



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

in Riga, May 2, 2007

in the case No. 2006-30-03

The Constitutional Court of the Republic of Latvia composed of the Chairman of the Court session- Gunārs Kūtris, as well as the justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Uldis Ķinis, and Viktors Skudra,

under Section 85 of Satversme (Constitution) of the Republic of Latvia and Item 3 of Article 16, Item 11 of the second part of Article 17, Articles 19.², and 28.¹ of the Constitutional Court Law,

having regard to the constitutional complaint of Rita Sirmoviča

on April 3, 2007 at a Court session in writing examined the case

“On the Compliance of Paragraph 23.5 of the Regulation No. 746 of August 24, 2004 of the Cabinet of Ministers “Regulations on Work Remuneration of Teachers” with Section 107 of the Satversme of the Republic of Latvia”.

The Constitutional Court has established:

1. In Section 14 of the Education Law, the jurisdiction of the Cabinet of Ministers in the sphere of education is established. According to Item 16 of this Section, the Cabinet of Ministers shall establish the order of work remuneration of educators and the amount of wages. However Item 22 of the same Section provides that the Cabinet of Ministers shall establish the amount of educators’ work load.

Based on authorization included in the Law, the Cabinet of Ministers passed the Regulation No. 746 on August 24, 2004 “Regulations on Work Remuneration of Teachers” (hereinafter - the Regulation No. 746). Paragraph 23.5 of the Regulation

provides that “a coefficient of 0.78 (multiplication approximated to whole lat without santims) is applied to the wage (wage rate) established in Paragraph 3 of Table 4 of Appendix No. 1 [...] for educators, who are acquiring professional higher education in the relevant sphere or pedagogical education that corresponds to requirements established in normative acts”.

2. Submitter of the constitutional complaint - Rita Sirmoviča – contests compliance of Paragraph 23.5 of the Regulation No. 746 to Section 107 of the Satversme.

The submitter of the constitutional complaint holds that fixing different wages for educators, who are only in the process of acquisition of the higher pedagogical education, does not comply with the rights established in the Satversme to receive commensurate remuneration for work done, since no just and equal wage is provided for work of equal importance.

The submitter of the constitutional complaint indicates that the coefficient established in the Regulation No. 746 has been unjustifiably applied to her wage. When establishing wage for educators, the quality of work should be taken into account. R. Sirmoviča holds that her education, pedagogical work experience, knowledge acquired in seminars and courses, as well as achievements of pupils in scholastic contests confirm the quality of her work and therefore she should be entitled to receive commensurate remuneration for work done, i.e., without applying the coefficient.

Furthermore, when beginning employment relations, the coefficient was not applied to the educator wage of the submitter of the constitutional complaint, because the Regulation No. 746 was passed only in 2004.

3. In a response letter, **the Cabinet of Ministers** indicates that application of the coefficient established in the Regulation No. 746 to the wage (wage rate) complies with Section 107 of the Satversme.

The Cabinet of Ministers explains that these regulations have been passed, based on delegation stipulated in Items 16 and 22 of Section 14 of the Education Law. When elaborating the educator wage regulations, the principles of establishing educator wages formulated by the Legislator in the first part of Section 53 of the Education Law were taken into consideration. Namely – the educator wage is

established according to the professional qualification, length of employment, and work load. The qualitative indices of work are dependent on the professional qualification and length of employment of the educator, however the quantitative indices - on the work load.

In the response letter the following is indicated: the Legislator has clearly stated that the educator must have relevant higher professional or academic education of the taught subject, as well as pedagogical education. It follows from Item 16¹ of Section 1 and the first part of Section 49 of the Education Law.

Under the first part of Section 48 of the Education Law, “a person who has pedagogical education, or who is acquiring pedagogical education which complies with the professional qualification requirements set by the Cabinet has the right to work as an educator”. Considering the fact that at the time of passing the law – in 1999 – many educators, whose education was inadequate, were employed in educational institutions, by Paragraph 5 of the transitional regulations of the Law it was established that the first part of Section 48 shall become effective on September 1, 2000. However, regarding certain categories of educators, the amendments of May 10, 2001 and of February 5, 2004 in the transitional regulations of the Education Law established even later term for enactment of the relevant standard. Thus, the educators employed in educational institutions were timely informed about the requirements in respect to educator education and professional qualification, and were aware of the fact that their wages would depend on the acquired education and qualification.

In the response letter, it was explained that a state recognized document verifying higher education confirms mastering contents established in the national educational standard and education programme, and thus allows regarding and assuming that a person has mastered the knowledge and skills that are necessary for performing the corresponding professional activities. However the acquired informal education, arranged beyond formal education, cannot verify the previously stated qualities. Likewise, employment experience cannot verify it. It clearly follows from Section 8 of the Education law that higher educational programs cannot be mastered in a form of self-education.

The Cabinet of Ministers also indicates that the opinion of the submitter of the constitutional complaint, i.e., that her education, pedagogical experience, and awards

confirm her employment quality and is a reason for not applying the coefficient, is regarded to be subjective. In compliance with the third part of Section 49 of the Education Law, improvement of professional qualification of educators occurs in a form of self-education and in institutions that implement the relevant continuing education programmes. Paragraph 3 of the first part of Section 51 provides for an obligation for the educators to improve independently their education and professional proficiency. Even if the submitter of the constitutional complaint would have education necessary for the position of an educator, she would be obliged to improve her knowledge, however this additional education cannot substitute formal education. The granted awards are supposed to be indicative of decent work done by the educator in a certain time frame, and of the fact that the skills and abilities of the individual have been sufficient for performance of specific tasks. Nevertheless, the granted awards do not confirm that the individual has acquired knowledge and skills necessary for performance of the corresponding professional activity. Furthermore, the number of scholastic contest winners does not confirm that the educator is equally skilled to work with pupils, who are not as gifted in mastering study material. The submitter of the constitutional complaint is said not to have acquired the necessary professional qualification, therefore her wage can be applied the 0.78 coefficient.

Nonetheless, the mentioned matters do not entail prohibition for the employer to allocate a person additional payment, after having evaluated the qualitative ratios of the educator's work. According to Paragraph 29 of the Regulation No. 746, the educator may be materially stimulated, considering his/her personal contributions and employment quality, by using the saved wage fund resources for this purpose.

Consequently, application of the coefficient established in the Regulation No. 746 to the wage (wage rate) is assumed to fully provide for the rights established in Section 107 of the Satversme to commensurate remuneration for work done.

4. The ombudsman of the Republic of Latvia (hereinafter - Ombudsman) considers that the wage system, which derives from the Education Law and from the Regulation No. 746 is to be recognized as objective and compatible with Section 107 of the Satversme.

The Regulation No. 746 are to be assessed in relation to the first part of Section 48 of the Education Law, according to which a person having pedagogical education

or a person who is in the process of acquisition of pedagogical education complying with the professional qualification requirements established by the Cabinet of Ministers, is entitled to work as an educator.

It means that the Legislator requires working educators to have pedagogical education, and persons, who are only in the process of acquisition of the education, are entitled to work in a position of an educator, which in the current situation of Latvia is necessary due to the lack of educators, and students of pedagogy are needed to be involved in employment.

The ombudsman indicates that the notion included in Section 107 of the Satversme “commensurate remuneration for work done” is to be interpreted in compliance with the rights to receive a just wage established in international human rights documents. It follows from Section 7 of the International Covenant on Economic, Social, and Cultural Rights that just payment consists of two principal aspects: established wage level, which ensures the employed and their families decent living conditions, and equal payment for equally valued work - this aspect firstly is ascribed to working men and women. When evaluating the payment provisions of educator wages, one can observe that a definite order of wage formation and criteria thereof are established in the State.

When evaluating of teachers' work, the results of which could not be generally measured in numbers, several criteria could be taken into consideration. The acquired pedagogic education is one of such objective criteria, which affect the value of teacher's work, and the comparable values cannot be limited only with the number of lectured classes. Supposedly, it is not presumed that a person without pedagogical education cannot work well, however the abilities of the person could not be objectively evaluated, therefore education as a guarantee of high quality is considered to be a justified requirement.

The ombudsmen holds that the transitional period established in Paragraph 5 of the transition provisions of the Education Law guaranteed until the date of enactment of the first part of Section 48 of this Law has been sufficiently long for the working educators to acquire the required education and their wage would not be therefore decreased.

5. Elkšņi Elementary School of Jēkabpils district confirms that R. Sirmoviča has been working in the mentioned school as the teacher of the Latvian language and literature for grades 5-9 since September 1, 1998. The wage (wage rate) has been set according to the Regulation No. 746, which provide for applying the coefficient of 0.78 for wage rates of those educators who are in process of acquisition of higher pedagogic education. In the information provided by the school, it has been indicated that R. Sirmoviča, in accordance with the Regulation No. 347 of October 3, 2000 of the Cabinet of Ministers “Regulations on the Required Education and Professional Qualification of Teachers”, is supposed to acquire the professional higher pedagogical education with qualification “teacher of the Latvian language and literature”. R. Sirmoviča is in the progress of acquisition of professional higher pedagogical education at the Faculty of Humanitarian and Legal Sciences at Rēzekne Higher Education Institution.

6. The Ministry for Education and Science informs that in the academic year of 2006/2007, the coefficient 0.78 of wage rate established in Paragraph 3 of Table 4 of Appendix No. 1 to the Regulation No. 746 has been applied to 2272 educators in elementary and secondary educational institutions, 606 educators – in professional educational institutions under subordination of the Ministry, 568 educators – in institutions under subordination of the Ministry for Culture. The above numbers are said to decrease each year, since more than 80% of the above educators are acquiring education established in normative acts.

The Constitutional Court holds that:

7. Section 107 of the Satversme establishes that “every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation”.

The justification for constitutional complaint does not refer to the rights to weekly holidays and paid annual vacation. Also, lack of conformity of the educator’s wage is not contested in respect to the state prescribed minimum.

The constitutional complaint asks the Constitutional Court to assess, whether application of coefficient established in the Regulation No. 746 to the wage (wage

rate) complies with the rights established in Section 107 of the Satversme to receive commensurate wage for work done.

8. The case in the Constitutional Court was initiated about compliance of Paragraph 23.5 of the Regulation No. 746 with Section 107 of the Satversme. However, it follows from the content of the constitutional complaint that, in fact, compliance of Paragraph 23.1 of the Regulation is contested. Paragraph 23.1 of Regulation No. 746 provide that a coefficient of 0.78 (multiplication approximated to whole lat without santims) is applied to the wage (wage rate) established in Paragraph 3 of Table 4 of Appendix No. 1 for educators, who are acquiring professional higher pedagogical education.

The institution that passed the Regulation No. 746, the Cabinet of Ministers, based on that the submitter of the constitutional complaint is an educator, who is in the process of acquisition of higher pedagogical education, has, in fact, issued resolution about compliance of Paragraph 23.1 of the Regulation with Section 107 of the Satversme.

During the case preparation time, the Cabinet of Ministers explained both situations of applying norms. Namely, the Cabinet of Ministers has indicated that Paragraph 23.1 of the Regulation is applicable in the case if an educator without professional higher pedagogical education is working in an educational institution. The higher education and journalist qualification acquired by the submitter of the constitutional complaint does not comply with the requirements of normative acts, therefore she is required to acquire a qualification of the Latvian language and literature teacher.

Furthermore, Paragraph 23.5 of the Regulation is applicable for educators, who do not have professional higher education in the relevant sphere. For instance, if a Latvian language teacher wishes to teach a foreign language, the person would have to master the relevant study programme, in order to be conferred the rights to work as an educator of foreign language. Rights to receive full wage for teaching a foreign language, therefore, would be applicable after having mastered the study program. The same applies also to the educators, who have acquired higher education to the teachable subject in the respective sphere, for instance, qualification of a physicist or

chemist, but who do not have pedagogical education, as provided in the normative acts. They could receive a full wage only after having acquired pedagogical education.

The answer provided for the Constitutional Court by Elkšņi Elementary School confirms the fact that when calculating the wage (wage rate) for R. Sirmoviča, Paragraph 23.1 of the Regulation No. 746 has been applied.

Hence, in this case, compliance of Paragraph 23.1 of the Regulation No. 746 with the rights to receive commensurate wage to the work done established in Section 107 of the Satversme has to be assessed.

9., In the framework of the contested provision, the Cabinet of Ministers has established a case that the coefficient 0.78 is applied to the minimum monthly wage (wage rate) established in the Regulation for an educator with the lowest professional qualification.

The Regulation No. 746 establishes the order of remuneration of educators, the amount of the wage, and the work load in national and municipal educational institutions. The Regulation of the Cabinet of Ministers has been passed in compliance with Section 14 of the Education Law. Paragraph 16 of the above section provides that the Cabinet of Ministers shall establish the order of work remuneration of educators and the amount of wages. However Paragraph 22 of same Section provides that the Cabinet of Ministers shall establish the amount of educator work load. Furthermore, the Cabinet of Ministers in its considerations was basing on the criteria established in Section 53 of the Education Law, which must be observed in process of determination of wages for educators. These criteria are professional qualification, length of service, and work load of the educator.

10. The submitter of the constitutional complaint holds that her education and knowledge acquired in seminars and courses, as well as pedagogical experience and the awards are indicative of quality of her work, and therefore she should be entitled to receive wage commensurate to the work done – “as provided for the wage rate for educators with lowest professional qualification”. It has been required in the constitutional complaint to assess, whether the provision, which divides educators into groups according to qualification criterion and provides for lower wage for a certain group of educators, complies with Section 107 of the Satversme.

11. Paragraph 2 of Regulation No. 746 establishes that “an educator with the lowest professional qualification is an educator, who has professional higher pedagogical education or higher professional (academic) education in the relevant sphere and a pedagogical education complies with the requirements established in normative acts”.

However the professional qualification of the educator is one of the criteria, which is taken into consideration, when establishing that the coefficient of 0.78 is applied to the lowest monthly wage (wage rate) provided for in the case indicated in the contested provision.

Therefore, it must be investigated, whether application of the coefficient to the wage complies with the principle of legal equality.

12. The Constitutional Court has indicated in several judgments that the principle of legal equality prohibits national institutions to issue provisions that without reasonable grounds permits different treatment of persons, who enjoy equal and comparable conditions (*see Paragraph 3 of the Concluding Part of the judgment of the Constitutional Court of December 5, 2001 in the case No. 2001-07-0103, Paragraph 7 of judgment of the Constitutional Court of March 26, 2004 in case No. 2003-22-01*)

Meanwhile, the Constitutional Court emphasized that the principle of legal equality allows and even requires different attitude towards persons that enjoy different conditions. Only if it is established that there are objective and reasonable grounds for it, the principle of equality permits different treatment of persons that enjoy equal conditions, or equal treatment for persons that enjoy different conditions (*see, e.g., Paragraph 14 of judgment of the Constitutional Court of November 2, 2006 in the case No. 2006-07-01*).

The different attitude is not objectively and reasonably grounded, if it does not have a legitimate goal or if it is not proportionate (commensurate) to the elected means and the objectives set (*see Paragraph 3 of Concluding part of the judgment of the Constitutional Court of December 23, 2002 in the case No. 2002-15-01*).

In order to establish compliance of the contested norm with the legal equality principle, the following must be investigated:

- 1) whether and which persons enjoy equal and comparable conditions;

- 2) whether the contested provision provides for different treatment;
- 3) whether the different treatment has objective and reasonable grounds, namely, does it have a legitimate objective and whether the proportionality principle has been observed.

13. When establishing, whether and which persons or groups of persons enjoy equal and comparable conditions according to established criteria, it is necessary to determine the uniting feature of this group (*see Paragraph 12 of judgment of the Constitutional Court of May 21, 2004 in the case No. 2003-23-01*).

Under the second part of Section 51 of Education Law, educators of educational institutions shall be responsible for their work, methods, techniques and results of such. Also, the general responsibilities of an educator, established in the first part of the same Section of the Law are not differentiated depending on the fact whether the educator has acquired professional higher pedagogical education, which corresponds with the professional qualification requirements established by the Cabinet of Ministers. Taking into consideration the fact that the responsibilities established in the Law, as well as liability for the work done is equal for all educators, it must be acknowledged that educators who have the professional higher pedagogical education enjoy equal and comparable conditions if compared to the educators, who are only in the process of acquisition of this education. Furthermore, the first part of Section 48 of the Education Law clearly establishes that both of the above-mentioned groups of persons are entitled to work as educators.

14. If persons or groups of persons enjoy in equal and comparable conditions, then it must be investigated, whether the contested provision provides for different treatment. Paragraph 23.1 of the Regulation No. 746 provides for one of the cases when the coefficient of 0.78 is applied to the wage (wage rate) established in Paragraph 3 of Table 4 of Appendix 1 of the Regulation. Namely, this coefficient is applied for educators, who are in process of acquisition of professional higher pedagogical education. Hence educators, who have acquired pedagogical education, are entitled to different wage than the educators, who are only in process of acquisition of professional higher pedagogical education that corresponds to the established professional qualification features.

Hence the contested provision provides for different treatment, since in the result of its application, educators, who perform comparable work, are allocated different payment.

In order to establish, whether the different treatment has an objective and reasonable grounds, it must be investigated, whether it has a legitimate objective and whether the principle of proportionality is observed.

15. The objective of the Law "On Regulated Professions and Recognition of Professional Qualification" is both, to ensure compliance of professional activities to the established quality requirements and criteria, if these activities are related to protection of public interests, safety thereof, and health protection, and protection of certain publicly important professions against involvement of unqualified persons by establishing increased requirements for these professions. The profession of an educator, similar to, for instance, profession of a doctor or an architect, is regulated and it is subject to increased requirements. It means that in this profession there exist certain requirements in respect to education, qualification, and activities.

Section 112 of the Satversme provides for rights to education for everyone. However, the objective of the Education Law is to ensure for each resident of Latvia developing of their intellectual and physical potential, in order to become an independent and developed person, a member of a democratic state of Latvia and its society. Therefore, applying increased requirements for the profession of an educator is related to the necessity of ensuring the rights of every person to education established in Section 112 of the Satversme, which in essence is right to high quality education. Furthermore, the Constitutional Court has recognized that "proper educational and scientific level is an integral prerequisite for successful development of each country" (*Paragraph 3.2 of Concluding part of the judgment of the Constitutional Court of May 20, 2003 in the case No. 2002-21-01*).

Moreover, the objective of the coefficient established in the contested provision is to promote acquisition of pedagogical education as fast as possible, which simultaneously ensures provision of high quality education along with the rights for the educator to receive wage, to which the respective coefficient is not applied.

Hence the objective of the restriction included in the contested provision can be recognized as the one that protects public welfare. The concept "public welfare",

undoubtedly, must initially include the aspects of common material welfare of the society, that are associated with various measures to improve the common material benefits of the society or distribution thereof between members of society. “However the concept of “public welfare” also includes non-material aspects, which are indispensable for functioning of society as harmonious as possible.” (*Levits E. Cilvēktiesību piemērošanas pamatjautājumi Latvijā// Cilvēktiesības Latvijā un pasaulē, ed. by I.Ziemele. Riga, 2000, pp. 286 – 287*).

Hence the restriction included in the contested provision has a legitimate objective, i.e., ensuring rights of other people to education and ensuring public welfare.

16. When analyzing the contested provision regarding its compliance with the proportionality principle, it must be assessed, whether its application does not cause greater loss to rights and legal interests of persons than the benefits that can be gained by the society.

When determining the wage commensurate to the work done, decrease thereof may not be permitted based on such criteria as gender, nationality, citizenship, religion of political opinion, or any other criterion, unless it is related to professional skills necessary for performing the work.

One can agree to the opinion expressed in the response letter of the Cabinet of Ministers: “A state recognized document verifying higher education confirms mastering contents established in the national educational standard and education programme, and thus allows regarding and assuming that a person has mastered the knowledge and skills that are necessary for performing the corresponding professional activities. However the acquired informal education, arranged beyond formal education, cannot verify the previously stated qualities. Likewise, employment experience cannot verify it.” (*See pp. 32 of the case materials*).

According to Section 8 of Education Law, the higher education programs cannot be acquired in a form of self-education. It implies that the Legislator has not considered as acceptable to take into account only for the educator’s experience, achievements, and other indices, and thus has acknowledged that a person, who does not have education and professional qualification that corresponds to the profession of an educator, which is confirmed by a state recognized educational document, has not

acquired the bulk the abilities, knowledge, and attitudes necessary for the corresponding profession.

Application of the above coefficient, although it is not the only way of determination of a differentiated wage, considering the criteria established in the Education Law, nevertheless is possible and in this case it is also a permitted measure. Determination of wage commensurate to the work done, while ignoring the criteria established in the Law, would be impossible, because a situation would form, where educators with different professional qualification would unjustly earn an equal wage for the work. However, also the current legal provisions allow taking into account the results of individual work of the educator and determine additional payment for the quality of work. I.e., - Paragraph 29 of the Regulation No, 746 establishes that taking into account individual contribution into work and work quality of each educator, he/she may be materially stimulated, using resources of wage payment fund saved specifically for this purpose.

Well-grounded also is the statement expressed by the Cabinet of Ministers that the pedagogical experience and achievements of a person may be indicative of the labour quality of a person. The granted awards may confirm decent work of the educator performed during a certain time frame, as well as the fact that the person has excellently performed certain job duties. However, consideration of such criteria, when determining labour quality, would require assessment of each individual case separately.

The provisions of Paragraph 3 of the first part of Section 51 of the Education Law must be taken into consideration, namely, one of the general responsibilities of educators is to constantly improve their educational and professional skill. Moreover, if the person has the professional higher pedagogical education that is required for the profession of an educator, he/she is obliged to improve the knowledge; however this additional education cannot substitute the formal education.

Information provided by Elkšņi Elementary School states that R. Sirmoviča has received additional payments for labour quality, which confirms her high labour parameters (*see pp. 39 of the case*). However the submitter of the constitutional complaint has not acquired the professional qualification required for the position of an educator, therefore her wage is subject to application of the 0.78 coefficient.

Hence the contested provision is to be recognized as being in compliance with the principle of legal equality.

17. The submitter of the constitutional complaint claims that the contested provision violates the principle of legal certainty, since Regulation No. 746, which provides for cases, when the coefficient is applied to wages of an educator, was passed only in 2004, and when she initiated her legal relations with the employer, there had not been any indications of a possibility of receiving only a partial remuneration for the work done.

However the submitter of the constitutional complaint does not contest the first part of Section 48 of the Education Law, which establishes that a person having pedagogical education or who is in the process of acquisition pedagogical education, which complies with the professional qualification requirements established by the Cabinet of Ministers, is entitled to be working as an educator. Paragraph 5 of transitional regulations of the Education Law, providing for enactment of Section 48 of the Law, is not contested. The second part of Section 49 of the Education Law, providing that the professional qualification of an educator is confirmed by a diploma of higher pedagogical education or a corresponding certificate, is neither contested. Likewise, Section 53 of the Law, providing that the wage of an educator is established also according to professional qualification of the educator, is not contested.

Hence, in this case, there is no dispute about the criteria affecting establishment of the amount of a wage, but rather about the fact whether the person was entitled to assume that the coefficient established in Paragraph 23.1 of Regulations No. 746 will not be applied to the wage.

17.1. The rights to receive remuneration commensurate to the work done are closely related to the principle of a judicial state, which also includes the principle of legal certainty. This principle establishes that the state institutions in their activities must be consistent in respect to the issued normative acts and must observe the legal certainty, which might arise for persons, based on grounds of specific normative acts (*see: Hartly T.C. The Foundation of European Community Law. An Introduction to the Constitutional and Administrative Law of the European Community. Oxford, Clarendon Press, 1994*).

However, a person, according to this principle, can rely on consistency and permanence of a legally issued legal norm. He/she can safely plan the future, considering the entitlements assigned by this norm. The principle of legal certainty is important regarding the fact, whether reliance of a person on the legal norm is legal, justified, and permanent, as well as whether the legal regulations in their essence are specific and permanent enough to be relied on (*see Paragraph 3.2 of Concluding part of judgment of the Constitutional Court of March 19, 2002 in the case No. 2001-12-01*). Furthermore, it must be taken into consideration that this principle can protect only the rights that the person has already been conferred (*see Paragraph 8 of judgment of the Constitutional Court of October 25, 2004 in the case No. 2004-03-01 8*).

The Constitutional Court has indicated that the main objective of the principle of legal certainty is to protect the rights of a person in the cases, when deterioration of legal situation of a natural person occurs or might occur in the result of amendments to legal regulations (*see Paragraph 21 of judgment of the Constitutional Court of November 8, 2006 in the case No. 2006-04-01*).

The Constitutional Court has also recognized that the principle of legal certainty nevertheless does not prohibit making amendments to the existing legal regulations, however these amendments must comply with certain requirements. The Constitutional Court has concluded that the principle of legal certainty in a judicial state requires that, when making such amendments, the Legislator must provide for a lenient transition to the new regulations (*see Paragraph 2 of Concluding part of the judgment of the Constitutional Court of March 25, 2003 in the case No. 2002-12-01, Paragraph 18 of the judgment of the Constitutional Court of March 8, 2005 in the case No. 2005-16-01*).

17.2. The Education Law was passed at the Saeima (the Parliament) on October 29, 1998 and became effective on June 1, 1999. According to the first part of Section 48 of the Law “a person who has pedagogical education, or who is acquiring pedagogical education which complies with the professional qualification requirements set by the Cabinet has the right to work as an educator”.

Taking into consideration the fact that at the time of passing the Education Law, many educators with inadequate education were employed in educational institutions,

in Paragraph 5 of transition regulations of the Law, it was established that the first part of Section 48 of the Law should become effective on September 1, 2000. Furthermore, the amendments to the transition regulations of the Education Law of May 10, 2001 and of February 5, 2004 established even later date of the norm becoming effective in respect to certain categories of educators.

Hence as it has been justly indicated in the response letter of the Cabinet of Ministers, the educators employed in the educational institutions were timely informed about the requirements established regarding education and professional qualification of educators, and, taking into consideration that the second part of Section 53 of the Education Law was not amended, the educators had to be aware that their wage shall depend on the acquired education and qualification.

17.3. The Regulation No. 746, which provided for application of a coefficient to the wage (wage rate) of educators, were adopted in 2004. Thus, from the moment, when the requirement regarding pedagogical education was established in the Law (June 1, 1999), several years had passed, during which the working educators, who did not have adequate professional qualification, could acquire education without the coefficient being applied to their wage.

Furthermore, Paragraph 22 of the Regulation No. 746 establishes that in the case “if under these regulations, the established monthly wage (wage rate) of an educator is lower than monthly wage (wage rate), which has been established before the date of these regulations becoming effective, the educator must be paid the wage (wage rate) difference for work at same position or higher position (within the framework of the wage fund of the corresponding educational institution)”.

Information provided by Elkšņi Elementary School has also confirmed payment of the wage difference to the submitter of the constitutional complaint (*see pp. 14-15, 38 of the case materials*).

17.4. The opinion of the Ombudsman is well-grounded. According to it, “the Legislator justifiably requires working educators to have pedagogical education, and the rights persons, who are only in the process of acquisition of the education, is an exception, which is necessary in the current situation of Latvia due to lack of educators, and students of pedagogy are needed to be involved in employment. The contested provision refers to the transition period, when a person is acquires

pedagogical education, and the objective of the provision is to motivate persons to acquire education without delay, because once it is acquired, the full wage rate is paid” (*see pp. 56 of the case materials*).

The coefficient established in the Regulation No. 746 is not applied permanently. It is applied temporarily for a certain period of time, the duration whereof depends on the educator himself/herself. Under Paragraph 10 of the Regulation, “recalculation of the wage shall be performed with the upcoming working day after submission of a document confirming change of professional qualification”. Hence an educator is interested in faster acquisition of the corresponding education and professional qualification.

Hence the contested provision complies with the principle of legal certainty.

The Substantive Part

Under Sections 30-32 of the Constitutional Court Law, the Constitutional Court

holds:

Paragraph 23.1 of the Regulation No. 746 of the Cabinet of Ministers of August 24, 2004 “Regulations On Work Remuneration of Teachers” comply with Section 107 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal

The Judgment takes effect as of the day of publishing it.

The Presiding judge

G.Kūtris