



OMBUDSMAN OF THE REPUBLIC OF LATVIA

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Report by the Ombudsman of the Republic of Latvia on Securing the Right to Free Primary and General Secondary Education at Municipal Educational Establishments

Preamble

Section 112 of Satversme (Constitution) of the Republic of Latvia (hereinafter – Constitution) stipulates that each and every person has the right to education. The State has committed to ensure that everyone may acquire primary and secondary education without charge, and primary education is mandatory.

The right to education is also stipulated in a number of international treaties binding upon Latvia: The UN Universal Declaration of Human Rights (Article 26); the UN International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14), and the UN Convention on the Rights of Child (Article 28).

The international human right instruments to which Latvia is a party focus in particular on implementation of the right to education as indispensable tools for realizing human rights in general.¹

When joining the UN International Covenant on Economic, Social and Cultural Rights, Latvia has committed to implement the stipulations of Article 3 of the Covenant: to ensure that primary education has to be mandatory and free of charge, and that all forms of secondary education including vocational and night-shift education has to be affordable and accessible, with gradual shift to free education. According to Article 1 of the Covenant, if Latvia has been unable to introduce free mandatory primary education in its jurisdiction at the time of joining the Covenant, it has committed to draft and adopt within two years a detailed schedule for gradual implementation of the principle of free mandatory general education within a timeframe agreed in the said schedule.

According to Article 28 of the UN Convention on the Rights of Child (hereinafter – Convention), Latvia as a state party to the Convention recognizes the right of

¹ General Comment No.13: The Right to Education (Art.13), United Nations, Economic and Social Council, Committee on Economic, Social and Cultural Rights, E/C.12/1999/10, 8 December, §1.

children to education and it has committed to achieve gradual realization of such right on the basis of equal opportunity principle, in particular:

- a) To introduce mandatory and free primary education;
- b) To promote development of different forms of secondary education, both general and vocational, and ensure that it is available to all children; and to take the necessary steps such as introduction of free education and provision of financial aid if appropriate;
- d) To ensure that information and materials in the field of education and professional training is available to all children;
- e) To take steps aimed at fostering regular attendance of school and reducing the number of children who leave school.

Apart from the above-stated, Latvia has committed to ensure realization of children's right to education in accordance with the education objective specified in Article 29 of the Convention, setting the development of personality, talents, intellectual and physical abilities of a child to the fullest possible extent as the priority objective.

Pursuant to the functions stipulated in Section 11 of the Ombudsman Law, the Ombudsman, having familiarized with the information disseminated by mass media and provided by parents and non-governmental organizations, has established that the present actual situation in our country in terms of availability of education does not correspond with that prescribed by regulatory acts. For example, parents have to provide at their own cost textbooks, exercise books and other educational materials necessary for acquisition of mandatory education. Such situation contradicts with the right guaranteed by Section 112 of the Constitution to free primary and secondary education.

In the Ombudsman's opinion, the norms contained in Constitution of the Republic of Latvia may not be declarative, and the state is responsible for ensuring the scope of rights it has committed to guarantee. Therefore, in 2011 the Ombudsman launched study of the contents of free education guaranteed by the State in accordance with Section 112 of the Constitution. The study included assessment of actual and legal situation and issuing certain proposals (the Ombudsman's recommendations) aimed at improvement of situation in the field of protection of human rights.

The Ombudsman has established advisory council on accessibility of education to ensure public involvement in the work of Ombudsman; the council includes representatives of parents, pedagogues, school children and non-governmental organizations as well as experts². Several meetings of the advisory council have been held to identify the situation and issue proposals on possible improvements.

² The Council is composed of: Gunta KraĶe (Board Member of the foundation "Fonds VIENS OTRAM"), Inete Ielīte (Board Chairperson of the Children's Forum of Latvia), Vaira Vucāne (Vice-President of the Children's Fund of Latvia), Aivars Borovkovs (Chairman of the Latvian Association of Lawyers), Andrejs Mūrnieks (Board Chairman of the Council of Pedagogues of Latvia

1. Normative Regulations on Funding of Education

1.1. Segregation of Competence

Section 12, Part One of the Education Law stipulates: “Fees for the acquisition of pre-school, basic and secondary education at an institution established by the State or local governments shall be covered from the State budget or local government budgets in accordance with the procedures prescribed by the Cabinet. A private educational institution may determine the fees for the acquisition of education.”

Competence of the Cabinet in the field of education is specified in Section 14 of the Education Law, where three sub-paragraphs refer to fee for acquisition of education. According to them, the Cabinet shall :

- * Specify the procedures by which the State organizes and finances the publication and acquisition of educational materials (sub-paragraph 15);
- * Specify the procedures for the payment of work remuneration and the amount of remuneration for educators (sub-paragraph 16);
- * Specify the minimum costs for the implementation of educational programs per one educatee (sub-paragraph 20).

Competence of Municipalities in financing of education is specified in Section 17 of the Education Law. According to Part Three of the said Section, municipalities of the cities and counties shall:

- * Specify the procedures for financing of the educational institutions under their supervision from the budget (sub-paragraph 3);
- * Participate in the financing of State, other local government and private educational institutions on contractual grounds (sub-paragraph 4);
- * Distribute and allocate municipal budget resources to educational institutions and control efficient utilization thereof (sub-paragraph 6);
- * Maintain the educational institutions overseen by them³, taking into account that the financial support provided to such institutions may not be less than the financial support specified by the Cabinet, and control the utilization of such funds;
- * Ensure the transfer of funding allocated from the State budget for remuneration of pedagogues to the accounts of educational institutions (sub-paragraph 9);

(LPD)), Jēkabs Juražs (President of Riga Council of School Children), Kārlis Boldiševics (Board Chairman of the Latvian Association of Parents “Vecāki izglītībai, sadarbībai, izaugsmei” (VISI)), Marija Golubeva (Researcher of the Public Policy Center “Providus”), Rūta Dimanta (Board Chairperson of the foundation “Fonds “Ziedot””).

³ other than specialized education institutions, specialized education classes and groups within general education institutions, boarding schools, including those financed from the State budget.

* Ensure registration of the children who have reached the mandatory school age in accordance with procedures prescribed by the Cabinet (sub-paragraph 20);

* Specify the amount of benefits and other kinds of financial support, and procedures for granting such funds to the educatees in the educational institutions under their supervision (sub-paragraph 21);

* **Take part at provision of the education institutions at their supervision with educational literature, other literature required during the educational process, and other educational materials** (sub-paragraph 23);

* Perform other functions of municipalities in the field of education as prescribed by the regulatory acts (sub-paragraph 28).

Competence of the Founder of Educational Institution is governed by Section 29 of the Education Law: “The founder of an educational institution shall provide the necessary financial and material resources for continuous operation of the educational institution, observing the Cabinet Regulations regarding financial and material support of educational institutions.”

Responsibilities of parents (persons who exercise parental authority) in financing of education are governed by Section 58, Part One, Paragraph 1 of the Education Law, according to which parents have the duty “within the scope of their abilities and financial possibilities, to ensure the necessary circumstances in the family for the education, health, development and daily life of the child”. Part Two of the said Section stipulates that “Parents (persons who exercise parental authority) are responsible for ensuring that the child acquires the mandatory education.”

1.2. Financial and Material Resources of the Educational System

Section 59 of the Education Law determines the sources of financing of the educational system:

(1) (..) **Municipal educational institutions** shall be financed from municipal budgets. **The State shall participate in the financing of educational institutions** in cases specified in this Law.

(4) Educational institutions may **attract additional resources**:

- 1) In the form of donations and gifts;
- 2) By providing paid services in the cases provided for in the by-laws or the Constitution;
- 3) From other income.

(Such resources may only be applied towards development of the educational institution, **acquisition of educational materials**; procurement of equipment for the institution; financial incentives to pedagogues and educatees⁴).

⁴ Section 60, Part Seven of the Education Law

Section 60 of the Education Law prescribes the procedures for financing educational institutions:

(1) Founders of educational institutions shall ensure the financing of such institutions, taking into account:

- 1) The **minimum costs** for the implementation of educational programs **per one educatee**, as specified by the Cabinet;
- 2) **Maintenance and economic expenditures** of educational institutions, including salaries of the general service personnel, as well as expenditures related to international co-operation;
- 3) **Maintenance expenditures for educatees** at the educational institution.

The costs related to the acquisition of education include financing the acquisition of educational materials.

Definition of educational materials is specified in Section 1, Sub-Paragraph 12¹ of the Education Law: “**Educational materials**– the literature, visual and technical aids, materials and equipment necessary for the implementation of educational programs.”

According to the normative regulations, the State has to organize and finance the acquisition of educational materials in accordance with the procedures prescribed by the Cabinet.

The procedures for performing of this function by the State is governed by Cabinet Regulations No 97 of 6 March 2001 “**The procedures for organizing and financing the issuing and acquisition of educational materials by the State**”⁵. Paragraph 2 of the Regulations stipulates: “The issuing and acquisition of educational materials that meet the national education standards (other than post-diploma education standards) is organized by the Ministry of Education and Science.”

The terms contained in the Regulations are only applicable to the acquisition of educational literature.

The State has established the national standards for primary education and general secondary education in accordance with:

Cabinet Regulations No 1027 of 19 December 2006 “Regulations concerning the national standard in primary education and standards for educational disciplines in primary education”; and

Cabinet Regulations No 715 of 2 September 2008 “Regulations concerning the national standard in general secondary education and standards for educational disciplines in general secondary education”⁶.

⁵ Issued in accordance with Section 14, Paragraph 15 of the Education Law: “The Cabinet shall determine the procedure for arranging and funding the issuing and acquisition of educational materials by the State”.

⁶ Both issued in accordance with Section 14, Paragraph 19 of the Education Law: “The Cabinet shall define the national educational standards which include exemplary educational programs that meet the requirements of such standards”, and Section 4, Paragraph 11 of the General Education Law: “The

The standard prescribed knowledge and skills to be mastered in each educational discipline. Educational materials necessary to support implementation of the national standard are not, however, specified in normative acts, and therefore the amount of funding required for implementation of national standard is also not fixed.

2. Description of Actual Situation

2.1. Summary of Information and Proposals Provided by Parents

In order to identify the actual situation in the field of access to free education, the Ombudsman encouraged reporting during the period from 23 February 2012 to 9 March 2012 on any occasions when schools had instructed parents to purchase any materials for the provision of educational process at schools. 136 letters in total have been received in reply to the Ombudsman's initiative to report on any items procured for schools by parents of school children and also by teachers on their own cost.⁷ The flow of letters also continues after expiration of the prescribed period. The most frequently mentioned items provided at the expense of parents include text-books and exercise books. Parents have been presenting to the Ombudsman's Office the lists of textbooks to be provided by parents. One of parents has summarized information from school websites publishing the lists of items to be provided. The fact that each spring schools issue lists of items to be provided for the following academic year is a common practice perceived by parents "with no emotions, or rather with certain sadness".

According to the information provided by parents, the most expensive educational disciplines include English Language, Housekeeping, and Visual Art (drawing). The list of items required for these disciplines is quite long: paper A4, A3, several blocks a year; gouache colors, moist colors, plasticine, wax and oil crayons; Indian ink; colored pencils, mixing vessels, brushes, PVA glue, glue-sticks, markers; different yarns; applique paper, cheesecloth, cotton, textile for embroidery and other textile items, for example, for making gnome's sockets; soil for growing plants; crepe paper, applique paper, needles, crochet hooks, wires, etc. Sports-related items are also costly: sportswear for indoor as well as outdoor sporting, skis, skates and the related items; special sporting footwear (with white soles); swimming items – swim-suit, bathing-cap, and pool shoes. Parents also report on requirement to purchase similar T-shirts with the logo of school for all children. According to parents' estimates, average costs on each school child amount to 680-850 lats per annum. The said amount includes text-books, exercise books, stationery and sporting items, as well as lunch, transport, casual wear and formal dress.

Proposals made by parents include:

- * To clarify the term "free education", and to specify the items to be provided by school and those to be purchased by parents;
- * To eliminate diversity of text-books (the number of alternative text-books for the same educational discipline);

Cabinet shall determine the national general education standards and the standards of educational disciplines".

⁷ Please find enclosed summary of the provided information "How much does free education cost?"

* To eradicate the practice where text-books are combined with exercise books which are paid for by parents and cost twice as much as the books provided by school;

* To fix clear principles for distribution of municipal funding among schools.

2.2. Summary of information and proposals made by municipalities

On 14 March 2012, the Ombudsman addressed all 119 municipalities of Latvia regarding a number of issues related to the provision of accessibility of education in accordance with the competence of municipalities specified in Section 17 of the Education Law. Municipalities were asked, among other things, to issue their opinion on the process of drawing up budgets of educational institutions; the actual costs incurred by municipalities per each educatee, and to specify the costs related to the acquisition of primary and secondary education which are not provided, or provided sufficiently, by the State. Municipalities were also asked to present their vision regarding the improvement of situation in the field of provision of general education.

104 opinions in total have been received on the above-described issues. The opinions enable conclusion that problems related to insufficient funding are most frequently faced by municipalities of small counties, and majority of the small municipalities of Latgale region trend to express no opinions at all.

Summarizing the information obtained from municipalities leads to conclusion that municipalities find the insufficient funding from state budget for provision of text-books to present the most urgent problem, along with switching the responsibility for provision of text-books, the related exercise books and other education materials to parents. It has to be concluded regretfully that this issue has persisted since the opinion issued by the Ombudsman R. Apsītis in 2008 on the inspection case titled “Whether or not acquisition of text-books at the expense of families of school children contradicts with the provisions of Section 112 of Constitution of the Republic of Latvia?”

Having reviewed the opinions obtained from municipalities, the Ombudsman has made the following conclusions.

In relation to the drafting of budgets by educational institutions:

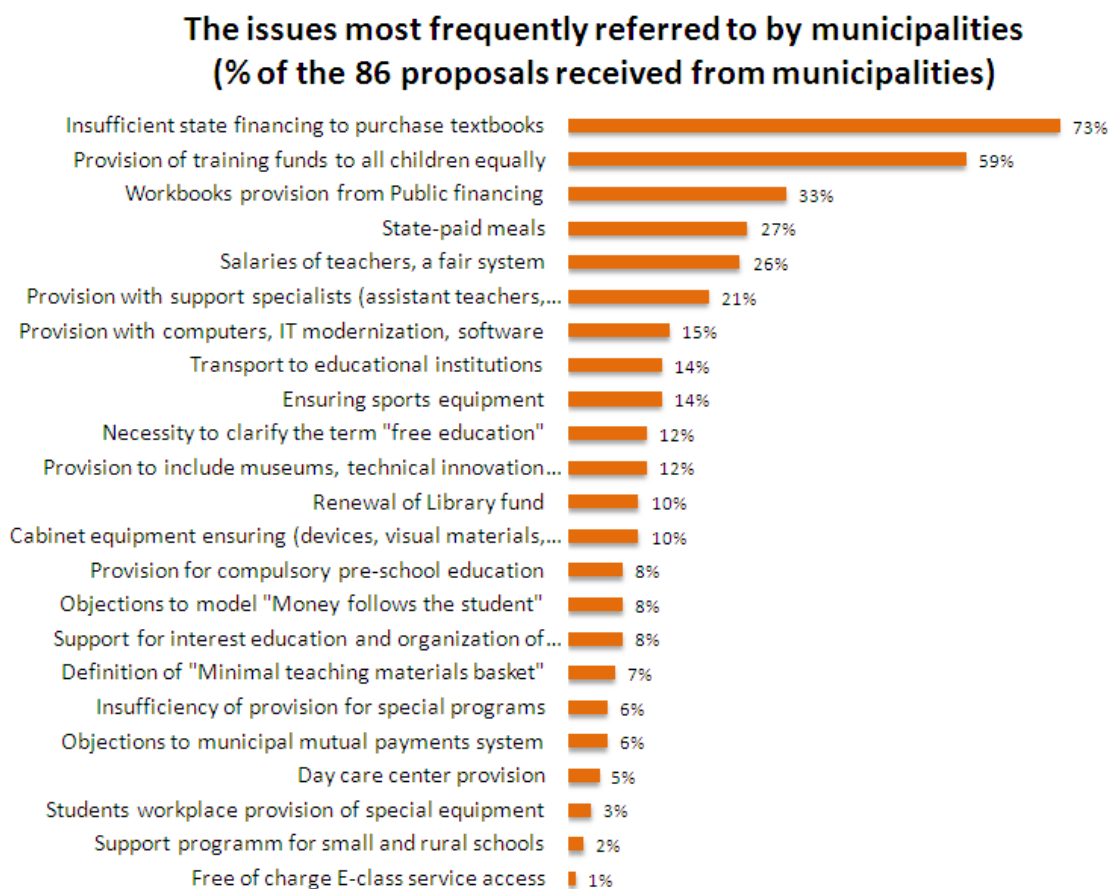
- Financial support provided by the State to educational institutions supervised by municipalities takes the form of earmarked subsidies towards remuneration of pedagogues and procurement of text-books, yet the actual costs are covered only partially.
- Funding of the provision of other relevant educational materials is the competence of each individual municipality. First, the municipality assesses and determines within the framework of their budget the permissible costs of educational institution, and points out to the need to reduce, proportionally or quantitatively, the draft budget submitted by the educational institution. Expenditures on pedagogues’ remuneration and costs incurred to support principal activities of the educational institution (costs of utility services, maintenance of buildings, remuneration to technical staff) are set as priorities. Therefore, procurement of educational materials is funded according to the “affordability” principle. In general,

administration of each educational institution is entitled to decide on internal distribution of funds and procurement of certain educational materials (exercise books, stationery, paper, visual aids, and other).

- The costs incurred annually by municipalities per one educatee trend to differ even within municipalities. The factors affecting such costs include the contents of curricula selected by the educational institution as well as participation of the institution at different projects, and the number of educatees in each institution. According to the model “funds follow educatees”, the applicable principle is “the smaller is the school, the higher are the costs per educatee.”
- According to the Cabinet Regulations No 399 of 13.09.2001 “Regulations concerning the minimum annual costs of implementation of general primary and general secondary education per educatee”, the amounts of costs per educatee referred to by municipalities range notably from LVL 26 up to LVL 1649.

The issues most frequently referred to by municipalities in relation to insufficient funding (see Table No 1):

The issues most frequently referred to by municipalities (% of the 86 proposals received from municipalities)



Regarding text-books:

- Support provided by the State in procurement of text-books is either insufficient or insignificant (up to 30% of the necessary amount). Such funding is insufficient to enable replacement of text-book stock available from library, and children have to use books that are physically worn out.
- Whenever education standards change and a new text-book is approved, schools have to procure new text-books or other educational materials. Funding provided by the state is not, however, increased upon change of the standard.

Regarding educational materials:

- The exercise books and educational materials necessary in the educational process have to be provided by parents.
- Educational materials necessary to meet the key requirements applicable to the acquisition of educational disciplines, including the fundamentals of research work, are not made available. Funding should be increased to provide materials necessary for teaching household and technologies, visual arts, sports, natural sciences, and biology.

- No sufficient funding is provided for acquisition of specific skills related to educational disciplines in accordance with the educational standard, such as attending exhibitions, concerts, ballet and opera performances, theaters, museums, science centers, and natural and historical landmarks.

Regarding educational environment:

- Insufficient provision of information technologies; lack of funds necessary for IT updating and software;
- Lack of funds necessary to provide equipment at working areas and labs.

Regarding transport costs:

- Funding provided to ensure transportation of children to educational institutions (transport costs) is not sufficient.
- A child has to spend over 60 minutes to travel to school due to insufficient funding and shortage of routes.

A number of municipalities list state-financed catering during the primary education stage and provision of day-care centers at schools among the measures that deserve support. They also point out to insufficient funding provided for remuneration of pedagogues and support specialists, as well as for interest-based education.

Recommendations made by municipalities:

- The term “free education” should be clearly defined as well as educational materials (there has to be specific list and the minimum set of educational materials for each curricular program), as well as the concept of free education. Proportional funding provided to free education from the state budget should be fixed as well as the proportion co-financed by municipality. Provision of educational materials should be based on equality principle, at least in terms of the minimum necessary educational materials provided by the State.
- Provision of educational materials should be based on centralized public procurement.
- The structure of costs may differ from school to school, depending on the selected syllabic programs and priorities; this issue may be addressed by allocating certain amount of funds to each school so that each school can use the funds for acquisition of educational materials and decide on selection of such educational materials.
- Cabinet Regulations No 399 of 13.09.2001 “Regulations concerning the minimum annual costs of implementation of general primary and general secondary education per educatee” contradict with the later-enacted Cabinet Regulations No 1616 “Procedures for calculating and allocating state earmarked subsidies to municipal and private educational institutions

for remuneration of pre-school education pedagogues working with children from their age of five years, and remuneration of pedagogues in general secondary education institutions”, because the regulations have not been amended during 8 years, notwithstanding the changes, and therefore they are not applied in practice. The factors specified in the annexes are no more applied by the Ministry of Education and Science when distributing the budget funds, and therefore the said Regulations should be abrogated.

- Mutual settlement of accounts between municipalities for services provided by educational establishments should be voided because if, for example, 3-4 educatees from one municipality join a class in another municipality with 20 educatees, it does not lead to increased consumption of electrical power or heating, or to increased space of premises to be attended. In fact, the actual increase of costs is only attributable to increased consumption of water.

3. Conclusions

1. The right to acquisition of free primary and secondary education enshrined in Section 112 of Constitution of the Republic of Latvia is not provided to full extent. Parents are forced to purchase educational materials necessary to acquisition of educational programs. The most significant costs are related to exercise books, text-books and materials necessary for educational disciplines such as household and visual arts.
2. According to regulatory acts, the State finances the provision of educational materials in accordance with the procedures determined by the Cabinet (Section 14, Sub-Paragraph 15 of the Education Law). The competence of municipalities includes co-financing the educational institutions supervised by them in procurement of educational literature, other literature necessary for the educational process, and other educational materials (Section 17, Sub-Paragraph 23 of the Education Law). Therefore, provision of educational materials is the competence of the State and municipality, respectively.
3. The State has developed the primary education and general secondary education standard including the standards of educational disciplines. The standards of educational disciplines specify the knowledge and skills to be mastered by the educatee⁸. Selection of educational materials is the competence of each individual educational institution.

⁸ For example, Appendix 19 to the Cabinet Regulations No 1027 of 19 December 2006 “Regulations concerning the national standards in primary education and standards of educational disciplines in primary education” defines the standard of educational discipline “Sports” for forms 1 through 9:

4. Basic skills in sporting exercises and drills:

4.1. Individual sports – gymnastics and the related sports (acrobatics, aerobics), track-and-field athletics, orienteering, and dance;

4. There is no common practice applied by municipalities in provision educational materials to educational institutions. Part of the funds provided by municipalities are only intended for acquisition of text-books; in some municipalities, the funds allocated for provision of text-books are smaller than funds available for provision of other education materials. The existing situation does not provide equal rights and possibilities for all children to acquire education in accordance with the regulatory acts.
5. The range of Continental Law of Europe distinguishes between public and private law. The key distinguishing factor in division between public and private law is the application of different principles of law. In case of private law, the applicable principle is “everything not prohibited by the law may be done”, while in public law “everything expressly permitted by the law may be done”. An educational institution established by municipality is a subject of public law, and regulatory acts do not impose responsibility for provision of educational materials on parents; therefore, the educational institution had no legal grounds to make parents to purchase educational materials. The requirement to provide educational materials may be treated as actual unlawful action on part of the institution in terms of Administrative Procedure Law.

4. Proposals

The following steps should be taken to ensure the right to free primary and secondary education provided by Section 112 of the Constitution:

1. To draft amendments to Section 12, Part One of the Education Law to clarify the interpretation of the term “fee for acquisition of education”. The norm has to be formulated so that to enables unequivocal conclusion that acquisition of the knowledge and skills required according to the national standard in primary education and secondary education has to be financed from the State and municipal budget.
2. To draft amendments to Section 1, Sub-paragraph 12¹ of the Education Law to clarify interpretation of the term “educational materials”. The term “educational materials” has to cover the entire set of items necessary for implementation of the goals and objectives prescribed by standards of educational disciplines included in the national educational standard.
3. To draft material amendments to the Cabinet Regulations No 97 of 6 March 2001 “The procedures for organizing and financing the issuing and acquisition of educational materials by the State” and to supplement the Regulations applicable to other educational materials necessary for implementation of the national educational standard. The State has to arrange and finance the procurement of the set of educational materials necessary for implementation of the national educational standard.

4.2. Sports games – basketball, football, volleyball, handball, floor-ball, Frisbee, badminton;

4.3. One of the following sporting activities, depending on weather conditions and material base of the educational institution: skiing, skating, swimming.

4. To draft a plan for raising funds and a schedule for implementation of such plan during a period of 3 – 5 years in order to ensure financing of the acquisition of mandatory primary education and general secondary education at educational institutions established by municipalities exclusively from the State budget, and to ensure that the quality of education is not compromised thereby.
5. To develop uniform methodologies (guidelines) for municipalities regarding the procedures for financing the educational institutions supervised by them from the municipal budget, including financing of the procurement of educational materials.
6. To develop unified methodologies (guidelines) regarding the procedures for drafting a budget application by educational institution established by municipality.
7. To assess the effectiveness of tools intended to control educational institutions (the purpose of inspections carried out at educational institutions by the competent governmental authorities and compatibility of such goal with the goal of realization of the right to education).
8. During the transitional period, prompt access should be provided to families to social support from municipality if the income and financial condition of a family is not sufficient to provide for education of child. A mandatory allowance for education of children should be introduced.

The Ombudsman

J.Jansons