

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.

(...)

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

Find a much more complete translation of the German Census Act on the website of freiheitsfoo:

<http://freiheitsfoo.de/census-act/>

Note: Front page graphics has been taken from the German Census Citizens Initiative „AK Zensus“ - www.zensus11.de



Informational Self-Determination

As Explained by German Constitutional Court

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

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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 digitalized and published this text – being driven from the deep conviction, that this document of German jurisprudence is worth to be spread and actually needed more than ever.

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 German 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) does not entail registration and classification of personal data that would be 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.

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 is compatible with the Basic Law.

Important Notes of the Court (Extract!)

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 in 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. 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 decision in extension of previous decisions. - 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.

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 files 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.