

Resolution of the 121<sup>st</sup>  
Senate of the German  
Rectors' Conference,  
Bonn, 12 June 2012

**On the future  
implementation of the  
"W" salary scale**

**HRK** German Rectors' Conference

The Voice of the Universities

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## **I. Introduction**

The Second Senate of the Federal Constitutional Court ruled on 14 February 2012 that the “W2” remuneration of professors in Hesse is a violation of the so-called maintenance principle (‘Alimentationsprinzip’) and is, therefore, unconstitutional. This decision has consequences for all federal states and most likely also for the entire “W” salary scale. With the introduction of the “W” salary scale, a functional integrated system was created for the remuneration of professors, which includes the possibility of performance-related pay. For German higher education institutions to remain attractive and competitive it is essential that the basic level of pay on the “W” salary scale is adequate and that at the same time performance-related pay continues to be a component of this salary scale.

## **II. Resolutions**

1. The existing combination of basic pay and performance-related pay as the two central elements of the “W” salary scale has proved itself and must be retained.
2. Remuneration in accordance with the maintenance principle can only be realised by adequately increasing the basic level of pay.
3. Insofar as it is still contained in the statutes of the federal states, there is no longer any justification for the allocation framework.
4. The costs of the statutory amendments made necessary by the Federal Constitutional Court’s ruling are to be borne by the federal states and not by the higher education institutions.
5. The individual states should aim to harmonise the basic elements of the “W” salary scale.

## **III. Explanatory comments**

1. The legislator must retain the existing “W” salary scale so as to strengthen an academically appropriate principle of performance-related remuneration at higher education institutions. The HEIs must be able to continue to decide on performance-related pay and the corresponding performance criteria so as to be able to further develop their individual goals and profiles themselves. These principles of the “W” salary scale have also been held to be essentially effective by the Federal Court of Justice.

2. The aim of a statutory revision in conformity with the constitution must be to guarantee that remuneration is appropriate to the relevant post and equally to ensure that there is adequate scope to award performance-related pay. A return to the "C" salary scale or to comparable elements such as experience levels, which has been suggested in part, must be rejected as this largely negates performance-related incentives. It must be noted that a significant increase in the "W2" basic pay levels may also make it necessary simultaneously to increase the "W3" basic pay levels, so as to ensure that there is still a sufficient difference between the salary levels, appropriate to the respective posts. Furthermore, it must be considered that any substantial increase in basic pay levels will affect the pension burden. This is particularly relevant in respect of higher education institutions that have to carry this burden themselves.

3. Particularly for higher education institutions with lump-sum budgeting, retaining the allocation framework is anachronistic. In particular, unusually large performance-related payments (e.g. performance-related payments from the senior management boards for taking on specific duties, performance-related payments for the recruitment of academics from abroad or from the private sector) are to be disregarded when calculating average salaries, as is already the case in non-academic research institutions. On the whole, the past has shown that starting from the reference year of 2001 too few funds are available for performance-related pay.

4. As is clear from the reasoning in the court's judgment, the fact that the basic pay on the "W2" salary scale in Hesse is not appropriate to professorial posts is an oversight on the part of the legislator who in violating the maintenance principle failed to consider basic elements of civil service law. The financial consequences of this legislative error are, therefore, to be systematically attributed to the legislator and, consequently, to the state. Considering the fact that there is already now a lack of basic funding, the higher education institutions are not in a position to bear additional financial burdens.

5. Considering that there is hardly any difference when it comes to

what is required of professors and what their duties are, significant differences in salaries between the federal states and isolated solutions in individual states cannot be justified. This should be accounted for by harmonising the salary structure in all federal states.