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**The Constitutional Court terminates legal proceedings in a case with respect to norms that envisage a fixed-term contract with a person elected to the position of an associate professor**

On 8 October 2019, the Constitutional Court made the decision in case No. 2018-20-01 “On Compliance of the Second Sentence of Section 2 (5) and the First Sentence of 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 in an open competition for a time period of six years by a council of professors of the relevant field. On the basis of a decision made by the council of professors in a field, 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* of the Republic of Latvia (hereinafter – the *Satversme*): “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

## **The Facts**

The case was initiated with respect to an application submitted by Jānis Neimanis. The applicant had been employed as the associate professor in the sub-branch of legal theory and history of legal science at the University of Latvia. On the basis of the contested norms, a fixed-term contract had been concluded with him until 30 June 2018. After expiry of this term, the applicant had not been re-elected to the said position. Likewise, the University had refused to recognise that the employment contract had been concluded for an unlimited term, therefore the legal labour relationship was terminated. The applicant has turned to a court of general jurisdiction requesting to recognise the contract as being concluded for an unlimited term.

The applicant does not doubt that the restriction on fundamental rights had been established by law and also notes that the legitimate aim of this restriction can be discerned; i.e., promoting the development of academic staff in compliance with the dynamic requirements of the labour market to ensure high quality higher education. However, it is alleged that the legitimate aim could be reached by other measures, for example, by verifying the qualifications of the academic staff. Moreover, the restriction on an individual’s rights, allegedly, does not correspond to the benefit gained by society. The applicant requests recognising the contested norms as being invalid with respect to him as of the moment when his fundamental rights were infringed upon.

## **The Court's Findings**

### On terminating legal proceedings due to *res judicata*

The Constitutional Court found that in case No. 2018-15-01 it had already recognised the contested norms, insofar they did not ensure protection against concluding in bad faith successive fixed-term contracts, as being incompatible with the first sentence of Article 106 of the *Satversme*. Para 5 of Section 29 (1) of the Constitutional Court Law provides that legal proceedings in a case may be terminated before a judgement is pronounced by the Constitutional Court's decision if a judgement had been pronounced in another case with the same subject of claim. The application comprises the same claim in the part with respect to compliance of the contested norms with the first sentence of Article 106 of the *Satversme* that had already been adjudicated in the judgement in case No. 2018-15-01. Thus, there is no need to re-examine compliance of the contested norms with Article 106 of the *Satversme*. However, the applicant has requested recognising the contested norms as being invalid as of the moment when his fundamental rights were infringed upon; therefore the Constitutional Court must examine whether this part of his claim has been adjudicated. [6.1.]

The Constitutional Court recognised that in its judgement in case No. 2018-15-01 it already had expressed considerations as to why the contested norms could not be recognised as being invalid as of a certain past date. Hence, also in this part the claim should be considered as being adjudicated. Thus, in the present case, the precondition for terminating legal proceedings, envisaged in Para 5 of Section 29 (1) of the Constitutional Court Law, exists. [6.2.]

### On applying the findings made by the Constitutional Court in its judgement

The Constitutional Court also found that the applicant had submitted a claim to a court of general jurisdiction requesting it to recognise the employment agreement as having been concluded for an unlimited term, reinstatement in position and recovery of average remuneration, and that a civil case had been initiated. The court has recognised that the contested norms are applicable in adjudicating the civil case and has suspended the legal proceedings until the applicant's constitutional complaint is heard by the Constitutional Court. [6.2.]

The Constitutional Court noted that its judgements are a generally binding source of law for applying a legal norm. In the process of applying legal norms, the Constitutional Court's findings and interpretation of a legal norm provided by it must be taken into account in the process of applying a legal norm. If the contested norms have been recognised as being incompatible with legal norms of higher legal force and invalid insofar they do not ensure protection against using in bad faith successive fixed-term employment contracts, then in the period, when these legal norms have to be applied, they, pursuant to Section 32 (2) of the Constitutional Court Law, must be applied in accordance with the interpretation provided in the Constitutional Court's ruling. Moreover, in examining compliance of the contested norms with the first sentence of Article 106 of the *Satversme*, the Constitutional Court took into account also the legal acts of the European Union in the particular field and the practice of applying these. The party applying the legal norms is obliged to take all actions that fall within its jurisdiction to ensure effectiveness of the European Union law and to arrive at a solution that would comply with the European Union law. [6.2.]

### **The Constitutional Court decided**

to terminate legal proceedings in case No. 2018-20-01 "On Compliance of the Second Sentence of Section 2 (5) and the First Sentence of 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 decision is not subject to appeal.

The text of the decision is available on the homepage of the Constitutional Court:

[http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/09/2018-20-01\\_Lemums\\_izbeigsana.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/09/2018-20-01_Lemums_izbeigsana.pdf#search=)

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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](http://www.satv.tiesa.gov.lv).

**Ketija Strazda**

Assistant to the President of the Constitutional Court

[Ketija.Strazda@satv.tiesa.gov.lv](mailto:Ketija.Strazda@satv.tiesa.gov.lv)

+ 371 67830749, + 371 26200580