Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

7 September 2022*

(Reference for a preliminary ruling – Article 49 TFEU – Freedom of establishment – Restriction – Justification – The organisation of education systems – Institutions of higher education – Obligation to provide courses of study in the official language of the Member State concerned – Article 4(2) TEU – National identity of a Member State – Defence and promotion of the official language of a Member State – Principle of proportionality)

In Case C-391/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), made by decision of 14 July 2020, received at the Court on 29 July 2020, in the proceedings brought by

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,

* Language of the case: Latvian.

Jānis Krišāns,

Jānis Urbanovičs,

Ļubova Švecova,

Sergejs Dolgopolovs,

Andrejs Klementjevs,

Regīna Ločmele-Luņova,

Ivars Zariņš

interested party:

Latvijas Republikas Saeima,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin and J. Passer, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, F. Biltgen, P.G. Xuereb, N. Piçarra, L.S. Rossi and N. Wahl, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Mr Cilevičs, Mr Agešins, Mr Dombrovskis, Mr Nikonovs, Mr Rubiks, Mr Ribakovs, Mr Kabanovs, Mr Pimenovs, Mr Orlovs, Mr Kucins, Mr Klementjevs, Ms Goldberga, Ms Papule, Mr Krišāns, Mr Urbanovičs, Ms Švecova, Mr Dolgopolovs, Mr Klementjevs, Ms Ločmele-Luņova and Mr Zariņš, by B. Cilevičs,

– the Latvian Government, by K. Pommere and V. Soņeca, acting as Agents,

– the French Government, by E. de Moustier and N. Vincent, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and M.H.S. Gijzen, acting as Agents,

– the Austrian Government, by A. Posch, E. Samoilova and J. Schmoll, acting as Agents,

– the European Commission, by L. Armati, I. Rubene and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 March 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49 and 56 TFEU and of Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings for review of the constitutionality of the Augstskolu likums (Law on higher education institutions) initiated on the basis of an action brought by Mr Boriss Cilevičs, Mr Valērijs Agešins, Mr Vjačeslavs Dombrovskis, Mr Vladimirs Nikonovs, Mr Artūrs Rubiks, Mr Ivans Ribakovs, Mr Nikolajs Kabanovs, Mr Igors Pimenovs, Mr Vitālijs Orlovs, Mr Edgars Kucins, Mr Ivans Klementjevs, Ms Inga Goldberga, Ms Evija Papule, Mr Jānis Krišāns, Mr Jānis Urbanovičs, Ms Ļubova Švecova, Mr. Sergejs Dolgopolovs, Mr Andrejs Klementjevs, Ms Regīna Ločmele-Luņova and Mr Ivars Zariņš, members of the Latvijas Republikas Saeima (Parliament of the Republic of Latvia, 'the Latvian Parliament').

Legal context

The Latvian Constitution

3 In accordance with Article 1 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia, 'the Latvian Constitution'), Latvia is an independent democratic republic.

4 Article 4 of the Latvian Constitution is worded as follows:

'The official language of the Republic of Latvia is Latvian. …'

5 Article 105 of that constitution provides:

'Everyone has the right to own property. The right to own property may not be exercised in a manner contrary to the public interest. The right to own property may be restricted only in accordance with the law. Expropriation in the public interest shall be permitted only in exceptional cases, pursuant to a specific law and in return for fair compensation.'

6 Article 112 of the Latvian Constitution provides:

'Everyone has the right to education. The State shall guarantee free access to the basic and secondary level of education. The basic level of education shall be compulsory.'

7 Article 113 of the Latvian Constitution is worded as follows:

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

The Law on higher education institutions

8 Article 5 of the Augstskolu likums (Law on higher education institutions) of 2 November 1995 (*Latvijas Vēstnesis*, 1995, No 179) provided that the role of higher education 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 (*Latvijas Vēstnesis*, 2018, No 132) amended the third sentence of Article 5(1) of the Law on higher education institutions as follows:

'As part of their activities, [higher education institutions] shall promote and develop the sciences, the arts and the official language.'

9 In accordance with Article 8(1) of the Law on higher education institutions, the State and other legal or natural persons, including foreign legal or natural persons, may establish higher education institutions in Latvia.

10 The Law amending the Law on higher education institutions also amended Article 56 of that latter law. As a result, Article 56(3) of the Law on higher education institutions read as follows:

'In higher education institutions and institutions of higher technical and vocational education, courses of study shall be taught in the official language. Those courses of study may be provided 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 six 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, which furthermore shall not include final exams, State exams, assessed coursework and dissertations for a bachelor's or master's degree;

(3) Courses of study that must be taught in a foreign language in order to achieve their objectives … in the following categories: linguistic and cultural studies and language courses; …

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

11 The Law amending the Law on higher education institutions added point 49 to the transitional provisions of that latter law, which is worded 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 concerned until 31 December 2022. From 1 January 2019, students may not be admitted to courses of study taught in a language that does not comply with Article 56(3) of this law.'

Law on the Stockholm School of Economics in Riga

12 Article 19(1) of the Likums 'Par Rīgas Ekonomikas augstskolu' (Law on the Stockholm School of Economics in Riga) of 5 October 1995 (*Latvijas Vēstnesis*, 1995, No 164) provides:

'Courses at [the Stockholm School of Economics in Riga] 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.'

The Law on the Riga Graduate School of Law

13 Article 21 of the Rīgas Juridiskās augstskolas likums (Law on the Riga Graduate School of Law) of 1 November 2018 (*Latvijas Vēstnesis*, 2018, No 220) provides:

'[The Riga Graduate School of Law] offers courses of study that have obtained the required accreditation, in accordance with the provisions of the applicable legislation. Courses shall be taught in English or another official language of the European Union.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 The Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia) is seised of an action brought by 20 members of the Latvian Parliament. That action seeks review of whether Article 5(1), third sentence, and Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law are compatible with the Latvian Constitution, and in particular with Articles 1, 105 and 112 thereof.

15 The applicants in the main proceedings submit in that regard that the aforementioned provisions of the Law on higher education institutions infringe the right to education. Since those provisions require private higher education institutions to promote and develop the official language of the Republic of Latvia, thereby limiting the opportunities for those institutions to offer courses of study in foreign languages, they restrict the independence of those institutions and the academic freedom of their teaching staff and students.

16 Moreover, there is also a restriction of the right of private higher education institutions to engage in commercial activities and to provide higher education services in return for payment in accordance with the accreditation they have obtained.

17 Those same provisions also, it is alleged, infringe the principle of the rule of law, enshrined in Article 1 of the Latvian Constitution, since the founders of private higher education institutions could legitimately expect that they would be able to profit from operating the institutions which they own.

18 Accordingly, by creating a barrier to entry to the higher education market and preventing the nationals and undertakings from other Member States from providing higher education services in foreign languages, Article 5(1), third sentence, and Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law undermine the freedom of establishment and the free movement of services guaranteed by Article 49 TFEU and Article 56 TFEU respectively, and also the freedom to conduct a business enshrined in Article 16 of the Charter.

19 The Latvian Parliament contends that the aforementioned provisions of the Law on higher education institutions comply with Articles 1, 105 and 112 of the Latvian Constitution since they do not constitute a limitation of those fundamental rights. The provisions in question do not limit the rights of private higher education institutions, since the right to education covers only protection for the rights of students. Nor do they limit the right to property since that right does not guarantee any right for individuals to make a profit.

20 Even if those rights were considered to have been limited, that limitation would have been provided for by law, be aimed at the pursuit of a legitimate objective, and be proportionate to that objective.

21 The Latvian Parliament further contends that EU law does not limit the power of Member States to adopt rules in the field of education which are necessary to protect the constitutional values of those States. Accordingly, the Republic of Latvia is not required to ensure that higher education may be provided in a language other than the official language of that Member State.

22 Lastly, Article 56(3) of the Law on higher education institutions makes specific provision for courses of study to be taught in EU languages and does not depart from the objective of establishing a European education area.

23 On 11 June 2020, the Latvijas Republikas Satversmes tiesa (Constitutional Court) delivered a judgment by which it decided to divide the case in the main proceedings which had been brought before it into two cases.

24 First, finding that Article 5(1), third sentence, and Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law govern an area which, pursuant to Article 165 TFEU, falls within the competence of the Member States, and that it was moreover undesirable that a possible reference for a preliminary ruling to the Court of Justice should leave the question of the compatibility of those provisions of Latvian law with the Latvian Constitution unresolved, the referring court ruled on the compatibility of those provisions with Articles 112 and 113 of that constitution.

25 The referring court accordingly held that the third sentence of Article 5(1) of the Law on higher education institutions complied with the Latvian Constitution. On the other hand, it ruled that Article 56(3) of that law and point 49 of its transitional provisions, in so far as those latter provisions apply to private higher education institutions, their teaching staff and students, did not comply with Articles 112 and 113 of that constitution.

26 Secondly, as to whether Article 5(1), third sentence, and Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law were compatible with Articles 1 and 105 of the Latvian Constitution, the referring court decided to continue its consideration of the case in the main proceedings. In that regard, it considers that the right to property enshrined in Article 105 must be interpreted in the light of the freedom of establishment, enshrined in Article 49 TFEU, and that it is necessary to clarify the content of that fundamental freedom.

27 The referring court finds that although it is apparent, first, from Article 4(2) TEU, that the European Union is to respect the national identity of the Member States, of which the official language is one of the manifestations thereof, and, secondly, from Article 165 TFEU, that the

content and organisation of higher education falls within the competence of the Member States, the Court of Justice has recognised that freedom of establishment also applies in the areas for which competence lies with those Member States.

28 The referring court expresses doubts as to whether legislation of a Member State that makes obligatory the use of the official language of that Member State in the field of higher education, including in private higher education institutions, while providing for certain limits on that obligation, constitutes a restriction on the freedom of establishment enshrined in Article 49 TFEU.

29 That court also notes that the provisions at issue in the main proceedings are not applicable to two higher education institutions, namely the Stockholm School of Economics in Riga and the Riga Graduate School of Law, which are governed by special laws.

30 In those circumstances the Latvijas Republikas Satversmes tiesa (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does legislation such as that at issue in the main proceedings constitute a restriction on the freedom of establishment enshrined in Article 49 [TFEU] or, in the alternative, on the freedom to provide services guaranteed in Article 56 [TFEU], and on the freedom to conduct a business recognised in Article 16 of the [Charter]?

(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?’

Consideration of the questions referred

Admissibility and continued existence of the dispute in the main proceedings

31 In the first place, as regards the admissibility of the present request for a preliminary ruling, it should be borne in mind that the provisions of the FEU Treaty on the freedom of establishment and the freedom to provide services do not apply to a situation which is confined in all respects within a single Member State (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 47).

32 The Court has nevertheless found that, where the referring court makes a request for a preliminary ruling in proceedings for the annulment of provisions which apply not only to its own nationals but also to those of other Member States, the decision of the referring court that will be adopted following the Court’s preliminary ruling will also have effects on the nationals of other Member States, which justifies the Court giving an answer to the questions put to it in relation to the provisions of the FEU Treaty on the fundamental freedoms, even though the dispute in the main proceedings is confined in all respects within a single Member State (see, to that effect, judgments of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 35, and of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 51).

33 That is the case with the proceedings at issue in the present case for review of the constitutionality of the Law on higher education institutions. It is apparent from the order for reference that, first, those proceedings give rise to a review *in abstracto* of certain provisions of that law, which is intended to examine whether those provisions comply with higher-ranking rules of law, taking account of all the persons to whom those provisions apply. Secondly, in accordance with Article 8(1) of that law, the State or other legal or natural persons, including foreign legal or natural persons, may establish higher education institutions in Latvia.

34 It follows that the referring court has set out the specific factors, referred to in the preceding paragraph, that allow a link to be established between the subject of the dispute in the main proceedings, confined in all respects within the Member State concerned, and Articles 49 and 56 TFEU, such that an interpretation of those fundamental freedoms is necessary for the resolution of that dispute (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 54).

35 As regards, in the second place, whether the dispute in the main proceedings continues to exist, the European Commission has expressed doubts as to the usefulness of a reply from the Court to the questions referred, since the referring court has held that Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law did not comply with the Latvian Constitution.

36 In that regard, it must be recalled that, as is apparent from the request for a preliminary ruling, and as is clear from paragraph 23 above, the referring court, by judgment of 11 June 2020, decided to divide the case in the main proceedings which had been brought before it into two cases.

37 First, as is apparent from paragraph 25 above, it held that the third sentence of Article 5(1) of the Law on higher education institutions complied with Articles 112 and 113 of the Latvian Constitution. By contrast, Article 56(3) of the Law on higher education institutions and point 49 of the transitional provisions of that law, in so far as they apply to private higher education institutions, their teaching staff and students, did not comply with Articles 112 and 113.

38 Secondly, that court decided to continue its consideration of the case in the main proceedings as regards the compatibility of Article 5(1), third sentence, and Article 56(3) of the Law on higher education institutions, and of point 49 of the transitional provisions of that law, with Articles 1 and 105 of the Latvian Constitution, taking the view that the right to property enshrined in that latter article had to be interpreted in the light of the freedom of establishment enshrined in Article 49 TFEU, whose content it was necessary to clarify.

39 In addition, the referring court decided, with a view to giving the national legislature a reasonable period in which to adopt new legislation, to maintain in force the provisions which had been declared unconstitutional and to defer the taking effect of the invalidity of the provisions until 1 May 2021.

40 As the Advocate General observed in point 24 of his Opinion, the conditions for the admissibility of a reference for a preliminary ruling must be satisfied not only at the time when the Court is seised, but also throughout the proceedings. Where the incompatibility of the relevant provisions of national law with the national constitution, as declared by the constitutional court of the Member State concerned, has the effect of removing them from the national legal system, the Court is in principle no longer in a position to give a ruling on the questions which have been

referred to it. Taking account of the development of the national law applicable to the dispute in the main proceedings, and without any explanation from the referring court as to the relevance of the questions referred to the resolution of that dispute, those questions would be regarded as being hypothetical (see, to that effect, judgment of 27 June 2013, *Di Donna*, C-492/11, EU:C:2013:428, paragraphs 27 to 32).

41 That said, it should be borne in mind that it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case in the main proceedings, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the question which it submits to the Court (judgment of 2 September 2021, *INPS (Childbirth and maternity allowances for holders of single permits)*, C-350/20, EU:C:2021:659, paragraph 38).

42 Consequently, where the question submitted concerns the interpretation or the validity of a rule of EU law, the Court is, in principle, bound to give a ruling. It follows that questions referred for a preliminary ruling concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraphs 30 and 31).

43 In the present case, even though the referring court has ruled that the third sentence of Article 5(1) of the Law on higher education institutions complies with Articles 112 and 113 of the Latvian Constitution, the fact remains that that court could, in the light of the Court's answers to the questions which it has submitted to it, reach the opposite conclusion as regards the compatibility of that provision with Articles 1 and 105 of that constitution, interpreted in the light of the provisions of the FEU Treaty on the freedom of establishment and the free movement of services and Article 16 of the Charter.

44 Moreover, in response to a request for clarification from the Court on the need to maintain the request for a preliminary ruling, given that national provisions concerned by the questions submitted have been declared invalid under the Latvian Constitution, the effects of that declaration applying from 1 May 2021, and taking account, in particular, of the adoption of the Law amending the Law on higher education institutions, which entered into force on that date, the referring court explained that it retained jurisdiction to assess the constitutionality of those provisions.

45 The referring court points out in that regard that those provisions, although declared unconstitutional, were in force for a certain period and were, therefore, liable to produce adverse legal effects for the legal persons to whom they were applied and also to give rise to legal proceedings.

46 Since that court is required, inter alia, to determine whether the provisions at issue in the main proceedings should be removed from the Latvian legal order, even in respect of the period prior to their becoming invalid, it must be held that an answer from the Court to the questions referred is still of use for the resolution of the dispute in the main proceedings.

47 Accordingly, it is necessary to rule on the request for a preliminary ruling.

Substance

48 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 49 and 56 TFEU and Article 16 of the Charter must be interpreted as precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State.

Preliminary observations

49 In order to answer those questions, it should, first of all, be noted that the referring court refers to the provisions of the FEU Treaty on the freedom of establishment and the free movement of services, and to the provisions of the Charter.

50 With regard, in the first place, to the fundamental freedoms, the Court has held that where a national measure relates to several of those freedoms at the same time, the Court will in principle examine the measure in relation to only one of those freedoms if it appears, in the circumstances of the case, that the other freedoms are entirely secondary in relation to the first and may be considered together with it (see, to that effect, judgment of 8 September 2009, *Liga Portuguesa de Futebol Profissional and Bwin International*, C-42/07, EU:C:2009:519, paragraph 47).

51 It is also clear from settled case-law that, in order to determine the predominant fundamental freedom, the purpose of the legislation concerned must be taken into consideration (judgment of 3 March 2020, *Tesco-Global Áruházak*, C-323/18, EU:C:2020:140, paragraph 51).

52 In addition, the Court has ruled that the provision of higher education courses for remuneration is an economic activity falling within Chapter 2 of Title IV in Part Three of the FEU Treaty on the right 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 (judgments of 6 October 2020, *Commission* v *Hungary (Higher Education)*, C-66/18, EU:C:2020:792, paragraph 160, and of 13 November 2003, *Neri*, C-153/02, EU:C:2003:614, paragraph 39).

53 On the other hand, services that are not offered on a stable and continuous basis from an establishment in the Member State of destination constitute a 'provision of services' for the purposes of Article 56 TFEU, it being noted that no provision of the FEU Treaty affords a means of determining, in an abstract manner, the duration or frequency beyond which the supply of a service or of a certain type of service can no longer be regarded as a provision of services (see, to that effect, judgment of 10 May 2012, *Duomo Gpa and Others*, C-357/10 to C-359/10, EU:C:2012:283, paragraphs 31 and 32).

54 In the present case, the Court notes that, as is apparent from the request for a preliminary ruling, Article 8(1) of the Law on higher education institutions governs the possibility for the State and other legal or natural persons, including foreign legal or natural persons, to establish higher education institutions in Latvia. In addition, the particular nature of the services concerned, namely higher education activities, means that those activities must generally be carried out on a stable and continuous basis.

55 It must, therefore, be held that the legislation at issue in the main proceedings predominantly concerns the freedom of establishment.

56 As regards a possible assessment of that legislation under Article 16 of the Charter, it must be observed that, as the Court has held, examination of the restriction brought about by national legislation from the point of view of Article 49 TFEU also covers possible limitations of the exercise of the rights and freedoms laid down in Articles 15 to 17 of the Charter, with the result that a separate examination of the freedom to conduct a business enshrined in Article 16 of the Charter is not necessary (see, to that effect, judgment of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 50).

57 In those circumstances, the referring court's questions must be answered in the light of Article 49 TFEU alone.

The restriction on the freedom guaranteed by Article 49 TFEU

58 In accordance with Article 6 TFEU, the European Union is to have competence to carry out actions to support, coordinate or supplement the actions of the Member States, including in the area of education.

59 While EU law does not detract from the power of those Member States as regards, first, the content of education and the organisation of education systems and their cultural and linguistic diversity and, secondly, the content and organisation of vocational training, as is apparent from Article 165(1) and Article 166(1) TFEU, the fact remains that, when exercising that power, Member States must comply with EU law, in particular the provisions on freedom of establishment (see, to that effect, judgment of 11 September 2007, *Schwarz and Gootjes-Schwarz*, C-76/05, EU:C:2007:492, paragraph 70).

60 The first paragraph of Article 49 TFEU provides that, within the framework of the provisions in Chapter 2 of Title IV in Part Three of the FEU Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are to be prohibited.

61 All measures which prohibit, impede or render less attractive the exercise of the freedom guaranteed by Article 49 TFEU must be regarded as restrictions on the freedom of establishment (see, to that effect, judgment of 22 January 2015, *Stanley International Betting and Stanleybet Malta*, C-463/13, EU:C:2015:25, paragraph 45).

62 In the present case, even if nationals of other Member States may establish themselves in Latvia and provide higher education courses, such a possibility is, in principle, made subject to the obligation to provide those courses solely in the official language of that Member State.

63 An obligation of that kind is such as to render less attractive the establishment of those nationals in the Member State imposing that obligation, which therefore constitutes a restriction on the freedom guaranteed by Article 49 TFEU. In particular, as the Advocate General observed, in essence, in point 75 of his Opinion, such nationals will not be able, when they have an institution in another Member State, to use a large part of the administrative and teaching staff employed in that institution, thus entailing considerable costs.

64 Similarly, such a restriction also exists in respect of nationals of other Member States who exercised that freedom, before the adoption of the Law on higher education institutions, by opening institutions in Latvia that offer a curriculum in a language other than Latvian. After the end of the transitional period, those nationals will have to adapt their curriculum to the requirements of that law, which may involve considerable costs, in particular as regards a large part of their administrative and teaching staff.

The justification for the restriction on the freedom guaranteed by Article 49 TFEU

65 According to well-established case-law, a restriction on the freedom of establishment is permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued and does not go beyond what is necessary in order to attain it (judgment of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 178).

– *The existence of an overriding reason in the public interest*

66 As is apparent from the request for a preliminary ruling, the obligation to provide higher education courses in the Latvian language, which stems in particular from Article 56(3) of the Law on higher education institutions, seeks to defend and promote the use of the official language of the Republic of Latvia.

67 The Court has observed in that regard that the provisions of EU law do not preclude the adoption of a policy for the protection and promotion of one or more official languages of a Member State (judgment of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 25).

68 It has thus held that according to the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter, the European Union must respect its rich cultural and linguistic diversity. In accordance with Article 4(2) TEU, the European Union must also respect the national identity of its Member States, which includes protection of the official language of the Member State concerned (judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 86, and of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 26).

69 The importance of education for the implementation of such a policy for the protection and promotion of the use of the official language of a Member State must be recognised (see, to that effect, judgment of 28 November 1989, *Groener*, C-379/87, EU:C:1989:599, paragraph 20).

70 Accordingly, the objective of promoting and encouraging the use of one of the official languages of a Member State must be regarded as being a legitimate objective which, in principle, justifies a restriction on the obligations imposed by the freedom of establishment enshrined in Article 49 TFEU (see, to that effect, judgments of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 27, and of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 50).

– *The suitability of the restriction concerned for ensuring the attainment of the objective pursued*

71 As is apparent from paragraph 65 above, it is still necessary to assess whether the legislation at issue in the main proceedings is suitable for securing the attainment of that legitimate objective and does not go beyond what is necessary to achieve it.

72 In that regard, it is ultimately for the referring court, which has sole jurisdiction to assess the facts of the main proceedings and interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions (see, to that effect, judgment of 13 April 2010, *Bressol and Others*, C-73/08, EU:C:2010:181, paragraph 64).

73 However, the Court of Justice, which is called on to provide answers of use to that court, may provide guidance based on the documents relating to the main proceedings and on the written observations which have been submitted to it, in order to enable the court in question to give judgment (see, to that effect, judgment of 13 April 2010, *Bressol and Others*, C-73/08, EU:C:2010:181, paragraph 65).

74 In the present case, a Member State's legislation which provides for an obligation on higher education institutions to use, in principle, the official language of that Member State appears to be suitable for attaining the objective of defending and promoting that language. That legislation encourages the use of the language in question by the whole of the population concerned and ensures that the same language is also used in education at university level.

75 That said, it must be pointed out that the legislation in question can be regarded as capable of ensuring that objective only if it genuinely reflects a concern to attain it and is implemented in a consistent and systematic manner (judgment of 4 July 2019, *Commission* v *Germany*, C-377/17, EU:C:2019:562, paragraph 89).

76 In view of their limited scope, the exceptions laid down in the same legislation are not such as to hinder attainment of the objective of defending and promoting the official language of the Member State in question.

77 Furthermore, it should be noted that, in the present case, as the referring court states, the Latvian legislation provides that the compulsory use of Latvian does not relate to two private higher education institutions, whose operation is governed by special laws, thus allowing those two institutions to continue to offer courses of study in English or, in some circumstances, in another official language of the European Union.

78 As is apparent from the Latvian Government's written reply to questions from the Court, those two institutions were established by international agreements entered into between the Republic of Latvia and the Kingdom of Sweden. It is apparent from the request for a preliminary ruling that Article 56(3)(1) of the Law on higher education institutions specifically provides that a course taking place in Latvia may be provided in an official EU language other than Latvian where that course is organised in the framework of international agreements.

79 In those circumstances, although it is true that the two higher education institutions whose operation is governed by special laws enjoy a special status, since education is provided there in English or, in some circumstances, in another official EU language, there is nothing, however, to

prevent other institutions from being able to provide education in an official EU language other than Latvian, provided that their operation comes under an international agreement entered into between the Republic of Latvia and other States.

80 It follows that the derogation arrangement applicable to those two institutions could apply to any institution in a similar situation. Moreover, that category of institution is significantly different from those establishments subject to the basic obligation in the present case to teach in the Latvian language, since the former category of institution forms part of a special kind of international university cooperation. Consequently, having regard to the specific objective which they pursue and in view of their limited scope, the existence of provisions which allow certain higher education institutions to benefit from a derogation arrangement, in the context of cooperation provided for by EU programmes and by international agreements, is not such as to render the legislation at issue in the main proceedings inconsistent.

– *The necessity and proportionality of the restriction concerned*

81 It must be borne in mind that measures which restrict a fundamental freedom may be justified only if the objective pursued cannot be attained by less restrictive measures (see, to that effect, judgment of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraph 90).

82 Furthermore, it is not indispensable for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States as regards the precise way in which the fundamental right or legitimate interest in question is to be protected. On the contrary, the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted in another State (judgment of 22 December 2010, *Sayn-Wittgenstein*, C-208/09, EU:C:2010:806, paragraph 91).

83 It is true that Member States enjoy broad discretion in their choice of the measures capable of achieving the objectives of their policy of protecting the official language, since such a policy constitutes a manifestation of national identity for the purposes of Article 4(2) TEU (see, to that effect, judgment of 16 April 2013, *Las*, C-202/11, EU:C:2013:239, paragraph 26). However, the fact remains that that discretion cannot justify a serious undermining of the rights which individuals derive from the provisions of the Treaties enshrining their fundamental freedoms (see, to that effect, judgment of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 78).

84 It must be stated that legislation of a Member State which would require, with no exceptions, that higher education courses of study be provided in the official language of that Member State would exceed what is necessary and proportionate for attaining the objective pursued by that legislation, namely the defence and promotion of that language. In actual fact, such legislation would lead to the outright imposition of the use of that language in all higher education courses, to the exclusion of any other language and without taking account of reasons that may justify different higher education courses of study being offered in other languages.

85 On the other hand, Member States may introduce, in principle, an obligation to use their official language in those courses, provided that such an obligation is accompanied by exceptions that ensure that a language other than the official language may be used in the context of university education.

86 In the present case, such exceptions should, in order not to exceed what is necessary for that purpose, allow the use of a language other than Latvian, at least as regards education provided in the context of European or international cooperation, and education relating to culture and languages other than Latvian.

87 In the light of all the foregoing considerations, the answer to the questions referred is that Article 49 TFEU must be interpreted as not precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State, in so far as such legislation is justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued.

Costs

88 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 49 TFEU must be interpreted as not precluding legislation of a Member State which, in principle, obliges higher education institutions to provide teaching solely in the official language of that Member State, in so far as such legislation is justified on grounds related to the protection of its national identity, that is to say, that it is necessary and proportionate to the protection of the legitimate aim pursued.

[Signatures]