



Norms that provide that the language of instruction in study programmes of private institutions of higher education is the official language are incompatible with Article 112 and Article 113 of the *Satversme*; in the remaining part, examination of the case on its merits will be resumed

On 11 June 2020, the Constitutional Court delivered the judgement in Case No. 2019-12-01 “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 1, Article 105 and Article 112 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

The third sentence of Section 5 (1) of the law “On Institutions of Higher Education”:

“Founders of higher education institutions shall determine the tasks to be implemented by the higher education institution. Within the framework of the autonomy thereof, higher education institutions shall ensure the inseparability of study, research, and artistic creation, the possibility to acquire knowledge, an academic education and vocational skills, academic degrees, vocational degrees and vocational qualification in the fields of social life, national economy, culture, health care, State administration, and other professional activities. In their activities they shall cultivate and develop science, arts, and the official language. Higher education institutions shall provide students with the possibility to do sports.”

Section 56 (3) of the law “On Institutions of Higher Education”: “The study programmes of institutions of higher education and colleges shall be implemented in the official language. The use of foreign languages in the implementation of study programmes shall be possible only in the following cases:

1) study programmes which are acquired by foreign students in Latvia, and study programmes, which are implemented within the scope of co-operation provided for in European Union programmes and international agreements may be implemented in the official languages of the European Union. For foreign students the acquisition of the

official language shall be included in the study course compulsory amount if studies in Latvia are expected to be longer than six months or exceed 20 credit points;

2) not more than one-fifth of the credit point amount of a study programme may be implemented in the official languages of the European Union, taking into account that in this part final and State examinations may not be included, as well as the writing of qualification, bachelor and master's thesis;

3) study programmes, which are implemented in foreign languages are necessary for the achievement of the aims of the study programme in conformity with the educational classification of the Republic of Latvia for such educational programme groups: language and cultural studies and language programmes. The licensing commission shall decide the conformity of the study programme to the educational programme group; and

4) joint study programmes may be implemented in the official languages of the European Union.

Para 49 of the Transitional Provisions of the law “On Institutions of Higher Education”: “Amendments to Section 56 (3) of this Law with respect to the language in which study programmes are implemented shall enter into force on 1 January 2019. Institutions of higher education and colleges, where the language in which study programmes are implemented does not comply with the provisions set out in section 56 (3) of this Law, shall have the right to continue implementing study programmes in the respective language until 31 December 2022. After 1 January 2019, enrolment of students in study programmes, the language of implementation of which is incompatible with provisions set out in Section 56 (3) of this Law, shall not be permitted.”

The Norms of Higher Legal Force

Article 1 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “Latvia is an independent democratic republic.”

Article 105 of the *Satversme*: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in

accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

Article 112 of the *Satversme*: “Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.”

Article 113 of the *Satversme*: “The State shall recognise the freedom of scientific research, artistic and other creative activity, and shall protect copyright and patent rights.”

The Facts

The case was initiated on the basis of an application submitted by 20 Members of the 13th convocation of the *Saeima*. The applicants note that the contested norms violate the right to education, included in Article 112 of the *Satversme*, as well as the right to property, included in Article 105 of the *Satversme*, examining these in interconnection with the principle of legitimate expectations that falls within the scope of Article 1 of the *Satversme*.

The applicants hold that the contested norms restrict the rights of private institutions of higher education and their faculty members and students. By establishing the obligation to cultivate and develop the Latvian language and restricting the possibilities to implement study programmes in foreign languages, the contested norms are said to limit disproportionately the autonomy of higher education institutions. The contested norms are said to restrict also the academic freedom of the faculty members in private institutions of higher education to implement study programmes in foreign languages. Likewise, the students’ academic freedom is restricted since they cannot choose to obtain higher education in study programmes implemented in foreign languages.

The applicants note that the contested norms restrict also the right of private institutions of higher education, established in Article 105 of the *Satversme*, to engage, on the basis of the acquired licence, in commercial activities and to provide services of higher education for a charge. Allegedly, the contested norms violate also the principle of legitimate expectations, included in Article 1 of the *Satversme*, pursuant to which the founders of

private institutions of higher education have developed legitimate expectations that they would be able to gain benefit from using their property. Likewise, the contested norms restrict the freedom of establishment, protected by Article 49 of the Treaty on the Functioning of the European Union (hereafter – TFEU) and infringe the competition law.

The applicants note that the restriction on rights, established by the contested norms, had not been defined by a law adopted in due procedure because it had not been sufficiently justified and discussed. Moreover, its compliance with the European Union (hereafter – EU) law had not been examined.

The contested norms are said to be an effective measure for reaching their aims – cultivation of the official language and accessibility of higher education. These could be reached by more lenient measures; for example, in applying the language rules to institutions of higher education, their attainments should be taken into account. Likewise, the benefit that society gains from the contested norms is said to not outweigh the restriction on persons' rights.

The Court's Findings

On how the constitutionality of the contested norms is reviewed

The Constitutional Court noted that the case comprised two basic issues – on the right of private institutions of higher education to engage in commercial activities and on implementation of study programmes of higher education in foreign languages at private institutions of higher education. The Constitutional Court examined each of these restrictions separately, first of all, examining the compliance of the contested norms with the right to property, *inter alia*, in the context of the principle of legitimate expectations. Afterwards, the Constitutional Court examined the compliance of the contested norms with the right to education. [21.]

On the compliance of the contested norms with Article 105 of the *Satversme* and the principle of legitimate expectations, included in Article 1 of the *Satversme*:

The Constitutional Court found that, in the present case, the principle of legitimate expectations was closely linked to the possible restriction on the right to property. Hence,

in verifying the possible restriction on a person's right to property, it must be examined in interconnection with the principle of legitimate expectations. [22.]

The Constitutional Court noted that the right to property, included in Article 105 of the *Satversme*, comprised every person's right to use their property, *inter alia*, to engage in commercial activities. The specification of this right is influenced by the EU law, which is an integral part of the Latvian legal system. Article 49 of TFEU defines the right to establishment of the citizens of the EU Member States. Hence, Article 105 of the *Satversme* must be specified in interconnection with the freedom of establishment included in this norm. [23.1.]

The Court of Justice of the European Union (hereafter – CJEU) has ruled previously that implementation of study programmes for a charge may fall within the scope of the right to establishment. However, currently it is reviewing a case pertaining to the Hungarian regulation on higher education, linked to such issues of law that could be of essential importance in specifying Article 105 of the *Satversme* in the present case. Therefore, the Constitutional Court noted that, within the framework of the present case, the content of the freedom of establishment, included in Article 49 of TFEU, should be clarified, at the same time considering the matter, whether the Constitutional Court was not obliged to submit a request of preliminary ruling to CJEU. [23.2.]

On dividing the case

The Constitutional Court held that a situation, where the issue of the contested norms' compliance with the *Satversme* would not be resolved, at least partially, for a long period of time, would be undesirable. Therefore, the Constitutional Court decided to divide case No. 2019-12-01 into the case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia” and the case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 112 of the *Satversme* of the Republic of Latvia”. [23.2. – 23.3.]

To facilitate comprehensive and swift examination of the divided cases and also to decide on the matter of requesting a preliminary ruling in the case from CJEU, the Constitutional Court decided to resume hearing the case On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia” on its merits. Whereas in the case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 112 of the *Satversme* of the Republic of Latvia” – to deliver the judgement. [23.4.]

On the compliance of the contested norms with Article 112 and Article 113 of the *Satversme*:

The Constitutional Court noted that the right to higher education had to be recognised as being one aspect in the right to education. Higher education unites two inseparable aspects – education process and scientific activities and research. Therefore, in view of the close connection between higher education and the freedom of scientific research, artistic and other creative activity as well as the principle of the unity of the *Satversme*, the compliance of the contested norms with Article 112 of the *Satversme* in interconnection with Article 113 of the *Satversme* should be examined in the case. [24.]

The right to education on the level of higher education cannot be exercised without the academic freedom of the faculty members and students and autonomy of educational institutions. The academic freedom, included in Article 112 and Article 113 of the *Satversme*, is to be linked with the rights of the faculty members of higher educational institutions to conduct research freely in the areas of their interest, to share ideas and express their opinions. Likewise, academic freedom comprises the students’ right to engage in scientific creative activities and to choose the direction and programme of studies within the framework of education system established by the state. This right is necessary so that higher education would promote public welfare and sustainable development. [25.1.]

Higher education institutions, endowed with autonomy, are needed for the exercise and protection of students’ and faculty members’ academic freedom. Within the framework of

their autonomy, institutions of higher education may adopt decisions free of external pressure to ensure academic freedom. [25.2.]

In view of the arguments presented in the application and other materials in the case, the Constitutional Court noted that, in the present case, the compliance of the contested norms with the *Satversme* should be reviewed insofar they applied to the rights of faculty members and students of private institutions of education as well as the rights of private institutions of education that were included in the *Satversme*. [26.]

On the third sentence of Section 5 (1) of the law “On Institutions of Higher Education”

Examining the compliance with the *Satversme* of the task of private institutions of higher education, included in Section 5 of the law “On Institutions of Higher Education”, to cultivate and develop the official language, the Constitutional Court found that the State had the obligation to establish such system of higher education that ensured that institutions of higher education operated in the interests of society in general. By the task, included in Section 5 of the law “On Institutions of Higher Education”, the legislator has specified the positive obligation of the State, by creating such regulation on higher education that provides that institutions of higher education operate in public interests. Hence, the third sentence of Section 5 (1) of the law “On Institutions of Higher Education” complies with Article 112 of the *Satversme* in interconnection with Article 113 of the *Satversme*. [27.]

On Section 56 (3) of the law “On Institutions of Higher Education” and Para 49 of the Transitional Provisions of the law “On Institutions of Higher Education”

The Constitutional Court found that Section 56 (3) and Para 49 of the Transitional Provisions of the law “On Institutions of Higher Education” restricted the academic freedom of the faculty members of private institutions of higher education to develop and teach study courses in foreign languages at the private institutions of higher education in Latvia because this regulation influenced the possibility of faculty members to be involved in study programmes in foreign languages. [29.1.]

The Constitutional Court noted that, similarly to other levels of education, also in higher education the right to request accreditation of a study programme in a foreign language of one's choice and to receive a state recognised diploma certifying successful acquisition of such study programmes did not follow from the rights included in Article 112 and Article 113 of the *Satversme*. However, Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education" restrict the rights of those students, who already have been enrolled in the study programmes in foreign languages, created before the contested norms entered into force. These contested norms cause a situation, in which, by exercising the right to discontinue and later resume studies, some of the students might not receive a diploma of higher education because, upon expiry of the term set in the transitional provisions, the institution of higher education will no longer have the right to issue it. [29.3.]

Section 56 (3) of the law "On Institutions of Higher Education" restrict the development and implementation of study programmes in foreign languages at private institutions of higher education because it is possible only in the cases set out in this norm. Hence, Section 56 (3) and Para 49 of the Transitional Provisions of the law "On Institutions of Higher Education restrict the autonomy of private institutions of higher education. [29.4.]

The Constitutional Court found that the procedure of adopting the contested norms complied with the principle of good legislation. The contested norms were repeatedly examined by the responsible Committee of the *Saeima*. They also must be seen as part of education reform, implemented over a long period of time, in the framework of which also the contested regulation has been discussed. Although it seems that the legislator has not examined the compliance of the contested norms with the EU law, in the context of the present case, the contested norms regulate an area, which is within the competence of the EU Member States. Moreover, the Constitutional Court did not find the grounds for recognising that if, in the adoption of the contested norms, their compliance with the EU law had been examined in the area of education, the *Saeima* would have decided otherwise. Hence, the Constitutional Court recognised that the restriction on fundamental rights had been adopted by law. [31.]

The contested norms reinforce the role of the official language in higher education. Thus, the legitimate aims of the restriction on fundamental rights caused by them are the protection of democratic order and other persons' rights. [32.]

The Constitutional Court also found that the restriction on fundamental rights caused by the contested norms was suitable for reaching the legitimate aims since the contested norms improved students' proficiency in the official language as well as reinforced the role of the Latvian language in science and cultivated its use in various branches of science. [34.]

However, the Constitutional Court recognised that there were more lenient measures for reaching the legitimate aim. Comprehensive quality assessment of all private institutions of higher education, on the basis of which permission to implement study programmes in foreign languages would be granted, should be recognised as one of such measures. Although the accreditation of institutions of higher education and study programmes already now assesses the quality of higher education provided by private institutions of higher education, within the framework of these processes it is not examined, whether the particular private institutions of higher education ensures higher education of sufficient quality to be permitted to implement study programmes in foreign languages. Likewise, regulation that would provide exemptions to some branches of science or studies on a certain level from Section 56 (3) of the law "On Institutions of Higher Education" would be less restrictive on the autonomy and academic freedom of institutions of higher education. The legislator has not examined duly the existence of such alternative measures that would infringe on the rights of faculty members and institutions of higher education to a lesser extent. [35.]

On the date as of which the contested norms become void:

The Constitutional Court noted that the contested norms regulated an essential aspect of higher education. Moreover, the legislator needs time to draft regulation on languages in private institutions of higher education in compliance with Article 112 and Article 113 of the *Satversme*. Thus, the contested norms – Section 56 (3) and Para 49 of the Transitional provisions of the law "On Institutions of Higher Education" – shall be deemed void as of 1 May 2021. [36.]

The Constitutional Court held:

1. To divide case No. 2019-12-01 into cases:

a) case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 112 of the *Satversme* of the Republic of Latvia” and

b) case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia”.

2. To recognise the third sentence of Section 5 (1) of the law “On Institutions of Higher Education”, insofar it applies to private institutions of higher education, faculty members and students thereof, as being compatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia.

3. To recognise Section 56 (3) and Para 49 of the Transitional Provisions of the law “On Institutions of Higher Education”, insofar these norms apply to private institutions of higher education, faculty members and students thereof, as being incompatible with Article 112 and Article 113 of the *Satversme* of the Republic of Latvia and void as of 1 May 2021.

4. To resume examination of the case “On Compliance of the Third Sentence of Section 5 (1), Section 56 (3) and Para 49 of the Transitional Provisions of the Law “On Institutions of Higher Education” with Article 1 and Article 105 of the *Satversme* of the Republic of Latvia” on its merits at a court hearing on 14 July 2020 in written procedure.

The judgement of the Constitutional Court is final and not subject to appeal. The text of the judgement is available on the homepage of the Constitutional Court: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/07/2019-12-01_Spriedums.pdf#search=2019-12-01

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. 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.

Ketija Strazda

Head of Public Relations and Protocol Department
of the Constitutional Court

Ketija.Strazda@satv.tiesa.gov.lv
+ 371 67830749, + 371 26200580