

Sensational verdict from Weimar: no masks, no distance, no more tests for students

Source: <https://2020news.de/sensationsurteil-aus-weimar-keine-masken-kein-abstand-keine-tests-mehr-fuer-schueler/>

On April 8, 2021, the Weimar Family Court ruled that, effective immediately, two Weimar schools are prohibited from requiring students to wear mouth-to-nose coverings of any kind (especially qualified masks such as N95 masks), impose minimum distances on them, and/or participate in SARS-CoV-2 rapid testing. At the same time, the court determined that classroom instruction must be maintained.

For the first time, evidence has now been presented before a German court regarding the scientific reasonableness and necessity of the prescribed anti-Corona measures. The expert witnesses that were heard: the hygienist Prof. Dr. med Ines Kappstein, the psychologist Prof. Dr. Christof Kuhbandner and the biologist Prof. Dr. rer. biol. hum. Ulrike Kämmerer.

The court case is a so-called "child protection case pursuant to § 1666 (1) and (4) of the German Civil Code (BGB)", which a mother had initiated for her two sons, aged 14 and 8 respectively, at the Local Court - Family Court. She had argued that her children were being physically, psychologically and pedagogically damaged without any benefit for the children or third parties. At the same time, this would violate numerous rights of the children and their parents under the law, the constitution and international conventions.

Proceedings under Section 1666 of the Civil Code may be initiated ex officio both at the suggestion of any person and without such suggestion if the court considers intervention to be necessary for reasons of the best interests of the child, Section 1697a of the Civil Code.

After examining the factual and legal situation and evaluating the expert opinions, the Weimar Family Court has come to the conclusion that the measures now prohibited represent a present danger to the mental, physical or psychological well-being of the child to such an extent that, if they continue to develop without intervention, considerable harm can be foreseen with a high degree of certainty.

The judge states, "Such a danger is present here. Because the children are not only endangered in their mental, physical and psychological well-being in particular by the obligation to wear face masks during the school time and to keep distances among themselves and to further persons, but beyond that already presently damaged. At the same time, this violates numerous rights of the children and their parents under the law, the constitution and international conventions. This applies in particular to the right to free development of the personality and to physical integrity from Article 2 of the "Grundgesetz" [Constitution] as well as to the right from Article 6 of the "Grundgesetz" to upbringing and care by the parents (also with regard to measures for health care and "objects" to be carried by children)...

The judge states: "The children are physically, psychologically and pedagogically damaged and their rights are violated without any benefit for the children themselves or third parties.

According to the court's conviction, the school administrators, teachers and others cannot invoke the state-law regulations on which the measures are based, because they are unconstitutional and thus void. Reason: they violate the principle of proportionality rooted in the rule of law (Articles 20, 28 of the "Grundgesetz").

"According to this principle, also referred to as the prohibition of excessiveness, measures intended to achieve a legitimate purpose must be suitable, necessary and proportionate in the narrower sense - that is, when the advantages and disadvantages they achieve are weighed against each other. The measures that are not evidence-based, contrary to Section 1 (2) IfSG [Infection Protection Act], are already unsuitable to achieve the fundamentally legitimate purpose pursued with them, to avoid overloading the healthcare system or to reduce the incidence of infection with the SARS-CoV-2 virus. In any case, however, they are disproportionate in the narrower sense, because the significant disadvantages/collateral damage caused by them are not offset by any recognizable benefit for the children themselves or third parties," the judge said.

He clarifies: "Nevertheless, it must be pointed out that it is not the parties involved who would have to justify the unconstitutionality of the encroachments on their rights, but conversely the Free State of Thuringia, which encroaches on the rights of the parties involved with its state law regulations, would have to prove with the necessary scientific evidence that the measures it prescribes are suitable for achieving the intended purposes and that they are proportionate, if necessary. So far, this has not been done to any degree."

1. The lack of benefit of wearing masks and observing distance rules for the children themselves and third parties.

To the conviction of the court, the expert Prof. Kappstein, after evaluating all the international data on the subject of masks, stated that the effectiveness of masks for healthy persons in public is not supported by scientific evidence.

The ruling states, "Likewise, 'third-party protection' and 'unnoticed transmission,' which the RKI used to justify its 'reassessment,' are not supported by scientific facts. Plausibility, mathematical estimates, and subjective assessments in opinion pieces cannot replace population-based clinical-epidemiological investigations. Experimental studies on the filtering performance of masks and mathematical estimates are not suitable to prove effectiveness in real life. While international health authorities advocate the wearing of masks in public spaces, they also say that there is no evidence for this from scientific studies. On the contrary, all currently available scientific results suggest that masks have no effect on the incidence of infection. Throughout, all publications cited as evidence for the effectiveness of masks in public spaces do not support this conclusion. This also applies to the so-called

Jena study, as the expert explains in detail in her report. This is because the Jena study - like the vast majority of other studies a purely mathematical estimation or modeling study based on theoretical assumptions without real contact tracing with authors from the field of macroeconomics without epidemiological knowledge - fails to take into account, as explained in detail by the expert, the decisive epidemiological circumstance that the infection levels already declined significantly before the introduction of mandatory masks in Jena on April 6, 2020 (about three weeks later in the whole of Germany) and that there was already no longer a relevant incidence of infection in Jena at the end of March 2020."

The masks are not only useless, they are also dangerous, the court ruled: "Every mask must be worn properly, as the expert goes on to say, in order to be effective in principle. Masks can become a contamination risk if they are touched. However, on the one hand, they are not worn properly by the general public and, on the other hand, they are very often touched with the hands. This can also be observed with politicians who are seen on television. The population was not taught to use masks properly, it was not explained how to wash hands on the way or how to perform effective hand disinfection. It was also not explained why hand hygiene is important and that care must be taken not to touch the eyes, nose and mouth with the hands. The population was virtually left alone with the masks. The risk of infection is not only not reduced by wearing the masks, but increased by the incorrect handling of the mask. In her expert opinion, the expert sets this out in detail, as well as the fact that and for what reasons it is "unrealistic" to achieve the appropriate handling of masks by the population."

"Transmission of SARS-CoV-2 by 'aerosols,' i.e., airborne, is medically implausible and scientifically unproven. It represents a hypothesis based primarily on aerosol physicists who, according to the reviewer, are understandably unable to assess medical relationships from their area of expertise. The 'aerosol' theory is extremely harmful for human coexistence and leads to the fact that people can no longer feel safe in any indoor space, and some even fear infection by 'aerosols' outside buildings. Together with the 'unnoticed' transmission, the 'aerosol' theory leads to the fact that in every fellow human being an infection risk can be seen.

The changed statements of the policy on masks, first fabric masks in 2020, then since the beginning of 2021 either surgical masks or N95 masks, lack any clear line. Even though surgical masks and N95 masks are both medical masks, they have different functions and are therefore not interchangeable. Either the politicians who made these decisions themselves did not understand what which type of mask is suitable for in principle, or they are not interested in this, but only in the symbolic value of the mask. The mask decisions of the policy are not comprehensible from the technical view of the expert and, to put it mildly, can be described as implausible.

The expert further points out that there are no scientific studies on spacing outside of medical patient care. In summary, in her opinion, to the conviction of the court, only the following rules can be established in this regard:

1. keeping a distance of about 1.5 m (1 - 2 m) in case of vis-à-vis contacts, if one of the two persons has symptoms of a cold, can be described as a reasonable measure. However, it is not proven in a scientific sense, but there is only evidence or can be called plausible that it is an effective measure to protect against pathogen contact by droplets of respiratory secretion

when the person in contact has signs of a cold. An all-around distance, on the other hand, is not useful for protecting oneself when the contact person has a cold.

2. keeping an all-around distance or even just a vis-à-vis distance of about 1.5 m (1 - 2 m) when none of the persons present has signs of a cold is not supported by scientific data. However, this greatly impairs the coexistence of people and especially carefree contact among children, without any apparent benefit in terms of protection against infection.

3. close contacts, i.e. under 1.5 m (1 - 2 m), among pupils or between teachers and pupils or among colleagues at work, etc., do not pose a risk even if one of the two contacts has signs of a cold, because the duration of such contacts at school or even among adults somewhere in public is far too short for droplet transmission to occur. This is also shown by studies from households where, despite living in close quarters with numerous skin and mucosal contacts, few members of the household become ill when one has a respiratory infection."

Regarding the transmission rates of symptomatic, pre-symptomatic and asymptomatic people, the court follows Prof. Kappstein's assessment. It writes:

"Presymptomatic transmissions are possible, according to her, but not inevitable. In any case, according to her, they are significantly lower when real contact scenarios are evaluated than when mathematical modeling is used.

From a December 2020 systematic review with meta-analysis on Corona transmission in households, she contrasts a higher but still not excessive transmission rate in symptomatic index cases of 18% with an extremely low transmission in asymptomatic cases of only 0.7%. Thus, the possibility that asymptomatic persons, formerly referred to as healthy persons, transmit the virus is meaningless."

In summary, the court states, "There is no evidence that facemasks of various types can reduce the risk of infection by SARS-CoV-2 at all, or even appreciably. This statement is true for people of all ages, including children and adolescents, as well as asymptomatic, presymptomatic, and symptomatic individuals.

On the contrary, it is more likely that the even more frequent hand-face contacts when wearing masks will increase the risk of coming into contact with the pathogen oneself or bringing fellow humans into contact with it. There is no risk of infection to the normal population, either in public or in private, that could be reduced by wearing face masks (or other measures). There is no evidence that compliance with distance requirements can reduce the risk of infection. This is true for people of all ages, including children and adolescents."

Even according to the extensive findings of the expert Prof. Dr. Kuhbandner, there is "no high-quality scientific evidence to date that the risk of infection can be significantly reduced by wearing face masks. According to the expert, the recommendations of the RKI and the S3 guideline of the professional societies are based on observational studies, laboratory studies on the filter effect, and modeling studies, which provide only low and very low evidence, because no really valid conclusions can be drawn from such studies on the effect of masks in everyday life and at schools due to the underlying methodology. In addition, the results of

individual studies are heterogeneous, and more recent observational studies also provide conflicting findings."

The judge states, "In addition, the achievable magnitude of the reduction in risk of infection by mask-wearing at schools is in itself very small, because infections occur very rarely at schools even without masks. Accordingly, the absolute risk reduction is so small that a pandemic cannot be combated in a relevant way... According to the expert's explanations, the currently allegedly rising infection figures among children are in reality very likely due to the fact that the number of tests among children has increased significantly in the preceding weeks. Since the risk of infection at schools is very small in itself, even a possible increase in the infection rate with the new virus variant B.1.1.7 in the order of magnitude assumed in studies is not expected to significantly increase the spread of the virus at schools. This small benefit is countered by numerous potential side effects on the physical, psychological, and social well-being of children, from which numerous children would have to suffer to prevent a single infection. The expert presents these in detail on the basis of, among other things, the side effect register published in the scientific journal 'Monatsschrift Kinderheilkunde'."

2. The unsuitability of PCR tests and rapid tests for measuring the incidence of infection.

Regarding the PCR test, the court writes: "Already the expert Prof. Dr. med. Kappstein points out in her expert opinion that only genetic material can be detected with the PCR test used, but not whether the RNA originates from viruses capable of infection and thus capable of replication (= reproduction).

Also the expert Prof. Dr. rer. biol. hum. Kämmerer also confirms in her expert opinion on molecular biology that a PCR test - even if it is performed correctly - cannot provide any information on whether a person is infected with an active pathogen or not.

This is because the test cannot distinguish between "dead" matter*, e.g. a completely harmless genome fragment as a remnant of the body's own immune system's fight against a cold or flu (such genome fragments can still be found many months after the immune system has "taken care" of the problem) and "living" matter, i.e. a "fresh" virus capable of reproducing.

For example, PCR is also used in forensics to amplify residual DNA present from hair residues or other trace materials by PCR in such a way that the genetic origin of the perpetrator(s) can be identified ("genetic fingerprint").

So, even if everything is done "correctly" when performing the PCR including all preparatory steps (PCR design and establishment, sample collection, preparation and PCR performance), and the test is positive, i.e.: detects a genome sequence which may also exist in one or even the specific "Corona" virus (SARS-CoV-2), this does not mean under any circumstances that the person who was tested positive is infected with a replicating SARS-CoV-2 and consequently infectious = dangerous for other persons.

Rather, for the determination of an active infection with SARS-CoV-2, further, and specifically diagnostic methods such as the isolation of replicable viruses must be used.

Independently of the principal impossibility to determine an infection with the virus SARS-CoV-2 with the PCR-test, the results of a PCR-test depend, according to the explanations of the expert Prof. Dr. Kämmerer, on a number of parameters which, on the one hand, cause considerable uncertainties and, on the other hand, can be manipulated in such a way that many or few (apparently) positive results are obtained.

Of these sources of error, two striking ones are to be singled out.

One of these is the number of target genes to be tested. In accordance with WHO guidelines, the number of target genes to be tested has been successively reduced from the original three to one.

The expert calculates that the use of only one target gene to be tested in a mixed population of 100,000 tests with not a single person actually infected would result in 2,690 false positives based on a mean error rate determined in an 'INSTAND' interlaboratory test. Using 3 target genes would result in only 10 false positives.

If the 100,000 tests performed were representative of 100,000 citizens of a city/county within 7 days, this reduction in target genes used alone would result in a difference of 10 false positives versus 2,690 false positives in terms of "daily incidence" and, depending on this, the severity of the restrictions on citizens' liberty taken.

If consistently the correct "target number" of three or even better (as e.g. in Thailand) up to 6 genes had been used for the PCR analysis, the rate of positive tests and thus the "7-day incidence" would have been reduced almost completely to zero.

On the other hand, the so-called ct value, i.e. the number of amplification/doubling steps up to which the test is still considered "positive", is one of the sources of error.

The expert points out that, according to unanimous scientific opinion, all "positive" results that are only detected after 35 cycles have no scientific (i.e.: no evidence-based) basis. In the ct range 26-35, the test can only be considered positive if matched with viral culture. In contrast, the RT-qPCR test for the detection of SARS-CoV-2, which was propagated worldwide with the help of the WHO, was (and following it all other tests based on it as a blueprint) set to 45 cycles without defining a ct value for "positive".

In addition, when using the RT-q-PCR test, the WHO Information Notice for IVD Users 2020/05 must be observed (No. 12 of the court's legal notice). According to this, as far as the test result does not correspond to the clinical findings of an examined person, a new sample has to be taken and a further examination has to be carried out as well as differential diagnostics; only then can a positive test be counted according to these guidelines.

<https://www.who.int/news/item/20-01-2021-who-information-notice-for-ivd-users-2020-05>

According to the expert opinion, the rapid antigen tests used for mass testing cannot provide any information about infectivity, as they can only detect protein components without any connection to an intact, reproducible virus.

In order to allow an estimation of the infectivity of the tested persons, the respective positive test (similar to the RT-qPCR) would have to be individually compared with the cultivability of viruses from the test sample, which is impossible under the extremely variable and unverifiable test conditions.

Finally, the reviewer points out that the low specificity of the tests causes a high rate of false positives, which result in unnecessary personnel (quarantine) and societal (e.g., schools closed, "outbreak notifications") consequences until they turn out to be false alarms. The error effect, i.e., a high number of false positives, is particularly strong in tests on symptomless individuals.

It remains to be stated that the PCR test used, as well as the antigen rapid tests, as proven by the expert opinion, are in principle not suitable for the detection of an infection with the virus SARS-CoV-2. In addition, the described and other sources of error listed in the expert opinion with serious effects, so that an adequate determination of the infection with SARS-CoV-2 in Thuringia (and nationwide) is not rudimentarily available.

In any case, the term "incidence" is misused by the state legislature. "Incidence" actually means the occurrence of new cases in a defined group of persons (repeatedly tested and, if necessary, medically examined) in a defined period of time, cf. no. 11 of the legal notes of the court. In fact, however, undefined groups of persons are tested in undefined periods of time, so that both what is passed off as "incidence" are merely simple reporting rates.

In any case, according to a meta-study by medical scientist and statistician John Ioannidis, one of the most cited scientists in the world, published in a WHO bulletin in October 2020, the infection fatality rate is 0.23%, which is no higher than for moderately severe influenza epidemics.

https://www.who.int/bulletin/online_first/BLT.20.265892.pdf

Ioannidis also concluded in a study published in January 2021 that lockdowns have no significant benefit.

3. The violation of the right to informational self-determination by rapid tests in schools.

The right to informational self-determination as part of the general right of personality in Article 2(1) of the German "Grundgesetz" is the right of individuals to determine for themselves in principle the disclosure and use of their personal data. This personal data also includes a test result. Moreover, such a result is a personal health "data" within the meaning of the General Data Protection Regulation (GDPR), which in principle is nobody's business.

This encroachment on fundamental rights is also unconstitutional. This is because, given the concrete procedures of the testing process in schools, it seems unavoidable that numerous

other people (fellow students, teachers, other parents) would become aware of a "positive" test result, for example.

Incidentally, this applies accordingly if similar test barriers are erected in the case of access to shopping or cultural events.

In addition, any mandatory testing of schoolchildren under state law is already not covered by the Infection Protection Act - irrespective of the fact that the latter itself is subject to considerable constitutional concerns.

Pursuant to Section 28 IfSG [Infection Protection Act], the competent authorities may take the necessary protective measures in the manner specified therein if "sick persons, suspected sick persons, suspected infected persons or excretors" are identified. According to § 29 IfSG, these persons can be subjected to observation and must then also tolerate the necessary examinations.

In its decision of 02.03.2021, Ref.: 20 NE 21.353, the Bavarian Administrative Court of Appeal rejected the idea of considering employees in nursing homes to be ill, suspected of being ill or excretors from the outset. This is likely to apply to students as well. However, classification as suspected of being infected is also out of the question.

According to the case law of the Federal Administrative Court, anyone who has had contact with an infected person with sufficient probability is considered to be suspected of being infected within the meaning of Section 2 No. 7 IfSG; mere remote probability is not sufficient. It is necessary that the assumption that the person concerned has ingested pathogens is more probable than the opposite. The decisive factor for a suspicion of infection is exclusively the probability of a past infection process, cf. judgment of 22.03.2012 - 3 C 16/11 - juris marginal no. 31 et seq. The BayVGH, loc. cit., has rejected this for employees in nursing professions. Nothing else applies to schoolchildren.

4 The Right of Children to Education and Schooling

Schoolchildren are not only subject to compulsory education under state law, but also have a legal right to education and schooling.

This is also derived from Articles 28 and 29 of the UN Convention on the Rights of the Child, which is applicable law in Germany.

According to this, all contracting states must not only make attendance at elementary school compulsory and free of charge for all, but must also promote the development of various forms of secondary education of a general and vocational nature, make them available and accessible (!) to all children and take appropriate measures such as the introduction of free education and the provision of financial support in cases of need. The educational goals from Article 29 of the UN Convention on the Rights of the Child must be adhered to."

5. Result

The judge summarized his decision as follows:

"The compulsion imposed on school children to wear masks and to keep their distance from each other and from third persons harms the children physically, psychologically, educationally, and in their psychosocial development, without being counterbalanced by more than at best marginal benefit to the children themselves or to third persons. Schools do not play a significant role in the "pandemic" event.

The PCR tests and rapid tests used are not suitable in principle and already in the approach for determining an "infection" with the virus SARS-CoV-2. This results after the explanations in the expertises already from the own calculations of the Robert Koch Institute. According to RKI calculations, as expert Prof. Dr. Kuhbandner states, in mass testing with rapid tests, regardless of symptoms, the probability of actually being infected when receiving a positive result is only two percent at an incidence of 50 (test specificity 80%, test sensitivity 98%). This would mean that for every two true-positive rapid test results, there would be 98 false-positive rapid test results, all of which would then have to be retested with a PCR test.

A (regular) compulsion to mass test asymptomatic persons, i.e. healthy persons, without any medical indication, cannot be imposed, because it is out of proportion to the effect that can be achieved. At the same time, the regular compulsion to test puts the children under psychological pressure, because in this way their ability to attend school is constantly put to the test."

Finally, the judge notes: "Based on surveys in Austria, where no masks are worn in elementary schools, but rapid tests are carried out three times a week throughout the country, the following results according to the explanations of the expert Prof. Dr. Kuhbandner:

100,000 primary school pupils would have to put up with all the side effects of wearing masks for a week in order to prevent just one infection per week.

To call this result merely disproportionate would be a wholly inadequate description. Rather, it shows that the state legislature regulating this area has fallen into a factual disconnect that has reached historic proportions."