

1995/06/13 - PL. ÚS 25/94: SCHOOL MATERIAL DECISION

HEADNOTES

1. Education free of charge means that the state shall bear the costs of establishing schools and school facilities, of their operation and maintenance, but above-all it means that the state may not demand tuition, that is, the provision of primary- and secondary-level education for payment. An exception is allowed for private and religious schools which exist apart from the network of „state“ schools, which to the necessary degree secure the right to education free of charge.

2. The provision on the degree to which the government provides free textbooks, teaching texts, and basic school materials can not be placed under the heading of the right to education free of charge.

CZECH REPUBLIC CONSTITUTIONAL COURT

JUDGMENT

IN THE NAME OF THE CZECH REPUBLIC

The Plenum of the Constitutional Court of the Czech Republic concerning the petition of a group of Deputies instituting a proceeding on the annulment of Government Regulation No. 15/1994 Coll., on the Provision Free of Charge of Textbooks, Teaching Texts, and Basic School Materials, has decided, thusly: The petition is rejected on the merits.

REASONING

I.

On 4 November 1994, the Constitutional Court of the Czech Republic received from a group of Deputies of the Assembly of Deputies of the Parliament of the Czech Republic a petition instituting a proceeding on the annulment of Government Regulation No. 15/1994 Coll., on the Provision Free of Charge of Textbooks, Teaching Texts, and Basic School Materials. In the petitioners' view, this regulation is in conflict with Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms,¹⁾ with Article 28 para. 2 letters a) and b),²⁾ and Article 41 of the Convention on the Rights of the Child,³⁾ and with Article 5 para. 2 of the International Covenant on Economic, Social, and Cultural Rights.

In addition, the group of Deputies cites the objected-to Government Regulation and asserts that it is in conflict with:

- Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms,¹⁾ which guarantees to all citizens the right to elementary and secondary school education free of charge;

- Article 28 para. 2, letters a) and b) of the Convention on the Rights of the Child,²⁾ promulgated under No. 104/1991 Coll., pursuant to which the Czech Republic as a State Party bound itself to establish, free of charge, education for all children and to establish, free of charge, secondary general and specialist education and, in cases of need, to provide financial support as well;

- Article 41 of the Convention on the Rights of the Child³⁾ and Article 5 para. 2 of the International Covenant on Economic, Social, and Cultural Rights,⁴⁾ according to which, in case of a conflict between domestic and international rights, those rights shall be applied which were, on the day the international treaty entered into effect, more favorable for persons under the jurisdiction of the State Party.

Thus, this state of facts satisfies the condition of admissibility of the petition as required in § 66 para. 1 of Act No. 182/1993 Coll., and it can be assumed that the Government Regulation was adopted in the manner stated in §68 para. 2 of Act No. 182/1993 Coll.

The Government of the Czech Republic informed the Constitutional Court of its position on the group of Deputies' petition, to the effect that its Regulation No. 15/1994 Coll.⁵⁾ was based upon authority given it under § 4 para. 2 of Act No. 29/1984 Coll., on the Basic and Secondary School System (the Education Act)⁶⁾, pursuant to which the Government is to designate the extent to which textbooks, teaching texts, and basic school materials will be provided to students free of charge. It added that education free of charge as called for in Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms¹⁾ is to be understood (in connection with the mentioned § 4 of the Education Act⁶⁾) as referring to the right of students to be provided with instruction in suitable buildings, the wages of qualified instructors and further personnel, the costs of the operation and maintenance of the buildings, free use of educational aids, that is, those which are owned by the school and which it uses for its own instruction (models, chemicals, chalk, wall maps and pictures, etc.). Students, or their parents, are to pay for educational materials which are owned and used by the students, with the exception of materials which the state provides to students in the first year of elementary school, worth 200 Czech Crowns per student. The above-mentioned Government Regulation provides that textbooks for elementary school are also lent to the students free of charge, but they do not become their property. In secondary school, the students purchase textbooks, and they become their property. This fact is not in conflict with the Charter of Fundamental Rights and Basic Freedoms, for the Government was merely exercising its authority; in addition, it is relatively difficult, particularly in relation to secondary specialist schools to precisely define the concept „textbook“ (without being bound to the list of textbooks), for in many cases they also make use of expert literature which are not texts prepared for didactic purposes, and the students commonly obtain them as their own property.

II.

From the perspective of the legal enactments of which the group of Deputies speak in their petition, it is appropriate to emphasize right away that § 4 para. 1 of Act No. 29/1984 Coll., on the System of Basic and Secondary Schools (the Education Act),⁶⁾ provides that citizens enjoy the right to education free of charge in schools that are a part of the elementary and secondary school system. The right to education can be secured in exchange for payment in private or religious schools. § 4 para. 2 of the above-cited Act states that students are to be provided with textbooks, teaching texts, and basic school materials to the extent provided for by the Government.

The group of Deputies' petition is based on the conviction that the 1 December 1993 Government Regulation No. 15/1994 Coll., on the Provision Free of Charge of Textbooks, Teaching Texts, and Basic School Materials, is in conflict with Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms,¹⁾ with Article 28 para. 2, letters a) and b) of the Convention on the Rights of the Child,²⁾ and Article 5 para. 2 of the International Covenant on Economic, Social, and Cultural Rights.³⁾ Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms¹⁾ provides that citizens enjoy the right to education free of charge in elementary and secondary school, as well as university-level education in accordance with the citizen's capabilities and society's possibilities. Article 28 para. 2 of the Convention on the Rights of the Child,²⁾ promulgated under No. 104/1991 Coll., is not subdivided into letters a) and b), and it provides that „States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.“ However, it can be deduced from the context of the submitted petition that the group of Deputies evidently had in mind Article 28 para. 1, letters a) and b) of the Convention,²⁾ which provides that „States Parties recognize the right of the child to education, and with the view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;“.

Article 5 para. 2 of the International Covenant on Economic, Social, and Cultural Rights,⁴⁾ promulgated under No. 120/1976 Coll., provides that „[n]o restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom will be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.“

In this connection, it is necessary to state once again that § 4 para. 1 of Act No. 29/1984 Coll.,⁶⁾ provides that citizens enjoy the right to education free of charge in schools that are part of the elementary and secondary school system. The right to education may be provided in exchange for payment, but only in private or religious schools. In its judgment

No. 49/1994 Coll., which is referred to in the group of Deputies' petition, the Constitutional Court annulled that portion of § 4 para. 1 of Act No. 29/1984 Coll., which reads „unless provided otherwise by statute“. The other provisions of the act were not affected, thus § 4 para. 2) was not thereby affected. It provides that, to the extent prescribed by the Government, students shall be provided free of charge with textbooks, teaching texts, and basic school materials.

Legal norms of a lower legal force must be in conformity with legal norms of a greater legal force. Proceeding on the basis of this universally recognized principle, it follows that a Government Regulation must be in conformity not only with constitutional acts but also with international treaties under Article 10 of the Constitution of the Czech Republic⁷⁾ and „ordinary statutes“. All legal norms of a greater legal force (that have a bearing on Government Order No. 15/1994 Coll.⁵⁾) guarantee the right to education free of charge. The mentioned Government Regulation, No. 15/1994 Coll.,⁵⁾ does not restrict the right to education free of charge nor does it affect it substantially. Education free of charge unquestionably means that the state shall bear the costs of establishing schools and school facilities, of their operation and maintenance, but above-all it means that the state may not demand tuition, that is, the provision of primary- and secondary-level education for payment. An exception is allowed for private and religious schools which exist apart from the network of „state“ schools, which to the necessary degree secure the right to education free of charge. The provision on the degree to which the government provides free textbooks, teaching texts, and basic school materials can not be placed under the heading of the right to education free of charge. According to the interpretation of this concept proposed by the petitioners, the state should see to the provision of everything directly related to attendance at elementary and secondary schools, for example, galoshes, briefcases, pencil cases, writing equipment, physical education gear, etc. It is clear that education free of charge cannot consist in the fact that the state bears all costs incurred by citizens when pursuing their right to education and the Government undoubtedly has authority to proceed in this way. In no way does this cast into doubt the principle of elementary and secondary education free of charge.

Art. 13. Para. 1 of the International Covenant on Economic, Social, and Cultural Rights provides that, „States Parties to the present Covenant recognize the right of everyone to education“, and Art. 13 para. 2 of the same Covenant provides that, „States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education . . . shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.“

The costs connected with putting the right to education into effect can be divided between the state and the citizen, or his legal representative. It is appropriate to keep in mind that it is in the citizen's own interest to obtain education (and by this way also higher qualifications and better opportunities to make one's way in the labor market) and to make effort himself to achieve it. The expenses connected with putting the right to education into effect are a long-term investment into the life of the citizen. The state bears the essential part of these costs, however, it is not obliged to bear all of them.

The Constitutional Court has, thus, come to the conclusion that Czech Republic Government Regulation No. 15/1994 Coll., on the Provision Free of Charge of Textbooks, Teaching Texts, and Basic School Materials, does not infringe either Article 33 para. 2 of the Charter of Fundamental Rights and Basic Freedoms,¹⁾ Article 28 para. 1, letters a) and b)²⁾ or Article 41 of the Convention on the Rights of the Child,³⁾ or Article 5 para. 2 of the International Covenant on Economic, Social, and Cultural Rights,⁴⁾ nor any other constitutional act, statute, or international treaty under Article 10 of the Constitution.⁷⁾ Therefore, pursuant to § 70 para. 2 of Act No. 182/1993 Coll., on the Constitutional Court, it has rejected on the merits the group of Deputies' petition proposing the annulment of this enactment.

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Overview of the most important legal regulations

1. Art. 33 para. 2 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that citizens have the right to free elementary and secondary school education, and, depending on particular citizens' ability and the capability of society, also to university-level education.

2. Art. 28 par. 1 letter a, b of the Convention on the Rights of the Child (published in the Collection of Laws under no. 104/1991 Coll.) provides that states parties to the convention shall recognize the right of the child to education, and with the aim of gradual implementation of this right on the basis of equal opportunity, shall:

- a. introduce free and mandatory education for all children
- b. support the development of various forms of secondary education including general and specialized education, make it accessible and acceptable for every child, and take other appropriate measures, such as introducing free education and, in case of need, providing financial support.

Note: The complainant incorrectly cites Art. 28 par. 2 of the Convention.

3. Art. 41 Of the Convention on the Rights of the Child (published in the Collection of Laws under no. 104/1991 Coll.) provides that nothing in the Convention affects provisions which to a large extent assist implementing the rights of the child and which may be contained in: a) the legal order of the state party b) international law which is binding for that state.

4. Art. 5 par. 2 of the International Covenant on Economic, Social and Cultural Rights (published in the Collection of Laws under no. 120/1976 Coll.) provides that no limitation or deviation from any of the fundamental human rights recognized or existing in any country on the basis of law, treaties, regulations or custom shall be permitted on the grounds that the Covenant does not recognize such rights or that it recognizes them in a lesser extent.

5. Order of the Government of the CR no. 15/1994 Coll., on Cost-free Provision of Textbooks, Teaching Texts and Basic School Supplies.

6. § 4 of Act no. 29/1984 Coll., on the System of Elementary Schools, Secondary Schools and Post-secondary Specialized Schools (the Schools Act), provides in par. 1, that citizens have a right to cost-free education in schools which are part of the elementary and secondary school system; the right to an education can be exercised in private schools and in parochial schools for payment. Par. 2 provides that education in post-secondary specialized schools established by the state can be provided for payment from the time when the government, by an order, provides its amount and method of payment; in these schools established by municipalities, from the time when the municipality provides the amount and method of payment by generally binding ordinance, and the payment may not be more than half of the expenses calculated per one student at the school. Note: § 4 par. 1 as amended by of Act no. 190/1993 Coll. provided that citizens have a right to cost-free education in schools which are part of the elementary and secondary school system, unless the Act provides otherwise. This provision was annulled by judgment ÚS no. 49/1994 Coll.

7. Art. 10 of Act no. 1/1993 Coll., the Constitution of the CR, provides that international treaties concerning human rights and fundamental freedoms which have been duly ratified and promulgated and by which the Czech Republic is bound are directly applicable and take precedence over statutes.