09.9.2025

Author

WOLFF, Heinrich Amadeus (ZIEDEK, Patrizia)

Title

Die Zulässigkeit eines Sperrvermerks in Berufungsverfahren / Heinrich Amadeus Wolff und Patrizia Ziedek

Publication year

2012

Source/Footnote

In: Wissenschaftsrecht. - 45 (2012) 4, S. 327 - 339

Inventory number

34539

Keywords

Berufung : allgemein ; Hochschullehrer : allgemein

Abstract

When the authority responsible for the adoption of an appointment list makes a note that those candidates applying for an appointment who have been placed at the bottom of the list shall only be appointed after further consultation with the authority, then this is referred to as a blocking note or a breaking point. Neither the higher education acts of the federal government (Bund) nor of the federal states (Länder) contain explicit rules relating to the admissibility of a blocking note. Therefore, the individual court rulings that have dealt with the problem consider a blocking notice not legally warranted, especially the Administrative Court of Frankfurt (Oder) in its order of 26 September 2008. This is not convincing. In cases where the authority may draw up a list consisting of only one or two candidates, a blocking note may also be considered admissible. A blocking note after the first and second placing does no more infringe the rights of the candidates and the appointment authority than a list of one or two candidates but expands the organizational possibilities of the authorities responsible for drawing up the list. The blocking note also makes sense because, should the occasion

arise, it avoids the need to carry out the procedure again if the candidate ranking in first place declines the offer. In cases in which it would be admissible to conclude the appointment procedure with an appointment list consisting of one or two candidates, in contrast to the view of the Administrative Court of Frankfurt (Oder) in its order, the blocking notice does not infringe the rights of other candidates or the appointment authority. If the authority responsible for the appointment disregards the blocking notice, correctly, this must be regarded as an infringement of the right of the authority responsible for the decision on the appointment list under Article 5 (3) of the Basic Law. (HRK / Abstract übernommen)