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Abstract

First Senate

Judgment of 15 December 1983

1 BvR 209, 269, 362, 420, 440, 484/83

Headnotes:

1. In the context of modern data processing, the general right of personality under Article 2.1 in conjunction with Article 1.1 of the Basic Law encompasses the protection of the individual against unlimited collection, storage, use and sharing of personal data. The fundamental right guarantees the authority conferred on the individual to, in principle, decide themselves on the disclosure and use of their personal data.
2. Limitations of this right to "informational self-determination" are only permissible if there is an overriding public interest. They require a statutory basis that must be constitutional itself and comply with the principle of legal clarity under the rule of law. The legislator must furthermore observe the principle of proportionality. It must also put in place organisational and procedural safeguards that counter the risk of violating the general right of personality.
3. As for the constitutional requirements applicable in this regard, a distinction must be made between personal data that is collected and processed as individualised information and not rendered anonymous, and data intended for statistical purposes. Where data is collected for statistical purposes, it cannot be subjected to a strict and specific purpose limitation (*Zweckbindung*). However, to compensate for this, the collection and processing of such information must be subject to limitations within the relevant information system.
4. The data collection framework of the 1983 Census Act (§ 2 nos. 1 to 7, §§ 3 to 5) does not amount to the registration and cataloguing of one's personality in a manner that is incompatible with human dignity; the relevant provisions also satisfy the principles of legal clarity and proportionality. However, it is imperative that additional procedural safeguards be put in place in order to ensure respect for the right to informational self-determination in the implementation and organisation of the census data collection.
5. The legal provisions governing the transfer of data under § 9.1 to 9.3 of the 1983 Census Act (concerning, *inter alia*, the alignment of census data and civil registry records) violate the general right of personality. However, the sharing of data for scientific purposes (§ 9.4 of the 1983 Census Act) is compatible with the Basic Law.

Summary:

I.

The proceedings concerned several constitutional complaints lodged by citizens, directly challenging the 1983 Federal Census Act (hereinafter, the “Act”). The Act provided for a comprehensive data collection that, in addition to a population count, included personal information such as name, address, religious affiliation etc. as well as information on the census subjects’ educational background, professional occupation and housing situation.

II.

The Federal Constitutional Court found the constitutional complaints to be for the most part admissible; in part, the complaints were also well-founded.

The decision is based on the following considerations:

The applicable standard of review derives primarily from the general right of personality as protected under Article 2.1 in conjunction with Article 1.1 of the Basic Law.

The general right of personality encompasses, based on the notion of self-determination, the power conferred on the individual to, in principle, decide themselves whether and to what extent to disclose aspects of their personal life.

If individuals cannot, with sufficient certainty, determine what kind of personal information is known to their environment, and if it is difficult to ascertain what kind of information potential communication partners are privy to, this may seriously impair the freedom to exercise self-determination. In the context of modern data processing, the free development of one’s personality therefore requires that the individual is protected against the unlimited collection, storage, use and sharing of personal data.

The right to “informational self-determination” is not, however, without limitation. Pursuant to Article 2.1 of the Basic Law, these limitations require a statutory basis, specifying the conditions and scope of the limitations in a manner that is clear and discernible to citizens in accordance with the principle of legal clarity deriving from the rule of law. Furthermore, the legislator must observe the principle of proportionality. In view of the threats resulting from the use of automatic data processing outlined above, it is incumbent upon the legislator to put in place organisational and procedural safeguards designed to counter the risk of violating the right of personality.

In principle, personal data may only be collected and used for statutorily defined purposes (*Zweckbindung*). With regard to the collection and processing of data for statistical purposes, however, the specific nature of statistics must be taken into account. The requirement that the purposes of data collection and use be precisely defined and the strict prohibition to collect personal data for retention do not apply to the collection of census data which, by way of producing reliable data on population and social demographics, serves to establish a verified data pool as a basis for further statistical analysis and political planning processes. The census must necessarily allow multi-purpose data collection and use.

It is precisely because data collected during population censuses is from the outset not limited by purpose-related restrictions that these censuses tend to entail a risk of registering and cataloguing the individual in a manner that violates personality rights. In order to ensure the protection of the right to informational self-determination, specific safeguards must be put in place concerning the implementation and organisation of data collection and processing. This is due to the fact that at the stage of collection – and in part also during storage – such data can still be attributed to individual persons. It is also necessary to impose statutory deletion requirements with regard to data collected as auxiliary information (identification markers). As long as the relevant data is still attributed or attributable to a person, it is indispensable that individual data collected for

statistical purposes be treated as strictly confidential (statistical data confidentiality); the same holds true for the requirement that data be rendered anonymous as soon as possible and that safeguards against de-anonymisation be put in place.

Particular problems arise if personal data is potentially transferred (data sharing) for other purposes. Where data collected for statistical purposes is shared with other authorities to be used in the exercise of administrative functions, and such data transfers occur before the data has been rendered anonymous or processed for statistical analysis, this may unlawfully interfere with the right to informational self-determination.

Measured against these standards, the data collection framework provided under the Act is mostly compatible with the general right of personality under Article 2.1 in conjunction with Article 1.1 of the Basic Law.

The data collection framework does not amount to the registration or cataloguing of full or partial personality profiles in a manner that was incompatible with human dignity. The information-related interference with fundamental rights serves an overriding public interest and satisfies the requirements of legal clarity and proportionality. Yet, in order to ensure protection of the right to informational self-determination, it is imperative that additional procedural safeguards be put in place. Essential safeguards include notification, information and deletion requirements.

The envisaged alignment of census data collected for statistical purposes with civil registry data does not meet constitutional requirements:

In principle, it constitutes an unjustifiable interference with the right to informational self-determination if personal data collected for statistical purposes was allowed to be shared, without having been rendered anonymous, for purposes pertaining to the exercise of administrative functions (use of data for purposes other than originally specified purposes). In this respect, the relevant statutory basis must make it clear for citizens that their data will not be used exclusively for statistical purposes; it must also be discernible for what kind of specific purposes related to the exercise of administrative functions their personal data is intended to be used, that the use of their data is necessary for and limited to the specified purposes, and that a guarantee of protection against self-incrimination applies. For the most part, the provisions of the Act governing the sharing of census data with other administrative authorities do not satisfy these requirements.

The Court declared void the provisions of the Act that are not compatible with the Basic Law.