

LEGAL IMPLICATIONS OF THE 70 YEARS RETIRING AGE FOR UNIVERSITY PROFESSORS

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Prologue

Ironically, the demand for a 70 years retiring age for University Professors resonated in the recent Press Conference by the Academic Staff Union of Nigerian Universities (ASUU). Very fortunately, this offers the present opportunity to undertake a critical and thorough examination of the legal implications of the proposed enactment for the benefit of the stakeholders, especially the University Professors, to enable them make a well-informed choice in the circumstance.

Proper Perception of The Prevailing Position

Section 8 of the Universities (Miscellaneous Provisions) Act No. 11 of 1993 contains the extant provision on the compulsory retiring age of sixty-five years now sought to be increased to seventy years by ASUU. Section 9 is also relevant for an illustration of the implications of the distinction between compulsory and voluntary retirement benefits and would be discussed together with section 8. These sections provide as follows:

“8.(1) Notwithstanding anything to the contrary in the Pensions Act, the compulsory retiring age of an academic staff of a University shall be sixty-five years.

(2) A law or rule requiring a person to retire from the public service after serving for thirty-five years shall not apply to an academic staff of a university.

9. A person who retires as a professor having served –

(a) a minimum period of fifteen years as a professor in the University or continuously in the service of a University in Nigeria up to the retiring age; and

(b) who during the period of service was absent from the University only on approved national or University assignments,

shall be entitled to pension at a rate equivalent to his last annual salary and such allowances, as the Council may, from time to time, determine as qualifying for pension and gratuity, in addition to any other retirement benefits to which he may be entitled.”

A few preliminary observations are pertinent here. The first is that these provisions are applicable only to Federal Universities by virtue of section 1 of the Act. However, State and Private Universities may benefit from these provisions by adopting them expressly in their enabling laws. Secondly, there is a distinction between **Compulsory retiring age** which is here legislated by virtue of section 8 and **Voluntary retiring age** which is still 60 years (and this is not contentious) for all categories of academic staff. The first is **mandatory** while the other is **optional**. In other words, an academic staff **may elect to retire** from the age of 60 years while he **must retire** upon attaining the age of 65 years. The 65 years retiring age under section 8 applies to all categories of academic staff of **Universities** only. It is clear that this provision does not apply to academic staff of other tertiary institutions of learning which are not Universities.

Under section 9 only University Professors, that is, professors in the Universities or who are in the employment of Universities or who are in the university system are covered by these provisions. Accordingly, professors employed for instance, in the Civil or Public Service or any government parastatal or agency cannot take advantage of these provisions. For the avoidance of any doubts, any professor who, by reason of his employment and office outside the university system, is not eligible or qualified for membership of the Academic Staff Union of Nigerian Universities (ASUU), is not within the purview of this Act.

The first limb of section 9(a) could be interpreted in two different ways. On the one hand, if restrictively interpreted, it could mean only a professor who retires compulsorily at the age of 65 years. On the other hand, if liberally interpreted, it would include a professor who retires voluntarily from 60 years of age. However, since the acceptable rule in any choice between a restrictive and liberal interpretation of a beneficial provision is to adopt the liberal approach, the word “retires” in section 9 may best be interpreted to include both voluntary and compulsory retirement. If this is adopted as acceptable, it may safely be concluded that where a professor retires voluntarily or compulsorily, he is entitled to full retirement benefits under section 9 by virtue of the provision of the first limb of section 9(a) of the Act.

However, the second limb of section 9(a) attracts different consequences. This is because the words “*retiring age*” can only mean the compulsory retiring age of 65 years under section 8 of the Act. It follows that only a professor who retires at the compulsory retiring age of 65 years could take advantage of the provision. Consequently, a professor who retires voluntarily is not eligible for the full retirement benefits under section 9. This distinction between voluntary and compulsory retirement has some adverse implications for many professors under section 9 and this is likely to be exacerbated by an increase of the retiring age from 65 years to 70 years by legislation. That would mean that any professor retiring between 60 years and 69 years and 11 months would fall within the voluntary retirement category with all its implications.

Professors Potential Preferences

For this purpose, university professors may conveniently be classified into two categories, namely:

- Those who prefer compulsory retirement at 65 years; and
- Those who opt for compulsory retirement at 70 years.

Our interactive research reveals that majority of University Professors, when properly educated on the implications of raising their retiring age to 70 years, prefer a compulsory retiring age of 65 years. Those who opt for compulsory retiring age of 70 years are only few and far between. It is submitted therefore, that it will be unfair and inequitable for the Federal Government to clamp a compulsory retiring age of 70 years on all professors by legislation without regard for their informed and legitimate preferences.

Indeed, the increase in the retiring age to 70 years being sought may not alone solve the problem of shortage of professors. It seems to us to be only a short-term solution. Professors should be encouraged to mentor younger colleagues and foster academic leadership in order to produce other professors to succeed them in their various disciplines when they retire. Many genuinely qualified younger colleagues are available for mentoring. Where a person who has been a professor for at least ten years in a department is unable to mentor another academic staff to produce a successor, it will be unjustifiable for him to benefit from his own

ineffectiveness by claiming that there is no professor to succeed him in the department upon his retirement at 65 years. After all, the success of a leader is the ability to produce a successor.

Besides, we ought to take into consideration that not all categories of professors are in areas of need in academics in the university to warrant a wholesale consignment of all professors to 70 years retiring age into eternity by legislation. What will be the rationale for foisting all these on the university system beyond 65 years when there are others to succeed them? We may have to take a reasonable clue from the Judiciary where the 70 years retiring age is not applicable to all judges but only to Justices of the Court of Appeal and the Supreme Court of Nigeria.

Purposeful Preparation of a Perfect Provision

It is recommended that care should be taken to adopt or fashion out the appropriate formula in the amendment sought by ASUU in order to protect the interest of the two categories of university professors identified above. It is strongly suggested that a perfect legislative arrangement in this situation should be one that not only provides for the 70 years retiring age for the few desirous of it but also caters for the interest of the majority who prefer to retire compulsorily at 65 years. It is possible to achieve both objectives in a single provision when adeptly drafted. The following is humbly recommended for adoption by the Legislature as a substitute for the existing section 8 of the Act:

*“8.(1) Notwithstanding anything to the contrary in the Pensions Act, the compulsory retiring age of an academic staff of a University shall be sixty-five years. **Provided that a professor may elect to retire at the age of seventy years by giving written notice to that effect to his university.***

(2) A law or rule requiring a person to retire from the public service after serving for thirty-five years shall not apply to an academic staff of a university.”

This provision is fair to all categories of professors discussed above as it gives all professors the freedom either to retire at 65 years or at 70 years with the same beneficial implications of compulsory retirement. It is therefore more in accord with the principle of freedom of contract. It completely dispenses with the idea of imposition by legislation often associated with compulsory retiring age as it affords a professor the opportunity to determine his retiring age according to his own preferences and yet within the limits of the enabling law!