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Abstract

In a long meandering process, the Federal Constitutional Court has derived organisational directives from Article 5 sec. 3 GG (i. e. Grundgesetz = German Basic Law). According to the Hamburger-Dekane-Entscheidung ((BVerfGE 127, 87 – 132; a decision on the Hamburg deans) and the MHH-Urteil (BVerfGE 136, 338–382; a decision on the organisational structure of the Hanover Medical School), the concept can be understood in the following way. In opposition to the tendency towards a managerial university with clear borrowings from the principle of hierarchy, the court significantly limits this weakening of the principle of collegiality. The court does not object to the strengthening of the management at the central and faculty levels, but demands that the bearers of the principle of hierarchy and the bearers of the principle of collegiality stay in a dialogue with each other; this by requiring a responsivity between a competence expansion on the management level and the monitoring duties on the collegial level. The more responsibility is shifted to the management

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level, the more control is required on the collegial side. Negotiation of top-down decisions is kind of "enforced" by the instrument of control. Those who do not seek to reinsure the hierarchical decision-making responsibility by the Academic Senate or the faculty board must have to fear for their office. The Federal Constitutional Court protects the principle of collegiality from a dysfunctional weakening and keeps it in the game as a legitimization principle, as a countervailing power, against the principle of hierarchy. The legislator's freedom is significantly limited. The legal conclusions are based on an image of the university that grants the governing bodies extensive competences if their decisions have been substantiated in a collegial context, especially through discussions with the academics, before becoming effective. Top-down and bottom-up processes must meet in a discourse. This is the only way to prevent the organisational institutes from performing on the basis of acquired external knowledge. This obligation to discourse which, by the way, also holds the academics responsible for dealing with their university, is effectively made possible by the fact that the election and dismissal of management staff is based on self-determined decisions on the academic side. Within such relationships, collegial cooperation can develop. Because of the question of constitutionality, these principles must now be "simulated" for all 17 higher education acts and university medicine acts. This is attempted here by example of the law on university medicine in Thuringia. / (HRK / Abstract übernommen)