



The norm of Education Law, which establishes an absolute prohibition for a person, who has been punished for serious or particularly serious crimes, to work as a teacher, is incompatible with Article 106 of the *Satversme*

On 24 November 2017, the Constitutional Court passed a judgement in the case “On compliance of Para 1 of Section 50 of Education Law, insofar it denies a person, who has been punished for serious or particularly serious crimes, to work as a teacher, with Article 106 of the *Satversme* of the Republic of Latvia.”

The Contested Norm

Para 1 of Section 50 of Education Law sets a prohibition on working as a teacher for a person, who has been punished for committing an intentional crime (regardless of the criminal record having been set aside or extinguished), except the case when, after the criminal record had been set aside or extinguished, the institution appointed by the Cabinet evaluated whether it would not harm the interests of educatees and gave permission to work as a teacher to a person who had been punished for an intentional criminal offence or a less serious crime. The Cabinet shall set the procedures for evaluating whether the permission for such person to work as a teacher will not harm the interests of educatees.

The Norm of Higher Legal Force

The first sentence of Article 106 of the *Satversme*: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications”.

The Facts

The case was initiated with respect to an application by Raivis Veinbergs. In is noted in the application that the applicant had been working as teacher since 1998. In 1994, he had been sentenced for committing an intentional serious crime¹. In view of this fact, the institutions of education, in which he had been working as a teacher, discontinued legal employment relationships with him. The applicant holds that by this his right, guaranteed in Article 106 of the *Satversme*, to freely choose his employment and workplace according to his abilities and

¹ Section 139 (5) of the Latvian Criminal Code (theft on a large scale).

qualifications was violated. It is alleged that the restriction on fundamental rights included in the contested norm is not proportionate.

The Court's Findings and Ruling

On the limits of reviewing the case

To ensure a comprehensive and objective examination of the case, as well as to abide by the principle of procedural economy and objective investigation, the Constitutional Court decided to examine the constitutionality of Para 1 of Section 50 of Education Law not only with respect to a person, who has been punished for intentionally committing a serious crime, but also with respect to a person, who has been punished for intentionally committing a particularly serious crime. [12.2.]

The prohibition that is included in the contested norm applies to all persons, who have been punished for intentionally committing a serious or a particularly serious crime. It does not allow exemptions. Moreover, such a prohibition is established for life, i.e., it is in force also for an unlimited period of time after the criminal record has been set aside or extinguished. Therefore the Constitutional Court established that such a prohibition was to be considered as being absolute. [12.3.]

The Constitutional Court examined the constitutionality of the contested norm, insofar it established an absolute prohibition for a person, who had been punished for intentionally committing a serious or a particularly serious crime, to work as a teacher. [12.3.]

On compliance of the contested norm with the first sentence of Article 106 of the *Satversme* (the right to freely choose vocation and workplace according to one's abilities and qualification)

The Constitutional Court noted that the profession of a teacher should be considered as being a profession of public importance. A teacher has an essential role not only in ensuring the quality of education and knowledge but also in forming an educatee's attitudes and values, therefore the legislator has the right to set strict requirements for persons, who wish to work as teachers, that apply not only to the professional qualification and skills but also to their personality and previous experience. If the legislator has envisaged such requirements, then

these, *inter alia*, must be assessed as restrictions on the fundamental right established in Article 106 of the *Satversme* to freely choose one's vocation [13.1., 13.2.]

The Constitutional Court found that the restriction on fundamental rights that followed from the contested norm was established by a law that had been adopted in due procedure. Moreover, this restriction has a legitimate aim, i.e., protection of other persons' rights, public morals and welfare. [15., 16.]

In examining the proportionality of the restriction on fundamental rights, the Constitutional Court found that an absolute prohibition for a person, who had been punished for intentionally committing a serious or a particularly serious crime, to work as teacher was an appropriate measure for reaching the legitimate aims of the restriction on fundamental rights [18.]

On the incompatibility of the absolute prohibition for a person, who has been punished for intentionally committing a serious or a particularly serious crime, to work as a teacher with Article 106 of the Satversme.

In examining the proportionality of the absolute prohibition, the Constitutional Court verified, whether the legislator had:

1. substantiated the need for an absolute prohibition;
2. assessed the essence of the absolute prohibition and the consequences of application thereof;
3. provided substantiation that, by envisaging exemptions from this absolute prohibition, the legitimate aim of the restriction on fundamental rights would not be reached in the same quality. [19.]

The Constitutional Court found that the legislator had provided substantiation for the need to retain an absolute prohibition to work as a teacher for all persons, who had been punished for intentionally committing a serious or a particularly serious crime. However, the materials of drafting the contested norm do not provide a confirmation that the legislator had examined, whether, indeed, in all cases, where by committing a criminal offence certain interests of a person, the society or the State are threatened, the prohibition to work as a teacher is substantiated. Likewise, the Constitutional Court did not establish that following the adoption

of the contested norm the legislator had re-examined the need to retain the absolute prohibition. [19.1, 19.2.1.]

The Constitutional Court noted that by establishing an absolute indefinite prohibition and without envisaging any possibility to review it, the legislator had to verify, whether the legal consequences of such a prohibition were proportionate. In setting a prohibition for a previously punished person to work as a teacher, an important factor is not only the interests that this person had infringed upon by committing the respective crime, but also criteria that characterise this person. It should be taken into consideration that a person's attitude towards a crime he or she committed, as well as their value system, might change over time. The Constitutional Court did not gain confirmation from the documents related to drafting and adopting the contested norm that the legislator, in setting the absolute prohibition to work as a teacher, had discussed it on its merits and had substantiated the need for an absolute prohibition. [19.2.2.]

The Constitutional Court recognised that the legislator, in establishing an absolute prohibition, not only had to substantiate the need for such a prohibition but also had to verify, whether an absolute prohibition was the only measure allowing to reach the legitimate aim of the restriction on fundamental rights. The Constitutional Court did not gain confirmation from the documents related to drafting and adopting the contested norm that an absolute prohibition to work as a teacher for all persons, who had been punished for intentionally committing a serious or a particularly serious crime, was the only measure for reaching the legitimate aim of the restriction on fundamental rights. [19.3.]

The Constitutional Court found that other, more lenient measures existed, which, in view of the interests jeopardised by the criminal offences, would be less restrictive on the fundamental rights established in Article 106 of the *Satversme*. By taking into consideration only the fact that a person has been punished for intentionally committing a serious or a particularly serious crime and without an individual assessment of the particular case, it is not always possible to become fully convinced that the fact of criminal record has left an irreversible impact on the personality of the prospective teacher [19.3.2.]

The Constitutional Court also noted that, in view of the fact, whether the crime, for which the person had been punished, was serious or particularly serious, the legislator had the right to

define additional requirements that should be met so that an individual assessment of a person's suitability for a teacher's work could be made. Likewise, following the assessment and substantiation of the need for prohibition, the legislator has the right to establish that in the case of concrete serious or particularly serious crimes an absolute prohibition to work as a teacher can be the only measure for reaching the legitimate aims. [19.3.2]

The Constitutional Court recognised that the possibility to assess, whether a person, who had been punished for intentionally committing a serious or a particularly serious crime, could work as a teacher, would allow reaching the legitimate aims of the restriction on fundamental rights – protection of other persons' rights, public morals and welfare – in the same quality as it is done now. At the same time this would restrict to a lesser degree the fundamental rights of persons, who have been punished for intentionally committing serious or particularly serious crimes, because in some cases, where the State Education Quality Service had concluded that it would not harm the interests of educatees, these persons could work as teachers. [19.3.2.]

The Constitutional Court also underscored that the possibility to conduct an individual assessment, whether a person, who has been punished for intentionally committing a serious or a particularly serious crime, could work as a teacher, did not, in the least, guarantee to this person a right to the particular vocation. [19.3.2.]

Hence, the Constitutional Court found that the restriction established by the contested norm was incompatible with the principle of proportionality and, thus, the contested norm was incompatible with Article 106 of the *Satversme*. [19.4.]

On the time of the judgement by the Constitutional Court entering into force

The Constitutional Court found that in this case it was necessary and admissible that the norm that was incompatible with the *Satversme* remained in force for a certain period of time. This would give the possibility to the legislator to adopt a new legal regulation within a reasonable period of time. The Constitutional Court decided that the contested norm was to be recognised as being invalid as of 1 June 2018. [20.]

The Constitutional Court held:

to recognise Para 1 of Section 50 of Education Law, insofar as it denies a person, who has been punished for serious or particularly serious crimes, to work as a teacher, as being incompatible with Article 106 of the *Satversme* of the Republic of Latvia and invalid as of 1 June 2018.

The judgement is final and not subject to appeal. The judgement shall enter into force on the day of its publication.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/03/2017-07-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

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