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Abstract

The state's duty of neutrality is often subject to legal discussions and have raised lots of questions for decades. Can a public authority be acting as a party? What are the limits of neutrality? And when are they exceeded? This is just a section of this complicated matter. Due to their legal importance, neutrality questions were and are discussed often in literary terms. While many essays deal mainly with neutrality in the context of gubernative action or in the area of municipal self-administration, this essay examines the question of the existence and extent of a neutrality requirement for universities. The reason for this is a call by the Leibniz University of Hanover for a counter-demonstration against a confiscation of "HAGIDA" (Hanover against the Islamization of the West) approved for the 12th of January 2015. "HAGIDA" is a group which is against the integration of foreign students. In this context, it is clarified that there is no written law which directs the neutrality. Much more there are only indications in the principle of democracy in Article 20 sec. 3 sentence 2 GG (i.e. Grundgesetz =

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German Basic Law) and in the general principle of equality in Article 3 sec. 1 GG. Therefore the Bundesverfassungsgericht (Federal Constitutional Court) had to formulate the more detailed requirements in the 1970s (BVerfGE 44, 125). In the words of the Federal Constitutional Court government action must take place in an official capacity and (1) must not be barracked and (2) non-advertising or striking; it must also be (3) not partisan, (4) relevant to the subject and (5) informing. Following this the judicial development in gubernative action and in the context of municipal self-administration is received. Both areas are also the subject of several recent decisions. Then the findings of these decisions transferred to the universities. In this context, decisions concerning the Allgemeiner Studierendenausschuss (AStA, General Student Committee) mainly shape the case law. The constitutional courts findings in these cases are transferred to the universities, so that the existence of a university neutrality mandate is to be affirmed. Here it became evident that the "political competence" of the universities is not generally denied, but is also not granted without restriction. Rather a graduated examination of the individual case is also necessary and it is absolutely essential that the individual case decision consider the jurisdiction of the Federal Constitutional Court. In addition the university must be included the university law. The result is that the fine line in a particular case is very narrow. However, it is also possible to call for (counter-)demonstrations by choosing carefully selected formulations, with reference to the jurisprudence criteria of the Federal Constitutional Court and the tasks of the universities (for example promoting diversity and internationality). (HRK / Abstract übernommen)