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Title

Neue Leitungsstrukturen als Gefährdungen der Wissenschaftsfreiheit?

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Abstract

The legislator is not only allowed to continually develop university law. Due to changing social conditions, he is even obliged to do so. Though the legislator has to observe constitutional requirements deriving from the academic freedom and self-government guarantees, he enjoys a wide margin of appreciation. Therefore, these constitutional guarantees do in principle not preclude a strengthening and professionalisation of university management structures. The institutionalization of an university council consisting of external experts and being equipped with decision-making and electoral competences does not encounter fundamental constitutional concerns as well. The analysis of the jurisprudence of the Federal Constitutional Court, however, has shown that the scientific staff must be able to sufficiently participate in science-related decisions. Where - due to the new university management structures - scientists are missing proper indirect or direct decision-making, participation or veto rights, the university law has - as a minimum standard - to grant the opportunity of influencing

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and controlling the staffing of the governing university bodies. These minimum rights must comprise self-determined electoral and deselectional powers which generally have to be exercised by the collegial organs representing the personal scientific substrate of the university - the Senate and the Faculty Council. The so called Hamburg-decision of the Federal Constitutional Court of 2010 revealed that the competences of these two collegial bodies have to be moved into the center of future legislative measures regarding the organization of universities. Their further disempowerment will therefore meet hard constitutional limits. However, according to the here held view, this restriction was already laid down in the much-criticized Brandenburg-decision. Whether the legislation on state level currently meets this constitutional minimum requirement, asks for a detailed analysis of the respective university laws with their sometimes complex interaction of various organs being involved in university management processes and decisions. However, the - only cursory - analysis based on the jurisprudence of the Federal Constitutional Court has revealed that at least the organizational provisions of North Rhine-Westphalia encounter substantial constitutional concerns. (HRK / Abstract übernommen)