

**Judgement**  
**on Behalf of the Republic of Latvia**  
**in Case No. 2012-24-03**  
**7 November 2013, Riga**

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķiniš and Sanita Osipova,

having regard to the application by Nataļja Čehova and Valērijs Kravcovs,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 3 of Sections 16 and Para 11 of Section 17(1), Section 19<sup>2</sup> and Section 28<sup>1</sup> of the Constitutional Court Law,

on 8 October 2013 examined in written procedure the case

**“On Compliance of Annex 1 to the Cabinet of Ministers Regulation of 7 July 2009 No. 733 “Regulations Regarding the Amount of the Knowledge of the Official Language and the Procedures for Examination of the Knowledge of the Official Language for the Performance of Professional Duties and Duties of Office, Receipt of the Permanent Residence Permit and Obtaining of the Status of a Long-term Resident of the European Union and the State Fee for Examination of the Fluency in the Official Language” with Article 91 and Article 101 of the Satversme of the Republic of Latvia, as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.”**

## The Facts

1. The Cabinet of Ministers Regulation of 7 July 2009 No. 733 “Regulations Regarding the Amount of the Knowledge of the Official Language and the Procedures for Examination of the Knowledge of the Official Language for the Performance of Professional Duties and Duties of Office, Receipt of the Permanent Residence Permit and Obtaining of the Status of a Long-term Resident of the European Union and the State Fee for Examination of the Fluency in the Official Language” (hereinafter – Regulation No. 733) was issued in accordance with Section 6(5) of the Official Language Law, Section 24(5) and Section 24(5<sup>1</sup>) of the Immigration Law, as well as Section 3(4) and 3(5) of “Law on the Status of Long-term Resident of the European Community in the Republic of Latvia”.

1.1. Section 6(1) of the Official Language Law provides that employees of State and local government institutions, courts and institutions constituting the judicial system, State and local government undertakings, as well as employees of companies, in which the greatest share of capital is owned by the State or a local government, must be fluent in and use the official language to the extent necessary for the performance of their professional duties and duties of office.

Whereas Section 6(5) of the Official Language Law provides that the extent of knowledge of the official language required for the persons referred to in Para 1 of this Section, as well as the procedures for testing the proficiency of the Latvian language shall be prescribed by the Cabinet.

1.2. Section 24(5) and Section 24 (5<sup>1</sup>) of the Immigration Law set out the procedure, via which a foreigner has the right to request a permanent residence permit, and provides that he has to pay a State fee in the amount and according to the procedures specified by the Cabinet.

1.3. At the time, when Regulation No. 733 was adopted, Section 3(4) of the law “On the Status of a Permanent Resident of the European Union in Latvia” envisaged that the Cabinet should prescribe the extent of official language knowledge needed for obtaining the status of a permanent resident of the European Communities, the procedure for testing the official language proficiency, the categories of persons, who because of prolonged or unresolvable health disorders should be exempt from the official language proficiency test. As regards those persons, who have previously

taken the test of the necessary extent of the official language proficiency, the Cabinet prescribes the procedure for recognising the obtained documents certifying the official language proficiency.

Pursuant to Section 3(5) of the aforementioned law, a third country national pays a State fee for the official language proficiency test in the amount and according to the procedure set put by the Cabinet,

**2.** The initial wording of Annex No.1 to Regulation No. 733, “Division of Offices and Occupations According to the Necessary Level and Grade of Official Language Proficiency”, which was in force from 1 September 2009 to 6 January 2012, set the following requirements for the members of local government councils: “1<sup>st</sup> grade of C level required for the heads of institutions, organisations, enterprises and companies and structural units thereof, highly qualified specialists, [...] whose professions have the following classification codes: [...] 1150 01 member of a city council; 1150 02 member of a regional council” (hereinafter – the initial wording of Regulation No. 733).

**2.1.** Annex No.1 to Regulation No. 733 was expressed in a new wording with the Cabinet Regulation No.16 of 3 January 2012 “Amendments to the Cabinet Regulation of 7 July 2009 No. 733 “Regulations Regarding the Amount of the Knowledge of the Official Language and the Procedures for Examination of the Knowledge of the Official Language for the Performance of Professional Duties and Duties of Office, Receipt of the Permanent Residence Permit and Obtaining of the Status of a Long-term Resident of the European Union and the State Fee for Examination of the Fluency in the Official Language” (hereinafter – Regulation No. 16), which entered into force on 7 January 2012. This wording of Annex 1 to Regulation 733 did not specify the mandatory extent of the official state language knowledge and skills.

**2.2.** On 23 October 2012 the Cabinet adopted Regulation No.714 “Amendments to the Cabinet of Ministers Regulation of 7 July 2009 No. 733 “Regulations Regarding the Amount of the Knowledge of the Official Language and the Procedures for Examination of the Knowledge of the Official Language for the Performance of Professional Duties and Duties of Office, Receipt of the Permanent Residence Permit and Obtaining of the Status of a Long-term Resident of the European Union and the State Fee for Examination of the Fluency in the Official

Language”” (hereinafter – Regulation No. 714), which entered into force on 26 October 2012.

In accordance with these amendments the necessary extent of official language knowledge and skills for a member of a city council (classification code 1111 21) and member of a regional local government council (classification code 1111 22) is the 1<sup>st</sup> Grade of C level. The aforementioned classification codes comply with the classification codes indicated in the Cabinet Regulation of 18 May 2010 No.461 “Regulation on the Classification of Occupations, Basic Tasks Appropriate for the Occupation and Basic Qualification Requirements, and on the Procedure of using and Updating the Classification of Occupations” (hereinafter – Regulation No. 461).

At the time, when the initial wording of Regulation No. 733 was adopted, the Cabinet Regulation No. 125 of 13 February 2007 “Regulation on the Classification of Occupations, Basic Tasks Appropriate for the Occupation and Basic Qualification Requirements, and on the Procedure of using and Updating the Classification of Occupations” (Classification of Occupations)” (hereinafter – Regulation No. 125) (hereinafter Regulation No. 461 and No. 125 together – classification of occupations) was in force.

**3. The Applicants – Natalja Čehova and Valērijs Kravcovs** (hereinafter – the Applicants) – hold that Annex No. 1 to Regulation No. 733 in its initial wording and in the wording included in Regulation No. 714, insofar it applies to the members of local government councils, (hereinafter also – the contested regulation) is incompatible with Section 91 and Section 101 of the Satversme of the Republic of Latvia (hereinafter – the Satversme), as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**3.1.** The Applicants were elected as members of the local government councils at the local government election held on 6 June 2009. The contested regulation entered into force on 1 September 2009. In September 2009 both applicants were made administratively liable for a violation envisaged in Section 201<sup>26</sup> of the Latvian Administrative Violations Code, i.e., for not using the official language to the extent necessary for performing professional duties and duties of office.

**3.2.** The requirements regarding the knowledge of Latvian language for the members of local government councils are directly and indirectly set out by a number

of regulatory enactments. Indirect requirement regarding the official language proficiency is defined in the law “On Local Governments”, the Official Language Law and the Satversme. From 13 January 1994 to 9 May 2002 Section 9 of the Law on the Election of City Council, Regional Council and Rural Municipality Council (hereinafter – the Election Law) defined the level of official language proficiency that the members of city councils and deputy candidates should have. Direct requirements regarding the extent of official language knowledge that the members of local government councils should have were repeatedly introduced with Regulation No. 733, which was adopted by the Cabinet of Ministers on 1 September 2009.

**3.3.** The Applicants hold that the Cabinet of Ministers did not have the right to prescribe the obligation of members of local government councils to have C level 1<sup>st</sup> grade official language proficiency. Regulation No. 733 does not clearly indicate the authorising norms and their main directions. Moreover, Section 6(5) of the Official Language Law has not been amended since the moment of its adoption. Thus, it is impossible to identify the legislator’s will to authorise the Cabinet of Ministers to adopt regulation, which would define the level and grade of official language proficiency for members of local government councils. Hence, allegedly the contested regulation is incompatible with Section 31 of the Law on the Structure of the Cabinet of Ministers.

The Applicants hold that the requirements of Section 6 of the Official Language Law cannot be applied to the members of local government councils, since they are not employees in the meaning of the Labour Law, i.e., they do not conclude an employment agreement and they have no employer. Hence, the contested regulation is incompatible with Section 6(1) of the Official Language Law. Whereas Section 6(5) of the Official Language Law applies only to employees, but not to political officials. The Applicants note that only the requirements regarding the use of the official language, not its proficiency can be applied to offices to which persons are elected. The restriction that the contested regulation comprises has not been established by law.

**3.4.** As the Applicants note, the contested regulation might have the purpose of aligning the classification of occupations with the list of those office, for the execution of which proficiency in the official language is necessary. Another probable legitimate aim could be inclusion of the representatives of ethnic minorities in Latvian society. However, both Applicants hold that the Cabinet of Ministers has not defined

the legitimate aim of the contested regulation. The requirement that the official language should be used in the work of local governments can be complied with by other, more effective means, for example, by using a translator's assistance in communication with electors.

The requirements included in the contested regulation are not formally set for the candidates running for the offices of local government council members. Thus, persons, whose official language proficiency level does not comply with the one defined in the contested regulation, may run for elections: however, after such persons have been elected, the compatibility of the member with the office may be disputed at any time.

**3.5.** It is alleged that the contested regulation establishes differential treatment of members of local government councils, depending upon their native language and ethnic origin. Para 12 of Regulation 733 envisages that those persons, who have acquired primary, secondary or higher education in accredited programmes in the Latvian language are exempt from the official language proficiency examination. However, these requirements do not apply to those council members, who have graduated from a secondary school with Latvian as the language of instruction, and partly – to council members, who have acquired secondary education in a minority language after accredited education programmes of ethnic minorities were introduced.

The contested regulation allegedly violates the Applicant's rights, guaranteed in Article 91 of the Satversme, to be equal with other colleagues before the law and enjoy their fundamental rights established in Article 101 of the Satversme without discrimination.

**4.** The institution, which adopted the contested regulation, – **the Cabinet of Ministers** – notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as with Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**4.1.** The contested regulation does not allow that persons, whose official language proficiency does not comply with the extent indicated in Regulation No. 733, to be members of local government councils. Thus, the contested regulation restricts the Applicants' fundamental rights, defined in Article 101 of the Satversme, to participate in the local government work as envisaged by law. The legislator has authorised the Cabinet of Ministers to define the amount of the official language knowledge that persons referred to in Section 6(1) of the Official Language Law need.

The authorisation to define this amount and the procedure for testing the official language proficiency is included in Section 6(5) of the Official Language Law.

**4.2.** The Applicants interpret Section 6(1) of the Official Language Law erroneously. The Latvian language has been defined as the official state language in the Satversme, the task of the Official Language Law, of special laws and Cabinet Regulations is to ensure that the requirements of Article 4 of the Satversme are met in the public sphere. Since local governments are public institutions, official language should be used there.

Until 1 September 2009 Regulation No. 733 did not directly define the level of official language knowledge necessary for the members of local government councils. However, this cannot give grounds for stating that in the period from 9 May 2002 to 1 September 2009 no direct requirements regarding the official language proficiency level that the local government deputies needed existed at all. The Cabinet of Ministers notes that also during the aforementioned period legislative enactments required knowledge of the official language to the extent needed for performing professional duties and duties of a deputy's office. Such requirements, inter alia, are set in the Satversme, the Official Language Law and the Law on the Status of a Member of a City Council or Regional Council.

**4.3.** As the Cabinet of Ministers notes, the contested regulation has a legitimate aim, since the State is interested in ensuring normal functioning of its institutions. The official language is a tool of legal governance. Knowledge of the official language is an important precondition for performing the deputy's duties.

The European Court of Human Rights in Case “Ingrīda Podkolzina *versus* Latvia” recognised that the requirement – that deputy candidates should have sufficiently good knowledge of the official language – had a legitimate purpose and that the State of Latvia could define the requirement for the deputy candidates to know the Latvian language. This requirement can be applied also the deputies.

The Cabinet of Ministers holds that the possibility of using the services of a translator is not a more lenient means and does not ensure that the legitimate aim is reached in the same quality as is ensured by the contested regulation. Thus, the contested regulation complies with Article 101 and Article 91 of the Satversme.

**5.** The summoned person – **the Ministry of Justice** – notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as with

Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**5.1.** Article 101 serves to ensure the legitimacy of democratic state order. In accordance with this Article the language to be used in the work of local government, both in communication and record-keeping and documents, as well as during work meetings is Latvian.

The contested regulation has the purpose to ensure functioning of local governments, since the Latvian language is their working language. The contested regulation is suitable for achieving the legitimate aim, since it ensures effective application of Article 101 of the Satversme.

**5.2.** It is a deputy's duty to participate in the work of the council, *inter alia*, to examine inhabitant's complaints and applications, provide answers to them, to meet with inhabitants. Such actions must be performed directly, since the deputy through his or her activities in the council, expresses his or her opinion and protects the interests of his or her electors. Communication is an important part of a local government deputy's work and a personal obligation.

The Ministry of Justice holds that the involvement of an interpreter would not ensure meeting the legitimate purpose of the contested regulation in the same quality, moreover, it could to a large extent hinder the work of a local government council. For example, if the member of a local government council has access to classified information, such information could not be disclosed to an interpreter. A deputy must perform his or her duties directly and immediately.

The term "employee" in the meaning of the Official Language Law is broader than the term "official" or "civil servant" and is applicable to both of the aforementioned categories. Thus, Section 6(1) and Section 6(5) of the Official Language Law are fully applicable to a member of a local government council.

**5.3.** The State Language Centre is obliged to submit a claim to the regional court requesting annulment of a local government council member's authorisation, if the deputy repeatedly does not come for the official language proficiency test or if it is repeatedly established that the deputy's knowledge of the official language does not comply with the level prescribed by the Cabinet of Ministers.

Since the member of local government council must have the level and the grade of official language proficiency stipulated by the Cabinet of Ministers, six



months until the official language proficiency test is a reasonable and sufficient period, allowing a person to improve his or her knowledge of the official language.

**5.4.** The Ministry of Justice holds that there is no incompatibility between the requirement, included in Subparagraph “g”, Para 3 of Section 17(1) of The City Council and Municipality Council Election Law, for deputy candidates to provide self-assessment of their Latvian language proficiency and the contested regulation, which provides that a member of a local government council should have C level , 1<sup>st</sup> grade knowledge of the official language.

The contested regulation does not restrict the passive right to vote of the ethnic minority representatives, since its requirement applies to all persons, irrespectively of their ethnicity, race, gender or other features. Moreover, no document linked with the exercise of the passive right to vote requires indicating ethnicity. Thus, the requirement that a member of local government council should know the official language is not discriminating and complies with Article 91 of the Satversme.

**6.** The invited person – **the Ministry of Education and Science** – notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers. The opinion of the Ministry of Education and Science conforms to the opinion expressed in the written answer by the Cabinet of Ministers and the arguments provided by the Ministry of Justice.

**7.** The summoned person – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**7.1.** The Ombudsman notes that persons, who have acquired primary, secondary or higher education in accredit programmes of education in the Latvian language, as well as persons, who have acquired an accredited ethnic minority education program and have taken the centralised examination of the Latvian language, have already demonstrated their knowledge of the official language. Therefore they are exempt from the official language proficiency test. Whereas those persons, who are not referred to in Para 12.1 and Para 12.2 of the Regulation, are not

exempt from the official language proficiency test, since they have no proof of their knowledge of the official language. Thus, those deputies, who in accordance with Para 12 of Regulation No. 733 are exempt from the official language proficiency test, are not in similar and according to concrete criteria comparable circumstances with those deputies, who do not have the aforementioned proof of their proficiency in the official language.

The regulation included in Regulation No. 733 aims at achieving uniform use of the official language and implementing the requirements set in Article 4 and Article 101 of the Satversme in the local government work.

**7.2.** The contested regulation was established by a law, which was adopted in due procedure. By adopting Regulation No. 733 the Cabinet of Ministers did not violate Section 6 of the Official Language Law, or Section 31 of the Law on the Structure of the Cabinet of Ministers. The legitimate aim is to consolidate the use of the official language, as well as Latvian citizens' right and even obligation to use the Latvian language both in oral and written communication. Reaching of this aim complies with public interests.

The contested regulation is suitable for reaching the legitimate aim. Moreover, protection against disproportional or arbitrary use of the restriction is effectively guaranteed. I.e., only the regional court may decide on annulling the deputy's authorisation by adopting a judgement after comprehensive assessment of all facts of the case and hearing all persons party to the case. A possibility to improve one's official language proficiency within the period of six months is envisaged for a deputy, who does not have the appropriate level of proficiency in the official language. The Ombudsman holds that other measures would not ensure reaching the legitimate aim. The restriction established by the contested regulation is proportional and is compatible with Article 101 of the Satversme. The Ombudsman also recognizes that Regulation No. 733 was adopted in compliance with the authorisation granted by the legislator and within the scope set by it.

Not only the members of the local government council, but also the deputy candidates must be aware of the high responsibility linked with this office. While preparing for being elected to the office of a deputy, persons must improve their proficiency in the official language to the extent that it would allow them to exercise their duties of a deputy.

**8.** The summoned person – **the association “Latvian Association of Local and Regional Governments”**– notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**8.1.** The obligation to know the Latvian language and to use it in state and local government institutions first and foremost follows from the Satversme. When a person runs for the local government election, he or she knows the requirements with regard to the official language proficiency set for the member of a local government council. The obligation to master and to use the official language arises prior receiving the authorisations of local government member and the term for mastering the official language after acquiring the authorisation is proportional.

The requirement defined by the contested regulation for the employees of state and local government institutions is necessary in order to ensure the mandatory use of the Latvian language in state and local government institutions in accordance with Article 4 and Article 101 of the Satversme. A member of a local government council should have sufficiently high level of the Latvian language proficiency, so that he or she would be able to perceive and understand what is said and written by others, and also should be able to express his opinion on diverse issues. If a deputy were to exercise his or her rights and perform his or her duties with the mediation of an interpreter, it would be impossible to ensure full-fledged work of the local government in the interests of the local inhabitants.

**8.2.** The legal norm, by which the legislator has authorised the Cabinet of Ministers to define the amount of the knowledge of the official language that the employees of state and local government institutions need for performing their professional duties and duties of office, should be examined in accordance with its purpose. Since a member of a local government performs certain obligations in a public institution, then in the framework of the case under review, the content of the concept – employee of a state or local government institution – should be analysed.

If a deputy’s knowledge of the official language does not comply with the level defined in the contested regulation, he or she has the possibility to improve it within the set term. If it is repeatedly established that the deputy’s knowledge of the official language does not comply with the aforementioned level, the State Language

Centre has the obligation to submit an application to the regional court requesting annulment of the deputy's authorisation.

**9.** The summoned person – **prof. Dr. h. c., Assessor iur., Dipl.-Pol. Egils Levits** – notes that the Latvian language as the official language is an integral part in the constitutional identity of the state of Latvia.

**9.1.** The main function of the state language is to serve as the common means of communication and understanding for all inhabitants of the State, irrespectively of their ethnicity, native language, religion and other features. The fact that the official language is the working language of state institutions, as well as local governments, is one of the concrete manifestations of this function. The third sentence of Article 101 of the Satversme only provides more concrete explanation of one of the cases when the pre-condition included in Article 4 of the Satversme is applied.

**9.2.** The Regulation that the Latvian language is the working language of local governments is not a restriction to the rights of a local government council member, since the requirement to know the official language follows from the Satversme. Whereas the requirement to have C level 1<sup>st</sup> grade official language proficiency could be regarded as a regulation that restricts a deputy's rights, which gives him subjective right to contest it in court. This restriction has a legitimate aim, i.e., to ensure that a deputy could perform his or her obligations in full in the working language of local governments. A deputy must understand what he or she himself or herself says and argue for his or her opinion, as well as communicate with electors. Advisors, assistants, interpreters and literary editors can only improve the quality of the deputy's work, but cannot substitute him in personal communication.

**9.3.** The term “employees”, which is used in Section 6(1) of the Official Language Law, covers all those, who work in institutions, enterprises and organisations referred to in this provision, as well as those who act on behalf of these institutions, irrespectively of the nature of their work or office. Thus, the term “employees”, used in the Official Language Law, is broader than the same term in the meaning of the Labour Law. If the requirement regarding the knowledge of the official language were applied only to those persons, who are employed in state and local government institutions on the basis of a labour contract, it would be incompatible with the purpose of the law – achieving comprehensive use of the official language in the public sphere,

**9.4.** The requirement set for the members of local government councils to have the appropriate proficiency level in the official language does not restrict the passive right to vote of the minority representatives. Since the contested regulation is based upon Article 101 of the Satversme, it complies with the principle of equality enshrined in the Satversme. I.e., there are no inner contradictions in the Satversme. Ethnicity, native language, religious belief or other circumstances cannot justify a person's lack of knowledge of the official language. It is the obligation of a member of a local government council to perform duties of office not only on behalf of those persons, who have voted for him or her, but also on behalf of all electors of the respective territory.

**10.** The summoned person – **Dr. iur. Mārtiņš Mīts** – notes that the contested regulation complies with Article 91 and Article 101 of the Satversme, as well as with Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.

**10.1.** The Cabinet of Ministers, in defining the amount of the official language knowledge, did not act *ultra vires*. There are no grounds to construe the term “employees” used in the Official Language Law solely in the meaning of the Labour Law, applying only the method of grammatical interpretation. The general regulation on the official language should be taken into consideration, therefore the content of Section 6(1) and Section 6(5) of the Official Language Law should be established by means of systemic interpretation. I.e., members of local government councils, in order to perform their duties, must know the official language.

The requirement that also deputy candidates must know the official language follows from the constitutional foundations of the state of Latvia and the legal norms, which were in force already before the local government election held in 2009. Even though in the period from 25 January 1994 to 23 May 2002 the Election Law envisaged that the local government deputy candidates should have the highest-level proficiency of the official language, the legislator is not obliged to define itself the extent of official language knowledge necessary for a specific office. Within the framework of the legal system this can be done also by the Cabinet of Ministers, which adopted the contested regulation in compliance with the authorisation granted by the legislator.

Since the Latvian language is the only working language of local governments, it is logical to prescribe such extent of official language knowledge for local government deputies that they need in order to fulfil their duties of office in full scope. The legitimate purpose of the contested regulation is to ensure the socially unifying significance of the official language as the common means of communication and to maintain Latvia's constitutional identity.

**10.2.** It is possible to use the services of a translator for performing some duties of a member of a local government, for example, to prepare documents. However, there are also such duties, the performance of which requires the knowledge of the official language to the extent defined by the contested regulation. These duties, for example, comprise participation in the meetings of the council and its committees, as well as expressing previously prepared or spontaneous opinion during these meetings. Passive participation in the work of the council and inability to respond actively to the occurrences cannot ensure full-fledged protection of the electors' interests. This, in its turn, can influence the quality of the discussions and the adopted decisions. Moreover, the legal regulation envisages a term of six months for mastering the official language. It is impossible to reach the legitimate aim of the contested regulation by less restrictive means.

Since the contested regulation has no impact upon the status of a deputy elected in the local government election of 2009 and does not affect the electors' right of free choice, the public benefit, which the restriction established by the contested regulation ensures, exceeds the harm inflicted to an individual's interests.

The requirement to have the relevant amount of the official language knowledge applies to all local government deputies, but those persons, whose amount of knowledge is not questioned, are exempt from the official language proficiency test. M. Mits is of the opinion that the restriction established by the contested regulation is obviously proportional with the legitimate aim and, thus, also objective, well founded and compatible with Article 91 of the Satversme.

### **The Findings**

**11.** The Applicants contest the norms of Annex 1 to Regulation No. 733 in their initial wording and in the wording included in Regulation No. 714, insofar these apply to members of local government councils. The aforementioned two wordings of

Annex 1 to Regulation No. 733 do not differ significantly, since they establish that the members of local government should mandatorily have C level, 1<sup>st</sup> grade proficiency in the official language.

Therefore, the Constitutional Court will assess the compatibility of Annex 1 to Regulation No.733 with Article 91 and Article 101 of the Satversme, Section 6(1) of the Official Language Law and Section 31 of the Law in the Structure of the Cabinet of Ministers, insofar it establishes the mandatory amount of the official language knowledge and skills for the members of local government council.

**12.** The case does not contain a dispute, whether the contested regulation pertains to the Applicants. I.e., the Applicants have been elected deputies at the local government election held on 6 June 2009 – V.Kravcovs – to the Liepāja City Council, but N. Čehova – to Jēkabpils City Council.

The State Language Centre, verifying the official language proficiency of both Applicants, decided to make them administratively liable for not using the official language to the extent needed for performing professional duties and duties of the office. A monetary fine was imposed to the Applicants for the aforementioned violation and simultaneously the obligation to take a repeated official language proficiency test within after six months was defined (*see Case Materials, Vol. 2, pp. 169 – 173, 188 – 196*).

**13.** The first part of Article 101 of the Satversme provides: “Every citizen of Latvia has the right, as provided for by law, to participate in the work of the State and local government, and hold position in the civil service.”

Whereas the second part of this Article of the Satversme provides: “Local governments shall be elected by Latvian citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European union who permanently resides in Latvia has the right, as provided for by law, to participate in the work of local governments. The working language of local governments is the Latvian language.”

It can be inferred from the application that the Applicants do not question the compliance of the contested regulation with the first and the second sentence of the second part of Article 101 of the Satversme. Therefore, in the framework of the case

under review, the compliance of the contested regulation with the first part and the third sentence of the second part of Article 101 of the Satversme must be assessed.

A citizen's participation in the work of the State and local government first and foremost should be understood as the right to participate in establishing the Saeima or a local government council, by voting and by running for election.

The State has the obligation not only to guarantee to a citizen formal right to participate, but also to create preconditions for citizens' participation in the work of the State and local government, moreover, doing that in an informed way and understanding the essence of participation (*see: Kusiņš G. Satversmes 101. panta komentārs. Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2011, 384. – 385., 394. lpp.*).

The Applicants hold that the contested regulation, which prescribes the level and degree of the necessary proficiency in the official language, disproportionately restricts their possibilities to perform the duties of office of a member of local government council. Thus, the Constitutional Court must first of all establish, whether the contested regulation restricts the Applicants' right to participate in the work of local governments, as provided for by law.

**14.** Article 116 of the Satversme does not refer *expressis verbis* to the possibility to restrict the fundamental rights established by Article 101 of the Satversme; however, the Constitutional Court in its practice has recognised that these rights are not absolute. I.e., Article 101 of the Satversme comprises the condition "as provided for by law". Thus, the way of exercising this right must be defined by law. The legislator, by including into the text of Article 101 of the Satversme the words "as provided for by law", has established that the body applying law in each particular case must interpret the words "every citizen" in interconnection with restrictions defined in laws (*see Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 1 of the Findings*).

The obligation to know and to use the official language to the extent needed for performing duties of office is one the preconditions that every citizen should take into consideration when participating in the work of the State and local governments.

The requirement, that the third sentence in the second part of Article 101 of the Satversme contains that the working language of local governments is the Latvian



language is enshrined also in the law “On Local Governments”. Section 3(3) of this Law provides that the working language of a local government council and the authorities and institutions established by it is the Latvian language.

Thus, the requirement to use the Latvian language in the work of local governments, which comprises also the obligation of the local government council members to know the official language and to use it, is constitutionally enshrined and does not restrict a person’s fundamental rights define in Article 101 of the Satversme.

In accordance with Annex 1 to Regulation No. 733, members of local government council must have C level, 1<sup>st</sup> grade proficiency in the official language and must use it. Thus, only those persons, whose amount of the official language knowledge and skills comply with at least the aforementioned level and grade, can be members of a local government council. It follows from the case materials that the Applicants do not have C level, 1<sup>st</sup> grade proficiency in the official language (*see Case Materials, Vol.1, pp. 163, 187*).

**Thus, the requirement included in the contested regulation regarding the amount of the official language knowledge and skills, i.e., C level 1<sup>st</sup> grade, is to be recognises as a restriction to the Applicant’s right defined by Article 101 of the Satversme.**

**15.** To assess the constitutionality of the restriction to the fundamental rights, it must be assessed, whether the restriction has been established by law, whether it has a legitimate aim and whether it complies with the principle of proportionality (*see, Judgement of 11 April 2006 by the Constitutional Court in Case No. 2005-24-01, Para 8 of the Findings*).

**16.** The Applicants are of the opinion that the Cabinet of Ministers has acted contrary to the regulation of Section 31 of the Law on the Structure of the Cabinet of Ministers and has unfoundedly defined the level and degree of the official language knowledge and skills necessary for the members of local government councils.

Thus, the Constitutional Court must assess, whether the restriction has been established by law (on the basis of law). I.e., whether the Cabinet of Ministers has adopted the contested regulation in compliance with the authorisation granted to it by the legislator (*see, for example, Judgement of 11 March 2011 by the Constitutional Court in Case No. 2010-50-01, Para 10*).

**16.1.** Pursuant to Para 1 of Section 31(1) of the Law on the Structure of the Cabinet of Ministers, the Cabinet may adopt external regulatory enactments – regulations, if a special authorisation to do so has been granted to the Cabinet by law. The authorisation indicates the main lines of its content.

The authorisation to adopt the contested regulation is included in Section 6(5) of the Official Language Law, which provides: “The extent of the knowledge of the official language for the persons referred to in Paragraphs one, two and three of this Section, and the procedures for testing the fluency of the Latvian language shall be prescribed by the Cabinet.”

Thus, the authorisation included in Section 6(5) of the Official Language Law applies, *inter alia*, to the persons referred to in the first part of this Section, i.e., employees of State and local government institutions, courts and institutions constituting the judicial system, State and local government undertakings, as well as employees of companies in which the greatest share of capital is owned by the State or a local government. These persons must be proficient in and use the official language to the extent necessary for the performance of their professional duties and duties of office.

To fulfil this delegated task, the Cabinet of Ministers has the right and the obligation to prescribe the extent of the Latvian language knowledge and skills that is necessary for the aforementioned persons. To ensure that the requirements set to persons regarding this mandatory amount, an appropriate control mechanism is needed. Therefore the establishment of the procedure for testing the official language proficiency also falls within the jurisdiction of the Cabinet of Ministers.

**16.2.** The Applicants note that the members of local government councils are not employees in the meaning of the Labour Law and, hence, the requirements of Section 6(1) of the Official Language Law cannot be applied to them. Whereas the Cabinet of Ministers note that the term “employee” in the meaning of the Official Language Law is broader than the term “official” or “civil servant” and, *inter alia*, is applicable to both of these categories of persons.

**16.2.1.** The Constitutional Court, assessing the arguments provided by the Applicants, finds that these are based upon the understanding of the term “employee” included in the Labour Law. I.e., pursuant to Section 3 of the Labour Law an employee is a natural person who, on the basis of an employment contract for an

agreed work remuneration, performs specific work under the guidance of an employer. The application contains only grammatical interpretation of term “employee”, referred to in Section 6(1) of the Official Language Law.

However, the method of grammatical interpretation is only the first one among methods of interpretation, and it is not correct to follow only the verbal meaning of a legal norm. The grammatical interpretation of a legal norms does not provide a final outcome, and it is not always confirmed after other methods of interpretation have been applied (*see Decision of 22 April 2005 by the Constitutional Court on terminating judicial proceedings in Case No. 2004-25-03, Para 6*).

In Latvian legal system the term “employee” is used not only in the meaning of the Labour Law, but also in a broader meaning. This, first of all, can be inferred from the Satversme, as its Article 107 provides: “Every employee has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.”

The term “employee” referred to in Article 107 of the Satversme applies not only to employees, who are employed on the basis of an employment contract regulated by the Labour Law, but also to other persons in employment relationship (*see: Stucka A., Badovskis M. Satversmes 107. panta komentārs. Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2011, 505. lpp.*).

A member of a local government council is an employee, who is entitled to receive remuneration for performing the duties of office, the concrete amount of which is defined by Section 5 of the Law on the Remuneration to the Officials and Employees of State and Local Government Institutions. At the moment when the contested regulation entered into force the remuneration of a member of local government council was set in accordance with the law “Law on the Remuneration to the Officials and Employees of State and Local Government Institutions in 2009”. Moreover, in accordance with subparagraph “c” of Para 2 of Section 1 of the law “On State Social Insurance” a member of a local government council is recognised as being an employee. It is recognised in the legal doctrine that not only persons, who are employed on the basis of an employment contract, but also other employed persons, subject to the state social insurance, are employees (*see: Slaidiņa V., Skultāne I. Darba tiesības. Rīga: Zvaigzne ABC, 2011, 27. lpp.*).

Thus, the term “employee” can be applied also to such offices and professions, whose legal employment relations are not based upon employment contracts, but have other legal basis.

**16.2.2.** The preparatory materials of the draft Official Language Law do not lead to the conclusion that any doubts had arisen at the Saeima regarding the understanding of the term “employee” included in the wording of Section 6 of the draft law. I.e., already at the beginning all persons employed on the state sector, also the members of local government councils, were considered to be employees. The international experts, who were involved for aligning the draft law with international requirements did not deem it necessary to assess the content and the meaning of this term (*see Case Materials, Vol.1, pp. 152 – 157*). Likewise, in the course of elaborating the Official Language Law there was a uniform understanding that Section 6(1) of this Law is applicable also to the deputies.

It must be noted in addition that the Saeima adopted the Official Language Law on 9 December 1999 and it entered into force on 1 September 2000. Whereas the Labour Law was adopted at the Saeima on 20 June 2001 and entered into force on 1 June 2002. Therefore there are no grounds to consider that the legislator, in elaborating Section 6(1) of the Official Language Law had based it upon the explanation of the term “employee”, which is included in Section 3 of the Labour Law.

Thus, the Constitutional Court concludes that the term “employee”, used in Section 6(1) of the Official Language Law, cannot be interpreted narrowly, without taking into consideration the system and aims of the legal regulation. A situation, when local government employees, who have employment relationship, would have to know the working language of local government, but a requirement like this were not set for the deputies, would be contrary to the purpose of the law. The requirement to know and to use the official language to the extent needed for performing professional duties and duties of office applies not only to persons, with whom an employment contract has been concluded, but also to other persons affiliated with State and local government institutions, inter alia, members of local government council.

**Thus, the term “employee” used in Section 6(1) of the Official Language Law covers also members of the local government council and the contested regulation complies with Section 6(1) of the Official Language Law.**

**16.3.** The Constitutional Court has noted that a legal norm, by which the legislator authorises the Cabinet of Ministers to regulate the procedure for exercising a person's fundamental rights enshrined in the Satversme or restrictions to exercising this right, must be clear and accurate. Restricting a person's fundamental rights by referring to unclear or ambiguous authorisation by the legislator is inadmissible (*see Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 10*).

Section 6(5) of the Official Language Law gives very clear and accurate authorisation to the Cabinet of Ministers to define the extent of official language knowledge and skills necessary to persons.

**Thus, the restriction defined by the contested norm is established on the basis of law and complies with Section 31 of the Law on the Structure of the Cabinet of Ministers.**

**17.** Any restriction to fundamental rights must be based upon circumstances and arguments regarding their necessity, i.e., the restriction is set because of important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

The Applicants have noted a number of, to their mind, possible aims, because of which the Cabinet of Ministers adopted the contested regulation. However, at the same time they consider that the contested regulation lacks a legitimate aim.

The Constitutional Court has noted that the need to protect the official language and its use is closely connected with the democratic order of the state of Latvia (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-01-06, Para 15.1 and Para 15.2*).

“Article 4 of the Satversme, by establishing that the Latvian language is the official language in the Republic of Latvia, grants it constitutional status. [...] In view of the fact that the Latvian language has been enshrined in the Satversme as the official language, as well as the fact that under conditions of globalisation Latvia is the only place in the world, where the existence and development of the Latvian language and, thus, also the Latvian nations can be guaranteed, narrowing the use of the official language within the territory of the State must be also considered as threat to the democratic order of the State” (*Judgement of 21 December 2001 by the Constitutional Court in Case No. 2001-04-0103, Para 3.2 of the Findings*).

The European Court of Human Rights (hereinafter – ECHR) has recognised that the state is interested in ensuring that its system of institutions functions normally, and, thus, the requirement set for the deputy candidates regarding the proficiency in the official language has a legitimate aim (*see Judgement by ECHR in Case “Podkolzina v. Latvia”, no. 46726/99, para. 34, ECHR 2002-II, 9 April 2002*).

The opinion by the Cabinet of Ministers can be upheld that the purpose of the legitimate aim is to ensure normal functioning of State institutions and to strengthen the Latvian language as the only official language in Latvia.

Stable and effective functioning of State institutions that have been properly legitimised is one of the preconditions for the existence of a democratic order. Therefore comprehensive and consistent use of the official language on appropriate level in the work of these institutions is necessary. If the deputies were to participate in the work of local government council only formally, without knowing and using the official language on the level and degree necessary for performing duties of office due performance of local government functions defined in law would not be ensured.

**Thus, the legitimate aim of the restriction established by the contested regulation is to ensure effective functioning of local administration and to protect the democratic state order.**

**18.** The Constitutional Court has concluded: if public power restricts a person’s rights and lawful interests, then reasonable balance between the interests of society and the interests of an individual must be found.

To establish, whether the principle of proportionality has been abided by, it must be assessed, whether the measure chosen by the legislator is suitable for reaching the legitimate aim, whether more lenient measures for reaching this aim cannot be found and whether the legislator’s actions are proportional. If the assessment of the legal norm leads to the conclusion that it is incompatible with even one of these criteria, then it is also incompatible with the principle of proportionality and is unlawful (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 17 of the Findings*).

**18.1.** The Constitutional Court already concluded that the requirements included in the Satversme and laws are binding upon the members of local

government councils and that they must know and use the official language in the work of local governments (*see Para 14 of this Judgement*).

The first sentence of Article 4 of the Satversme, pursuant to which the Latvian language is the official language, has been in force since 6 November 1998. The Constitutional Court has already recognised that “the constitutional status of the official language legally strengthens the rights and also the obligation of Latvia’s inhabitants to use the Latvian language in both oral and written communication” (*Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 15.1*). On 24 May 2002 the third sentence of Article 101(2) of the Satversme entered into force, providing that the working language of local governments is the Latvian language. Thus, the constitutionally enshrined requirement to use the Latvian language in the work of local governments has existed constantly already for a long time.

The case contains no dispute that the wording of Para 7 of Section 9 in the Election Law, which sets the requirement to the deputy candidates for the local government councils to have the highest (third) level proficiency in the official language, was in force from 25 January 1994 to 22 May 2002, and that after 22 May 2002 regulatory enactments did not specify the level and the grade of language proficiency.

However, already before the election of local government councils held in 2009 and the adoption of the contested regulation, Section 6(1) of the Official Language Law, which sets the obligation of the deputies to know and to use the official language to the extent necessary for performing the duties of office, was in force. Likewise, the regulation included in Section 3(3) of the law “On Local Governments” defines the Latvian language as the working language in the local government council and authorities and institutions established by it. Thus, it can be concluded that the binding requirements for the members of local government councils regarding knowledge and use of the official language was in force already before the contested regulation was adopted. Whereas the contested regulation only specifies the extent of the official language knowledge and skills by defining a concrete level and grade.

**18.2.** To establish, whether specifying the level and grade of the official language proficiency is a suitable measure for reaching the legitimate aim, the

Constitutional Court must identify the rights and obligations of a person, who occupies the office of the local government council member.

The rights and obligations of a local government council member are defined in law “On Local Governments “ and the Law on the Status of a Member of City Council or Regional Municipality Council. The deputy is obliged to participate in council meetings, as well as in the meetings of those institutions, to which he or she has been elected. He or she has to abide by the requirements of the law “On Local Governments”, Council Regulations and the Rules of Procedure for the meetings. The deputy also has the obligation to participate in the control over the implementation of the Council decisions in his or her constituency, to examine inhabitants’ complaints and applications, to provide answer to these in accordance with the procedure and within the term set by law, and at least once in two months organise meetings for receiving inhabitants.

A deputy has the right to vote on all issues examined at the council meetings. He or she has the right to submit proposals, make remarks and objections regarding the agenda of a meeting, the nature of issues for discussion and the sequence of examining them. A deputy may participate in discussions, put questions, provide information, submit proposals, express remarks and objections regarding the agenda of the meeting, the nature of issues for discussion and the sequence of examining them. The classification of occupations also indicates the scope of rights and obligations for the group “legislators”, to which, *inter alia*, also the deputies of local government members belong (*see Classification of Occupations*).

In accordance with Para 17.5 of Regulation No. 733, C level 1<sup>st</sup> grade knowledge is the first grade of the highest-level proficiency in the official language. The levels and grades of the official language proficiency included in Regulation No. 733 comply with the levels and grades of language proficiency assessment recognised by the Council of Europe (*see annotation to the draft Regulation No. 733, Case Materials, Vol. 2, pp. 66 – 67*). As noted in the aforementioned paragraph of Regulation No. 733, C level, 1<sup>st</sup> grade means that the person is able to communicate freely, to express and justify his or her opinion on different topics to sufficient extent, reads and understands texts of different content and complexity, is able to write different official documents (for example, recommendations, characterisations, official letters), as well as other texts, comprehends and understands naturally and



fluently paced spoken texts of different structure on different topics without difficulties.

It can be concluded that the requirements set for deputies of local government councils and to other officials of State and local government institutions are the result of continuous and constant policy of the State, which are legally enshrined in the Satversme and laws. In order to implement this policy of the state consistently and to achieve the legitimate aim of the contested regulation, the Cabinet of Ministers has specified the requirements regarding the knowledge of the official language, which were set already previously, determining the appropriate level and grade. The contested regulation, which imposes the obligation upon deputies to have C level 1<sup>st</sup> grade knowledge of the official language, ensures that the official language is used in local government work, thus promoting the effectiveness of the democratically legitimised local government.

**Thus, the contested regulation is appropriate for reaching the legitimate aim.**

**18.3.** The restriction to rights set out in the contested regulation is to be recognised as necessary, if no other means exist, which would be as effective and, if chosen, would restrict the fundamental right to a lesser extent. In assessing, whether it would be possible to reach the legitimate aim by other means, the Constitutional Court emphasizes that a more lenient means is not just any other means, but such, which would allow reaching the legitimate aim in, at least, the same quality (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

The Applicants hold that it is possible to reach the legitimate aim by other, effective means. I.e., the deputy of the local government council could use the assistance of an interpreter, advisor or literary editor in working with the claims submitted by electors and in communicating with them.

Admittedly, on some occasions the involvement of an interpreter, advisor or literary editor could improve the quality of the performance of a deputy's duties. However, the assistance by these persons would be more suitable in cases linked with the performance of certain support functions, for example, editing documents. The Constitutional Court upholds the opinion expressed by the Ministry of Justice and M.Mits that a deputy must perform his duties directly and immediately. I.e., a deputy performs his duties of office independently (*see Case Materials, Vol.3., pp.4, 45*).

The Constitutional Court notes that the scope of a deputy's obligations proves his or her importance in the development and implementation of the local government policy (*see Para 18.2 of this Judgement*). A persons who has received a mandate from electors, should be able to perform duly the duties of office entrusted to him or her, since these cannot be delegated to another person. Moreover, the deputy is responsible before the electors for performing the duties of office entrusted to him or her. Thus, the involvement of other persons cannot replace the activities conducted by the deputy himself or herself.

ECHR has also once noted that every inhabitant of Latvia has the right to demand the possibility to communicate in public space in the official language (*see Judgement by ECHT in Case "Jutta Mentzen alias Mencena v. Latvia", no. 71074/01, 6 April 2005*). A deputy must be able to communicate with electors in the Latvian language. It follows from the application and the appended documents that the Applicant's official language proficiency was first of all questioned by inhabitants, the State Language Centre initiated verification on the basis of complaints received from inhabitants (*see Case Materials, Vol. 2, pp. 164 – 169, 190 – 192*). Thus, lack of knowledge and skills in the official language prevented the Applicants from duly performing their duties of office.

The Constitutional Court, assessing the arguments noted in the application, did not identify such means that would be more lenient towards the Applicants and simultaneously would ensure that the deputy performed his duties of office independently.

**Thus, no other means exist that would allow reaching the legitimate aim in the same quality.**

**18.4.** The Constitutional Court must establish, whether the benefit to society exceeds the damage caused to the Applicant's interests.

**18.4.1.** The Applicant's note that the requirements set out in the contested regulation were applied to them after they had come into the office of a deputy.

The local government election was held on 6 June 2009. Whereas Annex 1 to Regulation No. 733 was adopted on 7 July 2009 and entered into force on 1 September 2009. However, the Constitutional Court already established that the requirements regarding the official language knowledge for the members of the local government councils were in force already before the contested regulation was adopted (*see Para 18.1 of this Judgement*).

Therefore the Applicants, upon running for local government election, had no grounds to trust that the requirement regarding the extent of the official language knowledge would not be specified by a concrete level and grade and that it would not be binding upon them as deputies.

**18.4.2.** Pursuant to Para 3 of Section 17(1) of the Election Law, a person running for local government election is obliged to submit information (self-assessment) of his or her official language proficiency, signed personally. It follows from the constitutional complaint that the Applicants also submitted such self-assessment (*Case Materials, Vol.1, p.6*).

The aforementioned self-assessment reflects the deputy candidate's subjective opinion on the extent of his or her official language knowledge and skills. In fact, the deputy candidate assesses, whether he or she will be able to perform the duties of office duly. Whereas the legal regulation must ensure that an elected deputy uses the official language in performing duties of office. To ensure that these requirements are met an appropriate legal mechanism for assessing a deputy's official language knowledge and skills has been established. I.e., the State Language Centre, in accordance with the procedure established by the regulatory enactments pursuant to the Cabinet of Ministers Regulation of 22 March 2005 No. 202 "Regulation on the State Language Centre" verifies whether state officials use the official language in compliance with the requirements of the contested regulation.

If the person fails the test of the appropriate level of official language proficiency, then, in accordance with Para 51 of Regulation No. 733, he or she may, no sooner than in three months time, repeat the test. It follows from the documents appended to the application that the State Language Centre scheduled for the Applicants a repeated test of the official language proficiency level in six month's time (*see Case Materials, Vol.1, pp. 169 – 173, 193 – 196*). During this period the Applicants had the opportunity to improve their official language knowledge and upgrade its proficiency.

**18.4.3.** In accordance with Para 8 in the Transitional Provisions of the Law on the Status of a Member of a City Council or Regional Council the legal regulation on annulling a deputy's authorisation, if the deputy's official language proficiency does not comply with the level prescribed by the Cabinet of Ministers, does not apply to those deputies, who were elected in the election of local government councils held in 2009.

The Constitutional Court emphasizes that the Applicants, who did not know and did not use the official language on the level and grade stipulated by the contested regulation, could stay in their deputy's office until the expiry of their mandate. It means that the legislator had taken into account also the interests of those deputies, who at the time when the contested regulation was adopted, were already elected to the office of the member of a local government council, however, were unable to meet the requirements of the contested regulation. Thus, the contested regulation did not cause significant harm to those persons, who had been elected to local government councils at the election held in 2009.

The Applicants were imposed a monetary fine in the amount of, respectively, 30 and 35 lats for not using the official language to the extent necessary for performing professional duties and duties of office, and the requirement to repeat the test of official language proficiency in six month's time was set (*see Case Materials, Vol.1, pp. 169 – 173, 193 – 196*). In fact, the Applicants, not knowing and not using the official language on the level and degree prescribed by the contested regulation, did not perform their duties of office to the necessary extent. Therefore, the fine imposed upon the Applicants, as well as the requirement to repeat the test of official language use within six months cannot be regarded as being disproportionately severe legal consequences.

**18.4.4.** The Constitutional Court already established in Para 18.2 and Para 18.3 of this Judgement that a person needs C level 1<sup>st</sup> grade knowledge of the official language to be able to perform the duties of office of a local government member. Thus, the contested regulation improves the quality of local government work. It is in the interests of society that deputies perform their duties of office duly, *inter alia*, would be able to communicate with inhabitants in the official language. Simultaneously the contested regulation motivates persons, who want to run for local government election, to improve their official language proficiency in due time, so that it would comply with the level and grade prescribed by the Cabinet of Ministers.

**The benefit to society granted by the contested regulation exceeds the damage to the Applicants' interests caused by the restriction to the fundamental rights, and, thus, is compatible with Article 101 of the Satversme.**

**19.** The Applicants note that the contested regulation is incompatible with Article 91 of the Satversme, since it envisages differential treatment of persons, depending of the language of instruction in which they have acquired their education.

The application contains arguments regarding the alleged incompatibility of the contested regulation with the first sentence of Article 91 of the Satversme, i.e., the principle of equality. Whereas regarding the statement that the contested regulation discriminates against the Applicants, has not been substantiated in the application.

Hence, the Constitutional Court will examine the compliance of the contested regulation with the first sentence of Article 91 of the Satversme.

**20.** The first sentence of Article 91 of the Satversme provides: “All human beings in Latvia shall be equal before the law and the courts”.

The principle of equality enshrined in the first sentence of Article 91 of the Satversme must guarantee the existence of a uniform legal order. I.e., its task is to ensure in a judicial state comprehensive impact of laws upon everybody and application of law without any privileges whatsoever. It also guarantees total effect of law, objective and impartial application of it, and also that no one is allowed to ignore the injunctions of law (*see Judgement of 14 September 2005 by the Constitutional Court in Case No. 2005-02-0106, Para 9.1*). However, such uniformity of the legal order does not mean levelling out, since “equality allows differential treatment, it is even justifiable in a democratic society” (*Judgement of 26 June by the Constitutional Court in Case No. 2001-02-0106, Para 4 of the Findings*).

The Constitutional Court, in interpreting Article 91 of the Satversme, has recognised that the principle of equality prohibits state institutions to adopt such norms, which would, without reasonable grounds, allow differential treatment of persons, who are in similar and according to concrete criteria comparable circumstances. Simultaneously, the principle of equality allows and even demands differential treatment of persons, who are in different circumstances, and it also allows differential treatment of persons, who are in similar circumstances, if there are objective and reasonable grounds for that (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings, and Judgement of 29 December 2008 in Case No. 2008-37-03, Para 7*). Differential treatment has no objective and reasonable grounds, if it does not have a legitimate aim or if the relationship between the chosen means and the set aims lacks proportionality

(see *Judgement of 23 December 2002 in Case No. 2002-15-01, Para 3 of the Findings*).

**21.** To assess, whether the contested norm complies with the principle of equality enshrined in the first sentence of Article 91 of the Satversme, it must be established:

1) whether and which persons (groups of persons) are in similar and according to concrete criteria comparable circumstances;

2) whether the contested norm envisages similar or differential treatment of these persons;

3) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (see, for example, *Judgement of 2 February 2010 by the Constitutional Court in Case No. 2009-46-01, Para 7*).

**22.** The Constitutional Court will assess, whether there are persons, who in accordance with the contested regulation are in similar and according to concrete criteria comparable circumstances, and what the treatment of these persons is.

**22.1.** The Constitutional Court already concluded in Para 18.1 of this Judgement that the contested regulation only specifies the requirements already set in the Satversme and laws.

The contested regulation provides that all those persons, who hold the office of a member of local government council, are obliged to know and to use the official language on C level, 1<sup>st</sup> grade. It is binding upon the citizens of Latvia and other states of the European Union, who, in accordance with The City Council and Municipality Council Election Law run for local government election and become deputies of local government councils. The contested regulation does not differentiate a separate group of deputies, who would be exempt from knowing and using the official language on a concrete level and grade. The contested regulation sets out requirements that are binding upon all deputies.

Thus, the contested regulation envisages only one group of persons – all deputies of local government councils, and the requirements regarding the amount of official language knowledge and skills are equal for all of them.

**22.2.** The Applicants hold that the following are in similar and in accordance with concrete criteria comparable circumstances: 1) members of local government council, who are exempt from taking the official language proficiency test; 2) members of local government councils, who are not exempt from taking the official language proficiency test.

It is noted in the application that the division into these, mutually comparable groups, follows from Para 12 of Regulation No. 733. However, Para 12 of Regulation No.733 does not regulate the extent of official language knowledge and skills mandatory to deputies. The persons referred to in Para 12 of Regulation No. 733 are able to prove their official language knowledge and skills by a document certifying acquisition of education in the Latvian language. As regards persons referred to in Para 12.2, their official language knowledge and skills are proven by the certificate of basic or secondary education, which indicate the results of centralised examinations. Thus, these persons are exempt from taking the official language proficiency test, because their knowledge is attested by appropriate education documents.

The Constitutional Court already established in Para 221. 1 of this Judgement that the contested regulation envisages only group of persons – members of local government councils, for whom identical extent of official language knowledge and skills has been prescribed. It can be concluded that the members, who are exempt from the official language proficiency test, and members, who are not exempt from the official language proficiency test, is one group of persons and the contested regulation does not create differential treatment of persons belonging to it.

**Since the contested regulation does not envisage differential treatment of members of the local government councils, it complies with the first sentence of Article 91 of the Satversme.**

### **The Substantive Part**

Pursuant to Section 30 – 32 of the Constitutional Court Law the Constitutional Court

**held:**

**to recognise Annex 1 to the Cabinet of Ministers Regulation of 7 July 2009 No. 733 “Regulations Regarding the Amount of the Knowledge of the Official Language and the Procedures for Examination of the Knowledge of the**

**Official Language for the Performance of Professional Duties and Duties of Office, Receipt of the Permanent Residence Permit and Obtaining of the Status of a Long-term Resident of the European Union and the State Fee for Examination of the Fluency in the Official Language”, insofar it applies to members of local government councils, as compatible with Article 91 and Article 101 of the Satversme of the Republic of Latvia, as well as Section 6(1) of the Official Language Law and Section 31 of the Law on the Structure of the Cabinet of Ministers.”**

The Judgement is final and not subject to appeal.

The Judgement enters into force as of the day of its publication.

Presiding Judge            G. Kūtris