

CO.07 Right to Liberty & Security

Authors: Winfried Veil

Last update: 2021-05-22 12:39:46 | By: Winfried Veil

Created at: 2021-05-12 10:26:51

The right to protection of personal data is not an absolute right, but must be balanced against other fundamental rights, in accordance with the principle of proportionality [[Tile CO.01](#)]. The right to informational self-determination “must be balanced against the freedom to gather, process and use information for one’s own purposes, including for changing purposes” [[BVerfG, Order of 6 November 2019 - 1 BvR 16/13 -, para. 87](#)].

This multidimensionality of fundamental rights is insufficiently recognised by the GDPR as a whole. Among the rights and freedoms of natural persons that the GDPR seeks to protect, the fundamental rights of the controller are hardly explicitly taken into account.

Therefore, the fundamental rights of the Charter of Fundamental Rights must be used for the interpretation of the term "rights and freedoms". If the controller's data processing is not protected by a more specific fundamental right, the controller can rely on Art. 6 CFR:

“Everyone has the right to liberty and security of person.”

In Germany, the general freedom of action or the right to free development of the personality is guaranteed by Art. 2 I GG.

In the absence of provisions in the GDPR, the principle of proportionality (Art. 52 I CFR) must be applied to balance the rights of the data subject and the right to freedom of the controller (see Practical Concordance, [Tile P.04](#)). Cf. furthermore [Art. 1 II GDPR](#) and especially Rec. 4 (2) GDPR:

“The right to the protection of personal data is not an absolute right; it must be [...] balanced against other fundamental rights, in accordance with the principle of proportionality.” [[see also Tile CO.01](#)].