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Author

KNOPP, Lothar

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Verbeamtung des Hochschulkanzlers auf Zeit verfassungsgemäß?

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Abstract

The exigencies to chancellery have risen considerably during last years process of university reform. Due to the dual legal position being assigned to the chancellor by virtue of university law, he is endowed with a bundle of tasks and fields of conflict at the same time while taking an extraordinary position at the interface of university politics and administration. The chancellery is a leading position. It may be considered as a practical application of the recent jurisdiction of the German Federal Constitutional Court (BVerfG) that, through its decision of May 2008, preliminary ruled off the discussion about temporary civil service regarding leading positions. The conception of the office of university chancellor as a temporary function is according to the respective regulations of university law - except for the regulation in Bavaria - hereafter to be qualified as unconstitutional. A merely temporary civil service disallows the chancellor to administrate his function independently and politically neutrally and therefore infringes the principle of lifetime tenure as a constitutionally protected core area of civil service. Miscasts of chancellery cannot be excluded. Difficulties in the

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process of revision have to be accepted; this risk may be as well minimized thereby that the university respectively the responsible public authorities do not favour an amiable, obliging and convenient candidate for the office, but decide strictly through qualification and desist any kind of patronage as Ludwig61 nicely phrased it years ago. Reciprocally the establishment of a lifetime tenure of civil service for the chancellery means for the competent university institutions that they have to assume a higher responsibility as they - in contrast to the conventional temporary civil service positions - cannot act on the assumption that an inconvenient and/or incapable chancellor may after a manageable period of time be simply removed of his function by not appointing or electing him again. Adhering to temporary civil service will in the long run as well entail that persons generally qualified for chancellery will no longer apply for this office as the risks combined with the function are not secured adequately. (HRK / Abstract übernommen)