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The Recruitment of Full Professors According to Pre-Determined Criteria in Four Nordic Countries

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This comparative legal study focuses on career advancement to a tenured full professor position according to pre-determined criteria in Denmark, Finland, Norway and Sweden. Nordic career advancement and professor recruitment practices to a large extent depend on the applicable national regulatory framework. There are fundamental differences between these countries' practices. It is customary to use promotion to full professor positions in Norway and Sweden. In Norway, the regulation of promotion to a full professor position is complemented by the regulation of standards. Norwegian promotion practices were used as a model in Sweden, but the Swedish laissez-faire approach to common standards seems to have created problems. American-style tenure-track practices are constrained by the laws of all four countries. The Danish "forfremmelsesprogram til professor" may nevertheless have potential to develop into a close functional equivalent to American-style tenure-track practices. In Finland, tenure-track practices are widespread but not sufficiently aligned with the regulatory framework.

Keywords: universities, tenure track, professors, Nordic countries, regulation.

Introduction

There can be different avenues to a tenured full professorship. A researcher can apply for a limited number of vacant positions in competition with other applicants. Sometimes a researcher can hope to be invited or promoted to

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a professor position. There can also be a particular track leading to a tenured professor position.

Generally, the main career advancement models include the competition model and the promotion model (Olsen, Kyvik and Hovdhaugen 2005; Frølich et al. 2018, 19). North American tenure-track systems are based on competition for tenure-track positions and, once the tenure-track position is secured, work to secure tenure by meeting the track-specific performance targets. Tenure-track systems have been introduced in more and more countries (Brechelmacher et al. 2015; Fumasoli, Goastellec and Kehm 2015).

The increased use of tenure-track systems reflects broader global educational structures and trends (Huisman, de Weert and Bartelse 2002; Brechelmacher et l. 2015). In the age of globalisation, public organisations reform and change their structures and policies as a result of global ideas (Christensen, Gornitzka and Maassen 2014). Educational structures and trends reflect realities or perceptions about dominant or successful countries (Ramirez, Meyer and Lerch 2016). The dominance of American universities in multiple international rankings has led to their deployment as benchmarks in global educational discourse (Ramirez 2020).

In Europe, a "leitmotif" identified in the studies of higher education reform is "the need for increasing institutional autonomy in order to delegate decision-making competencies in strategic policy matters, personnel policy, and financial management" (Christensen, Gornitzka and Maassen 2014). In the Nordic countries, "the global reform script" is characterised by internal decision-making procedures with more powers vested in university management and a contract-based relationship between the state and institutions, operationalised through funding arrangements (Christensen, Gornitzka and Maassen 2014).

Tenure-track systems are institutionalised structures. Generally, Meyer and Rowan (1977) distinguish between the adoption and implementation of institutionalised structures. After institutionalised structures have been formally adopted, organisations commonly decouple them. According to Meyer and Rowan, "decoupling enables organizations to maintain standardized, legitimating, formal structures while their activities vary in response to practical considerations. The organizations in an industry tend to be similar in formal structure – reflecting their common institutional origins – but may show much diversity in actual practice" (1977, 357).

This seems to apply to tenure-track systems as well. As late as in the early 2010s, European tenure-track programmes were still "in a relatively early trial or implementation stage" at 21 member universities of the League of European Research Universities (LERU 2014). There are different notions of tenure track on the two sides of the Atlantic. On one hand, the Statement of Principles on Academic Freedom and Tenure issued by the American Association of University Professors (AAUP 1940) and Unesco's 1997 Recommendation concerning the status of higher-education teaching personnel reflect a narrow "probation-on-the-job" model under which the goal is a permanent position at the same level (UNESCO 1997, paragraph 46). On the other, the LERU study defined tenure track as a fixed-term contract under which the goal is a permanent position at a higher level (LERU 2014). The LERU study indicated that tenure-track systems could be perceived more broadly as career advancement systems rather than strictly as a means to fix tenure. Tenure-track models were defined as a particular type of career advancements systems even in a NIFU report (Frølich et al. 2018).

In any case, career advancement systems are facilitated by laws. Laws are based on core notions or principles that increase the internal coherence of the legal system. Ensuring coherence is at the core of legal system-building (Kelsen 1934/2008) and the interpretation of laws (Mäntysaari 2016). This increases path dependency. Moreover, path dependency can be caused by organisational and cultural traditions. While some parts of proposed reforms are compatible with the existing culture and accepted, others are not (March 1994; Christensen, Gornitzka and Maassen 2014).

The reception of foreign legal notions or norms makes them legal transplants in the host country (Watson 1974). When foreign legal notions or practices are not fully compatible with the legal framework of the host country, they can become legal irritants (Teubner 1998). The reception of theories that are not compatible with the legal framework of the host country can turn theories into theory irritants (Mäntysaari 2017, 26–27). Legal irritants and theory irritants are examples of the existence of factors that hamper the reception of foreign practices and increase path dependency. Sometimes the reception of legal transplants is blocked by mandatory provisions of law in the host country.

While North American practices reflect the culture and legal framework of the US and Canada (e.g. Osakwe et al. 2015), it might be difficult to adopt

them in other countries (Mohrman 2008; Yang 2014) such as the Nordic countries. The Nordic countries tend to be regarded as a distinct group in social science (e.g. Castellacci and Viñas-Bardolet 2020) and legal research (Letto-Vanamo and Tamm 2019) with their own Nordic culture and values (Weber 1904–1905; Schwartz 2006; Schwartz 2012; OECD 2020). The general pattern of increased use of market-type mechanisms in the university sector has not wiped out the Nordic characteristics (Huisman and Lyby 2020). Universities are no exception from the rule that organisational and cultural traditions matter (Ramirez and Christensen 2013). One may ask to what extent US tenure-track practices could have been adopted as legal transplants and implemented in the Nordic countries.

Research on tenure-track practices in the recruitment of university professors has mainly been conducted in North America with its longest history of tenure-track practices. There are studies focusing on national tenure-track practices, but few comparative studies on such systems or their functional equivalents in the Nordic countries. In addition to the LERU study that included some Nordic universities (LERU 2014), a Norwegian NIFU report compared academic career structures in four Nordic countries and some other countries (Frølich et al. 2018). According to the two studies, there are fundamental differences in the adoption and implementation of tenure-track practices in the four Nordic countries, but prior comparative studies on tenure tracks have not focused on the role of regulation and functional equivalents to tenure-track systems in the recruitment of full university professors.

Research question and method

The research question is defined as follows: How do the laws of Denmark, Norway, Sweden and Finland protect the right of a researcher to a full tenured professorship after fulfilling pre-determined criteria?

The research question reflects so-called functionalism in comparative law (Rabel 1924). The point of view of functionalism is how the chosen societal need is addressed through laws in two or more countries. Functionalism goes hand in hand with the so-called functional method (Rabel 1924; Zweigert and Kötz 1996; Michaels 2006). The functional method basically is a qualitative research method with its own discipline-specific primary sources. Both functionalism and the functional method are designed to ensure that comparison is limited to comparable things. Rather than legal

norms or notions, what is being compared is the way to address the chosen societal need through laws.

The key to comparing comparable things is their function. Since the definition of the function is unclear in the theory of comparative law (Michaels 2006; Kischel 2015), we complement it with the theory of User-Friendly Legal Science (Mäntysaari 2017). The point of view of this discipline is how users can use legal tools and practices to reach their objectives in different contexts. In this article, the key "users" are university researchers that want a permanent full professor position. Actual relevance when university researchers try to reach their common goal is the common denominator of the regulatory acts and university guidelines that are relevant for the purposes of this article. This makes it possible to identify and study functional equivalents. Whether two things are functional equivalents is a question of fact rather than how things are classified in dogmatic areas of law.

For the purposes of this article, there are functional equivalents relating to the recruitment mechanism and the hierarchical position from which the researcher advances to a tenured full professorship position. The contemporary functional equivalents that relate to the recruitment mechanism reflect either the competition model or the promotion model and include the American-style tenure track, the German Juniorprofessor programme when it is complemented by a promised transition to a full professorship, the Danish "forfremmelsesprogram til professor", the Norwegian and Swedish practice of promotion to a full professorship position, and the Finnish "tenure-track" practices. As regards the hierarchical position of the researcher, functional equivalents may include both non-tenured and tenured positions and range from full professorships with a long probationary period as in the US to tenured or non-tenured lecturer or associate professor positions. The name of the mechanism or position basically is irrelevant as it does not indicate the relevant function (Rabel 1924).

The primary sources of comparative law consist of sources of law. In User-Friendly Legal Science, the primary sources consist of the documentation of legal tools and practices (Mäntysaari 2017). Combining the two approaches, the primary sources can consist of the documentation of career advancement programmes, internal university guidelines, regulatory acts,

and the preparatory works of regulatory acts. Secondary sources are either comparative or other studies that provide information about primary sources. Moreover, secondary sources include so-called method theories, that is, research from other disciplines that may help to answer the research question (Lukka and Vinnari 2014; Mäntysaari 2017, 56). In this article, higher education studies belong to important method theories.

The study consists of four brief Nordic country reports and a comparison. Moreover, there are brief country reports of the US and Germany. US and German practices work as international benchmarks and help to understand Nordic practices.

USA

American higher education is rooted in its history, culture, and social needs (Yang 2014). The modern concept of the North American university has its roots in the Humboldtian university model (Commager 1963; Osakwe et al. 2015). The Humboldtian university model is sometimes characterised as the "republic of scholars" (Brubacher 1967). American universities traditionally have applied the principles of unity of research and teaching, academic freedom, and academic autonomy or self-governance (Osakwe et al. 2015). According to Finkelstein (2017, 10), the perceived ideal American system was built on the concepts of shared governance, tenure, and an integrated academic role. The American university model is supported by a university-friendly societal culture reflected in the case-law of the Supreme Court such as *Sweezy v. New Hampshire*[2] and *Keyshian v. Board of Regents*[3].

In addition to Humboldtian principles, the American university system fundamentally relies on competition between a very large number of higher education institutions (Snyder 1993) and on rankings (Hazelkorn 2007). American college and university rankings fill a consumer demand for information about institutional quality (Myers and Robe 2009). Moreover, there are long-term efforts to diversify the American tenured faculty (Finkelstein, Conley and Schuster 2016a; Finkelstein, Conley and Schuster 2016b).

American tenure systems were originally designed to protect academic freedom rather than facilitate competition (Park, Sine and Tolbert 2011;

[2] Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957).
[3] Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967).

Yang 2014; Finkelstein 2017). The key nationwide document is the AAUP's 1940 Statement. It was partly inspired by the Humboldtian tradition and Lehrfreiheit (Commager 1963; Gerber 2014). The existence of "tenure" means that the service of university "teachers or investigators … should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies".

Tenure can be the outcome of a track. According to the AAUP's 1940 Statement, a tenure track basically means "a probationary period" before permanent or continuous tenure. In its 1956 Recommended Institutional Regulations on Academic Freedom and Tenure, also known as Regulation 1b, AAUP defined full-time appointments as probationary appointments or appointments with continuous tenure (Park, Sine and Tolbert 2011).

Under the American model, a tenure track means "a six-to-seven-year probationary period, followed by a high-stakes 'up or out' evaluation, leading to a continuous appointment and a relatively stable career" (Finkelstein 2017, 10). The period of time reflects the AAUP's 1940 Statement.

The benefits of tenure and tenure-track practices may have contributed to the popularity and longevity of AAUP's 1940 Statement (Metzger 1990). The perceived benefits of the American model were noted in Europe already in the early twentieth century (Weber, 1919).

This said, the American model is not static. The AAUP's 1956 Recommended Institutional Regulations on Academic Freedom and Tenure provide for an exception for "special appointments" (Park, Sine and Tolbert 2011). The loophole for "special appointments" facilitated a change in the American model.

The current situation was summed up by Finkelstein (2017, 11) as follows: "About 35 percent of the headcount of instructional staff are full-time, tenured faculty, or faculty on tenure tracks; about 50 percent now work part-time (predominantly teaching one to two courses on an ad hoc basis); and the remaining 15 percent are in full-time fixed contract positions, which are focused on teaching only, research only, or program administration only." According to Finkelstein (2017), the "new" model is built on an increasingly contingent workforce, the unbundling of the traditionally integrated roles, and the rise of full-time professional administrators.

The new American model has a connection to the gradual decline in the implementation of tenure systems since the mid-1970s and to increased reliance on non-tenured or non-tenure-track faculty. Universities have increasingly used fixed-term and part-time arrangements (Park, Sine and Tolbert 2011; Figlio, Schapiro and Soter 2015; Gyurko et al. 2016; Xu and Solanki 2020; Jacob et al. 2020). The decline in the implementation of tenure systems may be caused by the high long-term costs of tenured faculty appointments (McPherson and Schapiro 1999).

While the use of tenure-track systems increases pressures to produce quantity over quality in research (Simula and Scott 2020), reduced reliance on tenure systems and increased use of teaching positions has reduced opportunities to produce research (Jacob et al. 2020) and hampered the career prospects of women faculty and faculty of colour (Colby and Fowler 2020). While US colleges universities have increased faculty diversity over the past 20 years, most gains have been off the tenure track (Finkelstein, Conley and Schuster 2016a; Finkelstein, Conley and Schuster 2016b). Moreover, the choice of employment form has had an impact on educational outcomes with long-term or tenure-track faculty producing better outcomes (Ran and Xu 2019; Xu and Ran 2021). Tenured faculty has a positive and non-tenured faculty a negative effect on student graduation rates (Sav 2017).

Germany

The American tenure has its roots in the German model. The German model is interesting from the Nordic perspective as well. Historically, the Nordic countries have benefited from German cultural and legal influences. Like in Germany, Nordic university professors used to be civil servants in the public sector and in some Nordic countries still are.

In the nineteenth century, German university professors obtained strong employment security thanks to Lehrfreiheit and the civil servant status. Both still apply. The removal of civil servants is difficult and requires a disciplinary procedure under the Bundesdisziplinargesetz. Academic freedom in Germany is currently based on Article 5(3) of the Grundgesetz and the civil servant status of university professors on section 46 of the Hochschulrahmengesetz.

Under section 46 of the Hochschulrahmengesetz, there can be university professors that are civil servants and university professors that are not. If

university professors are civil servants, they are appointed either for a fixed period or life. The same provision permits the use of a probational period provided that it is based on an express provision of law.

Germany has a habilitation system. Habilitation means a recognised qualification that is sufficient for an appointment as a professor. A person that has obtained habilitation may apply for vacant professorships but is not guaranteed one. Because of the civil servant status, only the best candidate may be appointed to the rank of professor. This requirement is based on Article 33(2) of the Grundgesetz that provides for equal access to civil servant positions based on merit. Researchers in habilitation positions tend to have fixed-term contracts (LERU 2014).

The rigid system of university professorships is complemented by the fixed-term position of junior professor (Juniorprofessor) under section 48 of the Hochschulrahmengesetz. This position is intended to increase job security for qualified junior researchers.

Junior professors are appointed to a track. In principle, the track only needs to lead to the equivalent of habilitation. A researcher that has successfully completed the track may thus apply for vacant professorships but is not guaranteed a professorship.

This said, a junior professorship can sometimes work as the functional equivalent to a tenure-track position and result in tenure as a full professor. This route was described by LERU (2014, paragraph 58) as follows: "Due to the public sector regulation requiring the most qualified person to be recruited, all professorships have to be publicly advertised. In the context of tenure track, however, it is not mandatory to advertise the full professorship considering that the selection of the person with the highest qualification has already taken place when the Junior Professor is appointed, and the prospect of subsequent transition to the full professorship is already announced in the advertisement of the junior professorship."

The length of the junior professor track is limited to six years unless it is extended by one year. The track consists of two phases. Junior professors that meet the performance criteria can move on to the second phase (section 48(1)). Junior professors are either civil servants for a fixed period of time or employees (section 48(2)).

Denmark

Denmark with its proximity to Germany is regarded as a country with a habilitation or habilitation-equivalent system (LERU 2014). At Danish universities, "a typical career path is from a PhD position to a postdoc position, to an adjunct position (assistant professor), to a lektor position (associate professors), ending with a professor position" (Frølich et al. 2018). The typical career path traditionally has not included a tenure-track position. In Denmark, the use of tenure tracks in the recruitment of full university professors is influenced by the regulation of civil servants, employment contracts, and institutions of higher education. There is now a new professor track that is a functional equivalent of the American tenure track.

Civil Servant or Employee Status

University employees used to be civil servants. This changed with the University Act of 2003[4] that turned universities from government institutions into "independent institutions under the public-sector administration" (section 1(2)).

The civil servant status gone, positions at Danish universities continue to be regulated by the state. Under the current University Act of 2019,[5] salaries and employment terms are regulated by guidelines adopted by the Ministry of Finance (section 29(1)). Positions and key competence criteria largely are based on other ministerial guidelines. The University Act empowers the Danish Ministry of Higher Education and Science to adopt guidelines on the employment of academic staff (section 29(3)). The most recent guidelines on the employment of academic staff were issued in December 2019[6] and entered into force in January 2020.

Civil servant positions primarily are filled after a competition under guidelines adopted by the Ministry of Finance.[7] This continues to be the main rule when recruiting academic staff under the 2012 guidelines from the Ministry of Higher Education and Science.[8] Recruitment is international

[4] Lov nr. 403 af 28. maj 2003 om universiteter (universitetsloven).
[5] Lov nr. 778 af 7. august 2019 om universiteter (universitetsloven).
[6] Bekendtgørelse nr. 1443 af 11. december 2019 om stillingsstruktur for videnskabeligt personale ved universiteter.
[7] Bekendtgørelse nr. 302 af 26. mars 2010 om opslag af tjenestemandsstillinger i staten (opslagsbekendtgørelsen); cirkulære nr. 9299 af 26. juni 2013 om opslag af stillinger og lønnede hverv i staten.
[8] Bekendtgørelse nr. 242 af 13. marts 2012 om ansættelse af videnskabeligt personale ved universiteter.

to professor or lektor (associate professor) level positions under these guidelines (section 3).

There is no statutory appeals procedure for university appointments. Recruitment and selection generally are subject to little specific statutory regulation in Denmark. Flexibility is part of the Danish model. This said, Danish law requires equal treatment and prohibits discrimination on the basis of gender and many other particular grounds. The prohibition of discrimination is complemented by a right to compensation in the event of breach.[9] In principle, the University Act of 2019 would enable the board of the university to adopt internal guidelines on many things (section 13). But an internal appeals procedure does not seem to be on the agenda.

Tenured or Fixed-Term Position

According to the main rule, full professor positions are permanent. There may be fixed-term positions in special cases.[10]

Tenure is to some extent diluted by labour law. Denmark is well-known for its flexible termination practices under the Act on Salaried Employees[11] complemented by security under the so-called "flexicurity" model (e.g. Madsen 1999; Bekker and Mailand 2019). For this reason, the university may terminate any employment relationship by notice for cause. University employees seem to be concerned about the dilution of tenure (Friis 2020).

The use of fixed-term employment contracts is constrained by the Act on Fixed-Term Employment.[12] This Act limits the renewal of successive fixed-term contracts. Generally, a fixed-term contract may only be renewed if the renewal is objectively justified (section 5(1)). The fixed-term employment contracts of academic university staff may only be renewed twice (section 5(2)). This is intended to limit the abuse of successive fixed-term contracts (section 1).

Before 2007, there were no tenure tracks in Denmark. In 2000, a memorandum from the research ministry made it easier to use fixed-term lektor or professor positions (Forskningsministeriet 2000) without creating tenure-track positions.

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[9] Lov nr. 1349 af 16. december 2008 om forbud mod forskelsbehandling på arbejdsmarkedet m.v.; lov nr. 1678 af 19. december 2013 om ligestilling af kvinder og mænd; lov nr. 734 af 28. juni 2006 om ligebehandling af mænd og kvinder med hensyn til beskæftigelse m.v..

[10] Bekendtgørelse nr. 1443 af 11. december 2019 om stillingsstruktur for videnskabeligt personale ved universiteter.

[11] Lov nr. 1002 af 24. august 2017 om retsforholdet mellem arbejdsgivere og funktionærer (funktionærloven).

[12] Lov nr. 370 af 28. maj 2003 om tidsbegrænset ansættelse, as amended.

The fixed-term position of professor with special responsibilities, also known as professor MSO or "professor med særlige opgaver", was introduced by ministerial guidelines that were applied from 2005.[13] It was not a position designed to lead to a permanent professorship. After the expiry of its term, the position changed into a lektor (associate professor) position.

The 2005 ministerial guidelines that were revised in 2007[14] nevertheless introduced temporary ordinary positions and increased the discretion of Danish universities to make their own position descriptions (Christiansen 2016). The chance to use fixed-term employment contracts would have made it possible to adopt some kinds of tenure-track practices, but universities largely preferred their other options such as the appointment of researchers to a lektor position for a probational period (Christiansen 2016).

It has been said that a six-year tenure track was introduced by a 2013/2015 memorandum (Christiansen 2016; Frølich et al. 2018). But the memorandum did not create tenure-track positions leading to a professor position. These 2015 guidelines[15] introduced the functional equivalent of a six-year tenure track from an adjunkt or forsker (assistant professor or researcher) position to a lektor or seniorforsker position (associate professor or senior researcher) by introducing an evaluation in the sixth year for adjuncts or researchers (Finansministeriet 2015). In a 2019 debate article, a vice-rector of the University of Copenhagen described the benefits of such a tenure track from the adjunkt position to the lektor position and proposed making a tenure track available even from the lektor position to the professor position (Møller 2019).

The rules on tenure-track positions were changed by ministerial guidelines that entered into force in 2020.[16] First, a tenure track was expressly introduced from an adjunkt or forsker position to a lektor or seniorforsker position. This track can lead from a fixed-term position at a junior level to a permanent position at a senior level but not to a full professor position. Second, there shall be no new appointments to the position of professor MSO. Third, there is a new programme for

[13] Cirkulære af 22. december 2004 om stillingsstruktur for videnskabeligt personale ved universiteter.
[14] Cirkulære nr. 9427 af 13. juni 2007 om stillingsstruktur for videnskabeligt personale ved universiteter.
[15] Bekendtgørelse nr. 899 af 1. juli 2015 om stillingsstruktur for videnskabeligt personale ved universiteter.
[16] Bekendtgørelse nr. 1443 af 11. december 2019 om stillingsstruktur for videnskabeligt personale ved universiteter.

advancement to a full professor position, namely "forfremmelsesprogram til professor". While it became possible to use the programme at the start of 2020, no Danish university had started to use it one year later. Some had taken steps to adopt the programme (Baggersgaard 2021).

Forfremmelsesprogram til professor

The new programme for advancement to a full professor position is the functional equivalent of a "track". However, it is not a "tenure track", because it can only be made available to associate professors or senior researchers that already are tenured under the ministerial guidelines. The programme could be described as a promotion track or professor track.

"Forfremmelsesprogram til professor" is only available to exceptionally talented individuals and only by invitation. Whether to invite a person to the track is in the discretion of the university. Participation is not a subjective right.

The maximum length of the programme is eight years. Failure to comply with the advancement criteria will not lead to the termination of the underlying academic position.

Academic Criteria

Under the "forfremmelsesprogram til professor", the advancement criteria are in the discretion of each university. In any case, the criteria must be clear and transparent. According to the ministerial guidelines, the criteria can include, for example, general expectations relating to research, research-based teaching, research-based service to authorities, external funding, the management of research and courses, supervision and the distribution of knowledge. These criteria reflect the statutory tasks of a university under section 2 of the University Act of 2019.

Generally, the 2012 guidelines adopted by the Ministry of Education and Research require a professional evaluation of applicants to academic positions.[17] Each university must adopt its own rules for this purpose. The evaluation must tell whether the applicants are qualified, that is, meet the pre-stated minimum criteria for the position (section 4).

[17] Bekendtgørelse nr. 242 af 13. marts 2012 om ansættelse af videnskabeligt personale ved universiteter.

Conclusion

There is no general subjective right to promotion to a professor position in Denmark. The "forfremmelsesprogram til professor" is designed as an exclusive professor track. While access to the professor track is not a subjective right, promotion after the pre-stated minimum criteria have been met is a subjective right. Danish universities have been slow to adopt the professor track.

Norway

In Norway, laws protect the right of a researcher to a full professorship after fulfilling pre-determined criteria. While both Denmark and Norway have started with the civil servant status of university professors and departed from the full civil servant status, Danish and Norwegian law have developed in different directions.

Since 1993, the largely tenured associate professors have been able to apply for promotion to a full professorship based on merit whether or not there are vacant professorships. This subjective right has become the most important path to a full professorship (Olsen, Kyvik and Hovdhaugen 2005).

Tenure-track systems play a minor role according to a 2018 NIFU report: "Norway does not have a tenure-track system, but has recently introduced a small-scale experiment involving talented young scholars … Some tenure track positions have been introduced for a trial period in the fields of technology, natural science, economics and medicine" (Frølich et al. 2018). A 2019 report on the governance and regulation of higher education and research in the Nordic countries mentioned "tenure" just once (Hofsøy et al. 2019).

Civil Servant or Employee Status

There used to be institution-specific legislative acts for each Norwegian institution of higher education (NOU 2020:3). The first general act on universities was the Act of 1989.[18] Its scope nevertheless was limited to certain public institutions of higher education (sections 1 and 2). The Act of 1989 was replaced by the Act of 1995[19] that itself was replaced by the Act of 2005.[20] The Act of 2005 applies not only to public but even to private

[18] Lov 16. juni 1989 nr. 77 om universiteter og vitenskapelige høgskoler (universitetsloven).
[19] Lov 12. mai 1995 nr. 22 om universiteter og høgskoler (universitetsloven).
[20] Lov 1. april 2005 nr. 15 om universiteter og høyskoler (universitets- og høyskoleloven).

institutions of higher education, as was described by the Rysdal commission (NOU 2003:25). A reform is planned (NOU 2020:3).

Under the Act of 1989, academic staff at public universities were regarded as civil servants (section 31). The appointment of academic staff was governed by the Act of 1983 on state civil servants (tjenestemannsloven)[21] complemented by sector-specific special rules. While the Act of 1995 did not bring a change (NOU 1993:24), section 6-1 of the Act of 2005 did. Subject to sector-specific rules under the Act of 2005 as lex specialis, the appointment of academic staff has since the entry into force of the 2005 Act been governed either by private sector labour law (arbeidsmiljøloven)[22] or public sector law on state civil servants (statsansatteloven).[23] The legal framework is complemented by rules on administrative practice (forvaltningsloven).[24]

Under the Act of 2005, appointments to academic positions may not be made without an expert assessment (section 6-3(3)). Moreover, the Act of 2005 empowers the Ministry to "issue regulations concerning procedures and criteria for appointment or promotion to academic positions" (section 6-3(6)).

The appointment of civil servants is constrained by the qualification principle (kvalifikasjonsprinsippet) under the Act on state civil servants (§ 3). Its contents were explained in the preparatory works of the Act.[25] The qualification principle means that the best qualified applicant should be appointed. Under the Act of 2005 relating to universities and university colleges (section 6-1), this principle applies regardless of whether public sector or private sector labour law applies (NOU 2020:3). The qualification principle is reflected in the Regulations of 2006 that lay down academic criteria for different positions.[26]

This said, appeal is limited. Generally, the right to appeal an employment decision is based on the Administration Act (forvaltningsloven) (section 2). But even in serious cases such as dismissal, termination, suspension or disciplinary action, the right to appeal is an internal university matter under the Act of 2005 (section 11-3). Unfavourable recruitment decisions are not

[21] Lov 4. mars 1983 nr. 3 om statens tjenestemenn (tjenestemannsloven).
[22] Lov 17. juni 2005 nr. 62 om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven). For preparatory works, see Ot.prp. nr. 79 (2003–2004) Om lov om universiteter og høyskoler.
[23] Lov 16. juni 2017 nr. 67 om statens ansatte mv. (statsansatteloven).
[24] Lov 10. februar 1967 om behandlingsmåten i forvaltningssaker (forvaltningsloven).
[25] Ot.prp. nr. 67 (2004-2005) Om lov om statens embets- og tjenestemenn.
[26] Forskrift 9. februar 2006 nr. 129 om ansettelse og opprykk i undervisnings- og forskerstillinger.

mentioned as a cause of action in the Act. Moreover, the applicant may comment on but may not appeal the assessment committee's evaluation (section 2-2(12). In contrast, there can be a cause of action relating to discrimination. All employers must comply with the Equality and Anti-Discrimination Act of 2017.[27] The Act of 2017 prohibits discrimination (section 29) and provides for a right to compensation and damages (section 39).

One of the goals of the future reform will be to align public-institution and private-institution rules on employment. Ensuring that private and public institutions are governed by similar rules is regarded as important in order to guarantee a level playing field and common qualification standards (NOU 2020:3).

Tenured or Fixed-Term Position

Since the use of fixed-term contracts is limited by the Act of 2005 (sections 6-4 and 6-5), the main rule is that professors and senior researchers are tenured. This said, it is possible to use fixed-term contracts in a number of cases such as for managerial positions, for post-doctoral researchers,[28] for positions requiring creative or artistic competence (section 6-4), or in the absence of applicants deemed competent (section 6-5).

Subjective Right to Full Professorship

The Act of 1995 did not yet lay down the career structure but was complemented by circulars from the Ministry of Church, Education and Research setting out academic positions and qualifications.[29] Moreover, the Act was complemented by circulars from the Ministry on personal recruitment to professor on merit.[30]

The subjective right to apply for promotion to a full professorship based on merit irrespective of vacant professorships is the main route to a full professorship in Norway. While this idea may have been promoted by many parties, the breakthrough came with the so-called Hernes committee (NOU 1988:28) in 1988 (Kyvik, Olsen and Hovdhaugen 2003).

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[27] Lov 16. juni 2017 nr. 51 om likestilling og forbud mot diskriminering.

[28] Forskrift 24. mars 2015 om ansettelse på innstegsvilkår.

[29] Det kongelige kirke-, utdannings- og forskningsdepartementet, Rundskriv F-14-95, 01.02.1995, Felles stillingsstruktur for undervisnings- og forskningsstillinger ved høgskoler og universiteter - Reglementer for opprykk til førsteamanuensis, førstelektor og førstebibliotekar.

[30] Rundskriv F-015-02 om personlig opprykk til professor etter kompetanse.

After comparing the competition model (konkurransemodellen) and the competence model (kompetansemodellen), the Hernes committee chose the latter. A committee of Stortinget, the Norwegian Parliament, drew the conclusion that there should be a procedure for members of academic staff to become professors when they possess documented competence.[31] The required procedure was laid down in a circular adopted by the Ministry of Church, Education and Research in April 1993.[32] Since 1993, associate professors have been allowed to apply for promotion to a full professorship on the basis of individual research competence irrespective of vacant professorships (Kyvik, Olsen and Hovdhaugen 2003; Olsen, Kyvik and Hovdhaugen 2005). The circular defined the required level of competence by referring to established standards (Kyvik, Olsen and Hovdhaugen 2003). The circular was updated many times.

In 2006, the circulars were finally replaced by "Regulations concerning appointment and promotion to teaching and research posts" adopted by the Ministry of Education and Research.[33] These regulations have subsequently been amended. The procedure and criteria for promotion from the positions of førsteamanuensis (associate professor) or høyskoledosent to professor are set out in the Regulations of 2006.

The first requirement for promotion to full professor under the Regulations of 2006 is the possession of a permanent or fixed-term contract as førsteamanuensis or høyskoledosent (section 2-2). Since the use of fixed-term contracts is limited by the Act of 2005, the main rule is a permanent contract.

Academic Criteria

The academic promotion criteria are the result of regulatory evolution. Before the 1993 circular from the Ministry, the committee of Stortinget proposed criteria consisting of a doctorate, additional scientific production equivalent to a second doctorate in scope, and pedagogical qualifications amounting to at least two years' teaching experience (Kyvik, Olsen and Hovdhaugen 2003). The proposed requirements as to scope reflected the continental European practice of a doctoral thesis followed by a habilitation thesis.

[31] Kirke- og undervisningskomiteen, Innst. S. nr. 230 (1990–91) at p. 38.
[32] Det kongelige kirke-, utdannings- og forskningsdepartementet, Rundskriv F-37-93.
[33] Forskrift 9. februar 2006 nr. 129 om ansettelse og opprykk i undervisnings- og forskerstillinger.

In the 1993 circular,[34] the competence criteria were defined by a reference to established international and/or national standards and the requirement of at least two years' teaching experience (Kyvik, Olsen and Hovdhaugen 2003).

According to the Regulations of 2006, the academic level of a professor must meet "established international or national standards" (section 1-2(1)). The 2006 regulations added criteria for artistic activities. They included "extensive artistic activities at the highest level conforming to international standards and relevant breadth and specialization at the highest level of the subject or discipline" (section 1-2(2)). Moreover, the 2006 regulations added requirements as to educational qualifications by requiring "documented competence in relevant educational theory and practice based on training or on teaching and supervision".

Increased educational requirements entered into force in 2019 under the Regulations of 2019[35] that amended the 2006 Regulations. In addition to the educational qualifications for førsteamanuensis or høyskoledosent that are used as a baseline, they now consist of documented qualitative development over time, broad experience in supervision preferably at the master or doctorate level, and participation in the collegial development of education quality (section 1-2(3)).[36]

Standardised requirements are complemented by standardised evaluation by committees. Committees were required under the 1993 circular. This requirement is now based on the Act of 2005 (section 6-3(3)) and the Regulation of 2006 (section 2-2). Committees of at least three professors may have just one member from the applicant's own department and should have at least one foreign member.

Increased qualification requirements under state regulation are reflected in increased and more detailed qualification requirements under each university's internal guidelines. Each university has its own more detailed requirements that build on the 2006 regulations.

[34] Det kongelige kirke-, utdannings- og forskningsdepartementet, Rundskriv F-37-93.
[35] Forskrift 9. december 2018 nr. 1322 om endring i forskrift om ansettelse og opprykk i undervisnings- og forskerstillinger.
[36] Forskrift 9. februar 2006 nr. 129 om ansettelse og opprykk i undervisnings- og forskerstillinger as amended by forskrift 9. december 2018 nr. 1322.

Conclusion

According to a recent NIFU study, "Norway does not have a tenure track system" (Frølich et al. 2018). Since promotion to a full professorship is regulated in detail, there is little room for programmes leading to a tenured position as full professor. Moreover, one should note that a person appointed to any of the positions as professor, associate professor, lecturer, senior lecturer and docent will get permanent employment status. Since promotion to a tenured full professorship position customarily is from a tenured position, a subjective right, and enforceable regardless of open vacancies, the use of tenure-track programmes would be rather pointless in the recruitment of tenured full professors.

Sweden

On one hand, Sweden has followed Norwegian practices. On the other, Sweden relies on a laissez-faire regulatory policy in the recruitment of university professors.

The main route to full professorship starts with a permanent position as lektor (SOU 2016:29; Barriere, Baard and Nordstrand 2016; Frølich et al. 2018) and ends with promotion. The relatively minor relevance of tenure tracks in Sweden can be illustrated by the fact that in 2019 they were mentioned neither in a Swedish Research Council study on the career development of postdocs (Barriere et al. 2019), nor an inquiry on the governance of universities (SOU 2019:6). Having said this, several universities have tenure-track systems. According to a 2016 report from the Research Career Inquiry, tenure-track practices at Swedish universities are heterogeneous meaning that it is impossible to talk about any particular Swedish tenure-track model (SOU 2016:29). Another study identified "profound tensions" in the Swedish academic career system for the analysis of tenure track (Henningsson et al. 2017).

Civil Servant or Employee Status

In Sweden, university professors are public sector employees. The appointment of all public sector employees is governed by the Swedish constitution.[37] The constitution requires public sector bodies to apply the principle of equal treatment under law, take decisions on proper grounds,

[37] Regeringsform (1974:152) as restated (2011:109).

and be impartial (Chapter 1, section 9). All public sector recruitment decisions must have proper grounds such as merit and competence (Chapter 12, section 5). This requirement is repeated in the Public Employment Act.[38] Moreover, the Public Employment Act provides that competence must prevail in the absence of reasons to derogate from this default rule (section 4). Aligned with the broader regulatory framework, each university has its own guidelines on the employment of faculty.

There is a particular Higher Education Appeals Board to solve disputes relating to the interpretation of these norms and discrimination.[39] The Board can declare employment decisions invalid. The Board says that the employment relationship between a university and a university teacher consists of both public sector and private sector elements.[40]

Tenured or Fixed-Term Position

The Swedish model restricts the use of probationary periods and fixed-term contracts. The use of a probationary period in the recruitment of full professors was prohibited under the Higher Education Act[41] and the Higher Education Ordinance.[42] Moreover, the use of fixed-term contracts for full professors was limited to the arts, adjunct professors, and guest professors (Chapter 3, section 3, subsection 2). The use of fixed-term contracts in the arts was motivated by the need to ensure progress and avoid stagnation (SOU 1980:3). Restrictions on the use of probationary periods and fixed-term contracts still apply.[43]

Subjective Right to Full Professorship

In the early 1990s, the Swedish model was still very different from the Norwegian model. There was no subjective right to promotion. Promotion was mentioned as a method of appointment in the Higher Education Ordinance of 1977 as amended in 1985.[44] Any university teacher could be promoted under the Ordinance (Chapter 19, section 30). But there was no duty to promote a teacher.

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[38] Lag (1994:260) om offentlig anställning.
[39] Överklagandenämnden för högskolan. See chapter 12 section 2 of högskoleförordning (1993:100) and diskrimineringslag (2008:576).
[40] Higher Education Appeals Board, decision of 16 December 2016, reg. nr. 212-1120-16.
[41] Högskolelag (1992:1434).
[42] Högskoleförordning (1993:100).
[43] Regeringens proposition 2009/10:149, En akademi i tiden – ökad frihet för universitet och högskolor.
[44] Högskoleförordning (1977:263) as amended by förordning (1985:702).

A subjective right to promotion was recommended by a 1980 committee (SOU 1980:3). In 1996, a committee was entrusted with the task of proposing a new structure of teaching posts at Swedish institutions of higher education (SOU 1996:166). The committee noted as one of the benefits of the Norwegian model the alignment of academic positions and salaries according to performance. In 1998, the Norwegian model was adopted in Sweden simply by changing the Higher Education Ordinance.[45] Promotion to a professor position became a subjective right when the changes entered into force in 1999. Sweden thus chose to follow in Norway's footsteps (Högskoleverket 2007) in the late 1990s.

Under the new rules, a lektor (associate professor) employed on a permanent basis could apply for promotion to a professor position. The university had a duty to promote the lektor if the lektor was competent.[46] In a 2007 report by Högskoleverket,[47] it was later assumed that the Norwegian promotion (opprykk) and American tenure systems had served as inspiration for the new Swedish model (Högskoleverket 2007). This said, there clearly was a much closer connection to the regulation of public sector employment and the Norwegian model.

Increased University Discretion

The subjective right to promotion under the Higher Education Ordinance was abolished in the Ordinance of 2010[48] due to negative experiences. According to the government bill of 2009, it had become more difficult to plan faculty structure, the new professors were professors in name only as resources had not been increased, and the system had reduced national and international mobility.[49] The subjective right to promotion was replaced by rules on invitation. A person could be invited to the position of professor without competition provided that the recruitment was particularly relevant for a certain activity at the university and the person was competent (Chapter 4, section 7).

At the same time, promotion as a subjective right remained in place depending on the internal guidelines of each university. This subjective

[45] Förordning (1998:1003) om ändring i högskoleförordningen (1993:100).
[46] Förordning (1998:1003), Chapter 4, sections 11 and 12.
[47] Högskoleverket was a government body that existed in 1995–2012 and was succeeded by Universitskanslersämbetet.
[48] Förordning (2010:1064) om ändring i högskoleförordningen (1993:100).
[49] Regeringens proposition 2009/10:149, En akademi i tiden – ökad frihet för universitet och högskolor.

right was partly facilitated by the right of the university to invite a person to a professor position.

The positions of professor and lektor were the only mandatory teacher categories required by law at the time. Apart from these two categories, universities were free to choose their own teacher categories.

The wide scope of university discretion was reflected in career structures at Swedish universities. A 2016 inquiry (SOU 2016:29, 31) drew the conclusion that "Sweden essentially has never had a coherent career structure". A subjective right to promotion was used at some institutions of higher education. Thirteen higher education institutions offered "career development positions that give the holder the right to promotion to a higher teaching position", but "the majority of these have a parallel career development position that does not entitle the holder to be considered for promotion". The general mood seems to be that competitive recruitment is beneficial in the early part of the researcher career (SOU 2016:29, 14).

Academic Criteria

The basic requirements as to competence reflect the trend of laissez-faire.

The Higher Education Act of 1977[50] did not yet lay down any recruitment criteria. More detailed requirements were to be laid down in an ordinance. Professors' qualification criteria were adopted in the Higher Education Ordinance of 1977[51] (Chapter 19, section 13). A 1980 committee believed that these criteria focused too much on research and that even pedagogical expertise should be taken into account (SOU 1980:3).

After the amendments of 1985,[52] the Higher Education Ordinance of 1977 defined what to focus on when assessing scientific and pedagogical expertise (Chapter 19, sections 21 and 31) (Högskoleverket 2007). Neither national nor international excellence were required. The Higher Education Ordinance of 1977 was replaced by the Higher Education Ordinance of 1993[53] without any material change regarding professors' qualifications (Chapter 4, section 3).

In the Higher Education Act of 1997, professors were defined as the highest-ranking teachers. The 1997 Act only required proven scientific and

[50] Högskolelag (1977:218).
[51] Högskoleförordning (1977:263).
[52] Förordning (1985:702).
[53] Högskoleförordning (1993:100).

pedagogical expertise[54] with an exception for the arts (Chapter 3, section 2). There was no reference to national or international standards. The omission was intentional as the government preferred to leave the question to each university (Högskoleverket 2007).

In a reform that entered into force in 2011, the reference to proven scientific and pedagogical competence was deleted. The intention was not to abolish this requirement. According to the government bill, "high requirements" should continue to apply in line with the earlier wording.[55] But the Higher Education Ordinance of 1993 did not lay down high requirements.

According to its amended wording, the Higher Education Ordinance of 1993 (Chapter 4, section 3)[56] now defines the requirements as follows (as translated by Universitetskanslersämbetet). First, the Ordinance basically repeats the requirement set out in the earlier Higher Education Act: "A person who has demonstrated both research and teaching expertise shall be qualified for employment as a professor except in disciplines in the fine, applied or performing arts. A person who has demonstrated both artistic and teaching expertise shall be qualified for employment as a professor in disciplines in the fine, applied or performing arts." Second, the Ordinance plainly states that "the assessment criteria for appointment as a professor shall be the degree of the expertise required as a qualification for employment" and that "as much attention shall be given to the assessment of teaching expertise as to the assessment of research or artistic expertise". Third, each higher education institution determines itself what assessment criteria are otherwise to apply to the appointment of a professor.

Before a person can be appointed, it is necessary to obtain an opinion on the applicant's expertise, unless it is obvious that the opinion is not necessary. The Higher Education Ordinance does not require a panel. An opinion from one or more experts is sufficient (Chapter 4, section 6).

While Norway has chosen to increase the level of professors' standardised qualification requirements and transparency, Sweden seems to have chosen to abolish standardised qualification requirements and delegate the choice of criteria to each university. Combined with the subjective right to

[54] In Swedish, "vetenskaplig och pedagogisk skicklighet".
[55] Regeringens proposition 2009/10:149, En akademi i tiden – ökad frihet för universitet och högskolor, p. 62.
[56] Högskoleförordning (1993:100), as amended by förordning (2010:1064).

promotion still used at many universities, there is a risk of declining standards and increasing numbers of professors. In fact, some professors have publicly lamented the inflation of the professor title and too low professor standards and recommended replacing the subjective right to promotion with increased use of open competition for professor positions (Alvesson and Olsson 2016a; Alvesson and Olsson 2016b). At large universities, more than 60% of professors and lecturers were recruited internally in 2014 (Barriere, Baard and Nordstrand 2016). One may note that Swedish university professors have lower salaries than their Nordic peers (based on information from Nordic university sector labour unions). Many of the problems were discussed already in the government bill of 2009.[57]

Conclusion

The research question of this article is how laws protect the right of a researcher to a full professorship after fulfilling pre-determined criteria. In Sweden, the policy is to favour institutional autonomy. Laws do not lay down any pre-determined criteria. A tenure track from a non-tenured professor position to a tenured professor position is for legal reasons not possible in Sweden. According to the main rule, probationary periods and fixed-term contracts must not be used in the employment of university professors. Many universities offer tenured associate professors (lektor) a subjective right to promotion to a professor position. A subjective right to promotion can be regarded as a functional equivalent to traditional tenure-track positions in the recruitment of university professors. The subjective right to promotion is an echo of earlier regulation and shows that path dependency can sometimes be based on earlier laws that have ceased to apply.

Finland

Finland seems to be different from the other three studied Nordic countries. Until very recently, it was believed that "tenure-track recruitment does not play a major role in academic recruitment in Finland, although the number of tenure-track positions has been increasing" (Siekkinen, Pekkola and Kivistö 2016). Only 5% of all open positions at Finnish universities were tenure-track positions between 2010–2014 (Opetus- ja kulttuuriministeriö

[57] Regeringens proposition 2009/10:149, En akademi i tiden - ökad frihet för universitet och högskolor.

2016). This has rapidly changed due to managerial logic (Pietilä and Pinheiro 2021). A 2020 study of tenure-track practices commissioned by the Finnish Union of University Professors described how tenure-track practices have become the main way to recruit university professors. At the same time, the heterogenity of professor recruitment practices has increased (Pekkola et al. 2020). The heterogenity of practices goes hand in hand with the fact that a "tenure track" can mean different things depending on the university. A "tenure track" may be perceived as the existence of a career structure, as a career advancement system, or as probation on the job (Opetus- ja kulttuuriministeriö 2016; Pekkola et al. 2020). This development largely has happened in spite of regulation. What is striking in Finland is the diminishing relevance of regulatory compliance and an increasing culture of regulatory non-compliance.

Civil Servant or Employee Status

Finnish university professors used to be civil servants (Välimaa 2001; Välimaa 2019). Under section 87 of the Constitution of 1919[58] and the Act on the Appointment of University Professors and Associate Professors,[59] full university professors were appointed by the President of the Republic. Vacant professor positions were filled after an open competition. The university ranked applicants according to merit. Professors were appointed by the President of the Republic from a pool of three highest-ranked applicants. In the 1990s, there were almost 1,200 full university professors in Finland and the President appointed some 80 professors a year.[60] Unlike full professors, associate professors were appointed by the university. This way of appointing university professors ended in 1998 following the amendment of the Constitution[61] and the Appointments Act.[62] Universities were empowered to appoint their own professors. Professors were civil servants under the State Civil Servants Act.[63]

[58] Regeringsformen för Finland (94/1919).
[59] Lag om tillsättning av tjänster som professor och biträdande professor vid högskolor (856/1991).
[60] RP 42/1997 rd.
[61] Lag 647/1997 om ändring av 87 § och 89 § Regeringsformen för Finland.
[62] Lag 648/1997 om ändring av lagen om tillsättning av tjänster som professor och biträdande professor vid högskolor.
[63] Statstjänstemannalag (750/1994).

A decade after a major constitutional reform, the status of university professors and universities changed fundamentally in 2010.[64] The Universities Act of 1997[65] was replaced by the Universities Act of 2009[66] that was designed to increase institutional autonomy and ensure academic freedom (Aarrevaara, Dobson and Elander 2009). Since the entry into force of the new legal framework in 2010, universities have been independent legal entities separate from the state.

Universities nevertheless continue to be regulated by the state with the Ministry of Education and Culture as the main source of funding. Moreover, they are entities that to some extent exercise public power on behalf of the state under the Constitution (sections 22, 123 and 124) and the Universities Act of 2009 (sections 3 and 30). For this reason, universities have a legal duty to safeguard academic freedom under the Universities Act (sections 6 and 32(3)) and apply principles of good administrative practice under the Administration Act[67] (section 6).

The Universities Act of 2009 applies to research universities only. All higher-education institutions with university status are research universities in Finland. There are two types of research universities, namely "public law universities" and "foundation universities". Public law universities are separate entities under public law. Foundation universities have the legal form of a private law foundation. In the latter case, the Universities Act (lex specialis) is complemented by the Foundation Act of 2015[68] (lex generalis). In most respects, however, both are subject to the same regulatory framework, the main difference being slightly different forms of internal governance.[69]

All research universities are governed by the same rules on professor employment. Professors have lost their status as civil servants and are now employees under the Employment Contracts Act of 2001.[70] The recruitment of university professors is constrained by section 33 of the Universities Act of 2009, sections 3 and 4 of the Employment Contracts Act of 2001,

[64] Finlands grundlag (731/1999).
[65] Universitetslag (645/1997).
[66] Universitetslag (558/2009).
[67] Förvaltningslag (434/2003).
[68] Stiftelselag (487/2015).
[69] RP 73/2017 rd; GrUU 43/2017 rd - RP 73/2017 rd (report of the Consitution Committee); EOAK/1327/2018 (response of the Deputy Parliamentary Ombudsman to a complaint regarding the University of Tampere).
[70] Arbetsavtalslag (55/2001).

requirements as to integrity and good administrative practice under the Administration Act, and duties to observe good scientific practice. Subject to these constraints, the default rule is that the recruitment of university professors is a question of university autonomy, freedom of contract, and managerial discretion.

For the purposes of employment, both types of universities are in the private sector. For example, there customarily is one private sector collective agreement binding on all research universities. The party representing universities (Sivista) is a member organisation of the Confederation of Finnish Industries (EK).

Since the employment contracts of university researchers and professors are classified as private sector employment contracts, there is no general right to appeal against an unfavourable recruitment decision. Before the entry into force of the Universities Act of 2009, appeals against recruitment decisions were limited both under general public sector rules[71] and particular rules on the appointment of full professors and associate professors.[72] In some cases, a dissatisfied applicant may claim compensation for discrimination on the basis of gender.[73]

Tenured or Fixed-Term Position: The Law

The Employment Contracts Act is the main legal constraint on the use of the probation model. The Act limits the use of fixed-term contracts and probationary periods. According to the main rule, an employment contract is for an indefinite period of time. Fixed-term contracts may only be used "for a legitimate reason" ("av grundad anledning", section 3). However, fixed-term contracts must not be used for permanent work. This is clearly stated in the preparatory works[74] of the Employment Contracts Act. Moreover, the maximum length of a probationary period is limited to six months (section 4). The prohibition of fixed-term contracts for permanent work is made stronger by the Universities Act that lays down a duty for the university to ensure the freedom of research, artistic work, and teaching (sections 2, 3, 6 and 32). A university obviously has a permanent need to

[71] Original wording of section 57 of the State Civil Servants Act (statstjänstemannalag) (750/1994). Now permitted under sections 57 and 59 of the State Civil Servants Act, as amended.
[72] Section 13 of lag om tillsättning av tjänster som professor och biträdande professor vid högskolor (856/1991).
[73] Lag om jämställdhet mellan kvinnor och män (609/1986).
[74] RP 157/2000 rd.

carry out research and provide research-based education, the contents of which largely are in the discretion of the researcher/teacher under academic freedom.

Whether fixed-term contracts may be used for academic faculty depends on the nature of the position. The main rule is that full university professors have a permanent contract. Before the university reform of 2009–2010, a working group (Opetusministeriö 2008) proposed a four-stage research career model. The first stage consists of young researchers working on their doctoral dissertation. The second stage is the career phase of researchers who have recently completed their doctorate. The third stage consists of independent research and education professionals capable of academic leadership. The fourth stage is that of a full professor. According to the report of the working group, fixed-term contracts may be used at the first and second stage that are seen to include an educational element, but fixed-term contracts must not be used at the third and fourth stage that consist of permanent work. The proposals of the working group and the prohibition of temporary contracts for permanent work were largely applied by the government in the preparatory works[75] of the Universities Act of 2009. The parliamentary Education and Culture Committee generally required compliance with statutory limitations on the use of fixed-term contracts.[76] In practice, it is legal to use fixed-term contracts for guest professors.

The combined effect of the Universities Act and the Employment Contracts Act should be to increase the use of permanent contracts and strengthen tenure. Because of constitutional constraints and the provisions of the Universities Act, a university generally must not restrict academic freedom. This has been stated several times by the parliamentary Constitution Committee, the functional equivalent of a constitutional court in Finland.[77] While a permanent employment contract can be terminated for cause under Chapter 7 of the Employment Contracts Act, a university must not terminate the employment contract of academic faculty on grounds that would breach academic freedom under the Universities Act (section 32(3)). This means that permitted termination grounds applicable to the contracts of academic faculty are narrower than those applicable to

[75] RP 7/2009 rd.
[76] KuUB 5/2009 rd - RP 7/2009 rd.
[77] GrUU 11/2009 rd - RP 7/2009 rd.

employment contracts in general. To what extent academic freedom restricts the termination of employment relationships is still unclear although some courts such as the Labour Court[78] and the Helsinki Court of Appeals[79] have endorsed academic freedom in employment contracts.

Academic Criteria

The law does not lay down any academic professor qualification criteria. Each university is expected to determine the criteria in its own internal guidelines under the Universities Act. At the national level, there is just a non-binding recommendation applicable to all academic positions.

On one hand, the Universities Act lays down the duties of full professors. According to the Universities Act, a professor shall "carry out and oversee scientific or artistic work, provide research-based tuition, follow developments in science or art, and participate in societal interaction and international cooperation in his or her field" (section 33). In practice, the duties of a professor reflect the statutory duties of the university as a whole (section 2). Generally, universities shall "arrange their activities so as to ensure a high international standard in research, artistic activities, education and tuition in conformity with research integrity" (section 2).

On the other, the Universities Act does not expressly determine the required professor standards. Institutional autonomy applies. Each university needs to define its own professor standards in its own internal guidelines. In any case, the statutory benchmark for all university activities is "a high international standard" (section 2).

There is a non-binding national recommendation on what is good practice in researcher evaluation in general (Working group for responsible evaluation of a researcher 2020). Reflecting the General Recommendation of the DORA principles, it is recommended as good practice to assess scientific quality primarily by examining the scientific contents of research rather than on the basis of research metrics. At the moment of writing, the impact of the recommendation is still unclear as the use of research metrics is widespread in Finland.

[78] The Labour Court, combined judgments of 28 December 2020 nr. 116 (R 42/20) and nr. 117 (R 44/20) Julkisalan koulutettujen neuvottelujärjestö JUKO ry v. Sivistystyönantajat ry (Finnish Education Employers) and Taideyliopisto (Uniarts).
[79] Helsinki Court of Appeals, judgment of 3 December 2020 (S19/1903) in Hänninen v. University of Helsinki.

The Universities Act lays down some key aspects of the professor recruitment process. The Act reflects traditional recruitment practices that have their roots in the regulation of civil servants: "Career progression in Finnish academia has traditionally been based on individuals applying for vacant positions, such as professorships" (Pietilä and Pinheiro 2021).

Under the Universities Act, a professor can be appointed following an open competition or an invitation. The main rule is that a professor cannot be appointed without expert review: "Statements on the qualifications and merits of applicants or invitees to a position must be requested from a minimum of two assessors for an appointment that is in effect until further notice or for a fixed period of at least two years" (section 33). The experts must be unbiased (section 30). But since there is no common statutory set of standards shared by all universities, the quality of an applicant must be assessed applying each university's own internal guidelines. The guidelines should lay down the required qualifications - without which a person cannot be appointed - and other criteria regarded as merits.

Fixed-Term Contracts and Tenure Tracks: The Practice

According to its wording, the legal framework applicable in Finland should effectively exclude the use of American-style tenure tracks in the recruitment of full professors. The key legal constraints consist of the prohibition of fixed-term contracts for permanent work and the prohibition of probationary periods exceeding six months. No university employment practices may override mandatory law.[80]

However, fixed-term contracts have become common practice in the recruitment of academic personnel. The parliamentary Culture and Education Committee has required regulatory compliance,[81] but the use of fixed-term contracts continues to be widespread. The share of fixed-term contracts is much higher in Finland than in the other Nordic countries (Frølich et al. 2018; Iddeng and Norgård 2020). The common understanding in the political and labour union discourse is that 70% of academic personnel have fixed-term contracts. Without doctoral students, the figure is 60%.[82] Employers put the figure a bit lower (see Pietilä and Pinheiro 2021), but the picture remains the same.

[80] KuUB 5/2009 rd - RP 7/2009 rd.
[81] KuUB 4/2013 rd - RP 74/2013 rd.
[82] KK 675/2020 vp; SSS 675/2020 rd.

The widespread use of fixed-term contracts is reflected in the widespread use of tenure-track systems that include fixed-term contracts. Universities started to use tenure-track systems after the entry into force of the university reform in 2010 (Pietilä 2015; Pietilä 2019; Pietilä and Pinheiro 2021). A 2020 study found that various kinds of tenure-track practices have replaced open competition for vacant positions in the recruitment of professors in Finland (Pekkola et al. 2020). Each university that uses a tenure track seems to have its own interpretation of the tenure-track concept. Some universities do not see the difference between a tenure track and the existence of a four-stage research career model with a hierarchy of positions. In fact, the term "tenure" has been used in the Finnish discourse to describe both a fixed-term track position and the permanent target position (Pekkola et al. 2020). One can therefore say that there is no national tenure-track model in the recruitment of university professors in Finland (Opetus- ja kulttuuriministeriö 2016; Pekkola et al. 2020).

This means that the characteristic aspect of Finnish "tenure-track" practices is not the goal of tenure, that is, advancement to a permanent position at the same or higher career stage. It is the track, that is, career advancement without the need to apply for a vacant position in open competition. This was pointed out in an earlier study as well: "The difference between the tenure track and traditional academic career progression in Finland is the opportunity to promote or give tenure to an academic (without having the position publicly vacant) based on performance criteria and supported with administrative processes and guidelines. The exact organisational career structures, procedures and guidelines differ between organisations" (Pietilä and Pinheiro 2021).

A Culture of Regulatory Non-Compliance

The existence of different practices depending on the university reduces transparency and makes career paths less open and less inclusive (Opetus- ja kulttuuriministeriö 2016; Pekkola et al. 2020). This has worried the parliamentary Culture and Education Committee.[83] Moreover, since tenure-track positions are fixed-term positions for permanent work, there is an obvious conflict between tenure-track programmes and the Employment

[83] KuUB 4/2013 rd - RP 74/2013 rd.

Contracts Act (sections 3 and 4). One may therefore question the legality of many tenure-track practices currently applied at Finnish universities.

Universities have motivated the use of fixed-term contracts in tenure-track programmes with the existence of a "a legitimate reason" that consists of a tenure-track programme or customary university practice. Since this is circular reasoning, it has so far failed to convince the legislators. In 2009, the parliamentary Education and Culture Committee strongly condemned the use of customary university practice as a reason to circumvent the prohibition of fixed-term contracts for permanent work.[84] Universities are not above the law.

Finnish universities generally have a constitutional duty to comply with the law as entities created to ensure academic freedom on behalf of the state under sections 22 and 123 of the Constitution, and as entities that have a legal duty to observe good administrative practice under section 6 of the Administration Act.

One may therefore wonder why tenure-track practices that are not in conformity with the law are so widespread. A study blamed management culture (Peltonen 2021). In most legal cases of university non-compliance between 2010 and 2021, university management either exhibited arrogance and believed that it was above the law (28 cases) or did not care about the law (7 cases). University management was described as honest in a relatively small number of cases (10) in the study. Since regulatory non-compliance is widespread, there is an obvious enforcement problem (Vaughan 1982; Peltonen 2021).

Conclusions

How do the laws of Denmark, Norway, Sweden and Finland protect the right of a researcher to be appointed to a tenured full professorship after fulfilling pre-determined criteria? The four Nordic countries - and the two benchmark countries - exhibit partly different, partly the same approaches.

Generally, advancement to the target position may be from a tenured or non-tenured position. In Denmark, Norway, and Sweden, advancement to a full professor position customarily is from a tenured position. It is not permitted to use American-style probationary periods in the recruitment of full university professors. For this reason, advancement to a full professor

[84] KuUB 5/2009 rd - RP 7/2009 rd.

position is not via a tenure track in these three Nordic countries. In the US and Germany, the right of a researcher to a tenured full professorship after fulfilling pre-determined criteria is from a non-tenured position. In Finland, advancement to a tenured full professorship might in practice be from a tenured or non-tenured position depending on the university.

In Denmark, Norway, and Sweden, recruitment to the initial tenured position does not require decisions on access to a professorship track. In US practice, recruitment is expressly to the professorship track when a non-tenured professorship is combined with a probationary period and the prospect of tenure. In Germany, the functional equivalent of the US tenure track is the position of Juniorprofessor when it is combined with an invitation to professorship subject to fulfilment of pre-agreed criteria. In Denmark, access to the professorship track would be by invitation only if universities chose to use the track. In Norway and Sweden, it is a subjective right open to all holders of the initial position.

There are countries with exclusive or inclusive systems. Norway and Sweden have inclusive systems. Their systems focus on subjective rights and have a large scope. The US (non-tenured professors), Germany (Juniorprofessoren with or without promised invitation to a full professorship), and Denmark (forfremmelsesprogram til professor by invitation only) have exclusive systems. These systems focus on individual excellence and have a small scope. The American tenure-track model in particular has become more exclusive due to reduced use of tenure-track-positions and increased use of non-tenured or non-tenure-track positions. In Denmark, the slow adoption of professor tracks has left room for open competition for professor positions. In Finland, the characteristic function of the increased use of programmes that are called “tenure track” has been to reduce both open competition for full professor positions and transparency.

The four Nordic countries exhibit different approaches to law. In Denmark, law matters. Danish law does not give researchers any right to promotion to a professorship, but a university may choose to apply a career advancement programme (forfremmelsesprogram til professor). Access is limited. Law matters also in Norway, but not in the same way as in Denmark. Any førsteamanuensis and høyskoledosent has a subjective right to apply for promotion to a professorship based on merit. Under the Norwegian

model, some common criteria and independent expert assessments are employed in order to ensure high standards. Past law matters in Sweden. Many universities give researchers a subjective right to promotion based on merit. This practice reflects earlier regulation and is an example of path dependency. Generally, the Swedish model relies on institutional autonomy with freedom as the default rule. It could also be called a laissez-faire regulatory approach. In Finland, the law does not matter as it should. Different universities use different kinds of practices that they call "tenure track". The wide range of practices can be explained by a university management culture that has prevailed over strict regulatory compliance.

In the studied Nordic countries, the statutory tasks of a professor tend to reflect the statutory functions of a university. Whether the statutory functions of a university have been defined in a detailed or less detailed manner depends on the country. In Denmark and Finland, a relatively detailed list of university functions[85] is mirrored by a relatively detailed list of professor tasks.[86] In Norway, the list of university functions is relatively detailed.[87] There is no list of professor tasks, but the regulation of professor competence can be described as relatively detailed in the light of the fact that it even requires competence as førsteamanuensis and høyskoledosent.[88] In Sweden, a less detailed list of university functions is mirrored by a less detailed list of professor tasks. This difference between Sweden and the other three countries reflects the Swedish laissez-faire approach to the regulation of universities.

The regulation of professor qualification criteria follows the same pattern. The criteria are largely left to the discretion of each university in Sweden that has chosen the laissez-faire approach. In the absence of state regulation and common criteria, there is a risk of reduced transparency and lowering standards. Denmark, Norway and Finland leave the detailed criteria to be regulated by each university but not quite like Sweden as regulation in those countries provides more guidance. Moreover, while the minimum

[85] Denmark: section 2 of lov nr. 778 af 7. august 2019 om universiteter (universitetsloven). Finland: section 2 of yliopistolaki (558/2009) (the Universities Act).
[86] Denmark: bekendtgørelse nr. 1443 af 11. december 2019 om stillingsstruktur for videnskabeligt personale ved universiteter. Finland: section 33 of yliopistolaki (558/2009) (the Universities Act).
[87] Section 1-3 of lov 1. april 2005 nr. 15 om universiteter og høyskoler (universitets- og høyskoleloven) (Act on Universities and Colleges).
[88] Sections 1-2 (professor), 1-3 (høyskoledosent) and 1-4 (førsteamanuensis) of forskrift 9. februar 2006 nr. 129 om ansettelse og opprykk i undervisnings- og forskerstillinge (as amended).

requirement in Sweden is the opinion of one expert, the other countries require a minimum of two experts.

In the EU, Directive 2006/54/EC requires the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Timmer and Senden 2016; NOU 2020:3). The Directive also requires the availability of "judicial procedures" (Article 17) and measures "necessary to ensure real and effective compensation or reparation" (Article 18). This duty applies in the university sector regardless of how it is organised. For this reason, the laws of all four studied Nordic countries provide for these remedies. Apart from discrimination on grounds of gender, however, the right of the researcher to appeal against an unfavourable recruitment decision seems to depend on whether the position is regarded as a civil servant (or equivalent) position (Norway and Sweden) or as a private-sector position (Denmark and Finland). The best qualified person should be appointed especially in countries where professors are civil servants (Germany and Norway). In the private sector, the default rule is freedom of contract and the absence of a duty to make employment offers. The gradual move towards more institutional autonomy and increased discretion of university management, and from the public sector to the private sector in employment matters, is reflected in the increased limitation of appeals. Sweden's Higher Education Appeals Board is interesting, because it goes against the trend.

In the EU, the use of fixed-term employment contracts is constrained by Directive 1999/70/EC. The use of fixed-term contracts is limited in all four studied Nordic countries. It is common practice to distinguish between fixed-term positions and permanent positions in the university sector.

Finnish law prohibits the use of fixed-term contracts for permanent work. Finland should ensure regulatory compliance in the university sector in this respect but seems to have failed to do so. We can therefore try to provide an example of how the results of this comparative study could be used to address the problem.

Of the studied countries, Danish law could provide the most feasible model for the development of Finnish law. The Danish forfremmelsesprogram til professor is "Nordic" in the sense that advancement to a full professorship is from a tenured position, "American" and "German" in the sense that access to a career advancement programme

leading to full professorship is exclusive and not a subjective right, "global" since the subjective right to full professorship is based on contract, and "Danish" since termination practices are flexible regardless of tenure. The reception of the Danish solution would require just a small amendment to existing Finnish legislation. While flexible termination practices cannot be adopted in Finland due to the protection of academic freedom, we propose adding a new section 33a to the Finnish Universities Act of 2009 to create a functional equivalent to the Danish forfremmelsesprogram til professor.

The new section 33a of the Universities Act of 2009 could complement the existing section 33 that lays down part of the process in the recruitment of full university professors. We propose section 33a with the following core content:

> 33a. Track leading to professorship
> 33a(1). A university may invite a person to a track leading to full professorship provided that the person fulfils the following criteria: the person is exceptionally talented; the person is permanently employed by the university at the highest level before full professorship.
> 33a(2). A university that decides to use a track mentioned in the first sub-section shall define the contents of the track and determine the qualification criteria for a full professorship in its guidelines. The qualification criteria for a full professorship shall be clear and aligned with the duties of a full professor laid down in section 33.
> 33a(3). A person may not be invited to a full professorship from the track unless the person clearly fulfils the full professor qualification criteria according to an expert opinion mentioned in the third sub-section of section 33.
> 33a(4). A person may not be on a track leading to full professorship for a period longer than eight years.
> 33a(5). A person on a track leading to full professorship shall ask the university to procure an expert report on the fulfilment of full professor qualification criteria no later than six months before the expiry of the track period. Where the person does not ask the university to procure such an expert report or the qualification criteria are not met, the earlier employment relationship of the person continues outside the track. Where the qualification criteria

are met according to the expert report, the employment relationship of the person will change into a full professorship.

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