



Co. Co. A.

*Comparing Constitutional
Adjudication*



UNIVERSITY
OF TRENTO - Italy
Faculty of Law

Summer School 2014

CONSTITUTIONAL ADJUDICATION IN EDUCATION LAW:
A COMPARATIVE APPROACH WITHIN THE COUNCIL OF EUROPE

*The right to education in practice of the Constitutional Court of the Russian
Federation*

by Dmitry Kuznetsov

· Senior officer of the Secretariat of the Constitutional Court of the Russian Federation.

Summary

2

The paper consists of three parts. The first part briefly describes the main legislative provisions which regulate the right to education in the Russian Federation, including relevant constitutional provisions. The second part is an overview of the structure, competence and procedure of the Constitutional Court of the Russian Federation. The third part contains description of relevant cases of the Constitutional Court in the field of education. There are two rulings concerning studying of national languages in the Russian Federation and guarantees of social protection for students studying abroad. Also the paper contains several relevant decisions of the Constitutional Court on issues of state accreditation of higher educational facilities, equality of private, state, and municipal educational facilities, form of property of educational facilities, and the unified state examination.

1. Legal provisions¹

Regulation of education in the Russian Federation is a complex area of law. The main source, of course, is the Constitution of the Russian Federation, adopted in the all-nation Referendum on 12 December 1993. Relevant Constitutional provisions are:

[...]

Article 43

1. Everyone shall have the right to education.

¹ Translation of sources of law and of judicial decisions by the Author.

2. Guarantees shall be provided for general access and free of charge pre-school, secondary and high vocational education in state or municipal educational facilities.

3. Everyone shall have the right to receive on a competitive basis a free higher education in a state or municipal educational facilities.

3

4. The basic general education shall be free of charge. Parents or persons in law shall enable their children to receive a basic general education.

5. The Russian Federation shall establish federal state educational standards and support various forms of education and self-education.

Article 44

1. Everyone shall be guaranteed the freedom of literary, artistic, scientific, technical and other types of creative activity and teaching. Intellectual property shall be protected by law.

2. Everyone shall have the right to participate in cultural life and use cultural facilities and to have access to cultural values.

3. Everyone shall be obliged to care for the preservation of cultural and historical heritage and protect monuments of history and culture.

[...]

Article 72

1. The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes:

[...]

general issues of upbringing, education, science, culture, physical culture and sports;

[...]

On the level of the Federation the main source of law is the Federal Law “On education in the Russian federation” from 29 December 2012, which defines education as:

Unified, goal-seeking process of upbringing and training, which constitutes a socially important value and which is implemented in the interests of a human being, family, society and the state; also it is an aggregation of acquired knowledge, skills, proficiency, values, experience and competence of certain extant and complexity aimed at spiritual and moral, creative, physical and (or) professional development of a person, satisfaction of his educational needs and interests.

The above-mentioned law became a consolidated act in the sphere of education which had been designed more than ten years and which replaced a number of laws and by-laws being in force before.

Territorial subjects of the Russian Federation have the right to adopt their laws regulating the sphere of education. However, their competence is not absolute: the laws in question must not contradict to the Federal legislation. For example, in the Republic of Bashkiria there is a Law from 29 January 1992 No. VS-13/32 “On

education” which is quite similar to other educational laws of territorial subjects of Russia etc.

2. Constitutional Court of Russia: a brief overview

5

The legal grounds for the functioning of the Constitutional Court of the Russian Federation are Articles 118-128 of the Constitution of the Russian Federation adopted on 12 December 1993; Federal Constitutional Law "on the Constitutional Court of the Russian Federation" of 21 July 1994 (with amendments).

The Constitutional Court is composed of 19 judges appointed by the Federation Council upon nomination made by the President of the Russian Federation.

The term of office is not limited to a fixed term; however, judges shall resign when they reach the age limit of 70 years. The latter does not apply to the Chairman of the Court.

The Constitutional Court in its sessions considers and decides any question within its competence. The sessions of the Constitutional Court are called by the Chairman, who runs the preparation of the sessions and presides.

Decisions of the Constitutional Court are passed in its sessions provided that two thirds of the total number of judges are present.

In case the petition meets the formal requirements of the Federal Constitutional Law, the Chairman of the Constitutional Court assigns judges for a preliminary review of the petition. Conclusions of the judges on preliminary review of the petition are reported in the Court session, where the decision on the admissibility of the petition is

delivered. Parties are notified about the result of the preliminary review of the petition.

When the petition is found to be admissible the Constitutional Court takes a decision on the procedure of examination of the case.

6

Cases assigned for the hearing are considered in the open sessions. The hearings are oral. The Court hears the arguments of the parties and testimonies of experts and witnesses and reads available documents. In cases provided for by Article 47.1 of the Federal Constitutional Law, the Court may decide cases without holding a hearing.

The Constitutional Court:

1. decides cases on conformity with the Constitution of the Russian Federation of:
 - a. federal laws as well as enactments issued by the President of the Russian Federation, the Federation Council, the State Duma or the government;
 - b. constitutions and charters of republics as well as laws and other enactments issued by component entities of the Russian Federation on matters pertaining to the jurisdiction of bodies of State power of the Russian Federation and to the joint jurisdiction of bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation;
 - c. agreements between bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation, and agreements between bodies of State power of component entities of the Russian Federation;

d. international treaties of the Russian Federation that have not come into force;

2. settles disputes about the competence:

a. between federal bodies of State power;

b. between bodies of State power of the Russian Federation and bodies of State power of component entities of the Russian Federation;

c. between supreme bodies of State power of component entities of the Russian Federation;

3. following complaints on the violation of constitutional rights and freedoms of citizens, verifies the constitutionality of a law that has been applied in a specific case;

4. following inquiries of courts, verifies the constitutionality of a law that ought to be applied in a specific case;

5. interprets the Constitution of the Russian Federation;

6. delivers an advisory opinion on the observance of a prescribed procedure for charging the President of the Russian Federation with high treason or with the commission of other serious offences;

7. takes legislative initiative on matters within its jurisdiction.

The Court rules exclusively on matters of law. The Court refrains from establishing and investigating of actual facts whenever this falls within the competence of other courts or other bodies.

The final decision on the case is usually a ruling. The rulings are passed in the name of the Russian Federation.

The final decision on the merits of the inquiry on the observance of a prescribed procedure for charging the President of the Russian Federation with high treason or with the commission of other serious offences is an advisory opinion.

8

All other decisions of the Court are interlocutory orders.

The decisions of the Constitutional Court are binding on all representative, executive and judicial bodies of State power, bodies of local government, businesses, agencies, organisations, officials, citizens and their associations.

The decisions are final, may not be appealed and come into force immediately upon announcement.

3. Decisions of the Constitutional Court

The biggest part of the workload of the Constitutional Court of the Russian Federation is complaints concerning social rights. Protection of social rights of citizens of Russia is one of the priorities for the Court. Among all the decisions of the Constitutional Court during the last 15 years there were about 20 decisions devoted to educational rights. Primarily all the complaints and requests to the Constitutional Court are connected to the participation in educational relations. However, among these cases only 4 are considered to be educational disputes. The most famous of them is the Ruling of the Constitutional Court No. 16-P from 16 November 2004 concerning studying of national languages of the Republic of Tatarstan. There are 8 constitutional complaints devoted to labour relationships in the field of education or to social protection of the employees in the field of education. 5 constitutional complaints are connected with financial law, budget and tax regulation in the field of education.

In most of these cases applications were found inadmissible. Only in five cases the Constitutional Court confirmed its jurisdiction and the cases were decided on merits. In three of these cases some legislative provisions were found unconstitutional. Twice these provisions originated from the Federal Law “On undergraduate and postgraduate education”. Provisions in question regulated status of professors from a perspective of their labour and property rights. These decisions were taken in 1999 and in 2000. As a result the State Duma amended the Law. These amendments abolished age limits for occupation of the position of the head of a chair at universities and allowed to privatising dwellings situated at rural areas and belonging to state or municipal educational facilities.

Generally one can conclude that:

Firstly, till now the educational legislation (with certain exceptions) was not much criticised by society from a perspective of its conformity to the Basic Law which guarantees the right to education, freedom of scientific and teaching work;

Secondly, due to the specifics of the constitutional review procedure it is complicated for a case in the field of educational law to reach the Constitutional Court.

Russia is a party to the main international instruments in the field of human rights protection. Among binding treaties which were cited by the Constitutional Court in its case law, including the case law on educational issues, are: the International Covenant on Economic, Social and Cultural Rights, The European Convention on Human Rights and Fundamental Freedoms.

Ruling of the Constitutional Court No. 16-P, 16 November 2004

10

Concerning constitutional review of provisions of section 2, article 10 of the Law of the Tatarstan Republic “On languages of the peoples of the Tatarstan Republic”, part 2, article 9 of the Law of the Tatarstan Republic “On official languages of the Tatarstan Republic and other languages in the Tatarstan Republic”, section 2, article 6 of the Law of the Tatarstan Republic “On education” and section 6 article 3 of the Law of the Russian Federation “On languages of the peoples of the Russian Federation” following the complaint of S.E. Khapugina and requests of the State Council of the Tatarstan Republic and the Supreme Court of the Tatarstan Republic.

[The subject matter of the case was normative provisions according to which the Tatar and the Russian languages as official languages in the Tatarstan Republic were equally studied in public schools and at professional schools, and normative provisions according to which graphical structure of alphabets of the official languages in the Russian Federation have to be based on Cyrillic unless another is established by a federal law.

The Constitutional Court firstly referred to all relevant provisions of the Constitution. The Court reiterated that according to article 71, regulation of human rights issues, including the regulation in the field of national languages, is within the exclusive competence of the Russian Federation. Then the Court named other relevant legal sources which regulate the matter.]

[...]

3.2. Normative provisions of section 2, article 10 of the Law of the Tatarstan Republic “On languages of the peoples of the Tatarstan Republic”, part 2, article 9 of the Law of

the Tatarstan Republic “On official languages of the Tatarstan Republic and other languages in the Tatarstan Republic”, section 2, article 6 of the Law of the Tatarstan Republic “On education” which are being considered now concerning studying of Russian and Tatar in equal terms are obligatory to all people who get compulsory education in Tatarstan, including educational facilities where teaching is based on the Russian language, irrelevantly whether Tatar is native language for them or not; to all people who study Tatar from the primary school and to those who started his or her studies in educational facilities without the Tatar language.

Meanwhile, this requirement does not have an absolute nature. Equal studying of the Russian and the Tatar languages is possible when all the requirement of the Federal legislation are met, including those standards which concern obligatory learning of the Russian language as the official language of the Russian Federation and also when the conditions, which guarantee the right to education without belittlement of other rights, are met. That is why there is a need in a distinctive approach towards realisation of normative provisions on studying the Tatar language in educational facilities in the Tatarstan Republic.

Studying of the Tatar language should not be exercised in the detriment to the federal component of studying of the basic federal educational plan and educational plans of educational facilities in Russia and it should not prevent realisation of the right of pupils and students to deepen their knowledge in subjects of their choice, including the Russian language and other disciplines. Moreover, educational plans and programs should be composed in such a way which takes into account different life situations when pupils and students, to whom the Tatar language is not native and who had not

an opportunity to study it to a necessary extent, would not face any barriers while attestation and obtaining a document on compulsory education and would not face any barriers in obtaining an education of a higher level.

12

Otherwise, assuming that there are different requirements towards studying official languages of republics, there is a possibility of negative consequences to continuity of education in the unified federal educational space, as well as a possibility of violation of the right to education and the right to compulsory education using native language, guarantees of availability of compulsory education, and equal requirements necessary to obtain it, and, moreover, [as a consequence] limitation of freedom of movement and freedom of settlement guaranteed by part 1, article 27 of the Constitution of the Russian Federation.

3.3. Hence, the normative provision contained in section 2, article 10 of the Law of the Tatarstan Republic “On languages of the peoples of the Tatarstan Republic”, part 2, article 9 of the Law of the Tatarstan Republic “On official languages of the Tatarstan Republic and other languages in the Tatarstan Republic”, section 2, article 6 of the Law of the Tatarstan Republic “On education” establishing that the Tatar and the Russian languages as official languages of the Tatarstan Republic are equally studied in educational facilities does not contradict to the Constitution of the Russian Federation because in its constitutional sense in existing legal system they establish that studying of the Tatar language should correspond to educational standards provided by the legislation of the Russian Federation and should not create any barriers to final examination or obtaining documents on finishing compulsory education or education of higher levels.

[...].

Ruling of the Constitutional Court No. 18-P, 27 November 2009

Concerning constitutional review of section a, part 3 article 29 of the Law of the Russian Federation “On retirement insurance of people who served military service, service in bodies of the Ministry of Internal Affairs, the State Fire-fighting Service, bodies on control of circling of drugs and psychotropic substances, facilities and bodies of the criminal executive system and to members of their families”, section 3 article 57 of the Law of the Russian Federation “On education” and subsection 1, section 2, article 9 of the Federal Law “On labour pensions” following the complaint of N.S. Lappa.

[The applicant in the case was a daughter of a military officer who died during his service. She was asking for constitutional review of provisions according to which a child of a serviceman or a servicewoman who died while serving has the right to receive survivor benefits until he or she has turned 18 or if he or she studies in educational facilities in a full-time form until he or she has turned 23. To receive payments in a latter case one must be enrolled in educational facilities which have state accreditation. The applicant was denied these payments on the reason that she became a full-time student of a university in Finland.]

[...]

2.

[...]

In the field of retirement insurance fulfilment of the principle of equality means *inter alia* prohibition to establish differences which do not have objective and reasonable

grounds in respect of persons who belong to the same category of citizens (prohibition of different treatment of people in the same or similar situations); differences in conditions of receiving the right to a pension and realisation of their pension rights by different categories of citizens are acceptable if they are objectively justified, motivated and correspond to legitimate constitutional goals, and the means of achieving these goals are proportionate to them (The Ruling of the Constitutional Court of the Russian Federation from 16 July 2007 No. 12-P).

[...]

3.

[...]

Giving to the children [of state-servants who died while service] the right to receive survivor benefit section a, part 3 article 29 of the above mentioned Law defines only the form in which he or she should obtain education, i.e. the full-time form, but the law does not define a type of an educational facility, its situation (either within the territory of the Russian Federation or abroad), a level of this education, admission procedure (individually or by reference) etc. The only possible exclusion is made in regard of a student of such institutions where students are considered to be military servants or servants of bodies of internal affairs, i.e when he or she has signed a contract on military (law-enforcement) service and gets monetary allowance and other guarantees in accordance with law.

Inclusion of adult children of dead (wrecked) military servants in the list of their incapable relatives who have the right to receive survivor benefit, while these children are studying at educational facilities in full-time form is motivated by the reason that

these children, who lost necessary allowance, need state support to complete their studies: specific character of full-time form of education substantially limits students' ability to find a stable source of income; in comparison to correspondence studies full-time studies imply maximum volume of teaching load which means that studying becomes the main occupation of a full-time student.

Thus, the survivor benefit paid to children of dead (wrecked) military servants who study at educational facilities in full-time form constitutes a special measure of social protection aimed at creation of favourable conditions for these children to exercise their right to education.

3.1. According to article 43 (part 1) of the Constitution of the Russian Federation everyone has the right to education. This right is one of the basic and inalienable human rights recognised by international community (article 26 of the Universal Declaration on Human Rights, article 13 of the International Covenant on Economic, Social and Cultural Rights). In the Russian Federation one of the guarantees of realisation of this right is possibility of citizens of the Russian Federation to choose an educational facility and a form of education (section 2, article 50 of the Law of the Russian Federation "On Education").

The legislation of the Russian Federation does not limit citizens in their right to choose an educational facility only within Russian ones which corresponds to requirements of international treaties, e.g. article 13 of the International Covenant on Economic, Social and Cultural Rights prohibits limiting one's freedom to choose an educational facility.

Moreover, the Constitution of the Russian Federation while establishing the right to leave the country freely (part 2, article 27) does not provide any limitations towards

time being abroad or a country of residence as well as the reason for leaving Russia, including educational purposes.

16

Thus, realisation of a Russian citizen his or her right to choose an educational facility implies a possibility to study either in Russian or abroad.

3.2 According to section 3, article 57 of the Law of the Russian Federation “On Education”, Russian citizens can study abroad by signing contracts with educational facilities, associations, state bodies exercising control in the field of education, other legal persons and natural persons in accordance with international treaties of the Russian Federation.

Above mentioned normative provisions do not prevent Russian citizens from individual (unassisted) admission to foreign educational facilities and studying there, including such cases when there is no special international treaty of the Russian Federation concerning cooperation in the sphere of education; and it does not contradict to constitutional provisions. Another approach would lead to such a limitation of the right to education, including the right to choose an educational facility, which is not motivated by objective and reasonable grounds and does not correspond to legitimate constitutional aims listed in article 55 (part 3) of the Constitution of the Russian Federation.

Moreover, this normative provision which regulates relationships in the sphere of education is not applicable to relationships in the sphere of legislation on pensions, which excludes a possibility to interpret it in a way which establishes a requirement to have any treaty according to which a student must be enrolled in a foreign educational facility as a prerequisite of obtaining survivor benefit.

[...]

Deprivation of those, who individually (unassisted) were enrolled in international educational facilities and study there in the full-time form in contrast to those who were enrolled in international educational facilities on the ground of international treaties of the Russian Federation, of the right to obtain survivor benefit till the end of their studies (but no longer then they turned 23) would establish unmotivated distinctions in conditions of getting the right to obtain survival benefit for persons from the same category (adult children of dead (wrecked) military servants who study in foreign educational facilities in a full-time form) depending only on the way of enrolment in a foreign educational facility. Distinctions of this kind do not have objective and reasonable justifications and are not compatible with requirement of articles 19 (parts 1 and 2) and 39 (part 1) of the Constitution of the Russian Federation.

[...]

3.3

[...]

Meanwhile the constitutional principle of equality means *inter alia* securing of equal conditions for persons of the same category (adult children of dead (wrecked) military servants who study in foreign educational facilities in the full-time form) of their pension rights regardless of a situation of an educational facility where they study (either in Russia or abroad).

Existence of this lacuna in normative regulation of relationships in the sphere of professional education presumes the necessity of its elimination by the Federal

legislator, however, currently it cannot influence somehow the legal position of those who study abroad in their capacity as subjects of pension relationships.

[...]

Decision of the Constitutional Court No. 1696-O-O, 8 December 2011

Quite an opposite approach was taken by the Constitutional Court in another decision concerning orphan students. The applicant Y.I. Islamova, a child left without parental care, who was a full-time student of a private university was challenging the constitutionality of provisions of the Federal law from 21 December 1996 No. 159-FZ “On additional guarantees of social protection of orphans and children left without parental care” which defines “a full state support and additional guarantees of social protection for obtainment of professional education” and the provision concerning the right of those children who left without parental care and who study in state or municipal universities and have full state support till the moment of graduation. These guarantees are available only to full-time students of state or municipal universities who have not turned 23 year of old.

In its decision the Constitutional Court found that the Applicant claims that it is necessary to amend and to expand the Law with the view of establishing provisions giving orphans and children left without parental care who study in the full-time form in private universities the right to receive a full state support and additional guarantees of social protection for obtainment of professional education. However, the Court found that it lacks jurisdiction over this matter. Within that the Court noted that relationships on realisation of the constitutional right to education in a private

educational facility usually emerge from an educational agreement based on refundable basis. The latter explains the specifics of its regulation. Under the legislation in force there is a possibility to provide students regardless of the type of their universities with measures of social protection based on legal acts concerning the procedure of students social protection, including the Federal law “On education”, e.g. an opportunity of a university to introduce social protection measures within its financial and budgetary abilities (section 4, Article 42).

This Decision is of certain interest since the Constitutional Court in Russia usually acts as a guardian of social rights, which is quite hard to imaging for example in the United States. However, in this case the Court made a conclusion that it is out of jurisdiction to rule over a social matter and, moreover, decided that it should be settled within the frameworks of private law – in agreements between students and universities.

Decision of the Constitutional Court No. 76-O, 4 June 1998

On inadmissibility of the complaint of Kuznetsov Andrey Borisovitch concerning alleged violation of his rights by provisions of the Law of the Russian Federation “On education” and the Federal Law “On graduate and postgraduate professional education”.

In this decision the Constitutional Court of the Russian Federation considered the case on issuing the diplomas by educational facilities which do not have state accreditation. According to the facts, the Ministry of Justice declined Mr Kuznetsov’s request for licensing his private legal practice on the ground that his diploma issued by a university which did not have state accreditation does not confirm that the level of his

preparation corresponds to the state standard of the higher professional education. In the decision of the Constitutional Court it was noted that the state has the right to establish requirements for certain professional activities which are based on necessary educational level and there is no violation of the right to education. Establishment in the legislation of a list of requirements being prerequisites for a student to obtain a diploma is not a limitation of the right to education rather it is a condition of realisation of the right. Articles 10 and 26 of the Federal Law “On graduate and postgraduate professional education” oblige the State Attestation Service and state bodies on regulation of higher professional education to control the quality of graduate and postgraduate education and to establish requirements for creation and reorganisation of new universities, licensing, attestation and accreditation. These norms do not affect or violate the constitutional right of citizens to education because they are devoted to control and organisational functions of state bodies.

Decision of the Constitutional Court No. 80-O-O, 27 January 2007

On inadmissibility of the complaint of a private educational facility “The Evstafiev school of secondary (complete) general education” concerning alleged violation of its educational rights by section 21, article 16 of the Federal Law from 22 August 2004 No. 122 –FZ “On amendments of certain legislative acts of the Russian Federation and invalidation of certain legislative acts of the Russian Federation in connection with adoption of Federal laws “On general principles of organisation of legislative (representative) and executive bodies of territorial subjects of the Russian Federation”

and *“On general principles of organisation of local self-governance in the Russian Federation”*.

In its complaint to the Constitutional Court “The Evstafiev School of secondary (complete) general education” challenged constitutionality of the legal provision which defined the right of non-governmental educational facilities to receive state and municipal financing. According to the applicant the norm contradicted to article 8 (part 2) of the Constitution which guarantees equal protection of private, state, municipal and other forms of property, article 19 (part 1) and article 55 (part 3) which means, as the applicant stated that the right of non-governmental educational facilities to receive state and municipal financing could be limited but not abolished by a Federal law, and it could be done only to the extent which is necessary for the protection of constitutional foundations, morality, health, rights and legal interest of the others.

The Constitutional Court found the complaint inadmissible. The Court stated that the Constitution does not establish a right to receive state or municipal financing for non-governmental educational facilities, at the same time the Constitution does not intend to establish equal position of governmental and non-governmental educational facilities. As follows from article 43, availability and free-of-charge basis of preschool, compulsory and secondary vocational education are guaranteed in state or municipal educational facilities (part 2); everyone has the right to get higher education in state or municipal educational facilities on a competitive basis. The Constitution does not contain such guarantees in respect of education in non-governmental educational facilities. Neither article 2, “Principles of state policy in the sphere of education”, nor

other articles contain norms which would testify that state and non-governmental educational facilities have equal status.

22

Thus, the Court concluded that the contested provision cannot be considered as violating constitutional rights of the applicant. Moreover, *de facto* the applicant claims the restoration of legal provisions previously removed from the Law “On education” by the legislature. That is clearly out of the competence of the Constitutional Court as it is defined in article 125 of the Constitution and the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

The form of property of educational facilities

Decision of the Constitutional Court No 310-O, 6 December 2001

On the request of the Legislative body of the Tver Region on constitutional control of sections 2 and 3 of the Ruling of the Government of the Russian Federation from 22 September 1999 No. 1067 “On affirmation of the list of positions in the field of pedagogical activities in schools and other facilities for children which give the right to receive pensions for longevity and the Rules of calculation of longevity of service for assignment of pensions for longevity in the field of pedagogical activities in schools and other facilities for children”.

In this decision the Constitutional court stated that article 19 of the Constitution should be considered as a guarantee of equality of rights of pedagogical workers of educational facilities (governmental, municipal or private) independently of their form of property.

Decision of the Constitutional Court No 100-O, 15 May 2001

In its decision *On inadmissibility of the complaint of Mr Pavel Skakunov concerning alleged violation of his rights by provisions of the Law of the Russian Federation “On foundations of the tax system in the Russian Federation” as amended by the Federal law “On amendments of Article 20 of the Law of the Russian Federation “On foundations of the tax system in the Russian Federation” and the Sverdlovsk region law “On sales tax”* the Court was evaluating the complaint of Mr Skakunov who at that time was a student of a private higher educational facility “Humanitarian University” where he had to pay for his education. The applicant claimed that provisions of Article 20 of abovementioned Law of the Russian Federation and para. 2.12 of Article 3 of the Sverdlovsk region law violate constitutional principle of equality and discriminate students on the ground of the form of property of an educational facility and that is why he alleged a violation of articles 1, 7, 8, 15, 17, 19, 35, 43, 57 of the Russian Constitution. As it was noted in the complaint after the introduction of the new sales tax in the Sverdlovsk region the Applicant had to pay 5 per cent more for his education per month whereas students of state and municipal universities kept their payments on the same level.

The Court referred to its Ruling from 30 January 2001 concerning constitutionality of subpara. “d”, paras. 1 and 3 of Article 20 of the Law of the Russian Federation “On foundations of the tax system in the Russian Federation” as amended by the Federal law from 31 July 1998 “On amendments of Article 20 of the Law of the Russian Federation “On foundations of the tax system in the Russian Federation” and provisions of the Law of the Chuvash Republic “On sales tax, the Law of the Kirov

Region “On sales tax, the Law of the Chelyabinsk region “On sales tax, where it was stated that it is impermissible to establish discriminative rules of taxation based on organisation form and character of the entrepreneurial activities of tax payers.

24

The second conclusion made by the Constitutional Court is that the Law of the Russian Federation does not contain provisions which would testify an equal position of state owned and private educational facilities. However, here one may see a deviation from the previous approach: in the Decision of the Constitutional Court No 310-O (mentioned above) the Court stated that the law “On education” implies that different forms of educational facilities exist in Russia. Within that the state does not create any disadvantages and does not discriminate employees of private educational institutions. It means that people who work in private schools, kindergartens have equal right to receive retirement pensions as the employees of state or municipal institutions do. Moreover in its Ruling from 21 October 1999 No 13-P the Constitutional Court expressly said that the legislation in the area of education is applicable in respect of all educational facilities in Russia regardless of their form of property. Whereas the Court reiterated that the certificate of state accreditation of a private educational facility certifies that the content and quality of education there correspond to state educational standards. The state accreditation causes a number of legal consequences, e.g. the right of a private educational facility to give to graduates official state diplomas or the right to temporary suspension from compulsory military service. Thus, in that decision the Court established that the criterion of evaluation is not the form of property but conformity to the unified system of quality evaluation.

The third conclusion made by the Court is that the legal provision in question does not violate constitutional rights of the Applicant, who de facto asked the Court to reinstall the provisions in the law “On education” which were removed by the legislation – the matter which is out of the Court’s jurisdiction.

Unified State Examination

The Constitutional Court addressed a controversial issue of the Unified State Examination three times. The latter has been a key challenge of the education system in Russia for 10 years already. The Court found all three individual constitutional complaints inadmissible. However, it is notable to regard reasoning of applicants and motivation of the Court in these cases. In all the cases applicants claimed that the Unified state examination constitutes a scientific experiment in a sense which is prohibited under article 21 (part 2) of the Constitution.

Decision of the Constitutional Court No 1088 O-O, 16 December 2008

On inadmissibility of the complaint of Ms. Protsevskey Natalii Alexandrovny concerning alleged violation of her constitutional rights by the Federal Law “On amendments to the Law of the Russian federation “On Education” and the Federal Law “On higher graduate and postgraduate education” devoted to realization of the Unified state examination” and the Order of the Ministry of education and Science of the Russian Federation.

The applicant complained that contested normative provisions which regulate the procedure of the unified state examination contradict to articles 21 (part 2) and 43

(part 3) of the Constitution of the Russian Federation because they allow to provide scientific experiments on the applicant without her consent, humiliate her and deprive her of the right to obtain higher education on a competitive basis in a state or in a municipal educational facility. Unlike in two other complaints the applicant's rights were affected by contested norms because according to the materials of the case she underwent the examination procedure under the unified state examination. However, she did not provide any documents which would certify that she was denied access to participate in a competition for admission to a university. Thus, as the Court stated, her rights were not violated by the contested provisions, and the case was found inadmissible.

Nevertheless, the Constitutional Court made several conclusions.

4.

[...]

The unified state examination is a general form of objective evaluation of the quality of preparation of those who completed compulsory education programs with usage of standardised form (of evaluation materials) which helps to define the level of digestion of federal component of educational standard of compulsory education.

The rules of the unified state examination are applicable to everyone who completed education in compulsory educational facilities which fulfil compulsory educational program and which have certificates of state accreditation, also they are applicable to all entrant to professional educational facilities and to higher educational facilities; these rules do not imply personified physical influence on a human being which in spite of the allegations of the applicant does not allow to consider the unified state

examination as a scientific or another experiment in the sense of article 21 (part 2) of the Constitution of the Russian Federation.

Discrimination

27

The issue of discrimination in the area of education is quite rare in the practice of the Constitutional Court; however, there were a few cases.

In the Ruling from 27 December 1999 No 19-P *concerning constitutional review of provision of Article 20, para. 3 of the Federal law “On higher and postgraduate professional education” following the complaint of Mr V.P. Malkov and Mr U.A. Antropov and the request of the Vakhitovskiy district court of the Kazan city* the Constitutional Court found unconstitutional the provisions in question which established age limits in respect of heads of universities departments in state or municipal universities. In 2002 following the decision the legislation was changed. The age limits for heads of universities departments and deans were cancelled.

In the decision of the Constitutional Court from 16 November 2006 *on inadmissibility of the complaint of Mm E.A. Borodiy concerning alleged violation of her rights and the rights of her minor child by Article 17, para. 2 and Article 50, para. 10 of the Law of the Russian Federation “On education* the problem of education in special correctional schools was raised. The applicant and her son were refused from visiting general education school instead of a correctional school where he was assigned because of the level of his mental development. The applicant claimed that the mere existence of such a type of schools where standards of education different from the general

standards apply, and placement of her son there are unconstitutional and violate the constitutional right to education because after completed studying in such a school a former pupil is not able to continue his or her education in primary professional educational facilities or colleges.

The Constitutional Court found the complaint inadmissible. However, it was stated that the right to education implies the obligation of the state, which based on the constitutional aim of ensuring of accessibility of education, to take all necessary measures for full realisation of this right, including an opportunity for the disabled (who have physical or mental deviations) to get education and to correct their deviations and secure their social adaptation. There are special educational programs which are implemented in special correctional schools for children with limited cognitive capacities. These programs are specially designed on the ground of general educational standards with account to particularities of physical and mental development of pupils and students. Special features of these programs are motivated by the objective considerations.

Moreover, the Court noted that there is a possibility for such pupils and students to transfer from a special correctional school to another educational facility when all the requirements concerning the consent of the parents and medical expertise are met. Thus, the state regulation establishing conditions for education for mentally and physically disabled children is constitutional.

Conclusion

The relevant case-law of the Constitutional Court of the Russian Federation concerning the right to education shows the following trend. Primarily, this field as such is not yet on the forth front of the Court's activities. This is connected to the subject matters of the applications to the Court which rarely challenge constitutionality of relevant provisions of educational law. Another reason is that even if an aspect of education is discussed in an application and a subsequent decision, it usually constitutes a part of more general reasoning about social benefits or other measures of social protection do not raising a separate educational claim. Secondly, the federal nature of the state does not influence much on the subject-matters of cases. Practically the only exception was the Tatarstan Linguistic case described above. The applicants to the Court usually challenge provisions of the federal legislation. It is too early to make any conclusions in respect of the educational complaints to the Court after the new Law on Education was adopted, however the statistics of applications does not show any substantial increase. Thirdly, unlike in many European countries or in the US the issue of discrimination in education is not one of the main reasons for complaints to the Constitutional Court. As the provided decisions show the main topic is financing in the field of education.