**Summary to the Decision of the Grand Chamber of the Constitutional Court of Ukraine of February 7, 2023 No. 1-r/2023 in the case upon the constitutional petition of 56 People’s Deputies of Ukraine on compliance of the paragraph three of Article 22.2 of the Law of Ukraine** „**On the Upper General Secondary Education**“ **with the Constitution of Ukraine**

The subject of the right to constitutional petition - 56 People’s Deputies of Ukraine - applied to the Constitutional Court with a request to verify the constitutionality of paragraph three of Article 22.2 of the Law „On the Upper General Secondary Education“ of January 16, 2020 No. 463-IX (hereinafter referred to as the Law), according to which „pedagogical employees of the state and communal institutions of general secondary education who reached the age of retirement and who are paid age pension shall work on the basis of labour contracts concluded for a term from one to three years“.

The upper general secondary education is mandatory (Article 53.2 of the Constitution). This provision imposes a positive obligation on the state to implement a responsible state policy in the field of education.

The Law imposes high qualification requirements on pedagogical employees, since such employees are the main, most valuable intellectual potential, an important link in the system of modern general secondary education.

Pedagogical employees are persons who, at their primary place of employment in educational establishments, professionally carry out pedagogical activities.

Taking into account the need to implement a responsible state policy in the field of education, to provide educational establishments with qualified pedagogical employees, the state should create such working conditions within the framework of the educational process that will stimulate the creative performance of pedagogical functions by both experienced teachers and those who have just begun their pedagogical way. Only by maintaining an optimal balance in providing educational establishments with young qualified and experienced teachers, the state will be able to fulfil the function assigned to it by organising an effective education system.

Pedagogical employees of state and communal educational establishments, in accordance with the general rule, shall be admitted to work under labour contracts, by means of concluding an open-ended labour contract, i.e. labour contract for an indefinite term.

The normative regulation stipulated by the legislator in paragraph three of Article 22.2 of the Law does not have a legitimate purpose, as for some teachers the right to conclude an open-ended employment contract is preserved, while others have been deprived of this right by the legislator only due to the following legal facts: 1) working in a state or municipal establishment of general secondary education; 2) attaining a retirement age; 3) obtaining an old-age pension, which, in essence, means the exclusion of the conclusion of an open-ended employment contract only in view of the person obtaining a certain type of property (pension payments).

Pedagogical activity is not classified as a public service, it does not have such a special (specific) nature with account of which certain age limits (age qualifications) could be established. Attaining the retirement age by a pedagogical employee and obtaining an old-age pension cannot be sufficient grounds for additional requirements or additional restrictions, in particular, for the requirement to conclude an exclusively fixed-term employment contract with such a pedagogical employee, primarily considering that all other pedagogical employees of state and communal establishments of general secondary education are endowed with the right to hold the position of a teacher by concluding an open-ended employment contract.

The requirement established by the Law to terminate previously concluded open-ended employment contracts with pedagogical employees who have attained retirement age and obtain an old-age pension, provided that they work in state or communal establishments of general secondary education, *de facto* cancels employment relationships that were established before the Law came into force, and in combination with the absence of any alternative to concluding a fixed-term employment contract, such requirement jeopardises the exercise by a person who has entered into an open-ended employment contract of his/her right, guaranteed by Article 43.1 of the Constitution, according to which everyone has the right to work, including the opportunity to earn a living by work, which he/she freely chooses or freely agrees to.

Paragraph three of Article 22.2 of the Law limits the constitutional right to work of a person who works in a state or communal establishment of general secondary education, holds the position of a pedagogical employee, has attained retirement age and obtains an old-age pension, but who, due to his/her physical and mental health, is able to carry out pedagogical activities. In particular, his/her ability to voluntarily negotiate working conditions is narrowed. Consequently, the impugned provisions of the Law do not comply with Articles 43.1 and 43.2 of the Constitution.

Violation of the equality of constitutional rights and freedoms means that a person receives privileges or is subject to restrictions in the recognition, exercise or use of rights and freedoms in any form, except when such a restriction is established with a legitimate, determined by essential factors and a justified goal, the means of achieving which are appropriate and necessary in a democratic society.

Establishing for pedagogical employees of state and communal establishments of general secondary education who have attained retirement age and obtain an old-age pension, the possibility of concluding exclusively fixed-term employment contracts with them, in contrast to pedagogical employees of state and communal establishments of general secondary education who have not attained retirement age and do not obtain an old-age pension, constitutes an unjustified and unreasonable restriction of the rights of these persons in labour relations based on age and the legal fact of obtaining an old-age pension. In addition, the impugned provisions of the Law put pedagogical employees in an unequal, disadvantageous and vulnerable position, depending on whether they have a certain type of property (pension payments) and the form of ownership of the relevant establishment of general secondary education: these provisions of the Law apply to pedagogical employees of state and communal establishments of general secondary education, but do not apply to pedagogical employees of establishments of general secondary education that do not belong to state or communal property. Therefore, the provisions of paragraph three of Article 22.2 of the Law do not comply with Articles 24.1 and 24.2 of the Constitution.

Thus, the Constitutional Court of Ukraine held to declare paragraph three of Article 22.2 of the Law „On the Upper General Secondary Education“ of January 16, 2020 No. 463-IX, according to which „pedagogical employees of the state and communal institutions of general secondary education who reached the age of retirement and who are paid age pension shall work on the basis of labour contracts concluded for a term from one to three years“, as a result of which it is impossible to conclude open-ended employment contracts with this category of pedagogical employees, as such that does not comply with the Constitution (is unconstitutional). The specified provision shall cease to be valid from the date of adoption of this Decision by the Constitutional Court.

**References:**

Decisions of the Constitutional Court:

No. 12-rp/1998 of July 9, 1998,

No. 5-rp/2000 of April 18, 200,

No. 14-rp/2004 of July 7, 2004,

No. 8-rp/2007 of October 16, 2007,

No. 9-rp/2012 of April 12, 2012,

Recommendation R162 of World Labour Organization concerning Older Workers adopted at the 66th ILC session (Geneva, 13 June 1980),

Report on the Rule of Law adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011).