

20.12.2025

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Title

Promotionsrecht der Fachhochschulen - Gefährdung der Wissenschaft? / Klaus Herrmann

Publication year

2014

Source/Footnote

In: Wissenschaftsrecht. - 47 (2014) 3, S. 237 - 266

Inventory number

37680

Keywords

Promotion : allgemein ; Fachhochschulen : allgemein

Abstract

Upon the Bundesverfassungsgericht (BVerfG, Federal Constitutional Court) having emphasized, in its decision of April 13th, 2010, the academic freedom enjoyed by professors teaching at Fachhochschulen (universities of applied sciences), the discussion has resurfaced in Germany as to whether or not universities of applied sciences as well, in addition to academic universities, should be granted an independent authority to award doctorate degrees and if so, subject to which conditions. The present paper sets out the status of the Landeshochschulgesetze (Acts on Tertiary Education of the Länder) as given in May of 2014 and addresses particular aspects of those of the German federal states in which universities of applied sciences are authorized to perform PhD proceedings of their own, independently of universities. This development is playing out against the backdrop of the universities of applied sciences increasingly focusing on academic activities ever since lawmakers at the level of the federal Länder have assigned further tasks to them in research and academic teaching, in addition to their primary task of practice-based teaching. As concerns those universities of applied sciences that have evolved to become 'academic universities' as a result, it is no longer an option to

20.12.2025

refuse these institutions the right to perform doctoral proceedings based on the argument that such an organizational decision is 'not compatible with academic standards' ('wissenschaftsinadäquat'). However, the present contribution also discusses the measures taken to ensure that newly appointed professors have special academic qualifications, which measures differ significantly between universities and universities of applied sciences. Although it cannot be ruled out that professors teaching at universities of applied sciences have such qualifications, the Acts on Tertiary Education of the German Länder generally do not require appointments to a university of applied sciences to be based on additional academic work. Only in the case of universities is it guaranteed by these Acts that solely professors are appointed who have the special academic qualifications required for assessing the performance of PhD candidates in post-graduate work. When the two institutions of higher learning are regarded based on a criterion of substance such as this, the authorization to award PhD degrees may continue to be concentrated with the universities and in fact should be. Moreover, universities are able to provide a more advantageous environment for promoting and integrating emerging academic talent, for example by offering doctoral programs. The academic freedom protected by Article 5 paragraph 3 of the Grundgesetz (GG, Basic Law) does not grant universities of applied sciences, also not those styled 'academic universities of applied sciences,' any general entitlement to a participatory claim against the state, one intended to provide them with the right to award PhD degrees. By contrast, those professors at universities of applied sciences who have a proven academic track record may, and should, be given the opportunity to assist in doctoral proceedings. (HRK / Abstract übernommen)