



Ombudsman of the Republic of Latvia

Baznīcas iela 25, Rīga, LV-1010, tel.: 67686768, fax: 67244074, e-mail: tiesibsargs@tiesibsargs.lv, www.tiesibsargs.lv

Rīga

.03.2019 Our Ref.
To 01.02.2019 Your Ref. 1-04/68-pav

Attn. Hon. Gunārs Kušīņš, the Judge
Constitutional Court of the Republic of Latvia
Jura Alunāna iela 1
Rīga, LV - 1010

Re: Opinion on the case No. 2018-22-01

Ombudsman of the Republic of Latvia has received the Order issued by Mr. Gunārs Kušīņš, Judge of Constitutional Court of the Republic of Latvia, dated 1 February 2019 whereby the Ombudsman is joined in the capacity of intervener in the case No. 2018-22-01 “On compliance of Section 1, Part One, Section 112, the first sentence, and Section 114 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – Case No. 2018-22-01). The Order contains a request for issuing a written opinion on the matters relevant, in the Ombudsman’s opinion, to the investigated case.

The contested norm envisages the supplementing of Section 9 of the Education Law with Part One Prim to read as follows: “(1¹) General education and professional education shall be provided at private educational establishment on the level of basic education and secondary education in the official language.”

Sharing the position of the Saeima (Parliament) in their reply No. 612.1-1-13/19 of 14 January 2019 (hereinafter – The Saeima Reply), the Ombudsman draws attention to the fact that the norm contested in the case under investigation should be considered a part of the pending reform of education system comprising changes in the use of the official language and national minority languages. On 14 December 2018, Ombudsman of the Republic of Latvia issued the opinion on case No. 2018-12-01 pointing out to relevant circumstances in the case under investigation. The Ombudsman therefore kindly asks the Constitutional Court to supplement the evidence collected in the case under investigation with the Opinion of 14 December 2018 on case No. 2018-12-01 insofar it concerns compliance of the contested norm with Sections 112 and 114 of the Satversme.

Compliance of the contested norm with Section 1 of the Satversme of the Republic of Latvia

[1] The applicants point out in their application to non-compliance of Section 1, Part One of the Law of 22 March 2018 “Amendments to the Education Law” with Section 1 of the Satversme of the Republic of Latvia.

Historically, Section 9, Part One of the Education Law (the original wording of 01.06.1999-12.08.1999) stipulated that education shall be acquired at State and municipal educational establishments in the official language. Part Two, Paragraphs 1 and 2 of the said Law stipulated that education may be provided in other languages at private educational establishments; state and municipal educational establishments that implement education programs for national minorities. Ministry of Education and Science shall select syllabic disciplines in such education programs to be provided in the official language.

Paragraph 9 of Transitional Provisions of the Education Law stipulated that Section 9, Part One and Part Two, Paragraph 2 shall be gradually implemented:

- 1) From 1 September 1999 – for university-level education establishments;
- 2) From 1 September 1999 – state and municipal general educational establishments with different teaching language shall start implementation of education programs for national minorities or transition to teaching in the official language;
- 3) From 1 September 2004 – education shall start exclusively in the official language for grade ten of state and municipal general educational establishments and for the first year students of state and professional educational establishments.

Section 41 of the said Law stipulated that education programs for national minorities shall be developed by educational establishments in accordance with the national education standards on the basis of the model general education programs approved by the Ministry of Education and Science.

Then, amendments to the Education Law were adopted on 5 February 2004 stipulating that Paragraph 9, Subparagraph 3 of Transitional Provisions of the Education Law shall read as follows:

“3) Starting from 1 September 2004, the state and municipal general educational establishments that implement education programs for minorities, shall provide education in the official language, starting from grade ten, in accordance with the national general secondary education standard; the state and municipal professional educational establishments shall provide education in the official language starting from the first year in accordance with the national vocational education standard or the national professional secondary education standard. The national general secondary education standard, the national vocational education standard and the national professional secondary education standard provides that acquisition of the education content shall be provided in the official language for at least three fifths of the overall study loan in an

academic year, including foreign languages, and provide for acquisition of education content related to the language, identity and culture of the national minority in the language of the respective national minority.”

On 14 September 2018, the Ombudsman pointed out in his opinion on the Constitutional Court case No. 2018-12-01 that the above provisions mitigated the requirements for use of the official language because part of the representatives of national minorities expressed negative attitude towards the provisions of Paragraph 9 of Transitional Provisions of the Education Law stipulating that, starting from 1 September 2004, education would be provided for grade ten of the state and municipal secondary educational establishments and for the first year students of state and municipal professional educational establishments exclusively in the official language.¹

Amendments to the Education Law adopted on 15 March 2012 stipulated that Section 9, Part Two, Paragraph 2, the first sentence shall be supplemented with the words and figures “subject to the provisions of Section 41 of this Law”, and the second sentence was deleted. Therefore, Section 9, Part One of the Education Law (in the historical wording of 01.10.2012-31.12.2012) stipulated that education shall be provided at state and municipal educational establishments in the official language. Part Two, Paragraphs 1, 2 and 3 of the said Section stipulated that education may be provided in another language at private educational establishments; state and municipal educational establishments that implement education programs for national minorities, subject to the provisions of Section 41 of this Law; other educational establishments specified in the law.

Section 41 was amended to read as follows: "(1) Education programs for national minorities shall be developed by education establishments selecting from the model education programs contained in the national preschool education guidelines or the respective national education standard."

On 22 March 2018, amendments were adopted to the Education Law supplementing Section 9 with Part One prim to read as follows: “Private education establishments shall provide general education and professional education on the level of basic education and secondary education in the official language.”

The second sentence of Paragraph 9, Subparagraph 3 of the Transitional Provisions was deleted.

The Transitional Provisions were supplemented with Paragraph 66 to read as follows: "Amendments to Section 9 of this Law concerning the supplementing of Clause 9 with Part 1.¹ and adopting new wording of Part Two, Paragraph 2, and amendments to Section 41, Part One regarding replacement of the words “in the respective national education standard” by the words “in the national basic education standard” and supplementing of this Section with Parts 1.¹ and 1.² shall come into effect: 1) From 1 September 2019 – in relation to the implementation of preschool education programs and implementation of basic education programs for grades 1-7; 2) from 1 September 2020 – in relation to the implementation of

¹ Summary to the Cabinet Regulations No. 444 of 12 August 2003 “Amendments to the Education Law” enacted in accordance with Section 81 of the Satversme.

basic education programs for grade 8 and implementation of secondary education programs for grades 10 and 11; 3) from 1 September 2021 – in relation to the implementation of basic education programs for grade 9 and implementation of secondary education programs for grade 12.

The Ombudsman, having reiterated the historical amendments made to Section 9, Section 41 and Paragraph 9 of Transitional Provisions to the Education Law, draws the attention of the Constitutional Court to the fact that the wording of Section 9, Part Two, Paragraph 1 of the Education Law stipulating that education in another language could be provided at private educational establishments has remained changed since 29 October 1998 when the Education Law was enacted. On the other hand, the wording of Paragraph 9 of Transitional Provisions of the Education Law stipulating gradual transition to the implementation of education program for national minorities, transition of educational establishments to education in the official language, the proportion of education contents to be provided in the official language and other aspects has never contained any reference to Section 9, Part Two, Paragraph 1 of the Education Law.

[1.1] Section 2 of the General Education Law stipulates that the purpose of this Law is the regulation of activities of state and municipal educational establishments and other parties engaged in the provision of general education and defining of their rights and obligations (...). This Law historically specifies the legal regulation in the field of general education for the implementation of preschool education, basic education and general secondary education at state and municipal educational establishments as well as at private educational establishments.

Section 14, Part One, Paragraphs 1 and 3 of the General Education Law (in the original as well as the current wording) stipulates that the provision of general education, its content and organization as appropriate to the form, level and target audience of education shall be governed by the national general education standard; general education programs. Section 15, Part Two of the Law (in the original as well as the current wording) stipulates that the national general education standard shall be mandatory for each and every entity developing and implementing general education programs other than preschool education programs.

Section 18, Part One of the Law (in the original as well as the current wording) stipulates that only licensed general education programs may be implemented by an educational establishment.

Section 4, Paragraph 12 of the General Education Law stipulates that the Cabinet shall fix the time and procedure of State examinations in each academic year in accordance with the national general education standards².

² Cabinet Regulations No. 335 of 6 April 2020 “Regulations concerning the contents and procedures of centralized examinations” stipulate the content and procedures of centralized examinations for accredited educational programs.

It follows from the above-stated that private educational establishments until present have been responsible for licensing and accrediting educational programs similar to the state and municipal educational establishments; this ensured the proportion for use of the official language at educational establishments implementing educational programs for minorities as stipulated in Paragraph 9, Subparagraph 3 of Transitional Provisions of the Education Law.

Therefore, systemic interpretation of the regulatory norms regarding the provision of education at educational establishments that implement education programs for minorities demonstrates that the legislator has prescribed unified requirements to the provision of education for state and municipal educational establishments as well as to private educational establishments. It may be concluded accordingly that no applicants could expect that private educational establishments would not form a part of the overall educational system and that different norms would apply to them in terms of permissible proportion of use of the minority language and the official language.

Article 13, Part One of the International Covenant on Economic, Social and Culture Rights (hereinafter – the Covenant) stipulates that the States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

Article 13, Part Three of the Covenant stipulates that the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Part Four of the said Article stipulates that No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Notes to Article 13 of the Covenant state that a part of Article 13, Part Three of the Covenant is the right of parents or legal guardians to freely select an educational establishment that is not a state or municipal educational establishment, provided that it meets “the minimum education standards defined and approved by the State”. The above should be read in conjunction with the provisions of Article 13, Part Four of the Covenant that provides for freedom of individuals and institutions to establish and manage educational establishments that meet the purpose of education prescribed by Article 13, Part One, and the defined minimum standards. Such minimum standards can regulate enrollment, recognition of curricula and certificates and similar matters. The standards on the turn have to meet the purpose of education and the minimum standards stipulated

in Article 13, Part One of the Covenant, namely enrollment, curricula and certificates.³

Taking into consideration the above-stated, it may be concluded that in developing the education system the State shall develop uniform requirements to the operation of educational establishments, and the State has been facilitating the above conditions regarding uniform requirements to the implementation of education by state and municipal educational establishments as well as by private educational establishments.

On the other hand, the Ombudsman would like to draw attention of the Constitutional Court to importance of the historical wording of Paragraph 9 of Transitional Provisions of the Education Law in ensuring of the principle of legal certainty.

[1.2.] The Ombudsman sees no need for focusing on theoretical aspects of the principle of legal certainty, yet certain opinions issued by the Constitutional Court and individual Judges of the Constitutional Court regarding the role of Transitional Provisions in ensuring of the principle of legal certainty should be highlighted.

The requirements for enactment of a law and their interaction with the existing regulations is enshrined in Article 111 of Rules of Procedure of the Saeima. It stipulates: “(1) If necessary, the procedure by which a law is to be applied shall be formulated as transitional provisions, and the government and local governments shall be assigned specific tasks necessary to enforce the law. (2) If, upon passing a draft law, contradictions arise between this law and the laws already in force, the Saeima shall rule that the new law or its separate parts take effect simultaneously with the amendments to the laws already in force.”⁴

Therefore, Rules of Procedure of the Saeima contain no requirement for regulation of the matters related to the procedure of application of a law and their integration in the existing regulations exclusively by the means of transitional provisions to a law.⁵

It should be noted however that a transitional provision prescribing *expressis verbis* application of the law to already existing legal relations draws the attention of concerned parties to amendments of their rights, enables timely acknowledging of their legal status and prevents misunderstandings.⁶ Therefore, transitional provisions can be used by the State as a tool for communication of their position and for setting appropriate tasks for its implementation.

Judges of the Constitutional Court G. Kusiņš, S. Osipova and I. Ziemele, developing the concept of the principle of legal certainty in individual opinions, pointed out in case No. 2014-31-01 that ample discretion is available to the legislator in formulation of transitional provisions, yet according to the continuously applied legal technique the provisions applicable during the period

³ UN Committee on economic, social and cultural rights, General comments, No 13 (1999): The right to education, E/C.12/1999/10, para 29.

⁴ Award of Constitutional Court of 19 June 2010 in case No. 2010-02-01, pp. 20.

⁵ Ibid.

⁶ Ibid.

till complete transition to the new regulation they have to be distinguished from legal norms that serve other purpose and concentrated in transitional provisions as a subunit of regulatory act designed especially for such purpose.⁷

The legislator is free to select application of legal technique different from the commonly applied one, provided that both the addressee of such norm and the entity responsible for its implementation understand that lenient transition is the purpose of the given solution. In the given occasion the concerned legal norms provided no clear and unequivocal reference to their nature of transitional provisions or otherwise lenient transition.⁸

Taking into consideration the above-stated in its entirety, the Ombudsman concludes that existence of transition to new regulatory norms is a relevant precondition to ensuring the principle of legal certainty, as well as existence of clear formulation of the regulatory norm.

The Saeima state in their reply that education reform in terms of increase of use of the official language has been gradually and leniently implemented during more than 20 years. It should be therefore treated as a relevant aspect in adjudging the case. Unequivocal intention of the State in relation to the given position has also been enshrined on regulatory basis. Yet transitional provisions concerning gradual transition to education in the official language apply *expresis verbis* to state and municipal educational establishments. On the other hand, no clear intention of the State has been formulated in relation to private educational establishments. The above-mentioned regulatory inconsistency gives raise to reasonable concern of the Ombudsman regarding the provision of the principle of legal certainty.

The Ombudsman

J.Jansons

⁷ Individual opinions of the Judges of Constitutional Court Gunārs Kusiņš, Sanita Osipova and Ineta Ziemele on the case No. 2014-31-01 “Concerning the compliance of Section 44, Part One, Paragraph 1, Subparagraph b) of the Civil Procedure Law (in the wording of 29 November 2012) with Sections 1, 91, 92, and 105 of Satversme of the Republic of Latvia”, Riga, 13 May 2015, pp. 7.

⁸ Ibid.