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Hochschulzulassungsrecht im Spannungsfeld von gesamtstaatlicher Planung und lokaler Gerechtigkeit : ein Beitrag zum ersten Numerus clausus Urteil / Matthias Bode

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Abstract

College admission in Germany can be regarded as a three-party-relationship of applicants, universities and the state (i.e. federal state and Laender). Historically, the interpretation of the basic right concerning the freedom to choose an occupation by the federal constitutional court in 1972 helped to create an understanding of college admission as a hardly restrictable social good. That stimulated expectations in society and led to a race of state legislators to enact rules, for example the Hochschulrahmengesetz. However, admission criteria are not easy to agree on and a great variety of types has been invented: achievement in final secondary-school examinations, waiting time, tests, chance, etc. As the number of seats is limited while the number of applicants is fluctuating, the admission ranks are differing from term to term. This causes questions about which expectations are legally, even constitutionally, guaranteed and can be kept up and which ones are to be adjusted or abandoned. While questions of equal treatment concerning grades and inter permissions across the Laender are common reason for debate it seems that local assessments and exams are accepted very

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well. That leads to the assumption that besides the legislator university authorities should obligatory and on grounds of the academic freedom be involved in the administration of admission procedures. Rather than a matter of constitutional law the admission regulations can be seen as a topic of distributive justice. Besides Aristotle, Rawls and Dworkin with their normative as well as prescriptive point of view, Elster with his more empirically driven concept of local justice seems to offer an enhancing approach. (HRK / Abstract übernommen)