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Vereinbarkeit richterlicher Mediationen mit dem Prinzip der Gewaltenteilung am Beispiel der Bundesrepublik Deutschland

Studienarbeit

Vereinbarkeit Richterlicher Mediationen Gewaltenteilung Bundesrepublik

Alexander Haentjes



Vereinbarkeit Richterlicher Mediationen Gewaltenteilung Bundesrepublik:

Vereinbarkeit richterlicher Mediationen mit dem Prinzip der Gewaltenteilung am Beispiel der Bundesrepublik

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Universität Komenského v Bratislava Veranstaltung Verfassungsrecht Sprache Deutsch Abstract Die vorliegende Arbeit beschäftigt sich mit der Frage inwieweit die sogenannte gerichtsinterne Mediation mit einem Richter als Mediator mit dem Prinzip der Gewaltenteilung vereinbar ist. Im Folgenden werden daher zunächst in Kürze die Grundsätze der Mediation, also deren Prinzipien sowie der Verfahrensablauf dargestellt und sodann ein Überblick über die sogenannte gerichtsinterne Mediation gegeben, um anschließend zu diskutieren, ob diese mit dem Grundsatz der Gewaltenteilung vereinbar ist. Ob und in welchen Fällen Richter Mediationsverfahren anbieten dürfen, war in der BRD verfassungsrechtlich umstritten. Ebenso umstritten war die rechtstheoretische Einordnung richterlicher Mediation. Durch das Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung wurde die Mediation im Rahmen des Güterichtermodells als Alternative zum streitigen Gerichtsverfahren erstmals in der deutschen Rechtsordnung fest verankert. Jeder Rechtssuchende hat nunmehr einen verfassungsrechtlich garantierten Anspruch darauf, seine Streitigkeiten einem Gericht vorzutragen. Richterinnen und Richter nehmen sich der ihnen anvertrauten Rechtsfälle an und entscheiden aufgrund unabhängiger und verantwortungsbewusster Rechtsanwendung. Das Gesetz verpflichtet sie in jeder Lage des Verfahrens, die Möglichkeiten für eine einvernehmliche Streitbeilegung zu erforschen. Bis zum Erlass des vorbezeichneten Gesetzes war die Rechtslage jedoch umstritten und warf grundsätzliche verfassungsrechtliche Probleme auf, insbesondere die Frage, ob einem Gericht die Durchführung von Mediationen verfassungsrechtlich zugewiesen war oder nicht.

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