



Norms of the Cabinet Regulation that define the minimum number of students in the 10th form or the secondary school of a district educational institution have been adopted by exceeding authorisation granted by the legislator

On 29 June 2017 the Constitutional Court passed a judgement in Case No. 2016-23-03 “On Compliance of Para 12.1.1 and Para 60 of the Cabinet Regulation of 13 October 2015 No. 591 “Procedure in which Learners are Enrolled at and Discharged from Institutions of General Education and Special Pre-school Education Groups, as well as Moved to a Higher Form” with Article 1 of the *Satversme* of the Republic of Latvia”.

Contested Norms

Para 12.1.1 and Para 60 of the Cabinet Regulation of 13 October 2015 No. 591 “Procedure in which Learners are Enrolled at and Discharged from Institutions of General Education and Special Pre-school Education Groups, as well as Moved to a Higher Form” define the minimum number of learners in the 10th form or in the secondary school as a whole.

Norm of Higher Legal Force

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

Facts of the Case

The case has been initiated on the basis of an application by the Council of Jaunjelgava District (hereinafter – the Applicant). It is noted in the application that Jaunjelgava Secondary School is subordinated to the Applicant and that this is the only institution of education in Jaunjelgava District where students can obtain general secondary education. The school is said to be no longer able to comply with requirements set in the contested norms with regard to the minimum number of students in a form. Due to this reason in the school year of 2016/ 2017 the 10th form was not opened at Jaunjelgava Secondary School. If also in the future it will be impossible to ensure the minimum number of

students in a form, then programmes of secondary education will have to be closed in Jaunjelgava Secondary School.

The Applicant holds that the contested norms prohibit from performing the function transferred into the autonomous jurisdiction of a local government – to ensure the inhabitants’ right to acquire general secondary education. Allegedly, the contested norms envisage the number of students as the only criterion for existence of a secondary school, and thus local governments have no possibility to decide on the existence of secondary school, by individually assessing also other circumstances, for example, the performance of students of the particular educational institution at centralised examinations, as well as demographic situation and possible changes to it in the future.

The Applicant holds that the legislator could have provided that local governments may finance permanently or temporarily that part of expenditure that pertains to paying salaries to teachers. Thus, it would be possible to ensure possibilities to obtain secondary education with the territory of a local government also in the case, where the number of students is below the one set in the contested norms. Moreover, the contested norms had not been adopted in due procedure, because the Cabinet had not been authorised by law to issue these norms.

The Court’s Findings and Rulings

On terminating legal proceedings in the case

The Cabinet of Ministers holds that legal proceedings should be terminated because the contested norms do not infringe upon the Applicant’s rights. I.e., they do not prohibit the Applicant from performing the function transferred into the autonomous competence of a local government – to ensure inhabitants’ right to obtain general secondary education.
[13]

The Constitutional Court noted that an infringement upon a local government’s right could be manifested also in the fact that the contested act restricted the local government in performance of its autonomous functions. To ensure inhabitants' right to education, the legislator has transferred into the Applicant’s competence the autonomous function to provide for inhabitants’ education. Whereas the contested norms restrict the

Applicant's discretion in selecting the form for ensuring general secondary education. Thus, the Constitutional Court concluded that legal proceedings should be continued [15.2]

On whether the Applicant's discretion in performing an autonomous function has been restricted legally

The Constitutional Court pointed out that a local government's discretion in performing an autonomous function might be regulated by an external regulatory enactment; however, this enactment had to be legal. Therefore the Constitutional Court first and foremost verified, whether the contested norms had been adopted in due procedure. [16]

The Constitutional Court noted that the Cabinet might issue an external regulatory enactment only, if the legislator has worded in a law authorisation for issuing such an enactment and has defined the limits of such authorisation. Hence, the Constitutional Court must establish the content and purpose of the norms that provide this authorisation, as well as, whether the Cabinet has not exceeded the scope of authorisation granted to it by the legislator. [16]

On the authorisation granted to the Cabinet by the legislator

The Constitutional Court established that the contested norms had been issued on the basis of Para 18 of Section 4 of the General Education Law. This legal norms provides that the Cabinet is authorised to determine the procedure for enrolling students in general educational institutions and discharged from them (except boarding schools and special educational institutions) and the mandatory requirements for moving them up into the next grade. [17.1]

On the content of Para 14 of Section 4 of the General Education Law, the purpose and scope of authorisation

The Constitutional Court found that in accordance with grammatical interpretation of a legal norm the Cabinet was not authorised to determine the minimum number of students in forms. The right of the Cabinet to regulate only the procedural aspect of the respective issue follows from the wording "to determine the procedure" included in the authorising norm, i.e., the right to develop a specific procedure for enrolling students in general educational institutions and discharging from them. [17.1.1]

In accordance with historic interpretation of legal norms the Constitutional Court established that previously the legislator had specially authorised the Cabinet to determine the minimum number of students in forms. Whereas later this authorisation to the Cabinet was excluded from the General Education Law. The Constitutional Court concluded that currently the scope of authorisation granted to Cabinet prohibited it from adopting the contested norms. [17.1.2]

The Constitutional Court noted that with respect to institutions of general education the Cabinet was authorised only to determine the procedure for enrolling students in general educational institutions and discharged from them, but not to define criteria that could be the basis for refusal to enrol a student in a secondary school. Enrolment of students in institutions of general education is regulated by the General Education Law. It does not follow from the said law that the Cabinet had been authorised to define other criteria as the basis for refusal to enrol a student in a programme of general secondary education. Thus, also in accordance with systemic interpretation of a legal norm the structure of the General Education law does not allow considering that the Cabinet had been granted authorisation to issue the contested norms. [17.1.3]

The Constitutional Court recognised that establishment of such network of educational institutions that facilitated accessibility of quality education and effective use of resources, undoubtedly complied with those purposes that the legislator had defined in the Education Law and the General Education Law. However, no confirmation was found that the legislator's aim had been to authorise the Cabinet to determine the minimum number of students in a form for reaching these purposes. Pursuant to teleological interpretation of a legal norm it can be concluded that the Cabinet was not authorised to adopt the contested norms. [17.1.4]

The Constitutional Court noted that the contested norms pertained to establishment of an institutional network of educational institutions. This matter is related to a local government's obligation to provide for its inhabitants right to education. To provide for inhabitants' right to education, pursuant to the principle of subsidiarity, a local government has discretion to adjust performance of its autonomous function to circumstances within the particular administrative territory. Therefore it is provided in

the Education Law that a local government, with the approval of the Ministry of Education and Science, establishes, reorganises and closes institutions of general education. The contested norms, however, prohibit a local government from assessing the particular circumstances and deciding, whether and exactly how an educational institution established by it will operate in the future. Therefore a local government's discretion defined in the Education Law to decide on issues related to further existence of its educational institutions is restricted. [17.2]

The Constitutional Court recognised that the Cabinet of Ministers, in adopting the contested norms, had acted contrary to the principle of separation of powers, had exceed authorisation granted by the legislator and had acted *ultra vires*. [17.2]

The Constitutional Court ruled:

To recognise the contested norms as being incompatible with Article 1 of the *Satversme* of the Republic of Latvia and invalid as of the moment they were adopted.

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

Text of the Judgement [in Latvian] is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/10/2016-23-03_Spriedums.pdf.

The press release was prepared with the aim to facilitate understanding of cases reviewed by the Constitutional Court. It shall not be regarded as part of the ruling 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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