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Abstract

The article aims at a contextual critique of the German Federal Constitutional Court's case concerning the governance structure of West German universities (BVerfGE 35, 72). Decided in May 1973 in a critical moment for Willy Brandt's re-elected Federal Government, it is among the most highly disputed judgments in the Court's history. The moderate, liberal-conservative model of reconciling a reformist idea of higher education with traditional privileges of academic self-government, which the Court developed in this case, laid the foundations of more than four decades of higher education policies in Germany. The legal question in dispute was new in its kind: to what extent do constitutional rights guarantee not only personal freedoms but also stipulate a certain institutional structure of a public organization in which different social and professional groups interact with each other? Does the Constitution guarantee for a decisive majority of professors in all university boards and commissions? How much political participation of students and staff is consistent with academic

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freedom? The answers provoked by the constitutional controversy over the social-liberal government's university reform confounded the traditional lines of argument: Whereas conservatives had hitherto been highly critical about the Court's increasing political power, they now called for a more robust constitutional review of the government's legislative agenda. Liberals, on the other hand, defended what they saw as a key achievement of the 1968 student revolt. As the article shows, the Court's reasoning in BVerfGE 35, 72 for the first time developed the general stance of the Court towards the Brandt government's signature domestic projects, which would later result in other landmark judgments such as BVerfGE 50, 290 concerning the corporate governance of "co-determination": The Court accepted the adjustment of the traditional institutions of higher education to the needs of modern mass democracy but generally defended their inherited organizational structure. (HRK / Abstract übernommen)