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Abstract

In recent years the state legislator has been observed to have had a tendency (especially in regard to first appointments), to no longer appoint professorial posts for life but to initially fix a probationary period. Not only may the quality of the candidate be examined by these means but they also make possible a more flexible budgetary concept. Hereby arises the question as to in how far such regulations are compatible with the General Act on Equal Treatment (AGG = Allgemeines Gleichbehandlungsgesetz) and the EU - Council Directive 2000/78/EC. Because significantly more young candidates are affected by the limited period of their initial appointments, these regulations are a case of indirect unequal treatment on grounds of age. This is justified if there is a legitimate aim and if it is appropriate and necessary. Such a justification is not given with standards which are especially disadvantageous towards professors in their first appointments, because these have already proved their quality in the qualification phase and therefore there is a lack of a sufficient amount of diversified criteria. According to the view of the author however, indirect disadvantages are legitimate

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if these have a budgetary motive and as long as they are not aimed at the person as a candidate as such but at the type of position they hold. As long as the European Court of Justice has not established an infringement of European law in an at least similar case the case must be permitted to appear before the Federal Constitutional Court (Bundesverfassungsgericht) on the grounds of legal certainty. If limitations are allowed which are illegal according to both European and Constitutional law, then only the salaried professors can demand permanent employment. This is a different situation for temporary civil servants. The civil servant status will not become ipso jure a permanent one. There is also no possibility of laying down national law in accordance with the guide lines. Alone the possibility of a claim for unlimited employment under communal law seems a possibility but in the outcome must be rejected. (HRK / Abstract übernommen)