



The norms of Education Law, which set loyalty requirements for teachers are compatible with the *Satversme*

On 21 December 2017, the Constitutional Court passed a judgement in case No. 2017-03-01 “On Compliance of the Fourth and the Sixth Part of Section 30, the Fifth and the Sixth Part of Section 48, Para 5 of Section 50, and Para 2¹ of the First Part of Section 51 of Education Law with the First Sentence of Article 100 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Section 30 (4) of Education Law: “A person, who has impeccable reputation, who is loyal to the Republic of Latvia and its *Satversme*, *inter alia*, does not breach the prohibition of discrimination and differential treatment of a person, has the relevant education and the necessary professional qualification is entitled to work as a head of an educational institution. A person who has a higher pedagogical education or a higher and pedagogical education is entitled to work as a head of a general basic or general secondary educational institution, as well as a person who has a higher education who is acquiring a pedagogical education.”

Section 30 (6) of Education Law: “If the State Education Quality Service or the employer establishes that the head of an educational institution or his conduct does not meet the requirements defined in the fourth part of this Section or Para 2¹ of Section 51(1), then the person is prohibited from being in the position of the head of an educational institution.”

Section 48 (5) of Education Law: “A person, who is loyal to the Republic of Latvia and its *Satversme*, *inter alia*, does not breach the prohibition of discrimination and differential treatment of a person, has the right to work as a teacher.”

Section 48 (6) of Education Law: “It is prohibited from being in the position of a teacher, if the State Education Quality Service has established, in procedure established

by regulatory enactments, that the teacher or his conduct does not meet the requirements defined in Section 30(4) of this Law, the first and the fifth part of this Section, or Para 2¹ of Section 51(1).”

Para 5 of Section 50 of Education Law provides that a person, who has been dismissed from the position of a teacher, if it has been established in a procedure defined in regulatory enactments that his conduct does not meet the requirements set in Section 30(4), Section 48(5) or Para 2¹ of Section 51(1) of this Law and one year has not passed after legal employment relationship was terminated, is not entitled to work as a teacher.

Pursuant to Para 2¹ of Section 51(1) of Education Law, one of the general obligations of a teacher in the process of education is to bring up decent, honest, and responsible people – patriots of Latvia, to strengthen affiliation with the Republic of Latvia.

Norms of Higher Legal Force

The first sentence of Article 100 of the *Satversme*: “Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views.”

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.”

Facts of the Case

The case was initiated with respect to an application submitted by twenty members of the 12th *Saeima* (hereinafter – the Applicants). The applicants note that the prohibition to employ a head of an educational institution and a teacher, who does not meet the loyalty requirements, as well as the procedure for assessing compliance with the loyalty requirements places disproportional restrictions upon a teacher’s freedom of speech. The Applicants are of the opinion that the contested norms define a requirement for a teacher not only to act loyally towards the Republic of Latvia and express opinions that are loyal to the Republic of Latvia and its *Satversme* but should

also hold such internal conviction. Moreover, the freedom of speech is restricted not only in the professional activities of a teacher, but also in private life.

The contested norms are said to place disproportional restrictions upon a teacher's right to employment. I.e. a teacher is prohibited from working in his professions, if incompatibility with the requirements included in the contested norms is found.

The Court's Findings and Ruling

On united assessment of the contested norms

The Constitutional Court noted that the restriction on the freedom of speech that had been established by the contested norms applied only to persons having a concrete vocation – to teachers and heads of institutions of education. Thus, the contested norms comprise a restriction of the rights guaranteed both by the first sentence of Article 100 of the *Satversme* and the first sentence of Article 106 of the *Satversme*. [13.4.]

On the teacher's obligation to be loyal to the State of Latvia and its *Satversme*

The Constitutional Court noted that the contested norms were included in Education Law. Pursuant to Section 2 of Education Law, the purpose of this Law is to ensure that every resident of Latvia has the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia. Corresponding to the age and needs of an educatee, the State must ensure an opportunity to acquire knowledge and skills in the field of humanities, social, natural and technical sciences, to acquire knowledge, skills and experience in attitudes, in order to participate in the life of the State and society; for moral, aesthetic, intellectual and physical development, by promoting the development of a knowledgeable, skilful and socialised individual. Knowledge, skills and experience are, predominantly, acquired with the mediation of a teacher. [13.1.]

The communication between a teacher and the educatee mainly takes place within the framework of implementing certain programs of education. However, in the process of education also the personal example is very important, since an educatee can be

influenced also by the actions of the teacher and the head of the educational institution outside implementation of a certain educational program or even outside the institution of education. [13.1.]

Consequently, a teacher has an essential influence upon the educatee not only in the process of acquiring a certain program of education but also in daily contacts. Thus, the obligation to be loyal to the State of Latvia and its *Satversme*, to not breach the prohibition of discrimination and differential treatment, to raise decent, honest, and responsible persons – patriots of Latvia – and to strengthen their affiliation with the Republic of Latvia, essentially, is applied to the actions by a teacher and the head of the educational institutions and expression of their opinion in any form, if it can influence the educatees or the outcome of the process of education. [13.1.]

Latvia as a democratic state governed by the rule of law, taking into account the historical experience and developing an open, tolerant, civically active society, must take care of defending and embedding democratic values in the process of education. [18.]

Loyalty is an open legal concept – a general clause. Introduction of such concepts in a law is admissible, if, in general, their purpose, scope and envisaged consequences related to them are clear. The concept of loyalty as a general clause has been embedded in the legal system and the meaning of its content, essentially, is clear. [16.2.]

On restriction on the freedom of speech

The Constitutional Court found that the contested norms restricted the freedom of speech of a teacher and of the head of educational institution in its positive aspect. [13.1.]

The contested norms do not restrict the internal, unexpressed thought and beliefs of a teacher or the head of an educational institution. [13.2.]

On the right to freely choose vocation and employment

The Constitutional Court noted that the freedom to choose one's vocation comprised also such an essential element as the right to maintain the current employment, *inter alia*, the right to continue practising the chosen vocation also in the future. The contested norms prohibit a person from freely working in the chosen vocation, *inter*

alia, to continue practicing the vocation. I.e., a person is prohibited for a year to take the position of a head of education institution or to work as teacher, if the employment relationship with this person has been discontinued due to failure to meet the loyalty requirements. Thus, the contested norms restrict a person's right to freely work in the chosen vocation, *inter alia*, to maintain the existing vocation. [13.3.]

On whether the restriction on fundamental rights has been established by law adopted in due procedure

In the case under review, the Constitutional Court also took into consideration the fact that the contested norms had been adopted by two separate amendments to Education Law; i.e., the law of 18 June 2015 "Amendments to Education Law" and the law of 23 November 2016 "Amendments to Education Law". Each of the amendments had been adopted in a separate legislative process and on a different date. In examining the contested norms, the Constitutional Court abided by the sequence of the respective legislative processes. [15.]

The Constitutional Court found that the restriction on fundamental rights, which was established by the contested norms included in the law of 18 June 2015 "Amendments to Education Law", had been established by a law adopted in due procedure. [16.2.]

With respect to the law of 23 November 2016 "Amendments to Education Law", the Constitutional Court found that the annotation prepared by the Cabinet of Ministers did not provide confirmation that the contested norms, which were included in the draft law "Amendments to Education law", which was included in the package of state budget laws, was closely linked to the use of state budget resources. [17.2.]

However, in view of the special procedure for examining the package of state budget law, the *Saeima* must assess, whether all draft laws submitted by the Cabinet of Ministers comply with the criteria indicated in Para 87¹ of the *Saeima* Rules of Procedure. [17.3.]

The Constitutional Court also found that the Budget and Finance (Taxation) Committee of the *Saeima*, at its sitting of 16 November 2016, improved the wording of the contested norms for reviewing them at the second reading, thus, pointing to the close link of these norms with the use of the state budget resources [17.3.]. Hence, inclusion of the contested norms in the package of draft laws accompanying the draft law "On

the State Budget for 2017” complies with the requirements of Para 87¹ of the *Saeima* Rules of Procedure. [17.4.]

Thus, the restriction on fundamental rights, which was established by the contested norms included in the law of 23 November 2016 “Amendments to Education Law”, had been established by a law adopted in due procedure. [17.5.]

On the principle of proportionality

The Constitutional Court found that the restriction on fundamental rights included in the contested norms had a legitimate aim – protection of other persons’ rights and the democratic state order. [18]

The restriction established by the contested norms is appropriate for reaching the legitimate aims. [19.1.]

All educatees in Latvia have the right to receive such education, which, *inter alia*, complies with the principle of a democratic state governed by the rule of law, the principle of Latvia as a nation state and that ensures that an educatee becomes a full member of the democratic civic society. Members of society, who are aware of and respect the values, upon which the *Satversme* is based, is a pre-requisite for the existence of a democratic state governed by the rule of law. The primary aim of the process of education – to ensure the educatees’ right to receive such education and upbringing that would allow creating and reinforcing the feeling of belonging to Latvia, complies not only with the interests of educatees but those of society as a whole. Thus, the legislator, by adopting the contested norms, has balanced the interests of society and an individual and the restriction established by the contested norms is proportional. [19.3.]

Thus, the restriction on rights included in the contested norms complies with the principle of proportionality and, thus, is compatible with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia. [19.3.]

The Constitutional Court held:

to recognise the fourth and the sixth part of Section 30, the fifth and the sixth Part of Section 48, Para 5 of Section 50, and Para 2¹ of the first part of Section 51 of

Education Law as being compatible with the First Sentence of Article 100 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia.

The Judgement by the Constitutional Court is final and not subject to appeal, it enters into force on the day it is published.

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/2017/01/2017-03-01_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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