



LATVIJAS REPUBLIKAS ĀRLIETU MINISTRS

MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA

Riga, January 16, 2019

Dear Ms Boly Barry, Mr Kaye  
and Mr de Vareennes,

I acknowledge your letter of 8 November 2018, addressing the amendments to the *Law on Institutions of Higher Education*, as well as other issues related to the education reform in Latvia. With reference to this letter, and after a careful and thorough study of Latvia's international obligations you refer to, including the practice of the respective international bodies, I would like to provide you with an analysis that will lead to the conclusion that the education reform in Latvia complies with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

For the sake of clarity, the response of Latvia is divided into two parts. First part (I) contains an overview of the international obligations relevant to the issue of national minority education, focusing on the tertiary level. The second part (II) deals with the *de facto* situation in Latvia during and after the reforms that, as you will observe, comply with Latvia's international obligations.

***Ms Koumbou Boly Barry, Special Rapporteur on the right to education***  
***Mr David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression***  
***Mr Fernand de Vareennes, Special Rapporteur on minority issues***

## I. AN OVERVIEW OF THE INTERNATIONAL OBLIGATIONS RELEVANT TO NATIONAL MINORITY EDUCATION, FOCUSING ON THE TERTIARY LEVEL

### The rights of persons belonging to minorities to use their mother tongue in education

Articles 26 and 27 of the ICCPR and Article 13 of the ICESCR recognize the minorities' right to learn their language as first language within the initial stages of education. It is explained with the need to secure the right of the persons belonging to minorities to communicate among themselves in their mother tongue, and for that reason children in pre-school and primary education institutions ought to learn their mother tongue or at least receive instructions in it.<sup>1</sup> In the case of *Mavlonov and Sa'di v. Uzbekistan*, the Human Rights Committee emphasized that in the context of Article 27, education in a minority language is a fundamental part of minority culture. However, the Committee has made clear that: "[...] the question of whether Article 27 has been violated is whether the challenged restriction has an "impact" [...] [so] substantial that it does effectively deny to the [complainants] the right to enjoy their cultural rights [...]."<sup>2</sup>

In *Raihman v Latvia*,<sup>3</sup> the Human Rights Committee referred to its earlier jurisprudence<sup>4</sup> and recalled that States may regulate activities that constitute an essential element in the culture of a minority, provided that the regulation does not amount to a *de facto* denial of this right.<sup>5</sup> Even though the case did not revolve around minority rights to education or education in their mother tongue, the conclusions expressed by the Human Rights Committee draw a clear principle in regards to Article 27 of the ICCPR and its proportionality test.<sup>6</sup> Accordingly, as long as the national regulation does not deprive persons belonging to linguistic minorities from the right to freely use their language within their community or disproportionately infringe upon those rights, the respective State acts in conformity with Article 27 of the ICCPR.

Considering that only 24 States parties to the ICESCR are also parties to the Optional Protocol to the ICESCR, the practice of the Committee on Economic, Social and Cultural Rights is scarce. There are just a few cases where the Committee on Economic, Social and Cultural Rights has examined alleged violations of Article 13 and the right to education, and there are no views on the use of a minority language in higher education. The concluding observations on the reports of the States regarding the implementation of the ICESCR are likewise silent in regards to higher education. In the absence of the necessary rulings within the UN system, relevant practice of the European Court of Human Rights (hereinafter cited as "the ECtHR") should be taken into consideration. Latvia considers

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<sup>1</sup>Human Rights Council, Report of the Special Rapporteur on the right to education on the promotion of equality of opportunity in education, A/HRC/17/29 (2011), para.63; Recommendations of the Forum on Minority Issues (A/HRC/10/11/Add.1), para.58.

<sup>2</sup>Communication No.1334/04, (*Mavlonov and Sa'di v. Uzbekistan*), para 8.7.

<sup>3</sup>Communication No.1621/07 (*Raihman v. Latvia*); Concluding Observations on Latvia, UN Doc. CCPR/CO/79/LVA (2003), para. 20. In *Raihman v. Latvia*, the Committee concluded that the fact that State Language Centre refused to allow the registration of the applicant's name in its historical and ethnic spelling, this refusal did not substantially infringe upon his rights, because he was able to communicate with his community.

<sup>4</sup>Communications No.879/1999 (*Howard v. Canada*), para. 12.7; No. 197/1985 (*Kitok v. Sweden*); No. 511/1992 and No. 671/1995 (*Länsmann v. Finland*).

<sup>5</sup>Communication No.511/1992 (*Länsmann v. Finland*), para. 9.

<sup>6</sup>Communication No.1621/07 (*Raihman v. Latvia*); Concluding Observations on Latvia, UN Doc. CCPR/CO/79/LVA (2003), para. 8.6.

that the most relevant cases are the *Belgian linguistics case*,<sup>7</sup> the case of *Cyprus v. Turkey*,<sup>8</sup> and the case of *Ponomaryovi v Bulgaria*.<sup>9</sup>

In the *Belgian linguistics case*, the ECtHR found that the right to education does not include the right to access education in a particular language, but merely the right to access educational institutions existing at a given time.<sup>10</sup> The ECHR further continued that “*to interpret the two provisions [Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 of this Convention] as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the [States].*”<sup>11</sup> This conclusion is of particular relevance in the context of globalization in education, when students from different countries go abroad to study, but by no means are considered as thereby creating linguistic minorities.

In the case of *Cyprus v. Turkey*, regarding the abolition of Greek language secondary schools in Turkey, the ECtHR found a violation based on the prior existence of such [Greek language secondary] schools and their abolition by the Turkish authorities; an international agreement to allow Greek Cypriot authorities to provide such education in the north, fulfilment of which the Turkish authorities prevented; and the denial of the right to return to Northern Cyprus of Greek Cypriot children who went to the southern part of the island for their education.<sup>12</sup>

In the case of *Ponomaryovi v Bulgaria*, the ECtHR reviewed the national legislation obliging the applicants (Russian citizens without a valid residence permit in Bulgaria) to pay for studies in the Bulgarian secondary schools. The ECtHR concluded that the margin of appreciation of the national state is wide in regards to the organization of education system. Even though the ECtHR found a violation, in paragraph 56 the ECtHR said: “*in the Court’s view, the State’s margin of appreciation in this domain increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large. Thus, at the university level, which to this day remains optional for many people, higher fees for aliens – and indeed fees in general – seem to be commonplace and can, in the present circumstances, be considered fully justified. The opposite goes for primary schooling, which provides basic literacy and numeracy – as well*

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<sup>7</sup>*Case relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (No.2)*, (applications Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64), judgment of the European Court of Human Rights of 23 July 1968 (hereinafter cited as ‘*The Belgian linguistics*’).

<sup>8</sup>*Cyprus v. Turkey*, application No.25781/94, judgment of the European Court of Human Rights of 10 May 2001.

<sup>9</sup> *Ponomaryovi v. Bulgaria*, application No.5335/05, judgment of the European Court of Human Rights, 21 June 2011.

<sup>10</sup>*The Belgian linguistics*, para. 3.

<sup>11</sup>*Ibidem*, para.11; the conclusions have been repeated in cases like *Skender v. Former Yugoslav Republic of Macedonia*, application No.62059/00, judgment of 22 November 2001; *Mürsel Eren v. Turkey*, application No.60856/00, judgment of the European Court of Human Rights of 7 February 2006, para.44; *Leyla Şahin v. Turkey*, application No.44774/98, judgment of the European Court of Human Rights, Grand Chamber judgment, paras.134 and 136.

<sup>12</sup> *Turkey v. Cyprus*, application No.25781/94, judgment of the European Court of Human Rights of 10 May 2001, para 280.; Gilbert G. *The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights* (2006), HRQ Iss.24 pp. 736.,762; De Varennes F. *Linguistic Identity and Language Rights*. In: Weller M. (ed.) *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. OUP, 2007, p.312; Mowbray J. *Linguistic Justice: International law and Language Policy*, OUP, 2012, p.41.

*as integration into and first experiences of society – and is compulsory in most countries.”*

These conclusions of the ECtHR are similar to those reached by the UN Committee on the Rights of the Child in interpreting the UN Convention on the Rights of the Child, as well as the Committee on Economic, Social and Cultural Rights.<sup>13</sup> Namely, when addressing issues regarding the right to education of children belonging to minorities, the UN Committee on the Rights of the Child has ascertained the obligation of States is confined to providing a possibility to obtain education and an access to it.<sup>14</sup>

In this regard, it must be reiterated that, unlike primary or secondary education, higher education need not be “compulsory and available” or “generally available”, but only “accessible to all, on the basis of capacity”. The “capacity” of individuals should be assessed by reference to all their relevant expertise and experience.<sup>15</sup> Consequently, the higher the level of education, the more margin of appreciation the state has.

Latvia wishes to reiterate that the purpose of tertiary education is different from pre-school, primary or secondary level of education.<sup>16</sup> In tertiary level of studies, students obtain education within their future profession,<sup>17</sup> and their cultural backgrounds or language spoken have a secondary role. Primary education is the education necessary to obtain “basic learning needs”, such as literacy, oral expression, numeracy and problem solving, and basic learning content as knowledge, skills, values etc. to improve their lives and continue learning.<sup>18</sup> Secondary education includes completion of basic education and consolidation of the foundations for life-long learning and human development. It prepares students for vocational and higher educational opportunities.<sup>19</sup> Tertiary education builds on secondary education, providing learning activities in specialised fields of education. It aims at learning at a high level of complexity and specialisation. Tertiary education includes what is commonly understood as academic education but also includes advanced vocational or professional education.<sup>20</sup>

To provide a high-quality education is the prime aim of the State and its universities for the general population of the respective State.<sup>21</sup> The ECtHR has explained that a right of access to education exists only in as far as the education is available and within the

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<sup>13</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1; UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10.

<sup>14</sup> Report of the Working Group on a Draft Convention on the Rights of the Child. COMMISSION ON HUMAN RIGHTS Forty-first session Agenda item 13, UN Doc.E/CN.4/1985/64, 3 April 1985, paras. 75 and further

<sup>15</sup> CESCR General Comment No. 13: The Right to Education (Art. 13), Social and Cultural Rights, on 8 December 1999, UN Doc. E/C.12/1999/10, para.19; Saul B., Kinley D., Mowbray J. *Then International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*. OUP, 2014, p.1104.

<sup>16</sup> Saul B., Kinley D., Mowbray J. *Then International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*. OUP, 2014, pp.1101.-1105; UNESCO. Institute for Statistics. *International Standard Classification of Education ISCED 2011*, para.200.

<sup>17</sup> UNESCO. Institute for Statistics. *International Standard Classification of Education ISCED 2011*, para.200.

<sup>18</sup> CESCR General Comment No. 13: The Right to Education (Art. 13), Social and Cultural Rights, on 8 December 1999, UN Doc. E/C.12/1999/10, paras.9, 57; World Declaration on Education for All, Article 1.

<sup>19</sup> *International Standard Classification of Education 1997*, UNESCO, para.52.

<sup>20</sup> UNESCO. Institute for Statistics. *International Standard Classification of Education ISCED 2011*, para. 200.

<sup>21</sup> E.g. *Tarantino and Others v. Italy*, applications Nos.25851/09, 29284/09 and 64090/09, judgment of the European Court of Human Rights of 2 April 2013, paras. 43-48;

relevant limits. The ECtHR notes that such limits are often dependent on the assets necessary to run such institutions, including, *inter alia*, human, material and financial resources with the relevant considerations, such as the quality of such resources.

In light of the conclusions of the ECtHR, as well as the practice of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, Latvia concludes that there is no positive obligation that would require a State to ensure education in tertiary level in minority languages, because the margin of appreciation awarded to States in the tertiary level of education is evidently much wider than the one regarding primary and secondary schools.

### **Official language requirements for private higher education institutions and the right to freedom of expression and the academic freedom**

Article 19 of the ICCPR requires States to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse regardless of whether spoken, written and sign language and such non-verbal expression as images and objects of art.<sup>22</sup> The issue is closely linked to academic freedom.

Article 13 of the ICESCR protects not only the rights of individuals to education, but the academic freedom as well.<sup>23</sup> The ICESCR Committee has indicated in the General Comment No.13 that the academic freedom is an important aspect of the right to education. Accordingly, although this issue is not explicitly mentioned in Article 13, it nevertheless is a precondition to enjoy adequately the right to education.<sup>24</sup> The academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. For those same reasons, the academic freedom is a part of freedom of expression.<sup>25</sup>

The academic freedom includes autonomy in such a degree of self-governance of institutions of higher education that is necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities. Self-governance, however, must be consistent with systems of public

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<sup>22</sup> Communication No.926/2000, (*Shin v. Republic of Korea*); UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34.

<sup>23</sup> See UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997); CESCR General Comment No. 13: The Right to Education (Art. 13), 8 December 1999, UN Doc. E/C.12/1999/10, para.38.

<sup>24</sup> See UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997); CESCR General Comment No. 13: The Right to Education (Art. 13), Social and Cultural Rights, on 8 December 1999, UN Doc. E/C.12/1999/10.

<sup>25</sup> Saul B., Kinley D., Mowbray J. *Then International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*. OUP, 2014, p. 1149.

accountability.<sup>26</sup> The ICESCR Committee has noted that universities must be guaranteed freedom to exercise fully their academic authority and control over their curriculum and teaching methods.<sup>27</sup>

Latvia concludes that neither freedom of expression, nor the academic freedom as a part of freedom of expression necessarily includes the right of private actors to create tertiary education institutions in a minority language; at the least, the regulation on higher education institutions in this regard is silent. Thus, Latvia concludes that the language requirements for private higher education institutions do not constitute an interference with the right to freedom of expression and the academic freedom.

With regard to the Durban Declaration and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities, Latvia would like to note that these are soft-law instruments that do not impose any obligations on the State.<sup>28</sup>

## **II. EDUCATION REFORMS IN LATVIA: OBJECTIVES AND IMPLEMENTATION**

### **Amendments to the *Law on Education* and the *Law on General Education* (primary and secondary education level)**

At the outset, Latvia would like to reiterate its position as communicated to you in the letter of 28 March 2018. As you are aware, amendments to the *Law on Education* and the *Law on General Education* (hereinafter “the reform”) were approved by the Parliament at the third and final reading on 22 March 2018, and proclaimed by the President of Latvia on 2 April 2018. In the above mentioned communication Latvia explained the particularities regarding the said amendments, therefore here we would like to reiterate only the most significant aspects.

The reform is implemented gradually (until year 2022) and seeks to promote a united society and equal opportunities for all school graduates, preventing any form of discrimination. The principal aim of the reform is to ensure all school graduates with an equal command of the Latvian language for a successful and competitive entry into the labour market in Latvia or the continuation of their studies.

It is of essence to emphasize that during and after the reform, Latvia will continue to ensure the opportunities for students belonging to national minorities to learn their native language, as well as to learn other subjects in their mother tongue or bilingually. The new State Basic Education Standard, adopted on 27 November 2018, affirms this – national minorities’ education programmes will continue to be implemented, according to the following regulations:

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<sup>26</sup> CESCR General Comment No. 13: The Right to Education (Art. 13), Social and Cultural Rights, on 8 December 1999, UN Doc. E/C.12/1999/10.

<sup>27</sup> Concluding Observations on Republic of Korea, UN Doc. E/C.12/KOR/CO/3 (2009), para.35.

<sup>28</sup> United Nations, *Durban Declaration and Plan of Action, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence*, 8 September 2001, UN Doc. A/CONF.189/12; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135; García O., Flores N., Spotti M. (eds), *The Oxford Handbook of Language and Society*, OUP, 2017, pp.43-45.

- In the framework of national minorities' education programmes, **from grades 1 to 6**, representatives of national minorities will be provided with the possibility to study up to **50%** of the curriculum in their native language.
- In the framework of national minorities' education programmes, from grades **7 to 9**, representatives of national minorities will be provided with the possibility to study up to **20%** of the curriculum in their native language.
- In the framework of national minorities' education programmes, **from grades 10 to 12**, representatives of national minorities will be provided with the possibility to study in their native language subjects related to the respective minority's **language, literature, culture and history**.

Education institutions will be able to choose one of the given models to implement the basic education programmes:

- **Model 1:** the respective education institution determines the subjects to be learnt in Latvian language (no less than 80% of the total learning hours within the academic year).
- **Model 2:** the respective education institution determines the subjects to be learnt in Latvian language from grades 1 to 6 (no less than 50% of the total learning hours within the academic year); and from grades 7 to 9 (no less than 80% of the total learning hours within the academic year).
- **Model 3:** the respective education institution determines the subjects to be learnt in Latvian language from grades 1 to 6 (no less than 50% of the total learning hours within the academic year); and from grades 7 to 9 (no less than 80% of the total learning hours within the academic year). In this model, education institutions will also be able to develop a new subject, which is not included in the model plan of subjects, taking into account the proportional distribution of languages.

After transferring to grades 10-12, students will have a possibility to study in their mother tongue subjects related to their native language, literature and culture. Education institutions will have the right to increase the number of hours for a subject up to 10% within a study year in case they will observe that the students need to acquire a better knowledge of the said subject; this will apply to national minorities' language, literature and culture as well.

As to the issue of centralized examinations – since 2017/2018 academic year 12<sup>th</sup> grade students take centralized examinations in the State language; as of 2019/2020 academic year, 9<sup>th</sup> grade students will also take state examinations in Latvian. This is a logical step within the reform process, considering that in the last few years the number of students in national minorities' education programmes who chose to take centralized exams in Latvian has steadily risen (from 76% in 2013/2014 academic year to 92% in 2016/2017 academic year).

It should be emphasized once more that the implementation of the reform goes hand-in-hand with overall structural adjustments in the education content. A process of considerable change in approach to education is taking place, introducing a new competence-based education content, which will promote a successive and sustainable learning process. Changes in the teaching approach regarding the language of instruction will promote a successful learning process and implementation of the new competence-based education content, simultaneously stressing the preservation of the language and

culture of national minorities.

The reform is and will be supported by new teaching and learning materials, as well as training for teachers, including language courses for those who need to improve their competence in order to help them successfully implement the new competence-based education content in Latvian.

### **Amendments to the *Law on Institutions of Higher Education* (tertiary education level)**

On 21 June 2018, the Parliament of Latvia adopted amendments to *the Law on Institutions of Higher Education*, according to which higher education institutions and colleges further will implement higher education programmes in the state language. At the same time, the usage of other languages will be possible in specific cases (*as outlined below*).

Latvia wishes to emphasize that the reform will be implemented gradually: higher education institutions and colleges that have study programmes which do not comply with the provisions of the *Law on Institutions of Higher Education* with the amendments of 21 June 2018, can continue the implementation of those programmes until 31 December 2022 to complete the on-going courses; since 1 January 2019, educational institutions can enrol students only in study programmes which comply with requirements set out in the *Law on Institutions of Higher Education*.

Taking into account the changes in the regulation regarding the implementation of education programmes at the primary and secondary education school level (*see above*), it was deemed necessary to promote appropriate alignment in higher education as well. The reform within the tertiary education level is aimed at ensuring a smooth transition from one education level to another, to equip young people with the necessary competence level of the state language, thus facilitating their competitiveness at the labour market.

### **The use of languages other than the State language in the education process**

What pertains to the usage of Russian language and other national minority languages (that are not European Union languages) in primary and secondary education level – Latvia has elaborated in-depth on the national minority education programmes both in this letter and the previous communication of 28 March 2018. Regarding the use of EU languages as languages of instruction in the primary and secondary education level, the Content and Language Integrated Learning programme prescribes that an education institution can determine learning subjects during the academic year, which can be implemented fully or partly in one of these languages (for example, in Polish, German, French), at the same time respecting the standard of State education.

It should also be noted that two schools – the International School of Latvia and the International School of Riga – implement international baccalaureate education programmes and Cambridge international education programmes on the basis of international agreements.

According to the amended *Law on Institutions of Higher Education*, there are particular cases when a study programme can be implemented in a foreign language by a higher education institution. Programmes where a foreign language is essential for achieving their

main objectives (language and culture studies, linguistic programmes) can be taught in a foreign language, including Russian (for example, the Russian Philology programme).

Furthermore:

- Study programmes for foreign students in Latvia can be taught in the official languages of the European Union;
- Programmes implemented under EU programmes and intergovernmental treaties can be taught in a foreign language;
- Joint study programmes can be taught in EU official languages;
- 20% of the total scope of a programme (in terms of credits) implemented in the official language (Latvian) can be taught in EU official languages.
- In areas where English is the working language of the respective global industry (e.g., shipping, aviation), study programmes to foreign students must be ensured in English.

A higher education institution or a college has the right to organize courses to prepare foreign nationals to commence studies in a higher education institution or college.

In light of the above mentioned, it can be summarized that the amendments to the *Law on Institutions of Higher Education* do not preclude national minorities from studying in their native language: representatives of national minorities will continuously be able to study in private higher education institutions in their language in the framework of those study programmes where a foreign language is essential for achieving programme's main objectives (language and culture studies, linguistic programmes), and there will be a wide variety of possibilities to study in EU languages.

### III. CONCLUSIONS

Analysis of the international obligations regarding the usage of foreign languages in the study process in education institutions reveals that the higher the level of education the wider the margin of appreciation for the State in adopting national legislation. Furthermore, the above analysis shows that the right to freedom of expression and the academic freedom do not necessarily include the right of private actors to create tertiary education institutions in a minority language. Therefore, it can be concluded that amendments to the *Law on Institutions of Higher Education*, as described in section II of this document, are in conformity with Latvia's international obligations.

I hope that you will find information provided in this letter useful and sufficient to assure you that the education reform, at all education levels – starting from basic to tertiary – is implemented gradually and carefully, with full account of Latvia's international commitments and in the best interest of every individual member or group of Latvia's society.

Availing myself of this opportunity, please accept the assurances of my highest esteem and consideration.

Yours sincerely,  
Edgars Rinkēvičs

