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Abstract

The subject of this article is the financial responsibility of the states for their universities as well as the existence of a liability of the guarantor. Article 5 paragraph (3), 1 GG (= Grundgesetz, i.e. Basic Law for the Federal Republic of Germany) guarantees academic freedom for the individual academic who is entitled to basic funding. Parallel to this however, the universities themselves have a right to minimum financial funding, whereby the level is not easy to determine. Despite partial attempts in the literature, there is no entitlement to functionally adequate funding. Ultimately, only a fall beneath the evidential threshold is found to be unconstitutional. Apart from that, according to settled case-law, academic institutions do not have the benefit of the right of continuance. The liability of the guarantor is the financial obligation of the responsible body for the university to third parties. In regard to the universities, this question has only been highlighted rudimentarily to date. The author begins by summing up the different views and in conclusion rejects the idea of a generally valid principle of a guarantor liability. However, the Federal states are liable in relation to third parties if the universities are not only public bodies but at the same time, state institutions because then there is no sufficient legal separation from the state. This is particularly evident in the creation of federal states' assets. However, in the case of a sufficiently clear legal independence of universities, such as in North

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Rhine-Westphalia, where the universities only have the character of a public body, there is no guarantor liability. Due to the legal uncertainties, however, the author calls for legislative clarification. (HRK / Abstract übernommen)