

Super fundamental rightData protection?A fact check

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Since the European General Data Protection Regulation came into force and especially since the beginning of the corona pandemic, there have been repeated public discussions about the meaning and purpose of data protection. This involves the fundamental question of whether the protection of the rights and freedoms of citizens is adequate in its current form.

On the occasion of an opinion piece published in the issue of the Hamburger Abendblatt from November 21/22, 2020 entitled "Superfundamental right to data protection?" it is necessary to carry out a fact check against this background in order to separate facts from mere allegations. In this way, it may be possible to create an objective basis for public discussion.

"Basic rights are being restricted everywhere because of the corona pandemic - with one exception" The fact that fundamental rights are currently being encroached upon everywhere, just not the fundamental right to data protection, is wrong in this sweeping generalization. Restrictions on the fundamental right to informational self-determination are currently taking place en masse: For data transmission and storage when tracking infection chains and when reporting infected people and people entering from risk areas. In addition, everyone is obliged to always leave their contact details when visiting facilities of daily life. In the case of certificates for exemption from the mask requirement, the doctor must provide a diagnosis of the state of health of the person concerned. New legal restrictions on the right to informational self-determination were adopted by federal legislators just last week (see here).

"Germany has afforded a great Corona warning app for 69 million euros - it is so safe that it is unfortunately worthless in this second wave." The cost of the Corona app is correct. However, the Corona app is not "worthless": it enables people to behave in a manner appropriate to the risk and, in particular, to avoid contact to protect others. It is precisely its security and the legitimate trust of users in data protection that has made a significant contribution to the fact that it has been downloaded more than 23.2 million times (see here).

"For example, an AI research project on Corona was recently set up in Hamburg, which failed because of the tax-financed skeptics. The project is now being continued abroad. The list of abstruse interventions by data protection officials is so long that it finally needs to be discussed." It is completely unclear which AI research project is supposed to be involved here and where and when such a project was allegedly prevented in Hamburg. Despite a letter to the editors of the Hamburger Abendblatt, there has been no clarification on this or other points.

"Unforgettable how the Hamburg data protection officer wanted to hinder police work after the G-20 riots and in all seriousness demanded that the search file on violent criminals be deleted." control and protect rights and freedoms. In this context, assuming the intention to prevent criminal prosecution speaks for itself. The demand for the deletion of search data from violent criminals was never raised. Instead, the order concerned the deletion of the biometric profiles of passers-by who, in the masses, were completely innocent at the time and which were drawn together and collected in public in order to create a biometric reference database. This was unique in Germany and has already been deleted by the Hamburg police. The case is before the OVG Hamburg and has not yet found a final decision.

"The electronic patient file prevented data protectionists with reference to possible misuse - that the file can save lives if an emergency comes to the hospital? Not that important." The electronic patient file is regulated by law and is currently being implemented. It is wrong that this was prevented by data protection officers. This was never their concern. It is correct that there is currently criticism of the implementation. In the past, data protection officials have campaigned for the electronic patient file to be technically implemented securely and for patients to be able to control who can see which documents in it.

"The green mayor of Tübingen, Boris Palmer, wanted to collect information about criminal asylum seekers in order to take a closer look at them. The data protection officers prohibited it." That is correct, but says nothing about the legality of the prohibition. Data protection sometimes sets rules that have to be observed by authorities - also in favor of asylum seekers.

"It was also their concerns that prevented child benefit fraud from being uncovered by criminal clans for a long time." In fact, this question was raised in NRW and has led to a standardized procedure for data comparison there. Details of the course of the debate on site are not known.

"... the [data protection officers] had the restaurateurs checked in Hamburg in the summer. Where lists were openly displayed, there was trouble, and fines were imposed in the event of a repeat offense. This is how you make life difficult for entrepreneurs in need - and make it all the easier for Mickey Mouse and Darth Vader." In addition to educational campaigns, the supervisory

authority has in fact carried out on-site inspections. Only in three institutions have so far been imposed more symbolic fines of 50 to 100 euros each. Data protection and protection against infection go hand in hand: there have been numerous complaints about open contact lists, such as misuse of stored telephone numbers by flirt calls from strangers. Restaurant-goers need to be confident that their details are being kept safe if they leave their correct names and phone numbers.

For this Prof. Dr. Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "In large parts, the article does not stand up to the fact check. Research is an indispensable tool of journalistic diligence. Central social questions, such as the protection of people in the age of digitalization, can only be answered on the basis of facts. Otherwise, rational judgments will be replaced by prejudice and insinuation."

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