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Please cite the abstract as follows:

Abstract of the German Federal Constitutional Court's Order of 22 May 2019, 1 BvQ 42/19 [CODICES]

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Abstract

Second Chamber of the First Senate

Order of 22 May 2019

1 BvQ 42/19

Headnotes (non-official):

1. Under specific circumstances, Article 3.1 of the Basic Law may give rise to requirements pertaining to the right to equality in the context of relationships between private actors. Whether and to what extent this also affects private law claims vis-à-vis operators of social networks has not yet been clarified in the case-law of civil courts or of the Federal Constitutional Court.

2. At least until the 2019 European elections are concluded, Facebook is obliged to grant the applicant access to its Facebook profile and pages.

Summary:

I.

In January 2019, the applicant, a right wing political party, published an article on its website and shared it on its Facebook page. The article contained the following passage: "In the Zwickau neighbourhood Neuplanitz, there are many people one might call left behind in social and financial terms. While more and more foreign asylum seekers, who sometimes express their gratitude by violence and criminal offences, were accommodated in the apartments in the prefabricated high-rises, many Germans in this neighbourhood do not have any prospects (...)." Thereupon, Facebook notified the applicant of the fact that the article was considered hate speech and thus violates Facebook's Community Standards. On these grounds, Facebook restricted the visibility of the article and, for 30 days, the applicant's ability to post on Facebook. Following the applicant's objection based on its freedom of expression, the user profile was disabled and its contents are no longer available. Applications for preliminary injunctions lodged with the regular courts remained unsuccessful. The applicant challenged these court decisions.

II.

The Federal Constitutional Court decided to issue a preliminary injunction.

The decision is based on the following considerations:

Preliminary injunctions are intended to contribute to securing and preserving the effect and significance of a decision in the principal proceedings that is still to be expected. Therefore, the reasons put forward for the unconstitutionality of a challenged measure are generally not taken into consideration, unless the principal proceedings are inadmissible from the outset or manifestly unfounded. This is not the case here. If the outcome of the principal proceedings is open, the Federal Constitutional Court weighs the disadvantages that would arise if a preliminary injunction were not issued but the constitutional complaint were successful in the principal

proceedings against the disadvantages that would arise if the preliminary injunction were issued but the constitutional complaint were to be unsuccessful in the principal proceedings. The challenged decisions concern the granting of interim legal protection in a private law dispute between private actors relating to the scope of rights of the operator of a social network, which has considerable market power in Germany. According to established case-law of the Federal Constitutional Court, fundamental rights in such disputes may have a bearing on such disputes by way of indirect horizontal effects. In this case, difficult legal questions are at issue; these must be decided in principal proceedings. The weighing of consequences pursuant to § 32 of the Federal Constitutional Court Act comes down in part in favour of the applicant. The consequences that would arise if the applicant were denied access to its Facebook page but the respondent in the original proceedings were obliged to reopen access clearly outweigh the consequences that would arise if the respondent in the original proceedings were temporarily obliged to restore access but restricting access and disabling the profile were justified. In any event, this applies to the period up to the European elections, for which the applicant has shown particular urgency.

The exclusion from using the respondent's services, which, according to the respondent's advertising, are used by more than 30 million people in Germany every month, denies the applicant an essential opportunity to promote its political messages.