

The constitutional *Verschleifungsverbot*

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–Abstract–

In 2010, the German Constitutional Court (*BVerfG*) derived several new constitutional principles from Article 103(2) of the German Basic Law in the so-called *Untreuebeschluss*-decision, which applied to all criminal law from then on. One of them is the prohibition of concealment. Partly celebrated as a “milestone” and “constitutional revision of the entire criminal law”, partly dismissed as “constitutionally unnecessary” and “a matter of course under the rule of law”, it prohibits interpreting one element of a criminal law statute so broadly that it is “completely absorbed into another element of the statute, i.e., it is inevitably realized along with the other element.”

Since the *Untreuebeschluss*, many allegations of *Verschleifung* have been raised throughout core and secondary criminal law. Nevertheless, more than ten years after its introduction, the *Verschleifungsverbot* has still not been conclusively contoured. On the contrary, almost everything from its justification to its practical application is unclear. One reason for this may be that the *BVerfG* has not clarified how the *Verschleifungsverbot* relates to the other newly introduced principles; another is that literature and case law have largely referred to individual examples only and seem to have assumed that not much needs to be said about the general understanding and application of the *Verschleifungsverbot*. This contrasts with the finding that almost all allegations of *Verschleifung* made have remained controversial and that solutions are not in sight. This, however, is unfortunate in view of the drastic consequences of an encroachment on the *Verschleifungsverbot*: the unconstitutionality of an interpretation.

The present work is intended as a contribution to the contouring of the *Verschleifungsverbot*. The goals are to systematically review the contributions in literature as well as case law, to identify and categorize factual questions, to answer the factual questions, and finally to make a proposal for a practical understanding of the *Verschleifungsverbot*. For this purpose, a casuistry of all allegations of *Verschleifung* raised so far will be compiled, which will be used in the analysis.