

HEADNOTE

to the Order of the First Senate of 16 July 1969
1 BvL 19/63

On the constitutionality of a representative statistical survey conducted by the state (microcensus).

FEDERAL CONSTITUTIONAL COURT
- 1 BvL 19/63 -

IN THE NAME OF THE PEOPLE

In the proceedings
for constitutional review of

§ 2 no. 3 of the Act on Conducting a Representative Statistical Survey on Population and Occupation (Microcensus Act) of 16 March 1957 – BGBl I, p. 213 – in the version of the Act of 5 December 1960 – BGBl I, p. 873

– Order of Suspension and Referral of the Fürstfeldbruck Local Court of 30 October 1963 - Gs 168/63 -

the Federal Constitutional Court – First Senate –
with the participation of Justices

President Müller,
Stein,
Haager,
Rupp-von Brünneck,
Böhmer,
Brox,
Zeidler

held on 16 July 1969:

§ 1 and § 2 no. 3 of the Microcensus Act of 16 March 1957 (BGBl I, p. 213) in the version of the Act of 5 December 1960 (BGBl I, p. 873) [no longer in force] were compatible with the Basic Law insofar as they provided that the survey pursuant to § 1 of the Act contained questions on holiday and recreational travel.

REASONS:

A.

[...]

B.

I.

1. The plaintiff in the initial proceedings lives in a region [...] where all residents were to be surveyed under the Microcensus Act. She refused [...] to answer all 60 questions [...]. At the request of the Bavarian Statistical Office (*Bayerisches Statistisches Landesamt*), the Fürstenfeldbruck Administrative District Office (*Landratsamt*) [...] imposed a fine of DM 100 [...], against which she sought recourse to the courts. By Order of 30 October 1963 - Gs 168/63 - the Fürstenfeldbruck Local Court suspended the proceedings and referred to the Federal Constitutional Court the question whether Art. 1(2) no. 2 of the Amending Act of 5 December 1960 was compatible with the Basic Law. 7

2. The Local Court submitted the following reasons for the referral: Art. 1(2) no. 2 of the Amending Act of 5 December 1960 contradicted Art. 1 and Art. 2 of the Basic Law to the extent that the survey subjects were obliged to disclose information on holiday and recreational travel. [...] 8

3. The questions on holiday and recreational travel that the plaintiff in the initial proceedings refused to answer read as follows: 9

Who has travelled for holiday and recreational purposes for 5 or more days, including in connection with business travel, 10

a) during the period from 1 October 1961 through 30 September 1962 and/or

b) before 1 October 1961?

Which members of the household participated in the travel?

What kind of travel was it? (individual trip (privately organised), package tour for single traveller, organised group tour, health retreat)

When did the travel begin, and how long did it last?

Where did the traveller primarily stay (in Germany or abroad)? (in Germany: indicate city; abroad: indicate country)

What means of transport were primarily used for the outbound and inbound journey?

What type of accommodation was primarily used? (tourist accommodation, private rental, free accommodation (provided by relatives, acquaintances), health resort or sanatorium, holiday retreat or resort, children's home, campground, youth hostel).

II.

The Federal Minister of the Interior considers the challenged provision to be constitutional.

[...] 12-13

C.

I.

The referral is admissible. 14

[...] 15-16

II.

The questions on holiday and recreational travel as part of the representative survey pursuant to the Microcensus Act violated neither Art. 1(1) and Art. 2(1) of the Basic Law nor any other provisions of the Basic Law. 17

1. a) According to Art. 1(1) of the Basic Law, human dignity is inviolable and must be respected and protected by all state authority. 18

Human dignity is the highest value within the system of values of the Basic Law (BVerfGE 6, 32 <41>). This commitment to human dignity informs all provisions of the Basic Law, including Art. 2(1) of the Basic Law. The state may not violate human dignity through any measure, not even a law, or otherwise infringe on the essence (*Wesensgehalt*) of personal freedom beyond the limits established in Art. 2(1) of the Basic Law. Thus, the Basic Law recognises, for each citizen, an inviolable part of private life which is beyond the reach of public authority (BVerfGE 6, 32 <41>, 389 <433>). 19

b) In light of this conception of human nature, all persons, as members of the community, enjoy a right to be valued and respected as a person in society (*sozialer Wert- und Achtungsanspruch*). Treating a person as a mere object of the state would be a violation of human dignity (cf. BVerfGE 5, 85 <204>; 7, 198 <205>). It would be incompatible with human dignity if the state claimed for itself the power to subject the individual to compulsory registration and cataloguing of their entire personality, thereby treating them as a commodity that can be analysed in every respect; this applies even in the context of statistical surveys where data is rendered anonymous. 20

[...] 21

c) However, not every statistical survey of personality-related or biographical data violates the dignity of one's person or affects the right to self-determination within the innermost domain of private life. As a citizen connected to and bound by the community (cf. BVerfGE 4, 7 <15 and 16>; 7, 198 <205>; 24, 119 <144>), everyone must to a certain extent tolerate necessary statistical surveys collecting personal data, for example for census purposes, as a prerequisite for planning government action. 22

A statistical survey on one's personal circumstances may be perceived as degrading, and as a risk to the right to self-determination, where it captures the domain of personal life that is secret by its very nature, thus turning this innermost domain into a matter that can and must be analysed by means of statistics. In this regard, the state in a 23

modern industrial society must respect limits to administrative 'depersonalisation'. However, where a statistical survey only relates to a person's conduct in the outside world, it does not typically affect one's personality to an extent that amounts to a 'capturing' of the inviolable part of private life. This applies at least if the collected data is stripped of its connection to an individual person through anonymous data processing. This in turn requires sufficient safeguards ensuring that the data is indeed rendered anonymous. [...]

d) Based on this, the survey questions on holiday and recreational travel did not violate Art. 1(1), Art. 2(1) of the Basic Law. 24

While this survey did concern a certain part of private life, it did not compel the survey subjects to disclose information from their intimate sphere, nor did it grant the state access to individual relationships that would not normally be disclosed to the outside world, and that are by their very nature secret. [...]

2. With regard to the principle of the rule of law, the survey does also not raise constitutional concerns. In particular, it neither violated the requirement of legal clarity (cf. BVerfGE 20, 150 <158 and 159>; 21, 245 <261>) nor the principle of proportionality (cf. BVerfGE 17, 306 <313>; 19, 342 <348 and 349>). 26

a) § 2 no. 3 of the Microcensus Act satisfies the constitutional requirement of legal clarity regarding the questions on holiday and recreational travel. [...]

b) According to the official explanatory memorandum to the Microcensus Act, the documentation of data concerning holiday and recreational travel was intended to provide information about the economic and social significance of such travel, and about the means of transport used. [...]

Given that the results of the representative survey could already be undermined if only a few survey subjects refused to provide information, it did not amount to an excessive burden on the individual that the Microcensus Act in conjunction with § 10(1) and § 14 of the Statistics Act made answering the questions mandatory, with non-compliance punishable by sanctions. [...]

3. Finally, there are no constitutional objections regarding the design of the microcensus as a representative survey with a sampling rate of 1% of the total population of the Federal Republic of Germany, as laid down in § 1 of the Microcensus Act. 30

In particular, a representative survey for statistical purposes in which only a group of persons determined by a randomised procedure is subjected to the obligation to provide information does not violate the right to equality. The right to equality bars the legislator from treating citizens unequally only in cases where a provision must ultimately be considered arbitrary because, in light of the requirement of fairness, no reasonable grounds for the statutory differentiation are ascertainable; such grounds may derive from the inherent nature of the matter at hand or from other objective factual reasons (cf., e.g., BVerfGE 1, 264 <276>; 18, 121 <124>). Therefore, the legislator has wide latitude in determining which group of persons to subject to the legal framework (cf. BVerfGE 9, 20 <32>; 11, 245 <253>; 17, 1 <33>; 23, 12 <28>). 31

