

09.8.2024

Author

BEAUCAMP, Guy

Title

Rechtsschutz von Kandidatinnen und Kandidaten im Promotions-, Habilitations- und Berufungsverfahren / Guy Beaucamp und Jens Seifert

Publication year

2011

Source/Footnote

In: Wissenschaftsrecht. - 44 (2011) 1, S. 24 - 49

Inventory number

30137

Keywords

Habilitation : allgemein ; Berufung : allgemein ; Promotion : allgemein

Abstract

The route to becoming a tenured professor in Germany is long and difficult. First you have to obtain a doctor's degree; then, generally, you are expected to write a postdoctoral thesis, after which you can qualify as a lecturer; finally, you have to get an offer for a chair. This contribution deals with the legal problems which may arise at all three stages of an academic career. As a doctoral candidate you may not find a supervisor. What then? Can you make a claim for one? If you find a professor willing to supervise your thesis, there is still the possibility that he may lose trust in your abilities and end the association. Will the courts help you then? Perhaps you do not fulfil the procedural requirements, or the experts regard your thesis as a complete failure. And such misfortunes are just as likely to occur when you are applying for a supervisor as when you write your second book, the postdoctoral thesis. Administrative courts offer legal remedies in only a few cases. For example, even if the controlling professors prefer a different opinion to your own, it is still possible that your thesis will be approved, provided that you present plausible, scientifically-viable ideas. Mostly, however, the judges

09.8.2024

will not find an abuse of discretion or a grave procedural fault, and the decisions of the examination committee will be upheld. Opposing the appointment of another to a chair has similarly small success rates. Unlike with doctoral or postdoctoral candidates, some federal states even deny access to the appointment committee's records; the plaintiff is only able to guess what may have gone wrong. This, in our opinion, is unconstitutional, since it violates Art. 19 section 4 Basic Law, which guarantees an effective legal remedy against every state action. As nearly all German professors are civil servants, another constitutional rule is relevant for the selection process. Art. 33 section 2 Basic Law demands a fair choice which takes into account only suitability, talent, and professional achievements. Again, however, the discretionary choice of a university is huge. Candidates are only able to win in court if they can prove that a serious blunder has taken place: for example, the absence of an equal rights representative during the selection process, or an appointment who lacks the professional qualifications required for the professorship. This article concludes by considering two procedural problems. First, is the university allowed to arbitrarily stop the proceedings without choosing anyone for the chair? Second, given that it is common for selection procedures to last more than twelve months, how long is too long, and how could a time limit be put into force? (HRK / Abstract übernommen)