THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT
on Behalf of the Republic of Latvia
in Riga, on 24 November 2017
in Case No. 2017-07-01

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Ineta Ziemele, Justices Sanita Osipova, Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska and Artūrs Kučs,

having regard to Raivis Veinberg's constitutional complaint,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Par 1 of Section 16, Para 11 of Section 17 (1), Section 19^2 and Section 28^1 of the Constitutional Court Law,

at the court hearing of 25 October 2017 examined in written procedure the case

"On compliance of Para 1 of Section 50 of the Education Law, insofar it denies a person, who has been punished for a serious or a particularly serious crime, the right to work as a teacher, with Article 106 of the *Satversme* of the Republic of Latvia".

The Facts

1. On 29 October 1998, the *Saeima* adopted the Education Law, which entered into force on 1 June 1999.

Until 30 September 2012, Para 1 of Section 50 of this Law provided that a person, who had been punished for an intentional crime and had not been exonerated, was not allowed to work as a teacher.

Case No. 2012-11-01 "On Compliance of Para 1 of Section 50 of the Education Law with Article 106 of the *Satversme* of the Republic of Latvia" had

been initiated at the Constitutional Court. By the Decision of 12 February 2013 of the Constitutional Court, the aforementioned case was terminated because the legislator by the law of 5 July 2013 "Amendments to the Education Law" had eliminated the circumstances that were the grounds for submitting the application to the Constitutional Court. I.e., by the law of 5 July 2012 "Amendments to the Education Law", which entered into force on 1 October 2012, Para 1 of Section 50 of the Education Law was worded differently, prohibiting from working as a teacher

"A person who has been punished for committing an intentional criminal offence (regardless of the criminal record having been set aside or extinguished), except the case when after setting aside or extinguishing the criminal record an institution determined by the Cabinet, having evaluated whether it does not harm the interests of students, has permitted that such person works as a teacher who has been punished for an intentional criminal offence or a less serious crime. The Cabinet shall determine the procedures by which it shall be evaluated whether the permission for such person to work as a teacher will not harm the interests of students."

2. The applicant – **Raivis Veinbergs** (hereinafter – the Applicant) – holds that Para 1 of Section 50 of the Education Law, insofar it denies a person, who has been punished for a serious or a particularly serious crime, the right to work as a teacher (hereinafter – the contested regulation) is incompatible with Article 106 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*).

2.1. It is noted in the application that the Applicant had worked as the swimming coach for elective swimming classes at the Dobele Secondary School No. 1 since 30 November 1998. Since 1 September 2009, he had also been the swimming coach at the Dobele Sports School.

The State Education Quality Service had found that the Applicant had been punished for committing an intentional serious crime by the judgement of 5 November 1994 by the Dobele District Court and that the restriction included in the contested regulation, which prohibited from working as a teacher, was applicable to him. Therefore both the Dobele Secondary School No.1 and the Dobele Sports School had terminated the legal employment relationships with the Applicant, although he had been performing his duties in good faith.

2.2. It is alleged that the Applicant has appropriate qualification and abilities, nevertheless, the contested regulation prohibits him from working as a teacher. Moreover, this restriction is said to be absolute since it does not depend upon the criminal record having been set aside or extinguished. Likewise, the

contested regulation is said to prohibit the competent institution from examining the Applicant's suitability for a teacher's position. Hence, his right to freely choose employment and workplace in accordance with his abilities and qualification, guaranteed in Article 106 of the *Satversme*, has been infringed on.

The restriction on fundamental rights included in the contested regulation had been established by law and it is said to have a legitimate aim. I.e., the contested regulation is said to protect the rights and lawful interests of children, ensuring that only persons with impeccable reputation work as teachers. The contested regulation is said to be appropriate for reaching the legitimate aim. However, it is alleged that the legitimate aim could be reached by other measures, less restrictive on a person's rights. The benefit that the society gains by restricting the Applicant's fundamental rights, enshrined in Article 106 of the *Satversme*, is said not to outweigh the damage inflicted on his rights and lawful interests. Hence, it is maintained that the principle of proportionality had not been complied with.

It is indicated in the application that all adverse legal consequences that follow from a criminal record should end with the setting aside or extinguishing of the criminal record, including also the restriction on choosing freely one's employment and workplace in accordance with one's abilities and qualification. A situation, where, in addition to the sentence that has already been served, a person is prohibited for life from working as a teacher, although the criminal offence, for which the person had been punished, was not linked to jeopardising children's interests, is said to be inadmissible.

It is alleged that the aim of the contested regulation could be reached by as effective yet more lenient measures. The legislator could define particular criminal offences and provide that persons, who have been punished for them, could not work as teachers, but provide in other cases that an institution determined by the Cabinet examines, whether the particular person may work as a teacher. It is said to be essential since criminal offences are qualified according to the maximum applicable sentence, which, allegedly, cannot be the grounds for objective assessment of each offence. *Inter alia*, it should be taken into consideration that the contested regulation applies also to those offences that had been committed at the time when the Latvian Criminal Code was in force. Hence, a situation could occur, where a person is prohibited from working as a teacher because he, pursuant to the Latvian Criminal Code, has been punished for committing a serious crime, although according to the Criminal Law the qualification of the particular criminal offence has changed and it should be considered as being a less serious crime or an intentional criminal violation.

3. The institution, which issued the contested act, – **the *Saeima*** – indicates in its written reply that the contested regulation complies with Article 106 of the *Satversme*.

3.1. Ensuring a child's right to education is said to comprise a set of measures and is aimed both at educating and upbringing. To ensure the aim defined in the Education Law – to ensure to students the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia – it is essential that the teacher has an impeccable reputation. It is said to follow also from Section 30 (4) of the Education Law. Therefore, setting elevated requirements for teachers not only with respect to qualification and professional activities but also with respect to his personality is said to be admissible.

3.2. Although Para 1 of Section 50 of the Education Law prohibits from working as teachers persons with a previous criminal record, it envisages differential approach, depending on the form of guilt and the severity of the criminal offence.

The legislator has differentiated between offences that have been committed intentionally and offences that have been committed due to negligence. The restriction established by the contested regulation applies only to such persons, who have committed the offence intentionally, i.e., with direct or indirect intent. This means that the person, when committing the crime, had been aware of the hazardousness of his actions and had either wished to cause the respective consequences or had consciously allowed his actions to cause the respective consequences. Whereas the fact that the contested regulation includes such criterion as a criminal record is said not to be linked to the criminal law consequences of the particular criminal offence but with the reputation, personality profile of the respective person and his potential impact on a student and the process of education.

The main feature, according to which various criminal offences are qualified, is said not to be the maximum applicable punishment but the importance of the interests of society or an individual person that need protection and the extent to which the respective activity jeopardises them. Serious and particularly serious crimes are said to be the offences with the highest level of hazardousness and harm for society, therefore the legislator has established in the contested regulation the prohibition for the persons, who have committed such crimes, to work as a teacher.

Since the Applicant had been punished for committing an intentional serious crime and not an intentional particularly serious crime, in the case under examination it should be assessed only, whether the legislator's choice to prohibit

from working as teachers persons, who have been punished for committing an intentional serious crime, complies with Article 106 of the *Satversme*.

3.3. The contested regulation restricts the fundamental rights to freely choose one's employment, established in Article 106 of the *Satversme*, of a person who has been punished for committing an intentional serious crime. However, this restriction is said to be proportionate.

The contested regulation had been adopted to protect the rights of other persons – those of students. Likewise, it should be taken into consideration that, with respect to minors, the process of upbringing is irreversible, it is important that also the students' parents and other family members would trust the teachers. The fact that students are brought up and taught by persons who meet high requirements both with regard to their professional qualification and personality also improves the public welfare in non-material sense and trust in the system of education in general.

The profession of a teacher should be considered as being such profession of public importance that those working in it should ensure both appropriate upbringing and education of students and also enjoy the trust of students themselves, their parents and the society in general. The requirements that have been set for a person, who takes a certain position, to a certain extent, also prove how important the particular interests under protection are for the State. High requirements must be set for those teachers, who at an institution of education work for a long time with minors, both with respect to professional qualification and their personal features and actions, which might affect students.

Therefore, with respect to persons, who have been punished for committing an intentional serious crime, there are no alternative measures allowing reaching the legitimate aim in the same quality. Moreover, the restriction that prohibits from working in a certain profession or from taking certain positions persons, who have been punished for offences of various categories, has been included in a number of regulatory enactments that regulate professions of national and public importance. With respect to teachers, such restriction is said to be in force also in other countries, for instance, in Lithuania, Czechia, and Russia.

3.4. The *Saeima* notes that Section 9 of the Punishment Register Law provides that with respect to convicted persons the Register of Punishments includes information about the facts related to the person's conviction, *inter alia*, the Section, on the basis of which the person has been convicted, the form of guilt, the type of sanction or punishment applied. However, the manager and holder of the Register of Punishments – the Information Centre of the Ministry of the Interior – does not qualify or re-qualify criminal offences if the regulation of the Criminal Law is amended. Therefore, the party applying the contested

regulation, in each particular case, should additionally verify and examine the information included on the convicted person.

Moreover, the crimes, which in accordance with Section 7 of the Latvian Criminal Code, were recognised as being serious, also now, pursuant to the fourth and the fifth part of Section 7 of the Latvian Criminal Law, are to be recognised as being serious or particularly serious crimes. The exception is said to be the crime provided for in Section 149 (2) of the Latvian Criminal Code – profiteering. However, also in this case it should be taken into account that the law "On the Procedure for the Entering into Force and Application of the Criminal Law" sets special rules with respect to some criminal offences envisaged in the Latvian Criminal Code, including profiteering. I.e., the criminal cases that had been initiated for the respective criminal offence had to be terminated. Likewise, those persons, who had started serving the sentence applied for committing the respective criminal offence, had to be released from serving the sentence and the criminal record had to be extinguished.

Whereas those persons, who had been punished for criminal offences indicated in Section 2-5 of the law "On Exoneration of Unlawfully Repressed Persons" (for example, high treason, unlawful going abroad, evasion of the mandatory military service, counter-revolutionary activities, supporting thereof and other similar activities), had been exonerated.

4. The summoned person – the Ministry of Education and Science – holds that the contested regulation complies with Article 106 of the *Satversme.*

4.1. The contested regulation comprises an imperative prohibition for a person, who has been punished for committing an intentional serious or particularly serious crime, to work as a teacher.

Criminal offences, in view of the nature and hazardousness of the threat to society's or a person's interests, are divided into criminal violations and crimes. In view of the maximum applicable scope of punishment, crimes are subdivided into particularly serious crimes, serious crimes and less serious crimes. In adopting the contested regulation, the legislator had assessed the nature of criminal offences and the damage inflicted on public interests. The fact that a criminal offence has been qualified as a serious or a particularly serious crime *per se* proves that it is very dangerous.

4.2. Restrictions for positions that are linked to the performance of functions of public importance may be stricter than the restrictions imposed on other positions.

In the process of education, a teacher both teaches a student and performs upbringing work, *inter alia*, by helping the student to develop a proper attitude

towards himself, other people, work, and society. Moreover, the profession of a teacher is said to be one of the most regulated ones. Therefore not only a teacher's education and qualification but also the personality profile is important.

The aim of the restriction included in the contested regulation is to achieve that persons with an impeccable reputation would take the position of a teacher. By this, the interests of students are protected and the society's trust in teachers and the system of education in general is facilitated. It is said that the risk that a person, who has committed an intentional serious or a particularly serious crime, could harm the interests and security of students, is well-founded. Therefore the contested regulation ensures that persons, who have been punished for intentional serious or particularly serious crimes, are not engaged in teaching. The benefit that society gains from the restriction on the fundamental rights, established in Article 106 of the *Satversme*, that is included in the contested regulation is said to outweigh the damage inflicted on the interests of some persons.

5. The summoned person – the State Education Quality Service (hereinafter – the Quality Service) – notes that a teacher should comply with both high professional and equally high ethical and moral requirements. Committing of an intentional criminal offence, in particular, committing of a serious and a particularly serious crime is said to be an essential condition that might cause doubt regarding a person's compliance with the high ethical and moral requirements, which also could have an impact on a student's right to obtain quality education and to a safe environment.

5.1. Pursuant to the Cabinet Regulation of 15 April 2014 No. 195 "Procedure for assessing, whether the permission to work as a teacher to a person, who has been punished for an intentional criminal violation or a less serious harm, will not harm the students' interests" (hereinafter – Regulation No. 195), the Quality Service assesses only, whether a person, who has been punished for an intentional criminal violation or a less serious crime, is suitable for a teacher's position. The Quality Service does not have the right to conduct a review and to issue permission if a person has been punished for a serious or a particularly serious crime. If a person, who has been punished for a serious or a particularly serious crime, has submitted an application to receive permission, the Quality Service informs the applicant and the respective institution of education about the restriction established in the contested regulation that prohibits this person from working as a teacher.

Before a person commences working at an educational institution, the head of the institution must verify, whether the restriction established in the contested regulation does not apply to the potential teacher. The head of an institution can

obtain information regarding a person's criminal record from the Information Centre of the Ministry of the Interior. Moreover, at least once annually the head of an educational institution must verify repeatedly the person's compliance with the requirements set for a teacher. The compatibility of teachers with the requirement of legal acts that regulate education is checked also during the process of accreditation of the educational institution or an educational programme.

5.2. Since 1 January 2015, when Regulation No. 195 entered into force, the Quality Service has received 205 applications from persons who had been previously punished, requesting permission to work as a teacher. From among all these persons, 66 persons had been punished for committing serious or particularly serious crimes, *inter alia*, the crimes committed by 23 persons had been linked to violence or threat of violence, whereas seven persons had been minors at the time of committing the criminal offence. The Quality Service notes that in two cases the qualification of a criminal offence had changed due to the amendments to the Latvian Criminal Code, but in one case a person had been punished for large-scale embezzlement of state or public property; however, the Criminal Law does not provide for such criminal offence. In one case, the criminal offence after it had been committed had been qualified as a serious crime in accordance with the Criminal Law; however, in the current wording of the Criminal Law the qualification has been changed, therefore it has to be considered as being a less serious crime.

6. The summoned person – the Ministry of Justice – holds that the contested regulation complies with Article 106 of the *Satversme*.

6.1. Pursuant to Section 63(9) of the Criminal Law, the extinguishment or setting aside of a criminal record annuls all criminal legal consequences for the criminal offence committed. However, the extinguishment or setting aside of a criminal record does not annul those consequences of a criminal record that have been established in a special law as a restriction on employment. If the special law provides that the restriction exists, irrespectively of the extinguishment or setting aside of a criminal record, it continues existing even after the criminal record has been extinguished or set aside in the procedure established by Section 63 of the Criminal Law.

Hence, the extinguishment or setting aside of a criminal record, envisaged in the Criminal Law, is said to mean only that in the meaning of criminal law a person has to be regarded as having no criminal record. However, this does not mean that a person has not committed the criminal offence for which he has been punished; moreover, the fact of a criminal record has a legal significance both in

the field of civil law and state law, since the extinguishment or setting aside of a criminal record does not delete the fact of a criminal record *per se*.

6.2. In accordance with the nature and hazardousness of the threat to the interests of a person or the society, criminal offences are divided into criminal violations and crimes. Whereas crimes are sub-divided into less serious, serious, and particularly serious crimes.

The legislator, in setting the maximum amount of punishment has already assessed the nature and hazardousness of the threat to public interests inflicted by the criminal offence, i.e., has defined a particular criminal offence as a serious or a particularly serious crime. The degree of hazardousness and danger of intentional serious and particularly serious crimes is said to be so high that with respect to them it would not be proportionate to establish a procedure that would allow the Quality Service to assess a person's suitability for a teacher's position.

6.3. The teaching process is said to depend not only on a teacher's skills and knowledge but also, to a large extent, on a teacher's personality. In the area that pertains to upbringing and education of a child, is important to ensure that society could be fully convinced that the teacher will perform the duties entrusted to him in due quality.

The State is said to have the obligation to establish such a regulation that ensures that work in publicly important professions would be performed in compliance with the public interests and, *inter alia*, to set also qualification requirements for persons, who have been entrusted with the performance of functions that are important for the State and society. Moreover, the restrictions for a position linked with the performance of publicly important functions may be stricter than the restrictions for other positions. The restriction on fundamental rights included in the contested regulation had been established by law; it has a legitimate aim – to ensure that persons, who have been punished for committing an intentional crime, could not work as a teacher. In a broader sense, the aim of the contested regulation is said to be the protection of both democratic state order and the rights of other persons. To reach these aims, elevated requirements for teachers are set in regulatory enactments. Allegedly, no other measures that would allow reaching the legitimate aim in the same quality exist.

7. The summoned person – the State Inspectorate for Protection of Children's Rights – notes that the contested regulation complies with Article 106 of the *Satversme*.

Special legal protection has been established for children, and the rights and interests of children should be the priority within the state. Therefore a candidate for a teacher's position should meet both high professional and high moral and

ethical requirements. A person, who has committed an intentional serious or a particularly serious crime, does not meet these requirements. The restriction included in the contested regulation is said to be proportional since it ensures that the rights of the child, established in international and national regulatory enactments, are observed.

8. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the contested regulation complies with Article 106 of the *Satversme*.

8.1. The aim of the restriction on fundamental rights, included in the contested regulation, is to ensure that persons with impeccable reputation who are able to successfully teach and bring up students, to work creatively with students and trainees, would work as a teacher, because employment of teachers that meet this description this is a pre-condition for reaching the purpose of the Education Law. Hence, the candidates for a teacher's position should meet both high professionals and also moral and ethical requirements.

If a person had wished and envisaged or consciously allowed that the consequences of a criminal offence set in, it cannot be recognised that his personality complies with high moral and ethical requirements. Therefore a person, who has been punished for committing an intentional serious or a particularly serious crime, even if the criminal record had been extinguished or set aside, may not work as a teacher.

8.2. The Law on the Protection of the Children's Rights establishes restrictions on working with children. Section 72 (5) of the aforementioned law prohibits from working with children persons, who have been convicted of criminal offences that are related to violence or threats of violence, irrespective of whether or not the criminal record has been extinguished or set aside. Likewise, persons, who have been convicted of criminal offences against morals and sexual inviolability, irrespective of whether or not the criminal record has been extinguished or set aside, as well as person, to whom the court has applied the compulsory measures of a medical nature laid down in the Criminal Law, have been prohibited from working with children. These restrictions are said to apply not only to employees of child care, education, health care and other such institutions where children are staying but also to persons who are involved in organising events for children and other events, in which children take part, including volunteers.

Hence, the restrictions laid down in the Law on the Protection of the Children's Rights are said to be even more stringent than the ones established in the contested regulation. This is said to be an evidence of the legislator's wish to

extend to maximum the respective restrictions, applying them to all places, where children are staying, and, thus, ensure that the rights of a child are a priority.

9. The summoned person – the Latvian Trade Union of Education and Science Employees – notes that in some cases an institution set up by the Cabinet should have the possibility to assess also the suitability for a teacher's work of a person, who has committed a serious crime.

Para 1 of Section 50 of the Education Law is envisaging not a general prohibition from working as a teacher to a person, who has been punished for committing any intentional crime, but defines the mechanism that ensures a differential approach. If a person has committed an intentional criminal violence or a less serious crime, the committee established by the Quality Service, in view of the criteria set in Para 10 of the Regulation No. 195, decides on the suitability of this person for a teacher's position. If the crime, as to its nature, has not left negative consequences on the person and if the person requests it, in some, exceptional cases, it should be admissible that the committee examines also the suitability for a teacher's position of persons, who have been punished for committing an intentional serious crime. The period of time that has passed after the crime was committed, the person's activities after committing the crime, as well as whether the person has positively contributed to the development of an institute of education should be taken into consideration. The fact that a person has committed a crime before coming of age is said to not always prove that in his future life the person will not be able to become a good teacher.

10. The summoned person – the professor of the Faculty of Law, the University of Latvia, *Dr. iur.* Valentija Liholaja – notes that the restriction on the fundamental rights established in Article 106 of the *Satversme*, which is included in the contested regulation, is not proportional.

10.1. The criminal record is said to be the legal consequences of convicting a person who has committed a criminal offence or to whom a punishment has been applied, which is in force during the period of serving the sentence set by the court or a prosecutor's penal order, as well as until the criminal record is extinguished or set aside in the procedure established by law.

The criminal liability is said to be the most severe type of legal liability, i.e., the person, in accordance with the law on behalf of the State, is enforced the obligation to serve the sentence, which is linked to maximum restriction on his personal liberty, some rights or property. Whereas the principle of humanism is manifested in the individualisation of a criminal punishment, as well as in the extinguishment and setting aside of the criminal record, which is linked to the

purpose of the punishment – to protect public security, to restore justice, to punish the perpetrator for the committed criminal offence, to re-socialise the punished person and to achieve that this person and also other persons would abide by the law and would abstain from committing criminal offences.

It is said to be disproportional to establish an absolute prohibition to take the position of a teacher in all cases, without examining the personality of the punished person, the interests of those, upon whom the criminal offence had been inflicted, and the conduct of the punished person after serving the sentence, if the criminal record has been extinguished or set aside for this person in the procedure established in law.

10.2. The legislator could define in general the groups of criminal offences, to which the restriction on fundamental rights included in the contested regulation is applicable. A regulation like this is said to be included, currently, in Section 72 (5) of the Law on the Protection of the Children's Rights. I.e., the legislator has prohibited from working with children such persons, which had been punished for criminal offences related to violence or threat of violence, or for crimes against morals and sexual inviolability, irrespective of extinguishing or setting aside the criminal record.

Likewise, an absolute prohibition to take the position of teacher could be established for persons, who have committed criminal offences that are linked to violence or threat of violence, or intentional offences against a person's life or health, against morals or sexual inviolability, as well as any intentional criminal offence against a person who has not reached the age of 18. Whereas with respect to persons, who have committed other types of criminal offences that do not jeopardise the interests of other persons, including those of minors, it could be established that after a certain period of time has passed following the extinguishment or setting aside of a criminal record, an institution defined by the Cabinet could examine the person's suitability for a teacher's position.

11. The summoned person – ***Dr. iur.*** **Andrejs Judins** – notes that the restriction included in the contested regulation is proportional and justifiable also without assessing the facts of a particular case only if a person has been punished for an intentional crime that is linked to violence, a threat of violence or against morals and sexual inviolability. In other cases, a person should be ensured the possibility to request his individual assessment and permission to work as a teacher.

11.1. In the pre-war period, in Latvia, the position of a teacher, as regards restrictions, had been equalled to the position of a civil servant. Currently, the restrictions for the candidates for the position of a civil servant are defined by the

State Civil Service Law, which provides that a person, who has not been punished for an intentional criminal offence or has been exonerated, or whose criminal record has been extinguished or has been set aside, may apply for the position of a civil servant. Hence, although historically the positions of a civil servant and a teacher had been comparable, currently the legislator has established less stringent restrictions for civil servants, compared to teachers.

The Education Law, which had been in force previously, had not restricted the rights of persons who had been punished to work as a teacher. The respective restriction had been established by the Education Law of 29 October 1998.

11.2. The contested regulation establishes a life-long prohibition to work as a teacher for persons, who have been punished for serious or particularly serious crimes, irrespective of whether the criminal record had been extinguished or set aside.

A criminal record is the legal consequences caused to a person by recognising him as being guilty of a criminal offence and applying a punishment for this offence. It is said to be manifested as a number of restrictions and prohibitions and should be assessed as being adverse legal consequences for the convicted person. The scope and duration of restrictions and prohibitions are defined not only by the Criminal Law but also by a couple of other laws that regulate legal relationships that are not linked to criminal law. The prohibition to work as a teacher, established in the contested regulation, is said to be one of such restrictions.

The extinguishment of a criminal record is to be understood as the automatic termination of a criminal record after the period defined in Section 63 (3) of the Criminal Law expires. Whereas setting aside of a criminal record means termination of the criminal law consequences linked to the criminal record before the date when the criminal record would have been extinguished automatically. As the result of setting aside or extinguishing a criminal record a person, who has been punished for committing a criminal offence, is to be recognised as having no criminal record. However, it follows from Section 63 (9) of the Criminal Law that the extinguishment or setting aside of a criminal record annuls only the criminal law consequences of the committed criminal offence. Within the relationships outside the criminal law, the extinguishment or setting aside of a criminal record not always means termination of the adverse legal consequences for the persons linked to a criminal record.

11.3. The contested regulation is said to apply to persons, who have committed intentional serious or particularly serious crimes. Currently, the Special Part of the Criminal Law comprises 200 sections, envisaging liability for intentional serious and particularly serious crimes, but the total number of

dispositions in the sections applicable to the aforementioned crimes is said to be 322. Among the respective crimes there are many such that are obviously hazardous, therefore the prohibition for the perpetrators from working as a teacher is said to be proportional.

However, there are also such crimes after the committing of which, unless the conditions in which they had been committed are known, it is hard to forecast, whether and to what extent the persons punished for these, if they were allowed to work as a teacher, would jeopardise by their actions the interests of students and society. I.e., a group of infringements of law belongs to serious or particularly serious crimes, the liability for which is defined as the liability for taking an intentional action, which due to a person's negligence has caused particular adverse consequences. I.e., the criminal offence in its totality is to be recognised as having been committed intentionally, although the action that had been taken *per se* is to be recognised as a criminal violation, a less severe crime or an administrative violation. Such severe and particularly severe crimes are, for example, violation of waste management rules, destruction and damaging of specially protected nature territories, as well as a violation of fire safety rules. In view of the nature and consequences of a particular crime, the prohibition for a person punished for it to work as a teacher may be recognised as being proportional and well-founded; however, also such cases are possible, where the actions taken by a person should not be linked to a prohibition for a person to work as a teacher.

The fact that the legislator has qualified particular crimes as serious or particularly serious is not always a sufficient reason to prohibit a person from working as a teacher for life. The contested regulation is said to impose disproportional restrictions on a person's fundamental rights established in Article 106 of the *Satversme* because it prohibits from examining the circumstances of each particular case and does not grant any significance to a person's role in the committing of a criminal offence nor the way in which it was committed, nor the time period that had passed after the crime. Likewise, the contested regulation prohibits from assessing the scope of the damage caused by the criminal offence and other important circumstances.

Allegedly, Para 1 of Section 50 includes a mechanism that ensures an individual approach in the case, where a person has been punished for an intentional criminal violence or a less severe crime. I.e., a person may request the Quality Service to issue permission allowing him to work as a teacher. A similar procedure should be developed with respect to persons, who have been punished for intentional serious or particularly serious crimes that are not linked to violence, a threat of violence and are not aimed against sexual inviolability. In

view of the hazardousness of a particular crime, additional requirements could be set that these persons should meet before they may request the permission to work as a teacher.

The Findings

12. The Applicant requests the Constitutional Court to examine, whether Para 1 of Section 50 of the Education Law, insofar it denies a person, who has been punished for committing a serious or a particularly serious crime, the right to work as a teacher, complies with Article 106 of the *Satversme*.

Whereas the *Saeima* in its written reply notes that the compliance of Para 1 of Section 50 of the Education Law with the *Satversme* should be examined only insofar a person, who has been punished for committing an intentional serious crime, is prohibited from working as a teacher. The legislator's choice – to prohibit from working as a teacher also a person, who has been punished for committing an intentional particularly serious crime, should not be examined in the framework of this case because the Applicant had been punished for committing a serious and not a particularly serious crime (*see Case Materials, Vol. 1, pp. 74 –75*).

12.1. Para 1 of Section 50 of the Education Law applies to a person, who has been punished for an intentional less serious, serious or particularly serious crime, as well as for an intentional criminal violation. If a person has been previously punished for an intentional criminal violation or a less serious crime then the Quality Service, upon examining whether this will not harm the students' interests, may issue permission to this person to work as a teacher. If there is a risk of damage, the Quality Service may refuse to issue a permission to work as a teacher to a person, who has been previously punished for committing an intentional criminal violation or a less serious crime. Whereas a person, who has committed an intentional serious or a particularly serious crime, is prohibited from working as a teacher by Para 1 of Section 50 of the Education Law.

It follows from Para 1 of Section 50 of the Education Law that the restriction that prohibits from working as a teacher applies to such criminal offences that have been committed intentionally or with intent. I.e., when committing a crime, the person had been aware of the hazardousness of his actions and had either wished to or had consciously allowed that his actions cause the respective consequences. Para 1 of Section 50 of the Education Law does not prohibit from working as a teacher a person, who has committed a criminal offence due to negligence. The Ministry of Justice notes that the intentional criminal offences, as to their nature, are more dangerous and hazardous than those

committed due to negligence, as the person's mental attitude in the case of an intentional criminal offence is intentionally aimed at creating the hazardous consequences. Therefore, Para 1 of Section 50 of the Education Law is said to apply only to such criminal offences that have been committed intentionally or with intent (*see Case Materials, Vol. 1, p. 134*).

The Constitutional Court has repeatedly noted: if the contested norm applies to an extensive set of different situations then the extent to which this norm will be examined must be specified (*see Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6, and Judgement of 19 December 2011 in Case No. 2011-03-01, Para 13*).

Thus, also in the case under review, the extent to which and the persons with respect to whom the compliance of Para 1 of Section 50 of the Education Law with the *Satversme* must be examined is to be specified.

12.2. In the particular case, the Applicant has been punished for committing an intentional serious crime, and therefore Para 1 of Section 50 of the Education Law prohibits him from working as a teacher (*see Case Materials, Vol. 1, p. 36*).

Para 1 of Section 50 of the Education Law refers to various criminal offences, the seriousness of which determine, whether a person is prohibited from working as a teacher because of committing the particular criminal offence.

However, as regards the legal consequences, the prohibition established in Para 1 of Section 50 of the Education Law from working as a teacher equally applies to a person, who has been punished for committing an intentional serious crime, and a person, who has been punished for committing an intentional particularly serious crime. Thus, the constitutionality of the legal norm must be examined from the perspective of its legal consequences.

By examining the impact that the legal consequences of the legal norm have on both a person, who has been punished for committing an intentional serious crime, and a person, who has been punished for committing an intentional particularly serious crime, a comprehensive and objective review of the case is ensured, as well as procedural economy and the existence of such legal system, in which regulation that is incompatible with the *Satversme* or other legal norms (acts) of higher legal force) is prevented as fully and comprehensively as possible (*compare to Judgement of 7 April 2009 by the Constitutional Court in Case No. 2008-35-01, Para 11.2.*). A situation, where the Constitutional Court would have to initiate and examine new cases regarding the same issue of constitutional law, which could be decided on within the framework of the case under review, would be contrary to the principle of procedural economy.

In specifying the limits for examining the case, the Constitutional Court must also examine, whether all other principles of the legal proceedings before

the Constitutional Court are complied with. The legal proceedings before the Constitutional Court are based on the principle of objective investigation. Following the initiation of a case, the Constitutional Court uses not only the arguments and evidence submitted by the participants of the case – the applicant and the institution that has issued the contested act, but also is searching for such arguments and evidence itself (*see, for example, Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 2.3. of the Findings*). In addition to the participants of the case providing arguments and evidence, the Constitutional Court also gathers these on its own initiative because the meaning and essence of the legal proceedings before the Constitutional Court is closely linked to the Court's active role in establishing the circumstances that are of legal importance for adjudicating the case and in gathering evidence.

The written reply by the *Saeima* provides considerations regarding the reason why the prohibition included in Para 1 of Section 50 of the Education Law to work as a teacher for a person, who has been punished for committing an intentional particularly serious crime, complies with the *Satversme*. However, while preparing the case, the materials of drafting Para 1 of Section 50 of the Education Law have been obtained, including the minutes and audio recordings of the sittings of 20 and 26 June 2012 of the Education, Culture and Science Committee of the 11th *Saeima* (*see Case Materials, Vol. 1, p. 99 and pp. 106 – 122).* Upon receiving the written reply, the Constitutional Court requested the *Saeima* to provide additional explanations, *inter alia*, also whether the prohibition to work as a teacher for a person, who has been punished for an intentional particularly serious crime, was proportional (*see Case Materials, Vol. 1, p. 98 and pp. 123 –125*). The legislator's will and considerations regarding the prohibition to work as a teacher for a person, who has been punished for an intentional particularly serious crime, can be derived from the materials that were obtained and the additional explanations provided by the *Saeima*. Likewise, the summoned persons where requested to assess, whether Para 1 of Section 50 of the Education Law, insofar it denied the right to work as a teacher to a person, who had been punished for committing an intentional serious or particularly serious crime, complied with Article 106 of the *Satversme* (*see Case Materials, Vol. 1, pp. 80 – 91 and pp. 100–103*). The opinions of the Ministry of Education and Science, the Ministry of Justice, the Quality Service, the State Inspectorate for Protection of Children's Rights, the Ombudsman, V. Liholaja and A. Judins on this matter have been received (*see Case Materials, Vol. 1, pp. 129 –139, pp. 142–149, and Vol. 2, pp. 1 –15*).

The Constitutional Court finds that the materials in the case are sufficient to examine the constitutionality of Para 1 of Section 50 of the Education Law both

with respect to a person, who has been punished for committing an intentional serious crime, and with respect to a person, who has been punished for committing an intentional particularly serious crime.

12.3. The Applicant notes that the prohibition to work as a teacher for a person, who has been punished for an intentional serious or particularly serious crime, included in the contested regulation is absolute. I.e., it is in force until the respective person's end of life and excludes the possibility of an individual case-by-case assessment (*see Case Materials, Vol. 1, p. 3*).

In the case law of the Constitutional Court, the compliance of prohibition, included in legal norms applicable to a certain group of persons and existing for unlimited term, with the *Satversme* has been repeatedly examined (*see, for example, Judgement of 23 April 2014 by the Constitutional Court in Case No. 2013-15-01, and Judgement of 10 February 2017 in Case No. 2016-06-01*). The European Court of Human Rights has also examined such prohibitions. It follows from the judicature of the European Court of Human Rights that the prohibition is general if it applies to a situation, which has already been precisely defined in the legal norm, and, thus, excludes the assessment of a particular case forever (*see, for example, Judgement of the European Court of Human Rights of 6 October 2005 in Case "Hirst (no. 2) v. the United Kingdom", Application No. 74025/01, Para 82, and Judgement of 22 April 2013in Case "Animal Defenders International v. the United Kingdom", Application No. 48876/08, Para 106*].

The prohibition established in Para 1 of Section 50 of the Education Law to work as a teacher applies to all persons, who have been punished for an intentional serious or particularly serious crime. It does not allow exemptions. Moreover, this prohibition has been established for life – it is in force for an unlimited period of time also after the criminal record has been extinguished or set aside. Thus, the prohibition included in Para 1 of Section 50 of the Education Law to work as a teacher for all persons, who have been punished for an intentional serious or particularly serious crime, is to be considered as being absolute.

Hence, in the case under review, the Constitutional Court will examine whether Para 1 of Section 50 of the Education Law, insofar it establishes an absolute prohibition for a person, who has been punished for an intentional serious or particularly serious crime, to work as a teacher (hereinafter – the contested norm), complies with Article 106 of the *Satversme*.

13. Article 106 of the *Satversme* provides: "Everyone has the right to freely choose their employment and workplace according to their abilities and

qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour."

The substantiation of the constitutional complaint does not pertain to a violation of the prohibition of forced labour; therefore, in this case, the compatibility of the contested norms with only the first sentence of the quoted Article should be examined.

13.1. The Constitutional Court has repeatedly recognised that the first sentence of Article 106 of the *Satversme* does not directly guarantee the right to work but rather the right to freely choose one's employment and workplace, *inter alia*, the right to retain the existing employment and workplace. Thus, the right to freely choose one's employment includes such important element as the right to retain the existing employment, which, in turn, includes the right to continue this employment also in the future (*see Judgement of 23 April 2003 of the Constitutional Court in Case No. 2002-20-0103, Para 3 of the Findings, and Judgement of 21 December 2015 in Case No. 2015-03-01, Para 14.2.*).

The Constitutional Court also has recognised that the concept of "employment" included in the first sentence of Article 106 of the *Satversme* should be understood as such type of work that requires appropriate preparedness and is the source of human existence, as well as a profession that is closely linked to an individual's personality as a whole. The concept "employment" is applicable to employment in both private and public sphere (*see Judgement of 18 December 2003 by the Constitutional Court in Case No. 2003-12-01, Para 7, and Judgement of 21 December 2015 in Case No. 2015-03-01, Para 14.1.*). The rights established in the first sentence of Article 106 of the *Satversme* apply also to a teacher's work.

The fundamental rights established in the first sentence of Article 106 of the *Satversme* protect a person against all actions by the State that restrict a person's right to choose his employment. However, this norm does not prohibit the State from setting requirements that a person must meet to take a certain employment (*see Judgement of 23 April 2003 by the Constitutional Court in Case No. 2002-20-0103, Para 3 of the Findings, and Judgement of 21 December 2015 in Case No. 2015-03-01, Para 14.2.*). The legislator has the discretion to set requirements with respect to certain professional activities, insofar this is necessary for public interests (*compare to Judgement of 18 February 2010 by the Constitutional Court in Case No. 2009-74-01, Para 14).*

The profession of a teacher is one of the most regulated ones, and the State may set elevated requirements for those who wish to work as a teacher (*compare to Judgement of 2 May 2007 by the Constitutional Court in Case No. 2006-30-03,*

Para 15). The teacher's profession is to be regarded as a profession of public importance – it is linked to the need to ensure to all persons the right to education enshrined in Article 112 of the *Satversme*. The Recommendation Concerning the Status of a Teacher of the United Nations Educational, Scientific and Cultural Organisation (hereinafter – *UNESCO*) and the International Labour Organisation (hereinafter – *ILO*) also underscores the importance of the teacher's role not only in ensuring quality of education and knowledge but also in developing students' attitudes and values (*see: ILO/UNESCO Recommendation Concerning the Status of Teachers, 1966*). Therefore the legislator has the right to set stringent requirements for persons wishing to work as a teacher, pertaining not only to their professional qualification and skills but also to their personality and previous experience. If the legislator has envisaged such requirements then these, *inter alia*, must be assessed as restrictions on the fundamental rights defined in Article 106 of the *Satversme*.

13.2. It follows from the case materials that the Applicant had worked as a teacher for a long time. The Quality Service had determined that the absolute prohibition to work as teacher applied to the Applicant because he had been punished for committing an intentional serious crime. Due to this reason, the Applicant no longer has the right to work as a teacher.

If a person has the appropriate abilities and qualifications for performing the work of a teacher but this person has been punished for committing an intentional serious or particularly serious crime, then the contested norm prohibits the person from working as a teacher.

Thus, the contested norm restricts a person's right to freely choose one's employment defined in the first sentence of Article 106 of the *Satversme*.

14. The right to freely choose one's employment, established in the first sentence of Article 106 of the *Satversme*, can be restricted; however, the Constitutional Court must examine, whether the restriction is justifiable, i.e., whether: 1) it has been established by law; 2) it has a legitimate aim; 3) it is proportional (*see, for example, Judgement of 20 May 2003 by the Constitutional Court in Case No. 2002-21-01, Para 2 of the Findings, and Judgement of 10 February 2017 in Case No. 2016-06-01, Para 21*).

15. To assess the compliance of the restriction on fundamental rights included in the contested norm with the first sentence of Article 106 of the *Satversme*, it must be, first and foremost, verified, whether the restriction on fundamental rights has been established by a law adopted in due procedure, i.e.

1) it has been adopted in compliance with the procedure established in regulatory enactments;

2) it has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments;

3) it is worded with sufficient clarity so that a person would be able to understand the content of the rights and obligations following from it and the consequences of application thereof (*see, for example, Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14*).

The participants of the case and the summoned persons hold the consensus that the contested norm has been adopted in the procedure established in regulatory enactments, has been promulgated and is publicly accessible in accordance with the requirements of regulatory enactments.

The wording of the contested norm was included in the draft law submitted to the Education, Culture and Science Committee of the 11th *Saeima* "Amendments to the Education Law" (draft law No. 296/Lp11), which was examined in urgent procedure in two readings. In the course of examining the draft law, proposals from the Legal Bureau and the Education, Culture and Science Committee of the *Saeima* were received and were discussed at the sittings of the Education, Culture and Science Committee of the 11th *Saeima* (*see Case Materials Vol. 1, pp. 107 – 122*). The restriction on fundamental rights included in the contested norm has been established by a law adopted by the *Saeima* on 5 July 2012 – "Amendments to the Education Law", which on 11 July 2012 was promulgated in the official journal "Latvijas Vēstnesis", No. 108 (4711). Thus, the contested norm has been adopted and promulgated in the procedure established by the *Saeima* Rules of Procedure.

The content of the contested norm must be determined in interconnection with the regulation, included in the Criminal Law, that defines particular crimes as being serious or particularly serious, as well as the court's judgement or the prosecutor's penal order in the particular criminal case. A person may understand the content of the rights that follow from the contested norm, as well as forecast the consequences of application thereof. Thus, the prohibition, included in the contested norm, that prohibits all persons, who have been punished for an intentional serious or particularly serious crime, to work as a teacher has been worded with sufficient clarity.

Hence, the restriction on fundamental rights that follows from the contested norm has been established by law.

16. Any restriction on fundamental rights should be based on conditions and arguments requiring it, i.e., the restriction is established for the sake of important

interests – a legitimate aim (*see, for example, Judgement of 22 November 2011 by the Constitutional Court in Case No. 2011-04-01, Para 16*). Article 116 of the *Satversme* provides that the rights envisaged in Article 106 of the *Satversme* "may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals."

If restrictions on rights have been established then, in the legal proceedings before the Constitutional Court, the institution, which has issued the contested act, in this particular case – the *Saeima*, has to present and substantiate the legitimate aim of such restrictions (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 12, and Judgement of 11 December 2014 by the Constitutional Court in Case No. 2014-05-01, Para 18*).

The *Saeima* notes that the contested norm had been adopted to protect the rights and interests of students, their parents, guardians and other members of their families. The contested norm is said to facilitate trust in teachers and the system of education in general. I.e., the legitimate aim of the restriction on fundamental rights is said to be the protection of other persons' rights and public welfare (*see Case Materials, Vol. 1, p. 76 and pp. 124 –125*).

16.1. Absolute prohibitions to work in particular professions for persons, who have been punished for criminal offences of various categories, are included in a number of regulatory enactments. For example, Para 1 of Section 55 of the law "On Judicial Power" provides that a person, who has been previously punished for a criminal offence (irrespective of whether the criminal record has been extinguished or set aside), may not be a candidate for the judge's office. Pursuant to Para 6 of Section 15 of Advocacy Law of the Republic of Latvia, a person, who has been punished for committing an intentional criminal offence, irrespective of whether the criminal record has been extinguished or set aside, may not be admitted as a sworn advocate. Likewise, pursuant to Para 2 of Section 21 (1) of the law "On Police", a person, who has been punished for committing an intentional criminal offence, irrespective of whether the criminal record has been extinguished or set aside, may not be an employee of the municipal police.

In compliance with the statement made in Para 13.1. of this Judgement, it must be recognised that the profession of a teacher, in view of the tasks and functions that it comprises, differs from other professions, with respect to which restrictions are also set by regulatory enactments. Therefore, the Constitutional Court, in examining the compliance of the restriction fundamental rights, will

take into consideration the fact that the restriction applies to a particular profession, i.e., that of a teacher.

16.2. Section 2 of the Education Law provides that the aim of this Law is to ensure that every resident of Latvia has the opportunity to develop his or her mental and physical potential, in order to become an independent and a fully developed individual, a member of the democratic State and society of Latvia. The process of education comprises not only teaching but also upbringing activities. In accordance with a student's age and needs, he is ensured the possibility to acquire the knowledge, skills and experience of attitudes that are required to participate in the life of the State and society. Likewise, the aim of education is to ensure the moral, aesthetic, intellectual and physical development of students, promoting the development of a knowledgeable, skilful and cultivated personality. The rights of all persons to education, defined in Article 112 of the *Satversme*, in fact, mean the right to such education that ensures that the aforementioned aims of the Education Law are attained.

The outcomes of internationally comparable studies conducted by the Organisation of Economic Cooperation and Development confirm that a teacher's education and professionalism are the factors that significantly impact students and their learning achievements (*see: Creating Effective Teaching and Learning Environments: First Results from TALIS. OECD, 2009. Available: http://www.oecd.org*). A teacher plays an important role in the development of personality (*compare*: *ILO/UNESCO Recommendation Concerning the Status of Teachers, 1966*). To ensure an appropriate teaching process and the attainment of purposes defined in the Education Law, not only the teacher's professional qualification and abilities but also his personality are important. Hence, the candidates for the position of a teacher must meet not only professional requirements but also elevated moral and ethical requirements.

The contested norm prohibits from applying for a teacher's position as well as from working as a teacher all persons, who have been punished for committing an intentional serious or particularly serious crime. Hence, the contested norm is aimed at ensuring that teaching and upbringing work would be performed by such persons who, themselves being a role model, facilitate the development of such personality who not only is able to use the knowledge and skills that he has acquired but also is aware of the need to comply with and enforce regulatory enactments, in particular, regulatory enactments that regulate criminal law. Thus, the possibility that a person, who has intentionally committed a serious or a particularly serious crime, even after the criminal record has been set aside or extinguished, would have the right to perform the teaching and upbringing work, could jeopardise students' right to education. Moreover, one of the most essential

pre-requisites of a successful process of education is trusting the teacher, not only by the students themselves but also by their parents and other family members. Thus, the regulation included in the contested norm is aimed at protecting the rights of other persons – students, *inter alia*, children, and their family members.

The perception held by the majority of society about the conduct, which is unacceptable in a democratic state governed by the rule of law and jeopardises harmonious functioning of society, is included, *inter alia*, in the Criminal Law, which defines what human actions or the failure to act is of criminal nature. It is doubtful, whether a person, who has been punished for committing an intentional serious or particularly serious crime, will be able to create in the students proper attitude towards the norms that are in force in society. Thus, the restriction included in the contested norms serves also the purpose of protecting public morals.

By the contested norm, the legislator has wished to promote the development of such harmonious society, where each member of the society is aware of and respects the interests of other persons, society and the State. The Constitutional Court has already recognised that the concept "public welfare" includes also intangible aspects that are necessary for as harmonious functioning of the society as possible (*see Judgement of 2 May 2007 by the Constitutional Court in Case No. 2006-30-03, Para 15*). Therefore the contested norm is aimed also at the protection of public welfare, in the intangible aspect thereof.

The Constitutional Court finds that the restriction included in the contested norm serves a number of legitimate aims indicated in Article 116 of the *Satversme*, such as protecting the rights of other persons, public morals and welfare.

Hence, the restriction on fundamental rights included in the contested norm has a legitimate aim.

17. In examining the proportionality of a restriction on fundamental rights, the Constitutional Court must verify:

1) whether the chosen measures are appropriate for reaching the legitimate aim or whether the legitimate aim can be reached by the chosen measure;

2) is this action necessary or whether the legitimate aim cannot be reached by measures that are less restrictive on an individual's rights;

3) whether the restriction is appropriate or whether the benefit that society gains outweighs the damage inflicted on an individual's rights.

If, in assessing a legal norm, it is recognised that it is incompatible with even one of these criteria then it is incompatible with the principle of proportionality and is unlawful (*see, for example, Judgement of 16 May 2007 by*

the Constitutional Court in Case No. 2006-42-01, Para 11, and Judgement of 21 December 2015 in Case No. 2015-03-01, Para 25).

18. The measures chosen by the legislator are appropriate for reaching the legitimate aim if this aim is attained by the particular regulation (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 13*).

The absolute prohibition included in the contested norm (*see Para 12.3. of this Judgement*) ensures that a person, who has been punished for an intentional serious or particularly serious crime, is not engaged in teaching and upbringing work. The application of the contested norm ensures that a person, who has not been previously punished for an intentional criminal offence, has the right to work as a teacher. A person, who has previously been punished for an intentional criminal offence, has the right to work as a teacher only if the criminal offence committed by him has been qualified as an intentional criminal violation or a less serious crime and if the Quality Service has issued to this person the permission to work as a teacher. Hence, the absolute prohibition for a person, who has been punished for an intentional serious or particularly serious crime, to work as a teacher is an appropriate measure for reaching the legitimate aims of the restriction on fundamental rights – protecting the rights of other persons, public morals and welfare.

Thus, the measure chosen by the legislator is appropriate for reaching the legitimate aims.

19. A restriction on fundamental rights is necessary if there are no other measures that would be as effective and the choosing of which would be less restrictive on human fundamental rights.

However, a more lenient measure is not just any other measure but only such measure by which the legitimate aim can be reached at least in the same quality (*see, for example, Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 14*).

Verification, whether alternatives measures that would be less restrictive on persons' fundamental rights established in the *Satversme*, falls within the jurisdiction of the Constitutional Court. Likewise, the jurisdiction of the Constitutional Court envisages that the Court has to determine, whether the legislator, in restricting the fundamental rights of a person or a group of persons, has considered whether, in the particular case, there are no alternative measures that would be less restrictive on the fundamental rights established in the

Satversme (*see, for example, Judgement of 30 March 2010 by the Constitutional Court in Case No. 2009-85-01, Para 19*).

In the case under review, it is examined, whether the absolute prohibition to work as a teacher for any person, who has been punished for an intentional serious or particularly serious crime, is compatible with the *Satversme*. In examining the compliance of the absolute prohibition included in the legal norm with the *Satversme*, Latvia's international commitments in the field of human rights must be taken into consideration. The norms of international human rights and the practice of application thereof serve as a means of interpretation to determine the content and scope of fundamental rights and general principles of law, insofar it does not lead to decreasing or restricting of the fundamental rights included in the *Satversme* (*compare to Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings, and Judgement of 18 October 2007 in Case No. 2007-03-01, Para 11).* The State's obligation to take into consideration the international commitments in the field of human rights follows from Article 89 of the *Satversme*, which provides that the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. This article clearly points to the constitutional legislator's aim to achieve harmony between the norms of human rights included in the *Satversme* and the international norms of human rights (*see, for example, Judgement of 30 August 2000 by the Constitutional Court in Case No. 2000-03-01, Para 5 of the Findings, and Judgement of 18 October 2007 in Case No. 2007-03-01, Para 11*).

It follows from the judicature of the European Court of Human Rights that in assessing the proportionality of an absolute prohibition it is examined, whether the legislator has: 1) substantiated the need for an absolute prohibition; 2) assessed its essence and the consequences of application thereof; 3) substantiated that if an exception to this absolute prohibition were envisaged the legitimate aim of the restriction on fundamental rights would not be reached in equal quality (*compare Judgement of 22 April 2013 by the European Court of Human Rights in Case "Animal Defenders International v. the United Kingdom", Application No. 48876/08, Para 108*).

Thus, also the Constitutional Court must ascertain, whether the legislator has:

1) substantiated the need for an absolute prohibition;

2) assessed its essence and the consequences of application thereof;

3) substantiated that if an exception to this absolute prohibition were envisaged the legitimate aim of the restriction on fundamental rights would not be reached in equal quality.

19.1. To substantiate the need for an absolute prohibition, the *Saeima* notes in its written reply that the prohibition to work as a teacher for all persons, who have been punished for an intentional serious or particularly serious crime, had been established because these were offences of the supreme degree of dangerousness and hazardousness for society (*see Case Materials, Vol. 1, p. 74*).

The initial wording of the Education Law provided that a person, who had been punished for an intentional crime and had not been exonerated, was not allowed to work as a teacher. Hence, the absolute prohibition to work as a teacher applied to all persons, who had been punished for committing any intentional crime. This regulation was applied until 1 October 2012, when the law "Amendments to the Education Law" entered into force, expressing the contested norm in the wording that is currently in force.

The annotation to the draft law "Amendments to the Education Law" shows that Para 1 of Section 50 of the Education Law was amended with the aim of establishing differential treatment, depending on the seriousness of the criminal offence that the person had committed (*see annotation to the draft law No. 296/Lp11 "Amendments to the Education Law" submitted to the* Saeima *on 14 June 2012*). The aforementioned amendments were envisaged "to balance the public interests and the possible infringement on an individual's rights" by the contested norm (*see the transcript of the sitting of the* Saeima *of 14 June 2012*).

Following these amendments, Para 1 of Section 50 of the Education Law provides that an institution designated by the Cabinet assesses, whether a person, who has been punished for an intentional crime, may work as a teacher and whether this will not be detrimental for students' interests, in a procedure established by the Cabinet. However, this possibility was applied only to a person, who had been punished for an intentional criminal violation or a less serious crime. The absolute prohibition to work as a teacher was retained in Para 1 of Section 50 of the Education Law with respect to a person, who had been punished for an intentional serious or particularly serious crime.

It follows from the case materials that the wording had been discussed at the sittings of the Education, Culture and Science Committee of the 11th *Saeima* (hereinafter – the Committee) on 20 and 26 June 2012. It follows from the minutes and audio recording of the aforementioned sittings that the proposal to envisage the possibility, in some cases, to examine a person's suitability for a teacher's job, had been submitted by the Legal Bureau of the *Saeima*. The Legal Bureau of the *Saeima* had substantiated this proposal by the need to make the existing regulation more flexible, envisaging the possibility to individually assess a person's suitability for a teacher's work in those cases, where the damage caused by a criminal offence was less serious. Hence, the respective proposal

envisaged retaining the absolute prohibition to work as a teacher for all persons who had been punished for an intentional serious and particularly serious crime, but in other cases, where a person has been punished for an intentional criminal violation or a less serious crime, to allow an individual assessment (*see minutes and audio recordings of the sittings of the Committee of 20 and 26 June 2012, Case Materials, Vol. 1, pp. 107 –109 and pp. 114 –115*).

The legislator has substantiated the need for the absolute prohibition, essentially, by the fact that serious and particularly serious crimes are crimes of higher level of dangerousness and hazardousness for public compared to intentional criminal violations and less serious crimes. I.e., they jeopardise the particularly important interests of persons, society and the State that are protected by the Criminal Law and causes damage to them (*see the written reply by the* Saeima, *Case Materials, Vol. 1, p. 74*).

Hence, the legislator has substantiated the need for retaining an absolute prohibition to work as a teacher for all persons, who have been punished for an intentional serious or particularly serious crime.

19.2. An absolute prohibition is admissible if the legislator has examined its essence and the consequences of application thereof. I.e., in establishing an absolute prohibition, the legislator has the obligation to ascertain and to substantiate that a prohibition like this is necessary in exactly the particular scope, as well as to examine the consequences of applying a prohibition like this.

19.2.1. The absolute prohibition to work as a teacher that is included in the contested norm applies to all persons, who have been punished for an intentional serious or a particularly serious crime. The special part of the Criminal Law comprises 200 sections that envisage liability for serious and particularly serious crimes, whereas the total number of dispositions applicable to the aforementioned crimes is 322 (*see Case Materials, Vol. 2, pp. 16 –20*).

In establishing an absolute prohibition to work as a teacher for persons, who have been punished for an intentional serious or particularly serious crime, the legislator had to examine and substantiate the reason why this prohibition should be absolute. In other words, the legislator's obligation was to assess, which interests were jeopardised by intentional serious and particularly serious crimes, and substantiate why an absolute prohibition to work ever as a teacher had to be determined for persons punished for any of these crimes

At the sitting of the Committee of 20 June 2012, L. Sīka, the Deputy State Secretary of the Ministry of Education and Science noted that the decision on whether and in what cases a person with a previous criminal record should be allowed to work as a teacher, should be based on the analysis of criminal offences included in the Criminal Law. At the Committee's sitting, the representative of

the Ministry of Education and Science also provided examples on how this matter had been regulated in other countries and made a proposal to define particular crimes, providing that persons punished for committing these would be prohibited from working as a teacher (*see the minutes and audio recording of the sitting of the Committee of 20 June 2012, Case Materials, Vol. 1, pp. 107 –109*). The proposal by the Ministry of Education and Science, which indicated concrete criminal offences and provided that a person punished for committing these should be prohibited from working as a teacher, was examined at the Committee's sitting of 26 June 2012. During the sitting, the representative of the Ministry of Education and Science explained that situations could be different and therefore it would not be correct to prohibit all persons with a previous criminal record from working as a teacher. Whereas objections to this proposal were linked, *inter alia,* to the absence of sufficient assessment, on the basis of which particular cases could be determined, where an absolute prohibition to work as teacher should be set (*see the minutes and audio recording of the sitting of the Committee of 26 June 2012, Case Materials, Vol. 1, pp. 114 –115*).

During the Committee's sitting, when discussing, whether the possibility of an individual assessment of a person's suitability for a teacher's work should be applicable only to those cases, where a person had been punished for an intentional criminal violation, or also to cases, where a person had been punished for an intentional less serious crime, examples were given of criminal offences that were qualified as an intentional criminal violation or a less serious crime. Some members of the Committee noted that an intentional criminal violation could be linked to a threat of violence and that in such a case a risk of violence would exist in the institution of education, and therefore the children's interests should be seen as the priority. The Legal Bureau of the *Saeima* explained that it was impossible to fully exclude risk; however, an individual assessment would be the best option. It was noted that situations could differ, therefore in some cases, where a person had been punished for an intentional criminal violation or a less serious criminal offence, his suitability for the work of a teacher could be assessed. For example, such probable situations were mentioned, where a teacher had committed an intentional criminal violation by defending another person but overstepping the limits of self-defence and inflicting bodily injuries, or where a teacher, being also a member of the Latvian National Guard, had violated the rules on detention and, thus, committed a less serious crime (*see the minutes and audio recording of the sitting of the Committee of 26 June 2012, Case Materials, Vol. 1, pp. 114 –115*). However, a similar discussion with respect to intentional serious and particularly serious crimes, taking into consideration the elements of

these crimes and the nature of interests jeopardises by these crimes, did not take place during the Committee's sittings.

The assessment of the preparatory materials of the contested norm and the way, in which its wording was examined at the Committee's sittings, confirmation cannot be obtained that the legislator had examined, on their merits, the interests of persons, society or the State that were jeopardised by the criminal offences, the perpetrators of which were prohibited from working as a teacher.

The special part of the Criminal Law comprises such serious and particularly serious crimes that are committed against a person's life, health, fundamental rights and liberties, freedom, morals and sexual inviolability. Also some of the crimes against the family or minors, included in Chapter XVII of the Criminal Law, are serious or particularly serious. There are also such serious and particularly serious crimes that are committed against the natural environment, property, general security and public order, traffic safety, procedure of governance and jurisdiction. The Criminal Law also defines some crimes in economy, in the service of public institutions or in the military service as serious or particularly serious crimes. Likewise, crimes against humanity, peace, war crimes, genocide, as well as crimes against the State are serious and particularly serious crimes.

The contested norm establishes an absolute prohibition for everyone, who has been punished for an intentional serious or particular serious crime, to work as a teacher, irrespectively of the interests – those of a person, society or the State – he has targeted by committing the respective crime. Establishing of an absolute prohibition for persons punished for an intentional serious or particularly serious crime can be justified, if it is substantiated. However, confirmation cannot be gained from the preparatory materials of the contested norm that the legislator had examined, whether, indeed, each case, when the committing of a criminal offence jeopardises particular interests of a person, society and the State, the prohibition to work as a teacher is substantiated.

The *Saeima* has not indicated in its written reply and neither does the Constitutional Court find that following the adoption of the contested norm the legislator had reviewed this matter and held discussions regarding the need to retain the absolute prohibition. This, *inter alia*, would allow the Constitutional Court to ascertain of those considerations, on the basis of which an absolute prohibition to work as a person was established for a person, who had been punished for an intentional serious or particularly serious crime, irrespectively of the interests he had jeopardised by committing the respective crime.

19.2.2. The prohibition to work as a teacher for a person, who has been punished for committing an intentional serious or particularly serious crime, has

been established for an indefinite period of time. The *Saeima* also notes that this is a long-term prohibition and, most probably, the person, to whom it applies, will have to choose another profession (*see Case Materials, Vol. 1, p. 79*).

When establishing an absolute indefinite prohibition and not envisaging any possibility for reviewing it, the legislator must ascertain that the legal consequences caused by this prohibition are proportional. Also at the Committee's sitting of 26 June 2012, when discussing whether the possibility to assess individually a person's suitability for the work of a teacher could be applied only to a person, who has been punished for an intentional criminal violation, or also a person, who has been punished for an intentional less serious crime, several participants of the discussion have noted that situations may differ and therefore a person should not always and in all cases be prohibited from working as a teacher (*see the minutes and audio recording of the sitting of the Committee of 26 June 2012, Case Materials, Vol. 1, pp. 114 –115*).

Although the restriction included in the contested norm that prohibits a person from working as a teacher is linked to the fact that a person has been punished for an intentional serious or particularly serious crime, nevertheless, it causes also such legal consequences that exist outside the criminal law relationship. It is linked to the possible impact by a person, who has committed any of the aforementioned crimes, on students and the process of education. Therefore, in establishing a prohibition for a person with a previous criminal record to work as a teacher, not only the interests that the person has targeted by committing the respective crime but also the criteria that characterise this person are important, for example, a person's attitude towards the previously committed crime and the lifestyle after committing it. The characteristics of a person applicable to this period are also essential. Also, it should be taken into consideration that a person's attitude towards the crime he has committed and also the system of values may change over time.

It follows from the case materials that the Applicant had worked as a teacher since 1998. Dobele District Court, examining the legality of an employer's notice of dismissal, had stated that the awards and writs of gratitude that the Applicant had received proved that he had performed his official duties with integrity for a number of years. The court underscores that diplomas and certificates proving acquisition of additional education indicate that the Applicant is interested in improving the quality of his work, in developing and promoting the field of sports in educational institutions of Dobele region. Likewise, the Applicant's employer has emphasised that he, undeniably, was a professional and highly qualified teacher (*see Case Materials, Vol. 1, pp. 13 –14 and pp. 17 –26*). This also is an example showing that a person, who has previously committed an intentional

serious or particularly serious crime, may change in the course of his life. The Constitutional Court cannot gain confirmation from the documents related to drafting and adoption of the contested norm that the legislator, in establishing an absolute prohibition to work as a teacher, had discussed the possibility of such cases on their merits and substantiated the need for an absolute prohibition also in such cases.

19.3. An absolute prohibition is admissible if the legislator has substantiated that by envisaging exemptions to this absolute prohibition the legitimate aim of the restriction on fundamental rights would not be reached in the same quality. I.e., the legislator, in establishing an absolute prohibition, not only must substantiate the need for such prohibition but must also ascertain that an absolute prohibition is the only measure for reaching the legitimate aim of the restriction on fundamental rights.

Thus, the Constitutional Court must verify whether the legislator, in establishing an absolute prohibition for all persons, who have been punished for an intentional serious or particularly serious crime, has ascertained that an exemption to this prohibition would prevent from reaching the legitimate aims of the restriction in fundamental rights in equal quality.

The Constitutional Court does not gain confirmation from the documents related to drafting and adoption of the contested norm that the absolute prohibition to work as teacher for all persons, who have been punished for committing an intentional serious or particularly serious crime, is the only measure for reaching the legitimate aims of the restriction on fundamental rights. The Constitutional Court noted that in a democratic state governed by the rule of law the legislator could include absolute prohibitions in legal norms; however, in such a case the legislator had to ascertain also that by envisaging exemptions to such prohibition the legitimate aim could not be reached in equal quality.

There may be various exemptions to an absolute prohibition, for example, a regulation that in certain cases allows individual assessment, as well as precisely defined exceptions in the law, and also regulation that envisages regular review of the necessity for a prohibition. The choice of the most appropriate solution falls within the legislator's discretion. The task of the Constitutional Court is to examine the compliance of the contested norm with the fundamental rights defined in the *Satversme* rather than substitute the legislator's discretion in the matter of law policy by its own opinion on the most rational legal regulation. The Constitutional Court may only point out that more lenient measures for reaching the legitimate aims exist (*compare to Judgement of 4 November 2005 by the Constitutional Court in Case No. 2005-09-01, Para 14.3., and Judgement of 19 January 2014 in Case No. 2013-08-01, Para 14*).

The Applicant and the summoned persons point to a number of alternative measures that would be less restrictive on a person's fundamental rights but would allow reaching the legitimate aims of the restriction of fundamental rights in equal quality.

19.3.1. The Applicant notes that following extinguishing or setting aside of the criminal record all restrictions on a person's rights in connection with the criminal record should cease (*see Case Materials, Vol. 1, p. 7*).

The restriction on the fundamental rights established in Article 106 of the *Satversme* exists irrespective of whether the criminal record has been extinguished or set aside. Thus, a person is prohibited from working as a teacher even after his criminal record has been extinguished or set aside in the procedure set out in Section 63 of the Criminal Law.

Extinguishing of the criminal record is automatic cessation of the criminal record after the period defined in Section 63 (3) of the Criminal Law has expired. Whereas setting aside of the criminal record means that the criminal law consequences connected with the criminal record cease before it would have been extinguished automatically. Pursuant to Section 63 (9) of the Criminal Law, extinguishment or setting aside of the criminal record annuls all criminal law consequences of the criminal offence.

This legal norm applies only to criminal law consequences, i.e., the previous criminal record, after it has been extinguished or set aside, is no longer to be taken into consideration in other criminal proceedings. However, in other relationships that exist outside the criminal law, the extinguishing or setting aside of a criminal record not always mean that the adverse legal consequences for a person linked to the criminal record have ceased. If it is provided in the special law that the restriction exists irrespective of extinguishing or setting aside of the criminal record, then these continue existing also after the criminal record has been extinguished or set aside in the procedure established in Section 63 of the Criminal Law (*see Case Materials, Vol. 1, p. 132 and Vol. 2, pp. 7 –8*).

Thus, the concept of a criminal record, in the broader meaning thereof, comprises also other legal consequences that may manifest themselves, *inter alia*, as a restriction on the right to freely choose one's employment. Moreover, a restriction like this may exist also after the criminal record has been set aside or extinguished. Regulation that would allow any person to work as a teacher after extinguishing or setting aside of the criminal record may cause situations, where the rights and interests of students and their family members would be jeopardised; moreover, that would not reinforce a system of education complying with the needs of society in general.

Hence, the legitimate aims of the restriction on fundamental rights included in the contested norm – protecting the rights of other persons, public morals and welfare – would not be reached in the same quality if any person were allowed to work as a teacher after extinguishing or setting aside of the criminal record.

19.3.2. The Applicant holds that the legislator could have defined particular offences and provide that a person, who has been punished for committing these, could not work as teacher, and envisage, in other cases, the possibility for individual assessment of a person's suitability to a teacher's work (*see Case Materials, Vol. 1, pp. 7 –9*). This opinion is shared also by A. Judins, who notes that, in separate cases, where a person has been punished for an intentional serious or particularly serious crime but it is not linked to violence or threat of violence, is not against morals or sexual inviolability, a possibility should be envisaged for assessing the suitability of this person for teacher's work (*see Case Materials, Vol. 2, pp. 14-15*).

The summoned person V.Liholaja, in turn, holds that in those cases, where a person has been punished for an intentional serious or particularly serious crime, which has not jeopardised the interests of another person, in particular, those of a minor, a specific period of time could be set, after the expiry of which the respective punished person could request an assessment of his suitability for a teacher's work (*see Case Materials, Vol. 1, pp. 148- 149*).

The procedure, in which the committee set up by the Quality Service assessed the suitability of a person, who has been punished for an intentional serious or particularly serious crime, is regulated by Regulation No. 195.

Pursuant to Para 10 of this Regulation, this committee, in assessing, whether the permission to work as a teacher to a person with a criminal record will not be detrimental for students' interests, takes into consideration also whether the issuing of such permission would not be contrary to the restrictions established in the Education Law and the Law on the Protection of the Children's Rights. In assessing the foreseeable impact on children, the committee must take into consideration also the restrictions established in the Law on the Protection of the Children's Rights that apply to the employees of any institution, where children stay, also to teachers. Section 72 (5) of the aforementioned law prohibits from working as a teacher persons, who have been punished for criminal offences that are linked to violence and threats of violence, as well as for criminal offences against morals and sexual inviolability.

Likewise, pursuant to Para 10 of Regulation No. 195, the committee takes into consideration the period of time that has passed since the criminal offence was committed, the type and nature of the particular offence and the person's

attitude towards it, the person's activities during the period from committing the criminal offence until the day the person has requested the permission to work as a teacher, as well as the person's testimonial during this period. The committee also assesses the risk for the students' health, security, intellectual and physical development, information indicated in the documents submitted by the person and other institutions, as well as the foreseeable influence on each target group of education.

It follows from the case materials that the Quality Service has issued 125 permissions to work as a teacher to persons, who have been punished for intentional criminal violations or less severe crimes (*see Case Materials, Vol. 1, p. 138*). Thus, the fact that a person has a criminal record not always has had a negative impact on his personality and has been the reason for an absolute prohibition to work as a teacher. Taking into consideration only the fact that a person has been punished for an intentional serious or particularly serious crime and without individually assessing the particular case, it is not always possible to ascertain in full that the fact of a criminal record has had an irreversible impact on the personality of the potential teacher.

In view of the fact that the crime, for which a person has been punished, is serious or particularly serious, the legislator has the right to set also additional requirements that must be met to make an individual assessment of the person's suitability for the work of a teacher. Likewise, after assessing and substantiating the need of a prohibition, the legislator has the right to determine that an absolute prohibition to work as teacher in the case of a previously committed particular intentional serious or particularly serious crime is the only measure for reaching the legitimate aims.

The possibility to assess individually, whether a person may work as a teacher, by no means guarantees to him the right to the particular employment. The Quality Services issues to the person the permission to work as a teacher only if the committee established by the Quality Service finds that it will not be detrimental to students' interests. It follows also from the materials of the case that the Quality Service, in deciding, whether persons, who have been punished for intentional criminal violations or less serious crimes, are suitable for the teacher's work, in four cases have refused to issue the respective permission to a particular persons because it had found that the risk of harm existed (*see Case Materials, Vol. 1, p. 138*). Moreover, in the case, if the Quality Service has at its disposal information that proves probable harm to the students' interests, the Quality Service repeatedly assesses the suitability of the particular person for a teacher's work and, if necessary, annuls the issued permission. Pursuant to Para 19 of Regulation No. 195, the decision by the Quality Service may be

appealed against to the Ministry of Education an Science, whereas the Ministry's decision may be appealed against in court in the procedure established by the Administrative Procedure Law.

Thus, the possibility to assess, whether a person, who has been punished for an intentional serious or particularly serious crime, may work as a teacher, would allow reaching the legitimate aims of the restriction on fundamental rights – protecting other persons' rights, public morals and welfare – in the same quality as now. Students, their family members and society and general would benefit from teachers, who are able to ensure the teaching process, working at the education institutions The purposes defined in the Education Law could be reached also if a person, who, although having had a criminal record for an intentional serious or particularly serious crime, has proven through his conduct and activities in the period following extinguishing or setting aside of the criminal record of being able to create in the students a proper perception of the norms that are in force in society. This would ensure both the protection of other persons' rights and of public morals. Hence, the development of a harmonious society would be promoted and public welfare – in the intangible aspect thereof – would be ensured.

At the same time, the fundamental rights of persons, who have been punished for intentional serious or particularly serious crimes, would be restricted to a lesser extent, since in some case, where the Quality Service would find that this would not be detrimental to students' interests, they would be permitted to work as a teacher. Thus, these persons, by investing their knowledge, competence and abilities in work, could be full-fledged members of society. As the Constitutional Court has noted, work is an indispensable source of human self-respect and self-realization in a democratic society (*compare to Judgement of 14 June 2007 by the Constitutional Court in Case No. 2006-31-01, Para 14.2.*). If a person has not only the skills and qualification required for a teaching job but also the calling to be a teacher then the possibility to work in this profession is an essential factor that promotes the development of socially positive understanding of values and full integration of this person in society.

19.4. It follows from the above that more lenient measures exist that, in view of the interests jeopardised by the criminal offence, would restrict to a lesser extent a person's fundamental rights defined in Article 106 of the *Satversme*. However, the legislator, upon establishing an absolute prohibition, has not determined, whether no alternative measures exist, likewise, it has not assessed and substantiated why in the case of a criminal record for committing an intentional serious or particularly serious crime an absolute prohibition to work as a teacher had to be established. The legislator has the right to establish an

absolute prohibition only if that is the only measure for reaching the legitimate aims.

Thus, the restriction is incompatible with the principle of proportionality and, hence, the contested norm is incompatible with Article 106 of the *Satversme.*

20. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force is to be recognised as being void as of the date when the judgement of the Constitutional Court has been published, unless the Constitutional Court has provided otherwise. Pursuant to Para 11 of Section 31 of the Constitutional Court Law, the Constitutional Court may indicate in the judgement the date, as of which the legal norm (act) that has been recognised as being incompatible with a legal norm of higher legal force becomes void.

The aforementioned norms of the Constitutional Court Law grant to the Constitutional Court broad discretion to decide on the date, as of which a legal norm that has been recognised as being incompatible with a legal norm of higher legal force becomes void. In deciding on the date from which the contested norm becomes void, not only the applicants' interests but also the rights and interests of other persons must be taken into account. Moreover, declaring a legal norm void may not cause new infringements on fundamental rights established in the *Satversme* (*see Judgement of 29 April 2016 by the Constitutional Court in Case No. 2015-19-01, Para 17*).

The Applicant has not requested recognising the contested norm as void retroactively. The Constitutional Court finds that in this case it is necessary and admissible that the norm, which is incompatible with the *Satversme*, remains in force for a certain period of time to provide the opportunity to the legislator to adopt a new legal regulation.

In view of the fact that the legislator needs a reasonable period of time for adopting a new legal regulation, the contested norm is to be recognised as being void as of 1 June 2018.

The Substantive Part

On the basis of Section 30 -32 of the Constitutional Court Law, the Constitutional Court

held:

to recognise Para 1 of Section 50 of the Education Law, insofar it establishes an absolute prohibition for a person, who has been punished for an intentional serious or particularly serious crime, to work as a teacher as being incompatible with Article 106 of the *Satversme* of the Republic of Latvia and void as of 1 June 2018.

The judgement is final and not subject to appeal.

The judgement enters into force on the date of its publication.

Chairperson of the court hearing I. Ziemele