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PROTECTION IN GERMANY OF THE FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (GRCH). CASE NOTE OF THE BVERFG(CONSTITUTIONAL COURT) 1ST SENATE, RESOLUTION OF 06.11.2019 – 1 BVR 16/13 CONCERNING THE INTERPRETATION OF THE IMPORTANCE OF THE FUNDAMENTAL RIGHTS WITHIN THE BASIC LAW WITH REGARD TO NON FULLY HARMONIZED EU LAW.

Standards: Section 823 of the German Civil Code (BGB), Section 1004 of the German Civil

Code (BGB), Art 2 GG, Art 1 GG, Art 5 GG

Right to Forget I – The decision note deals with the Fundamental Rights of the GG as the primary standard of examination with regard to the application of specialised law under EU law (here: media privilege under data protection law) – The scope of the protection of the expression of general personality rights against threats caused by the dissemination of personal reports and information as part of public communication in an online press archive.

Abstract

Orientation sentences for the remark

1. In the case of non-fully harmonised EU law, the fundamental rights of the Basic Law constitute the primary standard of assessment. Within the diversity of fundamental rights provided for by European law, the presumption is that the fundamental rights of the Charter of Fundamental Rights of the European Union (GrCh) are co-guaranteed by those of the GG(German Constitution). That presumption can only be rebutted if there is concrete and sufficient evidence to support it.
2. Threats from the dissemination of personal reports and information as part of public communication affect the scope of protection of the expressions of general personality law, not that of the right to informational self-determination.
3. The general right of personality does not give way to filtering and restricting publicly available information about one's own person according to his own ideas. The unlimited public confrontation with previous positions, statements and actions, on the other hand, is not appropriate.
4. On the contrary, it is necessary to strike a balance with the interests of the content provider, with specific emphasis on the temporal aspect, availability and context of the information in relation to the communication conditions of the Internet.

Introduction into the subject matter

The discussion about a right to be forgotten – or rather a right to be forgotten – is becoming increasingly important as every aspect of life is digitised. About the increasingly existential online archives for press publishers, the question arises to what extent the unlimited availability and availability of information is covered by freedom of expression and freedom of the press[1] and under what circumstances the general right of personality of those affected is contrary to this[2]. Regarding media privilege, it was important, among other things, to what extent the fundamental rights of the Basic Law constitute the standard of assessment in matters with points of contact with EU law to be applied as a matter of priority. The BVerfG has recently dealt with this very issue in two decisions.[3]

Content and subject-matter of the decision

The complainant was convicted of murder in 1982 and sentenced to life imprisonment for shooting two people aboard a yacht on the high seas in 1981. He wanted to have the reports about the crime, in which his full family name was mentioned, deleted during the digitization of old Spiegel articles in an online archive, originally published in 1982/1983. Access to the articles through the archive is free and unlimited, finding them by entering the complainant's name into a common search engine very easily[4]. The man had been released from custody in 2002 after serving his sentence and is now claiming an injunction under Sections 823, 1004 of the German Civil Code (BGB) analogously, Article 2 paragraph 1 in conjunction with Article 1 paragraph 1 GG, since the publication of his name unlawfully infringes his general right to personality. The BVerfG has upheld the constitutional complaint. The BVerfG first deals with the standard of examination in national law that is not fully determined by EU law. Both the old provisions of Article 9 of the Data Protection Directive (DSRL 95/46/EC) and Article 85 GDPR, which is now in force, provide for media privilege with regard to the restriction of the privacy of natural persons for the purposes of expression and the exercise of freedom of the press, the practical implementation of which would be left to the Member States[5]. Article 85(1) requires Member States to bring the right to the protection of personal data under the GDPR into line with the right to freedom of expression and information, including processing for journalistic and scientific, artistic, or literary purposes, by means of legislation. In particular, separate from the second paragraph of Article 85, the first paragraph may well be understood as a separate ‚general opening and balancing clause',[6] according to which the Member States are to establish consistency between the two conflicting legal positions referred to[7]. In particular, the list of the specific purposes is not conclusive on the basis of the word ‚inclusive', in contrast to paragraph 2[8]. This suggests, first of all, that Article 85(1) in any event contains an opening and balancing clause for other purposes. Together with Article 85(2) and (3), ErwG 153 and against the background of the regulatory purpose of the GDPR, however, it is objected that Article 85(1) should not be regarded as a separate opening clause. For, on the one hand, only Article

85(2) expressly requires the provision of derogations and exceptions, and only for privileged purposes. The diversity of cultures and traditions, and thus also the design of the guarantees of fundamental rights, is an expression of the principle of subsidiarity[9] (recital 48 with further evidence). The presumption that the level of protection of the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights), which is specified by interpretation, is co-guaranteed by an examination of the fundamental rights of the Basic Law is supported by the overarching affinity of the GG and the Charter of Fundamental Rights in a common European tradition of fundamental rights. According to the BVerfG, it is not to be assumed, according to the BVerfG, a schematic parallelisation of the guarantees, but rather (only) a recording of assessments of the Charter of Fundamental Rights, insofar as this is methodologically justifiable and compatible with the requirements of the GG. However, the fundamental rights of the GG are understood on the basis of the Convention on Human Rights and in principle take up their guarantees[10]. Any differences in the level of protection must be taken into account in the context of the substantive examination. In the present case, both the interpretation of the GrCh and that of the GG provided for a largely identical balance between freedom of expression and the right of personality as fundamental rights in principle[11]. The fundamental application of fundamental rights among private individuals derives from the principle of indirect third-party effect[12]. Although the fundamental rights of the Union are not aware of any doctrine of ‚direct third-party effect', a similar effect is ultimately recognised for the relationship between private individuals.[13]The decisive factor in terms of content here was the weighing up of the complainant's general right of personality against the freedom of expression and the press of the publisher.[14] The BVerfG emphasises that the right to informational self-determination, as a stand-by expression of the general right of personality, is not relevant to its own content. While the general right of personality, in its expression law, provides protection against the processing of personal reports and information of a communication process, the right to informational self-determination offers protection against dangers through novel possibilities of data processing[15]. In simpler terms, the former concerns the communication route[16], while the latter concerns the form and content of the

publication. Since in the present case the dissemination of statements in the context of social communication – the reports on the complainant's person and their freedom of access – was criticised as a burden, in this case, irrespective of the point of contact with the way in which it was disseminated via the Internet, only the general right of personality in its expression under the law of expression must be regarded as a constitutional standard of examination. The possibility of dissemination was regarded only as a preliminary question for the assessment of the further handling of a particular statement and the image thus made public of a person himself[17]. The main consideration had to be to protect those affected from the dissemination of reports which reduce their reputation as a person in a manner that jeopardises the development of personality, against the stated task of the press to report on criminal offences and perpetrators, thereby satisfying the public's interest in information. The BVerfG also recognized the possibility of fully archiving reports in unaltered form as a „mirror of contemporary history" as an important element of the freedom of the press protected by Art. 5 sec. 1 sentence 2 GG. However, the public interest in information decreases with increasing time lag, so that there is a shift in the weighting of the interests. This does not take place schematically after a certain period of time, but must be assessed on a case-by-case basis. In particular, the interest of the offender (and also of the general public in legal policy) in his reintegration into society should not be neglected.[18]The decisive factor in terms of content here was the weighing up of the complainant's general right of personality against the freedom of expression and the press of the publisher. The BVerfG[19] emphasises that the right to informational self-determination, as a stand-by expression of the general right of personality, is not relevant to its own content. While the general right of personality, in its expression law, provides protection against the processing of personal reports and information of a communication process, the right to informational self-determination offers protection against dangers through novel possibilities of data processing[20]. In simpler terms, the former concerns the communication route, while the latter concerns the form and content of the publication. Since in the present case the dissemination of statements in the context of social communication – the reports on the complainant's person and their freedom of access – was criticised as a burden, in this case,

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the offender's need to be confronted with previous acts after a certain period of time in order to be able to reintegrate into society gains, to which the ECtHR explicitly gave human rights status[26] – increasingly important.[27]Based on the so-called „Google Spain" decision of the ECJ[28] of 13.05.2014, in which the court created for the first time a right to be forgotten, the article addresses the right to exclude hits from search engines. Further decision of the ECJ of 24.09.2019[29] (, by which the General Court answered questions raised in the abovementioned decision. The ECJ decisions deal with the question of the geographical scope of Article 17 GDPR.[30] More specifically, the scope of the claim under Article 17 GDPR in the case of special types of personal data is then discussed. In particular, the examination of the commencement of the examination obligation with a search engine operator as well as the right to deletion in accordance with Article 17 GDPR is highlighted. The limits of the claim and the balance of interests to be carried out are also mentioned. Finally, the author also deals with specifics of data on criminal offences and criminal convictions under Article 10 GDPR. In a final assessment, the conclusion can be drawn that the terminology of the „right to unlisting" now used by the ECJ is more appropriate, since the data concerned is not deleted but blocked in such a way that it no longer appears in the hit list. In addition the ECJ recently transferred and supplemented its case law on the „right to be forgotten" developed on the Data Protection Directive to the GDPR.[31] This is also where the way in which it is disseminated comes into play: Whereas in the past a previously published article could only be operated with difficulty and effort, the time availability on the Internet is now practically unlimited. In addition, the finding of a particular report is no longer dependent on a cumbersome search; on the contrary, the article in question can be found solely by entering the name of the person concerned into a search engine and, since there are no access restrictions or paywalls, retrieved. Taking account of this, disclosure must be justified at any time when it is accessible. It must be said that for some time now, forgetting has played a greater role in the handling of personal data in a digitised society. Two decisions of the ECJ will then be discussed. The first is the decision of 24.09.2019,[32] in which Google should be required to remove links to sensitive clues from the results list. In the further decision of 24.09.2019[33] was about actually deleting such links from all versions of the

search engine worldwide if successful applications were successful. Two decisions of the BVerfG of 06.11.2019 should be referred to, on the one hand on Decision 1 BvR 16/13[34] and secondly on decision 1 BvR 276/17.[35] It is pointed out that both decisions concern criminal law and international law and are therefore relevant to international law. The conclusion is that the decisions of the ECJ and BVerfG reflect a change caused by digitalisation.[36]

Context of the decision

While the complainant's interest in protecting his privacy was rated as higher than the publisher's freedom of the press and freedom of expression and the public's interest in information, the complainant's challenged assessment was classified as „nasty" in the decision „Right to Forget II"[37] as admissible expression.[38]Just as the European Economic Community has undergone a metamorphosis on the way to the present European Union, the control of fundamental rights by the BVerfG, with reference to European law, adapted evolutionarily to this development, and not without friction. The famous „Solange" case law with its later additions to the „Ultra-Vires" control and the reservation of the „constitutional identity" is the cipher of a complicated, intricate and not tension-free coexistence of the supranational guarantee of fundamental rights by the ECJ and the national reserve control by the BVerfG. With the two resolutions of 6 November 2019, the BVerfG has rebalanced the rules for interaction in such a way that it is possible to speak of a „November revolution". The BVerfG relies on the Charter of Fundamental Rights in the fundamental law review of the application of the law in the area of EU law. At the same time, the General Court emphasises the final binding interpretation of the Charter in that regard before the ECJ. In this way, the BVerfG positions itself pragmatically and sensibly in the network of fundamental rights interpreters. The scope of the BVerfG's decision on the application of the Charter of Fundamental Rights in particular is already clear from the fact that the First Senate considered a decision of the plenary but rejected it, but explicitly marked the deviation from its previous case law as a benchmark for examination. Once again, the law of the information society is the area of

application for the repositioning of the fundamental rights control of the ECJ and national (constitutional) jurisdiction.[39] The ECJ has established itself as a fundamental rights court, particularly on the basis of the standard of fundamental data protection rights, in rejecting the Agricultural Regulation and later the Data Retention Directive(s) and thus positioning itself as a central player in the horizontal and federal power structure. Finally, the Luxembourg Court of Justice, based on fundamental rights, drafted a ‚right to be forgotten' against the internet search engine operator Google. This was then explicitly enshrined in EU secondary legislation under Article 17 OF the GDPR. The Karlsruhe court has now used the abbreviated title „Right to Be Forgotten" as an opportunity to redefine its role in the control structure. In this context, it must be pointed out that the BVerfG had identified differences in the standard of assessment under the fundamental law by the two decisions. In matters relating to laws which are finally unified throughout the European Union, the General Court does not examine German fundamental rights, but only the fundamental rights of the Charter of Fundamental Rights of the European Union.[40] They have priority over the provisions of the GG.[41] There remains a „reserve reservation" in the event of a fundamental break in european protection of fundamental rights.[42]A significant difference was that in the case of ‚right to be forgotten', the complainant was concerned as a private individual; in the case of „Right to Forget II",[43] the relevant contribution concerned the complainant as a private individual (not least because of the blurring of the boundaries between the private and social spheres as a result of the discoverability and merging of information by means of name-related search queries on the Internet), but also in her function and activity as managing director.[44] In any case, she agreed with the coverage and took the step into the public sphere herself – without pressure or surprise from the journalists[45]. On the other hand, the BVerfG[46] expressed even greater importance to the public's interest in „nasty" practices by some employers even after seven years.[47] In both decisions, the BVerfG[48] stressed that the right to protection against a search engine operator could go further than that against the content provider; in the context of the case-by-case assessment, however, the interactions between the request for an injunction with regard to the search engine operator and the situation of the content provider must also be taken into account.[49]The

BVerfG also dealt with the question of the standard of examination in both cases. Overall, it declared the Basic Law to be applicable as far as Eu law is not fully harmonised.[50] In the case of fully harmonised rules, the invocation of basic legal data is possible and harmless, but the fundamental rights of the Union are applicable in that case. No equal coverage of both constitutional arrangements could be assumed.[51] However, the application of EU fundamental rights (also) by the BVerfG is nevertheless possible in so far as its interpretation has already been clarified by the ECJ.[52]

Impact on practice and concluding aspects

It is important to note that, in the case of rules which are not fully harmonised, the fundamental rights of the Basic Law are the primary standard of assessment, as long as the level of protection of the fundamental rights of the Charter of Fundamental Rights of the European Union is not more comprehensive on a case-by-case basis. This means, on the one hand, that the constitutional complaint before the BVerfG can now also explicitly challenge fundamental rights of the Charter of Fundamental rights of the EU and thus close a legal protection gap, since European Fundamental Rights were previously only examined in an incidental way. This development is significant both in terms of the protection of citizens under fundamental rights and in terms of the importance of the BVerfG in the context of European law.[53] The BVerfG[54] also found that reporting, which was once admissible, could also be inadmissible by the addition of new circumstances , and vice versa.[55] However, press publishers may, in principle, assume that initially lawfully published reporting may be made available to the public in an online archive until a complaint is made qualified; mandatory protective measures must only be taken.[56] In the context of a complaint, affected persons must present their complaints in a comprehensible manner. The relevant criteria are in particular the effect and the subject of the reporting, a (missing) current relevance, the wide-ranging dispersion[57] in the network or the context in which the information is communicated. A possible intervening contribution by the data subject to keep the interest awake or the embedding in further, more up-to-date information

may also have an impact on the assessment.[58]A schematic solution, on the other hand, was explicitly excluded by the BVerfG.[59] The nature and extent of the necessary reaction of a publisher also depends on the specific facts. If, as in this case, the social stigma is mainly problematic due to the targeted name searches in the circle of acquaintances, an interest-oriented solution can be found even with minor adjustments such as the use of the initials or a combination solution for the discoverability of the name by search engine crawlers.[60] For example the Higher Regional Court of Hamburg, in its judgment of 7.7.2015 – 7 U 29/12 focused on the question of how long an initially lawful reporting on a suspect, after the end of the proceedings, could still be found in an archived article, with his name mentioned. In this context, it refers first of all to the judgment of the ECJ of 13.05.2014[61], in which the Court dealt with the „right to be forgotten". The OLG Hamburg made it clear that a media house had to examine whether and what specific measures were necessary to grant the person concerned the anonymity interest only after an article had been challenged.[62] The problem seems to be whether the media houses can be required to influence the search engine results. The search engine results could not be influenced 100 percent. For that reason, it is even more important that the General Court to disclose precisely obligations the media house must fulfil. The approach of the OLG Hamburg is correct, but not yet formed to the end.[63]As a result, the BVerfG in the decisions „Right to Be Forgotten I" and "Right to be Forgotten II" gives up its strict separation thesis of the fundamental rights areas and thus accommodates the ECJ and its thesis of the double binding of fundamental rights. On the other hand, it exchanges a possibility of participation in the fully determined area. The GRCh thus becomes the subject of examination of constitutional complaints before the BVerfG. This has a glaring impact on the fundamental rights architecture in the multi-level system and thus also on future university examinations in public law. Against this background, a strict separation between constitutional and European law in teaching and the exam seems increasingly out of practice. Against this background, students should deal in depth with these decisions and the fundamental rights examination of the GRCh.[64]The decisions of the BVerfG contain important innovations and are all about improved communication between the fundamental rights courts.[65] This is

accompanied by the prospect of achieving better overall protection of fundamental rights. The BVerfG could see this new form of cooperation as a great opportunity to positively enrich the jurisprudence of the Luxembourg court through increased submissions to the ECJ.[66] Even the BVerfG recognizes that this step is necessary in view of the ever-increasing reformation of the law to remain relevant as a fundamental rights court in the future and to fulfil its constitutional mandate. With a certain scepticism, however, the reaction of the Second Senate must still be awaited. There is still potential for conflict, especially in ecclesiastical constitutional law.[67] In any case, the decisions of the First Senate contain potential for far-reaching new developments not only in the protection of fundamental rights. Whether the decisions are entitled to be forgotten I and II" in their relevance in a series with the Lüth and pharmacy judgments. It remains to be seen for the time being. However, the armament of the Federal Republic's dogma of fundamental rights through the extension of the examination standard of the BVerfG gives hope for the future.[68] It will also be legally exciting to see how the Constitutional Court will deal with these newly created tools in the future. The interweaving of Union and constitutional law could change the classic view of primacy of application and validity. So far, the BVerfG has only examined the agreement with the GG. A violation of fundamental rights led to unconstitutionality with the priority of validity as a normative hierarchical consequence. According to the decision „Right to be forgotten II", the fundamental rights of the GRCh can now also be understood under the „fundamental rights" in Art. 93 sec. 1 no. 4a GG. For example, a German standard based on a fully harmonised provision of a directive could now also be unconstitutional because of an infringement of EU law (due to a violation of the GRCh).[69] The consequence would be the full strength of the norm-hierarchical priority of application instead of a pure inability of the German regulation. By extending the standard of review of the BVerfG, constellations may be conceivable in the future in which a regulation that has so far „only" been contrary to EU law by the BVerfG can also be classified as an unconstitutional regulation. Interestingly, the BVerfG at least addressed this possibility in the decision „Right to Be Forgotten II", but ultimately left it open.[70] The consequence would be an application priority charged by the BVerfG to the priority of validity. In substance, the decisions

„Right to be forgotten I" and „Right to be forgotten II" are about increased cooperation. However, this dialogue is also accompanied by the fact that not only in Karlsruhe, but also in Luxembourg, a constitutional court sits, which could have the last word in case of doubt.[71]

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Endnotes

[1] For a better overview of the rights in matter guaranteed in Europe cfr. Uricchio, A. F., Giambrone F. L.(2020), European Finance at the Emergency Test, Cacucci ed., pp. 277 – 288; Smekal, Ch., E. Thöni, Österreichs Föderalismus zu teuer, 100; A.F.Uricchio/ F.L.Giambrone, Entwicklungen im italienischen Steuerrecht als Herausforderung des neuen europäischen Entwicklungsprozesses, 219 ff.

[2] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[3] Cfr. Smekal, Ch., Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen; „Right to Forget I" and BVerfG, Decision of 06.11.2019 – „Right to Forget II.

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[5] see ECJ, judgment of 16.12.2008 – C-73/07 paragraph 52 e.g.; ECJ, judgment of 14.02.2019 – C-345/17 paragraph 48 ff.

[6] Cfr. C.A.Giusti, Big Data ed internet delle cose: quale destino per la tutela della privacy.

[7] Vgl. Lauber-Rönsberg/Hartlaub NJW 2017, 1057, 1061.

[8] S. Kühling/Martini u.a. Die Datenschutz-Grundverordnung und das nationale Recht, S. 287 f.

[9] Cfr. Ch. Smekal, E. Thöni, Österreichs Föderalismus zu teuer?, 100, According to Ch. Smekal, from an economic point of view, this well-known subsidiarity principle requires that the lower or smaller local authority should take precedence in the provision of public goods and services when the preferential or frustration costs play a significant role in relation to production/provisioning costs and can thus be reduced (Biehl 1991, 368 f). This principle is even interpreted to the extent that, in the event of a conflict – i.e. when deployment costs rise more than preferential costs fall – preference costs are more heavily weighted and the performance of tasks remains at the lower level. A particular problem of the application of this principle is the case of interpretations of the ‚subsidiarity principle' in the EU Treaties. In contrast to the above, the EU Treaties are also interpreted in part as follows: if the EU level can perform tasks equally well or better than the national levels, it should take over the performance of the tasks. In the meantime, however, the majority of people are asking for the interpretation that, if the EU were to take up or take on tasks, it, and not the national levels, must prove the ‚benefit'.

[10] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[11] See also BVerfG, Decision of 06.11.2019 – 1 BvR 276/17 Paragraph 141 – WRP 2020, 57.

[12] BVerfG, Ur. v. 15.01.1958 – 1 BvR 400/51 rs 21 ff. – BVerfGE 7, 198 „Lüth-judgment"; BVerfG, Beschl. v. 11.04.2018 – 1 BvR 3080/09 Rn 31 ff. – BVerfGE 148, 267.

[13] BVerfG, as of 06.11.2019 – 1 BvR 276/17 Paragraph 96 – WRP 2020, 57.

[14] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[15] including BVerfG, Urt. v. 15.12.1983 – 1 BvR 209/83 – BVerfGE 65, 1 „Census judgment"

[16] Büttel, jurisPR-ITR 2/2020 Anm. 5 .

[17] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[18] Cfr. F.L. Giambrone, Finanzföderalismus als Herausforderung des Europarechts.

[19] Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[20] including BVerfG, Urt. v. 15.12.1983 – 1 BvR 209/83 – BVerfGE 65, 1 „Census judgment".

[21] For an overview of the elimination of double taxation in italian and in the German Federal Order cfr.. G. Corasaniti, L'eliminazione della doppia imposizione nell'ordinamento italiano e nell'ordinamento federale tedesco, in Dir. prat. trib., 1997, III, 433-453.

[22] For a comparison of the differences related to taxation in both Gemany and Austria cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn

– verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[23] Cfr. A.F. Uricchio/ F.L.Giambrone, European Finance at the Emergency Test, Collana del Dipartimento Jonico in Sistemi Giuridici ed Economici del Mediterraneo. Societá ambiente e cultura, 277.

[24] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[25] see ECt. v. 25.05.2004 – No 57597/00.

[26] cf. ECtHR, Urt. v. 28.06.2018 – No. 60798/10 and No. 65599/19, Section 100; see also ECJ, Urt. v. 13.05.2014 – C-131/12 rn. 98 „Google Spain"; Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-115, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[27] C.A.Giusti, Oltre il diritto all´ oblio: La deindicizzazione die dati e l´ adattamento alla sentenza google nell´ esperienza italiana e spagnola, in, Giustizia Civile, 21.

[28] For an overview of ECJ cases related to direct taxation cfr. M. Lang, Recent Case Law of the ECJ in Direct Taxation: Trends, Tensions and Contradictions, 61.

[29] Cfr. Lang/Rust/Owens/Pistone/Schuch/Staringer/Storck/Essers/Kemmeren/Öner/Smit, Tax Treaty Case Law around the Globe 2019, 57-110, IBFD und Linde 2020; C-136/17; GRUR 2014, 1310 and C-507/17; GRUR 2019, 1317.

[30] Compare C.A. Giusti/ F.L.Giambrone, The Biffi Judgement and the Suarez Case. Judicial decision of the ECJ and possible reforms of the italian civil code from an european point of view, p. 625-639.

[31] For a better understanding regarding the civil liability and other sources of obligations in Italy cfr. P.Pardolesi, Responsabilità civile e altre fonti delle obbligazioni, in Codice della responsabilità civile e RC auto – Utet, 2015, 19.

[32] Cfr.C-136/17.

[33] C-507/19.

[34] NJW 2020, 300.

[35] NJW 2020, 314.

[36] Cfr. C.A.Giusti, Global take down: deindicizzazione e territorialitá. Un nuovo caso Google alla Corte di Giustizia, 1-15.

[37] BVerfG, decision of 06.11.2019 – 1 BvR 276/17 – WRP 2020, 57.

[38] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[39] Cfr. A.F. Uricchio, Die zwischen der Haushaltsaufsicht, den ausserordentlichen Finanzinstrumenten und der sogenannten windfall taxes anfallenden Kosten der Sozialrechte, 131-172, in A.F. Uricchio/ F. L. Giambrone, Entwicklungen im italienischen Steuerrecht als Herausforderung des neuen europäischen Entwicklungsprozesses, Cacucci editore, 2020.

[40] For an overview of the elimination of double taxation in italian and in the German Federal Order cfr.. G. Corasaniti, L'eliminazione della doppia imposizione nell'ordinamento italiano e nell'ordinamento federale tedesco, in Dir. prat. trib., 1997, III, pp. 433-453.

[41] Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[42] Cfr. U. von der Leyen, A Union that strives for more, My agenda for Europe, 2020; juris Literaturnachweis zu Ory, AfP 2020, pp. 119-125.

[43] Cfr. C.A.Giusti, Oltre il diritto all´ oblio: La deindicizzazione dei dati e l´ adattamento alla sentenza google nell´ esperienza italiana e spagnola, in, Giustizia Civile.

[44] BVerfG, schl. v. 06.11.2019 – 1 BvR 276/17 paragraph 128.

[45] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[46] For an overview related to the austrian legal system Cfr. Ch. Smekal, Finanzkraft und Finanzbedarf von Gebietskörperschaften, Analyse und Vorschläge zum Gemeindefinanzausgleich in Österreich, p. 55-100.

[47] BVerfG, as of 06.11.2019 – 1 BvR 276/17 rs 131 ff.

[48] For a better understanding of the new perspectives in Europe cfr. A.F.Uricchio, New future perspectives: the cost of rights between debt control, extraordinary finance tools and windfall taxes, p. 129-135, in, A.F.Uricchio/ F.L.Giambone, European Finance at the emergency test.

[49] BVerfG, Beschl. v. 06.11.2019 – 1 BvR 276/17 Rn. 114 f.

[50] With regard of insights relating to the future of EU law cfr. A.F. Uricchio, European constraints on the source system,pp. 263 – 275, in A.F. Uricchio/ F.L.Giambrone, European Finance at the Emergency Test, Collana del Dipartimento Jonico in Sistemi Giuridici ed Economici del Mediterraneo. Societá ambiente e cultura. Cacucci editore, 2020.

[51] BVerfG, Beschluss von 06.11.2019 – 1 BvR 276/17 Rn. 45.

[52] Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[53] Cfr. U. von der Leyen, A Union that strives for more, My agenda for Europe, 2020, 1-24.

[54] Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[55] meeting decision, paragraph 109; the original legality of the articles was not in question here, see paragraph 115.

[56] Büttel, jurisPR-ITR 2/2020 Anm. 5.

[57] For an italian perspective Cfr. C.A.Giusti, Global take down: deindicizzazione e territorialitá. Un nuovo caso Google alla Corte di Giustizia. Comparazione e diritto civile,1-15.

[58] see paragraphs 112 e.g., paragraph 149.

[59] paragraph 126.

[60] see e.g. Höch, K&R 2015, 632, 633; Peuker, in: Sydow, Europaïsche Datenschutzgrundverordnung, 2. Aufl. 2018, Art. 17 DS-GVO Rn. 47.

[61] C-131/12; K&R 2014, 502.

[62] Cfr. Ch. Smekal, Steuerpolitik in Deutschland und Österreich: 2 Nachbarn – verschiedene Wege?, 93-113, in, Ulrich/Ried, Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen.

[63] see e.g. Höch, K&R 2015, 632, 633; Buchner/Tinnefeld, in: Kühling/Buchner (Fn. 29), Art. 85 DS-GVO Rn. 1.

[64] Denga, Referendarexamensklausur – Europarecht: Verfassungsrecht und Geselllschaftsrecht – Umwandlung in Europa, JuS 2020, 247, die als Pfflichtttfachprfiuffuunnggssaufgabe der Ersten Juristischen Pruiifung vom GJPA Berlin Brandenburg angenommen und nur aus technischen Griuinden nicht abgepruft wurde.

[65] Dazu kritisch Kaïmmerer/Kotzur, NVwZ 2020, 177; Kuhling/Klar/Sackmann, Datenschutzrecht, 4. Aufl. 2018, Rn. 622.

[66] Zu dieser Chance bereits Kühling/Drechlser, NJW 2017, 2950 (2954 f.).

[67] Dazu bereits Michl (Fn. 93); Kühling, NJW 2020, 275 (277 f.); BVerfG NVwZ 2004, 1346 (1346).

[68] Vgl. BVerfG, Recht auf Vergessen II, Rn. 85 ff.; Dazu Schorkopffi, Ein Geburtstagsgeschenk für das Grundgesetz, (zul. abgerufen 05.01.2020).

[69] Toros/ Weiß, Echte Kooperation – Wandel des Grundrechtsschutzes im Mehrebenensystem Zu den Entscheidungen „Recht auf Vergessen I" und „Recht auf Vergessen II" des BVerfG, Zeitschrift für das juristische Studium, 100-108.

[70] BVerfG, Beschl. v. 6.11.2019 – 1 BvR 276/17 (Recht auf Vergessen II), Rn. 51.

[71] Kühling, NJW 2020, 275 (279).