

11.8.2024

Author

HERZMANN, Karsten

Title

Friedlichkeitsforderungen an die universitäre Forschung als rechtliche Sackgasse? : zur Vereinbarkeit von Zivilklauseln mit der Wissenschaftsfreiheit

Publication year

2011

Source/Footnote

In: Wissenschaftsrecht. - 44 (2011) 4, S. 375 - 392

Inventory number

32063

Keywords

Freiheit von Forschung und Lehre ; Forschungsförderung ; Hochschule und Staat : allgemein ; Bundeswehr : allgemein

Abstract

The paper picks up the current renaissance of a debate on the ethical limits of science. Already decades ago, several boards of German state universities have adopted a so-called "Zivilklausel" (civil clause), which prohibits research that is directly oriented towards, or could be exploited for, military use. Yet, the continuous and rising importance of third-party funds for universities creates more potential conflicts concerning the application of such a rule. Moreover, further German universities recently adopted civil clauses, and others are insistently requested to do so by some of their students, researchers and labour unions. Given the importance of the issues at stake, it might not be surprising that the heated debate largely lacks a - apparently dry - legal perspective. However, the issue of the legality of such rules, whether enacted by the state or by the university, is of high relevance for the practical outcome of the discussion, because these rules clearly affect the freedom of science guaranteed under Article 5 para. 3 of the German Grundgesetz (Basic Law). And - as this paper shows

11.8.2024

- neither the autonomy of universities nor the constitutional goal of peace can justify this restriction. Thus, the only legal way to establish such a state or university rule would be to amend the German Basic Law. In this case, however, it would be the most recommendable (and beyond that the politically most feasible) option to include a further sentence in Article 5 para. 3 Basic Law, which in principle allows a restriction of the freedom of science by a statute, which aims at preventing a military use of the results of university research. Still, a mere statute may not be enough to fulfil the constitutional requirements. In order to protect the constitutionally granted and intended autonomy of science and research processes, an adequate system of case-by-case-decisions would have to be established within existing or newly installed internal university procedures and organisational structures. (HRK / Abstract übernommen)