



The Minister's Order on suspending paragraphs in the decision by the Rēzekne City Council, which determine the parents' obligation to pay for the catering costs for children in the special pre-school institutions of education, complies with Section 49 of the law "On Local Governments"

On 15 November 2018, the Constitutional Court passed the judgement in the case "On Compliance of the Order by the Minister for Environmental Protection and Regional Development of 26 September 2017 No. 1-2/7346 "On Suspending Sub-para 1.3., in the part determining catering costs (parents' payment) in the special pre-school institutions of education, and suspending Para 7 of the Decision by the Rēzekne City Council of 22 December 2016 No. 1872 "On Determining the Catering Costs in the Municipal Institutions of Education of Rēzekne and Approving the Mark-up" (minutes No. 103, Para 13) with Section 49 of the Law "On Local Governments"."

The Contested Order

The Order by the Minister for Environmental Protection and Regional (hereinafter also – the Minister) of 26 September 2017 No. 1-2/7346 "On Suspending Sub-para 1.3., in the part determining catering costs (parents' payment) in the special pre-school institutions of education, and suspending Para 7 of the Decision by the Rēzekne City Council of 22 December 2016 No. 1872 "On Determining the Catering Costs in the Municipal Institutions of Education of Rēzekne and Approving the Mark-up" (minutes No. 103, Para 13) ”¹.

The legal norm, the compliance with which is examined

Section 49 of the law "On Local Governments": "The operation of an unlawful binding regulation or other regulatory enactment or specific paragraphs of such issued by a city or municipality council, except the operation of decisions taken in accordance with the procedures of Section 47 of this Law, may be suspended by a substantiated order of the Minister for Environmental Protection and Regional Development. The order shall indicate the paragraphs of the specific binding regulations or another normative

¹ The contested order is available here: <https://www.vestnesis.lv/op/2017/195.4>

enactment that are to be revoked as unlawful, or shall indicate that the binding regulations or other regulatory enactment are to be revoked in their entirety. The order shall be published in the official gazette *Latvijas Vēstnesis* within three days from its issue and shall be sent to the chairperson of the relevant city or municipality council, who shall be responsible for its implementation.

The chairperson of the city or municipality council shall convene, within two weeks after receipt of an order from the Minister for Environmental Protection and Regional Development, an extraordinary meeting of the city or municipality council in which shall be examined the issue regarding revocation of the relevant binding regulations or other regulatory enactment or specific paragraphs of such. The Minister for Environmental Protection and Regional Development shall be timely notified of the time and place of the extraordinary meeting of the city or municipality council.

If the city or municipality council fails to take a decision to revoke the relevant binding regulations or other regulatory enactment or specific paragraphs thereof, it shall submit an application to the Constitutional Court regarding the revocation of the order of the Minister within three months. In such case the order of the Minister for Environmental Protection and Regional Development, regarding the suspension of the operation of the city or municipality council binding regulations or other regulatory enactment or specific sections thereof, shall remain in force until the proclamation of the judgment of the Constitutional Court.

The city or municipality council has no right to submit an application to the Constitutional Court regarding the revocation of the order of the Minister for Environmental Protection and Regional Development, if it within two months following the day of receipt of the opinion of the Ministry of Environmental Protection and Regional Development has not fulfilled the duty to take a decision determined in Section 45, Paragraph four of this Law in which a substantiation is provided why the city or municipality council does not agree with that specified in the opinion of the Ministry of Regional Development and Local Government Matters.

If the city or municipality council or its chairperson fail to implement the provisions of Paragraph two or three of this Section, the unlawful binding regulations or other regulatory enactment or specific paragraph thereof shall be considered to no longer be in force. The Minister for Environmental Protection and Regional Development shall issue a notice regarding such in the official gazette *Latvijas Vēstnesis*.”

The Facts

The case was initiated with regard to an application by the Rēzekne City Council (hereinafter – the Council). On 26 September 2017, the Minister by the contested act suspended some paragraphs in the Decision of 22 December 2016 by the Council No. 1872 “On Determining Catering Costs in the Municipal Institutions of Education of Rēzekne and Approving Mark-ups” (hereinafter – the suspended paragraphs in the Council’s Decision). The Minister holds that the local government has the obligation to ensure catering in the institutions of special education under its supervision, covering the costs from its budget resources. Therefore the Council had not had the right to establish the parents’ obligation to co-finance catering for children.

The Council has examined the contested act at an extraordinary sitting and decided to leave the Decision unamended and to submit an application to the Constitutional Court regarding the contested order. The Council holds that in issuing the contested act the Minister has exceeded the jurisdiction granted to him in Section 49 of the law “On Local Governments”. It is alleged that the Decision is not a regulatory enactment; therefore the Minister cannot review its legality. It is alleged that the suspended paragraphs in the Council’s decision are not generally binding or external legal norms, therefore the Minister cannot review the legality thereof. Moreover, the Council, in adopting the suspended paragraphs of the Decision, had acted in compliance with the requirements of regulatory enactments.

The Court’s Findings

On procedural matters

Since the Minister had requested the Constitutional Court to terminate legal proceedings in the case under review because the applicant had not abided by the procedure for submitting an application, established in Section 49 of the law “On Local Government”, the Constitutional Court, first and foremost, examined, whether such circumstances existed that required terminating legal proceedings in the case under review. [13.]

On the content of the first sentence of Section 49 of the law “On Local Governments”

The Constitutional Court recognised that the regulation included in Section 49 of the law “On Local Governments” is aimed at resolving the dispute between the Minister and the local government regarding the legality of a binding regulation or another regulatory enactment before the local government has submitted an application to the Constitutional Court requesting revoking of the Minister’s order. An application to the Constitutional Court is to be regarded as the final measure for dispute resolution in the case if the Council does not agree to the substantiation provided in the Minister’s order and considers that the suspended binding regulation or another regulatory enactment should be neither revoked nor amended. [14.1.]

In interpreting the first sentence of Section 49 (2) of the law “On Local Governments”, the Constitutional Court found that the local government had the obligation to convene an extraordinary sitting within two weeks following the receipt of the Minister’s order and to assess the Minister’s order. Section 49 of the law “On Local Governments” does not impose an obligation on the Council of a local government to examine the legality of the suspended binding regulation or another regulatory enactment within one sitting of the Council. If at the extraordinary sitting of the Council, which has been convened within two weeks following the receipt of the Minister’s order, it is impossible to adopt the decision on the legality of the suspended binding regulation or another regulatory enactment, the Council may adopt the respective decision later. However, the Council should take into consideration that, pursuant to Section 49 (4) of the law “On Local Governments”, it does not have the right to submit an application to the Constitutional Court regarding revoking of the Minister’s order if, within two months from the date of receiving the Minister’s opinion, it has not fulfilled the obligation defined in

Section 45 (4) of this law to adopt a decision, in which it provides the reasoning why the Council does not uphold the statements made in the Ministry's opinion. Likewise, the term set in the first sentence of Section 49 (3) of the law "On Local Governments" for submitting an application to the Constitutional Court is also binding upon the Council. I.e., if within three months following the receipt of the Minister's order the Council does not adopt a decision on revoking the suspended binding regulation or another regulatory enactment, or separate paragraphs thereof, it forfeits the right to submit an application to the Constitutional Court requesting revoking of the Minister's order. [14.1.]

On continuing legal proceedings

The Constitutional Court recognised that the applicant had complied with the procedure established by Section 49 of the law "On Local Governments" for submitting an application to the Constitutional Court. Thus, the Constitutional Court decided to continue legal proceedings in the case and to examine the compliance of the contested order with Section 49 of the law "On Local Governments". [14.2.]

On the Minister's right to suspend the particular paragraphs in the Council's decision

The Constitutional Court noted that the Minister had the right to suspend provisions in the binding regulation and internal regulatory enactments of a local government but did not have the right to suspend individual legal acts – administrative acts and individual management decisions, as well as political decisions of a local government. [15.1.]

The Constitutional Court noted that an administrative act, in difference to a regulatory enactment, did not create new legal norms. An administrative act is an act of applying legal norms, by which the legal norms included in an external regulatory enactment are applied. Also, a general administrative act embodies a regulatory enactment or a legal norm in concrete circumstances. [15.2.]

The Constitutional Court recognised that the suspended paragraphs in the Council's decision had an external effect, these applied to an undetermined circle of persons – to all parents, whose children were attending or would be attending a special pre-school

institution of education, and, thus, were applicable to several cases of the kind. Hence, the Constitutional Court found: the suspended paragraphs of the Council's decision are generally binding (external) legal norms. [15.3.]

On the unlawfulness of the suspended paragraphs of the Council's decision

The Constitutional Court noted that pursuant to the first sentence of Section 49 (1) of the law "On Local Governments" the Minister had the right to suspend an unlawful regulatory enactment or separate legal norms. [16.]

The Council's decision, which included the suspended paragraphs, was adopted on the basis of Para 4 of Section 15 (1) of the law "On Local Governments" and Para 3 and Para 7 of the Cabinet Regulation of 28 December 2010 No. 1206 "Procedure for Calculating, Allocating and Using the Resources Envisaged in the State Budget for Local Governments for Ensuring Catering to Students in Institutions of Basic Education" (hereinafter – Regulation No. 1206). However, the Constitutional Court found that Regulation No. 1206, in accordance with Sub-para 1.1. thereof, established the procedure, in which the resources envisaged in the state budget for local governments to ensure catering for the students at institutions of general education who were enrolled in the programme of basic education, were calculated, allocated and used. The suspended paragraphs of the Council's decision, however, determine the parents' obligation to pay for catering at special institutions of education, providing pre-school education programme. Hence, Regulation No. 1206 is not applicable in the case under review. [16.1.]

The Constitutional Court recognised that, in order to ensure the right to education, the legislator, pursuant to Para 4 of Section 15 (1) of the law "On Local Governments", had transferred into the autonomous competence of local governments the function of ensuring that the right to education was implemented. However, pursuant to Section 7 of the said law, the scope of fulfilling the autonomous functions is defined by law. The matter of resources, from which the maintenance of special institutions of pre-school education, including catering, should be financed, is regulated in the Education Law and the Cabinet Regulation of 15 July 2016 No. 477 "Procedure for Financing the

Institutions of Special Education, Boarding Schools and Forms (Groups) of Special Education in Institutions of General Education”. The external regulatory enactments that regulate the field of education do not grant the right to a local government to establish any kind of parents’ payments for catering in the special pre-school institutions of education subordinated to it. [16.1.]

The Constitutional Court found that by establishing, with the suspended paragraphs of the Council’s decision, payment for catering at the special pre-school institutions of education, the applicant had exceeded its competence defined in regulatory enactments and had not complied with subordination to law and rights. Hence, the suspended paragraphs of the Council’s decision are unlawful and the Minister, by suspending them, has complied with Section 49 of the law “On Local Governments”. Hence, the Constitutional Court recognised the contested order as being compatible with Section 49 of the law “On Local Governments”. [16.2.]

The Constitutional Court held:

to recognise the Order by the Minister for Environmental Protection and Regional Development of 26 September 2017 No. 1-2/7346 “On Suspending Sub-para 1.3., in the part determining catering costs (parents’ payment) in the special pre-school institutions of education, and suspending Para 7 of the Decision by the Rēzekne City Council of 22 December 2016 No. 1872 “On Determining the Catering Costs in the Municipal Institutions of Education of Rēzekne and Approving the Mark-up” (minutes No. 103, Para 13) as being compatible with Section 49 of the law “On Local Governments”.

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

The judgement will be published in the official journal “Latvijas Vēstnesis” within the term set in Section 33 (1) of the Constitutional Court Law.

The text of the judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/web/viewer.html?file=http://www.satv.tiesa.gov.lv/wp-content/uploads/2018/02/2018-07-05_Spriedums.pdf#search=

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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