

Judgment of 14th April 2003, [K 34/02](#)
TERRITORIAL DIFFERENTIATION OF TEACHERS' REMUNERATION

Type of proceedings: Abstract review Initiator: All-Poland Alliance of Trade Unions	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Determination of certain elements of teachers' remuneration by the organs of local self-government [Teacher's Charter Act 1982: Article 30(6)]	Principle of equality [Constitution: Article 32(1)]

All public schools in Poland, with the exception of public institutions of higher education, are set-up and run by units of local self-government (usually communes or districts).

The legal status of teachers is governed by the Teacher's Charter Act 1982. Teachers' remuneration is comprised of several elements: base remuneration, overtime remuneration, bonuses and rewards. The amount of base remuneration was set at an equal level for the whole country. In accordance with the challenged provision, the relevant unit of local self-government was empowered to determine the levels of the remaining elements of remuneration. This provision was challenged before the Constitutional Tribunal by the All-Poland Alliance of Trade Unions. The applicant alleged that the provision contradicts the constitutional principle of equality (Article 32) by creating a situation whereby teachers employed in different parts of the country receive different levels of certain components of remuneration, even where they possess the same qualifications and perform the same amount of work.

RULING

The challenged provision conforms to Article 32(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. In striving to accomplish certain socio-economic goals, the legislator may utilise instruments of wage policy which include allowing for the differentiation – within a framework of general rules common for the whole country – of levels of remuneration in accordance with various criteria, such as the criterion of territorial location. The legislator may, in particular, in addition to allocating specific public tasks to units of local self-government (in this case – the setting-up and running of public schools), grant such units the instruments of wage policy as are necessary to carry out these tasks in accordance with local needs and conditions. In consequence, units of local self-government may acquire certain competencies regarding the determination of teachers' remuneration. The inherent and unavoidable differentiation of levels of remuneration in various units of local self-government must be deemed permissible – within the

limits defined by statute and in the scope necessary for realization of public tasks allocated to these units.

2. As regards the constitutional principle of equality (Article 32), it is permissible for the legislator to differentiate between similar subjects provided that three conditions are fulfilled. Firstly, any such differentiation must be justified: it must be related to the aims and content of the provisions containing the given norm. Secondly, the importance of the interest to be protected by means of this differentiation must be proportionate to the importance of the interests of those subjects in respect of whom the differentiation will operate and whose interests will be infringed thereby. Thirdly, the differentiation must find its basis in constitutional values, principles or norms.
3. The legislator must adhere to the aforementioned conditions not only when enacting regulations that differentiate the legal situations of similar subjects in a direct manner but also when, in delegating powers to enact sub-statutory provisions, he thereby allows – either explicitly or impliedly – such provisions to differentiate between the legal situation of similar subjects.
4. Article 30(6) of the Teacher’s Charter, representing the challenged provision in this case, does not directly determine the levels of teachers’ remuneration. It does, however, grant units of local self-government the authority to determine, to a certain degree, the detailed rules concerning such remuneration. The territorial differentiation of similar subjects – in this case teachers of the same professional status, performing work of the same quality, in the same position and in the same conditions – which is an inescapable consequence of the challenged provision, is justified primarily by Article 166 of the Constitution, guaranteeing the independence of units of local self-government.
5. The general principle of social justice, as expressed in Article 2 of the Constitution, was clarified further in a number of more detailed constitutional norms, one of which is the principle of equality (Article 32). It is therefore unnecessary to refer to the more general norm as the basis of review when the allegation relates to the infringement of a more detailed constitutional provision clarifying the general principle. For this reason, the Constitutional Tribunal did not refer to Article 2 in its ruling. The constitutional principle of social justice would only constitute an independent basis of review where the Tribunal was faced with a situation concerning the infringement of elements of this principle which are not clarified in more detailed constitutional provisions.

Provisions of the Constitution

Art. 2. The Republic of Poland shall be a democratic state governed by the rule of law and implementing the principles of social justice.

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 166. 1. Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local self-government as their direct responsibility.

2. If the fundamental needs of the State shall so require, a statute may instruct units of local self-government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute.

3. The administrative courts shall settle jurisdictional disputes between units of local self-government and units of government administration.