



A case initiated with respect to norms that envisage conclusion of a fixed-term employment contract with a person who has been elected to an academic position

On 3 August 2018, the 1st Panel of the Constitutional Court initiated the case “On Compliance of Section 27 (5) and Section 30 (4) of the Law “On Institutions of Higher Education” with the first sentence of Article 106 of the *Satversme* of the Republic of Latvia”.

The Contested Norms

Section 27 (5) of the law “On Institutions of Higher Education”: “The employment contract restrictions specified in Section 45, Paragraph one of the Labour Law shall not apply to persons elected to academic positions. An employment contract with a person elected to an academic position (professor, associate professor, docent, lecturer or assistant) shall be entered into by the rector for the period of election – six years.”

Section 30 (4) of the law “On Institutions of Higher Education”:” In accordance with the provisions of Section 33 of this Law, associate professors shall be elected for a time period of six years by a Council of Professors of the relevant branch. On the basis of a decision made by the Council of Professors in a branch, a rector shall enter into a contract of employment with an associate professor.”

The Norm of Higher Legal Force

The first sentence of Article 106 of the *Satversme*: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

The Facts of the Case

The case has been initiated on the basis of an application submitted by the associate professor of the University of Latvia Jānis Kārklīņš (hereinafter – the Applicant). In accordance with the contested norms, an employment contract has been concluded between the Applicant and the University of Latvia for the performance of the duties of an associate professor for the term of six years.

The Applicant notes that after the expiry of this term a person must participate again in an open competition for the position. The contract must be concluded, on the basis of the compliance with the qualification requirements and the vote by the Council of Professors of

the sector, every time when the previous term of contract expires, irrespectively of the fact that person still meets the requirements set for the position.

The Applicant holds that such fixed-term employment, without objective grounds, when he, essentially, is performing a job that is constant and continuous by nature, violates his fundamental right to employment enshrined in the first sentence of Article 106 of the *Satversme*. Allegedly, the legitimate aim of the restriction on fundamental rights can be discerned – protecting the rights of other persons to obtain education from professional academic staff that is engaged in high-quality research and scholarly activities.

However, it is alleged that this restriction is not proportional. In fact, it is said to rather hinder than promote the development of science. The legitimate aim of the restriction could be reached by measures that restrict the fundamental rights to a lesser extent – for example, by regularly verifying the suitability of the academic staff for the position or by carrying out inspections in case of complaints. The adverse consequences that are created for the academic staff as the result of the restriction on fundamental rights are said to outweigh the benefit that society gains from this restriction.

Legal Proceedings

The Constitutional Court has requested the *Saeima* to provide a reply on the facts of the case and legal substantiation by 3 October 2018.

The term for preparing the case is 3 January 2018. The Court shall decide upon the procedure and the date for hearing the case after the case has been prepared.

The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court www.satv.tiesa.gov.lv.

Lina Kovalevska

Assistant to the President of the Constitutional Court

Lina.Kovalevska@satv.tiesa.gov.lv,

(+371) 67830748, (+371) 29813216