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Thomas Giegerich, Zwischen Europafreundlichkeit und Europaskepsis – Kritischer Überblick über die bundesverfassungsgerichtliche Rechtsprechung zur europäischen Integration, ZEuS 2016, 3-47.

The German constitution and the Federal Constitutional Court (FCC) as its protector on the one hand and the EU constitution and the Court of Justice of the EU (ECJ) as its protector on the other hand are still in the process of defining their mutual relationship. The challenge is to find the proper distribution of judicial (and accordingly also political) power between the two levels of government in the EU as a quasi-federal system *sui generis*. Unsurprisingly, both courts have insisted on the autonomy of "their" respective constitutional order and on their own power to have the final say with regard to the relationship of "their" to other legal orders. Yet, despite their different approaches and occasional verbal grandstanding, both courts respect each other and have so far managed to avoid open conflicts and practiced cooperation for the mutual benefit of both the EU and its German Member State. There are, however, instances in which the readiness of the FCC to cooperate with the ECJ could and should be improved. For instance, the FCC should itself be more willing to make references pursuant to Article 267(3) TFEU and to compel the German courts of last instance to fulfil their reference obligation.

The three main conflict areas between the German and European constitutions and their courts have been fundamental rights, the federal structure of Germany and more recently democracy. While the issue of federalism was settled some time ago, the fundamental rights conflict still poses some problems. In the past, the FCC had criticized the lack of adequate fundamental rights protection at European level and announced that it would use national fundamental rights to close the gap, irrespective of the European law's claim to primacy. Lately, though, the FCC has rebuked the ECJ for its alleged tendency to expand the fundamental rights of the EU Charter beyond the bounds of Article 51(1) of that Charter, which interferes with the FCC's power to determine the level of fundamental rights protection in Germany.

In the last years, however, democracy has developed into the most important conflict area, primarily with regard to the preservation of democracy in Germany. The FCC tends to equate democracy with sovereign statehood in the traditional sense which the Framers of the German Constitution had tried to overcome. While the Court also demands that the democratic structure of the EU be continuously strengthened, it has made clear its view that the European Parliament can play no more than a secondary role compared to the Council. The FCC has decried the degressively proportional representation of Union citizens in the European Parliament which disadvantages German voters compared with voters from smaller Member States. However it neglects the fact that this representation model is the only way to ensure adequate representation of the smaller Member States without expanding parliamentary membership beyond functionality. At any rate, the European Parliament's functionality was not considered as important enough by the FCC to justify the German legislature in setting any minimum threshold for the allocation of seats. In leaving that decision to the national legislatures, EU law had obviously expected them to exercise their discretion in accordance with Article 4(3) TEU in a way which would prevent excessive fragmentation of the European Parliament.

The FCC's jurisprudence on democracy began with its review of the constitutionality of the Treaty of Maastricht in 1993 and was expanded when it reviewed the Treaty of Lisbon in 2009. Recently, the FCC has and still is using the democracy principle as a standard to review the endeavours for saving the Euro. The FCC employs the Germans' fundamental right to vote in federal elections as the procedural basis for its interventions, permitting every German voter to lodge a constitutional complaint against further transfers of powers from the German federal parliament to the EU. According to the FCC, the German Constitution does not permit such transfers to an extent which voids the powers of the German parliament and thus destroys democracy in Germany. As a matter of fact, however, the FCC has so far always found ways to uphold new European Treaties or other EU acts as such and only ordered further safeguards in German law (such as the requirement of parliamentary authorization of executive measures).

One aspect of that democracy jurisprudence is the FCC's claim to exercise both the ultra vires review as well as the "identity review" over EU acts (including decisions of the ECJ). The ultra vires review concerns the question whether EU institutions overstepped the limits of the powers transferred to them by the Treaties. The "identity review" denotes the FCC's claim to review EU acts as regards their compatibility with the fundamental values of the German Constitution, laid

down in Articles 1 and 20 of that Constitution that define Germany's constitutional identity in the sense of Article 4(2) TEU. Those review powers claimed by the FCC disregard the ECJ's monopoly concerning the nullification or disapplication of EU acts. They are incompatible with EU law. So far, the FCC has not struck down any EU act for being ultra vires or in violation of the German constitutional identity, but it cannot be excluded that this will happen in the future and precipitate a crisis in the EU.

The FCC's case-law on the EU leaves an ambivalent impression. Several decisions are friendly toward European integration, but there are other sceptical ones, rather with regard to their reasoning (including *obiter dicta*) than their operative provisions. In the overall assessment, the FCC has acted neither as frustrator nor as promoter of European integration but rather as decelerator. The decelerator function has neither a patently positive nor a patently negative connotation. While improper deceleration can stall and possibly ruin a dynamic project like the European integration process, proper deceleration can save an overly dynamic process from derailment. It will be difficult to reach an agreement on how the deceleration manoeuvres of the FCC should be qualified. In my view, they have had a negative tendency.

Ulrich Seifert, Fortschritte beim Rechtsschutz in Umweltangelegenheiten nach Art. 9 Abs. 3 Aarhus-Konvention? – Jüngste Lösungsansätze von EuGH und BVerwG, ZEuS 2016, 49-84.

Mit der Aarhus-Konvention, einem völkerrechtlichen Abkommen aus dem Jahr 1998, sollte der Umweltschutz durch einen besseren Informationszugang, durch die Beteiligung der Öffentlichkeit an Projekten mit großem Einfluss auf die Umwelt sowie durch der Zugang zu Rechtsschutz verbessert werden. Vertragsstaaten des Abkommens sind neben den Mitgliedstaaten der EU auch die Union selbst. Seit der Umsetzung des Abkommens durch ein Richtlinienpaket der Kommission, reißen die Diskussionen zwischen Kommission und Mitgliedstaaten über die Umsetzung und Anwendung der völkerrechtlichen Vorgaben nicht ab. So hat sich erst kürzlich der EuGH in einem Vertragsverletzungsverfahren gegen die Bundesrepublik Deutschland wieder mit der Umsetzung der Vorgaben der europäischen Richtlinie 2003/35/EG im deutschen Umwelt-Rechtsbehelfsgesetz auseinandergesetzt. Stand bei dieser Entscheidung des Gerichtshofs wie bei den Judikaten zuvor stets die Umsetzung der unionsrechtlichen Vorgaben zum Rechtsschutz bei der Verletzung UVP-pflichtiger Vorhaben nach Art. 9 Abs. 2 AK im Fokus, so hatte sich der EuGH in seiner sogenannten „Braunbär"-Entscheidung erstmals mit der bisher unbeachteten Bestimmung des Art. 9 Abs. 3 AK auseinandergesetzt. Diese Vorschrift, die bisher im Unionsrecht nicht umgesetzt wurde, eröffnet generell die Möglichkeit, die Einhaltung innerstaatlichen Umweltrechts durch Einzelpersonen wie Umweltverbände überprüfen zu lassen. Der Frage, ob es dem EuGH damit gelingt, dieser Bestimmung zur Geltung in der EU zu verhelfen, und wenn ja, wie tragfähig sein Lösungsansatz ist, wird im vorliegenden Beitrag nachgegangen. Im zweiten Teil wird sodann untersucht, welche Schlüsse das BVerwG in seinem Urteil *Luftreinhalteplan Darmstadt* aus den Vorgaben des EuGH zieht. Abschließend wird noch ein Ausblick gewagt, welche „Aufträge" der deutsche und europäische Gesetzgeber aus den beiden Judikaten für sich ableiten.

Aike Würdemann und Caroline Glöckle, Die Dogmatik des Art. 110 AEUV in der Rechtsprechung des EuGH, ZEuS 2016, 85-107.

Der Beitrag widmet sich der modifizierten Dogmatik des Art. 110 AEUV durch die Rechtsprechung des EuGH. Art. 110 AEUV ergänzt das unionsrechtliche System der Warenverkehrsfreiheit um das Diskriminierungsverbot im Bereich der internen fiskalischen Regulierung der Mitgliedstaaten und gilt dem Wortlaut nach absolut. Allerdings prüft der EuGH in ständiger Rechtsprechung sogenannte „legitime wirtschaftspolitische Ziele" zur tatbestandsimmanenten Rechtfertigung einer möglicherweise diskriminierenden oder protektionistischen Steuergesetzgebung eines Mitgliedstaates. Überdies bezieht der EuGH Elemente der Verhältnismäßigkeit in seiner Prüfung ein. Der EuGH geht damit weit über den Wortlaut des Art. 110 AEUV hinaus. Er setzt unionsrechtliche Ziele in der Steuerpolitik der Mitgliedstaaten durch, indem er das Unionsrecht zum Maßstab der mitgliedstaatlichen Steuergesetzgebung macht.

Ana Pepeljugoska, Certain Data Privacy Issues in the Cloud Computing Environment from a Macedonian Perspective – A Comparative Analysis of the Legislation, ZEuS 2016, 109-132.

The digital world provides many opportunities for self-expression. One of the latest concepts is the cloud computing. The most challenging task in this cloud computing environment is the question of data privacy. The issue here is that the existing rules do not provide explicit reference or interpretation of the term "personal data". Especially, in the sense of the anonymized, pseudo anonymized and encrypted data a certain legal and factual gap exists, therefore, enabling easier evasion of the data protection rules in the cloud environment. In addition, the application of the territorially based data protection laws in the cloud focus is a rather difficult task. The complexity of data processing and the transactions in general in the cloud varies significantly from the physical world. The current data privacy legislation in Macedonia and the European Union does not contain explicit reference to these specific data privacy issues in the cloud computing environment. It is therefore necessary to address these relations specifically in the forthcoming reform on EU level as to reconsider and avoid the existing loopholes. In addition, it is more than necessary to reform the Macedonian data privacy legislation and practice in the sense of approximating it to answer the challenge of the newest digital trends.