

Juristische Methodik – SW 4

Teil A:

II. Einführungsfall : Datenschutz

Sachverhalt:

Stellen Sie sich vor, Sie sind in der Rechtsabteilung einer Bank mit Sitz in der Stadt Zürich tätig. Sie erhalten seitens der IT-Abteilung eine Anfrage, wie die gesetzlichen Anforderungen zur Datensicherheit in der Bank konkret umzusetzen sind. Der IT-Abteilung ist nach der Lektüre von Art. 7 des Bundesgesetzes über den Datenschutz (DSG), welcher die Datensicherheit betrifft, nicht klar, was sie tun soll.

Art. 7 DSG Datensicherheit « 1 Personendaten müssen durch angemessene technische und organisatorische Massnahmen gegen unbefugtes Bearbeiten geschützt werden.

2 Der Bundesrat erlässt nähere Bestimmungen über die Mindestanforderungen an die Datensicherheit.»

Nach einer kurzen Recherche finden Sie heraus, dass der Bundesrat eine Verordnung zum Bundesgesetz über den Datenschutz (VDSG) erlassen hat. Diese fordert in Art. 20 ff. VDSG bestimmte technische und organisatorische Massnahmen zum Schutz der Datensicherheit. Zudem stellen Sie fest, dass es in Art. 13 Abs. 2 der Bundesverfassung (BV) zum Schutz der Privatsphäre heisst : «Jede Person hat Anspruch auf Schutz vor Missbrauch ihrer persönlichen Daten.» Aber damit nicht genug: Sie finden auch ein Gesetz über die Information und den Datenschutz (IDG), das der Zürcher Kantonsrat erlassen hat, mit einer zugehörigen Verordnung über die Information und den Datenschutz (IDV) des Zürcher Sie stossen schliesslich auch auf eine Datenschutzverordnung (DSV) des Gemeinderates der Stadt Zürich.

Diskussion: Gibt es eine Hierarchie zwischen den genannten Erlassen?

1. Richtiges Einspuren:

- a) Normenstufen: Verfassung, Gesetz (im formellen Sinn), Verordnung
- b) Staatsebene: Bund – Kantone -Gemeinden
- c) Kombination

2. Folge:

- a) höhere Staatsebene geht niederer Staatsebenen vor
- b) höherer Erlass geht niedererem Erlass vor

3. Begrifflichkeiten

- a) Erlasse = Gesetze im materiellen Sinn = generell-abstrakte staatliche Anordnung (= Verfassung, Gesetze im formellen Sinn, Verordnungen)
- b) Gesetz im formellen Sinn = Parlamentsgesetz = im ordentlichen Verfahren der Gesetzgebung unter der Mitwirkung des Parlaments (+Volk) erlassener Erlass (→ demokratische Funktion)
- c) «Konkordate», «Vereinbarungen», «Gemeindeordnung», «Reglemente»-Begriff nicht verwenden

4. Lösung

- a) doppelte Hierarchie (Norm- und Staatsebenen)
- b) BV- DSG (Gesetz im formellen Sinn) – VDSG – IDG (Gesetz im formellen Sinn) – IDV - DSV

Juristische Methodik Juristische Methodik

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Reviewing **Juristische Methodik Juristische Methodik**: Unlocking the Spellbinding Force of Linguistics

In a fast-paced world fueled by information and interconnectivity, the spellbinding force of linguistics has acquired newfound prominence. Its capacity to evoke emotions, stimulate contemplation, and stimulate metamorphosis is truly astonishing. Within the pages of "**Juristische Methodik Juristische Methodik**," an enthralling opus penned by a highly acclaimed wordsmith, readers embark on an immersive expedition to unravel the intricate significance of language and its indelible imprint on our lives. Throughout this assessment, we shall delve to the book is central motifs, appraise its distinctive narrative style, and gauge its overarching influence on the minds of its readers.

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