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Abstract

In principle, public universities in Germany are organized as corporations under public law and are maintained and financed directly by the state. In 2002 the parliament of Lower Saxony adopted a (highly disputed) reform bill, amending the public university act. The reformed university act allows state universities to be transformed into a so called foundation university. After legal transformation, the university is still indirectly state-financed, but it is maintained by a foundation under public law. In November 2009 the Federal Administrative Court delivered a verdict on a leading case concerning the constitutionality of the reformed university organization. The court discusses if the foundation university's internal organization, in particular the strong position of the university's president and of the managing board of trustees, infringes the freedom of science and academia as provided in Article 5 para 3 of the Federal Constitution (Grundgesetz). The court points out that the core problems of the foundation university's statutory organisation arise from relevant gaps in the personal accountability of the executive organs and from the lack of legal control by the state. The court comes to the

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conclusion that the foundation model is (only just) in conformity with the constitution.

Notwithstanding that, the federal judges interpret the university act in a rather surprising way to guarantee the constitutionality of the reviewed statutory provisions. This review essay discusses the verdict in detail. At least in general, the author approves the court's constitutional reasoning.

Nonetheless, doubts remain if the relevant provisions of the university act can be saved by mere interpretation in accordance with the constitution. (HRK / Abstract übernommen)