

Case C-391/20

Request for a preliminary ruling

Date lodged:

29 July 2020

Referring court:

Satversmes tiesa (Constitutional Court, Latvia)

Date of the decision to refer:

14 July 2020

Applicants:

Boriss Cilevičs and Others

Institution whose act is contested:

Saeima (Parliament, Latvia)

LATVIJAS REPUBLIKAS SATVERSMES TIESA (CONSTITUTIONAL COURT, LATVIA)

DECISION

ON REFERRING QUESTIONS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

FOR A PRELIMINARY RULING

IN CASE No 2020-33-01

Riga, 14 July 2020

The Constitutional Court [...] [composition of the referring court],

on an application by 20 members of the 13th session of the Saeima (Parliament, Latvia) – Boriss Cilevičs, Valērijs Agešins, Vjačeslavs Dombrovskis, Vladimirs Nikonovs, Artūrs Rubiks, Ivans Ribakovs, Nikolajs Kabanovs, Igors Pimenovs, Vitālijs Orlovs, Edgars Kucins, Ivans Klementjevs, Inga Goldberga, Evija Papule, Jānis Krišāns, Jānis Urbanovičs, Ļubova Švecova, Sergejs Dolgopolovs, Andrejs Klementjevs, Regīna Ločmele-Luņova and Ivars Zariņš – [...] [procedural

considerations] made during the written stage of the proceedings, having heard the case ‘On the compatibility of the third sentence of Article 5(1) and Article 56(3) of the Augstskolu likums (Law on Higher Education Institutions) and point 49 of the transitional provisions of that law with Articles 1 and 105 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia, “the Constitution”)’ at a hearing on 14 July 2020,

states as follows:

I. Latvian legislation

1. Article 1 of the Constitution states:

‘Latvia is an independent democratic republic.’

Article 4 of the Constitution provides:

‘The official language of the Republic of Latvia is Latvian. The flag of Latvia is red with a white stripe.’

Article 68 of the Constitution provides:

‘All international agreements governing matters requiring legislation shall require the approval of Parliament.

By concluding international agreements, Latvia may, in order to strengthen democracy, delegate part of the powers of State institutions to international institutions. International agreements under which part of the powers of State institutions are delegated to international institutions may be approved by Parliament in a parliamentary session at which at least two thirds of the members of Parliament are present; approval shall require a two-thirds majority of the votes of the members present.

Latvia’s membership of the European Union shall be decided by a referendum held pursuant to a proposal by Parliament.

Any significant changes to the terms of Latvia’s membership of the European Union shall be put to a referendum when at least half of the members of Parliament so request.’

Article 105 of the Constitution provides:

‘Everyone has the right to own property. Property that is subject to ownership rights may not be used in a manner contrary to the public interest. The right to own property may be restricted only by law. No one shall be compulsorily deprived of his or her property except in exceptional circumstances in the public interest, in accordance with the provisions of a specific law and subject to payment of fair compensation.’

Article 112 of the Constitution provides that:

‘Everyone has the right to education. The State shall guarantee free access to basic education and to other levels of secondary education. Basic education shall be compulsory.’

Article 113 of the Constitution provides as follows:

‘The State shall recognise freedom of scientific, artistic and other forms of creation, and shall ensure protection for copyright and patent rights.’

2. On 2 November 1995 Parliament enacted the Law on Higher Education Institutions, which came into force on 1 December of that year.

2.1. Article 5 of the Law on Higher Education Institutions initially provided that the role of such institutions was to promote and develop the sciences and the arts. The likums ‘Grozījumi Augstskolu likumā’ (Law amending the Law on Higher Education Institutions) of 21 June 2018 amended the third sentence of Article 5 of the law to read as follows: ‘As part of their activities, they shall promote and develop the sciences, the arts and the official language.’

2.2. The Law of 21 June 2018 amending the Law on Higher Education Institutions also amended Article 56 of that law. At the beginning of Article 56(3), the term ‘state higher education institutions’ was replaced by ‘higher education institutions and institutions of higher technical and vocational education’. From 1 January 2019 (the date on which those amendments came into force), Article 56(3) of the Law on Higher Education Institutions therefore reads as follows:

‘In higher education institutions and institutions of higher technical and vocational education, courses of study shall be taught in the official language. Courses of study may be pursued in a foreign language only in the following circumstances:

(1) Courses of study pursued by foreign students in Latvia and courses of study organised as part of the cooperation provided for by European Union programmes and international agreements may be taught in the official languages of the European Union. Where the course of study to be undertaken in Latvia lasts for more than 6 months or represents more than 20 credits, the number of compulsory class hours to be taken by foreign students must include the learning of the official language.

(2) Classes taught in the official languages of the European Union may not account for more than one fifth of the credits for the course of study; final exams, State exams, assessed coursework and dissertations for a bachelor’s or master’s degree will not be taken into account for the purposes of that calculation.

(3) Courses of study may be taken in a foreign language where necessary in order to achieve their objectives in accordance with the educational classification established by the Republic of Latvia for the following categories of courses:

linguistic and cultural studies or language courses. The authorising body shall determine whether the course of study in question falls within this course category.

(4) Joint courses of study may be taught in the official languages of the European Union.’

Article 56(3) of the Law on Higher Education Institutions therefore establishes that courses of study must be taught in the official language in all higher education institutions in Latvia, including private institutions. Courses may be taught in foreign languages only in the circumstances laid down in that provision.

2.3. The Law of 21 June 2018 amending the Law on Higher Education Institutions added point 49 to the law’s transitional provisions; it provides as follows:

‘The amendments to Article 56(3) of this law concerning the language in which courses of study are to be taught shall come into force on 1 January 2019. Higher education institutions and institutions of higher technical and vocational education at which courses of study are taught in a language that does not comply with Article 56(3) of this law may continue to teach such courses in the language in question until 31 December 2022. From 1 January 2019, students may not be admitted onto courses of study taught in a language that does not comply with Article 56(3) of this law.’

3. There are two private higher education institutions in Latvia – the Rīgas Ekonomikas augstskola (Stockholm School of Economics in Riga) and the Rīgas Juridiskā augstskola (Riga Graduate School of Law) – whose activities are governed by special legislation. Amongst other provisions, the legislation includes provisions on the language in which courses are taught at those institutions.

Article 19(1) of the Likums ‘Par Rīgas Ekonomikas augstskolu’ (Law on the Stockholm School of Economics in Riga) provides:

‘In this institution, courses shall be taught in English. All work to be submitted for the award of a bachelor’s degree, a master’s degree or a doctorate shall be written and defended in English, and professional examinations shall be conducted in English.’

Article 21 of the Rīgas Juridiskās augstskolas likums (Law on the Riga Graduate School of Law) provides as follows:

‘This institution offers courses of study that have obtained the relevant authorisation and have been granted accreditation in accordance with the legislation. Courses shall be taught in English or another official language of the European Union.’

II. EU legislation

4. Article 49 of the Treaty on the Functioning of the European Union recognises the right of establishment, and Article 56 recognises the right of freedom to provide services. Freedom of establishment is also related to the freedom to conduct a business recognised in Article 16 of the Charter of Fundamental Rights of the European Union.

III. Facts of the case and proceedings before the Constitutional Court

5. Case 2019-12-01 ‘On the compatibility of the third sentence of Article 5(1) and Article 56(3) of the Law on Higher Education Institutions and point 49 of the transitional provisions of that law with Articles 1, 105 and 112 of the Constitution of the Republic of Latvia’ was commenced in the Constitutional Court.

The action was brought by 20 members of the Latvian Parliament (‘the applicants’). This type of action gives rise to a review of the legislation *in abstracto*. The purpose of such actions, which are brought in the Constitutional Court by those having [the right] to [apply for] a review of legislation *in abstracto*, which include members of the Latvian Parliament, is to defend the public interest. These actions are an essential means to protect important State and societal interests. A review of legislation *in abstracto* provides a means of rectifying the legal system. The Constitutional Court is therefore required to determine whether the provisions at issue, as they apply to all persons to whom the legislature has determined they should apply, are compatible with higher-ranking rules of law (see judgment of the Constitutional Court of 15 November 2016 in Case 2015-25-01, paragraph 9).

6. In their action in the Constitutional Court, **the applicants** argued that the third sentence of Article 5(1) and Article 56(3) of the Law on Higher Education Institutions and point 49 of the law’s transitional provisions (‘the contested provisions’) were not compatible with Articles 1, 105 and 112 of the Constitution.

The applicants argued that the contested provisions restrict the independence of private higher education institutions and the academic freedom of their teachers and students, in so far as they impose on such institutions a requirement to promote and develop the official language, and restrict their ability to offer courses of study in foreign languages. In their view, this restricts the right to education enshrined in Article 112 of the Constitution.

The applicants also argued that the contested provisions restrict the right of higher education institutions to engage in commercial activities and to provide a higher education service in return for payment in accordance with the authorisation they have been granted, even though that right is protected by the right to own property recognised in Article 105 of the Constitution. Private higher education institutions may not fully provide courses taught in English or in other languages that are not official languages of the European Union which have been granted the appropriate accreditation.

According to the applicants, the contested provisions also infringe the principle of the rule of law enshrined in Article 1 of the Constitution, under which the founders of private higher education institutions could legitimately expect to be able to benefit from the use of their property. Since the institutions in question obtained the relevant authorisation, and their courses of study have been granted accreditation, they had an expectation that they would be able to continue to carry on the commercial activities in question. No provision was made to ensure a smooth transition to the new legislation, nor was there any provision for a compensation mechanism.

The applicants also submitted that, by creating a barrier to entry to the higher education market and preventing citizens and undertakings from other EU Member States from providing higher education services in foreign languages, the contested provisions undermined the rights to freedom of establishment and freedom to provide services guaranteed by EU law and recognised in Articles 49 and 56 of the Treaty on the Functioning of the European Union, and also the freedom to conduct a business enshrined in Article 16 of the Charter of Fundamental Rights of the European Union.

7. The institution that enacted the contested measure, namely the Parliament, maintains that the contested provisions are compatible with Articles 5, 105 and 112 of the Constitution.

7.1. According to the Parliament, the contested provisions do not restrict the rights of private higher education institutions, since the right to education protects only the rights of students. The State is not required to guarantee higher education in a language other than the official language. The principle of the unity of the education system requires that the same basic linguistic requirements be applied to different types and levels of education and training. Consequently, the rights conferred by Article 112 of the Constitution cannot be considered to have been restricted. Moreover, even if those rights were considered to have been restricted, the restriction would have been imposed by law, would pursue a legitimate objective, and would be proportionate to that objective.

7.2. In its defence, the Parliament argued that the contested provisions do not infringe the rights recognised in Article 105 of the Constitution, since those rights do not accord legal protection to the right of individuals to make a profit. Furthermore, it should be borne in mind that private higher education institutions operate in a sector of activity that is subject to specific regulation, is required to achieve the objectives set by the legislature and may seek to make a profit only within the context of pursuing those objectives. Even if the contested provisions were considered to restrict the rights recognised in Article 105 of the Constitution, such a restriction would be proportionate, since private higher education institutions are still able to provide courses of study in accordance with the requirements of the Law on Higher Education Institutions, to offer informal courses and to carry on research. Moreover, point 49 of the transitional provisions

in the Law on Higher Education Institutions provides for a sufficiently long transitional period.

At the hearing, Mr Sandis Bērtaitis, representing the Parliament, argued that EU law does not restrict the power of Member States, in the field of education, to pass the legislation required to protect constitutional values. He also maintained that Article 56(3) of the Law on Higher Education Institutions makes specific provision for courses of study to be provided in the languages of the European Union, and therefore it is not disengaging from the EU education arena.

8. On 11 June 2020, the **Constitutional Court** gave judgment in Case No. 2019-12-01 ('the judgment').

8.1. In the judgment, the Constitutional Court concluded that the right to own property enshrined in Article 105 of the Constitution should be interpreted in the light of the freedom of establishment recognised in Article 49 of the Treaty on the Functioning of the European Union. It therefore considered that there was a need to clarify the content of freedom of establishment, while also contemplating the possibility of requesting a preliminary ruling from the Court of Justice. The Constitutional Court also noted that it was not desirable to have a situation in which, if a reference were made to the Court of Justice, the question of the compatibility of the contested provisions with the Constitution remained at least partially unresolved for a lengthy period of time. The Constitutional Court therefore decided to divide the case under consideration into two: the case concerning the compatibility of the contested provisions with Article 112 of the Constitution, and the case concerning the compatibility of the contested provisions with Articles 1 and 105 of the Constitution. The court was in a position to give judgment in the former case, since, in that context, the contested provisions govern an area which is a matter for the Member States of the European Union under Article 165 of the Treaty on the Functioning of the European Union. However, in the second case, it would have to return to its examination of the substantive issue.

8.2. In view of the close relationship between higher education and freedom of scientific, artistic and other forms of creation, in the case concerning the compatibility of the contested provisions with Article 112 of the Constitution, alongside the question of the compatibility of the provisions with the right to education, the Constitutional Court also assessed their compatibility with Article 113 of the Constitution, which enshrines freedom of scientific creation.

In the judgment, the court states that, in establishing the requirement to promote and develop the official language laid down in Article 5 of the Law on Higher Education Institutions, the legislature implemented the positive obligation on the State to create a legislative framework for higher education which ensures that the activities of those institutions serve the public interest. It should also be noted that the contested provision gives higher education institutions broad discretion as to how they fulfil this role. The third sentence of Article 5(1) of the Law on Higher

Education Institutions is therefore compatible with Article 112 of the Constitution, in conjunction with Article 113.

The Constitutional Court noted that Article 56(3) of the Law on Higher Education Institutions must be construed in conjunction with point 49 of the law's transitional provisions, since the provisions constitute a single legislative framework. That legislation restricts the academic freedom of teachers and students at higher education institutions and the autonomy of the institutions themselves, since it imposes restrictions on the use of foreign languages in the provision of courses of study at such institutions. That restriction is imposed by law, pursues a legitimate objective, and is suitable for achieving that objective. However, the Constitutional Court concluded that the legislature had not considered whether that legitimate objective could be achieved by less restrictive means. One such means could be an overall evaluation of the quality of all private higher education institutions, which could provide the basis for granting authorisation to provide courses of study in a foreign language. Likewise, legislation that established exceptions to Article 56(3) of the Law on Higher Education Institutions for certain branches of science or for a particular level of studies would be less restrictive of the academic freedom of teachers and students at private higher education institutions and the autonomy of the institutions themselves. Consequently, Article 56(3) of the Law on Higher Education Institutions and point 49 of its transitional provisions are not compatible with Article 112 of the Constitution, taken with Article 113, in so far as the contested provisions apply to private higher education institutions.

IV. Reasons why the Constitutional Court has made a request to the Court of Justice of the European Union for a preliminary ruling

9. Pursuant to Article 8(1) of the Law on Higher Education Institutions, higher education institutions may be established in Latvia by the State or by other legal or natural persons, including foreign legal or natural persons. Higher education is, therefore, a service that may be provided by undertakings established by private individuals.

Article 4 of the Treaty [on European Union] provides that the European Union must respect the national identities of the Member States. Moreover, by virtue of Article 165 of the Treaty on the Functioning of the European Union, the European Union must respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity. It can, therefore, be concluded that the content and organisation of higher education are matters for the Member States of the European Union. Consequently, the contested provisions, which regulate the operation of education institutions in order to foster the promotion and development of the official language, fall within an area which lies within the competence of the Member States of the European Union. However, the Court of Justice has recognised that freedom of establishment also applies in those areas for which competence lies with the Member States of the European Union (see, for

example, judgment of the Court of Justice of 11 June 2020, *KOB*, C-206/19, [...] EU:C:2020:463, paragraph 20).

Freedom of establishment within the meaning of Article 49 of the Treaty on the Functioning of the European Union includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country of establishment. That freedom is, therefore, enjoyed by both natural and legal persons. The Court of Justice has held that freedom of establishment must be interpreted broadly. That freedom includes the right of individuals and undertakings of the Member States of the European Union to participate in the economic life of another Member State on a permanent and continuous basis for commercial purposes (see judgment of the Court of Justice of 21 June 1974, *Reyners*, 2/74, [...] EU:C:1974:68, paragraph 25). The organisation for remuneration of higher education courses therefore also falls within the scope of freedom of establishment when that activity is carried on by a national of one Member State in another Member State on a stable and continuous basis from a principal or secondary establishment in the latter Member State. All measures which prohibit, impede or render less attractive the exercise of that freedom constitute restrictions on that freedom within the meaning of the first paragraph of Article 49 of the Treaty on the Functioning of the European Union (see judgment of the Court of Justice of 13 November 2003, *Neri*, C-153/02, [...] EU:C:2003:614, paragraphs 39 and 41).

9.1. At the hearing held in Case No 2019-12-01, various individuals who were called to give evidence stated before the Constitutional Court that the contested provisions could constitute a restriction on the freedom of establishment recognised in Article 49 of the Treaty on the Functioning of the European Union, since Article 56 of the Law on Higher Education Institutions creates a significant barrier for foreign undertakings seeking to enter the Latvian higher education market.

According to the case-law of the Court of Justice, the concept of ‘restriction’ within the meaning of Articles 49 and 56 of the Treaty on the Functioning of the European Union refers to all measures which prohibit, impede or render less attractive the exercise of the freedom of establishment and the freedom to provide services. Article 49 of the Treaty on the Functioning of the European Union precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State (see judgment of the Court of Justice of 5 July 2007, *Commission v Belgium*, C-522/04, [...] EU:C:2007:405, paragraph 37). Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (‘the Services Directive’) contains general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. Article 14(1) of the Services Directive establishes that Member States may not make the provision of services subject to discriminatory requirements.

Moreover, the concept of restriction also covers non-discriminatory measures taken by a Member State that affect access to the market for undertakings from other Member States and hinder trade within the European Union (see, for example, judgment of the Court of Justice of 28 April 2009, *Commission v Italy*, C-518/06, [...] EU:C:2009:270, paragraphs 62 and 64). Indirect discrimination means any national measure which, while applying irrespective of nationality, makes the exercise of the freedoms guaranteed by the Treaty less attractive (see, for example, judgment of the Court of Justice of 3 March 2020, *Vodafone Magyarország*, C-75/18, [...] EU:C:2020:139, paragraphs 42 and 43).

It follows from the case-law of the Court of Justice that national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty may nevertheless be allowed provided they pursue a legitimate objective compatible with the Treaty, are justified by imperative requirements in the general interest, are suitable for securing the attainment of the objective which they pursue, and do not go beyond what is necessary in order to attain it (see judgment of the Court of Justice of 5 July 2007, *Commission v Belgium*, C-522/04, [...] EU:C:2007:295, paragraph 47). The Court of Justice has examined restrictions on the freedom of establishment in the field of higher education, but to date it has done so [only] as regards the conditions governing access to a profession in Member States and recognition of higher education diplomas (see, for example, judgments of the Court of Justice of 10 July 2008, *Commission v Portugal*, C-307/07, [...] EU:C:2008:402, and of 29 January 2009, *Consiglio Nazionale degli Ingegneri*, C-311/06, [...] EU:C:2009:37). In the opinion of the Constitutional Court, the main proceedings concern access to the market for higher education services. The Court of Justice has not yet addressed the question of the conduct of a business within the field of higher education.

To date, the Court of Justice of the European Union has not examined the question whether the legislation of a Member State which requires the promotion of a national language and the use of that language in the field of higher education, including in private higher education institutions, constitutes a restriction on the freedom of establishment and, if so, whether it is justified, suitable, and does not go beyond what is necessary in order to attain that objective. The case-law of the Court of Justice of the European Union in cases where the facts and points of law differ from those in the present case could also be relevant to the current situation. Thus, for example, the Court of Justice has held that the requirement imposed on television broadcasters by a Member State to earmark a certain proportion of their operating revenue for works whose original language is one of the official languages of that Member State constitutes a restriction on the freedom to provide services, freedom of establishment, the free movement of capital and freedom of movement for workers. Such a restriction has been held to be compatible with EU law (see, for example, judgment of the Court of Justice of 5 March 2009, *UTECA*, C-222/07, [...] EU:C:2009:124, paragraph 24). The Court of Justice has also concluded that legislation that requires employment contracts to be drafted in the official language of a Member State is liable to have a dissuasive effect on employees and employers from other Member States who do not speak that

language and therefore constitutes a restriction on the freedom of movement for workers. That restriction has been held to be incompatible with Article 45 of the Treaty on the Functioning of the European Union (see judgment of the Court of Justice of 16 April 2013, *Las*, C-202/11, [...] EU:C:2013:239, paragraph 22).

It should also be noted that, in her Opinion delivered on 5 March 2020, Advocate General of the Court of Justice Juliane Kokott examined certain provisions of Hungarian law which provide that a foreign higher education institution wishing to establish itself in Hungary may do so only if it provides higher education services in the State in which it has its seat and if an international treaty has been concluded between Hungary and that country. Although the Hungarian Government stated that the legislation was needed to guarantee public policy and to ensure the quality of higher education, the Advocate General concluded that it was not compatible with Article 49 of the Treaty on the Functioning of the European Union in conjunction with Article 54 of that treaty, nor with Article 16 of the Services Directive, nor with the freedom to conduct a business enshrined in the Charter of Fundamental Rights of the European Union (see Opinion of Advocate General Kokott in Case C-66/18 *Commission v Hungary* [...] EU:C:2020:172, points 130 to 140, 153 to 161 and 175).

9.2. Article 5 of the Law on Higher Education Institutions requires any centre wishing to issue higher education diplomas recognised by the Republic of Latvia to develop and promote the official language, that is to say, Latvian. Article 56(3) of the law restricts the scope for private higher education institutions to offer and teach courses in foreign languages, since this is possible only in the circumstances specified in that provision (see judgment of the Constitutional Court of 11 June 2020 in Case No 2019-12-01, paragraph 29.4).

Both provisions apply equally to both public and private higher education institutions, and to undertakings established in Latvia and those established in foreign countries. However, by virtue of Article 21 of the Law on the Riga Graduate School of Law and Article 19(1) of the Law on the Stockholm School of Economics in Riga, Article 56(3) of the Law on Higher Education Institutions does not apply to those two higher education institutions established in Latvia.

The conclusion of the Constitutional Court is, therefore, as follows: the case-law of the Court of Justice cited above makes clear that the requirement to use the official language of a Member State or to promote its development in a particular field of business activity could be considered a restriction on the freedom of establishment. However, given that competence in education matters lies with the Member States, it is doubtful whether the requirement for private higher education institutions to promote and develop the official language of a Member State and to use it in higher education courses also constitutes a restriction on the freedom of establishment.

The fact that the contested provisions apply equally to Latvian undertakings and to individuals and undertakings from other Member States of the European Union

might indicate that the alleged restriction is not discriminatory. However, in the view of the Constitutional Court, it is not clear from the case-law of the Court of Justice whether the fact that Article 56(3) of the Law on Higher Education Institutions does not apply to two higher education institutions that have their seat in Latvia affects the nature of that restriction. In short, it is not possible to reach a clear conclusion as to whether or not legislation which applies indistinctly to both Latvian and foreign undertakings but which also includes exceptions for two undertakings that have their seat in Latvia is discriminatory.

The principle of proportionality has been the subject of thorough examination in the case-law of the Court of Justice (see, for example, judgments of the Court of Justice of 22 January 2013, *Sky Österreich*, C-283/11, [...] EU:C:2013:28, paragraph 50, and of 8 April 2014, *Digital Rights Ireland and Seitlinger and Others*, C-293/12 and C-594/12, [...] EU:C:2014:238, paragraph 46). However, assuming that the contested provisions in the present proceedings restrict freedom of establishment, it is doubtful whether the interpretation of Article 49 of the Treaty on the Functioning of the European Union and Article 16 of the Charter of Fundamental Rights of the European Union permits the conclusion that such a restriction is justified, suitable, and does not go beyond what is necessary in order to attain the legitimate objective of protecting the official language pursued by that restriction. In the view of the Constitutional Court, an official language is one of the manifestations of national identity.

10. Article 68 of the Constitution establishes, and the Constitutional Court has held, that EU law became an integral part of the Latvian legal order on the ratification of the treaty of accession of Latvia to the European Union. Consequently, in order to clarify the content of national legislation and to apply that legislation, regard must be had to EU law and to the interpretation thereof provided by the case-law of the Court of Justice (see judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraph 16.2).

It follows from the obligations assumed by Latvia by virtue of its accession to the European Union that Article 105 of the Constitution must be interpreted in the light of the freedom of establishment recognised in Article 49 of the Treaty on the Functioning of the European Union (see judgment of the Constitutional Court of 11 June 2020 in Case 2019-12-01, paragraph 23.1). In the present proceedings it is, therefore, necessary to clarify the content of Article 49 of the Treaty on the Functioning of the European Union.

Article 267 of the Treaty on the Functioning of the European Union provides that the Court of Justice of the European Union has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties of the European Union and the validity and interpretation of acts of the European Union. The Constitutional Court is a court against whose decisions there is no judicial remedy within the meaning of the third paragraph of Article 267 of the Treaty on the Functioning of the European Union. It must, therefore, comply with its obligation to request a preliminary ruling from the Court of Justice, unless the Constitutional Court has

established that the question is irrelevant or that the provision in question has already been interpreted by the Court of Justice or that the correct application of the law is so obvious as to leave no scope for any reasonable doubt (see, for example, judgment of the Court of Justice of 6 October 1982, *CILFIT v Ministero della Sanità*, C-283/81, [...] EU:C:1982:335, paragraph 21). It can be seen from the case-law of the Court of Justice cited above in the present decision that the correct interpretation and application of Article 49 of the Treaty on the Functioning of the European Union is not so obvious as to leave no scope for any reasonable doubt. Although the Court of Justice has interpreted that treaty provision on various occasions, it has not provided an interpretation concerning the restriction on the freedom of establishment in the field of higher education.

The Constitutional Court considers, therefore, that in Case 2020-33-01 there are circumstances that justify the decision to refer the matter to the Court of Justice for a preliminary ruling.

In the light of the foregoing considerations and [...] pursuant to Article 267 of the Treaty on the Functioning of the European Union, the Constitutional Court

has decided:

1. To refer the following questions to the Court of Justice of the European Union for a preliminary ruling:

1.1. Does legislation such as that at issue in the main proceedings constitute a restriction on the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union or, in the alternative, on the freedom to provide services guaranteed in Article 56 [of that treaty], and on the freedom to conduct a business recognised in Article 16 of the Charter of Fundamental Rights of the European Union?

1.2. What considerations should be taken into account when assessing whether the legislation in question is justified, suitable and proportionate with regard to its legitimate purpose of protecting the official language as a manifestation of national identity?

2. To stay proceedings until the Court of Justice of the European Union issues a decision.

There is no right of appeal against this decision.

[...] [signatures and formal matters]