

1. BVerfGE 27, 1      Order of the First Senate of 16 July 1969 – 1 BvL 19/63  
“**Microcensus Case**”  
Constitutionality of representative statistics  
(microcensus)

No. 1

**BVerfGE 27, 1**  
of 16 July 1969 – 1 BvL 19/63 –  
“**Microcensus Case**”

**HEADNOTE:**

**Constitutionality of a representative statistics (microcensus).**

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

in the proceedings for constitutional review of § 2 no. 3 of the Act on Gathering Representative Statistics on Population and Work Life (Microcensus) (*Gesetz über die Durchführung einer Repräsentativstatistik der Bevölkerung und des Erwerbslebens (Mikrozensus)*, Microcensus Act) of 16 March 1957 – Federal Law Gazette (*Bundesgesetzblatt – 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 Fürstenfeldbruck Local Court (*Amtsgericht*) of 30 October 1963 – Gs 168/63 –.

**DISPOSITIVE RULING:**

§ 1 and § 2 no. 3 of the Act on Gathering Representative Statistics on Population and Work Life (Microcensus) of 16 March 1957 (Federal Law Gazette I p. 213) in the version of the Act of 5 December 1960 (Federal Law Gazette I p. 873) were compatible with the Basic Law (*Grundgesetz – GG*), in so far as it had been mandated that the elements of holiday and recreational travel be included on a representative basis for the statistics prescribed under § 1 of the Act.

**REASONS:**

**A.**

The Act on Gathering Representative Statistics on Population and Work Life (Microcensus) of 16 March 1957 (BGBl. I p. 213) – the Microcensus Act – in the version of 5 December 1960 (BGBl. I p. 873)

that governs the present proceedings, included among its provisions the following:

### § 1

Within the purview of this Act, in the years 1956 through 1962, inclusively, statistics shall be gathered quarterly on population and work life, on a representative basis (microcensus), as a federal statistics, using a sampling ratio of 1 per cent of the population once per year, and using a sampling ratio of 0.1 per cent three times per year.

### § 2

The following elements shall be included in these statistics:

1. The number and names of the persons belonging to the household, their gender, age, relationship with the head of the household, family status, number of children, nationality, status as displaced persons (refugees), place of residence and changes of place of residence, disabilities and their causes, area under agricultural cultivation of the household;
2. Involvement or non-involvement in work life and professional life, particularly employment and unemployment, occupation, place of work, persons employed, work hours and insurance coverage;
3. Holiday and recreational travel, income category, child care (for working mothers). These elements shall be surveyed only once during the term of this Act.

The provision under § 2 no. 3 was added by Art. 1 sec. 2 no. 2 of the Act Amending the Act on the Gathering of Representative Statistics on Population and Work Life (Microcensus) of 5 December 1960 (BGBl. I p. 873).

This survey came within the scope of applicability of the Act on Statistics for Federal Purposes (*Gesetz über die Statistik für Bundeszwecke – StatG, Statistics Act*) of 3 September 1953 (BGBl. I

p. 1314). Accordingly, there was a duty to answer the prescribed questions (§ 10 sec. 1 StatG). Anyone who wilfully or negligently failed to comply with this duty committed an administrative offence punishable by a fine of up to ten thousand deutschmarks (§ 14 StatG).

#### **B. – I.**

1. The individual concerned in the original proceedings resides in a region identified using a statistical-mathematical method, where all residents are to be surveyed under the Microcensus Act. She refused to admit the agents of the Bavarian State Statistical Office and to answer all 60 questions that were set forth in a white questionnaire and a yellow supplementary questionnaire. At the request of the Bavarian State Statistical Office, the Fürstenfeldbruck Administrative District Office thereupon imposed a fine of DM 100 on her in a penalty notice pursuant to § 14 StatG. The individual concerned sought a court decision. In an order dated 30 October 1963 – Gs 168/63 – the Fürstenfeldbruck Local Court stayed proceedings in the matter and referred to the Federal Constitutional Court the question whether Art. 1 sec. 2 no. 2 of the Amending Act of 5 December 1960 is compatible with the Basic Law.

2. As reasons for its referral, the Local Court stated: The provision of Art. 1 sec. 2 no. 2 of the Amending Act of 5 December 1960 was in contradiction with Art. 1 and Art. 2 GG inasmuch as the persons providing information were obliged to make disclosures about holiday and recreational travel. Answering the questions about holiday and recreational travel contained in item 48 of the white questionnaire and items 1 through 6 of the yellow supplementary questionnaire was a duty. Such questions about undertaking holiday travel, its duration and its destination, with precise disclosures of the place and means of transport, were an invasion of the surveyed person's privacy, the court said. In the pending proceedings for a fine, the question of whether there was or was not an obligation to answer all items in the two questionnaires was of significance in setting the amount of the fine.

3. The questions to be answered by the individual concerned in the original proceedings with regard to the element of "holiday and recreational travel" read as follows:

Who has undertaken holiday and recreational travel for 5 or more days,

including in connection with business travel,

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 travel?

What kind of travel was it? (individual (private) trip, individual package tour, organised group tour, travel on doctor's orders)

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

Where did the person primarily stay (in Germany or other country)? (In Germany: indicate town of stay; in other country: indicate country travelled to)

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

What type of accommodation was primarily used?

(lodging establishment, private accommodation for remuneration, accommodation free of charge (relatives, acquaintances), health resort

or sanatorium, holiday or recreational convalescent home, children's

home, campground, youth hostel).

## II.

[...]

### C. – I.

The referral is admissible.

[...]

## II.

The prescribed representative survey of "holiday and recreational travel" violated neither Art. 1 sec. 1 nor Art. 2 sec. 1 GG, nor any other provisions of the Basic Law.

1. a) According to Art. 1 sec. 1 GG, human dignity is inviolable and must be respected and protected by all state authority.

According to the Basic Law's set of values, human dignity is of paramount importance (Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts* – BVerfGE) 6, 32 (41)). As is the case for all provisions of the Basic Law, this affirmation of human dignity also governs Art. 2 sec. 1 GG. The state cannot through any measure, not even a law, violate human dignity or otherwise interfere with the freedom of the person in its essence, beyond the limits drawn in Art. 2 sec. 1 GG. Thus, the Basic Law confers on each individual citizen an inviolable sphere of private life choices that is beyond the influence of public authority (BVerfGE 6, 32 (41), 389 (433)).

b) In the light of this concept of the human being, all human beings living in a community enjoy a right to social value and recognition. It would violate human dignity to make a human being a mere object within the state (cf. BVerfGE 5, 85 (204); 7, 198 (205)). It would be incompatible with human dignity if the state were to claim the right to compulsorily register and catalogue a human being in his or her entire personality, even under the anonymity of a statistical survey, and thereby to treat one as a commodity, accessible for inventory in every respect.

[...]

c) However, not every statistical survey of personal or life data violates the dignity of human personality or interferes with a person's right of self-determination within the most intimate sphere of one's life. As a citizen who is connected with and bound to the community (cf. BVerfGE 4, 7 (15, 16); 7, 198 (205); 24, 119 (144)), everyone must accept the necessity of statistical surveys about their person to a certain extent, for example in the case of a census, as a prerequisite for the possibility of planning government action.

Therefore, a statistical survey about one's person may be experienced as degrading, and as a threat to the right of self-determination, where it captures the sphere of personal life that is secret by its very nature, and where it thus also declares this intimate sphere to be a matter available to, and in need of, statistical exploitation. To that extent, even for the state in a modern industrial society there are barriers to administrative "depersonalisation". By contrast, where a statistical survey is connected only to a person's conduct in the outside world, as a general rule it does not yet "capture" human personality in the inviolable sphere of private life choices. This, in any event, is the case if this information is stripped of its connection with an individual personality through the anonymous manner in which it is processed. A prerequisite for this is that anonymity be adequately ensured. In the present case, it is guaranteed by the prohibition of the publication of individual information (§ 12 sec. 4 StatG) and by the facts that the agent entitled to gather information is obliged to keep the information secret, on penalty of criminal prosecution (§ 12 sec. 1 sentence 1 and § 13 StatG), that the agent is not subject to the statutory duties to provide assistance and notification to the tax authorities (§ 12 sec. 1 sentence 1 StatG), and that the authorities and agencies responsible cannot even forward individual information to their immediate superiors in the course of their duties, unless they have been expressly authorised to do so by law (§ 12 sec. 2 StatG).

d) Accordingly, the survey on holiday and recreational travel did not violate Art. 1 sec. 1 or Art. 2 sec. 1 GG.

To be sure, this survey did concern a sphere of private life. However, it did not compel the surveyed individual to make disclosures about his or her intimate sphere, nor did it grant the State access to individual relationships that are not accessible to the outside world, and that therefore are “secret” by nature. All information about the destination and length of trips, the type of accommodation, and the means of transport employed could also be determined without a survey, albeit with substantially greater difficulty. They therefore did not belong to that innermost (intimate) sphere in which the State would not be able to intervene, even with a survey for statistical purposes, without violating human dignity and an individual’s right of self-determination.

2. Also with regard to the principle of the rule of law, there are no constitutional reservations concerning the prescribed survey. In particular, neither the requirement for clarity of the law (cf. BVerfGE 20, 150 (158-159); 21, 245 (261)) nor the principle of proportionality (cf. BVerfGE 17, 306 (313); 19, 342 (348-349)) were violated.

a) § 2 no. 3 of the Act did not lack the constitutionally required clarity of law in its element of “holiday and recreational travel”. In the description of the element and its connection with the other elements that were to be covered by the statistical survey under the Act, there was sufficient clarity in the expression of the legislative intent that the most complete disclosures possible should be encouraged in their social connection as previously set forth. The question that proceeded from this requirement was therefore recognisable from the terms of the law both to the citizens and to the administrations of the federal states engaged in conducting the survey.

b) According to the official statement of reasons, the documentation of holiday and recreational travel was intended to provide information about the economic and sociological significance of such travel, and about the means of transport employed. In addition, it was to provide points of reference for checking data on the balance of payments for travel (*Bundestag* document (*Bundestagsdrucksache* – BTDrucks.) III/1925 Annex 1 at B). In view of the increasing importance of tourism, in order for the state to perform its duties in monetary, economic, social and transport policy it must rely on findings concerning the resultant shifts in consumption, the structural change in the hospitality industry, and the differences in frequency of travel within the territory of the state and in cross-border traffic. The survey about the element of “holiday and recreational travel” was intended to serve these purposes, and was at any rate not an unequivocally unsuitable means of obtaining this information.

Ultimately, considering that a refusal on the part of only a few surveyed individuals to provide information might already compromise the results of the representative survey, it did not

represent an immoderate burden on the individual that the Act imposed an obligation, in conjunction with § 10 sec. 1 and § 14 StatG, to answer the questions, on penalty of sanctions. Nor was it to be feared that the information might be misused for other purposes, as the anonymity of its processing was sufficiently assured by § 12 secs.1, 2 and 4 and § 13 StatG.

3. Finally, there are also no constitutional reservations against the form of a representative survey with a sampling ratio of 1 per cent of the total population of the Federal Republic of Germany, as prescribed in § 1 of the Act.

A representative survey for statistical purposes in which only a group of persons determined by a “randomised procedure” is affected by the obligation to provide information does in particular not violate the principle of equality. The principle of equality bars legislators from treating citizens unequally only in those cases where, in observance of the requirement of fairness, no reasonable cause for a legal differentiation can be found that proceeds from the nature of the matter or that is otherwise objectively convincing, such that the provision must be considered arbitrary as a consequence (see, for example, BVerfGE 1, 264 (276); 18, 121 (124)). Therefore, legislators also have a broad margin of discretion at their disposal in deciding on the group of persons to whom the provision of the statute is to apply (cf. BVerfGE 9, 20 (32); 11, 245 (253); 17, 1 (33); 23, 12 (28)).

These bounds were not exceeded by § 1 of the Microcensus Act. The varying, randomised burden on citizens as a result of the statistical sampling proceeds from the particular nature of such a representative survey. Moreover, the legislative decision in favour of this representative survey instead of a survey of the entire population is supported by objectively evident reasons. In comparison to a complete survey, a representative survey provides economical, rapid information to the state while imposing a burden from the survey on only a small portion of the population.

**Justices :** Dr. Müller, Dr. Stein, Dr. Haager, Rupp-v. Brünneck, Dr. Böhmer, Dr. Brox, Dr. Zeidler