

Current problem areas in university personnel law

**Lunch Lecture
"Precarious work in academia by
legal design?"**

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Overview

- 1. Introduction:**
important legal foundations
- 2. The problem area of fixed-term contracts,**
„Kettenvertrag“ (**chain of consecutive contracts**)
- 3. The problem area of working hours for**
scientific/artistic staff
- 4. Further questions**

1 Introduction: Important legal foundations

- Most important legal foundation in itself **UG (Universities Act): employment relationships with the university** only under **private law**; otherwise much was left open in employment regulation, in particular:
- enables regulation through the **collective agreement (KollIV)** for all **(now 22) public universities** (legally united in UNIKO (umbrella organisation))
- Negotiations between UNIKO and GÖD since 2003, agreement reached in April 2007, renegotiations under pressure from BMWF/BMF in particular on transitional legislation
- Signed 5 May 2009, **entry into force 1 October 2009**
- By now **17 changes**, most recently from 1.2.2024
(in particular, but not only, salary increases, most recently 9.2%)

1 Introduction: Important legal foundations (2)

- **Collective agreement has normative effect (§ 11 ArbVG)** = like law
- applies in principle **to all employees belonging to the collective agreement (§ 8 ArbVG)** = here: Members of the **umbrella organisation (§ 108 Para. 2** in conjunction with **§ 6 UG)** and **their employees**, even if not a GÖD member (**§ 12 ArbVG: "outsiders"**)
- brings (in principle) **mandatory minimum standards** for all employees,
- which can **only be deviated from in favour of the employees (§ 3 ArbVG)**
- Favourability must be determined **objectively** ("group comparison")
- **Interpretation of the KollIV like the law:** objective
- In case of doubt, "guarantee of correctness" by the parties to the KollIV

1 Introduction: Important legal foundations (3)

Hierarchy of legal sources:

- **EU law:** in particular freedom of movement for employees, anti-discrimination, but (via Charter of Fundamental Rights) also e.g. working time and holiday law
- **Constitutional law:** in particular freedom of association
- **Mandatory statutory law:** *ArbVG, AngG, UrlG, ...*
- **KollIV**
- **Company agreement (Betriebsvereinbarungen BV)**
- **Individual employment contract (Arbeitsvertrag - AV)**
- **Default Rule:** e.g. § 1155 ABGB
- **Employer instructions: AV as a basis and framework**

Deviations due to subordinate legal source(s) only in the case of FAVOURABILITY for employee

2. Problem area of fixed-term contracts, chain contracts

- Employment relationships generally **end** through **declarations of intent**
- **unilateral:** resignation, dismissal, ?
- **bilateral:** termination by mutual agreement, expiry of the agreed period (= **end of the fixed term**)
- **Protection of labour law**, especially in the case of **unilateral** declarations by the **employer**, otherwise **respect for private autonomy**
- **except in the case of disproportionate/abusive use:**
- Disproportionate agreement of **termination option despite time limit**
- **Sequence of fixed-term contracts = chain contract**

2. Problem area of fixed-term contracts, chain contracts (2)

- General labour law **does not** recognise **any legal limitation** of chain contracts
- **Case law** examines immorality in particular for **circumvention of employee rights** (protection against dismissal!)
- **Contradiction with EU law**, which requires limitation
- **§ 109 UG** is basically in line with EU law in this respect:
- Explicit **limitation** of the admissibility (the **sequencing**) of **fixed-term contracts**
- **Conflicting goals** of university **flexibility** in employment law **vs.** **stable** employment, **career opportunities**
- **UG amendment 2021** should (have) **strengthen(ed)** the latter

2. Problem area of fixed-term contracts, chain contracts

§ 109 (1) *Employment contracts may be of unlimited or limited term. A limited employment contract may be concluded once and shall not exceed six years, on pain of invalidity, unless otherwise provided for by this Act.*

(2) *The extension or renewed conclusion of a temporary employment contract of members of the scientific or artistic university staff under § 94 para 2, shall be permissible twice up a total duration of eight years, taking into account para 1.*

(3) *Notwithstanding the permissible maximum duration according to paras 1 and 2, employment contracts which are concluded predominantly for the implementation of third-party projects or research projects shall not be taken into account when establishing the maximum number of temporary employment contracts.*

(4) *If the assignment of an employee in the meaning of § 94 para 2 subpara 1 changes, it shall be permissible to limit the employment contract once more up to a maximum of six years.*

Source (you can also find the complete Universities Act and other HE Acts in English translation here): <https://www.bmbwf.gv.at/en/Topics/Higher-education--universities/Higher-Education-Legislation.html>
Disclaimer from the original: „This translation has been done with great care. In case of discrepancies or contradictions between the German original text and the translated version, only the German version is considered authentic and legally binding.“

2. Problem area of fixed-term contracts, chain contracts

§ 143 ... (83) § 109 ... shall apply to all employment contracts concluded from 1 October 2021. When establishing the maximum duration according to § 109 para 9, also the periods of employment at the university prior to 1 October 2021 shall be taken into account; periods according to § 109 para 7 shall not be taken into account. Also, periods of employment at the same university during a doctoral programme prior to 1 October 2021 up to a total of four years shall not be taken into account if they were inseparably connected with the doctoral programme in terms of content.

(84) If an existing employment contract is extended from 1 October 2021 without change of assignment, § 109 as amended by the Federal Act published in the F. L. G. I No 20/2021 shall continue to apply.

(85) If an employment contract according to § 109 para 6 is newly concluded from 1 October 2021, any periods of employment prior to 1 October 2021 shall not be taken into account. If, from 1 October 2021, an employment contract is concluded predominantly for the implementation of third-party or research projects, any such employment prior to 1 October 2021 up to four years shall not be taken into account.

2. Problem area of fixed-term contracts, chain contracts

§ (5) A repeated extension or renewed conclusion of an employment contract is permissible up to a maximum duration of six years for staff acting as temporary replacements.

(6) A repeated extension or renewed conclusion of employment contracts within eight academic years shall be permissible for staff which is exclusively used for teaching.

(7) Employment contracts which also include the completion of a doctoral programme up to a maximum of four years shall not be taken into account when establishing the maximum number and duration of employment contracts. Similarly, employment as student assistants shall not be taken into account.

(8) Periods according to § 20 para 3 subpara 1 of the collective bargaining agreement ... shall not be taken into account

(9) When establishing the maximum duration of employment relationships according to paras 1, 2, 5 and 6, all employment contracts concluded with the university shall be taken into account, regardless of whether or not they are directly consecutive.

2. Problem area of fixed-term contracts, chain contracts (3)

§ 109 UG now has **two basic rules**:

- **No fixed term duration longer than six years** (*para. 1*)
- A maximum of **three fixed-term contracts with a maximum total duration of eight years** (*para. 2*, also for part-time employees), **no matter** how long **interruptions** in between are (*para. 9*) generally **also periods before 1 October 2021** (§ 143 (83) *sentence 2*)

But there are numerous **exceptions**:

- **Project-based fixed term contracts** may be **more frequent** (but not longer) (*para. 3*)
Old project periods of a total duration of **4 years** do not count towards (§ 143 *para. 85 sentence 2*)

2. Problem area of fixed-term contracts, chain contracts (4)

Additional exceptions:

- In the case of appointment to a **fixed-term professorship** (at the same university) **1 x 6 additional years** (*para. 4*); *KollV*: fixed term for § 98 UG-*Profs*. Only in exceptional cases
- **Temporary replacement staff** as often as desired, but for a maximum of **six years** (*para. 5*)
- **Exclusively teaching staff** as often as desired, but for a max. **8 academic years** (*para. 6*)
Counting starts at 0 after 1.10.21 (§ 143 (85) *sentence 2*)
- **Prædoc periods** ("*also ... Dr. studies*") of up to **4 years not taken into account** (*para. 7*); old periods likewise, if the content was "*inseparably connected with the doctoral program*" (§ 143 *para. 83 sentence 4*).

2. Problem area of fixed-term contracts, chain contracts (5)

- **Extension** of the time limit by periods in accordance with § 20 Para. 3 line 1 *KollV* (para. 8):
- **Employment prohibitions** according to *MSchG* (*maternity protection law*)
- **Leave of absence** according to *MSchG/VKG* (*paternity leave law*)
- Military (training) service or civilian service
- **Part-time parental leave**: only pro rata, only for employment relationships that are aimed at certain qualifications (e.g. Dr., QV)
- **? other ?**: "*required*", otherwise possibly analogy
- **? Minimal employment** during parental leave ?
additional employment, probably not to be taken into account
- **Further extensions** through *KollV* probably possible

2. Problem area of fixed-term contracts, chain contracts (6): Evaluation

- ↻ New version of § 109 *UG* should **curb chain contracts**: in particular 8-year limitation, pre-doc periods only disregarded as an obligation (and right!) for doctoral students
- ↻ But: Still (too) **many exceptions** and in some cases **problematic transitional law**
- ↻ Time limits necessary at the beginning, also **protect employee** from dismissal (§ 20 para. 1 *KollV*: 2, for Proj. 1.5 years)
- ↻ Individual **additional extensions are not** an alternative
- ↻ **Permanent** employment contracts can be **terminated**: objectively more difficult for universities ("no culture of termination"), but protection only for **older** employees, possibly project staff

3. Problem area of Working hours

- scientific/artistic university staff are **not** subject to **general working time legislation** (AZG, ARG), but to

§ 110 UG: Utilisation of the framework of EU law:

- **Daily working time** max. **13 hours**, **weekly working time** max. **60 hours** (para. 3) but **48 hours** on average over 52 weeks (para. 10 + KollV)
- 11 hours a day - and 36 hours a week **rest period** (para. 6, 7)
- Sundays and public holidays are generally work-free (para. 7a)
- "normal weekly working time" **40 hours** (para. 2a)
- But: no differentiation "normal working hours - overtime", therefore
- **No entitlement to overtime/overtime bonus**

3. Problem area of Working hours

§ 110 (1) *The following provisions shall apply to scientific and artistic university staff instead of those of the Working Hours Act (...AZG) ... and the Rest Periods Act (ARG) The following shall be excluded...*

(2a) *The normal working week is 40 hours unless otherwise provided for by the collective contract.*

(3) *Daily working time may not exceed 13 hours. Weekly working time may not exceed an average of 48 hours within a reference period of up to 17 weeks or 60 hours in single weeks within the reference period. ...*

(6) *After daily working time, employees shall be given an uninterrupted rest period of at least 11 hours.*

(7) *Employees shall be given an uninterrupted rest period of 36 hours within the period from Monday up to and including Sunday....*

(7a) *Unless precluded by operational requirements, Sundays and statutory holidays (§ 7 paras 2 ARG) shall be kept free..*

3. Problem area of Working hours (2)

- **All-in salaries for 48 hours per week** (§ 49 KollV)
- Partial **compensation** through:
 - ➔ **Free scheduling** for employees, unless there is a BV (company agreement, e.g. flexitime) or "*important official reasons*" (§ 31 para. 2 KollV), within the 48/60 or 13-hour limits (*para. 3 and 5*)
 - ➔ **Relaxed location restrictions** for assistant, associate and university professors (*para. 9*)
 - ➔ (Staggered) **standard amount/upper limits for teaching hours** (**semester hours** on average over 2 academic years, § 49 para. 7-9)
 - ➔ appointment for **teaching only Mon-Fri 8 a.m.- 9 p.m.** (§ 31 para. 5)
 - ➔ In the case of **part-time overtime** only 10% (§ 32 Z. 1 in conjunction with § 35)

3. Problem area of Working hours (3): Evaluation

- ➔ **Flexible working hours** for academic work indispensable
- ➔ but (as far as possible) **self-determined, not externally determined**
- ➔ KollV opens up **possibilities of arrangement** (e.g. also 4-day week, home office, change in the distribution of tasks), which are often **not** (or cannot be) **utilised**
- ➔ **Unclear:** - **Number of hours for teaching**
 - **Proportion for independent research**
 - **Compensation for additional services**
 - **Exception for "executive employees"**
- ➔ Regulation of **record-keeping obligations** and monitoring **not compliant with EU law**

4. Any Further questions?

Current problem areas in university personnel law

**Thank you for
your interest!**

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