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The Struggle for Codetermination and the Group University (May 29, 1973)

In 1971, the federal state of Lower Saxony changed its system of governance for universities and other institutions of higher education. The new system dealt a blow to the traditional “professors’ university” by giving other groups – research associates, students, and non-academic staff – greater rights of codetermination. Under the new system, professors and representatives of these groups enjoyed equal representation on academic councils and university bodies. Professors responded by filing a constitutional complaint. The Federal Constitutional Court’s ruling once again strengthened the professors’ position vis-à-vis other groups by doing away with parity in decision-making processes. After the ruling, a number higher education laws had to be amended (e.g., in Berlin).

Higher Education Ruling by the German Federal Constitutional Court

1. Art. 5, Sec. 3, Sentence 1 (Basic Law) guarantees scholars a free space that is protected from state intervention; above all, this space encompasses academic autonomy in processes, methods, and decisions when it comes to research findings, their meaning, and their dissemination.

2. Art. 5, Sec. 3 (Basic Law) is also a value-determining fundamental principle that regulates the relationship between academia and the state. Accordingly, in the case of publicly funded academic institutions, the state must ensure that it uses the appropriate organizational means to guarantee that the basic right to independent academic work is not encroached upon insofar as it does not interfere with other legitimate responsibilities of academic institutions and the basic rights of the various participants.

3. The value decision contained in Art. 5, Sec. 3 (Basic Law) grants the individual bearer of basic rights the right to those state measures, including ones of an organizational nature, that are indispensable in the protection of his constitutionally guaranteed free space, because these measures allow for his independent academic activity in the first place.

4. The guarantee of academic freedom does not derive from the traditional structural model of the German university, nor does it even stipulate that academic work at institutions of higher education should assume a certain organizational form.

5. In and of itself, the organizational system of the “group university” is compatible with Art. 5, Sec. 3 (Basic Law).

6. When the state, within its jurisdiction, shapes the organization of academic administration, having taken into consideration the various interests and functions of the individual groups comprising the university, then it must, pursuant to Art. 5, Sec. 3 (Basic Law), in conjunction with Art. 3, Sec. 1 (Basic Law), take the special position of professors [*Hochschullehrer*] into account.

7. Organizational norms must afford members of institutions of higher education, especially professors, as broad a space as possible for independent academic work. On the other hand, they must [also] preserve the viability of academic institutions and their organs.

8. To the extent that decision-making bodies composed of different groups make decisions that directly affect research and teaching, the following principles must be observed:

a) The professors’ group shall be homogenous, meaning that the group must have characteristics that clearly distinguish it from other groups.

b) In decisions that directly affect teaching, the professors shall retain their decisive influence, in keeping with their special status. This demand is satisfied if this group commands more than half the votes.

c) In decisions that directly affect research or professorial appointments, the professors shall reserve the right to exert additional and decisive influence.

d) In decisions on research and teaching matters, non-academic staff members shall not have equal say.

Source: Decision by the German Federal Constitutional Court (BVerfGE 35, 79), May 29, 1973.

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