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Abstract

This article examines the lawfulness of proactive measures that aim to promote women in science. The background to this is the still existing blatant under-representation of women in science as well as the increasing efforts of not only scientific organisations but also the Federal Government and the Länder to promote women in order to counteract this under-representation. The subject of legal examination in this article are so called 'Programmes for Women Professors' that rely on start-up funding for appointments to a chair at German universities. First, the authors examine as to whether the gender related focus of such programmes, which is on the promotion of women exclusively, is legally permissible. They hereby refer to the rights of equality laid down in the German constitutional law, to European law and to the General Equal Treatment Act (AGG). They also consider the case law of the European Court of Justice regarding positive measures. In the second part, the authors explore the question as to which legal demands must apply for the concrete implementation of such programmes. This concerns the appointment procedure which has to be carried out within the

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framework of such a programme. The authors describe the constitutional requirements for appointment proceedings and attend in particular to the question on the admissibility of ad personam appointments. They also turn their attention to ordinary law and show that some Federal States already provide for deviations from the "normal" appointment procedure – and especially refrain from advertising a chair if external quality control schemes exist. The authors suggest to question the neutrality and openness of appointment procedures as they are assumed in the existing system and, taking the existing structures into account, speak in favour of the need for and the admissibility of programmes for women professors.(HRK / Abstract übernommen)