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Sustainable Higher Education as a Challenge for Latvia: Impact of the Constitutional Court of the Republic of Latvia

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In view of the current relevance of the concept of sustainability, the article examines the application of this principle within the system of higher education in three essential areas, analysing the existing situation and outlining the necessary improvements in the context of sustainability. The article also reveals the impact of the rulings delivered by the Constitutional Court of the Republic of Latvia on the sustainable development of institutions of higher education, highlighting the rulings, which directly deal with issues important for institutions of higher education, *inter alia*, in the context of the development of the rule-of-law state. The author also expresses her opinions on the need for a dialogue between the legislator and the Constitutional Court on these matters, as well as urges to seek solutions to several essential issues regulating the life of institutions of higher education – both with respect to regulation on the employment legal relationship and the criteria set for the Latvian Science Council's expert in the legal science.

Keywords: sustainability, higher education, Constitutional Court, professor, normative regulation, labour agreement, expert.

Contents

<i>Introduction</i>	51
1. <i>Sustainability and Higher Education: Concept, Application and Interconnection</i>	51
2. <i>Constitutional Court and Higher Education: Finding Sustainable</i>	
<i>Normative Regulation on Some Issues Within Higher Education System</i>	57
2.1. <i>Constitutional Court and Its Impact on Higher Education</i>	59
2.2. <i>Terminated Employment Agreements with Professors:</i>	
<i>Judgement of the Constitutional Court and Its Implementation</i>	63
2.3. <i>Expert of Latvian Science Council: National Particularity</i>	65
<i>Summary</i>	70
<i>Sources</i>	71
<i>Bibliography</i>	71
<i>Normative Acts</i>	72
<i>Case Law</i>	73
<i>Other Sources</i>	74

Introduction

Higher education, as well as science, is an important part of all societies. Institutions of higher education, by fulfilling their mission, shape individuals who, respectively, participate in the life of the state and society and, after all, constitute the state itself. The better educated society is, the more democratic and better governed by the rule of law is the state. Institutions of higher education are also the centres of science and innovation. If states set ambitious goals for development in the most diverse fields, it is impossible to reach them without higher education. Likewise, it will be impossible to attain the aims of a sustainable state without reaching the sustainability of higher education itself.

Sustainability is a comparatively new concept, which, in particular, recently is gaining popularity among parties applying the law; it is employed in the most diverse areas and fields. Sustainability must be seen as being of great importance also in higher education. Application of this principle in the three most essential areas of the system of higher education is examined in the article by analysing the current situation and also outlining the necessary improvements in the context of sustainability.

In view of the importance and impact of the Constitutional Court, the article reveals the influence of the valid rulings by the Constitutional Court on higher education and also outlines the contribution of the cases to be examined in the future not only to higher education but to the Latvian legal system in general. Some issues in the system of higher education are delineated and analysed in the context of the Constitutional Court's rulings. This chosen methodology, however, does not mean that other matters in higher education would be well organised.

Possibly, the space of Latvian higher education will soon undergo changes. However, it is important that these changes are comprehensible, justified and that the envisaged mechanisms reach the ambitious aims.

The article, in establishing the ideas and the content of a sustainable university, uses the experience of other countries, research that until now had not been sufficiently examined in the context of Latvian higher education.

1. Sustainability and Higher Education: Concept, Application and Interconnection

In view of the new challenges to the global politics, economy, law, environmental protection and development of states, new concepts are allocated a special role and significance. The concept of sustainability is one of these, it is becoming increasingly relevant for every nation state, the European Union and the global community. Sustainability may be considered as one of the most recent concepts, which was recognised by the international community only in 1987, when the World Commission on Environmental and Development (known as Brundtland Commission) published the statement "Our common future".¹ Following that, "Agenda 21" was adopted in 1992 at Rio de Janeiro Earth

¹ Report of the World Commission on Environment and Development: Our Common Future. Available: https://www.are.admin.ch/are/en/home/sustainable-development/international-cooperation/2030agenda/un-_-milestones-in-sustainable-development/1987--brundtland-report.html [last viewed 24.03.2020].

Summit.² Naturally, the politics of nation states reflect the ideas of sustainability. It is significant that today the definition of sustainability provided by Brundtland Commission is applied not only in Latvia³ but also in other countries. This definition comprises the most essential aspects of this concept. Namely, sustainability is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.⁴ To phrase it differently, sustainability merges the development interests of the present generation with those of the future generations, demanding long-term thinking and actions. The Constitutional Court of the Republic of Latvia (hereinafter – Constitutional Court) also uses this understanding of sustainability in its case law.⁵ A similar definition of the term “sustainable development” is included also in the normative regulation, for example, Section 1 of the Environmental Protection Law.⁶

Although sustainability could be considered as being, foremost, a principle of politics⁷, this principle is included in normative acts in specific areas⁸,

² United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992 AGENDA 21. Available: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf> [last viewed 23.03.2020].

³ See, for example, Judgement of the Constitutional Court of the Republic of Latvia of 24 February 2011 in case No. 2010-48-03, para. 6.1. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2010/07/2010-48-03_Spriedums_ENG.pdf#search=2010-48-03 [last viewed 23.03.2020]; Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008 in case No. 2007-11-03, para. 15. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf#search=2007-11-03 [last viewed 23.03.2020].

⁴ Report of the World Commission on Environment and Development: Our Common Future. Available: https://www.are.admin.ch/are/en/home/sustainable-development/international-cooperation/2030agenda/un_-_milestones-in-sustainable-development/1987--brundtland-report.html [last viewed 24.03.2020].

⁵ See, for example, Judgement of the Constitutional Court of the Republic of Latvia of 24 February 2011 in case No. 2010-48-03, para. 6.1. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2010/07/2010-48-03_Spriedums_ENG.pdf#search=2010-48-03 [last viewed 23.03.2020]; Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008 in case No. 2007-11-03, para. 15. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf#search=2007-11-03 [last viewed 23.03.2020].

⁶ Law states that “principle of sustainable development should be regarded as the integrated and balanced development of public welfare, the environment and economy, which meets the present social and economic needs of inhabitants and ensures the compliance with environmental requirements, not endangering the possibility to meet the needs of the future generations, as well as ensures the preservation of biologic diversity.” Vides aizsardzības likums [Environmental Protection Law] (02.11.2006). Available: http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Environmental_Protection_Law.doc [last viewed 23.03.2020].

⁷ Sustainable Development Strategy of Latvia until 2030 or “Latvia 2030” states that the aim of the country is to reach sustainable development that is an integrated and balanced development of the public welfare, the environment and economics, which satisfies present social and economic needs of inhabitants, ensures the observation of the environmental requirements without endangering the possibility to satisfy the needs of future generations, and ensuring the biological diversity. Sustainable Development Strategy of Latvia until 2030. Available: <http://varam.gov.lv/lat/pol/ppd/?doc=13857>, para. 8. [last viewed 23.03.2020].

⁸ Principle of sustainability is one of the fundamental principles of land use planning. See, for example, Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008 in case No. 2007-11-03, para. 15. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf#search=2007-11-03 [last viewed 23.03.2020]; Judgement of the Constitutional Court of the Republic of Latvia of 24 September 2008 in case No. 2008-03-03, para. 17.2. *Latvijas Vēstnesis*, No. 151 (3935), 30.09.2008; Judgement

turning it into a principle of a particular area. Even more so, the principle of sustainability has become a constitutional principle, directed at the protection of the aims and values included in the Constitution of Latvia – the *Satversme*⁹ – as well as implementation thereof.¹⁰ The Preamble to the *Satversme* provides that “Latvia protects its national interests and promotes sustainable and democratic development of a united Europe and the world.”¹¹ Alongside that, *Satversme* envisages an essential aspect of sustainability – responsibility towards future generations, since the Preamble to the *Satversme* states that “Each individual takes care of [...] future generations, the environment and nature.” This means that the constitutional legislator expects responsible actions of each individual or, one might say, each member of society, in the name of the future generations, which is also an indispensable element of sustainability.

Institutions of higher education (hereafter – also higher educational establishment, university¹²) have played an important role in the development of society.¹³ Today, the institutions of higher education are expected to yield manifold investments or contributions to society. Higher educational establishments are expected to be not only scientific research centres, but also sources of technological innovation, they have to be dedicated to civil rights, social justice and reforms.¹⁴ Undeniably, at present higher education has an essential role in the national development, based on knowledge, innovation, effectiveness and competitiveness. Likewise, higher education is an instrument for developing and safeguarding culture and values. The European Court of Human Rights has reiterated in its judgement¹⁵ that higher education is “instrumental in the pursuit

of the Constitutional Court of the Republic of Latvia of 30 January 2004 in case No. 2003-20-01, para. 8.2. Available: http://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2003/09/2003-20-01_Spriedums_ENG.pdf#search=2003-20-01 [last viewed 23.03.2020]; Judgement of the Constitutional Court of the Republic of Latvia of 3 May 2011 in case No. 2010-54-03, para. 12.1.1. *Latvijas Vēstnesis*, No. 70 (4468), 06.05.2011. Judgement of the Constitutional Court of the Republic of Latvia of 9 October 2014 in case No. Nr.2013-19-03, para. 15.1. *Latvijas Vēstnesis*, No. 201 (5261), 10.10.2014.; Judgement of the Constitutional Court of the Republic of Latvia of 19 November 2009 in case No. 2009-09-03, para. 14. *Latvijas Vēstnesis*, No. 184 (4170), 24.11.2009.

⁹ *Latvijas Republikas Satversme* [The Constitution of the Republic of Latvia] (15.02.1922). Available: <http://saeima.lv/en/about-saeima/work-of-the-saeima/constitution/> [last viewed 23.03.2020]

¹⁰ Judgement of the Constitutional Court of the Republic of Latvia of 6 October 2016 in case No. 2016-24-03, para. 11. *Latvijas Vēstnesis*, No. 201, 10.10.2017.

¹¹ *Latvijas Republikas Satversme* [The Constitution of the Republic of Latvia] (15.02.1922). Available: <http://saeima.lv/en/about-saeima/work-of-the-saeima/constitution/> [last viewed 23.03.2020]

¹² Pursuant to Section 3 (1) of the Law on Higher Education Institutions, higher education institutions are higher education and science institutions, in which academic and vocational study programmes are implemented, as well as which are engaged in science, research and artistic creation. A university is a higher education institution, which complies with specific criteria included in Section 3 (3) of the Law on Higher Education Institutions. *Augstskolu likums* [Law on Higher Education Institutions]. (02.11.1995). Available: <https://likumi.lv/doc.php?id=37967> [last viewed 24.03.2020].

¹³ *Hrubos, I.* The Changing Role of Universities in Our Society. *Society and Economy*, Vol. 33, No. 2, pp. 347–360; Available: <https://www.jstor.org/stable/41472162> [last viewed 23.03.2020].

¹⁴ See more in *Raulea, A. S., Oprean C., Titu, M. A.* The Role of Universities in the Knowledge based Society. *International conference KNOWLEDGE-BASED ORGANIZATION*, Vol. 22, issue 1, 2016, p. 229.

¹⁵ Judgement of 10 November 2005 of the European Court of Human Rights in case *Leyla Şahin v. Turkey*, No. 44774/98, para. 136. Available: <http://hudoc.echr.coe.int/eng?i=001-70956> [last viewed 23.03.2020].

and advancement of knowledge, constitutes an exceptionally rich cultural and scientific asset for both individuals and society.”¹⁶

If higher education is an integral part of society and, thus, also of the state, it cannot be separated from the strategic national aim – to be a sustainable state. Firstly, higher education, by reaching its aims and objectives, helps in reaching the aim of a sustainable state. Secondly, since higher education exists to meet the needs of society and it cannot be separated from the strategic national aim of being a sustainable state, and thus the higher education itself should also be sustainable. I.e., in contemporary society sustainable higher education can be discussed, covering three major blocks of issues: institutionality, relatedness to content and final outcome.

In the institutional perspective, it would be correct to speak, first and foremost, about a sustainable institution of higher education. One source explains that a sustainable institution of higher education, “as a whole or as a part, addresses, involves and promotes, on a regional or a global level, the minimization of negative environmental, economic, societal, and health effects generated in the use of their resources in order to fulfil its functions of teaching, research, outreach and partnership, and stewardship in ways to help society make the transition to sustainable life-styles.”¹⁷ There is an opinion that a sustainable university can be defined as “a university that, apart from seeking academic excellence, tries to embed human values into the fabric of people’s lives; a university that promotes and implements sustainability practices in teaching, research, community outreach, waste and energy management, and land use and planning through a continuous sustainability commitment and monitoring.”¹⁸ Another source surveys several heads of institutions of higher education, and each of them provides their view on the understanding of what a sustainable institution of higher education is.¹⁹ Admittedly, none of these views could be seen as wrong. In compiling these views, researcher S. Sterling has concluded that such principles or values as, for example, multidisciplinary, critical thinking, collective responsibility, welfare, commitment, long-term orientation, high level of competences, systemic approach, changing emphasis on education appeared in all these views.²⁰ This means that each institution is not prohibited from defining and determining, advancing its own vision of the institution’s sustainable development, respecting both the aim of the respective institution itself and the content of sustainability (as a concept).

¹⁶ Convention on the Recognition of Qualifications Concerning Higher Education in the European Region. Available: <https://likumi.lv/ta/id/24653-par-eiropas-regiona-konvenciju-par-to-kvalifikaciju-atzisanu-kas-saistitas-ar-augstako-izglitiba> [last viewed 24.03.2020].

¹⁷ Velazquez, L., Munguia, N., Platt, A., Taddei, J. Sustainable university: what can be the matter? *Journal of Cleaner Production*, Vol. 14, issues 9–11, 2006, p. 812. Available: <https://doi.org/10.1016/j.jclepro.2005.12.008> [last viewed 24.03.2020].

¹⁸ Nejati, Most., Nejati, Meh. Assessment of sustainable university factors from the perspective of university students. *Journal of Cleaner Production*, Vol. 48, 2013, p. 107. Available: <https://doi.org/10.1016/j.jclepro.2012.09.006> [last viewed 23.03.2020].

¹⁹ In greater detail, see *The Sustainable University: Progress and Prospects*. Sterling, S. et al. (eds.). Routledge: 2013, pp. 24–27. Available: ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/lulv/detail.action?docID=1125266> ProQuest Ebook Central, Available: <https://ebookcentral.proquest.com/lib/lulv/detail.action?docID=1125266> [last viewed 23.03.2020].

²⁰ Sterling, S. et al. (eds.) *The Sustainable University: Progress and Prospects*. Routledge: 2013, p. 27. Available: ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/lulv/detail.action?docID=1125266> [last viewed 23.03.2020].

The ideal or the aim of a sustainable university is usually included in the strategies, policy documents of an institution of higher education. For example, Harvard University²¹, Yale University²² have developed special Sustainability Plan. Yale University defines itself as a university where “sustainability is seamlessly integrated into the scholarship and operations of the university, contributing to its social, environmental, and financial excellence and positioning Yale as a local and global leader”.²³ One study notes that universities ranking the highest in university ratings (TOP 10) have created in their management structures sustainability councils, groups or committees, whereas those, which are not among the TOP 10 universities, have established at least sustainability bureaus or advisory committees.²⁴

Examination of the policy documents of major Latvian universities shows that the University of Latvia and the Riga Technical University see the university's contribution as one of the instruments that could help in reaching the common aim of society – becoming a sustainable state.²⁵ Thus, in these two largest universities, the strategies do not discuss a sustainable university *per se*. The aim of a sustainable university is very precisely and clearly defined at the Riga Stradiņš University (hereafter also RSU), which singles it out among major universities of Latvia. RSU has defined the sustainable development aims for the university itself.²⁶ The author has to admit that this line of thinking is very progressive and commendable in the context of sustainable higher education.

Content-wise, sustainable higher education means that all the activities that an institution of higher education engages in must be sustainable, it must offer education on sustainable development and education, in general, must be dedicated to sustainable development.²⁷ Sustainability of studies can be viewed both vertically and horizontally. The vertical perspective means that specific sustainability courses are included in programmes, whereas the horizontal perspective – that sustainability matters are explored in the existing study courses as one of the issues.²⁸ Here it must be noted that Latvia, by choosing to include imperatively the issues of environment protection in the content of study programmes, has demonstrated, in the context of sustainability, a quite advanced

²¹ Harvard University Sustainability Plan. Available: https://issuu.com/greenharvard/docs/harvard_sustainability_plan-web [last viewed 20.03.2020].

²² Yale Sustainability Plan. Available: <https://yale.app.box.com/s/xagi53f5qvpklkv31zdebe8rilgt3b6x> [last viewed 20.03.2020].

²³ Yale Sustainability Plan. Available: <https://yale.app.box.com/s/xagi53f5qvpklkv31zdebe8rilgt3b6x> [last viewed 20.03.2020].

²⁴ Salvioni, D. M., Franzoni, S., Cassano, R. Sustainability in the Higher Education System: An Opportunity to Improve Quality and Image. *Sustainability*, Vol. 9, No. 6, 2017, p. 15; Available: <https://doi.org/10.3390/su9060914> [last viewed 20.03.2020].

²⁵ See, for example, Development Strategy 2015–2020 (University of Latvia). Available: https://www.lu.lv/fileadmin/user_upload/LU.LV/www.lu.lv/Dokumenti/Dokumenti_EN/1/Summary_UL_strategy_EN_250517.pdf [last viewed 20.03.2020], and Strategy (Riga Technical University). Available: https://www.rtu.lv/writable/public_files/RTU_rtu_strategija2014.2020._g..pdf [last viewed 20.03.2020].

²⁶ Ilgtspējīgas attīstības mērķi [Sustainable development goals]. Available: <https://www.rsu.lv/ilgtspējīgas-attīstības-merki> [last viewed 19.03.2020].

²⁷ Sammalisto, K., Sundstrom, A., Holm, T. Implementation of sustainability in universities as perceived by faculty and staff – a model from a Swedish university. *Journal of Cleaner Production*, Vol. 106, No. 1, 2015, p. 45. Available: <http://dx.doi.org/10.1016/j.jclepro.2014.10.015> [last viewed 19.03.2020].

²⁸ Ceulemans, K., De Prins, M. Teacher's manual and method for SD integration in curricula. *Journal of Cleaner Production*, Vol. 18, issue 7, 2010, p. 645.

approach. Section 42 (1) of the Environmental Protection Law defines a general task for those delivering education on different levels to include in the mandatory content of a study subject or a course standard issues pertaining to environmental education and education for sustainable development.²⁹ Further on, the third part of the same Section defines an imperative obligation to include a separate course on sustainable development in the teacher training study programmes of all higher education establishments and colleges. Section 42 (2), in turn, defines the obligation to include in the mandatory part of all study programmes of higher educational establishments and colleges a course on environmental protection. Although the need to include a course on environmental protection in study programmes of higher education is understandable, taking into account the environmental challenges that the contemporary society faces, in the context of sustainability, environmental protection is only one of the issues. In the author's opinion, students of higher educational establishments would contribute more to the scope of their knowledge by studying matters of sustainability in the broader understanding of this concept.

In Europe, starting with the re-structuring of the University of Berlin at the beginning of the 19th century, scientific work has become an integral part of universities alongside studies.³⁰ If sustainability is the strategic national aim, then sustainable research should, likewise, be one of the priorities. This means that research funding should be envisaged in the aspects of developing a sustainable society and state. Moreover, as noted above, the assumption that a sustainable society (state) is formed only by environmental and nature protection is erroneous. Pursuant to para. 3 of Section 13 (2) and Section 34 (4) of the Scientific Activities Law, the Republic of Latvia Cabinet of Ministers has approved the priority directions in research³¹, which, in general, encompass a very extensive range of issues and, undeniably, these are largely directed towards the development of a sustainable society and state.

Institutions of higher education foster the development of students and graduates – future employees, which, accordingly, will later shape a sustainable society and state. Education forms accomplished and knowledgeable members of society. A sustainable higher education must raise a graduate, who would be able to be critical, focus on higher ideals of reasoning and skills, be capable to think responsibly, etc.³² A sustainable world cannot exist without a society

²⁹ Vides aizsardzības likums [Environmental Protection Law] (02.11.2006). Available: <https://likumi.lv/ta/en/en/id/147917-environmental-protection-law> [last viewed 19.03.2020].

³⁰ *Altbach, P. G.* The Past, Present, and Future of the Research University. In: *Road to Academic Excellence: The Making of World-Class Research Universities*, *Altbach, P. G., Salmi, J.* (eds.). World Bank Publications: 2011, pp. 31–32.

³¹ The priority directions in research are: 1. Technologies, materials and systems engineering for increased added value products and processes, and cybersecurity. 2. Strengthening the security of energy supply, development of the energy sector, energy efficiency. 3. Climate change, nature protection and environment. 4. Research and sustainable use of local natural resources for the development of a knowledge-based bioeconomy. 5. Latvia's statehood, language and values, culture and art. 6. Public health. 7. Culture of knowledge and innovations for economic sustainability. 8. Demographics, sports, open and inclusive society, and social resilience. 9. State and public safety, and defence. Par prioritārajiem virzieniem zinātnē 2018–2021 [On the priority directions in science 2018–2021] (13.12.2017). Available: <https://likumi.lv/ta/id/295821-par-prioritarajiem-virzieniem-zinatne-2018-2021-gada> [last viewed 24.03.2020].

³² *Wals, A. E. J., Jickling, B.* "Sustainability" in higher education: From doublethink and newspeak to critical thinking and meaningful learning. *International Journal of Sustainability in Higher Education*, Vol. 3, issue 3, 2002, p. 228.

shaped by, *inter alia*, higher education. No sustainable state will ever be able to exist without society's participation.³³ The better educated society is, the more it becomes involved in the process of democracy and, accordingly, also understands the importance of sustainability. Modern systems of higher education must prepare a graduate, who can think critically and integrate social, environmental and economic aspects in decision making, thus attaining the aim of sustainability. Undeniably, this is a long-term work – to attain and integrate the ideas of sustainability into the daily life of university graduates and society. However, if every institution of higher education understands and is aware of its responsibility, importance and contribution to society and the state, it would not easily deviate from reaching the common national aims, which include a sustainable state.

2. Constitutional Court and Higher Education: Finding Sustainable Normative Regulation on Some Issues Within Higher Education System

Sustainable legal regulation on higher educational establishments also is one of the elements or pre-requisites of sustainable higher education. It is the legislator's obligation and responsibility to create a sustainable legal framework for higher education. Sustainable legal regulation is such that complies with the norms, principles and values of the *Satversme* and in the process of adoption of which the norms in principles of the *Satversme* have been abided by, *inter alia*, the principle of good legislation, derived from the state governed by the rule of law.³⁴ The outcome of sustainable legislation must be well-considered, stable, it may not be hasty.³⁵ Hasty, ill-considered and constantly amended laws do not create and develop society's trust in the public power. The legislator, however, should strive for constantly advancing persons' trust in the state and law, as well as increasing understanding of the democratic process. This is an element of the principle of the state governed by the rule of law – to ensure that the state has stable laws that define the life of people and society.³⁶ This aspect is essential with respect to the important element of society – higher education. Laws, in the adoption of which substantial and procedural infringements have been made, cannot foster and ensure a sustainable national development. Such laws, *inter alia*, may also hinder sustainable development of institutions of higher education.

Systemic character is one of the quality criteria for normative acts. In general, normative acts should form a comprehensible and interconnected system. President E. Levits, addressing the Constitutional Court at the solemn hearing of

³³ Wals, A. E. J., Jickling, B. "Sustainability" in higher education: From doublethink and newspeak to critical thinking and meaningful learning. *International Journal of Sustainability in Higher Education*, Vol. 3, issue 3, 2002, p. 225.

³⁴ Judgement of the Constitutional Court of the Republic of Latvia of 6 March 2019 in case No. 2018-11-01, para. 18.1. *Latvijas Vēstnesis*, 48 (6387), 08.03.2019; see about principle of good legislation in Latvia in Pleps, J. *Satversmes tiesa un labas likumdošanas princips: piezīmes par spriedumu lietā Nr. 2018-11-01* [The Constitutional Court and the principle of good legislation: remarks on the judgment in the case No. 2018-11-01]. *Jurista vārds*, No. 12 (1070), 2019. Available: [HTTPS://JURISTAVARDS.LV/DOC/274411-SATVERSMES-TIESA-UN-LABAS-LIKUMDOSANAS-PRINCIPS-PIEZIMES-PAR-SPRIEDUMU-LIETA-NR2018-11-01/](https://juristavards.lv/doc/274411-satversmes-tiesa-un-labas-likumdosanas-principis-piezimes-par-spriedumu-lieta-nr-2018-11-01/) [last viewed 25.03.2020].

³⁵ See, for example, Judgement of the Constitutional Court of the Republic of Latvia of 18 April 2019 in case No. 2018-16-03, para. 15.3. *Latvijas Vēstnesis*, No. 80 (6419), 23.04.2019.

³⁶ *Lautenbach, G. The Concept of the Rule of Law and the European Court of Human Rights*. Oxford: Oxford University Press, 2013, p. 21.

the Court on 10 January 2020, noted that the rule of law had at least 4 enemies: legal nihilism, formal application of law, circumvention of law, and abuse of law.³⁷ Any legal system is undermined by normative acts that include requirements which, for a reasonable person applying the legal norms, are incomprehensible and unjustified, and the ensuing necessity to obey this normative regulation. Regretfully, institutions of higher education, respecting the principle of the rule of law, are compelled to abide by, at times, absurd requirements and be “creative” in meeting these requirements. For example, to organise an open competition, announce election to a position, the holder of which is already known. This situation arises for the institutions of higher education as they become involved in post-doctorate project³⁸, in which, in accordance with the norms of the Scientific Activities Law, legal employment relationship had to be established via open competition with the winner of the post-doctoral competition – a particular person.³⁹ To put it differently, higher educational establishments, abiding

³⁷ Valsts prezidenta Egila Levita runa Satversmes tiesas svinīgajā sēdē [Speech by President of Latvia Egils Levits at the solemn sitting of the Constitutional Court]. Available: <http://www.satv.tiesa.gov.lv/articles/valsts-prezidenta-egila-levita-runa-satversmes-tiesas-jauna-gada-atklanasas-svinigaja-sede/> [last viewed 25.03.2020].

³⁸ On 19 January 2016, the Cabinet Regulation No. 50 was adopted – Regulations Regarding the Implementation of Activity 1.1.1.2 “Post-doctoral Research Aid” of the Specific Objective 1.1.1 “To Increase the Research and Innovative Capacity of Scientific Institutions of Latvia and the Ability to Attract External Financing, Investing in Human Resources and Infrastructure” of the Operational Programme “Growth and Employment” (hereafter – Cabinet Regulation No. 50), which, *inter alia*, envisages the possibility also for the post-doctoral researchers to implement their scientific ambitions. Pursuant to para. 20 of Cabinet Regulation No. 50, a research application could be submitted, among others, by a research institution, which establishes legal employment relationship with a post-doctoral researcher and ensures access to the infrastructure and human resources for carrying out the research needed in the scope of the research application. In practice, submitting an application for the competition meant cooperation between the institution and a concrete post-doctoral researcher. If the submitted research application was supported [to put it differently – won in the competition], then, in the absence of such, the legal labour relationship had to be established between the concrete post-doctoral researcher and the research institution. It is important to underscore, that the research institution, which submitted the application, was not a decisive factor, instead, the content and the relevance of the research application were important, as well as the achievements of the concrete post-doctoral researcher, since the CV of the particular post-doctoral researcher was an integral part of the research application [see para. 23 of Cabinet Regulation No. 50]. Thus, the qualitative and quantitative research indicators of the concrete post-doctoral researcher were decisive in success of the application. Logically, the research institution should conclude an employment contract with a concrete natural person – a concrete post-doctoral researcher. However, pursuant to the Scientific Activities Law (Section 26), legal employment relationship could be established only by organising an open competition. See Darbības programmas “Izaugsme un nodarbinātība” 1.1.1. specifiskā atbalsta mērķa “Palielināt Latvijas zinātnisko institūciju pētniecisko un inovatīvo kapacitāti un spēju piesaistīt ārējo finansējumu, ieguldot cilvēkresursos un infrastruktūrā” 1.1.1.2. pasākuma “Pēcdoktorantūras pētniecības atbalsts” īstenošanas noteikumi [Operational Programme “Growth and Employment” 1.1.1. of the specific support objective “To increase the research and innovation capacity of Latvian scientific institutions and the ability to attract external funding by investing in human resources and infrastructure” 1.1.1.2. Implementing rules for the measure “Support for post-doctoral research”] (19.01.2016). Available: <https://likumi.lv/ta/id/279803-darbibas-programmas-izaugsme-un-nodarbinatiba-1-1-1-specifiska-atbalsta-merka-palinelinat-latvijas-zinatnisko-instituciju> [last viewed 25.03.2020].

³⁹ Pursuant to Section 26 of the Scientific Activities Law, scientific institutions (also higher education institutions) have three types of academic positions: 1) senior researcher, which can be occupied by a person with a doctoral degree in science; 2) researcher – may be a person with doctoral or master’s degree; 3) research assistant. Persons are elected to these academic positions for the term of six years in an open competition, which must be announced at least a month before by publishing

by the requirements of legal norms, “staged” the announcement of an open competition for a particular post-doctoral student, which, obviously, does not comply with the meaning and essence of an open competition.

Functioning of the Latvian institutions of higher education is regulated by the Law on Higher Education Institutions of 1 November 1995, which has been amended 34 times.⁴⁰ However, 2020 has brought new initiatives with respect to higher education. At the Cabinet’s sitting of 18 February 2020, “Conceptual Report on Changing the Internal Governance Model of Higher Education Institutions”⁴¹ (hereafter – the Conceptual Report) was supported. Clearly, the Conceptual Report is only the initial step on the path or on the probable path towards changes. It will be possible to discuss more precise changes only after the political ideas are included in legal norms, at least – in a draft law. However, it needs to be highlighted that the title of the Conceptual Report does not reflect in the least the envisaged changes in the higher education in Latvia. Content-wise, alongside a new model of governance, an entirely new typology of institutions of higher education, modification of the whole governance of higher education and also changes to the model of the academic staff members are envisaged.

Although the Conceptual Report is being criticised, the higher education policymakers will have to seek a compromise and the best solutions for a system, which might be called conservative but not such that would be unable to look at itself critically and accept the best solutions aimed at the general development of higher educational establishments. The greatest challenge for education policymakers will be the ability to develop such normative regulation that complies with the meaningful understanding of a sustainable law.

2.1. Constitutional Court and Its Impact on Higher Education

The best possible legal solution is always expected from the legislator – such that is both lawful and fair. If this aim is not reached, the constitutional court, the guardian of the rule of law, can give its contribution. In Latvia, it has been entrusted both with the safeguarding of the *Satversme* and of ensuring the constitutional justice.⁴² Undeniably, the Constitutional Court has played an important role in developing a sustainable legal regulation. First of all, the Constitutional Court has been the one to speak about sustainable legal regulation and the criteria that constitute it (see above). Secondly, the Constitutional Court’s judgement, which has *erga omnes* force, can be used to develop the so-called future legal relationships. In other words, the ideas expressed in the Constitutional Court’s judgements must be kept in mind in developing new legal regulation. The *Saeima*’s obligation is to choose the most appropriate solution that would ensure the compliance of legal regulation with the *Satversme* and, in fulfilling this obligation, the *Saeima*, in accordance with

an announcement in the official journal *Latvijas Vēstnesis*. Zinātniskās darbības likums [Scientific Activities Law] (14.04.2005). Available: <https://likumi.lv/ta/id/107337-zinatniskas-darbibas-likums> [last viewed 24.03.2020].

⁴⁰ Augstskolu likums [Law on Higher Education Institutions] (02.11.1995). Available: <https://likumi.lv/doc.php?id=37967> [last viewed 24.03.2020].

⁴¹ Konceptuālais ziņojums “Par augstskolu iekšējās pārvaldības modeļa maiņu” [Conceptual Report on Changing the Internal Governance Model of Higher Education Institutions]. Available: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40483658&mode=mk&date=2020-02-18> [last viewed 24.03.2020].

⁴² Judgment of the Constitutional Court of the Republic of Latvia of January 18, 2010 in case No. 2009-11-01, para. 5, http://www.satv.tiesa.gov.lv/upload/judg_2009_11.htm [last viewed 30.03.2020].

the principle of good legislation, must take into account the findings expressed in the Constitutional Court's judgements.⁴³ Thirdly, the Constitutional Court has had and continues to have a direct significance in determining the normative regulation that applies to higher educational establishments. This is understood as rulings by the Constitutional Court, which have *expressis verbis* dealt with issues important for (in this instance) state⁴⁴ institutions of higher education, also – influencing their lives in the direct meaning of it.

One of the first cases, in which the Constitutional Court reviewed legal regulation, which directly applied to higher educational establishments, pertained to the constitutionality of the age limit set for academic and research staff.⁴⁵ In “Scientists’ age limit” case, the Constitutional Court found that not the age, which in the contested legal norms – the first sentence of Section 27 (4) and Section 28 (2) of the law “On Institutions of Higher Education”, as well as Section 29 (5) of the Scientific Activities Law, had been set as 65 years, but rather a person’s abilities and qualification should be the decisive criterion in applying for the respective job at a higher educational institution.

When the contested legal norms, which restricted the fundamental rights enshrined in Article 106 of the *Satversme*, due to age, were recognised as being void *ex nunc*, the so-called age limit for academic and research staff also disappeared. In practice, this means that no age limits exist for taking an academic or scientific position at the institutions of higher education and science. It would not be correct to assert that only because no age limits exist in Latvia for taking an academic or scientific position, we can identify a rather concerning situation in terms of the renewal of the academic staff. It was established in 2017 that Latvia had a significantly lower indicator regarding the share of academic staff below the age of 50 years (Latvia – 51.4 %, EU average – 63.8 %) and accordingly, the highest indicator among all EU Member States regarding staff members above the age of 65 (Latvia – 15.8 %, EU average – 4.5 %), and a low number of staff members below the age of 35 (Latvia – 16.5 %, EU average – 23.5 %).⁴⁶ It must be also taken into account that remuneration in state-financed higher educational establishments is not attractive for specialists who are highly appreciated in the labour market and who might have the ambitions to join

⁴³ Judgement of the Constitutional Court of the Republic of Latvia of 12 April 2018 in case No. 2017-17-01, para. 21.3. *Latvijas Vēstnesis*, No. 74, 13.04.2018.

⁴⁴ As regards private institutions of higher education, a case has been initiated at the Constitutional Court regarding the compliance with the *Satversme* of the Law on Higher Education Institutions, which established the obligation to implement study programmes in the official language also to private institutions of higher education. Par lietas ierosināšanu: Satversmes tiesas 1. Kolēģijas 2019. gada 18. jūlija lēmums [Decision of the Constitutional Court Panel No. 1 on July 18, 2019 to initiate a case]. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/07/2019-12-01_PR_par_ierosinasanu.pdf#search= [last viewed 24.03.2020].

⁴⁵ Judgement of the Constitutional Court of the Republic of Latvia of 20 May 2003 in case No. 2002-21-01. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2002/12/2002-21-01_Spriedums_ENG.pdf#search=2002-21-01 [last viewed 24.03.2020].

⁴⁶ Sākotnējais novērtējums “Augstākās izglītības institūciju akadēmiskā personāla stiprināšana stratēģiskās specializācijas jomās” Eiropas Savienības struktūrfondi 2014.–2020. gadam 8.2.2. SAM “Stiprināt augstākās izglītības institūciju akadēmisko personālu stratēģiskās specializācijas jomās” [Preliminary Assessment “Strengthening of Academic Staff of Higher Education Institutions in Strategic Specialization Areas” European Union Structural Funds 2014-2020 8.2.2. SO “Strengthening Academic Staff in Strategic Specialization in Higher Education Institutions”]. Available: https://www.izm.gov.lv/images/ES_fondi/Sakotnejie_novertejumi/Sakotnejais_novertejums_822sam_final.pdf [last viewed 24.03.2020].

the academic environment. However, it is clear that the renewal of academic staff is an essential factor for the existence of qualitative, competitive and sustainable higher education.

The Constitutional Court returned to the issue of age limit for academic staff in another case in 2019, noting that “since the Constitutional Court’s judgement of 20 May 2003 in case No. 2002-21-01 was pronounced, circumstances have changed, which could be the grounds for the legislator to review the regulation regarding the setting of retirement age for academic staff.”⁴⁷ I.e., Latvia has a new generation of potential scientists, the number of persons with the doctoral degree has increased, compared to 2003. For example, in 2011, there were 5916 persons with the doctoral degree in Latvia, in 2016 – 7935, whereas in 2017 there were already 8045 holders of the doctoral degree.⁴⁸ Every year, several hundred persons obtain the doctoral degree. Thus, in the academic year of 2011/2012, 286 persons obtained the doctoral degree, in 2012/2013 – 313, but in the academic year of 2015/2016 – 256, the number was lower in 2017/2018 – 146 persons.⁴⁹ Understandably, each institution of higher education must elaborate a well-considered personnel development strategy to ensure continuous development of the study and research process. The practice of other European universities shows that age limits have been set, and these are within 60–67 years.⁵⁰ However, the legislator, in considering the age limits for academic and research staff, respecting, *inter alia*, the norms of the EU Directive 2000/78/EC⁵¹, should be able to find balance and establish respectful relationships with persons, who have dedicated the major part of their lives to a higher educational establishment. Attaining of a certain age does not prohibit a person from sharing experience, tutoring, engaging in research work and inspiring the successors in their work.

Clearly, both education and science are very expensive. Financing or the lack of it is one of the major problems in the space of Latvian higher education. Therefore, the issue [in the near future] to be solved at the Constitutional Court regarding the financing of higher educational establishments could be important. In a case initiated on the basis of an application submitted by the subjects of abstract constitutional review, the Constitutional Court will have to examine the compliance with Article 1 and Article 66 of the *Satversme* of the programmes 03.00.00 “Higher Education”, 02.03.00 “Higher Medical Education”, 20.00.00 “Culture Education” and sub-programme 22.02.00 “Higher Education” of the state budget for 2019, insofar as these do not ensure the annual increase of the state financing for studies in the state-established institutions of higher education, as provided for in Section 78 (7) of the law “On Institutions of Higher Education”, in the amount of at least 0.25 per cent of the gross domestic

⁴⁷ Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2019 in case No. 2018-15-01. *Latvijas Vēstnesis*, 116, 10.06.2019, para. 17.1.

⁴⁸ Zinātne skaitļos [Science in figures]. Available: https://www.csb.gov.lv/sites/default/files/publication/2018-06/Nr%2028%20Zinatne%20skaitlos%20%2818_00%29%20LV.pdf [last viewed 24.03.2020].

⁴⁹ Pārskats par Latvijas augstāko izglītību 2017.gadā [Overview of Latvian higher education in 2017]. Available: https://www.izm.gov.lv/images/statistika/augst_izgl/AII_2017_parskats.pdf [last viewed 24.03.2020].

⁵⁰ Weiss, G. Age Bar Forces Europe’s Senior Researchers to Head West. *Science*, Vol. 302, No. 5652, 2003, p. 1885.

⁵¹ Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OV, L 303, 02.12.2000, pp. 0016–0022. Available: <https://eur-lex.europa.eu/eli/dir/2000/78/oj/?locale=LV>.

product.⁵² Thus, the Constitutional Court will have to decide on the norms of the law on [2019] state budget [the norms of the state budget law], which, in general, have not been often contested before the Constitutional Court: it ruled once on the compliance of the norms of the state budget law with the norms of the *Satversme*, on the basis of an application by members of the Parliament⁵³, and once – on the basis of constitutional complaints submitted by legal persons⁵⁴. However, this case, definitely, will be important not only for the state-financed higher educational establishments hoping to receive more generous funding. This case will be interesting also from the perspective of the legal proceedings before the Constitutional Court and from the aspect of the “dialogue” maintained between the Court and the legislator. In addition to having to rule not only on the constitutionality of legal regulation no longer in force at the time of examining the case, the Constitutional Court also will have to state its opinion on how and whether the legislator abides by the commitments assumed in another law. Section 78 (7) of the Law on Higher Education Institutions stipulates that the Cabinet, upon submitting to the *Saeima* the annual draft state budget law, envisages therein an annual increase in the financing for studies in the state-founded higher educational establishments in the amount of at least 0.25 per cent of the gross domestic product, until the financing granted by the state for studies in the state-founded higher educational establishments reaches at least two per cent of the gross domestic product. From the moment when this norm was adopted and entered into force in 2011⁵⁵, the financing allocated for higher education has not increased in the way the legislator had intended. For example, in 2019, the financing increased only by approximately 0.007 % of the gross domestic product. The legislator is not prohibited *per se* from including in another normative act a promise to envisage appropriate financing in the state budget law. Keeping the promise in such cases is most important. The President has called the laws, which are not implemented in life, “the laws of empty promises”, which have no place in a state governed by the rule of law. “The laws of empty promises” do not increase trust in the public power. The principle of the rule of law requires, first of all, the legislator itself, who has adopted the law, to comply with its requirements.⁵⁶ An institution, which ignores its own decisions, cannot enjoy trust. Hence, most probably, the Constitutional Court will provide, alongside the issue of utmost importance for state higher educational establishments, also considerations on many relevant issues. Ultimately, the Latvian politicians should

⁵² Par lietas ierosināšanu: Satversmes tiesas 4. Kolēģijas 2019. gada 25. novembra lēmums [Decision of the Constitutional Court Panel No 4 on 25 November, 2019 to initiate a case]. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2019/11/2019-29-01_Lemums_ierosinasana.pdf#search= [last viewed 24.03.2020].

⁵³ Judgement of the Constitutional Court of the Republic of Latvia of 3 February, 2012 in case No. 2011-11-01. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2011/05/2011-11-01_Spriedums_ENG.pdf#search=2011-11-01 [last viewed 24.03.2020].

⁵⁴ Par tiesvedības izbeigšanu lietā Nr. 2009-42-0103: Satversmes tiesas 2010. gada 17. februāra lēmums [Decision of the Constitutional Court to terminate a procedure on 17 February 2010 in case No. 2009-42-0103]. *Latvijas Vēstnesis*, 29, 19.02.2010.

⁵⁵ Grozījumi Augstskolu likumā [Amendments to the Law on Higher Education Institutions] (14.07.2011). Available: <https://www.vestnesis.lv/ta/id/233707-grozijumi-augstskolu-likuma> [last viewed 06.05.2020].

⁵⁶ Judgement of the Constitutional Court of the Republic of Latvia of October 1, 1999 in case No. 03-05(99), para. 1. Available: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/1999/06/03-0599_Spriedums_ENG.pdf#search=03-05\(99\)](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/1999/06/03-0599_Spriedums_ENG.pdf#search=03-05(99)) [last viewed 24.03.2020].

finally become aware that the national welfare directly depends on investments into education and science.⁵⁷

2.2. Terminated Employment Agreements with Professors: Judgement of the Constitutional Court and Its Implementation

Academic staff is the core of all institutions of higher education. Beyond fulfilling their direct duties in their own higher educational establishments, the faculty members perform additional functions in society: often they are opinion leaders, they are heard, quoted, they could be regarded as “group of cultural producers in modern society.”⁵⁸

Undeniably, one’s job and its stability are an important element in the life of each person. This aspect was brought to the foreground in case “Employment contracts of academic staff I”.⁵⁹ J. Kārklīš, the professor of the Faculty of Law of the University of Latvia, submitted a constitutional complaint, requesting the Constitutional Court to recognise with the incompatibility between the first sentence of Article 106 of the *Satversme* and the norms of the Law on Higher Education Institutions – Section 27 (5) and Section 30 (4), which envisaged concluding fixed-term (6 years) employment contracts with associate professors of institutions of higher education.⁶⁰ The Constitutional Court, broadening the limits of the claim⁶¹, in this particular case examined the constitutionality of several norms, judging on the compatibility of the *Satversme* and the conclusion of fixed-term employment contracts with the professoriate (associate professors and professors).

Examining the contested legal norms as a united regulation, the Court arrived at the conclusion that the norms, insofar as they did not ensure protection against the abuse of successive fixed-term employment contracts, were incompatible with the first sentence of Article 106 of the *Satversme*. It is significant that the contested norms have become legally void *ex nunc* – as of 10 June 2019. The Constitutional Court, being aware that with the legal norms becoming void *ex nunc*, the questions would arise regarding the establishment of legal relationships in the absence of legal regulation, and included in the judgement also the following finding – “in the case under review, the fundamental rights of those persons, with whom successive fixed-term employment contracts have been concluded for

⁵⁷ Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2019 in case No. 2018-15-01. *Latvijas Vēstnesis*, 116, 10.06.2019, para. 14.1.

⁵⁸ Macfarlane, B. *Intellectual Leadership in Higher Education: Renewing the Role of the University Professor*. Routledge, 2012, p. 4.

⁵⁹ In the case “Employment contracts of academic staff II”, issues related to the submitter of the constitutional complaint – J. Neimanis – were examined. In this case, the Court decided to terminate legal proceedings. See Par tiesvedības izbeigšanu lietā Nr. 2018-20-01: Satversmes tiesas 2019. gada 8. oktobra lēmums [Decision of the Constitutional Court to terminate a procedure on 8 October 2019 in case No. 2018-20-01]. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/09/2018-20-01_Lemums_izbeigsana.pdf#search=2018-15-01 [last viewed 24.03.2020].

⁶⁰ Par lietas ierosināšanu: Satversmes tiesas 1. Kolēģijas 2018. gada 3. augusta lēmums [Decision of the Constitutional Court Panel No. 1 on 3 August, 2018 to initiate a case]. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/08/2018-15-01_Lemums_ierosinasana.pdf#search=2018-15-01 [last viewed 24.03.2020].

⁶¹ The Constitutional Court reviewed not only the legal norms that were contested in the constitutional complaint but also Section 28 (2) of the Law on Higher Education Institutions that applied to professors. Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2019 in case No. 2018-15-01. *Latvijas Vēstnesis*, 116, 10.06.2019, para. 10.

performing the duties of an associate professor or a professor, until the moment when the legislator adopts legal regulation that complies with the *Satversme* and ensures protection against the risk of abuse of such contracts, must be protected”, therefore, an instruction was given “until new legal regulation is adopted, the right of the respective persons to maintain the existing employment should be examined by directly applying the first sentence of Article 106 of the *Satversme* and the findings included in this judgement.”⁶²

The Constitutional Court’s judgement should ensure legal stability, clarity and peace within the social reality.⁶³ However, after this judgement by the Constitutional Court entered into force, uncertainties rather increased in the higher educational establishments themselves. In real life, after the contested norms became void, the legal employment relationships with associate professors and professors, established for the term of 6 years, were terminated in institutions of higher education, leading to the question – how an institution of higher education should develop relationships with its employees within the framework of the *Satversme*, respecting the findings included in the judgement. Clearly, each institution of higher education, in view of the individual nature of legal employment relationships and the findings included in the Constitutional Court’s judgement, has resolved its cases. At the University of Latvia, for instance, this matter was resolved in the Senate, establishing a kind of transitional regulation until the new legal regulation is adopted by the *Saeima*.⁶⁴ An opinion about the Constitutional Court’s judgement of 7 June 2019 was provided by the Council of Higher Education.⁶⁵ However, what the institutions of higher education and several thousand employees of these institutions expected the most was the *Saeima*’s or the legislator’s response and interest in regulating this very important matter – legal employment relationships with the professoriate of higher educational establishments. Until now (May 2020), the legislator’s conduct has been rather passive – a draft law envisaging settling the legal relationships in accordance with the respective judgement by the Constitutional Court cannot be found on the *Saeima*’s register of draft laws. However, the issue is important due to several reasons.

It cannot be excluded that different approaches to regulating legal employment relationships may develop in different higher educational establishments. Moreover, it is clear in the context of sustainability that academic staff is one of the elements in the sustainability of higher education. Justice of the Constitutional Court I. Ziemele has noted in her separate opinion, analysing the importance of the professoriate in the state, that “the existence of strong professoriate in the state is one of the mandatory preconditions for sustainable

⁶² Judgement of the Constitutional Court of the Republic of Latvia of 7 June 2019 in case No. 2018-15-01. *Latvijas Vēstnesis*, 116, 10.06.2019, para. 21.1.

⁶³ Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2009 in case No. 2009-43-01, para. 35.1. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2009/07/2009-43-01_Spriedums_ENG.pdf#search=2009-43-01 [last viewed 24.03.2020].

⁶⁴ LU Senāta 23.12.2019. lēmums Nr. 53. Par profesoru un asociēto profesoru darba līgumiem. Nepublicēts, pieejams LU informatīvajā sistēmā [University of Latvia Senate 23.12.2019. Decision No. 53. On Employment contracts of professors and associate professors. Unpublished]. Available in UL information system.

⁶⁵ Par Satversmes tiesas 2019. gada 7. jūnija spriedumu [On the judgment of the Constitutional Court of June 7, 2019]. Available: http://www.aip.lv/files/Nr_53_AIP_vestule_par_ST_spriedumu.pdf [last viewed 26.03.2020].

national development”.⁶⁶ It is essential that this case *per se* demonstrates the dialogue between the Constitutional Court and the legislator – whether and how the legislator understands what should follow, what kind of response is required after the Constitutional Court’s judgement has entered into force. The thesis that the legislator may choose the best legal solution is to be respected: it can either adopt or not adopt the necessary legal norms. However, in this case, it is clear that regulating the legal employment relationships in institutions of higher education is an essential matter, requiring corresponding attention.

The author believes that the regulation on the legal employment relationships with academic staff should be developed in a way to attain the meaning and essence of a sustainable higher educational establishment, the aims and objectives of higher education, *inter alia*, respecting the aim of both the university and the state – achieving sustainability. The legislator must look at the establishment of this legal relationship in a complex or systemic way. First of all, it must be underscored that the academic staff of higher educational establishments does not consist solely of professors and associate professors.⁶⁷ It is possible that the amendments to the Law on Higher Education Institutions are delayed because the Conceptual Report offers a quite promising perspective on the development of academic staff. The author of this article quite hopefully views the overarching aim included in the Conceptual Report – that a new model of the career of academic staff should be implemented, based on the unity of academic and research work, envisaging one position, to which academic staff is elected, 40-hour work week and workload, comprising research, teaching, administrative and “third mission” duties.⁶⁸ Hopefully, this would also eliminate absurd of a kind, requesting to elect the same person in the same institution of higher education to two positions: to the position of academic staff in compliance with the Law on Higher Education Institutions, and the scientific position in accordance with the Scientific Activities Law. However, the delay in regulating the legal employment relationships with the professoriate in institutions of higher education does not give a good and endorsable signal in the context of sustainable development.

2.3. Expert of Latvian Science Council: National Particularity

Legal proceedings before the Constitutional Court may conclude in two ways: The Constitutional Court may deliver a judgement or adopt a decision on terminating legal proceedings. At the end of 2019, on 12 December, legal proceedings were terminated in case No. 2019-02-03 “On Compliance of Para. 3 of the Cabinet Regulation of 12 December 2017 No. 724 “Regulation on the Qualification Criteria of the Experts of the Latvian Council of Science,

⁶⁶ Satversmes tiesas tiesneses Inetas Ziemeles Atsevišķās domas lietā Nr. 2018-15-01 [Separate opinion of the Constitutional Court judge Ineta Ziemele in case No. 2018-15-01], para. 4. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/08/2018-15-01_Atseviskas_domas-1.pdf#search=2018-15-01 [last viewed 26.03.2020].

⁶⁷ Section 27 (1) of the Law on Higher Education Institutions provides that the academic staff of a higher education institutions consists of: 1) professors, associate professors; 2) docents, senior researchers; 3) lecturers, researchers; 4) assistants. Augstskolu likums [Law on Higher Education Institutions] (02.11.1995). Available: <https://likumi.lv/doc.php?id=37967> [last viewed 24.03.2020].

⁶⁸ Konceptuālais ziņojums “Par augstskolu iekšējās pārvaldības modeļa maiņu” [Conceptual Report on Changing the Internal Governance Model of Higher Education Institutions], p. 25. Available: <http://tap.mk.gov.lv/lv/mk/tap/?pid=40483658&mode=mk&date=2020-02-18> [last viewed 24.03.2020].

Establishing of Experts' Committees and Organising of the Work thereof” and the decision of 15 January 2018 by the Latvian Council of Science No. 19-1-1 “The Procedure for Granting the Rights of an Expert of the Latvian Council of Science” with Article 1 and Article 64 of the *Satversme* of the Republic of Latvia”.⁶⁹ The case had been initiated on the basis of an application by the Administrative District Court, pertaining to a dispute regarding granting the rights of an expert between a natural person and the Latvian Science Council, which, on the basis of the contested legal regulation had refused to grant the rights of an expert to this person. After the case was initiated, the Cabinet found that the contested legal norms had been issued *ultra vires*; therefore, by the Cabinet Regulation of 23 April 2019, No. 172 “Amendments to the Cabinet Regulation of 12 December 2017 No. 724 “Regulation on the Qualification Criteria of the Experts of the Latvian Council of Science, Establishing of Experts' Committees and Organising of the Work thereof””, para. 3 of Regulation No. 724 was deleted and, accordingly, also the Procedure of the Latvian Science Council became void. The legislator, the *Saeima*, on 13 June 2019, by adopting the law “Amendments to the Scientific Activities Law”, included in Section 8 the authorisation to the Cabinet to determine the qualification criteria of an expert of the Latvian Science Council in a branch of science, the procedure for assessing them and for granting the rights of a Latvian Science Council's expert.⁷⁰ In view of this authorisation, the Cabinet adopted such regulation – Regulation No. 320 “Procedure for Granting the Rights of the Latvian Science Council's Experts and for Establishing of Experts' Committees” (hereafter Regulation No. 320) on 9 July 2019.⁷¹ Thus, the set of criteria for granting the status of an expert, which is so important for the academic staff of institutions of higher education, can be found in Regulation No. 320.

From the perspective of the legal proceedings before the Constitutional Court, the Court's decision can be upheld, it, on the basis of para. 2 of Section 29 (1) of the Constitutional Court Law, adopted the decision on terminating legal proceedings because the contested legal norms had become void and the legal problem, presented in the application, had been eliminated.⁷² This solution complies with the Constitutional Court's case law.⁷³ In view of the fact that the legal proceedings had been initiated on the basis of a court's application, respecting the objective of the concrete review, the Court presented its considerations also as to why it was not necessary to recognise the contested legal

⁶⁹ Par tiesvedības izbeigšanu lietā Nr. 2019-02-03: Satversmes tiesas 2019. gada 12. decembra lēmums [Decision of the Constitutional Court to terminate a procedure on 12 December 2019 in case No. 2019-02-03]. *Latvijas Vēstnesis*, 252, 16.12.2019.

⁷⁰ Grozījumi Zinātniskās darbības likumā [Amendments to the Scientific Activities Law], (13.06.2019). Available: <https://www.vestnesis.lv/op/2019/120.1> [last viewed 06.05.2020].

⁷¹ Latvijas Zinātnes padomes ekspertu tiesību piešķiršanas un ekspertu komisiju izveides kārtība [Procedure for granting the rights of experts of the Latvian Council of Science and setting up expert commissions] (09.07.2019). Available: <https://likumi.lv/ta/id/308118-latvijas-zinatnes-padomes-ekspertu-tiesibu-pieskirsanas-un-ekspertu-komisiju-izveides-kartiba> [last viewed 25.03.2020].

⁷² Satversmes tiesas likums [Constitutional Court Law] (05.06.1996). Available: <http://www.satv.tiesa.gov.lv/en/2016/02/04/constitutional-court-law/> [last viewed 24.03.2020].

⁷³ Compare with Par tiesvedības izbeigšanu lietā Nr. 2015-23-01: Satversmes tiesas 2016. gada 12. septembra lēmums [Decision of the Constitutional Court to terminate a procedure on 12 September 2016 in case No. 2015-22-01]. *Latvijas Vēstnesis*, 178, 14.09.2016.

norms as being void from a past date.⁷⁴ The author, however, subjectively really wished to see the Constitutional Court's opinion on the merits of this case – the requirements set for the Latvian Science Council's (hereafter LSC) expert in social sciences, to be more precise, in the legal science.

Currently, pursuant to Regulation No. 320, the rights of LSC's expert in the legal science can be acquired by a person, who, in the last three years, has had either three anonymously reviewed scientific publications in a scientific journal or conference proceedings, indexed in the database *SCOPUS* or *Web of Science* or included in the database *ERIH+*, or two anonymously reviewed scientific publications in a scientific journal or publication of conference proceedings, which have been indexed in the database *SCOPUS* or *Web of Science* or included in the database *ERIH+* and a reviewed scientific monograph on one scientific topic or problem, and it comprised a bibliography. This means that the rights of LSC's expert in the legal science can be acquired only by a person, whose work has been published in editions, which, accordingly, have been indexed in any of the databases indicated. It's a paradox, yet, for example, a professor, who has written several monographs in Latvian, prepared commentaries on laws in Latvian, whose work will be quoted by courts, used by the legislator, students, cannot acquire the status of LSC's expert. It is noted in the annotation to the Cabinet Regulation No. 320 that “the concrete databases are the generally accepted practice globally for assessing the level of importance of scientific publications [...]”⁷⁵, nevertheless, this would require additional explanations. At the same time, it must be admitted that the science community of several East European countries has decided to support private entrepreneurs, who maintain the most famous databases. The opinion expressed by the Young Scientists' Association cannot be upheld, i.e., that “monographs are an important type of scientific literature but do not ensure the same quality as scientific articles, because they lack clear requirements regarding relevance and quality, which are set by *Web of Science* or *Scopus* databases [...]”⁷⁶ Surely, it is possible to set criteria also for monographs, the preparation of which *per se* may require more work than preparing an article. In other words, the issue is, whether only a person, who has the indicated publications, can be a Latvian expert of legal science but not an expert of legal science recognised by another international organisation.

In Latvia, the Latvian Science Council's expert is vested with a decisive and major significance. For example, scientists, who have the rights of LSC's expert,

⁷⁴ Par tiesvedības izbeigšanu lietā Nr. 2019-02-03: Satversmes tiesas 2019. gada 12. decembra lēmums [Decision of the Constitutional Court to terminate a procedure on 12 December 2019 in case No. 2019-02-03]. *Latvijas Vēstnesis*, 252, 16.12.2019, para. 16.

⁷⁵ Ministru kabineta noteikumu projekta “Latvijas Zinātnes padomes ekspertu tiesību piešķiršanas un ekspertu komisiju izveides kārtība” sākotnējās ietekmes novērtējuma ziņojums (anotācija) [Initial impact assessment report (annotation) of the Cabinet of Ministers draft regulations “Procedure for Granting Expert Rights of the Latvian Council of Science and Establishing Expert Commissions”]. Available: <http://tap.mk.gov.lv/lv/mk/tap/?dateFrom=2019-03-06&dateTo=2020-03-05&mk&text=ekspertu+ties%C4%ABbu+%&org=0&area=0&type=0> [last viewed 24.03.2020].

⁷⁶ Latvijas Jauno zinātnieku apvienības viedoklis par Latvijas Zinātnes padomes eksperta tiesību piešķiršanas kritērijiem [Opinion of the Latvian Young Scientists Association on the criteria for granting expert rights of the Latvian Council of Science]. Available: http://lja.lv/wp-content/uploads/2017/09/LJZA-viedoklis-par-LZP-eksperta-kriterijiem-20170913_v1.pdf [last viewed 24.03.2020].

may be included in the Promotional Council.⁷⁷ The status of the LSC's expert may be a selection criterion in research and other projects. To phrase it differently, the status of the LSC's expert can be highly significant not only in the work of the institution of higher education but also for the employment prospects of the persons themselves. It is noted in the annotation to Regulation No. 320, *inter alia*, that "the matter of the expert's rights is also the matter of the employment, remuneration and reputation of the academic staff of the higher educational establishment."⁷⁸

The status "the Latvian Science Council's expert" is a certain Latvian national particularity and, internationally, it is irrelevant, whether a person, who represents a Latvian branch of science, does or does not have this status. A researcher's international recognition can be ensured by publications in foreign languages and appreciation (usability) gained in the international scientific community. One can agree that this status in interconnection with the set requirements reveals the international recognisability of the particular person. Furthermore, undeniably, academic staff members must be able to publish their research in a foreign language so that the work could be indexed in the respective databases and that science should be open to the international community. This is not questioned. Unquestionably, in the 21st century, English has become the language of science.⁷⁹ However, the requirements analysed here mean that publications in journals, editions, which have not entered these databases, including articles, monographs in Latvian, in Latvia are perceived as being less significant. The Constitutional Court has repeatedly underscored that Latvian language is one of the values of the state.⁸⁰ Moreover, Latvian language has been recognised as the language of "the united discourse of a democratic society"⁸¹ in Latvia. Therefore, Latvian scholars of law are responsible for development of legal Latvian vocabulary by means of high-quality research. It is worth noting the position taken by the Lithuanian Constitutional Court, which has emphasised that legal regulation, pursuant to which the Lithuanian language is construed to mean that the scientific work published in this language is held to be inferior, second-rate work, could not be established, because, as a matter of principle, that

⁷⁷ Zinātniskā doktora grāda piešķiršanas (promocijas) kārtība un kritēriji [Procedures and Criteria for Awarding a Doctoral Degree]. (27.12. 2005), p. 5. Available: <https://likumi.lv/ta/id/124787-zinatniska-doktora-grada-pieskirsanas-promocijas-kartiba-un-kriteriji> [last viewed 24.03.2020].

⁷⁸ Ministru kabineta noteikumu projekta "Latvijas Zinātnes padomes ekspertu tiesību piešķiršanas un ekspertu komisiju izveides kārtība" sākotnējās ietekmes novērtējuma ziņojums (anotācija) [Initial impact assessment report (annotation) of the Cabinet of Ministers draft regulations "Procedure for Granting Expert Rights of the Latvian Council of Science and Establishing Expert Commissions"]. Available: <http://tap.mk.gov.lv/lv/mk/tap/?dateFrom=2019-03-06&dateTo=2020-03-05&mk&text=ekspertu+ties%C4%ABbu+%&org=0&area=0&type=0> [last viewed 24.03.2020].

⁷⁹ *Altbach, P. G.* The Past, Present, and Future of the Research University. In: Road to Academic Excellence: The Making of World-Class Research Universities, *Altbach, P. G., Salmi, J.* (eds.). World Bank Publications, 2011, p. 33.

⁸⁰ Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2001 in case No. 2001-04-0103, para. 3.2. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2001/06/2001-04-0103_Spridums_ENG.pdf#search=2001-04-0103 [last viewed 24.03.2020].

⁸¹ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 21.1. Available: http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valstsskol%C4%81s_ENG.pdf#search=2018-12-01 [last viewed 24.03.2020].

would mean that the Lithuanian language is an inferior or second-rate language.⁸² “That is incompatible with the constitutional status of Lithuanian as the official language.”⁸³ It is a paradox, but, examining the judgement by Latvian courts, the author has not observed references to works by Latvian scientists in foreign languages, which are assigned a higher value by Regulation No. 320. Quite to the contrary – the rulings included in the database of edited rulings show that the works by scholars of law, published in Latvian, are used in courts’ rulings.⁸⁴

Presumably, the Latvian legislator should look for the possibility to balance the openness of the legal science to the international community and the national or own needs, which will not always attract the interest of foreign scholars. Clearly, the science of law is “primarily national”.⁸⁵ Social sciences and humanities differ from other branches of science because they are usually led by the particular society and its national, cultural and political problems, and the aim of these branches of science is creating and transmitting shared values, safeguarding values, the cultural and national identity of society.⁸⁶ Hence, also research in these areas is published in the national language and, although the outcomes of this research are not that universal by nature, these studies “are significant specifically to the concrete national, cultural and political community.”⁸⁷ Likewise, it needs to be understood, whether the scientific value of work *per se* is higher if the article has been published in a journal, which is indexed in the respective database. Again, the finding must be upheld that the scientific value of a work should be assessed not only by considering fact that the publication has been indexed in an international database but “first of all, according to their novelty, original ideas, fundamentality, impact upon formation of new spheres and/or subject areas of scientific research, etc.”⁸⁸ In other words, the fact that a publication is not found in a particular database does not prove that it should be seen, automatically, as less valuable.

Therefore, although Regulation No. 320 discussed above allows differentiating between the branches of science, another approach should be considered in determining a scientist’s assessment within the space of Latvian science, respecting the special nature of a branch of science, including the science of law. It is absolutely right that “national science and natural sciences require a different approach. In natural sciences, to reach excellence, integration into the global science is needed, and there excellence can be assessed by ratings and

⁸² Ruling of the Constitutional Court of the Republic of Lithuania in case No. 18/06 on May 5, 2007, para 17. Available: <https://www.lrkt.lt/en/court-acts/search/170/ta1402/content> [last viewed 26.03.2020].

⁸³ Ibid.

⁸⁴ LR tiesu nolēmumi [Rulings of the Courts]. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [last viewed 26.03.2020].

⁸⁵ Valsts prezidenta Egila Levita uzruna Latvijas Universitātes Juridiskās fakultātes 100-gades pasākumā [Address by President of Latvia Egils Levits at the 100th anniversary of the University of Latvia, Faculty of Law]. Available: <https://www.president.lv/lv/jaunumi/zinas/valsts-prezidenta-egila-levita-uzruna-latvijas-universitates-juridiskas-fakultates-100-gades-pasakuma-25985> [last viewed 25.03.2020].

⁸⁶ Ruling of the Constitutional Court of the Republic of Lithuania in case No. 18/06 on May 5, 2007, para. 13. Available: <https://www.lrkt.lt/en/court-acts/search/170/ta1402/content> [last viewed 25.03.2020].

⁸⁷ Ibid.

⁸⁸ Ruling of the Constitutional Court of the Republic of Lithuania in case No. 18/06 on May 5, 2007, para. 16. Available: <https://www.lrkt.lt/en/court-acts/search/170/ta1402/content> [last viewed 25.03.2020].

publication points, but another perspective is required for the legal science”.⁸⁹ To reiterate: without denying the fact that the legal science should also be open to the international research community, because truly modern science of law is simultaneously of a national and cross-border nature.⁹⁰ However, the state itself may not regard a high quality and fundamental research in the official state language as being inferior and less valuable.

Summary

1. In view of the role and objectives of the institutions of higher education, they are an indispensable part of the national strategic aim – becoming a sustainable state.
2. Modern institutions of higher education not only participate in attaining the common (national) sustainability but also develop themselves as sustainable institutions, formulating this strategy in their policy documents.
3. Institutions of higher education must offer education on sustainable development, and be dedicated, in general, to sustainable development. Modern institutions of higher education must prepare a graduate who is able to think critically and integrate various aspects in decision making, to adopt decisions aimed at reaching sustainability.
4. Policymakers in the area of higher education, in the context of the possible reform of higher education, should seek compromises and the best solutions for the system that might be called conservative, but not such that would be unable to consider themselves critically and would accept the best proposals aimed at the development of higher educational institutions in general. The greatest challenge for education policymakers will be the ability to develop a legal regulation that complies with a meaningful understanding of a sustainable law.
5. The norms that set an age limit for taking academic and scientific positions in higher educational establishments became legally void by the Constitutional Court’s judgement; not solely because of these reasons, Latvia has faced a problem renewal of academic staff. The renewal of academic staff is an important factor for ensuring qualitative, competitive and sustainable higher education. Since the Constitutional Court’s judgement in 2003, the circumstances have changed, which could be the grounds for the legislator to review the policy with respect to setting the retirement age for academic staff. However, most importantly, the legislator should establish respectful relationships with persons, who have dedicated the major part of their lives to the higher educational establishment. Attainment of a certain age does not prohibit a person from sharing experience, tutoring, engaging in research, and inspiring the successors in one’s work.

⁸⁹ Valsts prezidenta Egila Levita uzruna Latvijas Universitātes Juridiskās fakultātes 100-gades pasākumā. Available: <https://www.president.lv/lv/jaunumi/zinas/valsts-prezidenta-egila-levita-uzruna-latvijas-universitates-juridiskas-fakultates-100-gades-pasakuma-25985> [last viewed 25.03.2020].

⁹⁰ Satversmes tiesas priekšsēdētājas Inetas Ziemeles uzruna Latvijas Universitātes Juridiskās fakultātes simtgadē [Address by the President of the Constitutional Court Ineta Ziemele, at the Centenary of the Law Faculty of the University of Latvia]. Available: <http://www.satv.tiesa.gov.lv/articles/satversmes-tiesas-priekssedetajas-inetas-ziemeles-uzruna-latvijas-universitates-juridiskas-fakultates-simgade/> [last viewed 25.03.2020].

6. The norm of the law “On Institutions of Higher Education”, which envisages a gradual increase of financing for higher education, is “a law of empty promises” because the legislator, having envisaged annual increase in financing of higher education, has not met this commitment. However, without financing, it is not and will not be possible to reach the ambitious aims of education and the state.
7. One’s job and job stability are an important element in the lives of all persons. With the norms of the law “On Institutions of Higher Education”, which provided conclusion of fixed-term contracts with the professoriate, becoming legally void, the legislator has not taken the necessary measures for adopting new legal regulation. Hence, the establishment of legal employment relationships with the professoriate has been left in the care of higher educational establishments themselves. Academic staff is also an element in the sustainability of higher education, the legal regulation on its employment is an essential matter.
8. The status “Latvian Science Council’s expert” is a certain Latvian national particularity and internationally it is not relevant, whether a person representing a branch of science in Latvia, has or does not have this status. International recognition of a scholar can be ensured by publications in foreign languages and the use of their work by the international research community. However, in the working life in Latvia, the status of the Latvian Science Council’s expert has been granted a decisive and major importance.
9. Without denying the fact that legal science should be open to the international research community, the state itself may not recognise a high quality and fundamental research in the official language as being inferior and less valuable. If legal science primarily is a national science, another approach should be considered in determining the value of a legal scholar in the Latvian space of science in the context of the Latvian Science Council’s expert title.

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