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Specifics of the Employment of Higher Education Teachers

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Abstract:

Based on the selected materials addressing the procedure and requirements for the employment of higher education teachers in the context of different higher education systems, the paper presents specifics related to the post of a higher education teacher that are absent in the cases of employment of workers in other industries. Three aspects will be examined: the concept and status of higher education teachers, the conditions for filling the post of a higher education teacher, and the procedure for the employment of higher education teachers. The primary hypothesis of the paper is that requirements and procedure for the employment of higher education teachers should necessarily be regarded, interpreted, and legally regulated by taking into consideration specific characteristics of the status of higher education teachers employed at a university, the latter being an institution with a special status derived from the institutional autonomy.

Key words:

employment of higher education teachers, habilitation, open vacancy model, tenure track model, conditions of employment

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Introduction¹

The special status of higher education teachers employed at universities derives from the university's unique position and role within society and science development. European universities are granted a special status, the so-called university autonomy, which is defined and normatively regulated differently in each country. The significance and definition of university autonomy are reflected in international documents,² which mainly define it as a critical condition for creating an environment that ensures the right to education and the development of new science. Institutional autonomy constitutes the basis for the creation and exercise of true academic freedom and represents a degree of self-governance necessary for making effective decisions regarding academic activities, criteria, and management, taking into account the responsibility of the institution to the public, particularly concerning the public funding and respect for academic freedom.³

University autonomy can reasonably be understood as a substantive autonomy in the areas of university operations, drafting the rules of operation, own development strategy, habilitation and the employment of academic staff, and the determination of own study programmes.⁴

Persons carrying out education and basic research activities at higher education institutions are the employed higher education teachers. Their suitability and competence is a standard that has to be met by higher education institutions during the first accreditation procedure, before they may commence activities in the area of higher education. In their work, higher education teachers follow and contribute to the development of science and arts in their habilitation field, independently develop a particular area of science and arts, and are responsible for the transfer of knowledge to the students and society. In the Republic of Slovenia, the status of higher education teachers presently

¹ The contribution was drafted as a partial summary of conclusions in the preparation of the doctoral dissertation under the title 'Specifics of the employment status of higher education teachers'.

² *Magna carta universitatum* (1988), available at: <http://www.magna-charta.org/magna-charta-universitatum>, accessed: 12. 5. 2021; *The Bologna Declaration*, 19 June 1999, Joint Declaration of the European Ministers of Education; *Bergen Communiqué* (2005); *London Communiqué* (2007), *Leuven/Louvain-la-Neuve Communiqué* (2009), *Budapest-Vienna Declaration* (2010), *Bucharest Communiqué* (2012); *Yerevan Communiqué* (2015), *Paris Communiqué* (2018).

³ Institutional autonomy has already been recognised as a direction for the development of European universities in the Council of the EU document No. 9166 (2006), available at: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vj6ipfs6jrzm>, accessed: 12. 5. 2021.

⁴ Nejc Brezovar, "Pravni vidiki avtonomije državnih univerz in visokih šol", *Uprava* 10, No. 2 (2012), p. 91.

varies, depending on the sector in which they are employed, even though the majority of higher education teachers are employed in the public sector and have the status of public employees.⁵ The legal framework for their employment in public higher education institutions is set out in Public Employees Act (*Zakon o javnih uslužbencih*, hereinafter: ZJU),⁶ Employment Relationships Act (*Zakon o delovnih razmerjih*, hereinafter: ZDR-1)⁷ and Higher Education Act (*Zakon o visokem šolstvu*, hereinafter: ZVis),⁸ whereas the employers in private higher education institutions are not bound by ZJU when employing higher education teachers. Collective Agreement for non-commercial activities in the Republic of Slovenia,⁹ Collective Agreement for the Education Sector in the

- ⁵ The contribution refers to state universities (which are granted autonomy under Article 58 of the Constitution of the Republic of Slovenia) and higher education teachers employed at a university – public employees.
- ⁶ "Public Employees Act" (*Zakon o javnih uslužbencih*, ZJU), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 63 (2007), No. 65 (2008) – official consolidated text, No. 69 (2008) – ZIFI-A (*Zakon o trgu finančnih instrumentov / Market in Financial Instruments Act*), No. 69 (2008) – ZZavar-E (*Zakon o zavarovalništvu*, Insurance act) and No. 40 (2012) – ZUJF (*Zakon za uranoteženje javnih financ / Fiscal Balance Act*).
- ⁷ "Employment Relationships Act" (*Zakon o delovnih razmerjih*, ZDR-1), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 21 (2013), No. 78 (2013) – official consolidated text, No. 47 (2015) – ZZSDT (*Zakon o zaposlovanju, samozaposlovanju in delu tujcev / Employment, Self-employment and Work of Foreigners Act*), No. 33 (2016) – PZ-F (*Pomorski zakonik / Maritime Code*), No. 52 (2016) and No. 15 (2017) – odl. US (*odločba Ustavnega sodišča / decision of the Constitutional Court*).
- ⁸ "Higher Education Act" (*Zakon o visokem šolstvu*, ZVis), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 32 (2012) – official consolidated text, No. 40 (2012) – ZUJF, No. 57 (2012) – ZPCP-2D (*Zakon o prevozu v cestnem prometu / Road Transport Act*), No. 109 (2012), No. 85 (2014), No. 75 (2016), No. 61 (2017) – ZUPŠ (*Zakon za urejanje položaja študentov / Student Status Act*), No. 65 (2017), No. 175 (2020) – ZIUOPDVE (*Zakon o interventnih ukrepih za omilititev posledic drugega vala epidemije / Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic*) and No. 57 (2021) – odl. US.
- ⁹ "Collective Agreement for non-commercial activities in the Republic of Slovenia" (*Kolektivna pogodba za negospodarske dejavnosti*), *Uradni list Republike Slovenije I. (Official Gazette of the Republic of Slovenia I.)*, No. 18 (1991); *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 53 (1992), No. 13 (1993) – ZNOIP (*Zakon o načinu obračunavanja in izplačevanja plač / Method of Accounting and Payment of Salaries Act*), No. 34 (1993), No. 12 (1994), No. 18 (1994) – ZRPJZ (*Zakon o razmerjih plač v javnih zavodih, državnih organih in organih lokalnih skupnosti / Act Regulating Wage Rates in Public Institutions, State Bodies and Local Community Bodies*), No. 27 (1994), No. 59 (1994), No. 80 (1994), No. 64 (1995), No. 19 (1997), No. 37 (1997), No. 87 (1997) – ZPSDP (*Zakon o povračilih stroškov v zvezi z delom in nekaterih drugih prejemkov / Act Fixing the Reimbursement Amounts for Work Related Expenses and Certain Other Receipts*), No. 3 (1998), No. 39 (1999) – ZMPUPR (*Zakon o minimalni plači, o načinu usklajevanja plač in o regresu za letni dopust v obdobju 1999–2001 / Act Regulating the Minimum Wage, the Method of Wages Adjustment and Reimbursement for Annual Leave in the Period from 1999 to 2001*), No. 39 (1999), No. 40 (1999) – corection, No. 99 (2001), No. 73 (2003), No. 77 (2004), No. 115 (2005), No. 43 (2006) – ZKoliP (*Zakon o kolektivnih pogodbah / Collective Agreements Act*), No. 71 (2006), No. 138 (2006), No. 65 (2007), No. 67 (2007), No. 57 (2008) – KPJS (*Kolektivna pogodba za javni sektor / Collective agreement for public sector*), No. 67 (2008), No. 1 (2009), No. 2 (2010), No. 52 (2010), No. 2 (2011), No. 3 (2012), No. 40 (2012), No. 1 (2013), No. 46 (2013), No. 95 (2014), No. 91 (2015), No. 88 (2016) and No. 80 (2018).

Republic of Slovenia,¹⁰ and Collective agreement for public sector¹¹ also apply for the regulation of employment relationships involving higher education teachers. As a *lex specialis* in the area of higher education, ZVis failed to regulate the employment and status of higher education teachers in a comprehensive manner; moreover, there is a duality between ZJU¹² and ZDR-1, whereas the employment procedure is mainly regulated by the provisions of ZDR-1.

The procedure for the employment of higher education teachers is one of the elements of the university's HR autonomy and does not fall exclusively under the provisions of ZDR-1 but is also subject to substantive provisions of higher education legislation. A special requirement for filling the post is a specific election to the title, which is carried out in administrative procedure and directly impacts the employment and duration of the employment relationship (promotions, determining salaries, and the termination of the employment contract). Two types of models are established for the employment and promotion of higher education teachers, namely the open vacancy career model and the tenure track career model. The analysis of particular career models from different European higher education systems will serve to present the needed legal regulation of procedure and requirements for the employment of higher education teachers in the Republic of Slovenia.

The Concept of a Higher Education Teacher

Throughout history, the foundations of advanced civil society were formed by a highly educated elite (aristocracy, clergy, civil servants) that obtained education at institutions recognisable as universities, which were characterised by academic freedom.¹³ In 1088, the first European university, officially called Alma Mater Studiorum – Università di Bologna, was established in Bologna and later followed

¹⁰ "Collective Agreement for the Education Sector in the Republic of Slovenia" (*Kolektivna pogodba za dejavnost vzgoje in izobraževanja v Republiki Sloveniji*), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 52 (1994), No. 49 (1995), No. 34 (1996), No. 45 (1996) – popr., No. 51 (1998), No. 28 (1999), No. 39 (1999) – ZMPUPR, No. 39 (2000), No. 56 (2001), No. 64 (2001), No. 78 (2001) – popr., No. 56 (2002), No. 43 (2006) – ZKoliP, No. 60 (2008), No. 79 (2011), No. 40 (2012), No. 46 (2013), No. 106 (2015), No. 8 (2016) – popr., No. 45 (2017), No. 46 (2017) and No. 80 (2018).

¹¹ "Collective agreement for public sector" (*Kolektivna pogodba za javni sektor*, KPJS), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 57 (2008), No. 23 (2009), No. 91 (2009), No. 89 (2010), No. 89 (2010), No. 40 (2012), No. 46 (2013), No. 95 (2014), No. 91 (2015), No. 21 (2017), No. 46 (2017), No. 69 (2017) and No. 80 (2018).

¹² Only introductory provisions, common principles of the public employees' system, and other common issues related to the public employees' system apply for higher education.

¹³ Harold Perkin, *History of Universities. International Handbook of Higher Education* (Dordrecht: Springer, 2007), p. 159.

by others. Universities have been and still are the highest educational and academic-scientific institutions,¹⁴ providing education at the highest level. Universities have been established on the basis of statutes or founding charters, either as legal entities governed by public law or legal entities governed by private law.

The *Magna Carta Universitatum* laid down fundamental principles that each university should build upon as an autonomous institution at the heart of society, the organisation of which differs due to its geographical and historical heritage. Under the third principle, a university was defined for the signatories of the *Magna Carta Universitatum* document as a meeting ground for teachers capable of imparting their knowledge and willing to develop it by research and innovation.

Educational and scientific research processes at a university are managed and implemented by higher education teachers, also called teaching staff, academic staff, university staff, and university professors by the professional and lay public. Their position, entry conditions for employment and academic career requirements have been changing through time, along with the students' needs, which have been developing as well. Nevertheless, the fundamental role of higher education teachers has remained the same; they have always been the essential prerequisite for education and scientific work. In order to present the etymology of terms used to name persons who carry out teaching and research processes at the highest level, it is necessary to examine the definition of a teacher. According to the *Dictionary of the Slovenian Standard Language*, a teacher is a person who (professionally) teaches, educates. A teacher is a natural person who educates pupils and helps them acquire and consolidate knowledge and skills. In higher education, which is the highest level of education, teaching and scientific research activities are carried out by higher education teachers or professors. The term professor was first used in the 14th century when it denoted "a person who teaches a certain branch of knowledge". The word comes from the Latin term *professor*, referring to a person who is an expert in a particular field of science or art, which is, therefore, a teacher of the highest rank.¹⁵ A university professor represents the highest academic position at a university and is an expert in his or her field, with a special role in both the education and research areas. There is no university without higher education teachers, neither is there teaching or/and research process without higher education teachers. There is no uniform, normatively defined terminology for university academic person-

¹⁴ The definition of a university is obtained from the *Dictionary of the Slovenian Standard Language* (*Slovar slovenskega knjižnega jezika* (Ljubljana: Cankarjeva založba, 2014), p. 824.

¹⁵ The Latin expression came from the word *profiteri*, which means to declare openly (Douglas Harper, *Online Etymology Dictionary* (2007), available at: <https://www.etymonline.com/>, accessed: 12. 5. 2021.

nel with the highest titles in different legal systems, but the terms themselves do not signify differences in their importance for university activities. There is also no universally accepted definition of the concept of higher education teacher in international legal acts.

A higher education teacher represents the group of the highest academic titles, which in higher education exemplifies successful and renowned experts in a particular field of science.¹⁶ Under Articles 52, 53, and 54 of ZVis, teaching personnel at universities in the Republic of Slovenia are called higher education teachers, researchers and higher education associates. Higher education teachers include an assistant professor (*docent*), associate professor (*izredni profesor*), and full professor (*redni profesor*), as well as lecturers (*predavatelji*) and senior lecturers (*višji predavatelji*) in professional study programmes.¹⁷ ZVis, therefore, determines the titles that fall within the common concept of higher education teachers in the Republic of Slovenia.

Comparative overview demonstrates that the national designation of higher education teachers as persons undertaking scientific research activities is not typical and that the term more commonly used in the field of European higher education systems is a university professor. Pursuant to § 94 of Universities Act (*Universitätsgesetz*, hereinafter: UG),¹⁸ the academic and artistic university personnel in Austria includes university professors (*Universitätspersonen und Univerzitätsprofessoren*), university assistant professors, as well as scientific and artistic associates in the area of research, art and teaching (*Univerzitätsdozentinnen und Univerzitätsdozenten, die wissenschaftlichen und künstlerischen Mitarbeiterinnen und Mitarbeiter im Forschungs-, Kunst- und Lehrbetrieb*). University professors are defined as specialists in respective fields of science. Article 91 of Research Activity and Higher Education Act (*Zakon o znanstvenoj*

¹⁶ Universities also use this term when awarding honorary titles, such as *professor emeritus*, to honour retired professors for past work in higher education. It is also a tradition at universities to award honorary titles; honorary professor is a title awarded by the highest university bodies to prominent figures such as athletes, politicians, donors, i.e., persons without academic qualifications, who can not use the title when performing their work. By receiving an honorary title, the holders of such titles become ambassadors and messengers for these universities.

¹⁷ Such designation was already introduced when the first law for higher education was being drafted to succeed the "Career-oriented Education Act" (*Zakon o usmerjenem izobraževanju, ZUI*), *Uradni list Socialistične republike Slovenije (Official Gazette of the SRS)*, No. 11 (1980), No. 6 (1983), No. 25 (1989) and No. 35 (1989), which regulated the entire educational vertical until 1993. "The proposal for the adoption of Higher Education Act with arguments" (*predlog za izdajo Zakona o visokem šolstvu s tezami*), *Poročevalec Skupščine Republike Slovenije*, 8 December 1992, Year XVIII, No. 27) stated that the law retains previous titles of higher education teachers and researchers.

¹⁸ "Universities Act" (*Universitätsgesetz, UG*), StF (published): *BGBI (Bundesgesetzblatt für die Republik Österreich / Federal Law Gazette of the Republic of Austria)*, No. 120 (2002), last amended by *BGBI*, No. 20 (2021).

djelatnosti i visokom obrazovanju, hereinafter: ZZDVO)¹⁹ lists among the scientific-teaching staff (Chapter 4 is entitled teachers and staff)²⁰ an assistant professor, associate professor, and full professor, who carry out scientific research and teaching activities at Croatian universities. Finnish Universities Act (*Yliopistolaki*, hereinafter: UZf)²¹ includes professors and other teaching and research personnel among university staff in section 31. Professors perform and supervise scientific or artistic work, undertake research and carry out the teaching process. Based on the terms used to name higher education teachers in higher education laws of Austria, Croatia, and Finland, it is evident that persons who carry out teaching and scientific research processes at universities are generally broadly described as university staff or university professors. In contrast, narrow terms, which are tied to the title and work post or work performed for the university, are used to denote professors of different ranks or titles.

ZVis thus preserved a "historical name used by Slovenian legislation" of higher education teachers for university staff of the highest ranks, even though the proposal for the adoption of Higher Education Act with arguments²² stated that it pursues the convergence and integration in the area of the European systems of higher education. Under the first and second paragraphs of Article 52 of ZVis, a narrower designation is provided that refers to higher education teachers according to the title acquired, i.e., assistant professor, associate professor, full professor and language instructor, as well as a lecturer and senior lecturer in professional study programmes. Implementing regulations adopted by a competent ministry²³ and university acts applied only the narrower denomination for posts of higher education teachers between the years 1993 and 2008, i.e., assistant professor, associate professor, and full professor (for example, assistant professor instead of higher education teacher with the title of the assistant professor), which was more similar to denomination used by the majority of the EU Member States. The adoption of the Public Sector Sala-

¹⁹ "Research Activity and Higher Education Act" (*Zakon o znanstvenoj djelatnosti i visokom obrazovanju*, ZZDVO), NN (*Narodne novine / National Newspapers*), No. 123 (2003), No. 198 (2003), No. 105 (2004), No. 174 (2004), No. 46 (2007), No. 45 (2009), No. 63 (2011).

²⁰ Originally phrased *nastavnici i suradnici*.

²¹ "Universities Act" (*Yliopistolaki*, UZf), *Virallinen lehti (Official Gazette)*, No. 558 (2009), No. 954 (2011), No. 414 (2012), No. 487 (2015), No. 497 (2015), No. 644 (2016).

²² See the proposal for the adoption of Higher Education Act with arguments ("Predlog za izdajo Zakona o visokem šolstvu s tezami", *Poročevalec Skupščine Republike Slovenije*, 8 December 1992, Year XVIII, No. 27, p. 65).

²³ For example, "Order on the Norms and Standards of College and Higher Education" (*Sklep o normativih in standardih za opravljanje izobraževalne dejavnosti v višjem in visokem šolstvu*), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 39 (1992), No. 134 (2003) and Rules on the workplace promotion at the University of Maribor UM (*Pravilnik o napredovanju na delovnem mestu UM*), Notifications XVII-1-1999.

ry System Act (*Zakon o sistemu plač v javnem sektorju*, hereinafter: ZSPJS)²⁴ in 2008 introduced a broader name for the position, namely a higher education teacher, which can be held under one of the three titles: assistant professor, associate professor, and full professor.²⁵ The applicability of laws regulating salaries in the public sector for public universities has introduced a change to the title of the post and established the term higher education teacher as a possible common name for a group of titles representing the name of the post. Regardless of different terms used to name a person who carries out teaching and scientific research processes, higher education teacher is a uniform term signifying the highest academic titles used by Slovenian legislation. At the same time, the term is broad enough to cover all ranks of the highest academic titles used by European universities in the organisation of educational, scientific research and work processes.

The Status of a Higher Education Teacher

The status of higher education teachers, who represent the top of the educational pyramid, and the respect for the teaching profession are essential for the quality of the teaching process. As emphasised by international standards already adopted in the 1960s, the teaching profession requires expert knowledge and specialised skills acquired and maintained through rigorous and lifelong study and research, as well as a sense of responsibility for the welfare of students.²⁶

UNESCO Recommendation (1997) concerning the status of higher education teaching personnel²⁷ provided a definition of the term "higher-education

²⁴ "Public Sector Salary System Act" (*Zakon o sistemu plač v javnem sektorju*, ZSPJS), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 108 (2009) – official consolidated text, No. 13 (2010), No. 59 (2010), No. 85 (2010), No. 107 (2010), No. 35 (2011) – ORZSPJS49a (*Avtentična razlaga 49. člena ZSPJS / authentic interpretation article 49. ZSPJS*), No. 27 (2012) – odl. US., No. 40 (2012) – ZUJF, No. 46 (2013), No. 25 (2014) – ZFU (*Zakon o finančni upravi / Financial Administration Act*), No. 50 (2014), No. 95 (2014) – ZUPPJS15 (*Zakon o ukrepih na področju plač in drugih stroškov dela za leto 2017 in drugih ukrepov v javnem sektorju / Act Regulating Measures Relating to Salaries and Other Labour Costs for 2017 and other Measures in the Public Sector*), No. 82 (2015), No. 23 (2017) – ZDOdv (*Zakon o državnem odvetništvu / State Attorney's Office Act*), No. 67 (2017) and No. 84 (2018).

²⁵ This follows from Article 2 of Annex to the "Collective Agreement for the Education Sector in the Republic of Slovenia", *Uradni list Socialistične republike Slovenije (Official Gazette of the SRS)*, No. 80 (2018), which constitutes the basis for adopting the Catalogue of functions, jobs and titles, available at: https://www.gov.si/assets/ministrstva/MJU/Placni-sistem/Katalog/Katalog_FDMN_10.04.2020.pdf, accessed: 12. 5. 2021.

²⁶ *Handbook of good human resource practices in the teaching profession* (Geneva: ILO, 2012), p. 1.

²⁷ UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel (1997), available at: http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html, accessed: 12. 5. 2021.

teaching personnel", meaning all those persons in institutions or programmes of higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large. As a guiding principle for the higher education teacher, it stated that teaching in higher education is a profession: it is a form of public service that requires of higher education personnel expert knowledge and specialised skills acquired and maintained through rigorous and lifelong study and research. A special role and status of professors in relation to students had developed in medieval times, when "the teacher was the only source of knowledge, the students were few in number and when the university still enjoyed some of the privileges of a liberal discourse and exterritoriality".²⁸

The guidelines for regulating the status of higher education teachers, which have to follow the principle that research is inextricably linked with teaching when determining the status, are derived from requirements set out in the *Magna Carta Universitatum* that have to be ensured by the universities aiming to achieve the objectives of autonomous institutions, which can meet the needs of their surroundings. The status and role of higher education teachers were also influenced by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,²⁹ which also protects academic freedom, covering both scientific publications and scientific teaching.³⁰

In each country, the status of higher education teachers is regulated differently under national law. Their employment status differs; they may fall within a group of public employees with certain specifics related to their position, or they may hold the status of an employee. Higher education teachers are not explicitly defined as a constitutional category under constitutions of individual EU Member States; however, the academic freedom, which is tied to the position of a higher education teacher or his or her work, is protected within the context of constitutional provisions guaranteeing the freedom of scientific and artistic endeavour. Thus, Article 59 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*, hereinafter: URS)³¹ states that the freedom of

²⁸ Albin Igličar, "Avtonomija univerze v luči slovenske in evropske ustave ter bolonjske deklaracije", *Revus – revija za evropsko ustavnost* 3, No. 5 (2005), p. 96 (hereinafter: Igličar, "Avtonomija univerze v luči slovenske in evropske ustave ter bolonjske deklaracije").

²⁹ "Act ratifying the Convention on Human Rights and Fundamental Freedoms as amended by Protocols Nos. 3, 5 and 8 and amended by Protocol No. 2 and its Protocols Nos. 1, 4, 6, 7, 9, 10 and 11" (*Zakon o ratifikaciji Konvencije o varstvu človekovih pravic in temeljnih svoboščin, spremenjene s protokoli št. 3, 5 in 8 ter dopolnjene s protokolom št. 2, ter njenih protokolov št. 1, 4, 6, 7, 9, 10 in 11*), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia – International Treaties)*, No. 7 (1994).

³⁰ Matej Avbelj et al., *Komentar Ustave Republike Slovenije – KURS 2019* (Nova univerza, 2019), p. 505.

³¹ "Constitution of the Republic of Slovenia" (*Ustava Republike Slovenije*, URS), *Uradni list Republike Slovenije I. (Official Gazette of the Republic of Slovenia I.)*, No. 33 (1991); *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 42 (1997) – UZS68 (*Ustavni zakon o spremembi 68. člena URS / Constitutional Law Amending Article 68. URS*), No. 66 (2000) – UZ80 (*Ustavni zakon /*

scientific and artistic endeavour shall be guaranteed. In the Austrian Constitution (*Bundes-Verfassungsgesetz*, hereinafter: B-VG),³² Article 81 states that public universities represent a venue where free scientific research activities, teaching, and art development are made possible. The Constitution of the Republic of Finland (*Suomen perustuslaki*, hereinafter: CRF)³³ also regulates the status of institutions and their autonomy instead of the status of higher education teachers. The status of higher education teachers in each country is derived from international guidelines, defined in the higher education law of a particular country, or derived from the status of universities.

Igličar points out that the basic content of a professor's rights and duties evolved within the framework of a university and within the scope of its immanent needs, so that "subsequent national legislation only reproduces and further protects the essential elements of this content".³⁴ The content of the basic status is determined by tradition, i.e., the teacher, the educator, and the researcher or the scientist.

Historical Development of the Employment of Higher Education Teachers in the Republic of Slovenia

Until 1990, the procedure for the employment of higher education teachers had been carried out in accordance with the provisions of United Labour Act (*Zakon o združenem delu*, hereinafter: ZZD),³⁵ and later the provisions of Basic Rights Stemming from Employment Act (*Zakon o temeljnih pravicah iz delov-*

Constitutional Law), No. 24 (2003) – UZ3a, No. 47 (2004), No. 68 (2004), No. 69 (2004) – UZ14, No. 69 (2004) – UZ43, No. 69 (2004) – UZ50, No. 68 (2006) – UZ121,140,143, No. 47 (2013) – UZ148, No. 47 (2013) – UZ90, 97, 99 and No. 75 (2016) – UZ70a.

³² "Austrian constitution" (*Bundes-Verfassungsgesetz*), *StGBL (Staatgesetzblatt für die Republik Österreich / State Law Gazette of the Republic of Austria)*, No. 4 (1945), last amended by *BGBL*, No. 2 (2021), available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>, accessed: 12. 5. 2021.

³³ "Constitution of the Republic of Finland" (*Suomen perustuslaki*), *Virallinen lehti / Official Gazette*, No. 731 (1999), pp. 1633–1654, 11. June 1999, available at: <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>, accessed: 12. 5. 2021.

³⁴ Igličar, "Avtonomija univerze v luči slovenske in evropske ustave ter bolonske deklaracije", p. 96.

³⁵ "United Labour Act" (*Zakon o združenem delu*, ZZD), *Uradni list Socialistične federativne republike Jugoslavije (Official Gazette of the SFRJ)*, No. 53 (1976), No. 63 (1979) – popr., No. 57 (1983), No. 85 (1987), No. 6 (1988) – popr., No. 11 (1988), No. 19 (1988) – popr., No. 38 (1988) – popr., No. 77 (1988) – Zpod (*Zakon o podjetjih / The Companies Act*), No. 40 (1989), No. 40 (1989), No. 60 (1989) – ZTPDR (*Zakon o temeljnih pravicah iz delovnega razmerja / Basic Rights Stemming from Employment Act*); *Uradni list Republike Slovenije – stari (Official Gazette of the Republic of Slovenia – old)*, No. 37 (1990).

nega razmerja, hereinafter: ZTPDR).³⁶ At the time, higher education teachers had the status of workers, while entry conditions for employment were laid down by the Career-oriented Education Act (*Zakon o usmerjenem izobraževanju*, hereinafter: ZUI),³⁷ namely the election to the title, which was a requirement to fill the post. Under Article 125 of ZZD, a worker entered into an employment relationship following a selection procedure, which was carried out by a works council, by signing a written statement that he or she is familiar with the self-governing agreement on the uniting of work carried out by workers in higher education institution, the self-governing general act regulating the employment relationship, other self-governing general acts regulating his or her rights and obligations, and with the institutions' statute.³⁸ Between the years 1989 and 1993, higher education teachers were likewise considered workers, who were employed in accordance with Article 11 of ZTPDR, under the condition of being elected to a title. Higher education institutions only started to enter into or regulate employment relationships with higher education teachers on the basis of employment contracts under Article 135 of the Employment Relationship Acts (*Zakon o delovnih razmerjih*, hereinafter: ZDR)³⁹ in 1990.⁴⁰

ZVis was adopted in 1993. Since 2002, higher education teachers employed at public universities in the Republic of Slovenia have the status of public

³⁶ "Basic Rights Stemming from Employment Act" (*Zakon o temeljnih pravicah iz delovnega razmerja*, ZTPDR), *Uradni list Socialistične federativne republike Jugoslavije* (Official Gazette of the SFRY), No. 60 (1989), No. 42 (1990); *Uradni list Republike Slovenije – stari* (Official Gazette of the Republic of Slovenia – old), No. 4 (1991), No. 10 (1991); *Uradni list Republike Slovenije I.* (Official Gazette of the Republic of Slovenia I.), No. 17 (1991) – ZUDE (*Zakon o uporabi denarne enote Republike Slovenije* / Monetary Unit of the Republic of Slovenia Act); *Uradni list Republike Slovenije* (Official Gazette of the Republic of Slovenia), No. 13 (1993), No. 66 (1993), No. 97 (2001) – ZSDP (*Zakon o starševskem varstvu in družinskih prejemkih* / Parental Protection and Family Benefits Act), No. 42 (2002) – ZDR, No. 43 (2006) – ZkolP.

³⁷ "Career-oriented Education Act" (*Zakon o usmerjenem izobraževanju*, ZUI), *Uradni list Socialistične republike Slovenije* (Official Gazette of the SRS), No. 11 (1980), No. 6 (1983), No. 25 (1989), No. 35 (1989); *Uradni list Socialistične federativne republike Jugoslavije* (Official Gazette of the SFRY), No. 83 (1989); *Uradni list Republike Slovenije – stari* (Official Gazette of the Republic of Slovenia – old), No. 10 (1991); *Uradni list Republike Slovenije I.* (Official Gazette of the Republic of Slovenia I.), No. 12 (1991) – ZOFVI (*Zakon o organizaciji in financiranju vzgoje in izobraževanja* / Organisation and Financing of Education Act), No. 17 (1991) – ZUDE; *Uradni list Republike Slovenije* (Official Gazette of the Republic of Slovenia), No. 66 (1993), No. 67 (1993) – ZVis, No. 12 (1996) – ZPSI (*Zakon o poklicnem in strokovnem izobraževanju* / Vocational Education Act).

³⁸ Mojca Tancer Verboten, "Visokošolski učitelji nekoč in danes", v: *Vanekovo stoletje: ob stoletnici dr. Vaneka Šiftarja* (Maribor: Univerzitetna založba Univerze v Mariboru, 2019), p. 332 (hereinafter: Tancer Verboten, "Visokošolski učitelji nekoč in danes").

³⁹ "Employment Relationships Act" (*Zakon o delovnih razmerjih*, ZDR), *Uradni list Republike Slovenije I.* (Official Gazette of the Republic of Slovenia I.), No. 14 (1990), No. 5 (1991).

⁴⁰ Tancer Verboten, "Visokošolski učitelji nekoč in danes", p. 332.

employees,⁴¹ which has been granted under the second point of the second paragraph of Article 1 of ZJU and is tied to the status of legal entities, state universities, as public institutions. ZJU binds universities only up to and including Article 21; the rest of the act does not apply to universities and does not affect the status of higher education teachers at universities.⁴²

The Employment of Higher Education Teachers

With the employment of higher education teachers at a university,⁴³ a contractual relationship is established between the university as an employer and a higher education teacher. The UNESCO Recommendation (1997) provided that employers in higher education should establish such conditions of employment that will combine the areas of teaching and research and will be free from discrimination. A probationary period (today called a trial period) was also recommended for higher education teachers upon initial entry into a professional career at the university. The standard duration of the probationary period should be known in advance, and the conditions for its satisfactory completion should be strictly related to professional competence.

Two models of employment, promotion, or the development of an academic career in higher education are used in the employment of higher education teachers, namely the open vacancy model and the closed or tenure track model. The main differences between the two models relate to the entry into an academic career and how teachers are promoted to the title.

The open vacancy model is a concept that allows access to a position of a higher education teacher at a particular university through an open public call and a selection procedure following the presentation and evaluation of the individual's

⁴¹ In Austria, a gradual withdrawal of higher education teachers from the system of public employees has been under way since the adoption of UG (Günter Loschnigg and Michaela Sommer, *Universitätspersonalrecht in Österreich. Universitätspersonalrecht in internationalen Vergleich* (Wien: OGBVERLAG, 2011), pp. 214, 215, 216 (hereinafter: Loschnigg and Sommer, *Universitätspersonalrecht in Österreich*).

⁴² A major reform of higher education took place in Austria in 2002 with the introduction of the new Universities Act of 2002, which granted universities the autonomy of operation. Universities thus became legal entities governed by public law (Rudolf Neuhäuser, "Institutional Autonomy Versus Government Control (The New University Act in Austria)", *Higher Education Management and Policy* 16, No. 1 (2004), p. 20.

⁴³ Regardless of the autonomy that higher education teachers enjoy in the performance of their work, they are dependent or subordinate in the employment relationship with the university. In this contractual relationship, we are not necessarily talking about subordination and direct supervision or instructions related to the content of the person's work but rather about the context of dependency or subordination in which the work is carried out (Irena Bečan et al., *Zakon o delovnih razmerjih s komentarjem* (Ljubljana: GV Založba, 2016), p. 36 (hereinafter: Bečan et al., *Zakon o delovnih razmerjih s komentarjem*).

work results. Such a call is open to higher education teachers at all levels in their careers. The closed model or the tenure track model is a concept where the appointment to the highest title of a full professor is granted after working for a set number of years, after the probationary period, and after periodic evaluations of work performed. This model is also called *step-by-step promotions*.⁴⁴ Employment procedures or access to university positions depend on the model used by a particular university or higher education system set up by a legislator.

In Finland, the academic career is mainly framed around the open vacancy model, both in terms of employment and promotion.⁴⁵ In Austria, the access to posts of higher education teachers with lower titles is based on an open vacancy model; however, if an assistant professor is appointed to the position of an associate professor after fulfilling all the conditions and performing successfully, the tenure track model starts to apply.⁴⁶ Norway adheres to the open vacancy model and does not recognise the tenure track model. The opposition against the introduction of the latter model was based on the argument that the tenure track model extends the period of fixed-term employment and that decisions regarding new employments are taken too early in the career of academic personnel. However, experimental employment based on the tenure track model is being implemented in the scientific fields of technology, science, and medicine.⁴⁷ In 2009, Sweden experimentally introduced the tenure track model for assistant professors only at a few universities, aiming to improve career prospects for young teaching staff.⁴⁸ Higher education in the Netherlands follows the tenure track model, with the intention to retain talented higher education teachers within the same institution. There are several possible career models, namely a temporary appointment as an assistant professor, which can lead to a permanent post of a professor after receiving positive evaluations over the period of four or six years, or employment of new associate professors who acquire a permanent post as a professor after receiving a positive evaluation. In the Netherlands, it has been emphasised that the tenure track model offers a predetermined possibility of promotion and a possibility to obtain permanent employment in a teaching

⁴⁴ Jussi Kivistö, Elias Pekkola and Attila Pausits, "Academic Careers and Promotions in Finland and Austria: System and Institutional Perspectives", v: *Achieving Academic Promotion Surviving and Thriving in Academia*, eds. Mahat, M. and Tatebe, J. (Bingley: Emerald Publishing Limited, 2019), p. 111. (hereinafter: Kivistö, Pekkola and Pausits, "Academic Careers and Promotions in Finland and Austria: System and Institutional Perspectives").

⁴⁵ *Ibid.*, p. 113.

⁴⁶ Nicoline Frolich, Kaja Wendt, Ingvild Reymont, Silje Mara Tellman, Mari Elken, vein. Kyvik, Agnete Vabo and Even Larsen, *Academic career structures in Europe: Perspectives from Norway, Denmark, Sweden, Finland, the Netherlands, Austria and the UK* (Oslo: Nordic Institute for Studies in Innovation, Research and Education (NIFU), 2018), p. 80.

⁴⁷ *Ibid.*, p. 31.

⁴⁸ *Ibid.*, p. 41.

position.⁴⁹ Thus, the analysis demonstrates that individual countries⁵⁰ adhere to one or the other model, or to the combination of both models, which are linked to specific positions or levels in higher education careers since the models in a particular county are not necessarily the same for different positions.

There are notable differences between the two models of employment. The advantages of the open vacancy model are increased competitiveness in the phases of employment and promotion, greater fairness, whereas the tenure track model brings about closer connections with the institution, the possibilities for promotion and development remain within the same institution, the possibility of promotion results in more motivation, and there is basically no career without the possibility of promotion.⁵¹ The disadvantages of the open vacancy model are the lack of promotion opportunities, a greater risk of complex employment procedures, focusing only on points instead of the quality of work, and achieving lower-ranked titles. On the other hand, the shortcomings of the tenure track model are a requirement for the university to prepare a suitable system of evaluation and promotion, focusing on research achievements and neglecting the quality of teaching activities.⁵²

The Republic of Slovenia has a closed or tenure track model. The advantages of this model in the Republic of Slovenia are the following: the criteria for attaining the highest title are known in advance, the possibility to obtain the title without any further selection procedures that would involve several candidates, stronger affiliation with the university, and a possibility to develop a career within the same university. The disadvantages are the following: the university has very little time to select a suitable candidate, the candidate's workplace promotion is determined in advance, there is no selection of higher education teachers with titles of the highest rank, the quality can only improve through the tightening of habilitation conditions. Transition to the open vacancy model within the framework of higher education legislation can not be considered as long as the public sector salary system fully applies to the universities, with a single position of a higher education teacher who automatically progresses in his or her title by obtaining that title through the election.⁵³

⁴⁹ Ibid., p. 70.

⁵⁰ In Portugal, public universities also follow a tenure track model (James S. Taylor, Manuel Graça, Maria de Lourdes Machado and Sofia Sousa, *Portugal: Adapting in Order to Promote Change* (Kassel: International Centre for Higher Education Research Kassel, 2007), p. 218).

⁵¹ The tenure track model offers better social security for senior higher education teachers (Taru Siekkinen, *The changing relations between the academic profession and universities in Finnish higher education* (Jyväskylä: Finnish Institute for Educational Research, 2019), p. 45).

⁵² Kivistö, Pekkola and Pausits, "Academic Careers and Promotions in Finland and Austria: System and Institutional Perspectives", pp. 126, 127.

⁵³ The state is also interfering with the university's HR policy by imposing measures under the laws and regulations, which is why the scope of the university's operations is becoming overregulated (Andraž Teršek and Matija Žgur, "(Finančna) Avtonomija univerze", *Revus – revija za ustavno teorijo in filozofijo prava* 8, No. 14 (2010), p. 74.

Conditions for Filling the Post of a Higher Education Teacher

Special characteristics of conditions for filling the position of a higher education teacher were already highlighted in UNESCO Recommendation (1997), namely in point 25, which stipulated that access to the post of a higher education teacher should be based solely on appropriate academic qualifications, competence and experience and that the university has to ensure accessibility of the position without any discrimination.

The conditions for filling the post of a higher education teacher consist of general conditions, which are the same for each vacant post, and specific conditions, which relate exclusively to the positions of teaching staff, including higher education teachers. Among general conditions for employment relating to the education acquired, the post of a higher education teacher requires the highest (ninth) level of education, i.e., the doctor of science degree, or, in the field of arts, the recognition of distinctive works of art.⁵⁴ For reasons listed under Article 8 of ZVis, the post of a higher education teacher who will carry out educational activities within academic programmes for students – citizens of the Republic of Slovenia also requires proof of a good command of the Slovenian language, if the candidate had not already obtained education in the Republic of Slovenia. A special condition for filling the post of a higher education teacher is the election or appointment to the title, which is a basic prerequisite to perform work as a higher education teacher, regardless of the university or the country in which the higher education teacher carries out his or her work. The differences between higher education systems emerge in the process of obtaining the title, temporal and territorial validity of the title, the recognition of being elected or appointed to the title, the termination of the title, and, naturally, in the criteria for obtaining the title.

The election to the title – the internationally accepted term is habilitation – is a qualification or license needed for independent performance of university teaching activities and for filling the post of a higher education teacher (the post of a professor) at a university or other higher education institutions. The term habilitation originates from the medieval Latin term *habilitare*, which means to be suitable, to fit, to be adept. At first, habilitation was synonymous with doctoral qualifications, but later, the term became synonymous with postdoctoral qualifications. Throughout history, the word has developed new meanings.⁵⁵ *The Oxford English Dictionary* (2019) defines habilitation as "enabling or endowing with ability".⁵⁶

⁵⁴ The highest level of education is also a condition for employment in particular positions in the research sector, including the fields of medicine and healthcare science.

⁵⁵ Jessica Hayton and Dagmara Dimitriou, "What's in a world? Distinguishing between Habilitation and Re-habilitation", *Vision Rehabilitation Internacional* 1, Vol. 10 (2019), p. 1.

⁵⁶ *Ibid.*

Therefore, habilitation is not a new term in the area of higher education; it is widespread and plays a significant role in employment procedures. It has been used for many years in higher education in the EU; however, the procedure and conditions for obtaining habilitation are changing at national or university levels, depending on which model is applied at a particular university or laid down under national legislation.⁵⁷ Under Slovenian legislation, the appropriate term for presenting the Slovenian habilitation system is the election to the title,⁵⁸ which will be used in the following text referring to provisions of higher education legislation. Procedures for obtaining habilitation or title also differ in that a person can be appointed to the title, granted the title, or elected to the title.

According to the first paragraph of Article 21 of ZJU, each state authority, local community administration, and entity governed by public law shall have a job classification act (hereinafter: job classification) that specifies posts required for the performance of individual tasks in accordance with its internal organisation. For each post, the job classification shall include at least a description of tasks and conditions for holding each post. Exceptions to this part may be provided only by another special act. Legal grounds for employment on the employer's part are not significantly different under ZDR-1 from those under ZJU. Article 22 of ZDR-1 lays down *ius cogens* provisions concerning conditions for employment for all workers concluding an employment contract. The conditions for employment must be determined in advance, either by a collective agreement or the employer's general acts, and published in accordance with Article 25 of ZDR-1.

Employers in Slovenia are not autonomous when determining conditions for the employment of higher education teachers; instead, in accordance with labour legislation, they need a legal basis for employment in the form of a job classification act, which provides a description of tasks and conditions for holding each post and which has to comply with *ius cogens* legislation in the area of higher education.⁵⁹ Article 52 of ZVis determines the titles of higher education

⁵⁷ In Italy, bibliometric data were included in the habilitation process as a support to the evaluation committee (Giovanni Abramo and Ciriaco Andrea D'Angelo, "An assessment of the first 'scientific habilitation' for the university appointments in Italy", *Economia Politica*, No. 32 (2015), p. 330.

⁵⁸ It should be emphasised that in the case of higher education in Slovenia, we are referring to the election to the title, as the election procedure takes place before the senate of the university or the senate of the university member – Article 55 of ZVis stipulates conditions for the election and Article 56 of ZVis lays down the procedure for elections that take place before university bodies or the bodies of university members.

⁵⁹ The employer must comply with the laws, other regulations, and collective agreements that it is bound by. The law stipulates conditions, especially regarding the education and experience, for positions that are by their nature typical of certain professions (e.g., Medical Services Act, hereinafter: ZZdrS, for doctors, Higher Education Act for teachers) and cannot be accessible to just anyone, but only to persons with specific knowledge acquired through the verified education programmes. The

on teachers, ZSPJS provides specific names and titles of posts, while the conditions for obtaining the title are defined in Article 55 of ZVis. Universities require the election to the title as a condition for filling the post, which is proven with a decision submitted by the candidate applying for a vacant post, since only an employee who had been elected to the proper title may hold the post of a higher education teacher. Therefore, the election to the title is one of the special conditions of the call for the employment of higher education teachers in Slovenia.

In regard to the procedure for the employment of higher education teachers, Article 60 of ZVis as *lex specialis* provides that posts of higher education teachers, researchers, and higher education associates shall be publicly advertised and filled within the time limits and in the manner defined by the statutes of the higher education institution. The provisions of university statutes in Slovenia are very restrictive; namely, a university considers only those elections to the title or those university decisions valid that had been obtained in the procedure and under criteria of the institution at which the candidate has submitted a job application. The reciprocity of titles between universities is not stipulated. All other candidates, who had not been elected to the title at a university where they wish to apply for employment, may submit an application for the recognition of the equivalent title before submitting a job application. Therefore, a candidate who wishes to be employed at a specific university in Slovenia must undergo a preliminary procedure to obtain the election to the title or a procedure for the recognition of the title granted by another competent institution before applying for the vacant position. Obtaining a decision on the election to the title does not by itself represent the condition of employment. Therefore, the procedure to obtain the title is independent and separate from the labour-law procedure for the employment of a higher education teacher. Depending on the title acquired, a decision on the election to the title is issued for a fixed term (only the title of a full professor is permanent) and not determined by the duration of the employment relationship. Thus, a higher education teacher must maintain the validity of the election to the title for the duration of the employment relationship. Regardless of the post they hold, they must submit the application for the election to the same title or to the title of a higher rank six months before the election expires.

The specific of the Slovenian legislation regulating conditions for filling the post is linked to the employment system, i.e., the name of the post, for which

Constitutional Court of the Republic of Slovenia adopted the position that laying down specific conditions for the performance of work does not constitute a breach of the right to choose employment freely, but rather the exercise of legislative powers granted by the second paragraph of Article 15 of URS, which states that law may regulate the manner in which human rights are exercised if this is necessary due to the very nature of the right (U-I-240/04) (Bečan et al., *Zakon o delovnih razmerjih s komentarjem*, p. 151).

the university may not determine the title it seeks to employ in its job advertisement.

Under points 3 and 4 of the second paragraph of Article 6 of ZVis, universities in Slovenia have a certain autonomy in setting out the criteria for the election to the title of higher education teachers, researchers, and higher education associates, and in the elections to the titles of higher education teachers. Substantive legal basis for the election to the title of a particular higher education teacher is laid down in Article 55 of ZVis, which lists basic elements⁶⁰ and, in more detail, in the criteria for the election to the title. These criteria set out minimum requirements for the election to the title, they adopted by universities and must comply with minimum standards for the election to the title of higher education teachers at higher education institutions, which are determined by the Slovenian Quality Assurance Agency for Higher Education (*Nacionalna agencija za kakovost v visokem šolstvu*, hereinafter: NAKVIS). At the same time, they must also be internationally comparable⁶¹ and made available to the public. Accordingly, based on the third indent of the first paragraph of Article 51f of ZVis, NAKVIS adopted Minimum Standards for the Election to the Title of Higher Education Teacher, Researcher and Higher Education Associate at Higher Education Institutions (hereinafter: NAKVIS Minimum Standards).⁶² According to Article 7 of NAKVIS Minimum Standards, a candidate for the election to the title must cumulatively meet basic, general, and special minimum standards for the election to the title.⁶³ Under the seventh paragraph of Article 55 of ZVis, universities shall adopt their own criteria for elections to the titles.

For a particular scientific field, respective faculties may determine stricter criteria that must also be met by an individual submitting the application for the election to the title. Substantive legal grounds for the election to the title are

⁶⁰ Article 55 provides only two cumulative conditions, namely, holding a doctorate and demonstrating pedagogical skills.

⁶¹ The requirement of international comparability of criteria for the election to the title is also contained in the third paragraph of § 94 UG or in Article 18 of Law No. 240 (2010) – the Rules on the organisation of universities, academic staff and employment and on the transfer to the Government to promote the quality and efficiency of the university system (*Legge 30 dicembre 2010, n. 240, "Norme in materia di organizzazione delle università, di personale accademico e reclutamento, nonche' delega al Governo per incentivare la qualità e l'efficienza del sistema Universitario"*, hereinafter: UZi), *Gazzetta Ufficiale della Repubblica Italiana (Official Gazette of the Republic of Italy)*, No. 10, del 14 (2011).

⁶² "Minimum Standards for the Election to the Title of Higher Education Teacher, Researcher and Higher Education Associate at Higher Education Institutions" (*Minimalni standardi za izvolitev v nazive visokošolskih učiteljev, znanstvenih delavcev in visokošolskih sodelavcev na visokošolskih zavodih*), *Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 95 (2010), No. 17 (2011) and No. 91 (2020).

⁶³ According to Article 9 of NAKVIS Minimum Standards, basic minimum standards are a suitable education or suitable academic or professional title, qualification for professional or artistic work, pedagogical qualification, positive assessment by the majority of rapporteurs on the qualification of the candidate, and active knowledge of at least one widely spoken foreign language.

linked to the habilitation area in which the candidate has submitted the application for the election to the title and determined by universities or faculties, taking into account international competition standards related to the area. It is important to note the specifics of applying for the election to the title in Slovenia, namely that minimum standards, which are set by NAKVIS and have legal grounds to interfere with university autonomy, are also crucial for setting out substantive legal grounds at a university.⁶⁴ Within the framework of a particular university, the criteria provided for the election to the title cannot be the same for all higher education teachers, without regard to the habilitation area for which the candidate applies. Thus, the principle of equality of all higher education teachers cannot be implemented when determining substantive grounds for the election to the title,⁶⁵ but higher education teachers are treated equally in the respective area of habilitation. This solution is appropriate due to differences between individual scientific disciplines and scientific fields and the conditions that each higher education teacher can satisfy in their field. The procedure for the election to the title starts on the basis of an application submitted by the individual who has the interest in being elected to the title, either for the purpose of employment at a university or only to acquire the title,⁶⁶ which can be invoked in his or her professional life outside of higher education, for example, in scientific research activities, in the business sector (as an expert in a certain area), when working at a medical institution (where one of the conditions for acquiring the title of a clinic is for employed doctors to be elected to the title).⁶⁷ According to Article 57 of ZVis, the procedure for the election to the title of a higher education teacher shall be regulated in greater detail in the statute of the university in accordance with the law and the criteria for the electi-

⁶⁴ Due to the powers exercised by NAKVIS and because of restrictions they are facing when determining substantive grounds for the election, the universities had no authority to lower criteria for the election even during the COVID-19 pandemics in the part where the conditions could not be met for reasons of international travel restrictions or closures of respective institutions.

⁶⁵ Each habilitation area and scientific discipline has its specific characteristics and work results that a higher education teacher can achieve in this area. In the field of social sciences and humanities, there are no patents or licences, but journals with different impact factors are available for the publication of the results of scientific work.

⁶⁶ A title that is not tied to employment at a university can also be obtained in Austria and Italy.

⁶⁷ Under the first point of the first paragraph of Article 6 of the Rules concerning the requirements to be met and the procedure to acquire the title of a clinic, a clinical institute or a clinical department (*Pravilnik o pogojih in postopku za pridobitev naziva klinika, klinični inštitut ali klinični odderek, Uradni list Republike Slovenije (Official Gazette of the Republic of Slovenia)*, No. 72 (2006), No. 49 (2009)), the conditions for operating as a clinic, a clinical institute or a clinical department include a requirement that in the context of the sufficient number of properly educated and skilled medical and other personnel, at least one of the ten employees with a university degree has to hold the title of a higher education teacher (full professor, associate professor, assistant professor), while the highest habilitation or research title is required for the head of such department.

on.⁶⁸ Procedures for the election to the title are lengthy, extremely specific, and involve experts appointed by the university, the habilitation committee of the university, the senate of a university member, and the senate of the university.

The way the procedure for the election to the title is regulated in the Slovenian higher education area, as a preliminary procedure that is required to obtain the "licence to teach", is not comparable to the higher education systems in Austria and Finland. In Austrian higher education, the substantive basis for filling the post of a higher education teacher is quite different.⁶⁹ Prior election to the title is not a condition in the employment procedure, nor is there a preliminary procedure provided to obtain it. The candidate is granted the title following the successfully completed selection procedure for filling the post in the respective field for which he or she was selected, and the title is valid for the period of validity of the employment contract in accordance with paragraphs 12 and 13 of § 94 UG. If the candidate already has a valid election to the title that was obtained abroad, the satisfaction of conditions for obtaining the title at a particular university, where the candidate has applied for the post, has to be verified as well. The Austrian higher education system also allows for the acquisition of the title based on a request submitted by an external candidate outside of the regular employment procedure, and the mere acquisition of the title does not yet imply the position at a university. The conditions of employment at Austrian universities are determined broadly enough under UG to allow for the international application by each candidate (domestic or foreign scientists with relevant higher education research or artistic qualifications for the subject corresponding to the area in which they operate).⁷⁰ There is also no preliminary procedure for the election to the title at Finnish universities, and the election or appointment to the title is not a condition to fill a vacant post. Under the fourth paragraph of section 33 of UZf, following the employment procedure, a higher education teacher is granted the right to use the title at a university, which is valid for the duration of the employment contract. The employment procedure includes the verification of the candidate's eligibility, not only regar-

⁶⁸ At the University of Maribor, the procedure is regulated under Articles 190 to 202 of the Statute of the University of Maribor and the Rules on the procedure for the election to the title of higher education teachers and higher education associates. The procedural part of the habilitation process at the University of Ljubljana is regulated under Articles 149 to 156 of the Statute of the University of Ljubljana.

⁶⁹ Considering the procedure and legal provisions, the use of the term appointment to the title would be more fitting to denote the habilitation since there is no election to the title in Austria; instead, the title is granted on the basis of the candidate's research achievements by the habilitation committee, which is appointed by the senate of the university. However, the habilitation is also regulated (Article 103 of UG), which is awarded and does not represent the basis for employment, nor does it affect the existing employment contract.

⁷⁰ Loschnigg and Sommer, *Universitätspersonalrecht in Österreich*, p. 222.

ding employment but also regarding conditions required to obtain the title held by a higher education teacher for the duration of his or her employment at the university. In Italy, the UZi introduced national scientific habilitation, which provides access to the posts of higher education teachers at universities. The title is granted at a national level by a commission established for each scientific area. The appointment to the title is granted by the national committee and is valid for six years. The conditions for the particular election to the title are not determined within the framework of the university either, since the authority to determine indicators and criteria for the election was granted by law to the National Agency for the Evaluation of Universities and Research Institutes (*l'Agenzia nazionale di valutazione del sistema universitario e della ricerca* – ANVUR). In Italy, therefore, a preliminary procedure to obtain the election to the title is also required as a condition that must be met before applying for a vacant post; however, in comparison, the determination of conditions for the election in the Republic of Slovenia falls within the authority of each university in the scope of its autonomy, taking into account the legal requirement of compliance with NAKVIS Minimum Standards.

Based on the presented analysis of models or concepts of the election to the title, it can be concluded that differences in regulation depend mainly on national law. The university's success depends on the possibility of employing excellent higher education teachers, and the main feature of universities in advanced higher education systems is striving to acquire highly talented teachers and scientists through the employment procedure. In these systems, universities have legal grounds to determine their own criteria for employment and the acquisition of titles. Keeping the universities in the Republic of Slovenia subject to minimum standards for the election to the title set by NAKVIS is supposed to represent the uniformity of conditions for the election to the title within the Slovenian higher education area, and especially the level of quality that is expected from higher education institutions. When NAKVIS Minimum Standards have been drafted, extremely precise quantitative and qualitative standards have been determined that failed to consider the specifics of individual scientific areas or disciplines or even the possibility of organising the teaching process under the newly-established study programmes. The shortcomings of keeping certain university criteria for the election to the title subject to NAKVIS Minimum Standards become apparent with any change to the minimum standards, which can set the criteria for a particular scientific discipline or scientific area too high, meaning that a university might not be able to comply because of its financial situation or the number of higher education teachers holding

the required title.⁷¹ Adopting NAKVIS Minimum Standards without considering the specifics of the scientific area has resulted in equalisation, which does not always imply high quality or proper development of a particular scientific discipline or area of expertise. ZVis should provide universities with full autonomy in the area of academic activity, which includes the adoption of criteria for the election to the title and a free choice or election of higher education teachers.⁷²

In Austria and Finland, which both rank very highly in terms of performance indicators and the reviewed level of higher education autonomy, the procedure for obtaining the title is tied to the employment procedure, which means that no preliminary procedures are needed, while the validity of the title is territorially and temporally limited to the validity of employment contract signed at the university. In the context of higher education in the Republic of Slovenia, the employment procedure should be regulated so that after the procedure is completed, the candidate would acquire election to the title required for the vacancy published by the university, which would comply with UNESCO Recommendation (1997) and ensure better access to jobs. Candidates who would be employed in such a manner would also be elected for a fixed period of five years, which is not necessarily the case now, as the election decision is issued before the employment procedure is carried out, meaning that the remainder of the term can be even shorter in the case of procedure for the recognition of the title, in which the candidate is granted a recognised title for the time remaining until the end of the term. In Austria and Finland, there are no legal obstacles preventing the determination of criteria and standards for the election to the title autonomously within a particular university, as universities have full authority in that regard. It is evident that the interference of the state in employment procedures, with the state being involved in the granting of titles or determining the criteria for the election to the title, is detrimental to universities, as the universities are thus deprived of the possibility to develop and set out their own standards of quality, both in education and scientific research areas. Such is the case in Italy, where the preliminary procedure for obtaining the title takes place outside the university, and universities have basically no influence on the procedure and determination of criteria, even though this procedure directly impacts employment at universities.

⁷¹ During the state of the epidemic, the candidates cannot fulfill the condition laid down in the fourth indent of the second paragraph of Article 28 of NAKVIS Minimum Standards, namely the continuous work at a foreign university lasting for a minimum of three months. Universities had to file a request with NAKVIS, asking to adopt minimum standards for the duration of the state of the epidemic and to lay down the conditions that the candidates will be able to meet. Only after the new NAKVIS standard was established were the candidates who failed to meet this condition able to continue the procedure of obtaining the title.

⁷² Rado Bohinc, "Sodobna zakonska ureditev visokega šolstva. Kako povrniti zaupanje države v univerzo in univerze v državo", *Teorija in praksa* 54, No. 3–4 (2017), p. 518.

Conclusions

Academic employment is one of the most important tasks of a university since the choice of a higher education teacher has a long-term impact on the university's development and quality. With their knowledge and work at a university, higher education teachers affect the quality of teaching, research, knowledge-building, students' satisfaction, management, the acquisition of research projects, and involvement in the community.⁷³ The university management is becoming increasingly aware of the importance of procedures for employing the best higher education teachers, as the right choice has long-term consequences. In the context of national reforms of higher education, this area has been paid special attention.

There is no open vacancy model for the employment of higher education teachers in Slovenia, under which these posts would be available to all candidates that meet the prescribed conditions.⁷⁴ The possibility to publish international job advertisements is also precluded because of the teaching language, which, in accordance with Article 8, must be Slovenian and the knowledge of which must be demonstrated by means of a suitable certificate in so far as the candidate is not of Slovenian nationality. In the case of employment procedures for the purpose of carrying out education activities in study programmes implemented in a foreign language, it is not necessary to demonstrate the knowledge of the Slovenian language.

Due to the specifics of the status of higher education teachers, the following issues regarding the management of staff policies and procedures, not only for employment but also for filling the posts of higher education teachers, can be identified at the universities in Slovenia:

- preventing access to the posts of higher education teachers that are under the tenure track model already occupied by higher education associates employed at a university, who obtain a proper title and sign the employment contract for a higher education teacher respecting a suitable workload within the teaching process,
- the inability to transition between different fields of work within the public sector or change the employer (the transition from research work conducted outside of the university to the education process

⁷³ See Tatiana Fumasoli and Barbara M. Kehm, "Recruitment of Academics", v: *The Encyclopedia of International Higher Education Systems and Institutions*, eds. Pedro Nuno Teixeira and Jung-Cheol Shin (Dordrecht: Springer, 2020), p. 1, available at: DOI 10.1007/978-94-017-9553-1_288-1, accessed: 12. 5. 2021.

⁷⁴ The open vacancy model is based on the concept that each university has a specific number of posts for a particular title, and once the post becomes vacant, different selection procedures for the best candidate are conducted through a public tender.

taking place at the university is possible only in the case of vacant workload within the teaching process),

- the inability to conduct selection procedure by reviewing the compliance with teaching and research conditions (which are demonstrated by each candidate with the election to the title for the corresponding habilitation area),
- the inability to determine the habilitation title for which the university needs candidates (only a position encompassing multiple titles is determined).

Higher education legislation in the Republic of Slovenia should include provisions relating to the procedure for the employment of higher education teachers that would determine exceptions in the employment procedure and constitute a *lex specialis* regulation of the procedure for the employment of higher education teachers. In the part where ZVis regulates the employment procedure, it should determine that the procedure for the election to the title should be conducted simultaneously with the employment procedure. Thus, the university could select the candidate by reviewing the entirety of scientific and pedagogical results on the respective day instead of considering only the decision on the election to the title. That would allow the university to include both the title and the post when publishing a job vacancy. Regarding the job classification act for higher education teachers, the law should state that the university can determine the act autonomously and individually, depending on the needs of the teaching and research process.

Mojca Tancer Verboten

POSEBNOSTI ZAPOSILITEV VISOKOŠOLSКИH UČITELJEV

POVZETEK

Poseben položaj visokošolskih učiteljev, zaposlenih na univerzah, izhaja iz posebnega položaja ter vloge univerze v družbi oziroma v razvoju znanosti ter avtonomnosti njenega delovanja. Visokošolski učitelji so temelj za njeno delovanje in so nosilci izobraževalnega in raziskovalnega procesa na univerzah. Postopek zaposlitve visokošolskih učiteljev je eden izmed elementov kadrovske avtonomije univerze in ni v izključni domeni delovnopravne zakonodaje, temveč poteka tudi na podlagi materialnih določb visokošolske zakonodaje. Za zaposlitev in za napredovanje visokošolskih učiteljev sta uveljavljena dva modela in sicer model odprtih delovnih mest (*open vacancy career models*) ali zaprt karierni model (*tenure track career models*). Model odprtih delovnih mest je koncept, ki omogoča dostop do položaja visokošolskega učitelja na posamezni univerzi preko odprtega javnega razpisa in izvedbe izbire po postopku predstavitve, pregleda rezultatov dela posameznika. Takšen poziv je odprt za visokošolske učitelje na vseh nivojih kariere. Zaprt model oziroma sistema napredovanja v nazivih je koncept, kjer je razporeditev v najvišji naziv rednega profesorja omogočen po določenih letih dela, po preizkusni dobi in po občasno izvedenih evalvacijah opravljenega dela. Ta model se imenuje tudi napredovanje po nazivih (*step-by-step promotions*). Od modela, ki ga uporablja ali posamezna univerza ali posamezni visokošolski sistem določen s strani zakonodajalca, so odvisni postopki zaposlitve oziroma dostop do delovnih mest na univerzi. V Republiki Sloveniji imamo zaprt model delovnih mest (oziroma sistem napredovanja po nazivih). Prednosti tega modela v Republiki Sloveniji so vnaprej znani kriteriji za doseg najvišjega naziva, možnost dosega naziva brez dodatnih izbirnih postopkov med več kandidati, večja pripadnost univerzi in možnost razvoja kariere v okviru iste univerze, slabosti tega modela so, da mora univerza zelo hitro izbrati primerne kandidata, ki ima vnaprej znano napredovanje na delovnem mestu, izbire visokošolskih učiteljev v višjih nazivih ni, poteka dvig kvalitete samo z zaostrovanjem izvolitvenih pogojev.

Pogoji za zasedbo delovnega mesta visokošolskega učitelja so sestavljeni iz splošnih pogojev, ki so enaki na vsakem razpisanem delovnem mestu in posebnih pogojev, ki so vezani izključno na delovna mesta pedagoških delavcev, med njimi tudi visokošolskih učiteljev. Pri določanju pogojev za zaposlitev visokošolskega učitelja v Sloveniji delodajalec ni avtonomen, temveč mora imeti kot podlago za zaposlitev v skladu z uslužbensko zakonodajo sprejet akt o sistemi-

zaciji delovnih mest, v katerem za vsako delovno mesto določi opis delovnih nalog in pogoje za zasedbo delovnega mesta, pri katerih mora slediti kogentni visokošolski zakonodaji. Kot poseben pogoj za zasedbo delovnega mesta je določena izvolitev v naziv, ki poteka v Republiki Sloveniji po upravno-pravnem postopku in ima neposreden vpliv na zaposlitev in trajanje delovnega razmerja (napredovanje, določanje plač in prenehanje pogodbe o zaposlitvi). Kandidat, ki se želi zaposliti na točno določeni univerzi v Sloveniji, tako mora pristopiti pred sodelovanjem na razpisu k predhodnemu postopku pridobitve izvolitve v naziv ali postopku priznavanja naziva iz druge pristojne inštitucije. Sama pridobitev odločbe o izvolitvi v naziv še ni pogoj za zaposlitev, postopek za pridobitev izvolitve v naziv torej poteka neodvisno in ločeno od delovno-pravnega postopka zaposlitve visokošolskega učitelja. Posebnost, na katero je potrebno opozoriti pri vložitev vloge za izvolitev v naziv v Sloveniji je, da so pri določanju univerzitetnih materialnih podlag za izvolitev v naziv prav tako ključni minimalni standardi, ki ji določi NAKVIS in ki na zakonski podlagi posežejo v avtonomijo univerz. Odločba o izvolitvi je glede na pridobljeni naziv izdana za določen čas (trajnost naziva je predvidena samo za rednega profesorja) in ni vezana na trajanje delovnega razmerja.

Postopek izvolitve v naziv kot predhodni postopek, ki je pogoj za pridobitev "licence za poučevanje," kot ga predvideva slovenski visokošolski prostor, ni primerljiv z visokošolskimi sistemi v Avstriji ali na Finskem, kjer izbrani kandidat pridobi izvolitev v naziv po izvedenem izbirnem postopku zaposlitve.

V izvedeni analizi je predstavljeno, katere so posebnosti položaja visokošolskih učiteljev, ki vplivajo na pogoje in postopek za izvedbo zaposlitve na delovna mesta visokošolskih učiteljev ter ali so te posebnosti upoštevane v zakonodaji. Ugotovljeno je, da bi morala visokošolska zakonodaja v Republiki Sloveniji vključevati določila vezana na postopek zaposlitve visokošolskih učiteljev, ki bi določala izjeme v zaposlitvenem postopku in bi predstavljala *lex specialis* ureditev postopka zaposlitve visokošolskih učiteljev. ZVis bi tako v delu, kjer določa zaposlitveni postopek, moral določiti, da se hkrati s postopkom zaposlitve izpelje tudi postopek izvolitve v naziv. Univerza bi tako lahko izbrala kandidata s pregledom celotnih znanstvenih in pedagoških rezultatov trenutnega datuma in ne z upoštevanjem samo odločbe o izvolitvi v naziv. Z navedenim bi imela univerza v razpisnem postopku možnost razpisati tako naziv kot delovno mesto. Za sam akt o sistemizaciji delovnih mest za visokošolske učitelje bi moralo biti določeno, da ga lahko univerza avtonomno individualno določi glede na potrebe pedagoškega in raziskovalnega procesa.

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Jezik: angleški (izvleček angleški in slovenski, povzetek slovenski)

Gljučne besede: zaposlitev visokošolskih učiteljev, izvolitev v naziv, odprti karierni model, zaprti karierni model, pogoji za zaposlitev

Izvleček: V prispevku so na podlagi analize izbranega gradiva, ki obravnava postopek in pogoje za zaposlitev visokošolskih učiteljev v okviru različnih visokošolskih sistemov, prikazane posebnosti vezane na položaj visokošolskih učiteljev, ki jih v primeru zaposlitev delavcev v drugih dejavnostih ni zaslediti. Obravnavani so trije sklopi: pojem in položaj visokošolskih učiteljev, pogoji za zasedbo delovnih mest visokošolskih učiteljev in postopek zaposlitev visokošolskih učiteljev. Osnovna hipoteza članka je, da je potrebno pogoje in postopek za zaposlitev visokošolskih učiteljev obravnavati in interpretirati ter zakonsko ustrezno urediti glede na upoštevanje posebnosti položaja visokošolskih učiteljev, ki so zaposleni na univerzi kot instituciji, ki ima zagotovljen poseben status z institucionalno avtonomijo.