English Translation of essential parts of the German "Volkszählungsurteil" from 15 December 1983, which established in Germany the Basic Right on Informational Self-Determination.

This translation work has been done and provided by German Konrad-Adenauer-Stiftung[1].

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As neither the German Constitutional Court ("Bundesverfassungsgericht") nor the German government had been able or willing, to organize or publish this translation, the German self-organizing and non-profit group freiheitsfoo[3] digitalized and published this text – being driven from the deep conviction, that this document of German jurisprudence is worth to be spread and actutally needed more than ever.

Hanover, Germany, 11 October 2013

1 http://www.kas.de/rspa/en/publications/21403/
2 http://www.cljlaw.com/index.html
3 http://freiheitsfoo.de/

Census Act, BVerfGE 65, 1

Explanatory Annotation

The intention to conduct a census in 1983 in order to collect framework data for planning purposes concerning personal, work and business related information and about living conditions was at issue in this decision. In absence of a specific right protecting against the collection and use of such data the Court resorted to the fall-back right of Article 2.1 as construed in the Elfes-decision.

Using the broad construction of the right of free development of one's personality whereby any state action affecting individuals in a negative way by reducing the sphere of individual freedom must be measured against Article 2.1 the Court went on to develop the right to informational self-determination. Under this new right, which the Court also explicitly linked to the human dignity clause in Article 1.1 of the Basic Law, personal data is linked to the individual from whom it is taken and the release and use of such data must in principle be consented to by that individual. The Court argued that data collection and usage in the age of Computer technology has a very different and potentially threatening dimension because such data collections could be used to comprehensively map individual behaviour without any influence of individuals to even know what data is collected about them and how it is, will or might be used in the future.

Infringements of this right are, of course, possible and as the Court had developed in the Elfes-decision, there is actually a broad scope for such infringements, however, only on the basis of statutory authority that is in compliance with the Basic Law in all respects, conforms to the principle of proportionality and contains organizational and proccdural safeguards against the misuse of the data. The census statute of 1983, albeit unanimously passed by Parliament, did not fulfil these requirements.

This new right has played a crucial role in many other decisions of the Court, for example with regard to the "generic fingerprint", i.e. the analysis and storage of DNA for Identification purposes in criminal proceedings', or GPS surveillance in the context of organized crime and terrorism.

Translation of the Census Act Judgement - Decisions of the Federal Constitutional Court (Entscheidungen des Bundesverfassungsgerichts - BVerfGE) 65, 1[4]

Headnotes:

1. Given the context of modern data processing, the protection of individuals against unlimited collection, storage, use and transfer of their personal data is subsumed under the general right of personality governed by Article 2.1 in conjunction with Article 1.1 of the Basic Law (Grundgesetz - GG). In that regard, this fundamental right guarantees in principle the power of individuals to make their own decisions as regards the disclosure and use of their personal data.

2. Restrictions of this right to "informational self-determination" are permissible only in case of an overriding general public interest. Such restrictions must have a constitutional basis that satisfies the requirement of legal certainty in keeping with the rule of law. The legislature must ensure that its statutory regulations respect the principle of proportionality. The legislature must also make provision for organizational and procedural precautions that preclude the threat of violation of the right of personality.

3. As regards the Constitutional requirements to be satisfied by such restrictions, it is necessary to distinguish between personal data that are collected and processed in personalized, non-anonymous form and data intended for statistical purposes.
In the case of data collected for statistical purposes, it is not possible to require the existence of a narrowly defined, concrete purpose for the collection of such data. However, the collection and processing of information must be accompanied by appropriate restrictions within the information system to compensate for the absence of such a concrete purpose.

4. The survey program of the 1983 Census Act (Volkszählungsgesetz - VZG) (s. 2 nos. l to 7 and ss. 3 to 5) does not entail registration and classification of personal data that would he incompatible with human dignity; it therefore also satisfies the requirements of legal certainty and proportionality. Nonetheless, procedural precautions are required in connection with the execution and organisation of the collection of such data in order to preserve the right to informational self-determination.

4 Translation by Donna Elliott, (c) Konrad-Adenauer-Stifung

5. The provisions governing the transfer of data (including for the purposes of crosschecks with population registers) contained in s. 9.1 to 3 of the 1983 Census Act violate the general right of personality. The transfer of data for scientific purposes (s. 9.4 of the 1983 Census Act) is compatible with the Basic Law.

Judgement of the First Senate of 15 December 1983, on the basis of the oral hearing of 18 and 19 October 1983 - l BvL 209, 269, 362, 420, 440 and 484/83:

Facts:

The 1983 Census Act of 25 March 1982 (Federal Law Gazette Bundesgesetzblatt – BGBl.] I p. 369) made provision for a general census of the population, employment, housing and places of employment for statistical purposes in the spring of 1983. The declared purpose of the Act was to obtain information on the most recent state of the population, its geographic distribution and its composition in terms of demographic and social characteristics as well as on the economic activity of the population through the surveys-to be carried out, which information provides the indispensable basis for decisions made by the Federation, the Länder and municipalities in the areas of social and economic policy. The previous census had been taken in the year 1970. The 1983 Census Act defined in detail the data to be collected and the respondents, and s. 9 made provision, among other things, for the possibility of crosschecking the data collected with municipalities and federal and Land authorities for specific purposes having to do with administrative enforcement.

In response to numerous Constitutional complaints lodged directly against the 1983 Census Act, the Federal Constitutional Court found the Act to be essentially in compliance with the Basic Law; the Court declared in particular those provisions void that govern crosschecks with population registers and the power to transfer data for the purposes of administrative enforcement.

Extract from the Grounds:

B. II.

To the extent that the complainants were themselves personally affected by the 1983 Census Act, theirs is an immediate and current concern.

However, according to the case law of the Federal Constitutional Court, an immediate concern is lacking if the implementation of the provision under challenge requires a separate act of enforcement on the part of the administration. The reason for this is that such an act of enforcement will as a rule encroach on the legal sphere of the citizen first; legal recourse that may be taken against such encroachment also permits review of the constitutionality of the law applied (BVerfGE 58, 81 [104]; see BVerfGE 59, l [17]; 60, 360 [369 and 370],.

Implementation of the 1983 Census Act necessarily involved requests to furnish information; only through such requests could the legal sphere of the complainants be affected (See s. 5.2 of the 1983 Census Act). The way to legal recourse against this enforcement measure before the administrative courts would have been opened. This does not, however, constitute an obstacle to the admissibility of the Constitutional complaints.

The Federal Constitutional Court has, in cases involving special circumstances affirmed by way of exception, the admissibility of Constitutional complaints lodged directly against a law before an act of enforcement was ordered when that law would force the parties affected to make decisions that cannot be rectified later or would cause them to take measures that they can then no longer reverse after enforcement of the law (see BVerfGE 60, 360 [372]). The constitutional complaints lodged directly against the 1983 Census Act are also admissible by way of exception before the act of enforcement is ordered.

Enforcement of this Act was intended to affect the entire population within a very sbort period of time. The questionnaires were to be distributed starting on 18 April 1983 and then collected by early May 1983. A period of only about two weeks would therefore have been available to obtain injunctive relief before the administrative courts. The courts would not have been able to address the issue in this limited period of time in such a manner as to make it possible for the Federal Constitutional Court to expect substantive preliminary review from them. Nevertheless, a constitutional complaint against negative decisions in proceedings pursuant to s. 80.5, s. 123 and s, 146.1 of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung - VwGO) would have been admissible (see BVerfGE 51, 130 [138 et seq.]; 53. 30 |49, 52]; 54, 173 [190]). In any case, after the request to furnish information was contested through recourse to the administrative courts, a decision from the Federal Constitutional Court would have been conceivable prior to exhaustion of such legal remedies pursuant to s. 90.2 sentence 2 of the Federal Constitutional Court

Act (Bundesverfassungsgerichtsgesetz BVerfGG) (See BVerfGE 59, l [19 and 20]). The Federal Constitutional Court would then however, have had to deal with numerous, possibly contradictory, decisions of the administrative courts. The fact that some courts had granted the parties affected injunctive relief, but others not, could also have resulted in the possibility of legal uncertainty. Under these circumstances, the subsidiarity principle, according to which the public is in principle initially referred to specialized courts, would have .achieved the exact opposite of what is intended: it would no have served to relieve the Federal Constitutional Court and leave to it the review of cases of the specialized courts, but would have put it under especially great time pressure to make decisions on this subject matter. Given this Situation, the complainants had the right, by way of exception, to challenge the law directly with their constitutional complaint .

C.

The constitutional complaints are - to the extent admissible - in part founded.

...

II.

The primary Standard of review is the general right of personality, which is protected by Article 2.1 in conjunction with Article 1.1 of the Basic Law.

1. a)

The worth and dignity of individuals, who through free self-determination function as members of a free society, lie at the core of the constitutional order. In addition to specific guarantees of freedom, the general right of personal]ty guaranteed m Article 2.1 in conjunction with Article 1.1 of the Basic Law, which can also become important precisely in view of modern developments and the concomitant new threats to the personality, serves to protect that worth and dignity (see BVerfGE 54, 148 [153]). Previous concrete treatment in the case law does not conclusively describe the content of the right of personality. This right also subsumes - as has already been suggested in the BVerfGE 54, 148 [155] decision in extension of previous decisions (see BVerfGE 27, l [6]; 27, 344 [350 and 351]; 32, 373 [379]; 35, 202 [229]; 44, 353 [372 and 373]). - the right of individuals that follows from this idea of

self-determination to decide in principle themselves when and within what limits personal matters are disclosed (see also BVerfGE 56, 37 [41 et seq.]; 63, 131 [142 and 143]).

Given the current and future state of automated data processing, this right merits a special measure of protection. It is especially threatened since it is no longer necessary to consult manually assembled flies and dossiers for the purposes of decision making processes, as was the case previously; to the contrary, it is today technically possible, with the help of automated data processing to store indefinitely and retrieve at any time, in a matter of seconds and without regard to distance, specific information on the personal or material circumstances of individuals whose identity is known or can be ascertained (personal data (see s. 2.1 of the Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG)). This information can also be combined - especially if integrated information systems are set up - with other collections of data to assemble a partial or essentially complete personality profile without giving the party affected an adequate opportunity to control the accuracy or the use of that profile. As a result, the possibilities for consultation and manipulation have expanded to a previously unknown extent, which can affect the conduct of the individual because of the mere psychological pressure of public access.

However, personal self-determination also presupposes - even in the context of modern information processing technologies - that individuals are to be afforded the freedom to decide whether to engage in or desist from certain activities, including the possibility of actually conducting themselves in accordance with their decisions. The freedom of individuals to make plans or decisions in reliance on their personal powers of self-determination may be significantly inhibited if they cannot with sufficient certainty determine what information on them is known in certain areas of their social sphere and in some measure appraise the extent of knowledge in the possession of possible interlocutors. A social order in which individuals can no longer ascertain who knows what about them and when and a legal order that makes this possible would not be compatible with the right to informational self-determination. A person who is uncertain as to whether unusual behaviour is being taken note of at all times and the information permanently stored, used or transferred to others will attempt to avoid Standing out through such behaviour. Persons who assume, for example, that attendance of an assembly or participation in a citizens' interest group will be officially recorded and that this could expose them to risks will possibly waive exercise of their corresponding fundamental rights (Articles 8 and 9 of the Basic Law). This would not only

restrict the possibilities for personal development of those individuals but also be detrimental to the public good since self-determination is an elementary prerequisite for the functioning of a free democratic society predicated on the freedom of action and participation of its members.

From this follows that free development of personality presupposes, in the context of modern data processing, protection of individuals against the unrestricted collection, storage, use and transfer of their personal data. This protection is therefore subsumed under the fundamental right contained in Article 2.1 in conjunction with Article 1.1 of the Basic Law. In that regard, the fundamental right guarantees in principle the power of individuals to make their own decisions as regards the disclosure and use of their personal data.

b)

The guarantee of this right to "informational self-determination" is not entirely unrestricted. Individuals have no right in the sense of absolute, unrestricted control over their data; they are after all human persons who develop within the social Community and are dependent upon communication. Information, even if related to individual persons, represents a reflection of societal reality that cannot be exclusively assigned solely to the parties affected. The Basic Law, as has been emphasized several times in the case law of the Federal Constitutional Court, embodies in negotiating the tension between the individual and the Community a decision in favour of civic participation and civic responsibility (see BVerfGE 4, 7 [15]; 8, 274 [329]; 27, l [7]; 27, 344 [351 and 352]; 33, 303 [334]; 50, 290 [353]; 56, 37 [49]).

Individuals must therefore in principle accept restrictions on their right to informational self-determination in the overriding general public interest.

According to Article 2.1 of die Basic Law - as is also correctly recognized in s. 6.1 of the Federal Statistics Act (Bundesstatistikgesetz - BStatG) - these restrictions require a (constitutionally) legal basis from which the prerequisites for and the scope of the restrictions clearly follow and can be recognized by the public and which therefore satisfies the requirement of legal certainty in keeping with the rule of law (BVerfGE 45, 400 [420] with further references). The legislature must in its statutory regulations respect the principle of proportionality. This principle, which enjoys constitutional Status, follows from the nature of the fundamental rights themselves, which, as an expression of the general right of the public

to freedom from interference by the state, may be restricted by the public powers in any given case only insofar as indispensable for the protection of public interests (BVerfGE 19, 342 [348]; established case law). In view of the threats described above that arise from the use of automated data processing, the legislature must more than was the case previously, adopt organizational and procedural precautions that work counter to the threat of violation of the right of personality (see BVerfGE 53, 30 [65]; 63, 131 [143]).

2. The constitutional complaints provide no occasion for an exhaustive discussion of the right to informational self-determination. The only issue to be decided relates to the reach of this right in the case of governmental actions that require that individuals furnish personal data. It is not possible in such cases to limit consideration exclusively to the nature of the information. The usefulness and possible uses of the information are what are of decisive importance. This depends on the one hand upon the purpose served by the survey and on the other hand upon the possibilities for processing and collating information inherent in information technology. This is what makes it possible for data that are in and of themselves of no significance to take on new importance; in that respect, "unimportant" data no longer exist in the context of automated data processing.

Accordingly, the extent to which information is sensitive cannot depend exclusively upon whether it concerns intimate matters. Indeed, knowledge of the context in which data are used is necessary to establish the importance of data for the purposes of legislation governing the right to personality. Only after it has been clearly established, what the purpose is for requiring that data be furnished and what possibilities exist for collation and use of such data, is it possible to address the question as to the admissibility of restriction of the right to informational self-determination. In this context, it is necessary to distinguish between personal data that are collected and processed in personalized, non-anonymized form (see under (a)) and data intended for statistical purposes (see under (b)).

a)

It has been acknowledged up to now that compulsory collection of personal data without restriction is not permissible, in particular if such data are to be used for the purposes of administrative enforcement (for example, in connection with taxation or allocation of social benefits). In that respect, the legislature has made provision for various measures to protect the parties affected that go in the direction required by the Basic Law (see, for example, provisions of the data protection laws of the Federation and the Länder, ss. 30, 31 of the Fiscal Code (Abgabenordnung - AO); s. 35 of the First Book of the Social Code

(Sozialgesetzbuch l - SGB 1) in conjunction with ss. 67 to 86 of the Social Code X). The extent to which the right to informational self-determination and in that connection the principle of proportionality and the duty to take procedural precautions compel the legislature to make such provision on constitutional grounds depends on the nature, scope and conceivable uses of the collected data and the danger of abusc (see BVerfGE 49, 89 [142]; 53, 30 [61]).

An overriding general public interest will regularly exist exclusively in data of concern to society, to the exclusion of unreasonable, intimate information and self-incrimination. On the basis of the. state of knowledge and experience from the past, the following measures in particular would seem important:

Compulsory disclosure of personal data presupposes that the legislature has specifically and precisely defined the intended area of use and that the information is suitable and required for that purpose. The collection of non-anonymi2ed data to be stored for purposes that are not or have not yet been specified would not be compatible with this. All governmental entities that collect personal data to fulfil their duties will have to restrict themselves to the minimum required to achieve the specified purpose.

The use of the data is limited to the purpose specified by law. If for no other reason than because of the dangers associated with automated data processing, protection is required against unauthorized use - including protection against such use by other governmental entities - through a prohibition on the transfer and use of such data. Mandatory information, disclosure and deletion constitute further procedural precautions.

Due to the lack of transparency of the storage and use of data for the public in the context of automated data processing as well as in the interest of anticipatory legal protection in the form of timely precautions, the involvement of independent data protection officers is of significant importance for effective protection of the right to informational self-determination.

b)

The collection and processing of data for statistical purposes involve unique aspects that may not be ignored in the context of constitutional scrutiny.

aa)

Statistics are of significant importance for governmental policy that is subject to the principles and guidelines of the. Basic Law. If economic and social progress is not to be taken as the result of inevitable fate but as a permanent goal, comprehensive, continuous and constantly updated information on economic, ecological and social developments is necessary. It is possible to create the basis for action that is indispensable for governmental policy that is aligned with the principle of the social state only with a knowledge of the relevant data and the possibility of using such information for statistical purposes with the help of the opportunities presented by automated data processing (see BVerfGE 27, l [9]).

In the case of surveys for statistical purposes, it is not possible to require that the purpose for which the data are collected be narrowly and concretely defined. It lies in the nature of Statistics that data are intended to be used for a wide variety of different purposes after collection and that these purposes cannot be defined from the outset; accordingly, there is a need to store such data.

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bb)

If the variety of possibilities for the use and collation of data cannot therefore be determined in advance in the case of statistics because of the very nature of the Situation, the collection and processing of information within the information system must be accompanied by appropriate restrictions to compensate for this. Clearly defined conditions must be created for processing to ensure that individuals do not become mere data subjects in the context of the automated collection and processing of the information pertaining to their person. Both the absence of a connection with a specific purpose that can be recognized and verified at all times and the multifunctional use of data, reinforce the tendencies that are to be checked and restricted by data-protection legislation, which represents the concrete manifestation of the constitutionally guaranteed right to informational self-determination. Precisely because there is from the outset an absence of purposive limits that restrict the data set, population censuses are likely to entail the danger of invasive registration and classification of individuals that has already been emphasized in the micro census decision (Mikrozensus-Beschluß) (sec BVerfGE 27, l [6]). For that reason, the collection and processing of data for statistical purposes must be subjected to

special requirements intended to protect the right of personality of respondents.

Notwithstanding the multinational nature of the collection and processing of data for statistical purposes, it is a prerequisite that this be done exclusively to support the fulfilment of public duties. Here too, not just any information may be required. Even in the case of the collection of individual data that are required for statistical purposes, the legislature must, when it imposes a duty to furnish information, determine in particular whether the collection of such information could entail the danger of social categorization (for example, in respect of substance addiction, criminal record, mental illness or social marginality) of the party affected and whether the purpose of the survey could not also be achieved by means of an anonymized investigation. This is, for example, likely to be the case of those aspects of the collection of data governed by s. 2 110. 8 of the 1983 Census Act, according to which the population and employment census in the institutional area includes information on the Status of respondents as inmates or employees or relatives of employees. The collection of such data is intended to provide information on the population of institutions (Bundestag document (Bundestagsdrucksache - BTDrucks.), 9/451, p. 9). Such a goal can - apart from the danger of social stigmatization - also be achieved without reference to specific individuals. It would suffice to have the head of the institution provide figures on the population as of the datc of the census, broken down according to the criteria listed in s. 2 no. 8 of the 1983 Census Act without any reference to individual persons. Collection of the personal data mentioned under s. 2 no. 8 of the 1983 Census Act would for that reason constitute from the outset a violation of the right of personality protected by Article 2.1 in conjunction with Article 1.1 of the Basic Law.

Special precautions are required as regards the execution and Organisation of the collection and processing of data in Order to preserve the right to informational self-determination since information can be more easily assigned to individuals during the collection phase - and to some extent also during storage; at the same time, rules are required for deletion of information that is required for secondary purposes (identifying characteristics) and would facilitate de-anonymization such as names, addresses, identification numbers and lists of census takers (see also s. 11.7 sentence l of the Federal Statistics Act).

Regulations that ensure effective protection against access from outside are of especial importance in the case of surveys carried out for statistical purposes. Strict confidentiality

of the individual data collected for statistical purposes is indispensable for the purposes of protection of the right to informational self-determination - and to be sure also during the collection process - as long as a link to a person exists or can be created (confidentiality of statistics); the same applies as regards the necessity of (effective) anonymization at the earliest possible time together with precautions to prevent de-anonymization.

Governmental entities are allowed access to information required for planning purposes only in the case of hermetic Isolation of statistics through anonymization of data and confidential treatment of data as long as they still relate to a person; same is required by the right to informational self-determination and must be guaranteed by law. Only under this condition can and may the public be expected to provide the mandatory information. If the transfer of personal data that are collected for statistical purposes were to be allowed against the will or without the knowledge of the parties affected, this would not only impermissibly restrict the constitutionally guaranteed right to informational self-determination but also jeopardize official statistics, which are provided for under the Basic Law itself in Article 73 no. 11 and therefore merit protection. The highest possible degree of accuracy and truthfulness in the data collected is necessary to ensure the functional viability of official statistics. This can be achieved only if respondents have the necessary confidence in the protection of data collected for statistical purposes against access from outside, without which it is not possible to create a willingness on the part of the public to provide truthful information (as already correctly justified in the Federal Government's draft of the 1950 Census Act; see Bundestag document 1/982, p. 20 on s. 10).

Governmental practice that does not involve an effort to foster such confidence through disclosure of die data processing procedure and strict protection against access to information from outside would in the longer term lead to diminishing willingness to cooperate since a lack of trust would otherwise result. Since governmental compulsion can be of only limited effectiveness, governmental action that ignores the interests of the public will at best prove effective over the short term; in the long run, it will result in a decrease in the scope and accuracy of the information (Bundestag document 1/982, loc. cit.). Since the constant increase in the complexity of the environment that is typical of highly industrialized societies can be deciphered and rendered amenable to targeted governmental measures only with the help of reliable statistics, any threat to official statistics will in the end jeopardize an important prerequisite for governmental policy in the social area. If

responsibility for "planning" can therefore be guaranteed only through hermetic isolation of statistics against access from outside, the principle of confidentiality and anonymization of data at the earliest possible time is not only required by the Basic Law for the protection of the right to informational self-determination of the individual but is also of constitutive importance for the statistics themselves.

cc)

If the requirements discussed above are taken into account in an effective manner, there can be no misgivings on the basis of current knowledge and experience as regards the collection of data exclusively for statistical purposes on constitutional grounds. It is not possible to ascertain that the right of personality of individuals could be compromised if the collected data are made available to other governmental bodies or other agencies after anonymization or processing for statistical purposes (see s. 11.5 and s. 11.6 of the Census Act).

Any transfcr (disclosure) of data that have been neither anonymized nor processed for statistical use and are therefore still personalized data raises special problems. Surveys conducted for statistical purposes also include personalized information on individual citizens that are not required for statistical purposes and - which the surveyed public must be able to assume - serve only to facilitate the survey process. All of this information may, to be sure be made available to other parties by virtue of explicit legal authority to the extent and insofar as this occurs for the purposes of statistical processing by other public authorities and the right of personality has been reliably protected by taking the required precautions, in particular as regards the confidentiality of statistics and the requirement of early anonymization, as well as through organizational and procedural means as in the case of the Statistical Offices of the Federation and the Länder. The act of making data collected for statistical purposes that have not been anonymized or statistically processed, available for the purposes of administrative enforcement may on the other hand improperly infringe the right to informational self-determination (see also C IV l below).

III.

The survey program of the 1983 Census Act essentially satisfies the constitutional requirements presented above. In that regard, the subject matter under review covers, with the exception of the question as to qualification as an inmate of an Institution or member of the personnel of an Institution (s. 2 no. 8 in conjunction with s. 5.1 no. l second half of the sentence), ss. 2 to 4 in conjunction with s. 5.1 of the Census Act. These provisions are compatible with the general right of personality under Article 2.1 in conjunction with Article 1.1 of the Basic Law on condition that the legislature complement the legislation to compensate for heretofore lacking organizational and procedural rules to preserve the fundamental right, thereby ensuring compliance with the constitutional requirements to be satisfied by a total survey of the nature of the 1983 census.

...

c)

The survey program of the 1983 Census Act also satisfies, to the extent relevant lo the matter under review, the principle of proportionality. A measure to achieve the intended purpose must therefore be suitable and necessary; the intensity of the attendant action may not be disproportionate to the importance of the matter and the compromises imposed upon the public (see BVerfGE 27, 344 [352 and 353]; established case law).

The 1983 Census Act is intended to provide the state with information required for future planning and actions. As a prerequisite for making it possible to plan governmental activities (see BVerfGE 27/1 [7]), the 1983 census serves a purpose that is obviously intended to fulfil legitimate duties of the state.

Through the use of a census in the form of n total census (exhaustive census) and the catalogue of questions of s. 2 no l to 7 and ss. 3 and 4 of the 1983 Census Act, the Federal Republic of Germany has fulfilled its Obligation arising from the Directive of the Council of the European Communities of 22 November 1973 on die Synchronisation of general population censuses - 73/403/EWG (OJ no. L 347 of 17 December 1973, p. 50). The survey method and program are suitable and necessary for achieving the intended purpose and represent a reasonable imposition on respondents.

IV.

1. Data collected for statistical purposes that have not yet been anonymized and are therefore still personalized may - as has already been set forth (C II b cc above) - be made available to other parties by virtue of explicit legal authority to the extent and insofar as this occurs for the purposes of statistical processing by other public authorities and if the right of personality has been reliably protected by taking the- required precautions, in particular as regards the confidentiality of statistics and the requirement of anonymization as in the case of the Statistical Offices of the Federation and the Länder. If on the other hand personalized, non-anonymized data collected for statistical purposes and intended for such purposes by the statutory regulation are transferred to other parties for the purposes of administrative enforcement (improper use) in compliance with the law, this would constitute improper infringement of the right to informational self-determination. The question may remain open as to whether there would be any objection to direct transmission of such data in general and even if the legislature were to explicitly make Provision for such transmission on the grounds of incompatibility with the principle of Separation of statistics and enforcement. There is also no need for a conclusive discussion as to whether simultaneous collection of personal data for statistical purposes, which is in and of itself allowed, and collection of personal data for the purposes of administrative enforcement, which is in and of itself allowed, would be permissible if different forms were used (combined survey). Both the direct transfer of data collected for statistical purposes as well as the use of combined surveys would constitute a source of misgivings since the combination of two different purposes with different requirements would cause considerable uncertainty on the part of the public in view of the lack of transparency of the possibilities permitted by automated data processing, thereby threatening ihc reliability of the information and its suitability for statistical purposes. It is also necessary to take into account the different requirements that have to be satisfied: For example, the confidential nature of statistics, the requirement of anonymization and the prohibition of discrimination, apply the collection and exploitation of data for statistical purposes; this does not apply, or not in the same manner, as regards the collection of data for the purposes of administrative enforcement; whereas identification data (for example, name and address) serve only to facilitate processing in the case of statistics, they do as a rule constitute essential elements of data collected for the purposes of administrative enforcement. In this case, the investigative organization that is designed for the collection of data for statistical purposes is also used to collect data for other purposes that would hardly justify such an organization on their own.

It would also be necessary to take into account that judicial process can differ depending on whtch of the two types of data collection is used.

A regulatory measure intended to achieve both goals nonetheless is in any case unsuitable for achieving the intended purposes and therefore in violation of the Basic Law if it combines aspects that are basically incompatible. In such a case, the combination of statistical purposes with purposes of administrative enforcement in a census may result not only in a lack of clarity and obscurity in the statute, but also makes the statute disproportionate. Unlike the situation in the case of the collection of data for exclusively statistical purposes, it is essential that the data be transmitted for a narrowly defined, concrete purpose in this case (C II 2 (a) above). In addition, the requirement of legal certainty is of especial importance. The public must be able to clearly recognize from the statutory regulation that data are not being used exclusively for statistical purposes, the concrete purposes of administrative enforcement for which the personal data are intended and required and that the use of the data will remain limited to such purposes and the respondent shielded against self-incrimination.

2. The combination of the census conducted for statistical purposes and cross-checks with the population register pursuant to s. 9.1 of the 1983 Census Act does not satisfy the constitutional requirements.

...