

Schriften zum Öffentlichen Recht

Band 1294

Der Nichtakt

Eine dogmatische Systematik

von

Laura Müller



Deutscher & Hummel Verlag - Berlin

Nichtakt Eine Dogmatische Rekonstruktion

Thomas Griffiths



Nichtakt Eine Dogmatische Rekonstruktion:

Die Ultra-vires-Kontrolle von Rechtsakten der Europäischen Union Tim Nolte, 2023-11-15 Wie kann es sein dass ein nationales Verfassungsgericht Entscheidungen des Europäischen Gerichtshofs als schlechterdings unvertretbar verwirft Welches Grundverständnis von der Natur der Europäischen Union und ihrem obersten Gericht liegt einer solchen Vorgehensweise zu Grunde Tim Nolte legt eine umfassende Untersuchung des vom Bundesverfassungsgericht geschaffenen Instruments der Ultra vires Kontrolle vor Auf Grundlage einer eingehenden dogmatischen Aufbereitung und Analyse der einschlägigen Entscheidungen untersucht er die Kontrolle auf ihre rechtlichen und tatsächlichen Wirkungen hin Er zeigt dass sie nicht nur eine Herausforderung sondern auch eine Chance für die europäische Rechtsgemeinschaft ist indem sie einen Dialog der Gerichte über die gemeinsame Rechtsentwicklung in der Union vorantreibt **Rechtsnorm und ästhetische Reflexion** Gideon Stiening, 2024-10-06 Der Band versammelt Studien zur juristischen und zur literarischen Hermeneutik sowie zu deren Verhältnis Auf der Grundlage philosophischer und theologischer Konzepte zum Verstehen und zur Interpretation von Texten werden die Besonderheiten der Auslegung von Recht und Literatur erörtert Die spezielle Herausforderung besteht in der Korrelation der spezifisch juristischen und spezifisch literarischen Kunst der Auslegung Berücksichtigt werden zudem der historische Wandel dieser Bereichshermeneutiken und deren Verhältnis zueinander **Der Schulfrieden als Schranke der Religionsfreiheit** Joshua Moir, 2022-09-28 Der Schulfrieden ist ein etablierter Terminus des Verfassungs und Verwaltungsrechts In Situationen religiöser Konflikte in der Schule wird er als Schutzgut angeführt um Freiheitsrechte wie die Religionsfreiheit einzuschränken Joshua Moir untersucht den Begriff Schulfrieden und ob er verfassungsrechtlich verortet werden kann *"Rechtswidriges Recht"* Rodrigo Garcia Cadore, 2024-05-23 In Bezug auf das Problem des rechtswidrigen Rechts herrschte eine Kontroverse zwischen zwei Schulern Hans Kelsens 1881 1973 Adolf Julius Merkl 1890 1970 und Fritz Sander 1889 1939 Auf dem Spiel stand nicht weniger als die Frage wer über die Rechtmässigkeit einer Rechtsentscheidung entscheidet und welche Konsequenzen daraus folgen Während Merkl der Rechtswissenschaft das Primat zuschrieb beharrte Sander auf dem Primat des Rechtsverfahrens bzw der Rechtspraxis Rodrigo Garcia Cadore bietet eine Polemographie an eine ideen und intellektuellgeschichtlich informierte rechtswissenschaftstheoretische Rekonstruktion einer Polemik die bislang nicht erschlossenes Archivmaterial nutzt und die Vielfalt der Reinen Rechtslehren durch die Aufdeckung von grundlegend unterschiedlichen Ansichten zum Umgang des Rechts mit Fehlern innerhalb der Wiener Schule zum Ausdruck bringt Somit wird die Reine Rechtslehre durch Wiederentdeckung für die heutige rechtstheoretische Diskussion anschlussfähiger gemacht Die Arbeit wurde mit dem Werner von Simson Preis 2022 der Universität Freiburg für die beste Doktorarbeit auf dem Gebiet des Europarechts und der Staatstheorie und mit dem Carl von Rotteck Promotionspreis 2022 der Universität Freiburg ausgezeichnet worden **Der Verfassungsgrundsatz effektiver parlamentarischer Opposition** David Kuhn, 2019-01-10 Obwohl das Recht auf Bildung und Ausübung parlamentarischer

Opposition seit jeher als wesentlicher Bestandteil der freiheitlichen demokratischen Grundordnung anerkannt ist besteht innerhalb der Rechtswissenschaft weithin Uneinigkeit über den spezifischen Status der oppositionellen Akteure im Deutschen Bundestag. David Kuhn zeigt, dass nicht nur die Existenz, sondern auch die Effektivität der parlamentarischen Opposition durch das Grundgesetz als Prinzip gewährleistet wird. Während der Grundsatz effektiver parlamentarischer Opposition in der Rechtsprechung des Bundesverfassungsgerichts nur als leere Hülle existiert, wird dieser in seiner Arbeit mit Leben gefüllt. Hierzu extrahiert der Autor verfassungsrechtliche Gesetzgebungsaufträge und spürt den Wirkungen des Grundsatzes bis in die Auslegung einfachrechtlicher Vorschriften nach. Er geht dabei der akademischen Auseinandersetzung auch mit eingefahrenen Positionen des Bundesverfassungsgerichts nicht aus dem Wege und stellt abschliessend einen eigenen rechtspolitischen Entwurf zur Sicherstellung der Effektivität parlamentarischer Opposition vor.

Der Rechtswidrigkeitszusammenhang zwischen Amtsinhaberschaft und Amtshandlung Tobias Crone, 2025-07-07

Nebenbestimmungsfeindliche Verwaltungsakte Sebastian Traub, 2018-09-04 English summary Are there administrative acts that must not be subjected to conditions or other ancillary clauses? Although this is broadly approved of in German jurisprudence in many instances, Sebastian Traub reveals that there are numerous blurred areas and cracks in the theory. By refocussing away from traditional categories, he develops a new and sharper approach that makes way for significantly more flexible forms of autonomy in the administrative decision-making process.

German description Die Lehre von den nebenbestimmungsfeindlichen Verwaltungsakten hat in der Rechtswissenschaft lange Traditionslinien, deren älteste bis zu den *actus legitimi* des Römischen Rechts zurückreichen. Weithin unangefochten ist der überkommene Ansatz, aus dem Prinzip der Rechtssicherheit bestimmte Typen nebenbestimmungsfeindlicher Verwaltungsakte herauszuschälen. Sebastian Traub stellt diesen typengebundenen Ansatz umfassend auf den Prüfstand, auch in seinen Querbezügen zur zivilistischen Gestaltungsrechtslehre, und deckt dabei zahlreiche Unschärfen und dogmatische Brüche auf. Er führt die Dogmatik nebenbestimmungsfeindlicher Verwaltungsakte weg von der Fokussierung auf Fallgruppen und prinzipiengeleitetes Rechtsdenken und gründet sie begrifflich, normativ und methodologisch neu. Im Ergebnis eröffnet er für die behördliche Entscheidungspraxis erheblich flexibilisierte Möglichkeiten eigenständiger Gestaltung.

Öffentliches Reaktionsrecht Heiko Sauer, 2021-06-28 Hoheitliche Rechtsverletzungen müssen rechtliche Folgen haben, wenn Rechtsstaatlichkeit kein blosses Versprechen bleiben soll. Das positive Recht gestaltet diese Folgen nur teilweise aus und überlässt dem Richterrecht das Feld. Das hat zu einer unübersichtlichen Vielgestaltigkeit möglicher Folgen rechtswidrigen Staatshandelns und zu vielen Ungereimtheiten geführt. Heiko Sauer begreift die Folgen hoheitlicher Rechtsverletzungen als Verletzungsreaktionen, die er durch die Konturierung eines Rechtsgebiets des öffentlichen Reaktionsrechts ordnet und auf einheitliche Grundsätze zurückführt. Seine Grundlagen erschliesst er durch eine strukturtheoretische Analyse möglicher Reaktionsinhalte und Reaktionsmodi. Mit diesem Analyserahmen kann geklärt werden, wozu hoheitliche Rechtsverletzungen nach geltendem Recht

verpflichten wie diese Verpflichtungen erfüllt und durchgesetzt werden können und wann sie verfassungsrechtlich und unionsrechtlich begrenzt werden dürfen **Handlungslasten des Urhebers** Darius Rostam ,2025-06-11 **Der Nichtakt.** Laura Münkler,2015-06-10

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