



Satversmes tiesa

Press release

Case No. 2021-33-0103

27.05.2022

Regulation stating the organisation of the educational process during the spread of COVID-19 complies with the Satversme

On 26 May 2022, the Constitutional Court adopted a Judgement in the case No. 2021-33-0103 “On Compliance of Section 4, Paragraph One, Clause 8 of the Law on the Management of the Spread of Covid-19 Infection, Section 1, Clauses 1¹ and 12⁴, Section 14, Clause 45 of the Education Law, as well as Sub-paragraph 27.1.3, Paragraph 32⁷, Sub-paragraph 2, and Paragraph 32⁷, Sub-paragraph 3 of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of COVID-19 Infection” with Article 112 of the Satversme of the Republic of Latvia”.

THE CONTESTED NORMS

Section 4, Paragraph One, Clause 8 of the Law on the Management of the Spread of Covid-19 Infection stipulates: “If the COVID-19 infection spreads or there are threats that it could spread, the Cabinet can determine for the epidemiological safety purposes the conditions and procedures for the organisation of educational process, including for the ensuring of the learning process remotely.”

Section 1, Clause 1¹ of the Education Law stipulates: “remote learning is a component of full-time education process where educatees learn without being physically present in the same room or venue as the teacher, which also includes the use of information and communication technologies.”

Section 1, Clause 12⁴ of the Education Law stipulates: “full time is a form of completion of education where an educatee acquires the education content by attending an educational institution, including remote learning, according to the educational programme implemented by the educational institution.”

Section 14, Clause 45 of the Education Law stipulates: “The Cabinet of Ministers shall determine the procedures for organising and implementing remote learning.”

Sub-paragraph 27.1.3 of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording valid from 17 September 2020 to 19 August 2021) stipulated in which cases institutions, except for colleges and institutions of higher education may implement the education process partially or fully remotely.

According to Paragraph 32⁷, Sub-paragraph 2 of the Cabinet Regulation No. 360, face-to-face teaching at all the educational institutions was discontinued and remote learning was provided in the field of education and sports as of 7 April 2021, except as provided for in this sub-paragraph.

Paragraph 32⁷, Sub-paragraph 3 of the Cabinet Regulation No. 360 provided for, inter alia, the cases when the education process may be organised face-to-face for the 1st-6th and 12th year students and, on a rotational basis, for the 7th-9th and 10th-11th year students, as well as individual lessons in vocational education programmes.

NORM WITH A HIGHER LEGAL FORCE

- Article 112 of the Satversme of the Republic of Latvia (hereinafter referred to as — 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.”

THE FACTS OF THE CASE

The case was initiated following a constitutional complaint of a number of educatees receiving education at the level of primary and general secondary education (hereinafter referred to as - the Applicants). The contested norms were applied to the Applicants during the period from 7 April 2021 to the end of the school year 2020/2021. During this period, the Applicants received their primary and general secondary education only remotely, given the risk of spreading the Covid-19 infection in the country. The Applicants pointed at a number of problems in the implementation of remote learning, which, in their opinion, were caused by the contested regulation. Namely, the opportunities to education, availability thereof and adaptability aspects have been allegedly negatively affected, furthermore, so has the quality of education and health of educatees. The

Applicants considered that, in this way, their rights to education stipulated in Article 112 of the Satversme were infringed.

CONCLUSIONS OF THE COURT

On termination of the proceedings

The Constitutional Court established that the contested Section 1, Clauses 1¹ and 12⁴, of the Education Law, insofar as it regulates the form of remote learning after the end of the spread of the Covid-19 infection, had not been applied to the Applicants. Similarly, the Applicants are not subject to the authorisation stipulated in Section 14, Clause 45 of the Education Law for the Cabinet of Ministers, as the Applicants were not within the scope of this legal provision. Consequently, the Constitutional Court dismissed the proceedings in this part of the claim. [17.3]

On the scope of Article 112 of the Constitution

Article 112 of the Satversme includes the right of the educatee to expect that the state's obligations in relation to the education system, as laid down in the legal norms, are consistent with the aspects of educational opportunities, accessibility, acceptability and adaptability. The Constitutional Court recognised that the education system, on the one hand, must be sufficiently stable and, on the other hand, it must be capable of improvements in order to achieve the objectives of education in the highest possible quality. When ensuring the right to education, the state must be able to respond to different kinds of challenges. When fulfilling the educational objectives to be achieved with content, the education system needs to be flexible enough to respond, among other things, to the challenges posed by the Covid-19 pandemic.

The right to education established in Article 112 of the Satversme includes, inter alia, the obligation of the state to develop a sustainable education system that is capable of adapting to changing circumstances, while ensuring the right to quality and inclusive education. The Constitutional Court has derived from Article 112 of the Satversme that quality and inclusive education also includes several functions. Firstly, the personal development function, focused on the expressions of the individual's inner freedom and independence. Second, the function of inclusion,

which enables a person to integrate into society by accepting its values. Whereas, the economic function enables everyone to adapt the knowledge, skills and attitudes they acquire to the economic needs of society. [16]

On whether the contested norms are established by a duly adopted law

The Constitutional Court recognised that the contested norms had been proclaimed and made available in accordance with the requirements of normative legal enactments, as well as had been formulated with sufficient clarity. Although the contested norms were examined under the urgency procedure, the legislator has made its considerations in compliance with the principles enshrined in the Satversme and the Rules of Procedure of the Saeima. The Constitutional Court did not establish any significant infringements of the legislative procedure in the process of adoption of the contested norms. [20]

On whether the legislator has regulated the most important legal relations for society

The Constitutional Court recognised that the legislator had established the most important issues related to the management of the spread of Covid-19 infection in the contested norm of the management Law, as well as established a clear legal framework within which the necessary precautionary measures could be established and the protection of the rights of persons could be ensured. [20.2.1]

On whether the Cabinet of Ministers, by adopting the contested norms, has complied with the scope of the authorisation granted by the legislator

The Constitutional Court recognised that the contested norms of Regulation No. 360 established in general the principle in which cases an educational institution would switch to remote learning, as well as established exceptional cases when face-to-face learning at an educational institution could be maintained. The contested norms of Regulation No. 360 do not include such a legal framework that would provide for the introduction of new educational methods, standards or forms of educational organisation. These norms did not change the education system itself, so the Cabinet of Ministers has respected the scope of its mandate. [20.3]

On the methodology for assessment of constitutionality of the contested norms

In order to assess the constitutionality of the contested regulation in the present case, the Constitutional Court established whether:

- 1) The legislator had taken measures to ensure the rights of persons to primary and general secondary education during the period of the spread of the Covid-19 infection;
- 2) These measures were taken in an appropriate manner, i.e., in such a way as they are consistent with the aspects of the education opportunities, accessibility, adaptability and acceptability. [19]

On the positive obligation of the state to ensure the right to education

The Constitutional Court recognised that international obligations relating to the right to education impose a number of obligations on Member States, which must be fulfilled regardless of the resources, possibilities and circumstances of the state, including: to ensure access to educational institutions and programmes for everyone without discrimination; to ensure that the educational programmes offered comply with the objectives set out in international treaties on the right to education, in particular with respect to human rights; to guarantee the completion of compulsory primary education. The Constitutional Court recognised that Article 112 of the Satversme included the right of the educatee to expect that the State's obligations in relation to the education system included in legal norms complied with the above-mentioned criteria. Thus, these obligations arising from the right to education must be fulfilled also under the circumstances of spread of the Covid-19 infection, irrespective of national capacities, resources, the epidemiological situation and other circumstances. [16]

Aspects of the opportunities, accessibility, acceptability and adaptability of the right to education during the spread of the Covid-19 infection

The Constitutional Court assessed whether the education possibilities included that there were sufficient curricula and whether the state ensured their practical implementation. Within the aspect of accessibility of education, the Constitutional Court assessed whether the education was accessible to everyone. Within the aspect of acceptability of education, it was assessed whether the curricula,

teaching methods were acceptable to the educatees, as well as the quality of education under the circumstances of spread of the Covid-19 infection. The Constitutional Court concluded that the possible reduction in the quality of education for a certain period of time after the Covid-19 pandemic did not mean in itself that the state had not acted adequately to ensure the acceptability aspect of the right to education. In addition, the quality of education expected by society and provided for in the country's regulatory framework tends to evolve and improve. In terms of the aspect of adaptation of education, the Constitutional Court assessed the ability of the education system to respond to the challenges caused by the Covid-19 infection during the time, by adapting it to the needs of educatees, noting also the role and support of parents in the exercise of the right to education of learners.

When assessing the circumstances of the spread of the Covid-19 pandemic and the measures taken by the state to ensure access to the right to education, the Constitutional Court recognised that the measures taken by the legislator to ensure the possibility, accessibility, acceptability and adaptability of the right to education had been appropriate. [22.1], [22.2], [22.3], [22.4].

The Constitutional Court resolved:

1. To dismiss the proceedings in the case in the part concerning compliance of Section 14, Clause 45 of the Education Law with Article 112 of the Satversme of the Republic of Latvia.
2. To declare Section 1, Clauses 1¹ and 12⁴ of the Education Law, insofar as it relates to the organisation of the education process during the spread of Covid-19 infection, as well as Section 4, Paragraph One, Clause 8 of the Law on the Management of the Spread of Covid-19 Infection compliant with Article 112 of the Satversme of the Republic of Latvia.
3. To declare Sub-paragraph 27.1.3 (in the wording effective from 17 September 2020 to 19 August 2021), Paragraph 32⁷, Sub-paragraph 2 (in the wording effective from 17 September 2020 to 19 August 2021) and Paragraph 32⁷, Sub-paragraph 3 (in the wording effective from 17 September 2020 to 19 August 2021) of the Cabinet Regulation No. 360 of 9 June 2020 "Epidemiological Safety Measures for the Containment of the Spread of

COVID-19 Infection” compliant with Article 112 of the Satversme of the Republic of Latvia.

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

Text of the Judgement is available on the website of the Constitutional Court:
https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/07/2021-33-0103_Spriedums.pdf

This press release has been prepared to inform the society on the work of the Constitutional Court. **More detailed information on the latest developments, cases opened and adjudicated by the Constitutional Court is available on the [website](#) of the Constitutional Court.** We invite you to follow the information also on the Court's *Twitter* account [@Satv_tiesa](#) and the Court's *YouTube* [channel](#).

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