

Summary

Protection under Article 8 ECHR against state interferences on the internet

The paper at hand examines Article 8 ECHR and the protection offered hereby of one's private and family life in the internet against interferences by the state offered by Article 8 ECHR. It aims at answering the question whether or not Article 8 ECHR can offer adequate protection in this area. In this context, the fact that, unlike Article 8 of the Charta of Fundamental Rights of the EU, Article 8 ECHR does not explicitly mention the protection of personal data, has to be considered.

This examination follows the structure applied by the ECtHR: scope of protection, interference and justification. First, a systematic overview of what is protected by Article 8 ECHR is given and an analysis as to the relevance to the protection of one's private and family life in the internet is made for each protected aspect. The author shows that Article 8 ECHR guarantees a "right to informational self-determination", which protects all personal data. Any information relating to an identified or identifiable individual constitutes personal data. Second, actions by the state, which possibly interfere with the right to private and family life on the internet, are described in groups. These groups are formed in accordance with the phases of a data transfer. As all state actions regarding personal data on the internet constitute acts that may interfere, the threshold and the consent by the data subject are decisive as to whether or not state actions on the internet constitute an interference with Article 8 ECHR. Third, the particular requirements for the justification of interferences through the handling of personal data as provided by Article 8 paragraph 2 ECHR are examined. It becomes evident that Article 8 ECHR, which has a rather broad scope of protection, is given shape through the requirements for justification. Due to the particular dangers which arise in the context of the internet, the ECtHR tends to apply a high level of scrutiny and an increased need for justification can be seen.

This examination shows that Article 8 ECHR offers comprehensive protection against state interferences in the right to private and family life, even though it does not explicitly mention the protection of personal data. Article 8 ECHR is in no way inferior to Article 8 of the Charta of Fundamental Rights of the EU.