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Title

Verantwortliche Forschung und Wissenschaftsfreiheit - ein Widerspruch? : der neue Ethikkodex der Max-Planck-Gesellschaft zu verantwortlicher Forschung und dessen Vereinbarkeit mit der Wissenschaftsfreiheit

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Abstract

This spring the Max-Planck-Society for the Advancement of Science as one of the leading promoter of basic research in Germany introduced its new code of conduct, concerning the responsible conduct of research („Hinweise und Regeln der Max-Planck-Gesellschaft zum verantwortlichen Umgang mit Forschungsfreiheit und Forschungsrisiken?). It is intended to guide its researchers in handling conflicts between the constitutionally guaranteed freedom of research and the emerging risks of rapidly developing scientific progress by calling their attention to the ethical implications of science and providing an institutional procedure to evaluate their research projects. The code's stated aim to achieve this without claiming legal validity is continuously reaffirmed to avoid any conflicts with the sensitive basic right of Art. 5 para. 3 of the German basic law (Grundgesetz). This article examines whether this aim could actually be achieved. Despite their non-legal nature German courts are prone

17.8.2024

to scrutinize ethical codes as to their conformity with basic rights, given that they are dedicated to governing their addressees' behavior in their field of professional activities. To evaluate the code's interference with the freedom of research, the Max-Planck-Society will firstly be argued not to be directly obligated by the basic rights as it can not be attributed to the sphere of state. Furthermore, it will be claimed that its democratic governance structure does not create privileges concerning its obligation to respect the freedom of its members. The third-party effect of basic rights underpinning their objective dimension claims justification of every relevant interference with the freedom of research, which is highly controversial considering the special focus of the code on the dual use of scientific results in case of third party abuse. These provisions could generate problematic obligations with respect to the sensitive nature of basic research and the foreseeability of its impacts. The solution to this problem will be extracted from the constitutional principle of peace as an opposite object of legal protection, whose existence will be asserted by an interpretation of various norms of the Grundgesetz. However, the organs of the Max-Planck-Society must pay due regard to the execution of the designated procedures to limit its effects on the freedom guaranteed to individual researchers in order to ensure the proportionality of the measures in question. (HRK / Abstract übernommen)