



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga, on 21 December 2017,

in Case No. 2017-03-01

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, Jānis Neimanis and Artūrs Kučs,

having regard to an application submitted by twenty members of the *Saeima*,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), Section 19² and Section 28¹ of the Constitutional Court Law,

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

“On Compliance of the Fourth and the Sixth Part of Section 30, the Fifth and the Sixth Part of Section 48, Para 5 of Section 50, and Para 2¹ of the First Part of Section 51 of Education Law with the First Sentence of Article 100 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

The Facts

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

1.1. On 18 June 2015, the *Saeima* amended the requirements set for the head of an institution of education defined in Section 30 (4) of the Education

Law, providing that a person, who had impeccable reputation and who was loyal to the Republic of Latvia and its *Satversme* and had the relevant education had the right to work as the head of an institution of education.

At the same time it added the fifth part to Section 48, worded as follows: “A person, who is loyal to the Republic of Latvia and its *Satversme*, has the right to work as a teacher.”

The President promulgated the law of 18 June 2015 “Amendments to the Education Law”, and it entered into force on 16 July 2015.

1.2. On 23 November 2016, the *Saeima*, together with the law “On the State Budget for 2017”, adopted the law “Amendments to the Education Law”. The words “*inter alia*, does not breach the prohibition of discrimination and differential treatment of a person“ were added to the first sentence of Section 30 (4) and Section 48 (5) of the Education Law. The sixth part was added to Section 30 of the Education Law in the following wording: “It is prohibited from being in the position of the head of an educational institution, if the State Education Quality Service or the employer has established that the head of the educational institution or his conduct does not meet the requirements defined in Section 30(4) of this Law, or Para 2¹ of Section 51(1).” The sixth part was added to Section 48 of the Education Law: “It is prohibited from being in the position of the teacher, if the State Education Quality Service or the employer has established that the teacher or his conduct does not meet the requirements defined in Section 30 (4), the first and the fifth part of this Section, or Para 2¹ of Section 51(1).” Whereas Section 50 of the Education Law that provides, which persons may not work as a teacher, was supplemented with Para 5 worded as follows: “A person, who has been dismissed from the position of a teacher, if it has been established in a procedure defined in regulatory enactments that his conduct does not meet the requirements set in Section 30(4), Section 48(5) or Para 2¹ of Section 51(1) of this Law and one year has not passed after legal employment relationship was terminated, is not entitled to work as a teacher.” Moreover, the *Saeima* amended also Section 51 (1), adding the following duty to the enumeration of a teacher’s general duties in the process of education: “To bring up decent, honest, and responsible people – patriots of Latvia, to strengthen affiliation with the Republic of Latvia” (Para 2¹ of Section 51 (1)).

The law “Amendments to the Education Law”, which, *inter alia*, included the aforementioned amendments to its Section 30, 48, 50 and 51, was examined in two readings. The President promulgated the law on 10 December 2016, and it entered into force on 1 January 2017.

1.3. Thus, the fourth and the sixth parts of Section 30 of the Education Law, respectively, provide:

“(4) A person, who has impeccable reputation, who is loyal to the Republic of Latvia and its *Satversme*, *inter alia*, does not breach the prohibition of discrimination and differential treatment of a person, has the relevant education and the necessary professional qualification is entitled to work as a head of an educational institution. A person who has a higher pedagogical education or a higher and pedagogical education is entitled to work as a head of a general basic or general secondary educational institution, as well as a person who has a higher education who is acquiring a pedagogical education.”

“(6) If the State Education Quality Service or the employer establishes that the head of an educational institution or his conduct does not meet the requirements defined in the fourth part of this Section or Para 2¹ of Section 51(1), then the person is prohibited from being in the position of the head of an educational institution.”

The fifth and the sixth part of Section 48 of the Education Law, respectively, provide:

“(5) A person, who is loyal to the Republic of Latvia and its *Satversme*, *inter alia*, does not breach the prohibition of discrimination and differential treatment of a person, has the right to work as a teacher.

(6) “It is prohibited from being in the position of a teacher, if the State Education Quality Service has established, in procedure established by regulatory enactments, that the teacher or his conduct does not meet the requirements defined in Section 30(4) of this Law, the first and the fifth part of this Section, or Para 2¹ of Section 51(1).”

Para 5 of Section 50 of the Education Law provides that a person, who has been dismissed from the position of a teacher, if it has been established in a procedure defined in regulatory enactments that his conduct does not meet the requirements set in Section 30(4), Section 48(5) or Para 2¹ of Section 51(1) of this Law and one year has not passed after legal employment relationship was terminated, is not entitled to work as a teacher.

Finally, Para 2¹ of Section 51 of the Education Law provides that one of the general obligations of a teacher in the process of education is “to bring up decent, honest, and responsible people – patriots of Latvia, to strengthen affiliation with the Republic of Latvia” (hereinafter jointly also – the contested norms).

2. The applicants – twenty members of the Saeima (hereinafter – the Applicant) – hold that the contested norms are incompatible with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*).

The Applicant holds that the contested norms set a requirements for a teacher that he should not only act loyally towards the Republic of Latvia and express opinions that are loyal to the Republic of Latvia and its *Satversme* but also should hold such internal conviction. Moreover, it is maintained that this requirement applies to all aspects of the freedom of expression both in the teacher’s professional activities and his private life. It is alleged that a restriction like this infringes upon a teacher’s right to the freedom of speech.

Likewise, the contested norms are said to place disproportional restrictions on a teacher’s right to employment. I.e., a teacher is prohibited from working in his profession if incompatibility with the requirements set in the contested norms is established.

Hence, the Applicant requests the Constitutional Court to examine, whether all contested norms as a united legal regulation that prohibits persons, who do not comply with the requirements set in the contested norms, from taking the position of the head of an educational institution and work as a teacher comply with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme*.

The Applicant also contests that the law of 23 November 2016 “Amendments to the Education Law” had been adopted in compliance with the procedure set in regulatory enactments. The Applicant holds that the contested norms that were adopted by this law were not linked to the state budget and, thus, there had been no grounds for including the respective draft law in the package of

the draft budget laws. Moreover, the contested norms had been adopted in haste and had not been discussed with the direct addressees thereof – teachers. The Applicant noted that in the case if the respective draft law had been proceeded with in the general procedure and had been examined by the *Saeima* in three readings, which provided much broader possibilities both for submitting proposals and for discussions at the parliamentary committees, by inviting experts and representatives of the NGOs of the sector, then, most probably, the *Saeima* had chosen a regulation with a considerably different content.

In assessing the legitimate aim defined by the *Saeima* – protection of public interests, democracy and national security, the Applicant expresses the opinion that it could only partially be recognised as being the legitimate aim for restricting the freedom of speech guaranteed in the first sentence of Article 100 of the *Satversme*. It is maintained that presently the term “democracy” does not mean only the implementation of the majority’s will. Democracy is said to comprise, to the same extent, also other values: openness, tolerance against various, also critical and even shocking ideas, a dialogue leading to the formation of personal conviction and views. For the protection of the democratic state order, it is said to be of equal importance to facilitate the students’ sense of belonging to Latvia and also national self-confidence as well as to ensure openness, tolerance, dialogue and critical thinking. Nowadays, it can no longer be considered that for the protection of a democratic state order a person, *inter alia*, a teacher, could be prohibited from holding his own personal views and from expressing them even in the case if they comprise a critical attitude towards the State, insofar the person, in expressing these opinions, does not contest the statehood of the Republic of Latvia as such, does not call for violence and does not violate the norms of conduct generally accepted in society. In view of the fundamental importance of the basic right to maintaining and expressing one’s own opinions, guaranteed in the first sentence of Article 100 of the *Satversme*, in a democratic society, the legislator’s general reference to the need to protect the interests of the State and society, democracy, security and future development is

said to be insufficient grounds for restricting an individual's right to the freedom of speech.

The Applicant holds that alternative measures exist that would allow reaching the legitimate aim in a way less restrictive upon an individual's rights, for example, by assessing the teacher's possible violations in the procedure established in the Labour Law. Likewise, the Applicant holds that the duty of loyalty should not be established in law but should be embodied in practice by facilitating the teachers' and society's as a whole loyalty to State and its *Satversme* "by deeds" – by implementing such policy of the State that would meet and balance the interests of various social groups, would ensure the growth of national economy and raise the public welfare.

The arguments that the Applicant has provided in connection with the right to freely choose one's employment mainly pertain to the procedure, in which a teacher's and the head's of educational institution compliance with the requirements included in the contested norms is to be verified.

Allegedly, the contested norms are not appropriate for reaching the legitimate aims. The Applicant underscores that alternative measures exist, by which the legitimate aims of the restriction could be reached in a way less restrictive upon the individual's rights. For instance, the decision on a teacher's possible disloyalty could be adopted by the employer in accordance with the valid regulation of the Labour Law. The Applicant holds that the teacher's loyalty would be examined in a way more lenient towards him. The application of the mechanism included in Section 30 (6) and Section 48 (6) of the Education Law does not ensure better protection of students' interests compared to the protection by applying the regulation of the Labour Law.

3. The institution, which issued the contested act, – the *Saeima* – holds that the contested norms comply both with the first sentence of Article 100 of the *Satversme* and the first sentence of Article 106 of the *Satversme*.

The *Saeima* points out that the contested norms impose the obligation on the teacher and the head of an educational institution to be loyal to the Republic

of Latvia and its *Satversme*, not to the incumbent government, a certain official or a political force. The loyalty requirement is said to apply not to any private action but only to such action that might leave an impact on students or could influence the process of education and its outcomes.

The contested norms are said to be adopted in due procedure and no violations of the norms regulating the legislative process have been committed in the framework of adopting these norms.

The contested norms are said to have a legitimate aims – protection of other persons' rights and the democratic state order. In the process of education, ensuring the rights and interests of the student is said to hold priority, and this, in particular, applies to minors. The contested norms are necessary to prevent, to the extent possible, risks to the national security and public interests, democracy, and national security and development. Therefore it is essential to ensure that persons, who are able to provide quality education, which, *inter alia*, includes compliance with the requirements of the contested norms, work as teachers and heads of educational institutions.

The contested norms are said to be appropriate for reaching the legitimate aims. The *Saeima* underscores the teacher's significant influence on the student not only during acquisition of a certain study programme but also outside it, in daily contacts with the students. It is maintained that the application of the contested norms would ensure that a person, who is disloyal to the Republic of Latvia or its *Satversme* or violates the prohibition of discrimination and unequal treatment or does not perform the obligation to reinforce the students' affiliation with the State of Latvia, will not continue working with students.

The *Saeima* holds that the benefit that society gains from the application of the contested norms outweighs the damage inflicted upon a teacher's and the head's of an educational institution right to freedom of speech and the right to freely choose one's employment.

A person, who chooses the teacher's profession, should be aware of the fact that it is linked to a number of restrictions both with regard to criminal record and professional qualifications and the content of education that must

meet a certain standard set by the State. A teacher should take into consideration that he will not be able to exercise the freedom of speech to the same extent as the representatives of other professions. The interests of students and society in general are said to take the priority over the restrictions on the freedom of expression established for a teacher and the head of an educational institution. Likewise, the interests of society should be given preference compared to temporary restrictions on the right to freely choose one's employment envisaged by the contested norms.

Moreover, the *Saeima* expresses the opinion that the contested norms do not restrict an individual's right to be active in the civic and the political sense. They are said to allow exercising the freedom of speech in a way that complies with the *Satversme* and a teacher's ethics, *inter alia*, also to analyse and criticise the political and social process, actions by some officials or the government. Likewise, the loyalty requirements do not prohibit from organising work with the students in a way that encourages critical thinking, develops the ability to express, hear and analyse various opinions. However, the opinion or action by a teacher or the head of an educational institution, which influence students' opinion or attitude, may not undermine their loyalty to the State of Latvia as a value *per se* and the foundations of the *Satversme* or make them question their affiliation with the State of Latvia and its society.

The *Saeima* underscores that irrespectively of the party, which adopts the decision on the incompatibility of a teacher or the head of an educational institution with the requirements of the contested norm, – the employer or the State Education Quality Service (hereinafter – SEQs), this decision is subject to a judicial review. If the employer adopts this decision and, on the basis of it, dismisses the teacher from performance of job duties, then the teacher, in accordance with the Labour Law, has the right to turn to the court of general jurisdiction in civil law procedure. Whereas the administrative acts adopted by SEQs and its actual actions may be appealed against in the framework of the administrative procedure in the institution and the administrative court. Moreover, it should be taken into consideration that the contested norms do not

impose an obligation on the employee to terminate the legal employment relationship with the teacher or the head of an educational institution. The employer has the obligation only to ensure that the respective person does not take the position of a teacher or the head of an educational institution. If the employer is able to ensure to the person another occupation he has the right to not terminate the legal employment relationship with the particular person.

The temporary prohibition to take the position of a teacher or the head of an education is said to ensure immediate protection of a students interests and to serve as a preventive mechanism for the future. Hence, no alternative measure is available that would allow reaching the legitimate aim in the same quality and would be less restrictive on teachers' rights.

The interest of students and the society in having every teacher and head of the educational institution loyal to the Republic of Latvia is said to be more important than the damage inflicted on an individual's right to freely choose one's employment. The *Saeima* underscores that the restriction on the right to freely choose one's employment established by the contested norms is temporary. The term of the prohibition – one year – is said to proportionate, and after the expiry thereof it is possible to return in employment.

4. The summoned person – the President's Chancery – holds that in the case under the review the practice of applying the contested norms is of particular significance.

Since the law “Amendments to the Education Law”, adopted on 23 November 2015, had caused extensive public discussions, the President had received the requests by the leaders of the Latvian Trade Union of Education and Science Employees and the Association of Leaders of Education of Latvia to not promulgate it and return to the *Saeima* for repeated review.

Upon having acquainted himself with the materials for preparing the aforementioned amendments to the law, the course of discussing these in the *Saeima* and hearing the opinions expressed during the meeting organised in connection with the request of repeated examination of the law on 30 November,

the President had concluded that all the stakeholder shared the consensus: the requirement regarding the heads' of educational institutions and teachers' loyalty to the Republic of Latvia and its *Satversme* was necessary. The main objections had been linked to the fact that these norms, which were important for the Latvian society in general and which had no direct impact on the state budget, had been included in the package of draft budget laws for 2017, that the amendments to the law had been drafted in haste, in poor quality, without more extensive public discussions, which, allegedly, jeopardised not only the successful application of these norms but also offended numerous thousands of heads of educational institutions and teachers who performed their job honestly every day.

At the meeting dedicated to examination of the requests of repeated review of the law, the *Saeima* Legal Bureau had confirmed that in the adopted wording of the amendments to the law no contradictions with the *Satversme* of the Republic of Latvia or the international commitments binding upon Latvia could be discerned and had drawn attention to the fact that whether these amendment to the Education Law would be applied in compliance with the purpose thereof would depend on the parties applying the norms.

Upon deciding to promulgate the law of 23 November 2016 "Amendments to the Education Law", the President had sent a letter to the Speaker of the *Saeima* and the Prime Minister calling upon them to follow closely the practice of application of these norms to identify and prevent possible problems in a timely manner.

The President had emphasized in his letter that one of the aims of the education system was to ensure to all inhabitants of Latvia the possibility to develop into a member of a democratic state and society and that, in order to reach this aim, the heads of educational institutions and teachers had to fulfil their duty – to bring up patriots of Latvia. This was said to be possible only in the case if the heads of educational institutions and teachers were loyal to the State of Latvia and its *Satversme*.

However, the President had noted in his letter: “Also in the package of the budget draft law of this year, such issues that are not linked to the state budget and the use of the state budget resources have been included, including the law referred to above, “Amendments to the Education Law”. The package of the draft budget laws should not turn into a convenient tool for swiftly deciding on controversial or belated issues that are not linked to the use of the state financial resources. This not only increases unnecessarily the size of the package of the draft budget laws but also limits the possibilities to discuss and debate in full the matters with the representatives of the sectors and the stakeholders from society.” In his letter, the President had also noted the need for improving the procedure for developing the package of the draft budget law and for submitting proposals to make the drafting of the state budget and the related laws transparent and to facilitate the public trust in the decisions adopted by the state power.

5. The summoned person – the Ministry of Justice – holds that loyalty means recognition of, compliance with and respect for the fundamental values of a democratic state governed by the rule of law. It is said to be loyalty to the values and fundamental principles defined in the *Satversme*. However, loyalty to the State and its constitution does not mean that persons would not have the right to criticise the actions of public officials or to express dissatisfaction with the decisions adopted by concrete officials. However, such statements or actions, which are clearly aimed against the independent statehood, sovereignty and territorial unity of the Republic of Latvia, are said to be inadmissible.

Loyalty as faithfulness, esteem, respect, attachment to something, in this case, – to the State of Latvia and its *Satversme*, is to be recognised as one of the highest and most important virtues and moral principles, which have existed and continue in all societies. Loyalty is based on the voluntary principle, i.e., it is a person’s internal conviction that he, on his own free will, not being forced by anyone, respects the State and its constitution, abides by laws and fulfils his citizen’s obligations with integrity.

However, the Ministry of Justice draws attention to the fact that there should be concrete criteria, following the evaluation of which it could be

objectively established that a teacher or the head of an educational institution is disloyal in his professional activities. Unfounded interpretation of the contested norms contrary to the purpose thereof and, consequently, incorrect application would be inadmissible.

Likewise, a clear procedure is said to be necessary regarding the way, in which a person in this process could defend his rights, *inter alia*, the right to point out ungrounded and unproven statements and to provide his own arguments. The Ministry of Justice underscores that it must be ensured that as the result of application of the contested norms the legal employment relationship with a teacher or the head of an educational institution should be terminated on the basis of clear and objective criteria, as well as by abiding with a clearly established procedure. Thus, the Ministry of Justice holds that the methodology for identifying and assessing the violations of the loyalty requirements in the professional activities of heads of educational institutions and teachers should be established in an external regulatory enactment.

6. The summoned person – the Ministry of Education and Science – holds that the restrictions included in the contested norms have been established by a law adopted in due procedure. The contested norms are said to be linked to the state budget since they create legal grounds for allocating financial resources to SEQS, so that it would supervise and control compliance with the new legal norms.

The Ministry holds that the aim of the restrictions established by the contested norms is to ensure that only such persons would perform the work of a teacher or the head of an educational institutions who have impeccable reputation and who are able to teach and to perform educational work successfully, as well as work creatively with students. A teacher's personality and professional qualification is said to a pre-condition for implementing the aim of the Education 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. If the teacher is not loyal to the Republic of Latvia or its *Satversme* or violates the prohibition of discrimination or differential treatment or persons, then there are grounds to assume that this experience will influence a student's thinking. This might jeopardies the process of a personality's development. Hence, the established restrictions are said to have a legitimate aim, and, in a broader sense, they include the protections of both the democratic state order and other persons' rights.

The restrictions established by the contested norms are said to be proportionate because they are appropriate for reaching the legitimate aim and the benefit that society gains is said to outweigh the damage inflicted on an individual's rights and lawful interests.

7. The summoned person – the Ombudsman – holds that the contested norms cannot be examined as a united legal regulation.

Allegedly, in the current geopolitical situation loyalty requirements need to be set for teachers. It is said to be important that the teacher not only would have an impeccable reputation, would be knowledgeable, just and tolerant but also loyal to the Republic of Latvia. The national self-consciousness of the students is said to depend, to a large extent, on the personal qualities, individual initiatives of the teaching staff and also their ability to conduct systematic upbringing work to promote awareness of statehood. The teacher is an authority for the student also outside the school. However, the Ombudsman underscores that, in the context of the contested norms, the concept of loyalty should be interpreted narrowly, applying it only to the core of the *Satversme*.

Although the teacher's profession *per se* sets certain standards of ethics, including that of tolerance and forbearance, the teacher should not be excessively restricted in his professional activities. A teacher should teach pupils to think not only to implement instructions, therefore they should be allowed to express their opinion on what is happening in society. The dynamic and continuous development of society sets the task for the educational system to respond adequately to social innovations, therefore attention should be focused on the

problems related to the development of an autonomous, free personality endowed with critical self-confidence. The freedom of speech is said to be of particular importance in such subjects as history or social sciences, which usually require the teacher to facilitate discussions about controversial issues. For example, issues in history sometimes can be very contradictory and complicated. The Ombudsman admits that the loyalty requirements might make teachers afraid to discuss such issues; however, he holds that the discussions thereof would not violate the loyalty requirements.

The Ombudsman acknowledges that the contested norms, which were adopted together with the state budget for 2017, should have been examined by the *Saeima* in three readings to ensure proper discussions with teachers and experts. In fact, discussions about the adopted amendments among the addressees of the contested norms had not taken place, and thus, there are doubts whether it is clear to teachers how to comply with the loyalty requirements. In order for teachers to be free in their professional activities, they should have a clear understanding of the substance of the concept of loyalty as well as the way, in which compliance with the loyalty requirements will be assessed. The lack of clarity or doubts whether certain actions could be interpreted as disloyal could impede teachers' professional activities. Moreover, the opinions of a student are shaped not only by the educational institution and teachers but also by parents, family members, and peers. Situations might occur, where family members or peers express thoughts that are disloyal to the Republic of Latvia and the *Satversme* and that influence the student, and, in a case like that, it would be hard to prove that a teacher is not to be blamed for it.

The Ombudsman holds that the restriction on fundamental rights has legitimate aims – protecting the interests of the State and society, democracy, national security and development.

The measure chosen by the legislator is said to be appropriate for reaching the legitimate aims, and these could not be reached by other means. Likewise, the benefit that the society gains is said to outweigh the damage inflicted on persons' rights and lawful interests.

The legitimate aim of the restriction is reached by dismissing a teacher or the head of an educational institution. By these means, a teacher or the head of an educational institution is isolated from students and no longer can express in front of them an opinion, which undermines the foundations of the Latvian statehood. At the same time, the Ombudsman underscores that special responsibility will lie upon the parties applying the contested norms; they will assess each case individually and with utmost care. The correct application of the contested norms, i.e., such that complies with the meaning and legitimate aims thereof, will depend on their understanding of the concept of loyalty. It is underscored that a uniform approach to the interpretation of the established restrictions is important and that the assessment of the violations committed both by a teacher and the head of an educational institutions should be done in a similar procedure in the administrative procedure.

The Ombudsman holds that the established restriction on the freedom of speech is proportionate and complies with the first sentence of Article 100 of the *Satversme*; however, is incompatible with the first sentence of Article 106 of the *Satversme*, insofar it allows differential procedural order for assessing the loyalty of a teacher and the head of an educational institution.

8. The summoned person – the Latvian Trade Union of Education and Science Employees (hereinafter – LIZDA) – holds that teachers who are loyal to Latvia should work in educational institutions; however, the amendments to the Education Law that were adopted on 23 November 2016 are incompatible with the *Satversme*.

LIZDA, at the time, had turned to the President asking to not promulgate the said amendments to the law and return them to the *Saeima* for repeated examination. LIZDA is of the opinion that the contested norms should have been examined by the *Saeima* in three readings. The particular amendments had not been linked to the granting of financing from the state budget. Already at the sitting of the Cabinet on 4 October 2016, the social and cooperation partners had pointed out that the norms of the draft law linked to the employment prohibition

for teachers and heads of educational institutions disloyal to the State should be deleted from the draft law to discuss these first of all with teachers and experts of the sector.

It is important for every teacher to know and to understand his rights. The legislator has not defined what a disloyal teacher is. Hence, the representatives of the parties involved in education process are said to be given extensive discretion in interpretation. The teachers, who do not know or do not understand the substance of their work assessment, allegedly, will always feel anxious and confused when contacting the controlling institutions. Likewise, it is not clear how it will be established when the teacher is to blame and when the student himself has not acted with integrity, i.e., how deficiencies in the process of upbringing will be identified, moreover, taking into account that the outcomes of the process of upbringing do not always depend only upon the teacher. LIZDA holds that a teacher's obligations may be included in the employment contract or the job description, which, in accordance with the Labour Law, are mandatory for all employees.

In fact, the contested norms establish a prohibition to work since the teacher, who has been recognised as being disloyal, has been prohibited from working in the profession because a teacher, who has been recognised as being disloyal, actually will not be able to work in his profession also after the one-year long break because an employer will not want to subject itself to risk and troubles which later on could be caused by institutions of public administration.

The Ministry of Education has expressed the opinion that “the loyalty problems” affect approximately 30 teachers. LIZDA underscores that in the state, in general, 43 000 pedagogical staff (teachers, directors, deputy-directors, librarians, psychologists, speech therapists, social pedagogues, etc.) work in the field of pre-school, general and vocational education. Thus, LIZDA holds, that the problem is not widespread and should be handled in a different way. In general, the amendments are said to show that the Ministry does not understand the importance of a constructive dialogue in a democratic state and does not trust

teachers, their professionalism integrity, loyalty to the Republic of Latvia and its *Satversme*.

9. The summoned person – Ph. D. (Cantab.) Marija Golubeva – holds that the requirements set for teachers and directors of educational institutions to support democracy and human rights and to not violate the prohibition of discrimination and differential treatment of persons comply with the position of UNESCO regarding the ethics of teaching staff, *inter alia*, the UNESCO Recommendation Concerning the Status of teachers [*see: United Nations Educational, Scientific and Cultural Organisation (1966) Recommendation Concerning the Status of Teachers* (hereinafter – UNESCO Recommendation)] and the declaration of the international teachers' union *Education International* on professional ethics (hereinafter – the Declaration).

M. Golubeva underscores that the concept of loyalty is not easily defined not only in the practice of public administration but also in the political and legal science, thus, it is open to broad political interpretations. The loyalty requirements set for teachers and heads of educational institutions in the Education Law could be given a very broad interpretation.

Pursuant to UNESCO Recommendation (*see UNESCO Recommendation, Section III, Para 3*) one of the aims of education is the spiritual, moral, social, cultural and economic progress of the community, as well as inculcation of respect for human rights. However, it has been recognised in UNESCO Recommendation that the teacher's profession is linked to academic freedom in the discharge of professional duties (*see ibid., Para 61*). This, allegedly, means that the teacher, *inter alia*, has the obligation to support by his professional activities in the process of education the development of the community and that a teacher as a professional who enjoys academic freedom has the competence to determine the best means for reaching this aim. Moreover, a teacher should be free to exercise all civic rights generally enjoyed by citizens, i.e., all fundamental rights, including the freedom of speech, apply to teachers in full (*see ibid., Para 80*).

The majority of Latvian teachers are members of LIZDA. LIZDA, in turn, is a member organisation of the international teachers' union *Education International*. Pursuant to the Declaration, a teacher has the obligation to bring up the students so that they would be ready to contribute to society. Para" f" of Article 1 of the Declaration includes the requirement that teachers should promote democracy and human rights. However, the Declaration forbids teachers to use their position of power with respect to students and, thus, to exert ideological control (*see Declaration, Para "j" of Article 2*). Promotion of narrowly interpreted patriotism could be equalled to ideological control. For example, in the case, where the head of an institution, respecting the students' views, would allow one of them – a pacifist – not to attend a commemorative event in honour of the participants of a military conflict, an official of the local government (the employer) might interpret this action of the head of the educational institution as incompatible with the loyalty requirements.

It is underscored in UNESCO Recommendation that it is advisable that the codes of ethics that comprise requirements regarding teachers' professional activities would be drafted by extensively involving teachers themselves in this process (*see UNESCO Recommendation, Para 73*) and that teachers should be protected against ungrounded persecutions that might harm their professional activities or career (*see UNESCO Recommendation, Para 46*).

In a number of European countries, the involvement of teacher organisations or representative thereof in committees or councils that have been entrusted with the disciplinary procedures linked to teachers' ethical violations is considered to be the best practice.

The contested norms had not been discussed with teachers. Moreover, the responsibility for the control over the requirements included in them has been entrusted to state and municipal officials, who are not obliged to consult the representatives of the teacher's profession before taking the decision on the incompliance of a teacher or the head of an educational institution. Thus, state and municipal officials have been imposed the obligation to interpret the very important concept with broad content as the loyalty to the Republic of Latvia,

without involving in this assessment the representatives of professional organisations. An approach like this to the assessment of teachers' professional compliance is said to be incompatible with the international practice.

The degree of control over some aspects in teachers' professional activities and conduct is said to be different in different countries and to reflect the opinions of the public administration and society on the essence of the teacher's profession. In such countries as Azerbaijan and Russia, where the control of the central power over all aspects of public life is very strict, the control over the compliance with the teachers' norms of ethics is said to be prerogative of the public administration. Whereas in such countries as Sweden, Finland and Denmark, the teachers organisations have been entrusted with the responsibility over complying with the teacher's ethical standards and also with the control over the compliance. Some states and regions combine both approaches. In Latvia, the responsibility of teachers' organisations for teachers' ethics should be reinforced, following the model of other democratic states.

10. The summoned person – *M. Phil., Ph. D. (Cantab.) Roberts Kīlis* – notes that setting various requirements for teachers and heads of educational institution in connection with demonstration of loyalty to the State historically had been a widespread practice. Such requirements had been set, for instance, in the United Kingdom, the United States of America, the Republic of Turkey, and Japan. In the Member States of the European Union, restrictions to teachers, predominantly, are envisaged in connection with offences of criminal nature.

R. Kīlis holds that it is very difficult to define loyalty to the State and its constitution in a free society and that the risks related to the establishment of the respective restrictions outweigh the eventual benefits. He holds that the contested norms should not be supported. The greatest damage that the contested norms create are said to be fear and self-censorship, which prohibit them from acting creatively and freely in their professional activities. The ability to judge critically is said to be one of the most important future competences in life and in labour market. This means – to question, to examine comprehensively, to criticise and to

argue. In the context of pedagogy this is admissible without any restrictions. The contested norms might cause problems in analysing and discussing controversial periods of history and political theories or ideologies, for instance, Marxism, Fascism, Nazi and the like, including, in essays.

R. Kīlis sees the second problematic aspect in relation with the fundamental right to the freedom of speech. Viewing the order of things only from a transient position defines by the state could restrict the possibilities for the representatives of other EU Members States to integrate into the Latvian environment and for the Latvian youth, in turn, to prepare for another living practice in other Member States of the European Union.

Hence, R. Kīlis is of the opinion that the contested norms might be detrimental for the development of competences needed in the future among children and adolescents, create tension in the interpretation of the values included in the *Satversme*, as well as restrict Latvia's integration into the different models of public life existing within the European Union. Moreover, there are already sufficient legal acts in Latvia to prevent incident of criminal nature in teachers' work.

11. The summoned person – *Mg. iur.* Inga Bērtaitė-Pudāne – underscores that SEQS's decision on the incompliance of the head of an educational institution or a teacher with the loyalty requirements is an administrative act and causes legal consequences to the person, i.e., a prohibition to work as a teacher or to take the position of the head of an educational institution. She notes that teachers and heads of educational institutions are employed in the framework of legal employment relationship. Thus, the legislator has envisaged SEQS's competence to influence the legal employment relationship. A regulation like this is said to apply also to a number of other cases, for example, members of the municipal orphans' courts. A complicated regulation of the legal relationship, by which the State influences the legal employment relationship, is said to exist only because a uniform civil service has not been set up in Latvia with respect to all employees, who, essentially, perform

functions of the State, i.e., legal employment relationships exist in such areas, where the employees, essentially, perform functions typical of public service.

With respect to the scope of control by SEQS, it should be taken into consideration that the dispute in concrete administrative cases, most probably, will pertain to the content of the loyalty requirements and a person's incompatibility with them or a person's actions in a particular situation. With respect to verifying the loyalty requirements, it should be taken into account that loyalty to the State and its constitution needs to be differentiated from loyalty to a particular ruling government, a particular official or political force. This is said to be a matter of law, which could be verified in full both by an institution within the framework of administrative procedure and by a court.

Moreover, the decision that a person does not comply with the loyalty requirements should be separated from the termination of the legal employment relationship, i.e., the issue of civil law relationship, which has to be dealt with in the procedure established in the Labour Law and the Civil Procedure Law. Thus, if a person does not agree to a SEQS's decision and the termination of legal employment relationship, the final resolution in the case can be achieved in court, upon the conclusion of two legal proceedings, and this, in I. Bērtaite-Pudāne's opinion, is not effective.

The Findings

12. The compliance of a number of norms in the Education Law with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme* has been contested in the application.

12.1. Section 30 (4), Section 48 (5) and Para 2¹ of Section 51 (1) of the Education Law, in addition to other obligations, obligates a person, who works as a teacher or the head of an institution of education to be loyal to the Republic of Latvia and its *Satversme*, to not violate the prohibition of discrimination and differential treatment, to bring up decent, honest and responsible people –

patriots of Latvia, to strengthen their affiliation with the Republic of Latvia (hereinafter jointly also – the loyalty requirements). Section 30 (6), Section 48 (6) and Para 5 of Section 50 establish the procedure for verifying compliance with the loyalty requirements and the legal consequences for a person, whose conduct has been recognised as being incompatible with the loyalty requirements. I.e., a person like this is prohibited from working as a teacher or taking the position of the head of an educational institution. This ban is in force for one year as of the date when the legal employment relationship has been terminated.

One of the contested norms – Section 30 (4) of the Education Law – sets, alongside the loyalty requirements, also the requirements for the head of an educational institution regarding impeccable reputation, relevant education and professional qualification. These requirements have not been contested in the application. The applicant requests examination of the contested norms insofar they define the loyalty requirements, the procedure for verifying the compliance therewith and the legal consequences for a person.

12.2. The Applicant holds that the contested norms, insofar they establish the loyalty requirements, the procedure for verifying compliance therewith and the legal consequences for a person, is a united legal regulation that restricts fundamental rights. I.e., it is alleged that the contested norms restrict the right included in the first sentence of Article 100 of the *Satversme* to the freedom of speech because they require a person to be loyal to the Republic of Latvia and its *Satversme* and also obligates a person to not violate the prohibition of discrimination and differential treatment, to bring up decent, honest, responsible persons – the patriots of Latvia, and to strengthen their affiliation with the Republic of Latvia.

It is contended that the contested norms also restrict a person's right to freely choose one's profession and work in the chosen profession since the restriction has been established only with respect to particular professions; i.e. – persons working as teachers and the heads of educational institutions. The *Saeima* and persons summoned in the case are also of the opinion that the

contested norms are a united legal regulation that restricts the fundamental rights enshrined both in the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme*.

The united legal regulation consists of norms that define the loyalty requirements on their merits, i.e., Section 30 (4), Section 48 (4) and Para 2¹ of Section 51 (1) of the Education Law, and of norms that establish the procedure, in which the teacher's and the head's of an educational institution compliance with the loyalty requirements can be verified, and also define the legal consequences for a person, who has been recognised as not complying with the loyalty requirements, i.e., Section 30 (6), Section 48 (6), and Para 5 of Section 50 of the Education Law.

Thus, the Constitutional Court also will examine the contested norms as a united regulation.

13. The Applicant holds that the contested norms are incompatible with the first sentence of Article 100 of the *Satversme*, which provides that everyone has the right to freedom of expression. It is said to comprise the right to freely obtain, keep and distribute information, to express one's view. In the particular situation, the freedom of expression is said to be restricted in two aspects: firstly, an individual is required to have such personal, internal conviction that could be recognised as being loyal to the Republic of Latvia and its *Satversme*, and, secondly, it is required that an individual's conduct and opinions expressed should be loyal to the Republic of Latvia and its *Satversme*.

The Constitutional Court has recognised that the right to freedom of speech defined in Article 100 of the *Satversme* are rights that protect a person. I.e., it envisages that an individual may request the State to not intervene into the field of his freedom of speech (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 11.3.*). Two aspects of the freedom of speech need to be differentiated between: the positive or the rights of individuals to freely obtain and distribute information, to express their opinion publicly orally, in writing, visually, through the use of artistic means of

expression and in other legal ways, and the negative or the right to keep information, to withhold one's views and to not express these. I.e., an individual may choose to be "free from" expressing one's opinion and, thus, exercise his right to the freedom of speech in its negative aspect (*see ibid.*)

13.1. The Constitutional Court has recognised that everyone has the right to freely express one's opinions – orally, in writing, visually, by using artistic means of expression (*see Judgement of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Findings, and the Judgement of 29 October 2003 in Case No. 2003-05-01, Para 21*). Moreover, the freedom of expression alongside its traditional manifestations, for example, speeches, diversity of opinions expressed in mass media, participation in demonstrations and other events, comprises also various forms of artistic expression, for example, writing, painting, music, as well as other combined forms of expressing the freedom of speech, *inter alia*, the use of symbols (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 11.4.*).

The contested norms are included in the Education Law. Pursuant to Section 2 of the Education Law, the purpose 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 fully developed individual, a member of the democratic State and society of Latvia. Corresponding to the age and needs of a student, the State ensures to him an opportunity to acquire knowledge and skills in the field of humanities, social, natural and technical sciences, an opportunity to acquire knowledge, skills and experience in relationships, in order to participate in the life of the State and society, as well as for moral, aesthetic, intellectual and physical development, by promoting the development of a knowledgeable, skilful and socialised individual. Knowledge, skills and experience are acquired, predominantly, through the teacher's mediation.

The teacher and the student mainly interact in the framework of delivering a certain education programme. However, also the personal example is important in the process of education since the student can be influenced also by the

conduct of a teacher or the head of the educational institution beyond the delivery of a certain education programme or outside the educational institution. For example, a wide circle of persons, including his pupils, their parents, friends and relatives, may follow the teacher's activities outside his working hours, if these are reflected in social media or are otherwise publicly known (participation in events, associations).

Thus, a teacher has a significant influence on the student not only in the course of acquiring a certain education programme but also in daily interactions. Hence, the obligation to be loyal to the State of Latvia and its *Satversme*, to not violate the prohibition of discrimination and differential treatment of persons, to bring up decent, honest, responsible persons – the patriots of Latvia, and to strengthen their affiliation with the Republic of Latvia, actually, refers to the conduct and expression of opinions of a teacher and the head of an educational institution in any form if it may have an impact on the students or the outcomes of the process of education. The failure to fulfil this obligation may cause to the person the legal consequences that are envisaged in the contested norms – termination of the legal employment relationship and a prohibition to work as a teacher or the head of an educational institution for a year.

Hence, the contested norms restrict the freedom of speech of a teacher or the head of an educational institution in the positive aspect thereof.

13.2. The contested norms do not restrict the internal, unexpressed thoughts and opinions of a teacher and the head of an educational institution. Neither do the contested norms restrict a teacher's right to withhold his opinions and to not express them.

Hence, the contested norms do not restrict the freedom of speech of a teacher or the head of an educational institution in the negative aspect thereof.

13.3. The first sentence of Article 106 of the *Satversme* provides: "Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications."

The Constitutional Court has repeatedly recognised that the first sentence of Article 106 of the *Satversme* guarantees the right to freely choose one's employment. The right to freely choose one's employment includes also such essential elements as the right to keep the current employment, *inter alia*, the right to continue the chosen employment in the future (*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 Constitutional Court has also recognised that the concept "employment", included in the first sentence of Article 106 of the *Satversme*, means such type of work that requires appropriate qualification and is the source of a person's existence, as well as a profession, which is closely linked to an individual's personality as such. Moreover, the term "employment" is applicable to the employment in both private and public sector (*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 contested norms prohibit a person from freely working in one's chosen employment, *inter alia*, to continue one's employment. Namely, a person is prohibited from taking the position of the head of an educational institution or to work as a teacher for a year if the employment relationship with this person has been terminated due to the failure to comply with the loyalty requirements.

Thus, the contested norms restrict a person's right to freely work in the chosen employment, *inter alia*, keeping the current employment.

13.4. The contested norms restrict the right to the freedom of expression because they establish loyalty requirements and, at the same time, prohibit a person who, in the procedure set out in the contested norms, has been recognised as not complying with these requirements, from working in the chosen employment for one year. The restriction on the right to the freedom of expression established by the contested norms is applied only to persons in particular employment – teachers and heads of educational institutions. Hence, the contested norms comprise both a restriction on the rights guaranteed in the

first sentence of Article 100 of the *Satversme* and a restriction on the rights guaranteed in the first sentence of Article 106 of the *Satversme*.

Therefore, the Constitutional Court, taking into account the type of the restriction, will examine the compliance of the contested norms with the first sentence of Article 100 of the *Satversme* in interconnection with the first sentence of Article 106 of the *Satversme*.

14. The Constitutional Court has recognised that the freedom of expression is deemed to be one of the most important fundamental human rights and has been included in the catalogue of fundamental rights (*see, for example, Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 21*). However, the right to the freedom of expression is not absolute and may be restricted if that is necessary for public interests (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 13*).

Also the fundamental rights enshrined in the first sentence of Article 106 of the *Satversme* protect a person against all actions by the State that restrict a person's freedom of choice envisaged in this Article. However, this norm does not prohibit the State from defining requirements that a person must comply with to take 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 Constitutional Court has assessed the profession of a teacher as a regulated profession and has recognised that the State may set special requirements for those in this profession (*compare: Judgement of 2 May 2007 by the Constitutional Court in Case No. 2006-30-03, Para 15, and Judgement of 24 November 2017 in Case No. 2017-07-01, Para 13.1.*). Likewise, it has been recognised already that criteria may be set that are linked both to the performance of the teacher's obligations and his personality, insofar the setting of such criteria is in public interests (*compare: Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 10.2.*). The special public importance of the teacher's profession is manifested also by the fact that

the teacher is not only engaged in teaching and educational work but also forms the students' perceptions of society, the State and its values. The Constitutional Court has recognised that setting higher requirements for the teacher's profession is linked to the need to ensure persons' right to education, enshrined in Article 112 of the *Satversme*, which, actually, means the right of every student to high quality education (*see Judgement of 2 May 2007 by the Constitutional Court in Case No. 2006-30-03, Para 15*).

Article 116 of the *Satversme* provides for the cases, where a person's rights, established in Article 100 and Article 106 of the *Satversme*, may be restricted. Pursuant to it, the freedom of expression and a person's right to work in the freely chosen employment may be restricted to protect the rights of other persons, the democratic state order, public order, welfare, and morals.

To establish, whether the restriction on the right to the freedom of expression and the right to freely work in the chosen employment that has been established by the contested norms is justifiable, the Constitutional Court must examine, whether the restriction on fundamental rights has been established by a law adopted in due procedure, whether the restriction has a legitimate aim and whether the restriction is proportionate with its legitimate aim (*see, for example, the Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 22*).

15. The restriction on fundamental rights has been established by a law adopted in due procedure if:

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, and this ensures sufficient protection against arbitrary application thereof (*see Judgement of 8 April 2015 by the Constitutional*

Court in Case No. 2014-34-01, Para 14). The Constitutional Court has recognised that the fact, whether a law has been adopted in due procedure, should be examined in accordance with Article 21 of the *Satversme*. It comprises the principle that the *Saeima* sets its own agenda (*see Judgement of 22 February 2002 by the Constitutional Court in Case No. 2001-06-03, Para 5 of the Findings, and Judgement of 16 December 2008 in Case No. 2008-09-0106, Para 6.1.*).

In the case under review, the fact that the contested norms have been adopted with two separate amendments to the Education Law should be taken into consideration, i.e. with the law of 18 June 2015 “Amendments to the Education Law” and the law of 23 November 2016 “Amendments to the Education Law”. Each of these laws had been adopted in separate legislative procedure and in its own time. The Constitutional Court will examine the contested norms in accordance with the sequence of the respective legislative procedures.

16. The Constitutional Court will, first and foremost, verify whether the restriction on fundamental rights that had been established by the law of 18 June 2015 “Amendments to the Education Law” had been adopted in compliance with the procedure established in regulatory enactments.

16.1. By this law, the *Saeima* amended the requirements set for the head of an educational institution defined in Section 30 (4) of the Education Law, providing that a person “who has impeccable reputation, who is loyal to the Republic of Latvia and its *Satversme*, who has appropriate education”, may work as the head of an educational institution. At the same time, the fifth part was added to Section 48 of the Education Law in the following wording: “A person, who is loyal to the Republic of Latvia and its *Satversme*, has the right to work as a teacher.” The law of 18 June 2015 “Amendments to the Education Law”, which comprised part of the contested norms, was examined by the *Saeima* in three readings. The President has promulgated this law and it has entered into force on 16 July 2015.

It is not disputed in the case that the law of 18 June 2015 “Amendments to the Education Law” had been adopted in compliance with the procedure established in regulatory enactments, has been promulgated and is publicly accessible in compliance with the requirements of regulatory enactments.

16.2. The Applicant holds that the contested norms have not been defined with sufficient clarity, allowing a person to understand the content of the rights and obligations derived from them. I.e., allegedly it is unpredictable, which conduct should be deemed as being loyal or – respectively – disloyal. Hence, it is alleged that they can be interpreted broadly, which, in turn, might make the teachers afraid of expressing any critical opinion.

The *Saeima* underscores that the content of loyalty requirements had been sufficiently explained both at the time when these were discussed at the *Saeima* and also following the adoption of the contested norms. Whereas the Ministry of Justice, the Ombudsman, LIZDA and M. Golubeva emphasize that clear criteria should be set that would allow verifying objectively a teacher’s or the head’s of an educational institution loyalty to the State of Latvia and its *Satversme*.

The Constitutional Court has already recognised that the laws and legal norms that restrict a person’s fundamental rights should be sufficiently clear and predictable. I.e., the norm should be worded with sufficient precision so that an individual, if necessary, seeking appropriate advice, could regulate his own actions. The norm should be worded in a way that would allow a person to clearly forecast its field of application and significance. This ensures important safeguards for an individual (*see, for example, Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 15.2.*). The contested norms do not reveal in detail the content of the concept “loyalty”. Neither is it revealed in other norms of the Education Law.

The *Saeima*, explaining the content of the contested norms, notes that such conduct or an opinion that would be contrary to the fundamental values enshrined in the *Satversme* and shows that the respective person does not respect, denigrates or denies Latvia as an independent democratic republic, the fact the sovereign state power is vested in the people of Latvia, the independence of the

Latvian State, the indivisibility of the territory of Latvia, the Latvian language as the only official language and the symbols of the State of Latvia – the flag, the anthem and the coat-of-arms, should be recognised as being disloyal. Likewise, the *Saeima* notes that an opinion or conduct that is contrary to the requirements established by the State with respect to the teaching methods to be used in education process, study aids and is manifested in events, organised or supported by the teacher, publicly denying, justifying or glorifying genocide, crimes against humanity, crimes against peace or war crimes against the Republic or Latvia and its inhabitants or by flagrantly denigrating or calling to eliminate the independent statehood of the Republic of Latvia or its territorial indivisibility should be deemed to be disloyal.

Loyalty is an open legal concept – a general clause. It is admissible to integrate such concepts in the law if there is a general understanding of their purpose, scope and the consequences envisaged in connection with them. In each instance of applying the law, the general clause must be filled with concrete content. I.e., the party applying it must consider, on case-by-case basis, whether it is applicable to the content of the general clause. The party applying the norm, by analysing the actual circumstances, must reach a substantiated conviction that the case complies with the meaning of the general clause – *ratio legis* (see: *E. Meļķis. Latvijas tiesiskās sistēmas ceļš uz demokrātisku tiesisku valsti. Rakstu krājums. Rīga: Tiesu namu aģentūra, 2014, 218.–219. lpp.*).

By introducing the general clause, the legislator avoids increasing the load of detailed characteristics in the norm; at the same time does not permit excessive restriction of the norm's scope of application. Thus, the norm is made more flexible and able to adapt to the changing social circumstances. Moreover, the general clause significantly increases the authorisation granted to the party applying the norm. A general clause is delegation of a kind, by which the legislator allows the party applying the law (an institution, a court) to specify the norm reasonably [see: *E. Levits. Ģenerālklausulas un iestādes (tiesas) rīcības brīvība. Likums un Tiesības, 5. sēj., 2003, Nr. 6 (46), 7 (47)*]. In specifying a

general clause in the application thereof, legal guidelines that follow from the totality of all sources of law can be used.

The concept of loyalty is found in a number of laws. For example, in Section 18 (1) of the Citizenship Law, it is included in the pledge of loyalty to the Republic of Latvia that is given upon acquiring the Latvian citizenship. Section 15 (1) of the Civil Service Law provides, *inter alia*, that the basic obligations of a civil servant is to abide by the *Satversme*, the norms of international law binding on Latvia, and laws and other regulatory enactments, and to be loyal to the Republic of Latvia and its *Satversme* irrespective of his political convictions, and to be politically neutral.

The Constitutional Court has already examined the general clause of loyalty in connection with the status of a public official and has noted that the State should strive to ensure democratic, legal, effective, open public administration that is accessible to society. The citizens should rely that those working in public administration are loyal to the State and will perform their duties of office in the interests of the State and society. Political loyalty should not be understood as supporting the political aims of the respective government but rather as loyalty to the State, for the benefit of which those belonging to the civil service work (*see Judgement of 11 April 2006 by the Constitutional Court in Case No. 2005-24-01, Para 11.2.*). The requirement to be loyal to one's State is equally applicable to all public officials (*see Judgement of 8 November 2013 by the Constitutional Court in Case No. 2013-01-01, Para 14*). The status of a public official is characterised by special relationship of trust and loyalty with the State. The restrictions related to the status of a public official are the basis for the requirement regarding special trust and loyalty to the State, and these restrictions *per se* cannot be regarded as being disproportionate from the perspective of equality (*see Judgement of 23 November 2015 by the Constitutional Court in Case No. 2015-10-01, Para 17.2.*).

Also the European Court of Human Rights (hereinafter – ECtHR) has repeatedly referred to the general clause of loyalty (*see, for example, ECtHR Judgement of 26 September 1995 in Case “Vogt v. Germany”, Application*

No. 17851/91, and Judgement of 13 January 2015 in Case “Petropavlovskis v. Latvia”, Application No. 44230/06).

It is recognised in the Judgement in *Vogt* Case, reflecting the view of the German Constitutional Court, that loyalty is something more than just formally correct, indifferent attitude. Loyalty comprises also faith in one’s States, its fundamental values. Loyalty does not mean an obligation to identify oneself with the aims and politics of the particular incumbent government. It means the readiness of a civil servant to identify himself with the State, where he works, with the free democratic system of the State, based on the rule of law and social justice (*see ECtHR Judgement of 26 September 1995 in Case “Vogt v. Germany”, Application No. 17851/91, Para 34*). Moreover, loyalty also means unmistakable disassociation from groups that impugn and slander the State and the existing constitutional order (*see ibid., Para 58*). In expressing support to loyalty requirements, ECtHR has taken into account, in particular, the State’s historical experience and has recognised that in order to prevent the reoccurrence of such experience, the State has to take actions aimed at consolidating the traditions of a democratic state governed by the rule of law. ECtHR has also underscored that a democratic state governed by the rule of law has the right to demand loyalty to the constitutional principles on which it is founded. In the judgment in the case “*Petropavlovskis v. Latvia*”, ECtHR has recognised that the requirement of loyalty to the State and its constitution cannot be regarded as, for example, a punishment, restricting the freedom of expression (*see ECtHR Judgement of 13 January 2015 in Case “Petropavlovskis v. Latvia”, Application No. 44230/06, Para 85*).

Thus, the concept of loyalty as a general clause has been enshrined in the legal system and the meaning of its content, essentially, is clear. The Constitutional Court holds valid the opinion of the *Saeima* that concrete manifestations of loyalty need not be exhaustively listed in the law and that the possible violations of loyalty must be examined individually, on case-by-case basis, taking into consideration the impact of the teacher’s conduct or the expressed opinion on students and deeming as being disloyal such conduct or

opinion which denies the State of Latvia and the principles included in the *Satversme*. The contested norms, which were adopted by the law of 18 June 2015 “Amendments to the Education Law”, have been worded with sufficient clarity allowing a person to understand the content of the rights and obligations derived from them.

Thus, the restriction on fundamental rights that has been introduced with the contested norms that are included in the law of 18 June 2015 “Amendments to the Education Law”, has been established by law adopted in due procedure.

17. The Constitutional Court also must verify, whether the restriction that was introduced by the contested norms included in the law of 23 November 2016 “Amendments to the Education Law” has been established by a law adopted in due procedure.

17.1. The law “Amendments to the Education Law”, which the *Saeima* adopted on 23 November 2016, also includes a part of the contested norms. This Law added the sixth part to Section 30 and Section 48 of the Education Law, Para 5 – to Section 50, the words “*inter alia*, does not breach the prohibition of discrimination and differential treatment of a person”, to the first sentence of Section 30 (4) and Section 48 (5) but to Section 51 (1) - Para 2¹, defining the general obligations of a teacher in the process of education as follows: “to bring up decent, honest, and responsible people – patriots of Latvia, to strengthen affiliation with the Republic of Latvia””. I.e., substantive requirements have been added to the loyalty requirements, and the legal consequences of the failure to comply with them have been defined, which occur in the case, where a person, who works as a teacher or the head of an educational institution, is recognised as being incompatible with the loyalty requirements. The law of 23 November 2016 “Amendments to the Education Law” is included in the package of draft laws accompanying the draft law “On the State Budget for 2017” (hereinafter – draft laws of the state budget package), was recognised as being urgent and was adopted in two readings.

The participants of the case have expressed divergent opinions on whether there had been legal grounds for including the contested norms in the draft laws of the budget package. The Applicant holds that there had been no legal grounds for including the contested norms in the package of draft budget laws. Essentially, the Applicant's opinion is upheld also by the Chancery of the President, the Ombudsman, LIZDA and M. Golubeva. The Ministry of Justice and R. Kīlis have not expressed their opinion on this matter. The *Saeima*, in turn, is of the opinion that the legislator had the right to include the contested norms in the law of 23 November 2016 "Amendments to the Education Law" and adopt in the package of draft budget laws. The Ministry of Education and Science upholds the *Saeima*'s opinion.

The *Saeima* mainly founds its opinion on the view expressed by the Minister for Education and Science K. Šadurskis. He substantiates the connection of the contested norms included in the law of 23 November 2016 "Amendments to the Education Law" with the state budget by the allocation of the state budget resources required for the implementation of the control functions by SEQS. Also, at the meeting of 30 November 2016 at the Chancery of the President in connection with the submitted request to return the respective law to the *Saeima* for a repeated examination, K. Šadurskis noted that this law was linked to the state budget, i.e., the state budget resources in the amount of 244 thousand EUR were needed to increase the total capacity of SEQS, since the workload of SEQS would increase and, thus, additional staff posts would be necessary (*see the audio recording of the meeting organised by the Chancery of the President on 30 November 2016, Case Materials, Vol. 1*). The *Saeima* referred, as to an additional argument, to the current legislative practice, emphasizing that norms, which directly do not regulate the allocation of the state budget resources but are considered as being the necessary legal regulation on the acquisition or use of these resources, are regularly included in the package of draft budget laws.

17.2. The procedure, defined in the Rules of Procedure of the *Saeima*, in which the annual draft state budget law and draft laws that determine or amend the state budget law are examined, differs from the procedure for examining

other draft laws. Para 87¹ of the *Saeima* Rules of Procedure provides that the package of draft budget laws contains a draft law on the annual state budget and draft laws that set forth or amend the state budget, as well as budget-related draft laws. The legislator has the right and the obligation to include in the state budget law and the accompanying package of laws only such laws that

- 1) pertain to the respective fiscal year, and
- 2) are closely related to the use of the state budget resources (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 18*).

The contested norms, in their initial wording, were included in the draft law “Amendments to the Education Law”, which was submitted together with the other budget-related draft laws by the Cabinet to the *Saeima* on 14 October 2016.

Pursuant to Section 20 (5) of the law “On Budget and Financial Management”, the Cabinet decides on the submission of the package of the annual draft budget laws to the *Saeima*, whereas, in accordance with Section 22 of this Law, the *Saeima* examines and approves the package of the annual draft budget laws, submitted by the Cabinet, in accordance with the legislative procedure. Hence, the Cabinet is responsible for the inclusion of a particular draft law in the package of the annual draft budget laws to be submitted to the *Saeima*, the Cabinet determines, which draft laws constitute the package of draft budget laws.

The initial impact assessment of the law of 23 November 2016 “Amendments to the Education Law” (hereinafter – the annotation), which was submitted to the *Saeima* by the Cabinet, indicated that “the aforementioned amendment is to be linked with the state budget for 2017, since the dismissed heads of educational institutions must be disbursed dismissal-related compensations (for example, unused vacations), and also the matter of financing the introduction of assessment of the professional activities of the heads of educational institutions needs to be resolved.” It is mentioned in the annotation, *inter alia*, that the respective amendments do not affect the monetary evaluation

of administrative costs and that the law would be enforced within the limits of the existing human resources and that the establishment of new institutions or reorganisation of the existing ones was not necessary (*see Case Materials, pp. 112 –115*). Calculations of resources planned for reaching a number of objectives set in the field of education were included in the annotation, linked to other norms included in the draft law, *inter alia*, for ensuring that the remuneration and social insurance contributions were financed from the state budget for teachers working in boarding schools, special pre-school educational institutions, special schools, special education forms in institutions of general education and groups of pre-school special education, subordinated to local governments, and setting the new model of teachers' remuneration.

Thus, the annotation prepared by the Cabinet does not confirm that the contested norms, which were included in the draft law of the package of draft budget law “Amendments to the Education Law”, were closely linked to the state budget expenditure.

17.3. However, in view of the special procedure for examining the package of draft budget laws, the *Saeima* must examine, whether all draft laws submitted by the Cabinet comply with the criteria referred to in Para 87¹ of the *Saeima* Rules of Procedure. If a draft law is incompatible with these criteria the *Saeima* must exclude it from the package of draft budget laws (*see Judgement of 25 March 2015 by the Constitutional Court in Case No. 2014-11-0103, Para 18.1.*).

Pursuant to Article 25 of the *Satversme*, the *Saeima* elects committees, defining the number of their members and their tasks. The *Saeima* Rules of Procedure entrust a significant part of the work for preparing a draft law to the committees of the *Saeima*, and the responsible committees are the ones that ensure that a draft law is fully prepared for examination at the sitting of the *Saeima* (*see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 18*). The *Saeima* decided to transfer the draft law “Amendments to the Educational Law”, included in the package of the draft budget laws, including the contested norms in their initial wording, for

examination to the Budget and Finance (Taxation) Committee and the Education, Culture and Science Committee, determining that the Budget and Finance (Taxation) Committee was the responsible Committee.

The draft law “Amendments to the Education Law” was repeatedly examined at the Education, Culture and Science Committee, as well as at the Budget and Finance (Taxation) Committee. At the sitting of the Education, Culture and Science Committee on 18 October 2016, several members of the *Saeima* expressed the opinion that Section 30, Section 48 and Section 50 of the Education Law had no impact on the state budget and should not be examined together with the current annual state budget. The Committee had submitted to the Budget and Finance (Taxation) Committee a proposal to delete from the draft law “Amendments to the Education Law” Section 2, Section 3 and Section 4 (amendments to, respectively, Section 30, Section 48 and Section 50 of the Education Law).

The Budget and Finance (Taxation) Committee had repeatedly, including the sitting of 18 October 2016, discussed the connection of amendments to Section 30, Section 48 and Section 50 of the Education Law to the state budget and had decided to retain them in the package of draft budget laws. At the sitting of 18 October of the Budget and Finance (Taxation) Committee, the Minister for Education and Science was heard, who, *inter alia*, had substantiated the connection of the contested norms to the state budget and the fiscal impact on it, noting that this impact was linked to additional amount of work that SEQS would have to do and the need to employ additional nine senior inspector and one legal adviser.

At the sitting of 31 October 2016, the *Saeima* recognised by majority vote the draft law “Amendments to the Education Law” as urgent and adopted it in the first reading. A term was set for submitting proposals for the second reading – 2 November 2016. As the table summarising the proposals submitted for the second reading shows, a number of proposals regarding the draft law had been submitted, *inter alia*, by the Education, Culture and Science Committee, the parliamentary faction “Concord” and the *Saeima* Legal Bureau regarding

deleting the norms from the draft law “Amendments to the Education Law” submitted by the Cabinet and adopted in the first reading. Thus, the term that was set was sufficient so that persons, who had the right to submit proposals, would be able to formulate and submit them duly.

At the sitting of the Budget and Finance (Taxation) Committee of 16 November 2016, when the draft law was examined prior to the second reading, I. Vanaga noted, on behalf of LIZDA and also the Association of Leaders of Education of Latvia, that she upheld the position of the Education, Culture and Science Committee and of the *Saeima* Legal Bureau, i.e., that the amendments to Section 30, Section 48 and Section 50 of the Education Law, adopted in the first reading, had no connection to the state budget. Likewise, the representative of the Latvian Association of Local Governments had requested examining the amendments to the aforementioned Sections of the Education Law outside the package of the draft budget laws. Having heard the objections and other opinions, the responsible committee rejected the proposal regarding deleting Section 2, Section 3 and Section 5 of the draft law “Amendments to the Education Law”. However, in preparing the draft law for examination in the second reading, the *Saeima* Budget and Finance (Taxation) Committee had improved the wording of the contested norms, specifying the connection thereof with the use of state budget resources (*see Para 15, 23 and 28 of the table of proposals for the second reading*).

Hence, the *Saeima* Budget and Finance (Taxation) Committee at its sitting of 16 November 2016 improved the wording of the contested norms for examination in the second reading, thus pointing to the close connection of these norms with the use of state financial budget resources.

17.4. The discussion regarding the connection of Section 30, Section 48 and Section 50 of the Education Law with the state budget had continued also at the sitting of the *Saeima* of 23 November 2016. A number of deputies, Ņ. Ņikiforovs, I. Viņķele, A. Elksniņš and J. Viļums among them, have noted that substantially the draft law is not linked to the state budget. Whereas K. Šadurskis substantiated the inclusion of the draft law and, hence, the contested

norms, in the package of the draft budget laws for 2017 by the need to allocate additional resources to SEQs.

The process of adopting the contested norms in the *Saeima* shows that the legislator had examined and substantiated that the contested norms, which amended Section 30, Section 48 and Section 50 of the Education Law, included in the draft law, pertained to the respective fiscal year and were closely linked to the use of state budget resources. Whereas Para 2¹ of Section 51 (1) of the Education Law is to be considered as such that specifies the united legal regulation (the loyalty requirements), which was submitted to the *Saeima* for examination in the second reading by the Minister for Education and Science (*see Item No. 29 in the table of proposals for the second reading*). It was also noted at the meeting at the Chancery of the President that the contested norms were a united regulation and that it will be specified (*see audio recording of the meeting held by the Chancery of the President on 30 November 2016 in Case Materials Vol. 1*). Hence, the contested norms, including Para 2¹ of Section 51 (1), are systemically closely linked to the state budget resources required for strengthening the capacity of SEQs.

Hence, it can be concluded that the inclusion of the contested norms in the package of draft laws accompanying the draft law “On the State Budget for 2017” complies with the requirements of Para 87¹ of the *Saeima* Rules of Procedure.

17.5. In examining, whether the respective restriction on fundamental rights has been established by law, the Constitutional Court must verify also, whether the contested norms included in the law of 2016 “Amendments to the Education Law” have been worded with sufficient clarity allowing a person to understand the content of the rights and obligations following from them.

The contested norms establish the employer’s obligation to terminate immediately, in the procedure established by the Labour Law, the legal employment relationship with the head of an educational institution or a teacher who does not meet the loyalty requirements. It is noted in the annotation that the employer, upon establishing the incompatibility of a teacher or the head of an

educational institution with their respective position, has the right to adopt a decision on termination the legal employment relationship with the respective employee, choosing the actual substantiation for terminating legal employment relationship and the appropriate norm of the Labour Law. Section 101 of the Labour Law envisages a number of cases, where the employer has the right to give a notice of termination of the employment contract. Depending on the grounds for the particular notice of termination, different legal consequences for the person set it, *inter alia*, also with the respect to the time period for a notice of termination and severance benefit. A dispute between the employer and the employee in such a case must be resolved at a court of general jurisdiction in the procedure established by the Civil Procedure Law. Hence, if a person does not agree to the decision by SEQS on the violation of the loyalty requirements and, respectively, the notice of termination of the legal employment relationship, he can defend his rights and lawful interests that have been infringed on in court.

Essentially, the legal consequences of the failure to meet the loyalty requirements have been regulated by the law of 23 November 2016 “Amendments to the Education Law”. The aims of the loyalty requirements are explained in the annotation, it also characterises the current situation and problems, as well as provides considerations regarding the constitutionality of the contested norms, i.e., suitability for reaching the legitimate aims and the benefits that society will gain from the application of the contested norms. The Minister for Education and Science has explained to the members of the parliament the substance of the aforementioned amendments, although an extensive discussion about them had not evolved. The Constitutional Court has gained confirmation from the materials of drafting and adopting the draft law that the legislator, upon hearing the explanation provided by the Minister for Education and Science, has sufficiently deliberated the content of the contested norms which envisage legal consequences for a person, who has been recognised as being incompatible with the loyalty requirements. Hence, the contested norms, which have been included in the law of 23 November 2016 “Amendments to the Education Law”, have been worded with sufficient clarity.

Hence, the restriction that has been established by the contested norms, which have been included in the law of 23 November 2016 “Amendments to the Education Law”, has been established by law adopted in due procedure.

18. Upon establishing that all contested norms have been established by law adopted in due procedure, the Constitutional Court must continue examining them, verifying, whether the restriction on a person’s right to freedom of expression and a person’s right to work in a freely chosen employment has been established for a legitimate aim.

If a restriction on fundamental rights has been established then in the procedure before the Constitutional Court the institution, which has issued the contested act, has the obligation to be the first to present and substantiate the legitimate aim of the restriction (*see, for example, Judgement of 13 June 2014 by the Constitutional Court in Case No. 2014-02-01, Para 13*).

The *Saeima* notes that the contested norms had been adopted with the aim of protecting the rights of other persons and the democratic state order. In fact, all persons summoned in the case and also the Applicant upholds the opinion of the *Saeima*.

The Constitutional Court has recognised that the State has the obligation to ensure high quality and democratic education to all students. In the process of education, the student and ensuring of his rights and interests are in the centre. Pursuant to Section 2 of the Education Law, each student has the right to receive such education that inculcates respect for the fundamental principles of a democratic state, the national values of the State of Latvia and ensure that the students in the future could become a full-fledged member the democratic society. From the vantage point of protecting a democratic state order, it is important to foster in students in the process of education the feeling that they are affiliated to the state of Latvia and its fundamental values, as well as their understanding of democracy and opportunities of civic participation, developing

in them the feeling of responsibility for the society and the environment, and strengthening their national self-confidence.

Latvia as a democratic state governed by the rule of law, in view of its historical experience and in developing an open, tolerant civically active society, must ensure that democratic values are safeguarded and reinforced in the process of education.

Hence, the restriction on the fundamental rights included in the contested norms has a legitimate aim – protecting the rights of other persons and the democratic state order.

19. In determining, whether the restriction on fundamental rights established by the contested norms is proportionate, the Constitutional Court examines, whether the restrictive measures applied are appropriate for reaching the legitimate aim, whether the aim could not be reached by other measures that are less restrictive on human rights, and whether the benefit gained by the society outweighs the damage inflicted on an individual (*see, for example, Judgement of 16 May 2007 by the Constitutional Court in Case No. 2006-42-01, Para 11*).

19.1. The Constitutional Court has recognised that the measures chosen by the legislator are appropriate for reaching the aim if it can be reached by the contested norms (*see, for example, Judgement of 20 May 2011 by the Constitutional Court in Case No. 2010-70-01, Para 15*). The *Saeima* holds that restriction included in the contested norms – the requirement to be loyal to the Republic of Latvia and its *Satversme*, as well as the legal consequences of the failure to comply with this requirement, which is manifested as a prohibition to work as a teacher or the head of an educational institution, is appropriate for reaching the legitimate aim.

The *Saeima* has emphasised the teacher's role in the process of education. One of the teacher's obligations is to serve as role model for the students. Hence, a teacher's attitude and conduct not only in the process of education and in immediate contact with students but also outside the educational institution, if this attitude or conduct, if it becomes public or becomes known to a student,

impacts the process of upbringing, *inter alia*, the development of the student's attitudes. If a teacher were not loyal to Latvia as a democratic state governed by the rule of law and its foundations and were to denigrate the symbols of the Latvian state, contest the value of human and fundamental values and by such opinions or conduct thus influenced the students, it would hinder reaching the aims of education. Essentially, all persons summoned in the case uphold the opinion of the *Saeima*.

The aims and objectives of bringing up students are defined in the Cabinet Regulation of 15 July 2016 No. 480 "Guidelines on Student Upbringing and on the Procedure for Assessing Information, Study Aids, Materials and Study and Upbringing Methods" (hereinafter – Regulation No. 480). One of the objectives is to reinforce the students' awareness of the statehood, to foster civic involvement and initiative, loyalty and patriotism, including by organising celebrations of state festivities and the Latvian traditional festivals, abiding by commemorative and celebration days, and other events that deepen the understanding of the history of Latvia, origins of the State, restoration of statehood, the fate of the nations, the fight for liberation and defence of the State, to promote pride for the State and the people of Latvia, to popularise the examples of human lives and activities that demonstrate selflessness and self-denial for the benefit of the Latvian State, to foster in students the feeling of affiliation with their institution of education, region, city, and inform them about the possibilities of civic involvement (*see Sub-para 10.5. of Regulation No. 480*). Also SEQS in the letter to the municipal education boards and education experts on the application of the contested norms notes that a teacher's conduct and the expressed opinion cannot be incompatible with Regulation No. 480 (*see letter of SEQS of 13 January 2017 No.1-19.2/16 to the municipal education boards and education experts, Case Materials, Vol. 1, p. 129*).

The aims set in the Education Law – to ensure high quality and democratic content of education, as well as to avert risks to the national security and democracy – can be achieved by bringing up members of society that are loyal to Latvia. The Education Law provides that only such study aids that have

been approved by the National Centre for Education may be used in education process. However, the process of education includes more than just the use of specific teaching materials. The teachers have the discretion to choose various additional materials that are used in the process of education and to recommend supplementary reading; moreover, the teacher's personality is very essential. The teacher creates in the students, in particular, children the notion what a member of the Latvian society – of a democratic state governed by the rule of law – should be like, and, in this regard, serves as a role model.

Hence, high quality process of education provides to the students not only knowledge but also understanding of the values of the State of Latvia and the *Satversme*, instilling respect for them and reinforcing the awareness of being a part of the Latvian civil society. Hence, the democratic order is ensured and safeguarded both now and in the future. If a teacher or the head of an educational institution, who is not loyal to Latvia as a democratic state governed by the rule of law and the principles of *Satversme* and through his actions or statements expresses disloyal opinions like these, were to participate in the process of education and to influence the students, it would be impossible to ensure high quality education and to reach the aims of education.

The restriction established by the contested norms ensures that the right to high quality education is exercised in a way that is loyal to Latvia as a democratic state governed by the rule of law.

Hence, the restriction established in the contested norms is appropriate for reaching the legitimate aims.

19.2. The Constitutional Court must examine, whether more lenient measures for reaching the legitimate aims are not available and whether the legislator has considered such measures. Moreover, it should be taken into consideration that a restriction on fundamental rights is proportionate only if there are no more lenient measures that would be as effective and the choice of which would make the restriction on fundamental rights less felt. In examining, whether the legitimate aim could be reached by more lenient measures it should be taken into consideration that a more lenient measure is not just any other

measure but such that allows reaching the legitimate aim in the same quality (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

The Applicant has not pointed to the existence of alternative measures to the loyalty requirements that would allow reaching the legitimate aim in the same quality but has expressed the opinion that the loyalty to Latvia should be embodied by fostering the loyalty of teachers and society in general to the State and its *Satversme* by “deeds”, i.e., by implementing such policy that would satisfy the society, balancing the interests of various social groups, ensuring the growth of national economy and increasing public welfare.

The *Saeima* holds that there are no more lenient measures for reaching the legitimate aim.

The Constitutional Court underscores that a person, who takes the position of a teacher or the head of an educational institution, performs a function that is important for the state – ensures the right to high quality education enshrined in the *Satversme*, which, *inter alia*, comprises a loyal attitude towards the State of Latvia and its *Satversme*. In the process of education, the rights to all students to development, by perfecting their talents and abilities, are ensured, respect for the fundamental values of a democratic state governed by the rule of law are instilled in the students the personal and national identity is reinforced, as well as affiliation with the civil society and other important aspects for the personality. Hence, the aims of the Education Law include acquisition of such knowledge, skills and attitudes that, *inter alia*, should ensure active involvement of the person in the life of the Latvian State and society. One of the pre-conditions for meeting these requirements is pedagogical staff that are loyal to the State of Latvia and its *Satversme* since, as recognised above, a teacher and the head of educational institution influences the personal development of all students, as well as their understanding of the society and the State. Although democratic values and civil society have become consolidated in Latvia since the restoration of independence, nevertheless the State, in view of the historical experience, must take particular care for safeguarding and reinforcing the democratic values

in the field of education. By adopting the contested norms this essential prerequisite with respect to the teaching staff is met. It follows from the case materials that the legislator has considered alternatives to the contested norms and has chosen the most lenient measure for reaching the legitimate aim. There is no other way to ensure that the teachers and the heads of educational institutions are loyal to the State of Latvia and its *Satversme*.

Thus, the legitimate aims cannot be reached in the same quality by other measures that are less restrictive on an individual's rights.

19.3. To review the proportionality of the restriction on fundamental rights, it must be verified, whether the adverse consequences that the restriction of the fundamental rights leads to do not outweigh the benefit that the society gains as the result of this restriction (*see, for example, Judgement of 20 May 2011 by the Constitutional Court in Case No. 2010-70-01, Para 17*).

To substantiate that the benefit that the society gains from the contested norms outweighs the harm inflicted on a person, the *Saeima* underscores that the greatest part of the content of the loyalty requirements has been legally regulated. For example, glorification of genocide and other international crimes or a call to eliminate the independence of Latvia's statehood or territorial indivisibility is considered to be hate speech and such form of expression that is not protected by a person's right to the freedom of speech. Likewise, disrespect towards the symbols of the State or desecration thereof are punishable both in the administrative and criminal law procedure (*see Section 93 of the Criminal Law and Section 201⁴⁴ of the Latvian Administrative Violations Code*). All individuals, irrespectively of their profession or employment, must abide by these restrictions.

The *Saeima* notes that the restriction on a person's fundamental rights is proportionate. The profession of a teacher is one of the regulated professions since it is linked to the performance of the State's functions in the field of education. A person must be aware that this profession is linked to certain restrictions, i.e., that when working as a teacher he will have to abide by the content and the curriculum of education defined by the State, as well as by the

rules regarding impeccable reputation and absence of criminal record, and also the restrictions set in the contested norms. Thus, a person should take into consideration that upon choosing the teacher's profession he will not be able to exercise the freedom of expression to the same extent as can be done by the representatives of other professions that are not linked to education.

The Constitutional Court recognises the *Saeima's* opinion as being valid, however, finds it necessary to underscore that the loyalty requirements do not restrict a person's right to be publicly, i.e., also politically and civically, active. They allow a person to exercise the freedom of speech in a way that is compatible with the *Satversme* and the teacher's ethics, *inter alia*, also by criticising the political and social processes, the actions of officials and the government. Likewise, the loyalty requirements do not prohibit the teacher to organise the subject lessons and the upbringing work in a way that facilitates critical thinking, develops the ability to express, to hear and to analyse diverse opinions. However, the opinion expressed or the actions may not undermine the students' loyalty to the State of Latvia and the principles of the *Satversme*.

In the case under review, the rights of an individual, i.e., a teacher must be balanced with the right of students, including children, to high quality education. The Constitutional Court has recognised that the student is most important in the process of education (*see, for example, Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 20.3 of the Findings*).

Thus, the process of education must be student-centred and aimed at ensuring his rights and interests. All students in Latvia have the right to receive education, which, *inter alia*, complies with the principles of a democratic state governed by the rule of law, the principle of Latvia as a nation state and ensures that the student becomes a full fledged member of a democratic civil society. Members of society, who are aware of and respect the values, upon which the *Satversme* is based, is the precondition for the existence of a democratic state governed by the rule of law.

Moreover, the priority objective of the process of education – to ensure the students' right to receive such education and upbringing that would allow

creating and reinforcing the feeling of affiliation with Latvia – complies not only with the students’ interests but the interests of society in general. I.e., not solely the students but the society at large is interested in having such persons perform the obligations of a teacher and the head of an educational institution who are loyal to the Republic of Latvia and its *Satversme* and, accordingly, are able to bring up students as members of society who are loyal to the State of Latvia and its fundamental values. Hence, the legislator, by adopting the contested norms, has abided by the balance between the interests of society and those of an individual, and the restriction established by the contested norms is proportional.

Hence, the restriction on the rights included in the contested norms complies with the principle of proportionality and, thus, the contested norms comply with the first sentence of Article 100 and the first sentence of Article 106 of the *Satversme* of the Republic of Latvia.

The Substantive Part

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

held:

to recognise the fourth and the sixth part of Section 30, the fifth and the sixth Part of Section 48, Para 5 of Section 50, and Para 2¹ of the first part of Section 51 of Education Law as being compatible with the first sentence of Article 100 and the First Sentence of Article 106 of the *Satversme* of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force on the day of its publication.

Chairperson of the court hearing

I. Ziemele