JUSTICE OF THE CONSTITUTIONAL COURT

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SEPARATE OPINION
of Jānis Neimanis,
Justice of the Constitutional Court,
in Riga on 12 July 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".

On 29 June 2023, the Constitutional Court delivered its judgment 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". I do not consent to the finding made in the Court's judgement regarding incompatibility of the contested provisions with the first sentence of Article 91 of the *Satversme* because, allegedly, the differential treatment, caused by the contested provisions, lacks a legitimate aim. Likewise, I do not consent to the Court's refusal to review the compatibility of the contested provisions with Article 107 of the *Satversme*.

Firstly, in general, application of the principle of legal equality must be examined in two steps: 1) whether legally significant unequal treatment exists; and 2) whether such

inequality can be justified from the perspective of constitutional law. To determine whether legally significant differential treatment exists, it should be verified whether several groups of cases or situations are comparable at all. The Court argued very intensively that that the teachers of pre-school education and teachers of general basic education and general secondary education were comparable. I consent to this, these groups are united by the elements characterising the groups of teachers, indicated by the Court. However, by spending all vigour to substantiate the possibility of comparing groups of teachers, the Court lost its capacity. In continuation, the Court limited itself to the conclusion that that the aim of differences in remuneration were only budgetary possibilities and that was not legitimate. Likewise, the Court lost its vigour to verify compliance of the contested provisions with Article 107 of the *Satversme*.

Contrary to the majority's opinion that the differential treatment lacks a legitimate aim, I hold that it was incorrectly interpreted in the judgement and was subordinated to the outcome of the judgement. The Cabinet pointed out already in its written reply that the differences in remuneration for teachers of pre-school education and teachers of general basic education and teachers of general secondary education were justified by several differences in the work of teachers of pre-school education and teachers of general basic and general secondary education. This was also noted by the Ombudsman in his opinion (although he held that, because of this, comparable groups of teachers did not form). I am of the opinion that these were reasonable causes and served as legitimate grounds in the matter of differences in the basic remuneration.

The Court, however, used the statements made by the Cabinet's representatives that the differences were linked to the State's fiscal possibilities. However, the government pointed this out to justify why the increase in teachers' remuneration, demanded by the trade union, could not be reached faster and not to justify the existing differences in the matter of remuneration for teachers of pre-school education and teachers of general basic and general secondary education. I rather see that, in the present case, decrease of differences in remuneration is linked both to pressure by political interest groups and the available financing; however, the majority interpreted it solely as if the differences in remuneration had been justified by budgetary possibilities.

In verifying further compliance with the principle of equality, in my opinion, it had to be concluded that the government, in establishing minor differences in remuneration for work, had not acted arbitrarily because differences were based on rational facts linked to the aim of differentiating remuneration. Although, on a general scale, a teacher's work has the same aim, the requirements regarding professional qualification, different scope of teachers' studies, the style and content of work of teachers working with learners of different age groups differ significantly, depending upon the age of children to be educated, their ability to concentrate, physiological needs, and other aspects. The differences have been recognised also in the judgement: "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 Para 16.2.1. of the judgement*). Such increase in the complexity of the content of studies influences, *inter alia*, also the amount of time that teachers have to spend to prepare for classes and individual work, as well as demands regarding continuous education. The differences in teachers' work environment, duties and teaching methods are exactly the facts that allow and, perhaps, even require more nuanced allocation of remuneration. They also constitute the justification of differential treatment, insofar the differential treatment is not manifestly arbitrary or the remuneration – manifestly or disproportionately unequal.

The fact that differences exist between groups of teachers because of their different duties and the form in which they are fulfilled does not in any way mean that any of the groups would be less valuable. It is self-evident that the developed programme that is ensured to a child at an institution of pre-school education is fundamental for consolidating socialising skills, empathy, patriotism and other qualities, which, accordingly, influence also the growth of the national economy and know-how. As noted by Dr .paed. Linda Daniela, assessment of a child's achievements on the level of pre-school education is more complicated compared to other levels. The work of teachers employed on other levels of education is equally valuable – in different way, by ensuring adolescents' right to education and by involvement in their patriotic upbringing. However, this matter needs to be

examined more broadly: each duty, performed in accordance with work ethic, contributes to the general functioning of society and is valuable. Society is able to function only thanks to division of labour and the importance of each profession could be clearly seen during the period of pandemic.

The term used by the Constitutional Court, "work of equal value", in the practice of the Committee on Economic, Social and Cultural Rights is mainly used in the context of gender discrimination and other types of discrimination, which is not an issue in this case (*see Para 15.2. of the judgement and the title of the sub-section of the quoted document - 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 – "Equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work").* The finding that work of different professions is of equal value cannot automatically demand identic, standard remuneration because, by this, the principle of equality would be violated from the opposite side – by determining the same remuneration for groups that actually differ significantly in other aspects. Hence, remuneration for work of equal value but, substantially, different, should be in comparable range or one group of salaries, within which various differences are admissible, taking into consideration individual nuances of each work, *inter alia*, education, workload at the place of work and outside it, benefits ensured for the profession, and other aspects.

The fact that the limited State budget resources are allocated differently by the contested provision does not mean that the differential treatment could not have another substantiation, with the financial aspect occurring as a secondary impact of the provision. In other words – State budget savings occur because, at the given moment, the legislator has considered the existing differences between groups of teachers as being sufficiently important to impact their remuneration.

Secondly, I do not consent to the position, chosen by the Court, to avoid analysing and explaining Article 107 of the *Satversme* and its content, which is equally important as the principle of equality. The Constitutional Court has the task to provide full review of the

constitutionality of the contested provisions, revealing the content of the *Satversme´s* provisions, the content of fundamental rights. Each application is an opportunity for the Constitutional Court to evolve and develop the *Satversme*. Thus far, in the Court's judicature, Article 107 of the *Satversme* has been examined very rarely and, as seen in the opinions of the summoned persons, has been understood very differently in the Latvian legal science. Explanation of the content of Article 107 of the *Satversme* would both allow the legislator to understand better the legal compliance of its actions with the *Satversme* and for the rest of society – know and understand the content of fundamental rights. After all, the Constitutional Court itself has recognised that its task is, in accordance with its jurisdiction, to ensure existence of such legal regulation, in which such regulation that is incompatible with the *Satversme* or other superior legal provisions (acts) would be eliminated as fully and comprehensively as possible, as well as to provide its assessment on matters with constitutional significance (*see Judgement by the Constitutional Court of 7 April 2009 in Case No. 2008-35-01, Para 11.2.*). Irrespective of whether it is done for the sake of effectiveness or unwillingness to deal with new challenges, a Court, which avoids answering half of the questions addressed to it, carries out its mission poorly.

Justice* J. Neimanis

* The document is signed with a secure electronic signature and contains a time stamp.