



Seminar

Die Abwägung von Rechten und Interessen

Wintersemester 2021/2022

Themen- und Literaturliste

I. Normtheoretische Grundlagen

1. Alexy, Robert. 2000. Grundrechtsnorm und Grundrecht. *Rechtstheorie Beiheft* 13:101–115.
2. Alexy, Robert. 2001. Kollision und Abwägung als Grundprobleme der Grundrechtsdogmatik. *World Constitutional Law Review* 6:181–207.
3. Pavlakos, George (2011): Constitutional Rights, Balancing and the Structure of Autonomy. In: *Canadian Journal of Law & Jurisprudence* 24, p. 129–153. DOI: 10.1017/S0841820900005099.

II. Deontologische vs. utilitaristische Theorien

4. Beade, Gustavo A. 2013. DER DEONTOLOGISCHE CHARAKTER DER ABWÄGUNG Eine Untersuchung zu den Positionen Alexys und Dworkins zum Fall des Luftsicherheitsgesetzes. *Rechtstheorie* 44:371–393..
5. Tridimas, P. Takis; Gentile, Giulia (2019): The Essence of Rights: An Unreliable Boundary? In: *German Law Journal* 20 (6), p. 794-816. DOI: 10.1017/glj.2019.63.
6. van Drooghenbroeck, Sébastien; Rizcallah, Cecilia (2019): The ECHR and the Essence of Fundamental Rights: Searching for Sugar in Hot Milk? In: *German Law Journal* 20 (6), p. 904–923. DOI: 10.1017/glj.2019.68.
7. Borowski, Martin. 2009. Die Bindung an Festsetzungen des Gesetzgebers in der grundrechtlichen Abwägung. In *Grundrechte, Prinzipien und Argumentation*, Hrsg. Laura Clérico und Jan-Reinard Sieckmann, 99–128. Baden-Baden: Nomos.
8. Gottlieb, Stephen E. 1994. The Paradox of Balancing Significant Interests. *Hastings Law Journal* 45 (4): 825-.
9. Stone Sweet, Alec, und Eric Palmer. 2017. A Kantian system of constitutional justice: Rights, trusteeship, balancing. *Global Constitutionalism* 6 (03): 377–411. doi: 10.1017/S2045381717000107.



III. Kritik und Alternativen

10. Schauer, Frederick (2014): Proportionality and the Question of Weight. In: Grant Huscroft, Bradley W. Miller und Grégoire Charles N. Webber (Eds.): Proportionality and the Rule of Law. Rights, Justification, Reasoning. New York: Cambridge University Press, p. 173–185. DOI: 10.1017/CBO9781107565272.011.
11. Windisch, Florian. 2013. „Abwägung“: total, formal oder strukturiert? Ansätze einer Methodik rechtsgebundener Wertzumessung. *Rechtstheorie* 44 (1): 61–102. doi: 10.3790/rth.44.1.61.
12. Luterán, Martin (2014): The Lost Meaning of Proportionality. In: Grant Huscroft, Bradley W. Miller und Grégoire Charles N. Webber (Eds.): Proportionality and the Rule of Law. Rights, Justification, Reasoning. New York: Cambridge University Press, p. 21–42. DOI: 10.1017/CBO9781107565272.004
13. Bar-Siman-Tov, Ittai (2012): Semiprocedural Judicial Review. In: *Legisprudence* 6 (3), p. 271–300. DOI: 10.5235/17521467.6.3.271.
14. Pildes, Richard H. (1994): Avoiding Balancing. The Role of Exclusionary Reasons in Constitutional Law. In: *Hastings L. J.* 45, p. 711–751.
15. Stone, Adrienne (2020): Proportionality and Its Alternatives. In: *Federal Law Review* 48 (1), p. 123–153. DOI: 10.1177/2F0067205X19890448.
16. Herling, David. 1999. Weight in discretionary decision-making. *Oxford Journal of Legal Studies* 19 (4): 583–604.

IV. Fallanalysen

17. Hain, Karl-Eberhard. 2006. Konkretisierung der Menschenwürde durch Abwägung. *Der Staat* 45:189.
18. Hwang, Shu-Perng (2020): Margin of Appreciation in Pursuit of Pluralism? Critical Remarks on the Judgments of the European Court of Human Rights on the ‘Burqa Bans’. In: *Human Rights Law Review* 20 (2), p. 361–380. DOI: 10.1093/hrlr/ngaa014..
19. Samartzis, Andreas. 2021. Weighing Overall Fairness: A Critique of Balancing under the Criminal Limb of Article 6 of the European Convention on Human Rights. *Human Rights Law Review* 21 (2): 409–432. doi: 10.1093/hrlr/ngaa062.
20. Mowbray, A. 2010. A Study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights. *Human Rights Law Review* 10 (2): 289–317. doi: 10.1093/hrlr/ngq006.