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European Family Policy as an Issue of Specifying Rights

I. Three Levels of Negotiation

1. The fundamental right of freedom of individual and state aid as a presumption of freedom

European countries are aware of the need for an active approach to family policy. Their future depends on the birth of large numbers of children, on children being raised in beneficial social environments, and educated as responsible individuals able to live in society.[1] These assumptions are, however, in today's environment very sensitive. The primary decisions are not part of the state competence. These are the personal responsibilities of men and women in the sphere of personal liberty, and this responsibility cannot fall within the competence of any law. Last, but not least, public welfare depends on individual family planning and the educational abilities of parents. The state, however, is not indifferent to these basic life principles. Issues that cannot be governed by the state can be, at least, supported by it, and what cannot be ordered by the state can be, at least, stimulated by it. The state can ensure legal and real conditions that will support families and their willingness to have children. [2] The possibilities for influencing are limited. However, these are very strongly perceived by European states. States have elaborated on the concepts of family policy that currently combine, on various levels, the traditional patterns and needs of current life. From Finland to Greenland, the family policy map is a reflection of variety and national specifics.

2. *EU family policy activity*

Currently, the European Union has started to be intensively involved in family policy.[3] The number of EU activities is growing, and they are more extensive and more specific.

Based on the level of intensity, this is classified as:

- collecting information on the legal regulations of member states and developing monitoring (e.g. "European Alliance for Families" measure of 2006),
- impulses for harmonizing national legal systems and for coordinating national legislations (e.g. Council recommendation on childcare of 1992),
- financial support for specific family policies projects of member states,
- producing obligatory standards related to family policy or affecting family policy (e.g. the Directive on Equal Treatment of 1975, Directive on Human Rights of 1992, Directive on Parental Leave of 1996).

The topics are very varied: equalization of genders and protection against discrimination, equal treatment on the labour market, protecting mothers, parental leave, childcare, social benefits, fighting child poverty, continuous supply of financial subsidies in relation to demographical changes, and many others.

Two different systems do not enable a comprehensive concept to be produced. Nevertheless, we can talk about two dominant directions: economic and emancipatory. From the economic view point, the family is perceived as a disturbing factor of the economic process because childcare deprives the economy of a work force, thus depleting a valuable financial source. In the majority of cases this is the mother. Politicians strive to use this situation on the market as best they can. Childcare is not considered to

be employment and therefore not evaluated as such in statistics. On the contrary, mother care results in a decrease of the employment of women. In this context, however, the family seems to be an inevitable base for resolving demographic issues, which create a burden for the labour market, systems of social support and the state budget. Therefore, the family is supported, for the economy - in the jargon of the EU in each role that it plays in "the creation and reproduction of socio-economy potential.[4] The factor of emancipation is also significant in the European family policy; it strives to achieve an absolute equalization of the genders; the cancellation of the traditional division of roles - men work, women take care of children and the household; removal of the existing imbalance, ensuring the compatibility of family and employment for both parties and enabling mutual financial independence for men and women. In the conflict of intentions between equalizing genders, the freedom of both partners and in establishing tasks of them in the family, European Union is biased towards equalization by the model of gender equality.

Completely shadowed by the main objectives is the objective, which should be, objectively, a priority of the family policy agenda: the child's well-being. Let us not forget: for the child itself, not because of the demographical balance, employment policy or because of equalizing parents.

II. Specifying EU Family Policy Authorities

1. Principle of limited authorizations in individual cases

The European Union is expected to find the key to solving the existing problems of family policy. Member states' governments hope that they will be better able to enforce their own, unpopular objectives via supranational instances, which are remote from voters, far from the opposition and there is no public pressure imposed other than via national parliaments. The importance of family policy is generally acknowledged, so it is evident that decisions should be made at the highest level. The national family policy must, however, overcome a legal obstacle: proof of qualification.

On the other hand, member states do not have to provide such evidence. Their authority to decide on family policy issues is understood on its own. The power of its authorizations - the state determines its authorizations on its own by the content and objective of tasks, which the state wishes to attend to. Supremely, it defines its own sphere of action. The state as such disposes of virtual general authorizations. The state uses these based on individual political needs, while emphasizing ideas of general well being, within the constitutional limits.[5]

And this very thing is withheld from the European Union. It does not have specifics, which make the state. It is governed by laws of a limited number of authorized agents for individual cases.[6] Its uniqueness is within the limits of contractually limited authorizations and contractually determined objectives (Art. 5, Para. 1, EEC Treaty). It does not have any authorizations to issue legal norms.[7] Nor has it any other authorizations.[8] As a simple union of states, it is inclined against authorizations that were transferred to it by the treaties of individual member states. The states are in charge of treaties. The legal acts of the Community must respect the legal base thereof in the form of explicit references or other supporting points. [9] If

the authorization for the family policy sphere is missing, it is acting ultra vires.

2. Division of authorizations in the family policy sphere

The European Union does not dispose of authorizations for family policy as such. However, there are general objectives established in other spheres that are also relevant for family policy, such as:

– support of the equalization of men and women (Article 2 SES),
– the fight against gender discrimination (Article 13, para. 1 SES),

in more detail:

– similar opportunities when entering the labour market for men and women and equal treatment in the workplace (Art. 137, Para. 1, Letter i SES),
– equal remuneration for men and women (Art. 141 SES).

Some abstractly conceived ordinances, which are not directly associated with family law, but can be applied to it, e.g.

– coordination of social benefits (Art. 42 SES) can be applied to family benefits,
– judicial cooperation (Art. 61, Letter c SES) applied to cross-border legal issue related to families.

This applies to general established social targets (Art. 136 SES) and to employment policy tasks (Art. 125 and the following, SES).

In its effort towards the compatibility of employment and private life, the European Union is inclined against its mandate within the employment policy and requires the establishment of affordable facilities providing childcare from a minimum determined number.[10] We can assume that the treaty will not include acts of secondary law of such a nature. From the viewpoint of economy competences we can assume that the European law treats the family as an exclusively economic agenda. “The access method focuses primarily on the rights of an individual, being a person conceived as

an economic subject."[11] This EU jargon must not be understood as the EU despising human values. This diction is rather a mere expression of limited authorizations, thus an expression of an inevitable, legitimate bias.

Comments: The issue of specifying authorizations is driven by who can decide, not by what the right decision should be. The agenda, thus, is not family policy as such, but is a debate on a political level on who is authorized to decide in this sphere.

3. Inconsequentiality of Essential Rights

Essential rights treat the family in another, personal context. The family is perceived as a natural, original society. If, by the Lisbon Treaty, the European Charter of Essential Rights becomes legally binding, the question arises of where the basic articles on the family should not be given more attention from the viewpoint of a comprehensive family policy. This applies to ensuring legal, economic and social protection of the family (Art. 33, Para. 1 of the Charter) and to ensuring, from the viewpoint of unified family and professional life, that each individual has the right to be protected against being discharged because of maternity, as well as a title to a paid maternity leave after the birth or adoption {Art. 33, Para. 2 of the Charter).[12] European politicians expect these provisions to increase the efficiency of the European family policy. [13] However, legal support for these political expectations cannot be sustained by articles contained in a summary of essential rights. Essential rights assume the specification of authorizations. They control and specify the scope of their actions, but do not substantiate them. According to the Charter, essential rights are supranational, if sufficient. However, they do not contain any new authorizations [14] and do not extend the scope of their activity.

Therefore, we can not imply any limitations of authorizations for the family policy sphere from the basic law elements of the general law

principles of the Community or from the European convention on human rights.

4. Authorizations to extend authorizations?

Based on the above-mentioned it is clear that the European Union disposes of only marginal and disparate authorizations in the family policy sphere and these are limited to economic aspects, as a principle.[15] However, this is not reflected in the common practice of Union bodies. They extensively enforce their authorizations. Where the treaty text provides only a symbolic finger of aid, they tend to grab the whole hand. Specification of authorizations is, however, not defined selectively, and certainly not by various spheres, as in the Federal Constitution due to the limitation of central institutions and member states, but based on the determined objectives for establishing a unified EU internal market.[16] This corresponds to the Community nature. Contrary to the federal state, the Union is not a final structure but an unfinished construction site. Static elements of institutions remit to dynamic elements of integration. The Union is not saturated from the viewpoint of authorizations. Thus, the Union seeks to acquire extensive authorizations in dividing authorizations by contractual right for the family policy sphere. In this process, the arguments usual for the integration process could be helpful.

One of these is the **doctrine** of **implicit authorizations**, according to which unwritten authorizations are implied from the specific internal logics of the given authorities.[17] For the family policy sphere, such logic cannot be derived in the excess of the framework of determinate authorities. Of course, in actual life, everything is connected to everything. This is, however, not an argument for specifying authorities. Specifying authorities separates associated scopes of actions and redistributes them to the various parties involved.

Contractual law assigns to the Community authorities **implicit contractual authorizations** in cases that are not assumed by the Treaty, but in which the Community must exert an effort to achieve some of the Community objectives within the framework of a common market, this Treaty does not provide the necessary authorities to them. In such a case, the Council, at the request of the Committee and on consultation with the European Parliament, will render a unanimous measure (Art. 308 SES).[18] The supranational practice tends to be satisfied with (in reality, with demanding) formal requirements so the unanimous approval of the Council could be sufficient for rendering a change in authorizations, thus replacing the demanding proceeding of carrying out modifications to the Treaty. However, this legal opinion is not sustainable. The proceedings for assigning authorizations is carried out only if particular prerequisites of merits are fulfilled. These merits are strictly interpreted. The Council, in assigning authorizations, does not have the power for all matters, and cannot expand the activity of the Community above the contractual framework and carry out provisions, which, in principle, would result in modifying the Treaty without adhering to the proceedings under the Treaty.[19] Specific agendas of family policy do not come into question because of its very contents. Since family support and modification of the family law are not among the determined objectives of the Treaty. They are not among the "common market framework", either. In the case of a family it is not a phenomenon assumed by the Treaty, neither issues that the Treaty has and which are associated with it, can be assumed by the contractual partners.

Since the Community is not aware of the targets determined in the family policy sphere, a common interpretation in the sense of the broadest possible interpretations of Community authorizations cannot be applied (**effet utile**).[20]

III. Subsidiarity Principle

1. Regulative procedure in the performance of authorizations

What function does the subsidiarity principle have? Here, we must differentiate. From the viewpoint of legal ethics and politics, this principle is ambivalent. On one hand, it governs the division of authorizations between the upper and lower levels, on the other hand it governs the performance of them[21] From the viewpoint of the positive law, as a norm of European law (Art. 5, Para. 2 SES) it applies exclusively to the performance of authorizations. Thus, it assumes a Community authorization, more precisely: "competitive" authority, which is genuine to both levels. Thus, the competitive fight is removed, since member states have priority in performing their authorizations and the Community is pushed only in the case that objectives can be achieved better by the Community because of the scope or effect of the proposed activities.[22]

The subsidiarity argument thus does not substantiate Union authority within the family policy sphere. More probably, it is a delimitation of that spot of spare authorizations, which it has at disposal. Only individual marginal competences, which implicate economic and political aspects of a family are associated with both levels and enable the subsidiarity principle to be applied. In general, the presumption for applying this principle itself is missing since the most important authorizations associated with family policy are held by member states, without restrictions.

Nevertheless, the question arises, if some particular economic and political objectives of the Union could be applied to the family policy sphere in order to apply the subsidiarity principle. A fictive case: A community, based on a decree or a directive, would remove from parents their right to raise their children and impose institutional care and education outside the home, so as to reach the compatibility and reconciliation of

professional and family life, and would force the mother and father to equally distribute among themselves the remaining household care in order to satisfy the equality of genders. The reasons for this conduct would be obvious; however the concept of the law of member states would very much differ, since states have other priorities from the viewpoint of national traditions and value conception. In these cases, doubts on the conformity of the determined objectives with the Treaty could be implied. Legitimate objectives by the Treaty must be found in genuine economic borders as determined by the European Community, as described in Art. 2 SES. Measures in the sphere of family policy relate to private life and thus fall exclusively under the authorizations of individual states, if at all open to legal modifications.

Each attempt of the Community to increase its competences into this area would be in conflict with the Community's engagement of respecting the national suzerainty of member states (Art. 6, Para. 3, EU Treaty). The heterogeneousness of law and priorities are expression of cultural, ideological, social and ethical independence, which is contrary to the wide conception by the national principle.[23] The fulfilment of economic objectives cannot justify interference with non-economic areas and the associated inception of the practically accepted competence collateral damages in the interest of the economic and social integration progress. This abundance of rules is to drop out of the principle of interventionism, according to which measures imposed by the Community may not exceed the level required to achieve objective of the Constitution (Art. 5, Para. 3 SES). This principle prohibits the marginal economic and political authorizations influencing the performance of the main authorities in the family policy sphere, as if the "dog's tail wagged the whole dog". Nevertheless, on the European political field, there are imperceptible conceptions cropping up to deduce the main authorizations for applying the entire family law from marginal authorizations for cross-border family relations and migration, and to deduce authorizations for contracting

marriages between partners of the same gender including their rights to adoption from the ban on discrimination.[24]

Whatever will be the outcome of the discourse on the European legal level - the transition of economic objectives to non-economic does not substantiate the acknowledgment of the title to the Community's authorization.

If the economic and political authorizations of the Community relate to the family sphere they must be limited only to economic aspects and must enable member states to independently determine their priorities in the family policy sphere. Member states have the sole and exclusive right to review parental care in comparison with the performance of paid employment, to influence the division of household tasks between the mother and father, and to determine the quality and quantity norms for childcare outside the family.

The European Union may, at the most, determine the framework conditions for family life. These conditions, however, may not implicate rules for non-economic issues as determined by member states.

2. Wit Principle

The subsidiarity principle also includes the rule of political wit.[25] Resolutions made on this virgin soil, thus not associated with the high level of risk of not achieving the established objective and thus giving rise to negative side effects, usually take place on the lower level, where the inception of risks is limited. Measures from the family policy viewpoint that are adapted to the modifications of life style and which are to create a demographic balance, have a type of experience, since they are not supported by sufficient experiences, and the consequences are not transparent. Legal-political experiments are on the lower level. Here, the

rise of possible risks is limited. The benefits and disadvantages of various solutions can be compared. It is also possible to compete for the best possible solution. Of course, the conditions of the competition principles must also be announced. Family policy models cannot be reviewed in the same manner as economic and politic models by their efficiency and economy and their success cannot be expressed purely in numbers since they do not pursue exclusively demographic objectives and objectives determining the labour market, but also ethical and mental principles. These principles are deeply rooted in the human conception of values. The development of them is governed by their own laws, which are far remote from the economic calculus of political feasibility, as a manifestation of the autochthonic national identity.

If the European Union wants to harmonize law using the principle "from below" and impose on all member states a particular way of life, it will provoke a test of the strength of its already shabby uniformity of opinions. The principle of a unified Europe, which is in line with the founding treaties, must respect the natural varieties of family policies of member states.

V. Agenda without Specifying Authorizations

Legal authorizations include all the legally binding provisions of the Community. On the other hand these also include activities that do not concern the identity of member states: collection and storage of information on interstate law, monitoring social development in member states, also the support of exchanging information between these states and the support of similar research tasks, are measures falling under the program of the "European Alliance for Families", the establishment of which was resolved by the European Council. The Union also serves its members as a forum for intergovernmental cooperation on family issues, for mutual approval of initiatives in the family policy sphere, and for coordinating their own legal systems.[26] The Union cannot be biased towards any party in the political spectrum outside its assigned authorizations, whether due to the influence of single-side focused recommendations, or the subjective assignment of financial funds.

The European Union cannot dispose of its finances without authorizations.[27] It expense policy is governed by the division of expenses by primary law. Simply: It collects revenues so that it can acquit its contractual duties, however not in order to contract new tasks. Authorizations cannot be procured, and are not for sale. The practice of distributing financial funds, however, does not respect the borders of individual authorizations. The Commission strives to acquire control power and expert knowledge.

VI. Return to the Limits of Authorizations

Whoever is aware of the practice of supranational institutions, can look, with mockery or resignedly, on the efforts to achieve the specification of authorizations for established objectives under the Treaty and for normative stipulations of the Contract, since the expansion of supranational institutions seems to be unstoppable. In reality, EU activities step over competence barriers. Competence rights are considered, more or less, to be soft law. Where treaties run out, Parkinson's law governs. Thus, the condition of the subsidiarity principle control purports in vain, it only serves as a soothing and sedative plaster for delicate points of individual states.[28] Governments of member states alone often contribute to the expansion in excess of the Treaty framework (the German government, among others), when wishing to enforce unpopular measures without the need to face their own political risks, while dissociating themselves from such measures immediately afterwards. National governments can thus control the borders of the Community scope of action conditionally only.

When the Community was established, there were good reasons for embracing flexible borders and in a wide context so as not to limit the growth and strength of newly established institutions, and to test the legal broadmindedness in the puberty phase of the Community. However, the Union has matured, and is now ready to take over power. However, this power must have legal and competence continuity. The time has come to take the legal foundations of Union word for word.

In the case of conflict of interests within the federal state, the Constitutional Court is the central institution ready to rule on two state levels, sine ira et studio, independently on political powers of legislation and execution. The European Court of Justice, which has, in fact, a critical role in Community relations with its member states, has disqualified itself from this role.[29] It construes itself as a driver of integration, not as a guardian of

legal framework conditions thereof, as it should be in the case of a court. This Court's attitude assigns the Court the role of a party in a sport that the Court is to judge. As regards the Court, it is perceived as a political actor equal to the legislative and executive authorities of the Community, without its democratic legitimacy however.

The deficit of the judiciary authority of the European Court of Justice results in the failure of self-control and self-correction within the authorities of the Community in serious matters, in which such authorities evidently trespass their authorizations, while starting from the legitimate interpretation of the Treaty to acquire authorizations in excess of the contractual authorizations, thus acting extra vires. The Union, the existence of which is based on law, may not build upon blind obedience. The German Constitutional Court has an unambiguous answer: interpretation of authorizations, which in its result means modifications of the Treaty, is not to be accepted by member states.[30] Interstate authorities would be, because of constitution-law reasons, disallowed from applying acts of Communities issued ultra vires. Since the European Court of Justice has renounced its authority, the national constitutional court has the last word on this matter. Therefore, the Federal Constitutional Court must verify, whether the legal acts of European institutions and bodies are within the limits of assigned authorities, or whether they trespass those.[31]

"Mene tekel" appears in the European family policy on the field of legal specifications of authorizations. In order to preserve itself, the Union should instantly recall the borders of its authorizations.

[1] Educational Target, Art. 1, Para 1 of the Social Code (SGB) VIII.

[2] General: *Josef Isensee,* Basic legal assumptions and institutional viewpoints on applying fundamental rights v: ders./Paul Kirchhof (publisher), State Law Manual of the Federal Republic of Germany (HStR), Volume V, [2]2000, Art. 115 no. 13 and the following, no. 158 and the following.

[3] Overview of the development, statuses and plans: *"Barcelona targets"* for employment policy and social policy no. 5 (President's Conclusions, European Council [Barcelona, 15.-16.3.2002, document SN 100/1/02 REV 1, page 47]); Report of *Commission* addressed to the European Parliament, European Economy and Social Committee and Regional Committee - implementation of Barcelona targets on establishing preschool childcare facilities (SEE [2008] 2597); position of the European Economic and Social Committee (*EWSA*) with regard to the reports of the Commission addressed to the European Parliament, Council, European Economic and Social Committee, and Committee of Regions - Support of Solidarity Among Regions, in : KOM (2007 / C 120/16); EU commissioner *Vladimír Špidla,* What should European family policy look like?, Speech/07/166.

[4] *EWSA* (N 3), 3.11.

[5] Details in *Josef Isensee*, Tasks of State, in: State Law Manual of the Federal Republic of Germany (HStR), volume IV, [3]2006, § 73 Rn. 55 and the following (postface).

[6] Art. 5 para. 1, no. 7 par. 1 page. 2 SES, art. 3 para. 1 page. 2 EA. Reference *Matthias Herdegen*, European Law, [10]2008, § 9 no 55 and following; *Georg Lienbacher,* in: Jürgen Schwarze (publisher), EU-commentary, [2]2009, SES no. 5, no. 9 f.; From the German constitution viewpoint, German Constitutional Court 89, 155 (188, 191 and following); *Paul Kirchhof*, Maastricht resolution of German Constitutional Court, v: Peter Hommelhoff/Paul Kirchhof (publisher), Association of States of European Union, 1994, page 22.

[7] *Lienbacher* (no. 6), SES Art. 5, Para. 9.

[8] More in German Constitutional Court (BVerfGE) 89, 155, 194 and following

[9] European Court of Justice (EuGH) on the matter of 45/86, of Coll.

[10] Directive 18 of integrated directives 2008-2010.

[11] EWSA (no. 3), 3.3.

[12] On EU Legitimizing Art. 33 of the Charter: European Economic and Social Committee, Opinion The family and demographic change v. 14./15.03.2007 (CESE 423/2007), 1.1.1. – Juristic View: *Hans-Werner Rengeling/Peter Szczekalla*, Essential Law in the European Union, 2004, page 467 and the following 813 f. Further similar provisions of Art. 7, 9, 14, 24, 32, 34.

[13] On the issue EWSA (No. 3), 3.4, 3.5 – along with regrets for forgetting to mention in the revised EU treaties in Art. 3 of the final list an explicit reference to "support of family life". This is, however, from the legal point of view, the core of the issue.

[14] Concisely *Carl Otto Lenz/Klaus-Dieter Borchardt*, Treaty of the European Constitution, 2005, page 23 - to the original constitutional treaty. Compare with *Rengeling/Szczekalla* (no. 12), page. 154 f., 717. – Analogically on authorizations in a federal state *Jost Pietzcker*, Rules for specifying authorizations and collision law in federal states, v: HStR volume VI, ³2008, § 134.no. 12.

[15] By the conception of the *Committee* itself, it does not have "any direct competences" in childcare (Report, no 2, page 7). Compare with *Rengeling/Szczekalla* (no. 12), page 474.

[16] *Herdegen* (no. 6), page 179; *Lienbacher* (no 6), SES art. 5, no. 10; *Josef Isensee*, Authorizations in Federal State: HStR VI, ³2008, § 133 no. 51 and following..

[17] On this issue *Thomas Oppermann*, European Law, ³2005, page 191 f.; *Herdegen* (no. 6), page 176; *Christian Koenig/Andreas Haratsch*, European Law, ³2000, no. 62; *Lienbacher* (no. 6), SES art. 5 no. 12.

[18] Compare also Art. 6, Para. 4 of the EU Treaty. On this issue *Koenig/Haratsch* (no. 17), Para. 60 f.; *Herdegen* (no. 6), page 17 f.

[19] Opinion of the European Court of Justice 2/94 – European Convention on Human Rights, Coll. 1986 I – 17 59 Para. 30.

[20] *Oppermann* (no. 17), page 160 and following.; *Koenig/Haratsch* (no. 17), para 72; *Herdegen* (no. 6), page 170 f., 186.

[21] Details see *Josef Isensee*, Principle of Subsidiarity and Constitutional Law, ²2001, page. 333 and following, 349 and following; *Jiří Georgiev,* Principle of Subsidiarity in Legal Theory and Practice / Principles of Subsidiarity in Legal Theory and Practice, Prague 2007.

[22] *Isensee*, Principle of Subsidiarity (no. 21), page 355 and following; *Hans-Jürgen Papier*, Principle of Subsidiarity - Drag of European Centralism?, in: Memorial Volume for Josef Isensee, 2007, page 691

(694 and following.); *Herdegen* (no. 6), page 92 f.; *Lienbacher* (no. 6) , SES Art. 5 page 13 and following – Law-political Aspect: *Jiří Georgiev,* Embedding the Subsidiarity Principle into Constituent Treaties, in: Georgiev (no. 21), page 141 and following; BVerfGE 89, 155 (210 and following); 92, 203 (239 f.).

23 The directive to respect independence is embedded, too, in Art. SES (*Armin v. Bogdany/Martin Nettesheim,* v: Eberhard Grabitz/Meinhard Hilf (publisher), EU Law, of 2006, SES Art. 3 b, no. 37).

24 Comments *Rengeling/Szczekalla* (no. 12), page 474.

25 On this issue *Isensee* Subsidiarity Principle (no. 21), page 337 and following

26 On this integration task in general *Rupert Stettner*, Between Integration and Decline: "Amplified Cooperation" in Union law, v: Memoirs for Dieter Blumenwitze, 2008, page 779 and following

27 On the issue of a zone without authorizations in a federal state *Isensee* (no. 16), § 133 no. 106 and following

28 Dogmatic comments vs. normativity and judiciability of subsidiarity principle: *Lienbacher* (no. 6), SES Art. 5, no. 20 and following (no. 33: "lex imperfecta"). Sceptically also *Herdegen* (no. 6), page 92 f.

29 Critical of Principles: *Roman Herzog,* Stop the European Court of Justice, in: FAZ v. 8.9.2008, no. 210, page 8.

30 Federal Court (BVerfGE) 89, 155 (210). On this issue *Josef Isensee,* Priorities of European Law and Priorities of Constitution, in: Memorial Volume for Klaus Stern, 1997, page 1239 (1253 and following.); *Franz C. Mayer*, Trespassing Authorizations and Final Decision, 2000, page 19 and following, 67 and following, 260 and following

31 Federal Court (BVerfGE) 89, 155 (188).