such treatment is justifiable.

21.1. The criteria, on which differential treatment is based, are various. Depending both on the specificity of the respective criterion and the actual circumstances of the particular case, justification for the use of the criterion may differ. I.e., there are criteria, the use of which cannot be justified, as well as such, the use of which can be justified in certain cases (*see, for example, Judgement of 10 July 2020 by the Constitutional Court in Case No. 2019-36-01, Para 14.1.*).

It has been recognised in the judicature of the European Court of Human Rights that the State needs to indicate very important reasons in order to justify differential treatment of men and women (*see Judgement of 28 May 1985 by the European Court of Human Rights in Case “Abdulaziz, Cabales and Balkandali v. the United Kingdom”, Application No. 9214/80, etc., Para 78 and Judgement of 24 October 2019 in Case “J. D. and A. v. the United Kingdom”, Application No. 32949/17, etc. Para 89*).

21.2. Article 3 of the Convention on Elimination of Discrimination against Women provides that the States Parties must take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Moreover, pursuant to Para 1 of Article 4 of the said Convention, adoption by the State Parties of temporary measures aimed at accelerating *de facto* equality between men and women, is not to be considered discriminatory; but it in no way may entail as consequence the maintenance of unequal or separate standards; these measures must be discontinued when the objectives of equality of opportunity and treatment have been achieved

The Constitutional Court, referring to the practice of international human rights organisations, has already recognised that the State may treat comparable groups differently to remedy the actual inequality, moreover, in certain

circumstances the fact that the State does not attempt to eliminate this inequality by differential treatment can be recognised as being a violation. I.e., in some cases the State may have the obligation to take special measures to decrease circumstances that promote inequality. Such measures are lawful, insofar these are rational, objective and proportional measures for decreasing inequality and are discontinued when equality is, substantially, achieved (*see Judgement of 10 July 2020 by the Constitutional Court in Case No. 2019-36-01, Para 14.2.*).

The UN Committee on the Elimination of Discrimination against women (hereafter – the Committee) has recognised that, in view of the existing differences between men and women, not only biological ones but also those that have evolved socially and culturally, in some cases men and women should be treated differently. The temporary special measures are established for the period required for achieving the special purpose – ensuring *de facto* equality of men and women. Such measures may include also a broad spectrum of legislative, administrative and other instruments, policies and practices, *inter alia*, support programmes, granting or re-allocation of resources, favourable treatment, establishing targeted employment relations, promotion, and quota systems (*see: UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures), UN Doc. A/59/38 (supp), 18 March 2004, paras. 8, 20–22.*).

21.3. Para 4 of Article 4 of the Istanbul Convention applies to special measures that the State Parties may take to enhance the protection of women from gender-based violence, and which would benefit women only. It is noted in the Explanatory Report to the Istanbul Convention that such differential treatment has objective and reasonable grounds because women become victims of gender-based violence to a significantly larger extent than men (*see: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Para 55.*).

Pursuant to Para “d” of Article 3 of the Istanbul Convention, “gender-based violence against women” means violence that is directed against a woman because she is a woman or that affects women disproportionately. This violence includes any

harm that is perpetrated against a woman and that is both the cause and the result of unequal power relations between women and men, based on perceived differences between women and men that lead to women's subordinate status in both the private and public sphere. Gender-based violence may be deeply rooted in the social and cultural systems, norms and values that govern society, and is often perpetrated by a culture of denial and silence (*compare, see also: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Para 44*).

To recognise that the differential treatment is part of the special measures, it should be examined, whether this differential treatment is directed at ensuring *de facto* equality of women and men and that women may benefit from it in a way that meets the purpose of the special measures.

Hence, the Constitutional Court must examine whether the differential treatment of men and women is directed at achieving *de facto* equality of women and men.

22. In examining, whether the differential treatment, envisaged in a Para 4 of Article 4 of the Istanbul Convention, is directed at achieving *de facto* gender equality in Latvia, the Constitutional Court must verify:

1) whether such circumstances exist in Latvia that allow introducing special measures directed at women, envisaging differential treatment of them;

2) whether the differential treatment, substantially, is directed at preventing such circumstances.

23. In the present case, to verify, whether such circumstances exist in Latvia that require introduction of special measures, the Constitutional Court will examine, whether such stereotypes exist in society that reflect the unequal distribution of power and resources among women and men, placing women in subordinate situation and subjecting them to the risk of gender-based violence. To this end, the historical context of understanding of gender equality should be taken into account.

Until the beginning of the 20th century, in the majority of countries worldwide women were not considered as being full-fledged members of society and society in general was patriarchal. Certain stereotypes regarding the role of both men and women in society had taken root. Traditionally, the women's role was linked to raising of children and taking care of the family. Women had less opportunities to exercise their rights compared to men. *Inter alia*, the struggle for granting the right to vote illustrates the change in the society's understanding of the actual equality of women (*see Judgement of 7 November 2019 by the Constitutional Court in Case No. 2018-25-01, Para 22.1.*).

In Latvia, the political equality of genders was recognised already at the time when the State was established. The Political Platform of the People's Council, adopted on 17 November 1918, provided that the Constitutional Assembly would be elected "by the participation of both genders". This principle was consolidated also in the Law on Electing the Constitutional Assembly, adopted by the People's Council of the Republic of Latvia on 19 August 1919. However, some stereotypes regarding the role of men and women in society have persisted till the present, thus, formal equality of women has not been sufficient to ensure *de facto* equality of men and women in Latvian society.

Moreover, Latvia has one of the highest incidence rates of violence against women in Europe (*see: Vardarbība pret sievietēm un bērniem Latvijā. Situācijas pārskats par statistiku un publiski pieejamajiem kvantitatīvajiem datiem, 2019. Available: antropologija.lu.lv*). The UN Committee on the Elimination of Discrimination against Women also has expressed concern regarding the great prevalence of gender-based violence in Latvia (*see: Committee on the Elimination of Discrimination against Women. Concluding observations on the combined fourth to seventh periodic reports of Latvia. 10 March 2020, Para 23*). Furthermore, Latvia has problems in providing assistance to victims of gender-based violence, for example, there is not enough shelters for women victims of violence and for victims of sexual violence. Likewise, Latvian society is not sufficiently informed about organisations and specialists who provide assistance to women who are

victims of violence (*see also opinion of association “Centrs MARTA” in Case Materials, Vol. 1, pp. 143-146*).

The Constitutional Court concludes that gender-based violence is still present in Latvia and most often affects women in particular.

Thus, currently such circumstances exist in Latvia that allow taking special measures with respect to women, envisaging differential treatment of them.

24. Para 4 of Article 4 of the Istanbul Convention does not impose upon the State Parties the obligation to implement particular special measures. Pursuant to Para 2 of Article 2 and Para 1 of Article 4 of the Istanbul Convention, the State Parties are encouraged to protect all persons against violence and to apply this Convention to all victims of domestic violence. Thus, the Istanbul Convention leaves the decision on whether the State Party should implement special measures at the discretion of the State party itself, only noting that special measures for protecting women against gender-based violence are not considered discrimination in the meaning of this Convention.

Since such circumstances exist in Latvia that allow establishing differential treatment of women to prevent gender-based violence and ensure *de facto* gender equality, it can be concluded that the introduction of special measures is directed at achieving the purpose – achieving *de facto* equality of men and women. The legislator enjoys certain discretion, in deciding on the form and nature of these special measures; however, in exercising this discretion, the general principles of law and other norms of the *Satversme*, as well as the provisions of international law and the European Union law must be complied with (*compare, see Judgement of 18 April 2019 by the Constitutional Court in Case No. 2018-16-03, Para 15.1.*).

The differential treatment, allowed by Para 4 of Article 4 of the Istanbul Convention, substantially, facilitates prevention of gender-based violence, i.e., the circumstances, which require the introduction of special measures with respect to women, are being eliminated. However, the Constitutional Court draws attention to the fact that these special measures should be introduced in a way that would not

perpetuate the stereotypes, on which gender-based violence is founded (*see: Otto D. Gender, Violence and Human Rights. In: Shepherd L. J. (Ed.) Handbook on Gender and Violence. Cheltenham, Northampton: Elgar, 2019, pp. 363–364*).

Consequently, the differential treatment allowed by Para 4 of Article 4 of the Istanbul Convention, has objective and reasonable grounds.

Hence, Para 4 of Article 4 of the Istanbul Convention complies with Article 91 of the *Satversme*.

III

25. The Applicant holds that Article 14 of the Istanbul Convention is incompatible with Article 112 of the *Satversme*.

In the Applicant's opinion, Para 14 of the Istanbul Convention imposes an obligation on the State Parties to modify the study curriculum in a way to include in it material about gender equality and social roles of genders, which have not been stereotyped, *inter alia*, include in the education programme issues related to persons, whose gender identity differs from their sex determined at birth. This norm is said to be incompatible with the proportionality principle, being contrary to the best interests of the child and the parents' right to educate their children in accordance with their religious or philosophical conviction.

The Cabinet, in turn, notes that the measures, envisaged in Article 14 of the Istanbul Convention, comply with the right to education, included in Article 112 of the *Satversme*. I.e., the purpose of the said provision is to achieve that, with help of the system of education, the understanding of gender equality, mutual respect, violence-free interpersonal relationships, the right to personal integrity, as well as violence against women and domestic violence and the need to eradicate it is promoted.

To review compliance of Article 14 of the Istanbul Convention with the right to education, included in Article 112 of the *Satversme*, it must be established, whether this norm restricts the respective right.

25.1. Article 112 of the *Satversme* provides: “Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.”

The first sentence of Article 112 of the *Satversme* comprises the right to make full use of all opportunities provided by the system of education. The second sentence of the respective article envisages the basic resource for exercising the right to education, i.e., primary and secondary education paid for by the State. The third sentence of this article, in turn, defines the compulsory nature of primary education, from which a person’s constitutional duty to acquire, within the framework of the system of education, certain skills, *inter alia*, in obtaining information, reasoning, critical thinking and rational decision-making follows. The fulfilment of this duty is directed at sustainable implementation of the sovereign’s will, included in the basic norm of Latvia, – to live in a democratic state governed by the rule of law (*compare, see Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 20, and Judgement of 6 April 2021 in Case No. 2020-31-01, Para 16.1.*).

The Constitutional Court already has recognised that the right to education allows certain discretion of the State regarding the system of education that the State sets up. Taking into account the resources available to the State and the needs of society in the particular stage of its development, Article 112 of the *Satversme* comprises the obligation to respect, protect and realise the right to education (*see Judgement of 19 June 2020 by the Constitutional Court in Case No. 2019-20-03, Para 12*). However, the State’s actions, in creating a system of education that is accessible to all learners, must comply with such basic requirements as availability, accessibility, acceptability and adaptability of education. Availability of education means sufficient number of educational institutions that meet learners’ needs and elaboration of educational programmes to guarantee that the aims of education are achieved. Accessibility of education should be ensured by creating equal opportunities and removing obstacles that might occur in using the availability of education. Acceptability of education must be ensured by adjusting the content and methods of education to learners’ needs, *inter alia*, by defining standards of

education and creating circumstances for creative freedom to reach the respective standards in certain stages of education, as well as providing for the possibilities of parental involvement. Acceptability of education includes also the rights of children to free participation in cultural life, the right to rest, as well as safe and healthy conditions of education. Adjustability of education, in turn, means constant development of the system of education in compliance with the changing needs of society (*see Judgement of 23 April 2019 by the Constitutional Court in Case No. 2018-12-01, Para 20*).

Article 112 of the *Satversme* should be specified and applied in conjunction with Article 2 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which provides: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” In this regard, the European Court of Human Rights has recognised that this right does not prevent the State from including in the study curriculum information or knowledge of religious or philosophical issues (*see Judgement of 7 December 1976 by the European Court of Human Rights in Case “Kjeldsen, Busk Madsen and Pedersen v. Denmark”, Application No. 5095/71, etc., Para 53*). Moreover, the parents of children in education do not have the right to object against inclusion of such information in the standard of education, insofar this information is included in the curriculum in an objective, critical and pluralistic manner, thus promoting the development of critical thinking (*see Judgement of 18 March 2011 by the Grand Chamber of the European Court of Human Rights in Case “Lautsi and Others v. Italy”, Application No. 30814/06, Para 62*).

Hence, adjusting the system of education to the changing needs of society, recognising and, to the extent possible, ensuring the parents’ right to ensure to their children such education and studies that comply with their religious conviction or philosophical views, falls within the scope of Article 112 of the *Satversme*.

25.2. Para 14 of the Istanbul Convention pants imposes an obligation on the State Parties to review, in compliance with the situation therein, the need to take

particular measures for changing programmes of education and distribution of materials that comply with the purpose of the Convention in places where informal education is acquired, as well as in sports, cultural and leisure facilities and in the media and, if necessary, to take such measures in compliance with the purpose of the Convention. The particular measures depend on the situation of each State Party and the organisational particularities of their systems of education (*see: Council of Europe. Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Para 95; see also the opinion of Mg. iur. Māris Lejnieks in Case Materials, Vol. 2, pp. 20-21*).

Before the legislator has assessed, whether particular measures should be introduced in Latvia for changing the system of education, and has, accordingly, taken such measures, it is impossible to verify, whether these measures meet the needs of Latvia's society, i.e., whether the content of education complies with the requirement set regarding the adjustability of education, which follows from the right to education, included in Article 112 of the *Satversme*. Moreover, until concrete research has not been conducted regarding the need to introduce the measures referred to in Article 14 of the Convention into Latvia's system of education and to introduce concrete improvements in programmes of education, it is impossible to assess, whether and how they pertain to the parents' right to bring up their children in accordance with their religious or philosophical conviction. This means that Article 14 of the Istanbul Convention *per se* does not restrict any group's right of education, included in Article 112 of the *Satversme*.

The Constitutional Court reminds that in cases, which have been initiated on the basis of an application submitted by Members of the *Saeima*, the abstract review of legal provisions has to be conducted. In such a case, the Applicant does not have to substantiate the existence of an infringement of a particular person's fundamental rights. However, the legal reasoning of the claim regarding incompatibility of the norm with the fundamental rights, enshrined in the *Satversme* should include substantiation for the fact that the norm of an international treaty, in case it is ratified, will restrict the rights of a certain group of persons, as well as of the causal relationship between the contested norm and the adverse consequences created for

persons (*compare, see Judgement of 13 February 2013 by the Constitutional Court in Case No. 2012-12-01, Para 10*). Moreover, abstract constitutional review does not mean that expression of considerations regarding the compliance of the possible alternative legal regulations with the *Satversme* would fall within the Constitutional Court's jurisdiction.

Hence, there are grounds, referred to in Para 6 of Section 29 (1) of the Constitutional Court Law, for terminating legal proceedings.

Thus, legal proceedings in the part regarding compliance of Article 14 of the Istanbul Convention with Article 112 of the *Satversme* shall be terminated.

The Substantive Part

On the basis of Articles 29–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To terminate legal proceedings in the case in the part regarding compliance of Para “c” of Article 3, Para 3 of Article 4 and Para 1 of Article 12 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence with the Preamble, Article 1, Article 99 and Article 110 of the *Satversme* of the Republic of Latvia, and compliance of Para 14 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence with Article 112 of the *Satversme* of the Republic of Latvia.

2. To recognise Para 4 of Article 4 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence as being compatible with Article 91 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into force on the day it is published.

Chairperson of the court hearing

Sanita Osipova