Education



Marju Bormeister. Still Together. Oil on canvas. 2024 (fragment of the work)

At the beginning of the year, speaking at the Astangu Vocational Rehabilitation Centre conference *We Care. Everyone on Board?*, the Chancellor concluded her remarks with the observation: “It is difficult in our time to maintain a kind and wise path. I am convinced that the winners will be precisely those who manage to do so”.

Life’s difficulties can arise unexpectedly, but educational institutions must be prepared to respond when pupils encounter difficulties, within the scope of their teaching and educational responsibilities. With kindness and an open mind. It should, for example, be natural for a child who needs support to be able to attend a camp through cooperation between the parent and the camp organiser, rather than only after the parent has had to ask the Chancellor for help in resolving the situation.

The task of an educational institution is to support a child through difficulties so that the child can obtain an education on equal terms with others. Turning a blind eye helps no one. Overcoming difficulties also builds the wisdom needed to deal with the next ones.

If public authorities genuinely find it difficult to show kindness while carrying out their duties, sometimes simply following the law may be enough. After all, the purpose is to guarantee people's rights and freedoms, which, under the Constitution, is the duty of the legislature, the executive, the judiciary and local authorities. Yet the Estonian Education and Youth Board explained to the Chancellor that pupils were being prevented from taking the Estonian language proficiency examination without any legal basis. The Chancellor had to agree with the Board's assessment. The Ministry of Education and Research, in turn, found in its response to the Chancellor that schools have no right to organise entrance tests for admission to the first grade. Nevertheless, the Ministry has chosen merely to inform schools rather than require compliance with the law. The knowledge is there, but following the law proves difficult.

There is nothing new about artificial barriers being erected to deny pupils support, or about violations recurring year after year. This was also pointed out by an adviser to the Chancellor in presentations at an education innovation conference ("The Fundamental Right to Education in the Learning Environment") and at a webinar of the Estonian Association of Speech Therapists ("The Speech Therapist – Creating Equal Opportunities"). Barriers that have been created will not disappear unless they are removed. A lack of money, or any other excuse that may be found, does not justify breaking the law.

This spring, under the leadership of the University of Tartu Centre for Ethics, a Code of Ethics for Teachers was completed. It states a general principle of communication: "Talk to the person, not about them." Unfortunately, when a school and a parent become alienated from one another, the opposite may happen. Kindness and wisdom are replaced by confrontation and self-justification. The child and their concerns recede into the background — the child may not even be asked for their opinion. It is hardly surprising, then, if the parent is left continuing to ask questions in the midst of such a conflict.

Silence, or pointing the finger behind the backs of the parent and the child, cannot therefore be the solution. Nor is it acceptable for other parents or the wider community to take it upon themselves to resolve an incident at a kindergarten or school. Yet this may happen when a child behaves violently and thereby puts others at risk. The Chancellor has received descriptions of a child's health and a family's circumstances that should be known only to the family and the relevant authorities, not to other parents.

Violent behaviour is never acceptable and no one should be expected to tolerate it. All children must therefore be able to feel safe at kindergarten and school and concentrate on learning. But solutions must be found by the kindergarten or school that the child attends and where the problems have arisen. Intervention by parents who are not involved in the matter — still less involving them in resolving an already tense situation — is not justified. Nor may an educational institution disclose to third parties the identity of a person who has approached it with a concern.

Neither a parent nor an educational institution should feel uncomfortable simply because a disagreement has arisen, but it is for the educational institution to find solutions in accordance with the law. Resolving disagreements must not cause additional harm to either party. Even unwelcome answers must be given honestly and directly: politely and respectfully, remaining calm and perhaps tolerating a degree of discomfort, but without blaming the other party and always putting the interests of the child first. A legal rule alone is not always enough. Relevant knowledge, skills and attitudes help people find a way through difficult situations.

If, however, a parent is left without a reply or their application is not dealt with, there can no longer be any question of protecting their rights. Such conduct deprives a person of the opportunity to defend their rights effectively. At the same time, by acting in accordance with the law, a kindergarten or school can set boundaries that help it perform its duties more effectively. As an employer, a kindergarten or school can thereby ensure a safe working environment for all employees, including by taking measures to prevent harm to health arising from psychosocial hazards.

It is entirely understandable that parents want the best education for their child, but in making choices they must take account of the options provided by law. A parent does not, for example, have the right to require a kindergarten to use a teaching method that is not provided for in the curriculum. Nor can a parent decide that home schooling is to be implemented. The law lays down rules for all of these matters, and those rules must be followed.

Parents must also take account of the school’s requirements so that the school can perform the duties entrusted to it. This means, among other things, that parents must attend development interviews at school, so that they can see and hear how their child reflects on their own activities and development, communicates with the teacher and envisages their

future.

How can difficulties that may stretch human abilities to their limits be borne with dignity? And how can a balance be found, within the framework of the law, between parents' expectations and what educational institutions are able to provide?

Early Childhood Education

Support for Attendance at a Private Preschool

Every child aged three to seven must have access to a preschool place if their parent requests one. Once an application has been submitted, the local authority may decide whether to offer the family a place in a municipal or private preschool. However, if the local authority offers a place in a private preschool, the attendance fee charged to the family may not be higher than that charged in a municipal preschool.

The Chancellor confirmed that if a family has been offered a place in a municipal preschool, it cannot require the local authority to subsidise the child's attendance at a private preschool. Where a local authority voluntarily supports private preschools, it has considerable discretion in deciding the conditions under which it provides support towards the attendance fee.

This remains the case even if the private preschool uses a different teaching methodology from that used in the municipal preschool, or if the child attends a private preschool because the local authority has failed to offer them a place in a municipal preschool — in the latter case, the local authority has breached the law. Early childhood education in preschools is provided on the basis of the national curriculum. This applies to both municipal and private preschools, although preschools may follow different pedagogical approaches within the framework of the national curriculum.

If a family decides to accept the place offered by the local authority in a municipal preschool, the child will have to adjust to a new environment and new peers. This is not, however, necessarily contrary to the child's interests.

When offering a family a place in a municipal preschool, the local authority must ensure that the preschool is sufficiently close to the family's home or can be conveniently reached by public transport. The situation becomes more complicated if children from the same family

attend different preschools. It is, of course, most convenient for a family if the children attend the same preschool, but the law does not give parents the right to demand this. When offering a place, the local authority must take the parents' wishes into account and, where those wishes cannot be accommodated, offer a place in a preschool near the family's home.

Reduced Attendance Fee Depending on the Child's Age

To ensure that families can afford the fees charged for childcare and preschool places, the Riigikogu has set a maximum attendance fee. The upper limit is 20 per cent of the minimum wage per child per month. Rural municipalities and cities may differentiate the amount of the attendance fee.

The Chancellor noted that different treatment based on children's age resulting from the introduction of a fee reduction cannot be regarded as unconstitutional. The amount of the attendance fee and the granting of reductions are matters of policy for the local council.

A local authority may establish different attendance fees. It may also decide whether, and what kind of, benefits or fee reductions to provide to its residents. In both cases — whether differentiating attendance fees or voluntarily granting reductions — the principle of equal treatment must be observed.

Under the law, a preschool helps children aged three to seven develop the knowledge, skills and attitudes that create the prerequisites for acquiring basic education. No corresponding objective has been set for children under the age of three. If a local authority wishes, through a reduction in the attendance fee, to support preschool attendance by children aged three to eight so that they are better prepared for school, such support cannot be regarded as manifestly inappropriate. The resulting difference in treatment is therefore not arbitrary and is not prohibited by the Constitution.

Preschool Attendance Fees in Summer

A local authority may establish different preschool attendance fees for families depending on the number of children in the family, the family's socio-economic circumstances or other factors.

The Chancellor has found that the law does not give parents the right to demand a reduction in the attendance fee, nor does it require such a reduction to apply throughout the entire academic year. The law also does not prescribe the amount of the reduction or the period for

which it must be granted.

Where a local authority voluntarily provides benefits or fee reductions to its residents, it may decide who is entitled to them and for how long. The same principle applies where a rural municipality council decides not to grant families a reduction in the attendance fee based on the number of children during the summer period.

A parent raising a child of up to seven years of age has the right to demand annual holiday at a suitable time. Employers must also take account of parents' rights when scheduling holidays. Parents can plan their annual holiday if the opening hours of preschool groups operating during the summer are announced sufficiently far in advance. They can then decide when they wish to take their holiday while also taking into account that they will have to pay a higher preschool attendance fee during the summer months.

General Education

Allocation of School Places

The law provides that every child must be given a place in their school of residence. It does not provide for allocating school places on any other basis. A child may attend another school if there are vacant places there.

As some local authorities allocate basic school places in such a way that admission to certain schools or classes is based not on the law but on conditions established by the school itself, the Chancellor asked the Minister of Education and Research for an explanation.

The Ministry of Education and Research explained that a child's knowledge and skills may not be assessed when admitting them to basic school. Thus, according to the purpose of the law, all basic schools should be schools of residence.

The Ministry acknowledged that schools nevertheless organise entrance tests for admitting pupils, but said that this practice would be difficult to change quickly. The Ministry explained that it could inform rural municipalities and cities that the law does not allow pupils to be selected for basic school through entrance tests.

Availability of a Vacant School Place

The law gives parents freedom to choose a school for their child if the school they prefer has vacant places. A parent who contacted the Chancellor noted that the information system used by the local authority showed that a place was available, but the school refused to offer it to the family because it was being kept for a pupil assigned to a special class, so that the pupil could return to a mainstream class if necessary.

The Chancellor found that the school was entitled to keep the place for the child who had begun studying in a special class. Under the law, a pupil is generally assigned to a special class temporarily. Placement in a special class may therefore be a temporary measure, and the child and parent are entitled to expect that, once the measure is no longer necessary, the child can continue studying in the class to which they were originally assigned. Although a pupil could also move from a special class to a mainstream class by increasing the maximum class size, this may not always be possible.

Information in an information system about vacant places is indicative only. It does not give a parent the right to demand a particular place from a school. This does not, however, mean that a public authority may mislead people by providing incorrect information. The information must always be accurate. To obtain a school place for a child, the parent must submit an application to the school. The school grants the place if it approves the application.

Parent’s Obligation to Participate in the Child’s Developmental Conversation

Schools hold developmental conversations at least once every academic year to support a pupil’s development. Under the law, the pupil, the class teacher and the legal representative of a minor pupil participate in the developmental conversation.

The Chancellor found that the obligation to participate in a developmental conversation cannot be regarded as excessive interference with a parent’s right to raise and care for their child. Apart from the developmental conversation, the law does not provide for any other occasion on which the school, child and parents come together specifically to discuss the child’s school life, progress and development.

Since school occupies a large part of a child’s life and has a major impact on their future, parents should be aware of what is happening at school. A developmental conversation also enables a parent to better ensure that the child learns and develops, and to create the

necessary conditions for this. In addition, the conversation helps to identify the child's strengths and the areas in which they need to develop, allowing the school to adapt its activities accordingly.

Parents have the right to raise and care for their children, and the state may not prevent them from doing so or interfere with this right. Intervention is not, however, ruled out where the interests of the child require it. Parents have a constitutional duty to care for and raise their children. This duty primarily serves the interests of children by ensuring their right to receive care from their parents, even though fulfilling the duty may restrict the parents' fundamental rights.

Organisation of Social Transport

Social transport must be arranged for a child with a disability to travel to school and back home if, because of the disability, the child is unable to use public transport or the family's vehicle. The Chancellor found that a local authority must create the conditions necessary to ensure that a child with a disability has transport suited to the particular needs arising from their disability.

For a person who needs social transport every day, the service must be organised so that it can be used consistently. This requires anticipating the likely obstacles that may arise in providing the service and considering how they can be resolved. Smooth and uninterrupted provision of social transport is particularly important where a child with special needs is able to attend school only by using social transport arranged by the local authority.

The Chancellor concluded that the city had not acted lawfully because, for almost four months, it had failed to arrange an escort for the child. As a result, the child's attendance at school depended entirely on whether the child's mother was able to accompany them on the journey home from school. Although it was known that a passenger in the vehicle might behave unpredictably or dangerously, the city had no action plan for resolving such situations quickly. The city merely required the child whose behaviour had caused the dangerous situation to have an escort (support person) in future. Finding an escort takes time, but a child has both the right and the obligation to attend school, and that obligation cannot be put on hold.

Organisation of School Transport

The law provides that a local authority must arrange transport to and from school for a child acquiring basic education. The Chancellor has explained that this is unequivocally an obligation of the local authority and cannot be shifted onto the family.

Instead of providing transport for the pupil, the city decided to reimburse the family for part of its travel expenses, citing the city's limited financial resources.

By failing to arrange school transport for a basic school pupil, the city breached the law. A local authority cannot avoid its obligation for financial reasons. If it is not possible to arrange transport for the pupil in any other way, occasional transport or a taxi service must also be considered.

Where a local authority has violated a child's rights through its inaction, the parent is entitled to claim full reimbursement from the city for the costs incurred under the State Liability Act and, if necessary, to apply to an administrative court. The Chancellor asked the city to ensure that accessible school transport is provided to pupils in future and to resolve families' claims for compensation in accordance with the law.

Conditions for Home Education at a Parent's Request

Whether home education is applied at a parent's request is not decided by the parent. A pupil may be permitted to study at home by the head of school. In making this decision, the head of school must be satisfied that the pupil will be able to acquire an education in accordance with the requirements of the law, taking into account the national curriculum as well as the pupil's abilities and need for support.

The possibility of home education is an education policy choice made by the Riigikogu, not a fundamental right. The Chancellor found that the Riigikogu has required the Minister of Education and Research to establish the conditions for home education. By laying down these conditions, the state seeks to prevent home education from being applied arbitrarily. Home education must not jeopardise the child's right to education.

A pupil studying at home may also need additional support with their studies. They are therefore entitled to receive assistance from a support specialist at school free of charge. Before permitting a pupil to study at home, the school must consequently consider how support can be provided if needed. If the pupil is unable to study at home in a manner

appropriate to their abilities, applying home education violates the child’s rights.

Sanctions

The purpose of imposing sanctions is not to punish a pupil but to help them respect the rights and needs of fellow pupils, teachers and other members of the school community, and to genuinely understand why agreed rules must be followed. It is the school’s task to guide and educate the pupil.

The Chancellor has explained that a pupil’s dignity must be respected when a sanction is imposed. The school must hear the pupil’s explanations and explain the reasons for choosing the particular sanction. When imposing sanctions, care should be taken to ensure that they do not end up causing harm to the young person. It is important that the pupil understands why the particular sanction was imposed. This makes it more likely that the pupil will comply with the school’s internal rules and respect others in future, and helps the school prevent situations that could endanger safety.

Since parents bear primary responsibility for safeguarding their child’s rights and well-being, they too must understand what the child is considered to have done wrong and why the school considers the sanction justified. Consequently, if a parent asks for an explanation, the school must explain the circumstances and the reasons for choosing the sanction.

Dealing with a Parent’s Application

If a school is informed that a child has been treated inappropriately at school or that other mistakes have been made, it must establish whether the report is well founded while respecting the rights of everyone involved. Information about the person who submitted the application may be disclosed only where there is a legal basis for doing so.

The Chancellor explained that if the circumstances described in an application need to be discussed at a meeting of the board of trustees, its members must be informed in a way that does not make it possible to identify the person who submitted the application.

The situation is different where the parent has themselves submitted the application to the board of trustees.

Disclosing the name of a person who has reported a possible violation constitutes processing of personal data. Specific requirements apply to the processing of personal data: it must be lawful, purpose-specific and limited to what is necessary. Disclosing the reporter’s name also undermines general trust and does not support the principle that people should feel able to report suspected mistreatment of children to a school without hesitation. The child may also suffer as a result of the parent’s actions being made public.

If the report was well founded, a fair and lawful way must be found to resolve the problem and remedy any harm caused. If the report was unfounded, the parties involved must also be informed of this and consideration of the matter brought to an end. A person who reports suspected misconduct must not be ‘punished’ for having approached the school. The starting point should always be that a parent is protecting their child and wants what is best for them.

Procedure for Forming the Board of Trustees

Under the law, a school’s board of trustees is formed in accordance with the procedure established by the owner of the school. On the basis of the law, the Chancellor explained that the Riigikogu has not given the head of school the power to establish the procedure for forming the board of trustees.

Under the procedure established by the rural municipality government, the head of school is required to carry out activities relating to elections — to initiate and organise them — but has neither the power nor the duty to establish more detailed rules for forming the board of trustees. Nor may the municipal council grant the head of school such a power. If it did, the procedure would be contrary to the law. The law does not provide for the power to establish any part of the procedure to be further delegated to the head of school.

As the head of school had specified the procedure for forming the board of trustees and its rules of procedure by directive, the Chancellor asked the rural municipality government to assess whether the school’s actions complied with the procedure established by the municipality. On the basis of the results of its review, the rural municipality government may supplement the procedure for forming the board of trustees.

Rules of Procedure of the Board of Trustees

The rules of procedure of a board of trustees must be established by the owner of the school. The Chancellor found that keeping minutes of meetings forms part of the board's rules of procedure and that the owner of the school must therefore decide who is responsible for drawing up the minutes. The law does not require a secretary to be elected from among the members of the board of trustees to take the minutes of its meetings.

If a rural municipality council has decided that the secretary is to be elected from among the members of the board of trustees, this is a decision concerning work organisation. The Riigikogu has not required a separate position to be created to provide administrative support to the board of trustees in carrying out its functions.

A member of the board of trustees elected as secretary must agree to perform the secretary's duties and take the minutes of meetings. If a member feels that taking the minutes prevents them from participating properly in the discussion, the board may appoint someone else to take the minutes. If none of the members is willing to act as secretary, the rural municipality council may consider amending the rules of procedure.

Conditions for Payment of Support for Education Staff

To ensure the provision of education in Estonian in Ida-Viru County, the state has decided to provide support to the owners of educational institutions in the county. In establishing the support scheme, the state sought to give schools in Ida-Viru County the opportunity to employ education staff with the required proficiency in Estonian so that teaching could be carried out in Estonian as required by law. Applications for the support may be submitted within specified periods.

The Chancellor found that the state may establish the conditions for support paid from the state budget so that applications are accepted at specified times rather than continuously. As the Constitution does not require such support to be paid, the support for education staff is provided on a voluntary basis. The state therefore has considerable freedom in determining the conditions for providing the support.

The regulation on allocating the support, adopted by the Minister of Education and Research, does not, however, confer on any employee of an educational institution an individual entitlement to receive the support. Nor does the regulation restrict an employer's right to pay a higher salary to an employee who meets the qualification requirements; such a higher

salary is paid from the employer’s own funds rather than from the support.

Support paid under the regulation is not the only way in which an employer can encourage teachers to improve their qualifications or take up employment at an educational institution. The support merely provides additional funding and assistance to an employer who is required by law to ensure that qualified staff work at its educational institution.

Support for Hobby Education and Recreational Activities

Granting Support Depending on the Child’s Age

Under the Constitution, everyone is equal before the law. This means that people in similar circumstances may not be treated differently unless there is a reasonable and relevant justification for doing so.

The Chancellor concluded that the rural municipality had treated pupils participating in recreational activities differently without reasonable justification. The rural municipality council had granted hobby education support to children in the first grade who had reached the age of seven by 1 September. Children who turned seven during September, however, were excluded from the support.

The Convention on the Rights of the Child requires that, where the balancing of different interests results in a solution that does not best serve the interests of the child, convincing reasons must be given — including when adopting legislation — as to why the child’s interests were outweighed by other considerations. In this case, there were no compelling reasons for doing so.

The Chancellor proposed that the rural municipality bring the regulation into conformity with the Constitution and also recommended considering payment of the support to the parents of children who had already been placed at a disadvantage, should they apply for it.

The rural municipality informed the Chancellor that the recreational activities support had been paid and that the regulation would be amended.

Fees for Hobby Education for Children and Young People

Everyone’s fundamental right to education also includes the right to hobby education. Although a rural municipality must provide children living in the municipality with opportunities to pursue their interests, the law does not specify from whom, or to what extent, the municipality may charge a fee for participation in hobby activities.

In the Chancellor’s assessment, a rural municipality may require both parents — or a single parent — to be residents of the municipality to qualify for a discount on tuition fees at a hobby school. Tuition fees charged by municipal hobby schools are one source of funding for the operation of those schools.

The different treatment of families in granting the discount is justified because, where both parents are registered as residents of the municipality, more income tax is paid into the municipal budget from which hobby activities are funded. Part of the income tax paid by individuals accrues to local authority budgets, enabling local authorities to provide services to their residents, including opportunities for children to participate in hobby activities. Where both parents in a family have registered as residents of the municipality, the family’s connection with the municipality is stronger and the balance between obligations and benefits is better maintained.

For the purpose of granting a discount, the rural municipality may request documents — for example, concerning custody or maintenance — proving that a parent is raising the child and bearing the related expenses alone.

Support for a Sports Organisation

The Sports Act provides, among other things, that rural municipalities and cities must approve the conditions and procedure for supporting sports organisations. The procedure for granting support must be established by the city council. The Chancellor found that neither a committee of the city government nor any other body has the right to impose additional conditions for receiving the support.

The city government explained that, when determining the amount of sports support awarded for results achieved, its committee takes into account the amount allocated in the city budget for supporting sporting achievements and the number of achievements by sports organisations that meet the eligibility conditions.

The amount of support also depends on the place achieved in the competition, the level of the competition and the age category in which the athlete competed. It is also taken into account whether the result was achieved at European or world level. Better results attract a higher amount of support.

The city council had not provided for such distinctions. The Chancellor explained to the city that the council's audit committee could assess how the regulation was being implemented. If the council considers it appropriate to continue awarding sports support according to the principles applied so far, it must lay down the additional conditions in the regulation. A local authority council has the right to decide the conditions for granting support, but those conditions must apply equally to everyone.

System for Awarding Professional Qualifications

Competence of Members of a Professional Qualifications Committee

Under the Professions Act, a professional qualifications committee consists of parties interested in the awarding of professional qualifications in the relevant field: specialists, employers, employees, training providers, representatives of professional associations and, where necessary, representatives of clients and consumers, as well as other interested parties.

In the Chancellor's assessment, a member of a professional qualifications committee need not themselves hold the professional qualification whose award the committee decides on. It is entirely reasonable for the committee to include people who encounter the profession in different capacities. This makes it possible to take account of the interests of several parties when awarding a professional qualification, since the work and competence of a person practising a particular profession affect not only that person and their employer but also the company's clients and consumers.

When a professional qualification is awarded, the applicant's competence and compliance with the requirements set out in the professional standard are assessed. However, it is not the professional qualifications committee that assesses the applicant's knowledge, skills and attitudes, but an assessment committee with the necessary professional expertise. The

decision on awarding the professional qualification is made by the more broadly constituted professional qualifications committee. The objectivity of the decision is supported by separating the assessment of the applicant’s competence from the decision on awarding the qualification, with different people serving on the two committees.

Qualification Requirements for Social Workers

Rural municipalities and cities may appoint as a social worker only a person who has been awarded the profession of a social worker under the Professions Act or who has acquired state-recognised higher education in social work or qualifications equivalent thereto.

The Chancellor found that there are no grounds for considering the statutory qualification requirements for social workers excessive or unconstitutional.

Qualification requirements restrict people’s freedom to choose an occupation and place of work. Such restrictions are permissible where they are necessary and constitute the least restrictive means suitable for achieving the objective. The requirements must reflect the nature and needs of the particular field or service. The professional qualification requirement for social workers is intended to ensure that social welfare workers have sufficient knowledge for the work and are familiar with best professional practices. Social workers make decisions that often affect the way in which people in vulnerable situations live their lives.

The requirements described above do not apply to support staff working in the social welfare field. A local authority decides what duties its employees perform and what job titles they hold. Support staff working in the social welfare field may be granted access to the Social Services and Benefits Registry to the extent required by the nature of their work.