



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

SEPARATE OPINION

of Gunārs Kusiņš,

Justice of the Constitutional Court,

in Riga on 30 June 2023

in case No. 2022-31-03

“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”.

1. On 29 June 2023, the Constitutional Court delivered its judgement in case No. 2022-31-03 “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” (hereafter – the Judgement), in which it decided to recognise Para 3 of Table 4 in Annex 1, in the wording that was in force since 1 January 2023, and Para 7 of Annex 3 of the Cabinet Regulation of 5 July 2016 No. 445 “Regulations Regarding Remuneration of Teachers” (hereafter – the contested provisions) as being incompatible with the first sentence of Article 91 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) and void from 1 January 2024.

I consent to the conclusion made in the Judgement that the basic matter in the case was whether such legal regulation that provides that the lowest wage rate of teachers of pre-school education differs from the rate set for other teachers complies with the principle of legal equality and that, within the framework of the

particular case, teachers of pre-school education and teachers employed on the level of basic education and secondary education had to be compared.

However, I cannot consent to the assessment made by the Constitutional Court that teachers of pre-school education and teachers of general basic education and general secondary education are in similar and according to certain criteria comparable circumstances. Therefore I hold that, in the particular circumstances, legal proceedings in the part regarding compliance of the contested provisions with the first sentence of Article 91 of the *Satversme* had to be terminated and, in such circumstances, in this case compliance of the contested provisions with Article 107 of the *Satversme* had to be reviewed.

In substantiating my opinion, I shall use abbreviations used in the Judgement.

2. Referring to the findings consistently made in the Constitutional Court's judicature, it is validly noted in the Judgement that, in assessing whether the principle of legal equality is respected, the fact whether several groups of persons are united by a common and essential feature is of decisive importance. To determine whether and which groups of persons are in similar and according to certain criteria comparable circumstances the main feature that unites these groups must be identified (*see Judgement by the Constitutional Court of 15 December 2022 in Case No. 2021-36-01, Para 15*).

To determine whether, in defining the lowest wage rate, the principle of legal equality had been respected, in the present case, the Constitutional Court verified whether teachers of pre-school education and teachers employed on the level of basic education or secondary education did work of equal value (*see Para 15. 2 of the Judgement*). To assess whether, in turn, teachers of pre-school education did work that is of equal value to work done by teachers employed on the level of basic education and the level of secondary education, the Constitutional Court examined the following criteria: 1) the skills required for doing the work; 2) personal contribution and responsibility; 3) conditions of work (*see Para 16 of the Judgement*).

3. It is concluded in the Judgement that teachers of pre-school education, teachers of general basic education and teachers of general secondary education are in similar and according to certain criteria comparable circumstances because they are doing work of equal value. To substantiate this conclusion, it is noted in the

Judgement that equivalent demands regarding professional qualification and the skills needed to do the job, equivalent level of responsibility have been set for the teachers belonging to the groups that need to be assessed, likewise, the conditions or work, the environment in which a teacher is situated and the difficulties of the work to be done in terms of daily problematic issues and situations that must be resolved demand from all these teachers equivalent effort and contribution (*see Para 16.1.–16.3. of the Judgement*). Whereas the differences that the Constitutional Court identified in the work done by a teacher of pre-school education and teachers of general basic education and general secondary education are, allegedly, linked to the form in which learning is organised, the methods and techniques used and cannot be considered as being substantial (*see Para 16.4. of the Judgement*).

I do not consent to the conclusion, included in the Judgement, that the differences, identified in the work done by a teacher of pre-school education and teachers of general basic education and general secondary education, are not substantial and hold that proper substantiation for such a conclusion by the Constitutional Court has not been provided in the Judgement.

4. The Constitutional Court already has recognised: to determine whether and which groups of persons are in according to certain criteria comparable circumstances, it must also assess whether any significant considerations do not exist pointing to the fact that these groups are not in mutually comparable circumstances (*compare, see Judgement by the Constitutional Court of 9 April 2013 in Case No. 2012-14-03, Para 17.2.*).

I am of the opinion that several differences can be discerned in the work of a teacher of pre-school education and teachers of general basic education and general secondary education, which are substantial and clearly indicate that the aforementioned persons are not in mutually comparable circumstances.

Thus, for example, differences can be identified in the requirements of professional qualification set for a teacher of pre-school education and teachers of general basic education and general secondary education in Para 2 and Para 5 of Regulation No. 569. Due to these differences, a person who has the professional qualification of a teacher of pre-school education has the right to work on the level of basic education during the stage of primary education; however, does not have the right to work, for example, on the level of general secondary education. Whereas a person whose professional qualification corresponds to a certain 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. In my opinion, requirements regarding professional qualification are essential since they apply directly to a person's suitability for doing specific work.

Likewise, the methods and techniques used to organise the learning process differ on the level of pre-school education and on the level of general basic education and general secondary education. Namely, on the level of pre-school education, learning is organised in the form of a game class, whereas on the level of general basic education and general secondary education the form, in which studies are organised, is a lesson in particular subjects. Moreover, since the differences in the methodology for acquiring the subjects, in study aids and the involvement of learners in the study process become more significant when the learner moves to a higher level of general education, I believe that the learning process on the level of pre-school education, which takes place in the form of a game class, obviously differs from the study process on the level of general secondary education.

Finally, substantive differences can be identified in the aims of education to be reached on the level of pre-school education and on the level of general basic education and general secondary education, as well as in the basic tasks set for teachers and their significance on each level of education mentioned.

By concluding that teachers of pre-school education, teachers of general basic education and teachers of general secondary education are doing work of equal value, the Constitutional Court underscores in Para 16.4. of the Judgement: 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. However, notwithstanding these changes, significant differences in the work of teachers of pre-school education, teachers of general basic education and teachers of general secondary education still exist, which are not examined in detail in the Judgement.

In view of the above, I do not consent to the conclusion made by the Constitutional Court that teachers of pre-school education, teachers of general basic education and teachers of general secondary education are doing work of equal value. Hence, I hold that these groups are not in similar and according to certain criteria comparable circumstances.

Thus, legal proceedings in the part regarding compliance of the contested provisions with the first sentence of Article 91 of the *Satversme* had to be terminated and, in such circumstances, in this case compliance of the contested provisions with Article 107 of the *Satversme* had to be reviewed.

Justice of the Constitutional Court

Gunārs Kušiņš