



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 29 June 2023

n Case No. 2022-31-03

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Justices Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

With the participation of Kristaps Zaķis and Gints Osis, the authorised representatives of the applicant – 38 Members of the 13th convocation of the *Saeima*: Jānis Vucāns, Edgars Kucins, Evija Papule, Gundars Daudze, Armands Krauze Uldis Augulis, Māris Možvillo, Raimonds Bergmanis, Janīna Jalinska, Ļubova Švecova, Māris Kučinskis, Jānis Dūklavs, Karina Sprūde, Jūlija Stepaņenko, Edgars Tavors, Viktors Valainis, Ralfs Nemiro, Ilga Šuplinska, Inguna Rībena, Romāns Naudiņš, Ēriks Pucens, Ivans Ribakovs, Jānis Urbanovičs, Jānis Krišāns, Vitālijs Orlovs, Zenta Tretjaka, Ivans Klementjevs, Andrejs Klementjevs, Didzis Šmits, Inga Goldberga, Sergejs Dolgopolovs, Nikolajs Kabanovs, Boriss Cilevičs, Vladimirs Nikonovs, Igors Pimenovs, Jānis Tutins, Valērijs Agešins, and Artūrs Rubiks,

and Daiga Dambīte, Edīte Kanaviņa, Baiba Bašķere and Gunita Delijeva, the authorised representatives of the Cabinet, the institution, which issued the contested act,

and Laura Stutāne as the secretary of the court hearing,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 3 of Section (16), Para 3 of Section 17 (1) and Section 28 of the

Constitutional Court Law, on 19, 22 and 30 May 2023, at an open court hearing with the participants in the case present examined the case

“On Compliance of Para 3 of Table 4 in Annex 1 and Para 7 of Annex 3 of the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers” with the First Sentence of Article 91 and Article 107 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 5 July 2016, the Cabinet adopted Regulation No. 445 “Regulations Regarding Remuneration of Teachers” (hereafter – Regulation No. 445), which entered into force on 1 September 2016.

1.1. Para 3 of Table 4 in Annex 1 of Regulation No. 445 provides that the lowest monthly wage rate for a teacher of pre-school education is EUR 872.

By the Cabinet Regulation of 5 July 2022 No. 415 “Amendments to the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers”” (hereafter – Regulation No. 415), which entered into force on 1 September 2022, the lowest monthly wage rate for a teacher of pre-school education was set in the amount of EUR 970.

By the Cabinet Regulation of 13 December 2022 No. 787 “Amendments to the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers”” (hereafter – Regulation No. 787), which entered into force on 1 January 2023, the lowest monthly wage rate for a teacher of pre-school education was set in the amount of EUR 1070.

Whereas by the Cabinet Regulation of 21 April 2023 No. 199 “Amendments to the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers”” (hereafter – Regulation No. 199), which will enter into force on 1 September 2023, the lowest monthly wage rate for a teacher of pre-school education was set in the amount of EUR 1240. On 26 April 2023, the Cabinet issued Regulation No. 207 “Amendments to the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration

of Teachers”” (hereafter – Regulation No. 207), which will enter into force on 1 September 2023 and in which Table 4 in Annex 1 of Regulation No. 455 has been merged with Annex 3 of Regulation No. 455.

1.2. Para 7 in Annex 3 of Regulation No. 445 provides that the workload per week of a teacher of pre-school education in astronomical hours is 40 hours, of which 36 hours are envisaged for teaching lessons and classes, whereas the annual workload is 1760 hours.

By Sub-para 1.9. of Regulation No. 787, Annex 3 of Regulation No. 445 has been expressed in new wording and its Para 8 provides that the total annual workload of a teacher of pre-school education is 1760 hours, the weekly workload is 40 astronomical hours, of which 34 are envisaged for teaching lessons and classes. Pursuant to Para 50 of the Transitional Provisions of Regulation No. 787, the aforementioned provision will be applied from 1 September 2023.

2. The applicant – thirty-eight Members of the 13th convocation of the Saeima (hereafter – the Applicant) – holds that Para 3 in Table 4 of Regulation No. 445, in the wording that was in force from 1 September 2021 until 31 August 2022, and Para 7 in Annex 3 of this Regulation, which was in force from 1 September 2016 until 31 December 2022 (hereafter also – the contested regulation) are incompatible with the first sentence of Article 91 and Article 107 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicant notes that the contested regulation envisages lower rates of the lowest monthly wage for a teacher of pre-school education compared to teachers employed on the other levels of education. Likewise, the contested regulation envisages for teacher of pre-school education different workload corresponding to the lowest monthly wage rate, and these differences are said to be disproportional because the requirements that are set in regulatory enactments for pre-school education teachers are similar and, in some situations, the same as the ones set for teachers employed on other levels of education

The weekly workload set for teachers of pre-school education in Regulation No. 445 is said to be larger than the one set for teachers in general education

institutions, whereas remuneration is calculated in accordance with the same principles as for the other teachers.

In 2009, due to the global financial crisis, the system of remuneration for teachers of pre-school education was transferred into the responsibility of local governments. Therefore, the amount of remuneration for teachers of pre-school education depends upon the financial possibilities of a local government. Further reforms introduced into the system of teachers' remuneration had facilitated levelling out of remuneration for work of general education teachers; however, inequality between teachers of pre-school education and other teachers in general education had not been eliminated.

The Applicant holds that also following amendments to Regulation No. 445 inequality with respect to remuneration for teachers of pre-school education for one hour of work persists and, allegedly, the planned changes to the model of financing teachers' remuneration for work will not eliminate this inequality.

Teachers of pre-school education and teachers working at other institutions of education are said to be representatives of a regulated profession. Since the requirements regarding education and professional qualification for a specific profession are defined, by taking into account the nature of duties and the level of responsibility related to discharging these duties, these requirements are said to be an objective criterion for comparing several sub-groups of one profession.

Higher education has been set as a mandatory prerequisite also for working as a teacher on the pre-school level. Moreover, several of the requirements regarding education and qualification, defined for a teacher of pre-school education are such, the compliance with which allows a teacher to work also as a primary school teacher. Similar obligations and rights for teachers of pre-school education and other teachers have been defined in normative legal acts. Thus, teachers of pre-school education and all other teachers in general education are said to be in similar and according to certain criteria comparable circumstances.

The Applicant holds that the differential treatment, established by the contested regulation, lacks a legitimate aim. The differential treatment had been introduced with the aim of saving the State budget resources. However,

irrespective of the national economic situation and even in circumstances of sharp economic downturn, the State is said to retain a certain totality of basic obligations that it has no right to deviate from. The Applicant is of the opinion that the differential treatment is not proportionate and that the objectives proposed could be reached by alternative measures, less restrictive upon a person's fundamental rights.

It is contended that the contested regulation is incompatible also with the right to receive, for work done, commensurate remuneration. The content of the right to fair and appropriate remuneration for work should be interpreted in line with employees' right, enshrined in the Revised European Social Charter of the Council of Europe, to receive as high and stable income as possible, as well as the right of everyone who works, defined in the third part of Article 23 of the Universal Declaration of Human Rights, to just and favourable remuneration, ensuring for themselves and their family an existence worthy of human dignity.

In the additional explanations provided, the Applicant notes that, since submission of the application to the Constitutional Court, those provisions of Regulation No. 445 that define the lower monthly wage rates and the annual workload, appropriate for these rates, for teachers of pre-school education and teachers in general education have been amended already twice – on 1 July 2022 and 1 January 2023.

At the court hearing, the Applicant's representative reiterated the reasoning stated in the application and noted that, by the amendments to Regulation No. 445, which have been adopted after the contested regulation entered into force, the difference between the lower wage rates has been decreased; however, inequality between teachers of pre-school education and other teachers persists. The Applicant's representative holds that prolonged negotiations between social partners and the Cabinet had not brought the preferable outcome and the Constitutional Court's assessment of whether the Cabinet, by setting the lowest wage rate for teachers of pre-school education, has abided by the principle of legal equality is needed. Therefore, there are no grounds for terminating legal proceedings in the case.

The Applicant's representative cannot uphold the statement that the State has fulfilled its positive obligation, by setting remuneration to teachers of pre-school education that is higher than the general minimum payment for work, defined in the state. A fair amount of remuneration for work should be based on the assessment of the nature and duties of job, the required level of skills and education needed to do the job, conditions of employment and other objective criteria. The Applicant's representative is of the opinion that it is impossible to define what kind of remuneration should be deemed to be commensurate for the work done. Therefore, the scope of this concept should be examined from the perspective of the principle of legal equality, included in the first sentence of Article 91 of the *Satversme*. Namely, remuneration to teachers of pre-school education would be commensurate to the work done if it were equal to remuneration of teachers, employed on other levels of education.

3. The Cabinet, the institution, which issued the contested act, notes in its written reply that the contested regulation complies with the first sentence of Article 91 and Article 107 of the *Satversme*.

To ascertain whether teachers of pre-school education and teachers working in other institutions of education are in similar and according to certain criteria comparable circumstances, the requirements, set for teachers, regarding the necessary education, qualifications, basic duties, as well as the aims set for the quality of education to be attained on each level of education in the learning process, as well as the teacher's duties should be assessed.

Teachers working at an institution of pre-school education could be compared to teachers in general education. Similar requirements regarding education had been set for these groups of teachers. However, it should be taken into account that the requirements regarding professional qualification, set for teachers of pre-school education and teachers in general education, differ, likewise, the content of their work, the methods to be applied, as well as duties with respect to the child and requirements regarding the preparedness of learners for the acquisition of the State-defined mandatory content of education differ.

Hence, teachers of pre-school education and teachers in general education are said to be two different groups of persons who are not in circumstances that are comparable in accordance with certain criteria. Therefore, the contested regulation has not caused a violation of the legal equality principle because, allegedly, there are grounds for setting a different lower rate of monthly wage for different groups of persons.

Whereas incommensurate remuneration for work done should be understood only as violating the principle of prohibition of discrimination in setting the remuneration for work and not as a different amount of remuneration set for different groups of persons. In this case, the State's responsibility is manifested as a certain requirement that an employer should pay similar remuneration for similar work. It is maintained that the legislator does not have an obligation, derived from the *Satversme*, to ensure strict uniformity of remuneration for everyone employed in the public sector; however, a teacher's remuneration should be proportionate to the requirements set for a teacher's position and the restriction imposed. A teacher of pre-school education does not have job-related restrictions; however, there are several such compensatory mechanisms that others, employed in the public sector, do not have.

The legislator is said to have the right to decide on setting a fixed amount of teachers' remuneration; however, in such a case, it should envisage regular review of the amount of remuneration, and, pursuant to amendments introduced to Regulation No. 445, it is being done. Thus, it can be established that the system of teachers' remuneration is adjusted to the economic situation and changes in legal regulation and that the remuneration set for teachers of pre-school education fulfils the function of remunerating for the work done. Hence, the Cabinet has properly introduced the measures needed to fulfil its positive duty, defined in Article 107 of the *Satversme*.

At the court hearing, the Cabinet's representative noted that work aimed at aligning the system of teachers' remuneration was constantly ongoing. From 1 September, the lowest monthly wage rate of teachers will be increased every year. Until 1 September 2022, the lowest monthly wage rates had been increased

gradually, by reaching an agreement with the Latvian Trade Union of Education and Science Employees and the Latvian Association of Education Managers. Simultaneously, the Cabinet has advanced the requirement for local governments to align the network of institutions of education and make the process of education more effective. The indicative schedule for increasing teachers' remuneration is being implemented by taking into account the national economic situation in the respective year.

Implementing the task, defined in the declaration of 14 December 2022 "Declaration of the Intended Activities of the Cabinet of Ministers headed by Arturs Krišjānis Kariņš", to ensure remuneration for a teacher's hour of work in the amount of at least 120 per cent of the average remuneration of public sector employees, the Cabinet had gradually increased the lowest wage rate for teachers of pre-school education. However, any changes aimed at increasing the lowest monthly wage rate for teachers of pre-school education are linked also to reviewing other teachers' wage rates. Thus, increasing the State budget expenditure for this purpose is said to influence the budgets of other Ministries, to which the respective institutions of education are subordinated. The Cabinet must take into account also the budgetary possibilities of local governments because local governments are obliged to ensure the wages for those teachers of pre-school education who educate children from the age of eighteen months to four years inclusive. The Cabinet has the obligation to prepare independently a feasible draft State budget, balancing the expenditure planned in all sectors.

4. The summoned person – the Ministry of Education and Science – holds that the contested regulation complies with the first sentence of Article 91 and Article 107 of the *Satversme*.

Remuneration of teachers, employed at state and local government institutions of education, *inter alia*, of teachers involved in educating children starting from the age of five, is ensured from the State budget resources and earmarked State budget grants. Whereas remuneration for the work of those teachers who implement pre-school education programmes prior to commencing

compulsory education has to be ensured from the local government budget. Allegedly, legal regulation allows a local government to set an additional fund for remunerating teachers of pre-school education and increase the lowest monthly wage rate for teachers of pre-school education. However, in view of the planned increase in the minimum pay for a teacher's work, local governments are not ready to assume an additional financial burden related to even faster increase in remuneration.

It has been concluded in a study conducted by the Organisation for Economic Co-operation and Development (hereafter – *OECD*) that, in twenty-two of the studied Member States of the European Union, the remuneration of teachers employed in the stage of pre-school education on average is lower than the remuneration of other teachers. Assessment of other indicators in the area of education allows concluding that the number of classes for Latvian teachers is pronouncedly high, whereas the total number of hours of work – lowest among the Member States, included in the study.

Allegedly, the amendments to Regulation No. 445 not only had significantly decreased the difference between the lowest wage rate of teachers of pre-school education and of other teachers but teachers of pre-school education had been ensured more paid-for time for fulfilling other duties of a teacher outside classes. I.e., 34 hours have been set for conducting classes and six hours – for fulfilling other duties, instead of the previous four hours. Hence, teachers of pre-school education will have more time to prepare for conducting game classes and performing other duties.

At the court hearing, the representative of the Ministry of Education and Science expressed an opinion on the differences in the monthly wage rates, workload and basic duties on the levels of pre-school, basic and secondary education, pointing to differences in the nature and content of the work of teachers employed in the respective stage of education. With the particular characteristics of a teacher's profession remaining unchanged and on the basis of changes introduced into the system of education pertaining to the content of education, the duties of pre-school education teacher and those of secondary education teacher

can be compared. With the introduction of the competency approach in the content of education, the principles of implementing the content of pre-school education have changed – although game classes remain as the main type of child’s activities, also the content of education in pre-school institution of education is being created as a process of upbringing and education.

It is planned to balance the workload of teachers in the stages of pre-school, basic and secondary education and equalize the lowest hourly wage rate in all stages of education by 2025.

5. The summoned person – the Ombudsman – holds that the contested regulation complies with the first sentence of Article 91 and Article 107 of the *Satversme*.

Sub-para “i” and “ii” of Para “a” in Article 7 of the International Covenant on Economic, Social and Cultural Rights (hereafter – the Covenant) formulate in general the right to fair remuneration for work, *inter alia*, complying with the principle of legal equality, as well as the right to such remuneration that ensures a decent living for a person. The Committee on Economic, Social and Cultural Rights, in examining “fairness” of the remuneration for work, established in states, verifies whether the minimum pay for work, defined in the state, ensures a decent level of living to a person.

The matter of what amount of remuneration should be deemed to be commensurate for the work specifically done by a person in certain position cannot be assessed legally. In examining a position, the remuneration for the holder of which cannot be defined in accordance with specific legal criteria, the assessment of whether the particular amount of remuneration for work is appropriate for this position and the work done is said to depend not only on the education and qualifications required to do the job, work environment, complexities, nature and seriousness of duties but also on the economic and social value of the respective position.

Undoubtedly, the Cabinet has taken measures to ensure to teachers of pre-school education the right to receive remuneration for work. To assess whether

these measures have been implemented properly, in the present case, it is sufficient to verify that the remuneration for work, defined for teachers of pre-school education, is higher than the general minimum remuneration, established in the state. I.e., the general minimum remuneration, established by the State, substantially is a legal instrument the purpose of which is to ensure a decent level of living for all those who work – the general minimum remuneration for work, established in the state, should be such that ensures that this aim is reached.

Teachers of pre-school education, teachers in general basic and secondary education work with persons of different age. Moreover, the basic tasks of a teacher of pre-school education are said to differ significantly from the basic tasks of teachers in general basic and secondary education. Although similar requirements regarding education and professional qualifications have been set for the candidates for these teaching positions and the Education Law sets out, *inter alia*, such general legal regulation that includes all teachers, nevertheless, teachers of pre-school education, due to the nature of their basic duties, are said to be in different circumstances.

Additionally, the Ombudsman underscores that the comparatively low financing for the sector of education and low remuneration for teachers makes it difficult to fill the vacant teachers' positions and do not promote interest in this profession among the most capable candidates, as well as lower teachers' motivation in their work. These factors may impact the quality of education, be an obstacle to accessibility of education and, thus, can significantly infringe on the fundamental rights of learners, included in Article 112 of the *Satversme*. Education of insufficient quality hinders a person from continuing successfully education on the next level of education, from taking part in the labour market and participating in the social and political life of the State and society, it also has a negative impact on the entire development of the State and society.

6. The summoned person – the Latvian Association of Local Governments – subscribes to the reasoning provided by the Applicant.

The autonomous function of a local governments – to ensure education to inhabitants, defined by the legal acts that regulate functioning of local governments, is said to be, actually, responsibility with shared competence because part of this function is fulfilled by the State, whereas the other part – by the local government. This approach follows from the legal acts that regulate the sector of education. In the sector of education, the competence of a local government includes, mainly, ensuring infrastructure and providing of education-related services. Thus, the competence of financing the salaries of teachers is shared by the State and the local government, and the financing for teachers' salaries is mainly provided for from the State budget. Therefore, no justification can be found as to why the remuneration for teachers working at institutions of pre-school education should be provided from the local government's budget.

The requirement to finance from the State budget the remuneration of all teachers of pre-school education has been included in the minutes of negotiations between the Latvian Association of Local Governments and the Cabinet already since 2005. The State's obligation to ensure earmarked grant for paying remuneration to all teachers in pre-school education is substantiated by the requirement, included in Para 9 of the European Charter of Local Self-Government, to ensure to local governments adequate financial resources, allowing them to discharge their autonomous functions. As regards remuneration to teachers, the Latvian Association of Local Governments has noted regularly that adequate financing should be provided, therefore the sources of financial resources for ensuring an increase in the remuneration for teachers, indicated in the Cabinet's written reply, should be viewed critically. Finding resources for paying remuneration to teachers of pre-school education solely in the budgets of local governments, in turn, is said to be impossible.

7. The summoned person – the Latvian Trade Union of Education and Science Employees (hereafter – the Trade Union) – notes that it subscribes to the legal reasoning provided in the application.

The Cabinet has repeatedly admitted and confirmed that inequality can be identified in the way remuneration for teachers of pre-school education is determined, comparing the lowest monthly wage paid to them with the lowest monthly wage set for teachers in general secondary education. It had been confirmed in negotiations with the Prime Minister and the Minister for Finances, during which the issues of inequality in the remuneration to teachers of pre-school education were discussed, that the increase in the remuneration for teachers of pre-school education, proposed by the Ministry of Education and Science, should be seen positively; however, it is not sufficient and the inequality that exists within the system of remuneration should be diminished faster.

The Trade Union points out that such criteria as demands set for education, the aims of education and the content of work may not serve as the basis for separating the teachers of pre-school education and of general basic, general secondary and vocational education. Pursuant to provisions of the law “On the Regulated Professions and the Recognition of Professional Qualifications”, the profession of a teacher is included in the range of regulated professions and it comprises teachers of general basic and general secondary education, as well as teachers of pre-school education. Pursuant to classification of professions, defined in the Cabinet Regulation of 23 May 2017 No. 264 “Regulation on the Classifier of Professions, Basic Tasks Corresponding to the Profession and Basic Qualification Requirements” (hereafter – Regulation No. 264), the teachers of basic education and pre-school education are included in one group of professions – “234 Teachers of basic and pre-school education”. Uniform basic tasks of the job have been defined for these teachers. Teachers belonging to this group teach several subjects on the basic and pre-school level of education, organise group and individual games and lessons that help the learner to develop physically and mentally and to gain communication skills. Assessment of the requirements set for the profession of teachers in pre-school and general education, as well as the main tasks and duties allows recognising that both teachers of pre-school education and teachers of general education do similar pedagogical work on different levels of education and each level is the basis for the successive stage.

At the court hearing, the Trade Union's representative drew attention to recommendations made by the Council of Europe and *OECD*, i.e., that Latvia has been urged to pay greater attention to establishing qualitative system of pre-school education and care. The representative of the Trade Union holds that teachers should be included in the unified state system of remuneration to avoid a situation where the issues related to teachers' remuneration depend upon the Cabinet's decisions and possibilities of the State budget. Since the application had been submitted to the Constitutional Court, the inequality between teachers of pre-school education and other teachers in general education has decreased. The Cabinet has decided to eliminate the inequality with respect to the lowest wage rate by 1 January 2025, and the Trade Union's demand to resolve this matter sooner has been ignored for many years.

The development of children in the early stage of their life is essential investment into the growth of national economy and welfare. Therefore, professionalism of teachers is said to be the most important education-related factor, which determines learners' achievements. Quality and accessibility of education should be ensured in all stages of education, and remuneration worthy of a teacher's work is not only a matter of the prestige of this profession but also an important element in ensuring the right to education.

8. The summoned person – association “Independent Association of Education” – notes that, with the coming into effect of amendments to Regulation No. 445, the difference between remuneration of teachers of pre-school education and teachers of general basic and general secondary education has decreased. However, the answer to the question whether the remuneration for one hour of work to a teacher of pre-school education should be the same as for the teacher of general secondary education is said to be unclear.

There have been discussions as to whether the intellectual contribution and intensity of knowledge of a teacher of pre-school education is comparable to the contribution and knowledge of a teacher of general secondary education, and opinions on this matter still differ. It should be taken into account that the work of

a teacher of pre-school education (workload, work conditions, duration and intensity of classes, the rhythm of working day and specificity of work) is different. Amendments to Regulation No. 445 envisage the right of founders of educational institutions to regulate the matters of teachers' remuneration. In a large part of local governments, where the school network has been optimised, both teachers in institutions of general education and in institutions of pre-school education receive much higher remuneration than the minimum rate of monthly wage, defined in Regulation No. 445.

9. The summoned person – *Dr. paed. Inga Stangaine*, docent at the Faculty of Pedagogy, Psychology and Arts of the University of Latvia and director of the professional bachelor-level study programme “Teacher of pre-school education”– notes that requirements that have been set regarding the necessary education and professional qualifications for teachers in pre-school education and general basic education are similar and, in some situations, even identical. Requirements regarding teachers' continuous education are also identical.

The basic tasks in teachers' professional activities are regulated by the Cabinet Regulation of 11 September 2018 No. 569 “Regulation on the Necessary Education and Professional Qualifications for Teachers and the Procedure for Professional Further Training” (hereafter – Regulation No. 569) and the Standard of Teacher's Profession (12.06.2020, agreed in the Tripartite Cooperation Sub-council for Vocational Education and Employment). Whereas the Cabinet Regulation of 13 June 2017 No. 322 “Regulation on Classification of Education in Latvia” define the classification of a teacher's education corresponding to the levels of Latvian qualifications framework, as well as descriptions of knowledge, skills, and competences. In view of the fact that the qualification of a teacher of pre-school education comprises also competences from the sixth level of Latvian qualifications framework, it can be recognised that the basic tasks and duties of teachers' professional activities are similar for teachers employed both on the level of pre-school education and the level of general education.

A teacher of pre-school education, like a teacher of general education, has the task to plan, organise and assess learners' activities, taking into account learners' needs, experience, way of thinking and abilities. Likewise, a teacher of pre-school education must prepare the thematic plan for pedagogical work, participate in developing the programme of subjects and diversify methods and forms of teaching.

A child of pre-school age develops fast in all aspects of their personality (physical, social, emotional, moral and intellectual). It is exactly in this period of a child's development that the learning environment and learning processes are of greatest importance with respect to learning achievements in further stages of education. The experience gained during the stage of pre-school education should be considered as being the foundation for developing an individual's personality. This is the reason why a teacher of pre-school education is required to have high professional competence. The outcome of upbringing children of pre-school age directly depends upon the teacher's professional competence, empathy, their ability to perceive, accept and support a child adequately, as well as ability to plan and implement the content of the programme of pre-school education.

In the pre-school education stage, a child is constantly learning in relationships with children and adults in game classes, organised by the teacher, during walks, excursions, as well as preparing for and celebrating festivities. Each level of education has its purposes and content that has to be acquired. Likewise, teaching methods that are used by the teacher are different on each level of education, therefore the level of pre-school education should not be contrasted with other stages of education, thus diminishing the importance of pre-school education.

10. The summoned person – Dr. paed. Linda Daniela – stated at the court hearing that the rate of lowest wage should be equal for all teachers. In the mandatory stage of pre-school education (from the age of five) the teacher must assess a child's achievements, whereas the fact that the process of assessing children takes place in a different way does not change the fact that teachers of pre-school education, like teachers of other levels of general education, are

involved in assessing children's achievements. A teacher of pre-school education assesses children according to the results achieved in various areas, and the assessment process is ongoing for the entire day, analysing a child's behaviour and skills during games or other targeted activities, organised by the teacher. Thus, the duties of a teacher of pre-school education differ from the duties of teachers of basic and secondary education; however, these differences do not mean that the value of works done by these teachers would be different.

The education requirements set for a teacher of pre-school education are similar to those set for other teachers. The fact that the teachers, employed on other levels of education, have specialised in teaching a particular subject, i.e., chemistry or physics, does not change the requirement that a teacher of pre-school education must acquire transversal skills, which are more extensive than specialisation in one particular subject of studies. Therefore, the value of work done by teachers, employed on the level of pre-school education, is comparable to the work done by other teachers and is equal to it.

11. The summoned person *Mg. iur. Anita Kovaļevska*, at the court hearing, expressed opinion on the right to commensurate compensation for work, guaranteed in Article 107 of the *Satversme*, and underscored the importance of international law in clarifying the content of the respective article of the *Satversme*. Article 7 of the Covenant guarantees the right to just and favourable conditions of work, and remuneration is one of the elements needed to ensure such conditions. There are several aspects to Article 7 of the Covenant but it is important to mention remuneration, which ensures a standard of living that is worthy of a human being and is called the minimum remuneration. Just remuneration is another aspect, which includes also the right to equal pay for work of equal value.

In assessing remuneration that ensures a standard of living that is worthy of a human being, the content of the work is irrelevant because such remuneration should be ensured to every person. Whereas, in considering the fairness of remuneration for work, the particularities of each job and the specific situation should be assessed. The aspects that should be assessed in defining the scope of

the concept of fair work are mentioned in the commentary provided by the Committee of Economic, Social, and Cultural **Rights**, moreover, these aspects are not exhaustive. Namely, each case requires individual assessment not only of the results of work but also the responsibility, education, required skills of the worker, as well as of the impact of the particular work on health, safety, private and family life.

The right to just remuneration, enshrined in the Covenant, comprises one more aspect, i.e., the right to equal remuneration for work of equal value. In this context, what work of equal value is and to whom this right applies should be identified. The concept of equivalent work is said to be important and highlighted in numerous sources of international law. It is referred to in the European Social Charter, as well as other legal acts of the European Union. Work of equal value is not the same as identical or even similar work because the value of particular work must be considered. Thus, totally different jobs can be compared. It is stated in the Covenant that the right to just remuneration should be ensured without distinction of any kind. Whereas, in the comment by the Committee of Economic, Social and Cultural **Rights**, this right is linked to the general prohibition of discrimination; however, attributed also to other prohibited criteria, thus pointing to broader scope in the general context of respecting the principle of equality.

The Findings

12. The Constitutional Court has recognised: prior to reviewing the constitutionality of the contested provision on its merits, all issues of procedural nature must be decided on (*see Decision by the Constitutional Court of 10 December 2021 on Terminating Legal Proceedings in Case No. 2021-11-01, Para 9*).

Para 2 of Section 29 (1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated before a judgement is delivered if the contested legal provision has become void. This provision is aimed at ensuring

economy of legal proceedings before the Constitutional Court and that the Constitutional Court should not be making judgements in cases where the dispute no longer exists (*see Judgement by the Constitutional Court of 16 May 2019 in Case No. 2018-21-01, Para 8*). However, the law envisages the possibility for the Constitutional Court to terminate legal proceedings but not an obligation to do so. The fact that the provision, contested in a case, has become void *per se* is not always the grounds for terminating legal proceedings (*see, for example, Decision by the Constitutional Court of 29 March 2011 on Terminating Legal Proceedings in Case No. 2010-68-01, Para 8*).

After the present case was initiated, the Cabinet has amended the contested regulation several times. I.e., by Regulation No 415, Regulation No. 787 and Regulation No. 199, the contested regulation was expressed in new wording.

Hence, during legal proceedings, the contested regulation has been amended and the Constitutional Court must verify whether legal proceedings in the case should be continued.

12.1. In the meaning of Para 2 Section 29 (1) of the Constitutional Court Law, the concept of “contested provision” should not be understood formally, i.e., only as the text included in the regulatory enactment. The contested regulation establishes the legal procedure, which is considered by the Applicant as being incompatible with superior legal provisions. Therefore, also in those cases where the contested regulation has been amended, the Constitutional Court must ascertain whether the legal situation, caused by the contested regulation, has been changed substantially (*see, for example, Decision by the Constitutional Court of 11 March 2015 on Terminating Legal Proceedings in Case No. 2014-33-01, Para 7*). Moreover, the Constitutional Court must assess whether circumstances that require continuing the legal proceedings do not exist (*see, for example, Decision by the Constitutional Court of 18 February 2022 on Terminating Legal Proceedings in Case No. 2021-10-03, Para 13.1.*).

Para 3 of Table 4 in Annex 1 of Regulation No. 445, which is contested in the case, in the wording that was in force until 31 August 2022, provided that the lowest monthly wage rate of a teacher of pre-school education was EUR 872. By

Regulation No. 415, the lowest monthly wage rate of a teacher of pre-school education was defined as E R 970, whereas by Regulation No. 787, which entered into force on 1 January 2023, it was increased up to EUR 1070. By Regulation No. 199, which will enter into force on 1 September 2023, the lowest monthly wage rate of a teacher of pre-school education is set in the amount of EUR 1240.

Likewise, the Cabinet has revised the division of teachers of pre-school education' workload, envisaged in Regulation No. 445. Pursuant to contested Para 7 of Annex 3 of Regulation No. 445, the weekly workload of a teacher of pre-school education is 40 astronomical hours, of which 36 are envisaged for conducting lessons and classes, whereas the annual workload is 1760. By Regulation No. 787, contested Annex 3 of Regulation No. 445 has been expressed in new wording and its Para 8 provides that the workload of a teacher of pre-school education is 40 astronomical hours and 34 hours are envisaged for conducting lessons and classes, envisaging 1760 hours as the total annual workload. Pursuant to Para 50 in the Transitional Provisions of Regulation No. 787, the weekly workload of a teacher of pre-school education for conducting lessons and classes in the amount of 34 hours will be applied from 1 September 2023.

However, the Constitutional Court finds that even following these amendments different lowest wage rate and workload has been defined for teachers of pre-school education. For example, by Regulation No. 787, a new group of teachers has been defined – a teacher of general basic and general secondary education – with the lowest monthly wage rate in the amount of EUR 1080; however, the lowest monthly wage rate for a teacher of pre-school education is EUR 1070. Likewise, differences exist in the allocation of workload corresponding to one monthly wage rate – 40 astronomic hours per week, of which 34 are allocated for conducting lessons and classes, in total – 1760 hours annually. Whereas the weekly workload of a teacher in general basic or general secondary education has been increased up to 36 astronomical hours and the total annual workload is 1584 hours.

The Applicant admits that the improvements to the model for financing teachers' remuneration for work, implemented by the Cabinet, *inter alia*, by amending the contested regulation, has decreased the inequality of the lowest monthly wage rates for certain groups of teachers; however, it points out that these rates are still different (*see Case Materials, Vol. 1, pp. 17–18*).

The Constitutional Court concludes: although the Cabinet has repeatedly amended the contested regulation, still the lowest monthly wage rate and workload set for teachers of pre-school education differ from the rate and workload set for teachers of general basic and general secondary education. Moreover, at the court hearing, the Applicant underscored: although the Cabinet has amended the contested regulation, the lowest monthly wage rate for teachers of pre-school education, currently defined in Regulation No. 445, is still incompatible with the first sentence of Article 91 and Article 107 of the *Satversme* (*see Transcript of the court hearing of 19 May 2023 in Case Materials, Vol. 3, pp. 138–139*). The Constitutional Court takes into consideration also the fact that the dispute between the Cabinet and the social partners regarding the amount of remuneration for teachers, including teachers of pre-school education, has been lasting for years. As noted by the Latvian Association of Local Government, the increase in the amount of State budget financing, planned by the Cabinet, depends, *inter alia*, on the optimisation of school network. However, the savings gained through optimisation of the school network is not a sufficient source for increasing teachers' remuneration (*see Case Materials, Vol. 3, p. 88*). Thus, the matter of the lowest wage rate for teachers of pre-school education is linked to substantial public interests.

In such circumstances, the Constitutional Court has no grounds for applying Para 2 of Section 29 (1) of the Constitutional Court Law and legal proceedings in the case must be continued.

12.2. While the case is being heard, the lowest wage rate for teachers of pre-school education is regulated by Para 3 in Table 4 of Annex 1 of Regulation No. 445, amended by Regulation No. 787, and Para 8 of Annex 3. Thus, not only the contested regulation but also the lowest monthly wage rate for

teachers of pre-school education, defined later by Regulation No. 415, have been replaced by Regulation No. 787. At the court hearing, the Applicant's representative noted that the compatibility of the currently valid regulation with the *Satversme* should be reviewed. Namely, the Constitutional Court should examine whether Regulation No. 445, which is in force from 1 January 2023, is compatible with the first sentence of Article 91 and Article 107 of the *Satversme*.

The Constitutional Court concludes that currently valid Para 3 in Table of Annex 1 and Para 8 of Annex 3 of Regulation No. 445 continue regulating in the same way the same legal relations that previously were regulated by the regulation contested in the case. The reasoning, included in the Cabinet's written reply and stated at the court hearing, as well as the opinions of summoned persons are applicable to the compatibility of the aforementioned legal provisions with the first sentence of Article 91 and Article 107 of the *Satversme*.

Hence, the Constitutional Court will review the constitutionality of Para 3 in Table 4 of Annex 1 and Para 8 of Annex 3 of Regulation No. 445, in the wording that is in force since 1 January 2023 (hereafter – the contested provisions).

13. The Applicant requests the Constitutional Court to examine the compatibility of several legal provisions with several provisions of the *Satversme*.

If the compatibility of several legal provisions with several superior legal provisions is contested then the Court, considering the merits of the case, must determine the most effective approach to this compatibility review (*see, for example, Judgement by the Constitutional Court of 15 May 2020 in Case No. 2019-17-05, Para 13*).

13.1. Contested Para 3 in Table 4 of Annex 1 of Regulation No. 445 provides that the lowest monthly wage rate for teachers of pre-school education is EUR 1070. Whereas pursuant to Para 8 of Annex 3 of Regulation No. 445, the total annual workload of a teacher of pre-school education is 1760 hours, the weekly workload is 40 astronomical hours, whereas 34 hours have been allocated for conducting lessons and classes.

The Constitutional Court concludes that, in applying both these norms, i.e., dividing the annual workload set for the group by 12, i.e., months in a year, or multiplying the workload set for the respective group of teachers by 4, i.e., weeks in a month, the lowest hourly wage rate for a teacher can be calculated. Thus, the amount of workload influences a teacher's hourly wage rate and the contested provisions as united legal regulation define the amount of the lowest monthly wage rate for a teacher of pre-school education. Hence, the contested provisions are closely interconnected and, in conjunction, constitute united legal regulation, in accordance with which the lowest monthly wage rate for one hour of work is set for teachers of pre-school education.

Hence, in the present case, the compliance of the contested provisions as united legal regulation with the *Satversme* must be reviewed.

13.2. The Applicant states that the contested provisions are incompatible with the first sentence of Article 91 and Article 107 of the *Satversme*.

The Applicant's considerations regarding the incompatibility of the contested provisions with Article 107 of the *Satversme* are mainly related to the fact that the Cabinet, in determining the lowest monthly wage rate for teachers of pre-school education, allegedly, has not complied with the principle of legal equality (*see Transcript of the court hearing of 19 May 2023 in Case Materials, Vol. 3, p. 142*). Thus, the main matter in the present case is whether such legal regulation, which determines that the lowest monthly wage rate for teachers of pre-school education differs from the rate set for other teachers, complies with the principle of legal equality. This matter pertains directly to the principle of legal equality, included in the first sentence of Article 91 of the *Satversme*.

Hence, in the present case, the Constitutional Court will review, first and foremost, the compatibility of the contested provisions as united legal regulation with the first sentence of Article 91 of the *Satversme*. Whether the compatibility of the provisions, contested in the case, with Article 107 of the *Satversme* needs to be reviewed, in turn, depends on the resolution of the main matter in the case.

14. The first sentence of Article 91 of the *Satversme* provides: “All human beings in Latvia shall be equal before the law and the courts.”

The principle of legal equality has been derived from the principle of general justice, which is a fundamental value of a democratic state governed by the rule of law. The principle of legal equality means that that treatment is similar in similar actual and legal circumstances, whereas, in different circumstances, it is different. The principle of legal equality prohibits State institutions from issuing such provisions that, without reasonable grounds, allow differential treatment of persons who are in according to certain criteria comparable circumstances (*see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-36-01, Para 12.1.*). Differential treatment lacks objective and reasonable grounds if it does not have a legitimate aim and the relations between the chosen measures and the defined aims are not proportionate (*see, for example, Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-25-01, Para 25*).

To assess whether the contested provisions comply with the principle of legal equality, falling within the scope of the first sentence of Article 91 of the *Satversme*, the Constitutional Court must verify:

1) whether and which persons (groups of persons) are in similar and according to certain criteria comparable circumstances;

2) whether the contested provision envisages equal or differential treatment of these persons (groups of persons);

3) whether this treatment has been established by a legal provision, adopted in procedure set out in regulatory enactments;

4) whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate aim and whether the proportionality principle has been complied with (*see, for example, Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-28-0306, Para 11*).

15. In the assessment of whether the principle of legal equality has been complied with, the decisive aspect is whether several groups of persons share one common and essential feature. To determine whether and which groups of persons

are in similar and according to certain criteria comparable circumstances, the main common feature of these groups must be identified (*see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-36-01, Para 15*).

15.1. The Applicant holds that the teachers of pre-school education and teachers of institutions of general education are in similar and according to certain criteria comparable circumstances. Allegedly, these teachers are representatives of several sub-groups of the same profession, and the requirements regarding education and professional qualifications, set for them, allow comparing these teachers (*see Case Materials, Vol. 1, p. 20*). The Trade Union also points out that assessment of the requirements set for the profession of a teacher of pre-school education, the main tasks and duties of those teachers leaves no doubts that the teachers of both pre-school education and of general basic and secondary education do equivalent pedagogical work on different levels of education and each level is the basis for the successive one (*see Case Materials, Vol. 3, p. 70*) *Dr. paed.* Linda Daniela also expresses a similar opinion, noting that teachers on the level of pre-school education do equivalent work. Assessment of a child's achievements on the level of pre-school education is even more complicated than on other levels because the teacher must describe the level on which the child has mastered competences and transversal skills and areas, where they need improvement. The differences in the form in which learning is organised is not of major importance because a teacher's work during a game class or a lesson is said to be equivalent (*see Transcript of the court hearing of 22 May 2023 in Case Materials, Vol. 4, pp. 40–43*).

The Cabinet notes that teachers of pre-school education, teachers of general basic education and teachers of general secondary education are not in similar and according to certain criteria comparable circumstances because the requirements set regarding professional qualifications, the content of work and the methods used are different for teachers of pre-school education and teachers employed in the stage of basic and secondary education. Therefore it is contended that the fact that different lower hourly wage rates have been set for these groups of teachers in Regulation No. 445 is not contrary to the principle of legal equality (*see Case*

Materials, Vol. 1, pp. 112–113). The Ombudsman also subscribes to this opinion, noting that the basic tasks of a teacher of pre-school education are adjusted to learners' age and the particularities of the learning process following from it and, thus, their basic tasks differ from the basic tasks of other teachers (*see Case Materials, Vol. 3, pp. 56–57*).

15.2. In the present case, to clarify the content of the first sentence of Article 91 of the *Satversme* and verify whether groups of persons are united by one shared and essential feature, Latvia's international commitments in the area of international law should be taken into account. I.e., harmony between the provisions of the *Satversme* and the human rights provisions, included in international agreements that are binding upon Latvia, must be ensured (*see, for example, Judgement by the Constitutional Court of 8 June 2022 in Case No.2021-40-0103, Para 7.2.*).

Pursuant to the provisions of Sub-para "i" of Para "a" in Article 7 of the Covenant, the States Parties to the Covenant recognise the right to everyone to just and favourable conditions of work, which ensure to all workers fair wages and equal remuneration for work of equal value.

The Committee on Economic, Social and Cultural Rights, in specifying Sub-para "i" of Para "a" in Article 7 of the Covenant, has noted that the principle of equal remuneration for work is applicable not only to similar work but to work of equal value. Equality in setting remuneration must be complied with not only with respect to criteria that prohibit discrimination, in particular, between genders, but also to other grounds that follow from the general principle of equality (*see: Committee on Economic, Social and Cultural Rights. General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 27 April 2016, paras 11, 16*). Moreover, everyone enjoys the right to just and favourable conditions of work, guaranteed in the Covenant (*see: Committee on Economic, Social and Cultural Rights. General comment No. 20 (2009) Non-discrimination in economic, social and cultural rights (article*

2, para 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, para. 3).

The principle of equal remuneration for work has been recognised as being one of the elements of social justice. It applies not only to those cases where employees do the same work but also to cases where employees do work of equal value but different in content. Therefore, the principle of equal remuneration is applicable also in those cases where employees do such work that might have different duties and different qualification and skills are required to do it (*compare, see: Oelz M., Olney S., Tomei M. Equal Pay: An Introductory Guide. Geneva: International Labour Organization, 2013, pp. 2, 31*).

Hence, the requirement to comply with the principle of equal remuneration is applicable not only to equal work but also to work of equal value. Thus, to determine whether, in setting the lowest wage rate, the principle of legal equality has been complied with, the Constitutional Court must verify whether teachers of pre-school education and teachers employed on the level of basic education and the level of secondary education do work of equal value.

16. The Committee on Economic, Social and Cultural Rights, in specifying Sub-para “i” of Para “a” in Article 7 of the Covenant, has pointed to criteria to be used for comparison in order to assess work of equal value – the required skills to do the work, personal contribution and responsibility that is demanded from the employee, as well as the conditions of work (*see: Committee on Economic, Social and Cultural Rights. General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 27 April 2016, para. 12*).

Thus, to assess whether teachers of pre-school education do work that is of equal value with the work done by teachers employed on the level of basic and secondary education, the Constitutional Court will examine the following criteria: 1) the skills required for doing the work; 2) personal contribution and responsibility; 3) conditions of work. These criteria are interconnected and, in general, characterise the substance of work of equal value.

16.1. The skills necessary for the work to be done are understood as such factors like the requirements set for the specific position, education and professional qualifications (*compare, see.: Oelz M., Olney S., Tomei M. Equal Pay: An Introductory Guide. Geneva: International Labour Organization, 2013, p. 39*).

16.1.1. Pursuant to the provisions of Para 1 of Section 28 (1) of the law “On the Regulated Professions and the Recognition of Professional Qualifications” the regulated profession in the field of education and sport is a teacher whose qualification requirements are determined by accredited education programmes or, in cases specified in the law, the provisions for professional certification.

Pursuant to Regulation No. 264, the profession of a teacher is included in the Classification of Professions into the second basic group of professions and divided into separate groups: small group “233 Teachers of secondary education” and small group “234 Teachers of basic education and pre-school education”. In accordance with Para 204 of the Annex to Regulation No. 264, teachers who belong to the group of the profession of a teacher of secondary education teach one or more subjects so that primary school graduates obtain secondary education at the basic or secondary level and prepare to continue their education on the next level of education. Para 207 of Regulation No. 264, in turn, provides that those teachers who belong the group of profession of teachers of basic and pre-school education teach several subjects on the level of basic and pre-school education, organise group and individual games and lessons, which help the learner to develop physically and mentally, as well as to acquire communication skills. Thus, teachers belonging to the groups of teachers to be assessed are representatives of one regulated profession who ensure acquisition of general education and do pedagogical work on the level of pre-school education, basic education or secondary education.

16.1.2. To work as a teacher of pre-school education, a person must mandatorily acquire higher education and meet one of the qualification requirements, set out in Para 5 of Regulation No. 569: 1) higher pedagogic or higher education and qualification of a teacher of pre-school education; 2) higher

pedagogic or higher education and qualification of a teacher of primary education; 3) higher pedagogic education and completed programme of professional continuous education in the content and didactics of pre-school; 4) a master or doctoral degree in education or pedagogy and the research work prepared for obtaining the degree is related to the content or didactics of pre-school; 5) pedagogic education and the qualification of a music teacher for a pre-school music teacher or the qualification of sports teacher for a pre-school sports teacher.

Pursuant to the provisions of Para 2 of Regulation No. 569, teachers of general basic education and general secondary education must meet one of the following requirements: 1) higher pedagogic education and qualification as a teacher of the relevant subject; 2) higher pedagogic or higher education and the qualification of a primary school or basic education teacher, in the 1st grade of basic education - also the qualification of a teacher of pre-school education and completed programme of professional continuous education in the content and didactics of pre-school; 3) higher education in the field of science corresponding to the subject and a teacher's qualification or completed programme of professional continuous education; 4) higher education and a master's or doctoral degree in education or pedagogy and the research work developed for obtaining it is related to the content and didactics of the subject.

Thus, a teacher of pre-school education, just like teachers of general basic education and general secondary education, must have higher education. Moreover, a person with the professional qualification of a teacher of pre-school education has the right to work on the level of basic education in the primary school stage. Whereas a person whose professional qualification is appropriate for the specific level of basic or secondary education, has the right to work on the level of pre-school education only if a programme of professional continuous education in the content and didactics of pre-school has been completed.

16.1.3. Pursuant to the provisions in the Standard of Teacher's Profession, the professional qualification of teachers, included in the group of teachers of general basic and general secondary education, corresponds to the sixth level of the Latvian qualifications framework. Whereas the professional qualification of a

teacher of pre-school education corresponds to the fifth and the sixth level of Latvian qualifications framework. In both levels of qualifications framework, the same duties and tasks have been defined for teachers, i.e., to plan and implement learning process, assess the learning achievements and development of a learner, as well as improve their professional competences.

In the Standard of Teacher's Profession, for example, with respect to planning the learning process, similar requirements in one area of professional knowledge have been set for teachers of pre-school education and teachers employed on the levels of basic and secondary education.

Namely, a teacher of pre-school education must understand a child's psycho-physical, emotional and social development, as well as its impact upon successive age levels, whereas those employed on the level basic education and level of secondary education must understand the theories of psycho-physical and emotional development of teenagers and adolescents, as well as the typical particularities of stages in development and their impact upon study process. Likewise, the requirements regarding professional qualification in this area are similar – those employed on the level of basic and the level of secondary education must be able to assess the learner's individual development, learning, personal and social growth needs corresponding to their development and speed of learning, complying with the approach of inclusive education, whereas a teacher of pre-school education must be able to assess a child's individual development, learning, personal and social growth needs corresponding to their development, cooperating to ensure the approach of inclusive education. Moreover, a teacher of pre-school education must be able to plan pedagogic activities in accordance with the child's individual development and growth needs.

Whereas in the stage of implementing the study process, for example, in one area of professional knowledge, identical requirements have been set for teachers employed on any level of general education. Namely, all teachers must be able to apply techniques of group management, conflict prevention and resolution, as well as emotion management.

Thus, all in all, the competences of teachers of general education, included in the fifth and sixth level of Latvian qualifications framework, are acquired in accordance with the specialisation of the study programme, taking into account the peculiarities of learner's age on the respective level of general education. Thus, the qualification of teachers on the level of basic education and secondary education may differ depending on the aims and objectives of the particular study subject, the plan for mastering the content, as well as use of methods and study aids necessary for implementing the study programme.

Since the duties and tasks set regarding pedagogic activities for all teachers of general education are the same but only methods and techniques, used to perform them, differ, it has to be recognised that the requirements regarding professional qualification, set for teachers on the level of pre-school education, the level of basic education and the level of secondary education, are equivalent.

16.1.4. The results of OECD research confirm that a teacher's education and professionalism are the factors that significantly influence learners and their learning achievements (*see: Creating Effective Teaching and Learning Environments: First Results from TALIS. OECD, 2009. Available: oecd.org*).

A teacher plays an important role in the development of a person's personality because the process of education comprises not only learning but also upbringing. Section 2 of the Education Law also provides that, according to their age, a learner is ensured the possibility to acquire knowledge and skills needed to participate in the life of the State and society.

The Constitutional Court concludes that the requirements, education and professional qualification set for a teacher of pre-school education have been defined to ensure qualitative pedagogic activities corresponding to the best interests of a child and is aimed at successful transition of the child to the level of basic education. Thus, the skills needed for doing the work of a teacher of pre-school education are equivalent to the skills needed by teachers, employed on other levels of general education.

16.2. A teacher's personal contribution and responsibility are assessed by taking into account the methods and techniques used, corresponding to the

learners' age, as well as learning outcomes to be achieved (*see Section 51 (2) of the Education Law*). Namely, a teacher is responsible for his or her work, appropriateness of methods and techniques used in it, as well as the achieved outcomes, which reflect the quality of obtained education.

Para 10 of Regulation No. 445 provides, *inter alia*, that the head of the institution of education, in compliance with criteria approved within the institution, by assessing the intensity of a teachers work and personal contribution to the development of the institution of education, has the right to determine by up to 60 per cent higher rate of monthly wage for a teacher of general education. In setting a higher rate of monthly wage, the length of service as a teacher may be taken into account. The Constitutional Court finds that the assessment of a teacher's personal contribution is linked to their professional activities to reach the aims of the particular institution of education and participation in other activities for improving the quality of education. This criterion is assessed in determining the variable part of a teacher's wage, which differs from the lowest monthly wage rate, defined in the contested provisions. Moreover, it depends upon assessment of a teacher's individual work performance, which is not the task of the Constitutional Court.

Therefore to establish whether teachers of pre-school education and teachers employed on the level of basic education and secondary education do equivalent work, the Constitutional Court will examine teachers' responsibility.

16.2.1. To ensure implementation of contemporary and successive content of education, by the Cabinet Regulation of 21 November 2018 No. 716 "Regulations Regarding the State guidelines for Pre-school Education and the Model Pre-school Education Programmes" (hereafter – Regulation No. 716), from 1 September 2019, implementation of competence approach began. Para 2 of Regulation No. 716 provides that the objective of the implementation of the pre-school education content is a curious, creative and joyful child who leads a healthy, safe, and active life, acts independently, learns with interest and joy, gaining experience about himself or herself, others, the surrounding world and the interaction therein.

As *Dr. paed.* Inga Stangaine noted, a teacher creates the content of pre-school education for the duration of the entire day, integrating it with a child's free and independent play and learning during game classes, organised by the teacher in a targeted way and lead indirectly, at the same time ensuring even load, rest and a child's activities corresponding to the individual abilities. On the level of pre-school education, just as on the level of basic education and the level of secondary education, a teacher guides and observes the child, assesses the child's performance and provides feed-back to the child, encouraging to improve performance. On the level of pre-school education, the contact with the child is direct and is not aimed only at the group as the general target audience. As on the level of basic education and the level of secondary education, also on the level of pre-school education, a child in practical classes acquires knowledge in an integrated way in seven areas of learning and also develops transversal skills. Within pre-school education, active activity of a child has been recognised as the main or the guiding principle, which requires preparatory work of the teacher – selecting and preparing didactic materials, as well as planning of classes (*see Case Materials, Vol. 3, pp. 41–45*). Thus, following the introduction of pre-school education content, based upon competence approach, the child's and the teacher's place and role in the pedagogic process have changed significantly. Namely, the learning outcome on the level of pre-school education is long-term development of skills. The skills acquired on the level of pre-school education is a significant pre-condition for the development of child's educational competences un successful transition to the level of basic education.

Dr. paed. Linda Daniela points out that the learning process is organised differently on the level of basic education and the level of secondary education. Namely, on the level of pre-school education, the form in which learning process is organised is a game class. Taking into account the age peculiarities and maturity of a learner, on the level of basic education and on the level of secondary education, the form for organising studies is a lesson of the specific subject. The number of subject lessons is increasing proportionally, with the learner moving to a higher level of general education. Likewise, the methods for mastering the subject, study

aids and learners' involvement in the study process change. Similarly, also a teacher's work in preparing study aids and in communicating with learners change, envisaging, *inter alia*, individual approach in tutorials and in working with learners who have shown excellent results in any of the subjects (*see Transcript of the court hearing of 22 May 2023, Case Materials, Vol. 4, pp. 40–45*).

These differences in the methods and techniques used by teachers of pre-school education and teachers of general basic education and general secondary education are linked to the need to adjust, on each level of education, the content of learning to the peculiarities of learners' age. It follows from the above that, with the transition to competence approach in the system of general education, also in pre-school education, as in basic and secondary education, the learning process is planned in an integrated and meaningful way, linking areas of learning, transversal skills and creating in learners' values-based habits.

16.2.2. The Constitutional Court has recognised that the first sentence of Article 112 of the *Satversme* defines the right to obtain education in the broadest meaning of this right and is applicable to education programmes of all levels and all types. The quality of education is characterised by skills, values, attitudes and knowledge that provide to an individual the possibility to lead a full and fulfilled life, to make informed and well-considered decisions, respond to challenges and integrate successfully into the labour market (*see Judgement by the Constitutional Court of 26 May 2021 in Case No. 2021-33-0103, Para 16*).

Pursuant to Section 3 (1) of the General Education Law, general education is implemented on three levels of general education: 1) pre-school education; 2) basic education, and 3) secondary education. The pre-school level of education comprises two stages. The first stage is pre-school education in early childhood, i.e., from the age of eighteen months to five years. The second stage is the mandatory pre-school education from the age of five to seven years. The Constitutional Court has recognised that the right to education, included in the first sentence of Article 112 of the *Satversme*, comprises the level of pre-school education in both its stages (*see Judgement by the Constitutional Court of 19 June*

2020 in Case No. 2019-20-03, Para 12.2.). Thus, pre-school education is the first level of general education.

The Latvian system of education has been organised to ensure, within the framework of each level of education, successful mastering of knowledge and skills, needed for the child to move successfully from the level of pre-school education to the level of basic education and to adapt to it, and later – also to the level of secondary education. Pre-school education must ensure that the learner, upon graduating from the institution of pre-school education and continuing studies on the level of basic education, would be able to master successfully the learning content defined for the level of basic education (*compare, see Judgement by the Constitutional Court of 19 June 2020 in Case No. 2019-20-03, Para 14.3*).

Thus, the level of pre-school education, just as the level of basic education and the level of secondary education, is one of the stages in general education. Teachers of pre-school education, as the teachers employed on the level of basic education and secondary education, ensure the learner's right to obtain general education.

16.2.3. In early childhood, children develop the foundation and the abilities for life-long learning. Learning is a gradual process, therefore, the creation of stable foundations in early childhood is an equally significant pre-condition both for developing higher-level competences and education achievements and for children's health and wellbeing. Early pre-school education and care should be seen as the foundation of the system of education and training and it should be an integral part of continuity in education (*see Council Recommendation of 22 May 2019 on High-Quality Early Childhood Education and Care Systems (2019/C 189/02)*).

Section 51 (1) of the Education Law provides, *inter alia*, that the obligation of a teacher of pre-school education, as of teachers of general basic education and general secondary education, is to participate creatively and responsibly in the implementation of the relevant educational programmes, to shape responsible attitude of a learner towards himself or herself, others, work, culture, nature, to raise honest and responsible human beings, as well as to strengthen their belonging

to the State of Latvia. It follows from the above that, irrespective of the aims set in the educational programme that must be reached on each level of general education, the common aim of all teachers of general education is to educate a human being who respects the fundamental values of the Latvian State, is a knowledgeable, creative and critically thinking personality. On each level of general education, the teacher is responsible for the chosen methods and techniques and the learning outcomes to be reached.

In view of the role that a teacher of pre-school education has, like teachers of all other levels of education, in ensuring a person's right to education, the level of responsibility that a teacher of pre-school education has should be recognised as equivalent to the level of responsibility that teachers employed on all other levels of education have.

16.3. In assessing the conditions of work to be done, the environment where the teacher is situated and the level of difficulty of work should be taken into account (*see: Committee on Economic, Social and Cultural Rights. General comment No.23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 27 April 2016, para. 16, 17*). On all levels of education, the pedagogic workload includes the amount of main work to be done, the invested time and its pedagogic content. Conditions of work, degree of complexity, particularities of the study subject may differ in each specific case (*see Para 4² of Section 1 (2), Section 33 and Section 44 of the General Education Law*).

A teacher of pre-school education is engaged with the child throughout the entire day and continuously develops his or her social and cooperation skills. Guided by the teacher, a child masters the transversal skills, defined in the guidelines on pre-school education, knowledge, understanding and basic skills in various areas of learning. A teacher of pre-school education must not only ensure successful learning process but also respond to social situations and assess the child's response. The possible level of noise and involvement in duties that are unrelated to learning process, by helping the child in his or her self-care, is more intense than on the level of basic education or the level of secondary education.

The intensity of work in pre-school education is linked to a higher level of stress that the teacher has to deal with in the process of daily work. Whereas for teachers employed on the level of basic education and the level of secondary education, higher intensity of work is observed in caring for the acquisition of the knowledge in the particular subject and in supporting learners in the application of the acquired knowledge and skills (*see Latvijas Izglītības un zinātnes darbinieku arodbiedrības pētījumu "Pedagogu darba tiesības izglītības iestādēs"*. Available: *lizda.lv*).

Thus, the working conditions and environment, in which the teacher is situated, as well as the difficulties in everyday work related to resolving problematic issues and situations, demand from teacher equivalent efforts and contribution, irrespective of the level of general education on which they work.

16.4. In view of the above, the Constitutional Court concludes: since the approach to the content of education has changed, a child must acquire already on the level of pre-school education transversal skills, knowledge and basic skills in various areas of learning so that this learning process would continue successfully and deepen on the levels of general basic and general secondary education. The differences that the Constitutional Court has identified in the work of a teacher of pre-school education and teachers of general basic and general secondary education are linked to the form in which learning is organised, the methods and techniques used and cannot be considered as being substantial. The work of all teachers, irrespective of level of education they work on, is directed towards one common aim – ensuring acquisition of qualitative general education, and the skills required for doing this work, responsibility and conditions of work are equivalent, notwithstanding the learners' age particularities on each level of education. Thus, teachers of pre-school education, teachers of general basic education and teachers of general secondary education are doing equivalent work.

Hence, teachers of pre-school education and teachers of general basic education and teachers of general secondary education are in similar and according to certain criteria comparable circumstances.

17. Para 16 and Para 22 of Section 22 of the Education Law define the Cabinet's competence in determining the procedure for the payment of remuneration to teachers, the lowest monthly wage rate and the amount of workload. Thus, the legislator has authorised the Cabinet to determine, *inter alia*, the lowest monthly wage rate for the defined workload, the payment of which is the employer's obligation. Pursuant to Section 53 (1) of the Education Law, the monthly salary of teachers is defined in accordance with the monthly wage rate, which is not lower than the rate set by the Cabinet and the workload.

By the contested provisions, the Cabinet has set the lowest monthly wage rate for a teacher of pre-school education in the amount of EUR 1070 for the workload of 40 hours per week, of which 34 are allocated for conducting lessons and classes. Whereas in Regulation No. 787, the wage rate for a teacher of general basic education and general secondary education has been determined in the amount of EUR 1080 and the weekly workload in the amount of 36 hours.

Thus, the invariable part of remuneration for a teacher of pre-school education is lower than for the teachers employed on other levels of general education.

Hence, the contested provisions envisage differential treatment of groups of persons who are similar and according to certain criteria comparable circumstances.

18. The Constitutional Court has repeatedly concluded that the Cabinet's right to issue external regulatory enactments extends only insofar as such authorisation for the Cabinet has been included in law (*see Judgement by the Constitutional Court of 21 March 2023 in Case No. 2022-06-03, Para 19.1.*). Differential treatment may be established only by a legal provision that has been adopted in procedure set out in regulatory enactments, abiding by the principle of good legislation (*compare, see Judgement by the Constitutional Court of 2 May 2019 in Case No. 2018-14-01, Para 17.*).

Participants in the case have not expressed objections and neither does the Constitutional Court doubt that the contested norms have been issued in

compliance with the principle of good legislation, within the framework of authorisation granted to the Cabinet by law, are accessible in accordance with statutory requirements, as well as have been worded with sufficient clarity, allowing a person to understand the content of rights and obligations following from them and forecast the consequences of application thereof.

Thus, the differential treatment, defined in the contested provisions, has been established by a legal provision, adopted in the procedure set out in regulatory enactments.

19. Differential treatment of groups of persons who are in similar and according to certain criteria comparable circumstances, requires a legitimate aim. In the proceedings before the Constitutional Court, the obligation to indicate the legitimate aim, first and foremost, rests upon the institution, which has issued the contested act (*see, for example, Judgement by the Constitutional Court of 2 May 2019 in Case No. 2018-14-01, Para 18*).

The Cabinet holds that groups of persons, indicated by the Applicant, are not in similar and according to certain criteria comparable circumstances, and, thus, has not provided in its written reply reasoning as to why the differential treatment, caused by the contested provisions, is objective and reasonable, i.e., has a legitimate aim (*see Case Materials, Vol. 1, p. 113*). At the court hearing, the Cabinet's representative noted that Regulation No. 445 defined the lowest monthly wage rate for a teacher of pre-school education and not the total remuneration for work. The provision of financing for paying remuneration to teachers of pre-school education for educating children from the age of eighteen months to five years has been placed in local governments' responsibility. Therefore, the Cabinet, in calculating the earmarked grant for teachers of pre-school education, until now has been taking into account also the local governments' financial possibilities (*see Transcript of the court hearing of 19 May 2023 in Case Materials, Vol. 4, pp. 7–8*).

At the court hearing, the Trade Union stated that consensus had been reached in negotiations with the Latvian Association of Local Governments that

the system of teachers' remuneration should be reformed, envisaging that remuneration to all teachers of institutions of pre-school education would be ensured from the State budget. Exactly the fact that remuneration to teachers employed at an institution of pre-school education is paid by the local government from its own budget but to teachers who ensure education to children from the age of five remuneration is paid from the State budget makes it hard to decrease inequality in terms of the wage rate. I.e., increasing the lowest wage rate for a teacher of pre-school education causes fiscal impact upon the local governments' budgets.

Local governments had objected several times to faster increase of the lowest wage rate for teachers of pre-school education, pointing out that their budget possibilities were limited and that the maintenance of the network of educational institutions was not the only autonomous function that a local government had to fulfil (*see Transcript of the court hearing of 30 May 2023 in Case Materials, Vol. 4, pp. 77–78*).

Thus, the differential treatment, established by the contested provisions, of groups of persons in similar and according to certain criteria comparable circumstances is linked to impact upon the State budget and the local governments' budgets. The Cabinet has decided to eliminate the inequality in the lowest wage rate for teachers of pre-school education by 1 January 2025 (*see the Cabinet's Order of 18 April 2023 No. 226 "On the Schedule for Increasing the Lowest Wage Rate of Teachers from 1 September 2023 until 31 December 2025"*).

The Constitutional Court recognises that such gradual levelling of the lowest wage rate of teachers of pre-school education could be based upon considerations that are linked to the need to ensure the stability of the State budget and the local governments' budgets. However, this reasoning is not sufficient to justify the legitimate aim of the differential treatment (*compare, see Judgment by the Constitutional Court of 15 May 2018 in Case No. 2017-15-01, Para 21.1.*). The stability of the State budget and of local governments' budgets *per se* cannot be used to justify differential treatment of persons who are in similar and according to certain criteria comparable circumstances.

The Cabinet has created a system of remuneration for teachers of general education, within which remuneration to teachers is ensured not only from the State budget resources and ear-marked grants from the State budget but also from the budget of a local government. Whether remuneration to teachers of pre-school education should be paid from the State or the local government budget resources is a matter of national social politics. However, such choice made by the State and local governments' possibilities to implement it cannot serve to justify differential treatment of groups of persons who are in similar and according to certain criteria comparable circumstances. In the particular case, a legitimate aim for which, by the contested provisions, differential treatment of teachers of pre-school education who do work that is equivalent to the one done by teachers of general basic and general secondary education has been established, by envisaging a different lowest monthly wage rate, cannot be discerned.

Hence, the contested provisions are incompatible with the first sentence of Article 91 of the *Satversme*.

20. Pursuant to the Constitutional Court's judicature, if a contested provision is incompatible with even one superior legal provision it must be recognised as being unlawful and void (*see, for example, Judgement by the Constitutional Court of 2 November 2020, in Case No. 2020-14-01, Para 13*). Thus, additional review of the compatibility of the contested provisions with Article 107 of the *Satversme* is not necessary.

21. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal provision that has been recognised by the Constitutional Court as being incompatible with a superior legal provision, must be considered as being void from the date when the Constitutional Court's judgment is published, unless the Constitutional Court has provided otherwise. In exercising the right granted to it in Section 32 (3) of the Constitutional Court Law, the Constitutional Court, insofar possible, must ensure that the situation that might occur after the contested provisions have become void should not cause infringements upon persons' rights,

guaranteed in the *Satversme*, and would not inflict significant harm upon the interests of the State and society. Namely, the law not only grants authorisation to the Court but also imposes responsibility to ensure that its judgements ensure legal stability, clarity and peace in the social reality (*see Judgement by the Constitutional Court of 2 May 2023 in Case No. 2022-02-01, Para 26*).

The Constitutional Court has recognised that, in deciding on the time when the judgement enters into force, it should be taken into account that the adoption of the State budget is an important area of the State's functioning and the expenditure, envisaged in the budget, has impact upon economy in general (*see Judgement by the Constitutional Court of 20 June 2020 in Case No. 2019-24-03, Para 25*). The enforcement of the Constitutional Court's judgement is linked to examination of issues that are significant in drafting the annual State budget. Likewise, the interests of local governments, in drafting their budgets, also should be taken into account. Hence, in the present case, it is necessary and admissible that the provisions, which are incompatible with the *Satversme*, remain in force for a certain period of time in order to adopt new legal regulation, abiding by the findings made in this judgement.

In view of the fact that the contested provisions are not linked to the minimum remuneration for work, defined in the state, that would have to be ensured to teachers of pre-school education without delay and that the Cabinet has planned to level the lowest wage rate for teachers of pre-school education by 1 January 2025, as well as the fact that the respective amendments to regulatory enactments can be aligned with the State budget for the next fiscal year, the contested provisions shall be recognised as void from 1 January 2024

The Substantive Part

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

held:

to recognise Para 3 of Table 4 in Annex 1, in the wording that is in force since 1 January 2023, and Para 8 of Annex 3 of the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers” as being incompatible with the First Sentence of Article 91 of the *Satversme* of the Republic of Latvia and void as of 1 January 2024.

The judgement is final and not subject to appeal.

The judgement was pronounced in Riga on 29 June 2023.

The judgement enters into force at the time it is pronounced.

Chairperson of the court hearing

Aldis Laviņš