



The norms of the Cabinet Regulation regarding a teacher's right to for evaluation of the quality of teachers' professional activities and the procedure for determining a surplus payment have been issued by violating the principle of separation of power

On 21 February 2018, the Constitutional Court passed the judgement in case No. 2017-11-03 "On Compliance of Para 91 of the Cabinet Regulation of 17 June 2014 No. 350 "Procedure for Evaluating Professional Activities of Teachers" with Article 1, 64 and 91 of the *Satversme* of the Republic of Latvia and with the First and the Third Part of Section 49¹ of Education Law, and of Para 27 of the Cabinet Regulation of 5 July 2016 No. 445 "Regulation on Remuneration for Teachers' Work" with Article 1 of the *Satversme* of the Republic of Latvia".

Contested Norms

Para 91 (void as of 10 August 2017) of the Cabinet Regulation of 17 June 2014 No. 350 "Procedure for Evaluating Professional Activities of Teachers" (hereinafter – Regulation No. 350): "A teacher, who has not been awarded a quality level until 31 May 2016 or a teacher, whose certificate of quality degree expires in the period from 31 May 2016 to 31 August 2018, shall have the right to apply for evaluation of the quality of teachers' professional activities not earlier than 1 September 2018. Applications submitted by teachers before 31 August 2018 shall not be examined."

Para 27 of the Cabinet Regulation of 5 July 2016 No. 445 "Regulation on Remuneration for Teachers' Work" (hereinafter – Regulation No. 445): "Teachers, who have been awarded the 3rd, 4th and 5th quality level of professional activities (hereinafter – quality level) shall be granted a surplus payment in the amount of 45 *euro*, 114 *euro* and 140 *euro* respectively for one teacher's rate of pay proportionally to the number of rated classes, but to educational psychologist, teacher – speech therapist and special teacher – proportionally to the rated workload. To directors of institutions of general education, institutions of vocational education, as well as institutions of interest-related education and their deputies, heads of structural units in the field of education, education methodologists, organisers of sports activities, deputy directors in charge of methodological work and methodologists of institutions of pre-school education the

surplus payment for the quality level shall be granted proportionally to that teacher's workload, for which the quality level has been acquired in the procedure established by regulatory enactments, without taking into account the salary for their position."

Norms of Higher Legal Force

Article 1 of the *Satversme*: "Latvia is an independent democratic republic."

Article 64 of the *Satversme*: "The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution."

Article 91 of the *Satversme*: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind."

The first part of Section 49¹ of Education Law (in the wording that was in force until 9 August 2017): "A teacher whose pedagogical experience is not less than one year and who participates in implementation of general educational programmes, including in the pre-school education level of general educational programmes, in the basic education or secondary education level of vocational education programmes, in implementation of vocationally oriented education or interest education programmes, has the right to, not less than once every five years, receive a quality assessment of professional activity of a teacher."

The third part of Section 49¹ of Education Law (in the wording that was in force until 9 August 2017): "The institutions referred to in Paragraph two of this Section shall take a decision to award the level of quality of professional activity of a teacher within one year from the day of receiving the application of the teacher."

The Facts

The case has been initiated with regard to an application by 21 members of the 12th convocation of the *Saeima* (hereinafter – the Applicant). The Applicant notes that Education Law provides for teachers' right to have their professional activity assessed within a certain term (hereinafter – quality assessment). However, Para 91 of Regulation No. 350 prohibits certain groups of teachers from applying for quality assessment until

1 September 2018, thus depriving them of the right to receive a surplus payment for the quality level.

The Applicant holds that the Cabinet, by adopting this norm, has exceeded the authority granted to it by the legislator. It is maintained that Para 91 of Regulation No. 350 violates also the principle of legal expectations since it had been adopted with retroactive force and does not envisage a lenient transition to the new regulation. Moreover, this provision is said to create differential treatment of teachers' groups that are in similar and comparable circumstances. The Applicant holds that this differential treatment is incompatible with Article 91 of the *Satversme*.

Whereas Para 27 of Regulation No. 445 is said to decrease the amount of surplus payment for the level of quality that has been granted to certain groups of teachers; i.e., for a part of teachers the surplus payment for quality levels is no longer calculated proportionally to the rated workload of the position but proportionally to the number of rated classes. The Applicant holds that teachers have developed legal expectations with respect to an unchanging procedure for calculating the surplus payments for the quality level that has been granted throughout the term of validity of the quality level.

The Court's Finding and Ruling

On continuing legal proceedings

First and foremost, the Constitutional Court recognised that it had to be assessed in the case, whether the procedure for adopting Para 91 of Regulation No. 350 had been complied with and whether this legal norm could have caused any legal consequences for persons at all. Therefore, although Para 91 of Regulation 350 has become void on 10 August 2017 and the Cabinet of Ministers had requested termination of legal proceedings in the part regarding compliance of Para 91 of Regulation No. 350 with Article 1, Article 64 and Article 91 of the *Satversme* and the first and the third part of Section 49¹ of Education Law, legal proceedings in the case must be continued [11., 12.]

On constitutionality of Para 91 of Regulation No. 350

The Constitutional Court found that the Applicant, as the subject of abstract review of legal norms, was not required to substantiate an infringement on the fundamental rights of

a concrete person, therefore the Court would, first and foremost, examine whether the Cabinet had acted in compliance with authorisation granted by the legislator. [14.] The Cabinet's right to issue Para 91 of the Cabinet Regulation No. 350 must be examined in compliance with those norms that were in effect on the date when the contested norm was issued. [14.2.]

The Cabinet, in drafting and adopting Para 91 of Regulation No. 350, has not complied with the requirements of the Cabinet Rules of Procedure. [14.2.1.] The Constitutional Court recognised that restrictions that could have been set with respect to those teachers, who wished to apply for quality level, were exhaustively listed in the first part of Section 49¹ of Education Law, which guaranteed to teachers quality assessment and a quality level appropriate for it. Thus, the Cabinet was not authorised to establish a new restriction on a teacher's right to quality assessment, which was not envisaged in Education Law. Para 91 of Regulation No. 350 for more than two years prohibited from applying for quality assessment a teacher, to whom a quality level had not been granted. Likewise, this legal norm prohibited from applying in timely manner for quality assessment (this process lasts nine months) also a teacher, the validity of whose certificate of quality level had expired. Thus, Para 91 of Regulation No. 350 comprised a restriction on a teacher's right to quality assessment that was not envisaged in Education Law. In view of the above, Para 91 of Regulation No. 350 was issued outside the authorisation granted in Para 37 of Section 14 of Education Law. Thus, the Cabinet had acted contrary to the principle of separation of power that falls within the scope of Article 1 of the *Satversme*. Hence, Para 91 of Regulation No. 350 has been issued *ultra vires* and is incompatible with Article 1 and Article 64 of the *Satversme*. [14.2.2.]

The Constitutional Court noted: upon establishing incompatibility of the contested norm with even one article of the *Satversme*, it must be recognised as being unlawful and void. Hence, it was no longer necessary to examine compliance of Para 91 of Regulation No. 350 with the principle of legal expectations falling within the scope of Article 1 of the *Satversme* and the principle of legal equality included in Article 91, as well as the first and the third part of Section 49¹ of Education Law. [15.]

On constitutionality of Para 27 of Regulation No. 445

It was contested in the case, whether Para 27 of Regulation No. 445 had been issued in compliance with the legislator's authorisation, which was included in Para 16 of

Section 14 of Education Law. Hence, the Constitutional Court had to examine, whether in issuing Para 27 of Regulation No. 445, the principle of separation of power had been complied with. [16.]

The Constitutional Court found that the legislator had not defined in Education Law a specific classification of teachers, *inter alia*, depending on the position or specialisation. The Cabinet has been authorised to define positions and specialisation of teachers; however, this authorisation does not create the right to create such legal regulation that, depending upon teacher's position or specialisation, establishes to teachers' different rights and obligations. The Cabinet, in issuing Para 27 of Regulation No. 445, has envisaged a criterion that is not defined in Education Law – classification of teachers depending on their position and specialisation. Thus, for teachers with the same quality level the amount of surplus payments may differ. This difference is unfounded. Thus, the Cabinet has acted contrary to the principle of separation of powers that falls within the scope of Article 1 of the *Satversme*, has exceeded authorisation granted by the legislator and acted *ultra vires*. Hence, the Court recognised that Para 27 of Regulation No. 445 was incompatible with Article 1 and Article 64 of the *Satversme*. [16.]

In view of the above, the Constitutional Court held that it was no longer necessary to examine compliance of Para 27 of Regulation No. 445 with the principle of legal expectations falling within the scope of Article 1 of the *Satversme*. [17.]

On the date as of which the contested norms become void

The Constitutional Court has noted that legal norms that have been adopted *ultra vires* are to be recognised as unlawful and invalid as of the date of their adoption. With respect to such cases, it must be presumed that the anti-constitutional legal norm had never been in force because it has not been adopted in due procedure and, therefore, cannot cause legal consequences. In the case, such important circumstances that could be the grounds for exception with respect to Para 91 of Regulation No. 350 and Para 27 of the Regulation No. 445 being void as of the moment of adoption were not identified. The Constitutional Court underscored that a teacher, in certain circumstances, has the right to request quality assessment. The principle of legal expectations is based upon a person's expectations regarding legal and consistent actions by the State. The parties applying the law, also in the future, when determining the surplus payments to teachers must take into consideration the principle consolidated in the transitional provisions of Education Law

that a person has the right to continue receiving surplus payment for a quality level in the amount that was determined prior to 9 August 2017. [18.]

Hence, the Constitutional Court decided to recognise Para 91 of Regulation No. 350 and Para 27 of Regulation No. 445 as being incompatible with Article 1 and Article 64 of the *Satversme* of the Republic of Latvia and void as of the moment of their adoption.

The judgement of the Constitutional Court is final and not subject to appeal; it will 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/2017/04/2017-11-03_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 a ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available on the homepage of the Court www.satv.tiesa.gov.lv.

Līna Kovalevska

Assistant to the President of the Constitutional Court

Lina.Kovalevska@satv.tiesa.gov.lv

(+371) 67830748, (+371) 29813216