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Abstract

There is a strained relationship between academic freedom and evaluation: on the one hand, the state can quite rightly expect that the academic expenses that have incurred must in some way show results. The way there, however, is anything but one-dimensional: on the one hand, it is not as though academic results can be "industrially" produced. On the other hand, academic freedom recognizes that, according to Article 5 (3) sentence 1 of the Basic Law (Grundgesetz - GG), the individual academic has the right to resist intervention by the state. What is more, according to the so called "objectivelegal" jurisdiction of the Federal Constitutional Court, the individual academic has, at his disposal, the right to adequate funding in order to exercise his academic freedom, which in times of sinking basic salaries according to the W salary scale is becoming increasingly important. At the same time he has the right to an academic organization that allows him to protect his specific academic freedom. In contrast, in it's decision regarding the Brandenburgian Higher Education Act (BVerfGE 111, 333) the Federal Constitutional Court held that the academic organization, at least in the testing out of new elements of control such as evaluation, is principally subject to an assessment prerogative

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of the legislator. This is, on the other hand balanced by an "obligation to observe". In it's latest decision (concerning the appropriateness of the W2-salary in Hesse), the Federal Constitutional Court has begun to examine the legislator's performance of his observation obligation duty by the as well as examining how the prognosis was reached. Whilst in regard to the result of the prognosis it only examines whether it is manifestly unlawful, as far as the decision is concerned it also analyses the procedure by which the decision came into being. The article attempts to examine the fundamental tension between the relatively new control element of evaluation and the constitutionally guaranteed academic freedom and to examine the current developments towards the proceduralization of (science) law. (HRK / Abstract übernommen)