

TEACHER AS A SUBJECT OF LAW IN LEGAL EDUCATION RELATIONSHIP

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ABSTRACT

In Latvia, the essential legal aspects of the teacher's professional activity have been little studied. In short, the relevance of the research and practical nature is not negative. Taking into account several difficult cases in the practice of educational institutions, as well as some legal proceedings in which teachers, educators and parents were involved, it follows from discussions about how the work of teachers, its content, rights, duties, and responsibilities both before and the Covid-19 pandemic are relevant. Although in Latvia, the number of teachers in general education schools has decreased over the past five years, at the same time, these schools form the largest number of teachers, i.e. 21,573 teachers (2020). There were only 2,424 (Official statistics of Latvia, 2021), teachers in vocational education institutions in 2020, and 11,430 teachers in preschool education in the 2019/2020 academic year (Ministry of Education and Science, 2020). That is why general education teachers are the focus of this study. The teacher is both a participant in the pedagogical process and a participant in legal relations. This means that teachers are an important subject of law, who fulfil their rights and obligations. The teacher, together with other subjects of law – the parents of the student, the head of the educational institution, support staff, etc. – are responsible for the result of the educational process. The teacher is involved in professional activities both in the field of children's rights and in the field of labour, in constitutional and administrative law. Therefore, it is important to know the main rights, duties and responsibilities of a teacher and proposals for improving Latvia's regulation of Education law.

Keywords: *teacher's rights, duties, responsibility, teacher as a subject of law, legal educational relationship.*

Introduction

The professional activity of a teacher today is relatively widely studied. A fundamental study on the identity of the teacher has recently been published in Latvia. This study, for example, indicates the responsibility and independence of the teacher's personality as a sense of professional identity. This, together with the professional and high-quality teaching of their subject, also enables the teacher to apply what is established by legal

acts, as well as demonstrate an understanding of the content and hierarchy of his professional duties (Vidnere, 2019).

The teaching profession and the factors that affect it needs to be studied from different viewpoints. Taking into account the above, the aim of this research is to analyse the most important components of a teacher's professional role in terms of educational legal relations, i.e., a teacher's rights, duties and responsibilities. In addition, the article focuses mainly on education as a set of administrative legal relations, leaving aside other research questions about the teacher as a subject of civil legal relations. Respectively, questions about teachers' employment, salaries, vacations, etc. are not further analysed in this study.

The research is based on scientific literature, national legislation, such as the Latvian (hereinafter – LV) Education Law, the Law on the Protection of the Rights of the Child, case law – practice of the Constitutional Court, the Senate of the Republic of Latvia and other courts. The following methods of interpretation of legal norms are used in the research: grammatical – legal interpretation that is based exclusively on the words themselves, systemic – legal interpretation that is based on analysing legal norm as a system, teleological – legal interpretation that is based on Identification of the objective (goal) of legal norms.

Considering the interdisciplinary nature of the research, the authors want to emphasize that the Education Law of Latvia uses the term “teacher” to refer to all persons employed in educational institutions or certified private practice who implement educational programs (Education law of Latvia, 1998). Thus, taking into account the diversity of teachers' positions (Cabinet of Ministers, 2011, Nr.354) and the specifics of this study, as well as the limitations of the volume of publication, only the professional activity of a general education teacher will be analysed. Consequently, the authors of the study have chosen to use the traditional term “teacher”, while acknowledging that this terminological choice suggests that the article will not analyse the management or support staff, such as the social pedagogue, school or education psychologist, speech therapist, or activities of teachers with specific responsibilities, such as form tutors. In the opinion of the authors, the legal aspects of the rights and responsibilities of support staff or the head of a general education institution are topics worthy of separate research.

The legal aspect of the education process

The basic duty of a teacher's daily professional role is to participate in the implementation of the educational program – to organise and implement the teaching and upbringing process in accordance with the

educational standards and guidelines set by the state. Basically, this main obligation necessitates the establishment of a lasting pedagogical and also legal connection with the learners, their parents and legal representatives, as well as the ability to deal with various (problem-solving) situations in their daily activities, the nature of which may even go beyond traditional educational frameworks (e.g. social issues, psychological support for learners, etc.), as well as taking responsibility for learners, their well-being and safety. This implies that a teacher's role is an important subject of legal relations for education, for whom specific rights and obligations, as well as responsibilities are detailed in statutory regulations. This legal relationship is a complex one, as it regulates both human rights (the right to education, the rights of the child and its protection, etc.), as well as administrative rights (the student's education in an educational institution, etc.), civil law (a teacher's employment relationship with employer, etc.). Thus, the activity of a teacher is regulated by the determination of rights and obligations, a number of regulatory enactments, including the Education Law of Latvia, the Law on the Protection of the Rights of the Child of the Republic of Latvia, the regulations of the educational institution and the rules of procedure, etc. Pedagogical scientists point out that teaching, especially in primary and secondary education, is nationally defined in terms of both content and organisation, i. e., educational standards and guidelines, and the educational institution as the institution where the teaching takes place determines the teacher's professional activity and defines the basic structure of teaching and student relationships (Namsone, Lāce, Volkinšteine, 2018). The Latvian standard of the teaching profession also states: "[...] A teacher carries out pedagogical activity in one of the levels and types of education in accordance with the state education standards or the state pre-school education guidelines. The teacher purposefully directs the development of the learner's competencies in accordance with the needs of the learner's individual development, learning, personality and social development..." (Teacher profession standard, 2018). This means that the teacher must be competent not only in didactics or child psychology and in his/her subject, but also in matters of children's rights, as well as in the legal framework related to the work of a teacher. At the same time, the State Inspectorate for the Protection of the Rights of the Child points out that, in its inspections in 2020, it had found reference to insufficient cooperation from teachers with parents, emotional and physical abuse between peers, as well as inappropriate use of disciplinary and non-pedagogical methods of communication with students by teachers and teaching assistants. That is, of the total number of examinations, the majority of (23.78%) cases were related to emotional abuse by teachers (Public Report of the National Inspectorate for the Protection of Children's Rights, 2020). In this context,

the judgment of the Supreme Court of 2015 should be mentioned, which states: “The actions of a teacher when stepping on a child’s feet are unjustifiable and incompatible with the status of a teacher, as such do not correspond to pedagogical methods, as the physical intervention on a child is a violation of the child’s rights and is incompatible with continuing any employment at school...” (Judgment in Case No. C33261514, 2015). While in 2021, the Regional Administrative Court heard a case for the dismissal of a director of a general education institution in Riga, including a state education standard that is mandatory for anyone who develops and implements general education programs. The head of an educational institution has a duty to ensure that teachers implement the curriculum set by the state (Judgment in Case No. A420198420, 2021). So, the teacher must not only know and teach study subject, but also his/her rights and obligations in the teaching and upbringing process.

Teachers’ rights, duties and responsibilities

The United Nations Educational, Scientific and Cultural Organization (UNESCO) states that today, when information is readily available, the role of teachers is changing significantly. Namely, teachers are still key members of society in facilitating learners’ transition to a sustainable lifestyle. This means that teachers help learners understand difficult choices. This is necessary to ensure sustainable development to motivate them to transform themselves as well as society. Teachers themselves need certain opportunities, knowledge and skills; they must adhere to certain values and they must act in such a way as to pass them on (UNICEF, 2021). This is possible if teachers execute their responsibilities in their daily activities and exercise their rights, acting in the best interests of the learners and children as much as possible. Although Section 51 of the Latvian Education Law sets out the general responsibilities of a teacher, the details of the teacher’s activities are up to each educational institution, specifying the teacher’s tasks and responsibilities accordingly, (taking into account the specifics of the educational institution, the learning environment and learners’ needs internally and externally). It should be noted that the teacher’s participation in extra-curricular activities must not lead to an excessive burden and interfere with the performance of the teacher’s main duties (International Labour Organisation United Nations Educational, Scientific and Cultural Organization, 1984).

The Constitutional Court of Latvia also points out: “[...] Communication between the teacher and the learner takes place mainly within the framework of the implementation of a certain educational program. However, the personal example is also important in the educational process, because

the learner can also be influenced by the actions of the teacher and the head of the educational institution outside the implementation of a certain educational program or even outside the educational institution. For example, a wide range of people, including students, their parents, friends and relatives, can follow the teacher's activities outside working hours, if they are covered on social networks or are otherwise made public (participation in events or associations). Thereby, the teacher has a significant influence on the learner, not only in the process of acquiring a certain educational program, but also in everyday communication... ” (Constitutional Court of Latvia, Case No. 2017-03-01, 2017).

This finding is also in line with the science of pedagogy. Respectively, a teacher's professional competence involves more than just knowledge. Skills, attitudes and motivation also contribute to teaching and learning. Teacher proficiency is characterised by good problem-solving strategies, extensive knowledge of pedagogy and the subject matter, good adaptability in relationships with different students, good decision-making skills, greater sensitivity to the context and greater respect for the student (Guerriero, 2021). In the pedagogy, the teacher's activities are considered to affect the activities of pupils, which is the basis of their future competences (Margeviča-Grinberga, Šūmane, 2020).

Historically in Latvia, for example, the 1920 legislation stated: “[..] The school must respect the rights, interests and amenities of the pupils, but the teachers must demand the same from the pupils...” (Melnalksnis, 1923). Thus, a teacher has long been subject to high professional and personal requirements, which, among other things, include law-abiding behaviour, compliance with regulatory enactments. As well as observing the relatively recent amendments to the Education Law – loyalty to the Republic of Latvia and its Constitution (1998), because the teacher must ensure the learning process, observing the content of the state education standards and guidelines and achieve the state goals. It is also necessary to raise considerate, honest, responsible people – Latvian patriots, strengthening the students' belonging to the Republic of Latvia. Each pupil in accordance with Section 3, Paragraph one of the Education Law, shall be entitled to qualitative and inclusive education (Education law of Latvia, 1998). Upholding such rights is also one of the basic duties of the educator. In addition, the age, development and needs of pupils, as well as the specific content of the educational relationship often also determine the hierarchical nature of the teacher-learner relationship. Namely, the student must follow the procedures adopted by the educational institution and obey the teacher's requirements, while the teacher has a creative and responsible duty to participate in the implementation of the educational program, to ensure and implement a modern and high-quality teaching and upbringing process; to create and

ensure a physically and psycho-emotionally favourable, inclusive and safe educational environment, as well as to create and ensure a physically and psycho-emotionally favourable, inclusive, safe educational environment. For example, in one of the judgments of the LV Senate in 2017, it is specified: “[..] An environment suitable for acquiring education means such circumstances in which a student can acquire the respective educational program without hindrance and to the fullest extent. This includes both the right of every pupil to trust that other schoolmates will be respected in the learning process and the right of every teacher to perform his or her duties in a dignified environment...” (Judgement No. A420225114 SKA-115/2017, 2017).

An environment suitable for education is one in which the student feels physically and psycho-emotionally safe, in which mutual communication is respectful, but in the centre there is the learner and his or her needs. The implementation of the teaching and upbringing process is not possible without appropriate modern technologies, other material and technical means or textbooks. Therefore, one of the preconditions for a teacher’s professional activity is an appropriate learning environment with provision so that it is physically possible to lead a modern lesson (Margeviča-Grinberga, Šūmane, 2020).

As already stated, in the performance of his or her duties, the teacher must give priority to the rights and interests of the child or learner, (Law on the Protection of the Rights of the Child of the Republic of Latvia, 1998), the rights, needs and development of pupils must be respected, including the individualisation, differentiation and personalization of the teaching and learning process without any discrimination, in coordination with the staff of the educational institution developing interdisciplinary links and other initiatives of a pedagogical nature. As previously specified, in addition to the obligations and rights detailed in the Education Law, the duty of cooperation and exchange of information with other staff of the educational institution, as well as with pupils, parents and legal representatives, as well as regular systematic follow-up of pedagogy and in all subject areas for improvement.

Management of teaching and upbringing is related to the obligation to evaluate/assess the student’s performance and participation in the educational process. This evaluation/assessment can take the form of a descriptive account that can be submitted to the educational institution, other teachers, the pupil (at a level he or she understands), the pupil’s parents, and an assessment on a given grading scale (e. g. scores). Evaluation in itself requires compliance with the evaluation principles and procedures established by the state and the educational institution. It raises the issue of the teacher’s obligation to be able to explain and substantiate his or her evaluation/assessment, as well as the learner’s right to challenge or correct

the assessment (which is a current issue for pedagogy, education law and education management). In addition, the teacher should be involved in the decision-making and documentation of a number of student-related issues (for example, enrolment, promotion to the next class, deduction, recommendation for another curriculum, support measures) where the teacher's assessment and opinion can be decisive. When cooperating with the learner on a daily basis, one of the basic principles is not only the exchange of information, but also respectful communication and clear, reasonable requirements. As recognised by the Supreme Court of Latvia, a teacher must be an example to students in the learning process. This means that the teacher must meet both professional and high moral and ethical requirements, and observe professional ethics (Judgement No. A420225114 SKA-115/2017, 2017).

In addition to the above, the teacher's set of responsibilities requires the ability to find a solution to any conflict or problem situation that arises within the educational relationship (involving institutions outside the educational institution if necessary). Namely, the LV Senate points out: "[..] Schools, whose competence is to provide a suitable environment for education, must be able to deal effectively with situations of non-compliance by the learner..." (Judgement No. A420225114 SKA-115/2017, 2017). In order for a teacher's work to be fully fledged and meet the highest quality standards, the teacher must receive the necessary information about the student's health and development, previous education, and any other issues that may affect the teaching and upbringing process. Thus, both in the educational institution and in cooperation with a particular teacher, a clear exchange of information with other teachers, students and their parents must be established. Moreover, the teacher must be available so that such collaboration is possible and can be implemented in a variety of ways. No less important is the teacher's right to work in a favourable and dignified environment, which raises the issue of the duties and responsibilities of learners. LV The Senate emphasises: "The implementation of the right to education is inextricably linked with the responsibilities of learners or students themselves in the process of obtaining education. The responsibilities of learners are aimed at enabling students to study the curriculum as effectively as possible and at ensuring that their behaviour does not infringe on the right of others to a fully fledged process of education and growth. These responsibilities are based on socially accepted values, including a polite and dignified relationship. [...] ... The fact that a pupil confronted a teacher with a coarse word is to be regarded as a particularly serious breach of the learner's obligations..." (Judgement No. A420225114 SKA-115/2017, 2017). This raises the issue of the teacher's ability to resolve conflicts and problem situations, as well as being able to find solutions to protect the rights of

oneself and others, i. e. to work for students to fulfil their responsibilities in the educational institution, to respect the rights of teachers and others.

One of the most important principles that determines the professional activity of each teacher is the principle of responsibility. Section 51, Paragraph Two of the Education Law stipulates that “teachers are responsible for their work, the methods, techniques and results” (Education law of Latvia, 1998). Taking responsibility means the teacher’s ability to implement a modern, systematic, high-quality, continuous and inclusive teaching and upbringing process, to choose the solution that best suits the needs and interests of learners, including the most appropriate teaching aid, method, approach, also – if necessary – readiness and the ability to justify and explain one’s actions, to acknowledge the consequences of one’s actions, to be able to analyse and reflect on one’s actions. No less important is the teacher’s responsibility for the student’s safety – both in the lesson, in the educational institution and its events, as well as the responsibility that the teacher’s teaching and upbringing process is meaningful, promoting the student’s growth and development, ensuring successful continuation and inclusion in society. In addition to the above, education is essentially one of the administrative functions provided by an educational institution on the basis of a state decision (state registration, licensing of educational programs). (It should be noted that state and municipal educational institutions are public administration institutions.) Consequently, the teacher is also bound by the principles of public administration, including respect for human rights, the rule of law, openness, accessibility, good governance, efficiency, continuous improvement, the public interest, etc. (Briede, Danovskis, Kovaļevska, 2016). These principles must be implemented in the daily activities of a teacher – in the performance of duties, implementation of rights, as well as responsibility, because as the Constitutional Court of Latvia has acknowledged “[...] Learners, their family members and society as a whole would benefit ...”(Constitutional Court of Latvia, Case No. No. 2017-07-01).

Conclusions

In accordance with the above, it is possible to establish that the set of rights and obligations manifested in the everyday professional activity of a teacher, is considerably wider than the general duties and rights of a teacher specified in the education law. The definition of a teacher’s professional responsibility also needs to be supplemented. It must be concluded that:

1. The basic duty of a teacher is to implement the teaching and upbringing process in accordance with the state educational standards and guidelines, proving himself or herself as a law-abiding, ethical and loyal professional in his or her daily activities. However, no single piece of

legislation is able to provide guidance on all possible solutions, leaving each teacher with a relatively wide field of interpretation or a so-called “grey area”. At the same time, the teacher must act in the interests of his students (the principle of the rights of the child and the priority of interests), justifying his activities with the goals of educational standards and programs.

2. The precondition for the performance of the duties of a teacher and the exercise of rights is dignified communication, cooperation and exchange of information with colleagues, the learner and his or her parents, and the child or learner being at the centre of the educational process, at the same time being able to identify the needs of all learners in the class/group and to balance them in the interests by implementing the principles of inclusive and high-quality education.
3. Consequently, the guiding principle of a teacher’s professional activity is the priority of the child’s/learner’s rights, the needs of the learner (child-centered educational process). Alongside this, the pedagogue is bound by a number of basic principles of public administration, which are basically aimed at the maximum protection of the rights and interests of the learner and his or her parents, as well as the most efficient and high-quality activities possible.
4. Among the duties of a teacher, the list of which is currently missing in the Education Law, is the obligation to create a favourable and safe educational environment, to ensure and take care of learners ‘safety’, to follow current issues in pedagogy and the subject, to get involved and solve problems, if learners’ safety and well-being are under threat.

This makes it possible to make a proposal on the need to start a wider public and professional discussion on the improvement of the regulation of the rights and obligations of teachers.

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