



Court Judgement -Weimar Family Court Germany - 8 April 2021

(Misuse & Invalidity of PCR Testing, Face Masks & Social Distancing)

In summary proceedings (Ref.: 9 F 148/21), the Weimar Family Court ruled on 8 April 2021 prohibiting two Weimar schools with immediate effect from requiring pupils to wear mouth-nose coverings of any kind (especially “qualified” masks such as FFP2 masks); it further prohibited the schools from demanding compliance with AHA minimum distance-keeping; and also prohibited them from demanding that pupils undergo SARS-CoV-2 rapid tests. At the same time, the Court ruled that classroom instruction must be face-to-face [i.e. not remote].

This is the first time that evidence has been presented to a German court on the scientific reasonableness and necessity of the anti-Corona measures which have been imposed. Those heard as expert witnesses were the public health doctor Prof. Dr. med Ines Kappstein, the psychologist Prof. Dr. Christof Kuhbandner and the biologist Prof. Dr. rer. biol. hum. Ulrike Kämmerer.

The legal proceedings are a child protection case pursuant to § 1666 paragraph 1 and 4 of the German Civil Code (BGB). It was initiated by a mother for her two sons, aged 14 and 8, at the Municipal Court – Family Division. She argued that her children were being physically, psychologically and educationally harmed without any benefit for the children or third parties. At the same time, there was violation of numerous rights of the children and their parents under the law, under the constitution and under international conventions.

Proceedings under section 1666 of the Civil Code can be initiated ex officio, either on the proposal of any person, or if, in the best interests of the child, the Court considers intervention to be necessary pursuant to §1697a of the Civil Code, in the absence of any such proposal.

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 – constituted a present danger to the children's mental, physical and psychological well-being to such an extent that, if they continued without intervention, there was a high degree of certainty of considerable harm being inflicted.

The judge elaborated: “Such a danger is present here. For the children are not only endangered in their mental, physical and psychological well-being by the obligation to wear face masks during school hours, and to keep their distance from each other and from other persons, but they have already been harmed. At the same time, there is violation of 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 under Article 2 of the Basic Law, as well as to the right, pursuant to Article 6 of the Basic Law, to parental upbringing and care (also with regard to measures for healthcare and "objects" to be carried by children)....”

With his judgement, the judge confirmed the mother's assessment: “The children are physically, psychologically and educationally harmed while their rights are violated without any benefit for the children themselves or third parties.”

According to the Court, the school administrators, teachers and others could not invoke the regional state [i.e. “Land”] regulations, on which the measures are based, because these are unconstitutional and therefore null & void. Reason: they violate the principle of proportionality, rooted in the constitutional rule of law (Articles 20, 28 of the Basic Law).

"According to this principle, also known as the prohibition of excess, the measures intended to achieve a legitimate purpose must be suitable, necessary and proportionate in a narrow sense – that is to say: when weighing their advantages and disadvantages. The measures at issue are not evidence-based, contrary to Section 1(2) IfSG, and are already unsuited to achieving the fundamentally legitimate purpose they pursue, namely to avoid overloading the health system or to reduce the incidence of infection with the SARS-CoV- 2 virus. In any case, however, they are, strictly speaking, disproportionate because the considerable disadvantages/collateral damage caused by them are not compensated for by any recognisable benefit for the children themselves or for third parties," the judge said.

He made clear: "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, rather, the Free State of Thuringia, which with its State law provisions has encroached on the rights of the parties involved, would have to prove with the necessary scientific evidence that the measures it prescribes are suitable to

achieve the intended purposes and, if so, that they are proportionate. So far, this has not been done in the remotest."

1. THE LACK OF BENEFIT OF WEARING MASKS AND OBSERVING DISTANCE RULES FOR THE CHILDREN THEMSELVES AND THIRD PARTIES

With her assessment of the complete international data on masks the expert Professor Kappstein convinced the Court that the scientific evidence does not support the idea of the effectiveness of masks for healthy people in public.

The ruling states: "Likewise, 'third-party protection' and 'unnoticed transmission', which the RKI [Robert-Koch Institute] used to justify its 're-evaluation', are not supported by scientific facts. Plausibility, mathematical estimates and subjective assessments in opinion pieces cannot replace population-based clinical epidemiological studies. 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 from scientific studies to support this. Indeed, all currently available scientific evidence suggests that masks have no effect on the incidence of infection. None of the publications that are cited as evidence for the effectiveness of masks in public spaces allow this conclusion. The same 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 modelling study, based on theoretical assumptions without real contact tracing, and with authors from the field of macroeconomics without epidemiological knowledge – fails to take into account the decisive epidemiological circumstance, as explained in detail by the expert, that the infection levels had already declined significantly before the introduction of mandatory masks in Jena on 6 April 2020 (about three weeks later in the whole of Germany), and that there was no longer any relevant incidence of infection in Jena as early as the end of March 2020."

The masks are not only useless, they are also dangerous, rules the Court: "Every mask, as the expert explained, must, in order in principle to be effective, be worn correctly. Masks can become a contamination risk if they are touched. However, in the first place, people do not wear them properly; secondly, people often touch the masks with their hands. This can also be observed with politicians who are seen on television. The population was not instructed how to use masks properly, it was not explained how to wash their hands when out & about, or how to perform effective hand disinfection. Furthermore, it was not explained why hand hygiene is important and that one must be careful not to touch one's eyes, nose and mouth with one's 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 witness sets this out in just as much detail as the fact that, and for what reasons, it is "unrealistic" to achieve the appropriate handling of masks by the population."

The judgement goes on to say: "The transmission of SARS-CoV-2 through 'aerosols', i.e. through the air, is medically implausible and scientifically unproven. It is a hypothesis that has come mainly from aerosol physicists whose specialism, states the expert, understandably does not enable them to assess medical contexts. The 'aerosol' theory is extremely harmful to human interactions and leads to people no longer feeling safe in any indoor space, with some even fearing infection from 'aerosols' outside buildings. Together with the idea of 'unnoticed' transmission, the 'aerosol' theory leads to people seeing an infection risk in every fellow human being.

The changes in the policy on masks, first fabric masks in 2020, then since the beginning of 2021 either OP masks or FFP2 masks, lack any clear rationale. Even though OP masks and FFP 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 basically suitable for, or they did not care about that, but only about the symbolic value of the mask. From the expert's point of view, the policy-makers' mask decisions are not comprehensible and, to put it mildly, can be described as implausible.

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

1. Keeping a distance of about 1.5 m (1 - 2 m) during face-to-face encounters when one of the two persons has symptoms of a cold might be described as a sensible precaution. However, it is not scientifically proven; there is only evidence – or it can be said to be plausible – that it is an effective measure to protect against contact with pathogens through droplets of respiratory secretion if the person in contact has signs of a cold. Keeping distance with all & sundry, however, is not an effective way to protect oneself if the other person has a cold.
2. Maintaining an all-round distance or even just a face-to-face distance of about 1.5 m (1 - 2 m), if none of the people present has signs of a cold, is not supported by scientific data. However, this greatly impairs people living together and especially carefree contact among children, without any recognisable benefit in terms of infection protection.
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 contact persons 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 mucous membrane contacts, few members of the household become ill when one of them has a respiratory infection."

The Court also follows Professor Kappstein's assessment regarding the transmission rates of symptomatic, pre-symptomatic and asymptomatic people. It writes:

"She states that pre-symptomatic transmission is possible, but not inevitable. In any case, according to the professor, they are significantly lower when real contact scenarios are evaluated than when mathematical modelling is used.

From a systematic review with meta-analysis on Corona transmission in households published in December 2020, the professor contrasted a higher, but still not excessive, transmission rate of 18% for symptomatic index cases with an extremely low transmission of only 0.7% for asymptomatic cases. The possibility that asymptomatic people, previously referred to as healthy people, transmit the virus is therefore meaningless."

In summary, the Court states, "There is no evidence that face masks of various types can reduce the risk of infection by SARS-CoV-2 at all, or even appreciably. This statement applies to people of all ages, including children and adolescents, as well as asymptomatic, pre-symptomatic and symptomatic persons.

On the contrary, there is the possibility that hand-to-face contact, which becomes more frequent when wearing a mask, increases the risk of coming into contact with the pathogen oneself or bringing fellow humans into contact with it. For the normal population, there is no risk of infection in either the public or private sphere that could be reduced by wearing face masks (or other measures). There is no evidence that compliance with social distancing regulations can reduce the risk of infection. This applies to people of all ages, including children and adolescents."

Even after the extensive findings of the expert Prof. Dr. Kuhbandner, according to the reasons for the judgement, "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's findings, 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 modelling studies, which only provide low or very low evidence, because the underlying methodology of such studies does not allow any really valid conclusions to be drawn on the effect of masks in everyday life, or at schools. Moreover, the results of the individual studies are heterogeneous and some more recent observational studies provide contradictory findings."

The judge states: "In addition, the achievable extent of the reduction in the risk of infection by wearing masks in schools is very low, because infections occur very rarely in 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 very likely to be due to the fact that the number of tests among children increased significantly in the preceding weeks. Since the risk of infection at schools is very low, even a possible increase in the infection rate of 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 possible side effects with regard to the physical, psychological and social well-being of children, from which numerous children would have to suffer in order to prevent a single infection. The expert presents these in detail, among other things, on the basis of the side-effects register published in the scientific journal *Monatsschrift Kinderheilkunde*."

2 THE UNSUITABILITY OF PCR TESTS AND RAPID TESTS FOR MEASURING THE INCIDENCE OF INFECTION

On the subject of the PCR test, the Court writes: "The expert witness Prof. Dr. med. Kappstein has already pointed out in her testimony that the PCR test can only detect genetic material, but not whether the RNA originates from viruses that are capable of infection and thus capable of replication (i.e. capable of reproduction).

The expert witness Prof. Dr. rer. biol. hum. Kämmerer confirmed, in her testimony on molecular biology, that a PCR test – even if it is carried out 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 "dealt with" 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 from hair remains or other trace materials by means of PCR in such a way that the genetic origin of a [putative] perpetrator(s) can be identified ("genetic fingerprint").

Even if everything is done "correctly" when carrying out 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 sequence (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 is therefore infectious = dangerous for other persons.

Rather, in order to determine an active infection with SARS-CoV-2, further – indeed specific – diagnostic methods, such as the isolation of replicable viruses, must be used.

Independent of the fact that, in principle, it is impossible to detect an infection with the SARS-CoV-2 virus using the PCR test, the results of a PCR test, according to the expert witness Prof. Dr. Kämmerer, depend on a number of parameters which, firstly, cause considerable uncertainties and, secondly, can be manipulated in such a way that many or few (apparently) positive results are obtained.

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

One of these is the number of target genes to be tested. The WHO guidelines reduced these from originally a sequence of three to just one. The expert witness calculated 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 a count of 2,690 false positives; this is based on a mean error rate determined in an inter-laboratory comparison. Using three target genes would result in only ten false positives.

If the 100,000 tests carried out were representative of 100,000 citizens of a city or district over a period of seven days, this reduction in the number of target genes used would alone result in a difference of 10 false positives compared to 2,690 false positives in terms of the "daily incidence" and, depending on this, the severity of the restrictions on the freedom of the citizens.

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

Furthermore, the so-called Ct-value, i.e. the number of amplification/doubling steps up to which the test is still considered "positive", is an additional source of error.

The expert witness points out that, according to unanimous scientific opinion, all "positive" results that are only detected from a Ct-value of 35 upwards have no scientific (i.e. no evidence-based) foundation. In the Ct range 26-35, the test can only be considered positive if it is matched with virus cultivation. Yet 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 at 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 notes). Accordingly, if the test result does not correspond to the clinical findings about an examined person, a new sample must be taken and a further examination performed, as well as a differential diagnostic; only then, according to these guidelines, can a test be counted as positive. According to the expert report, the rapid antigen tests used for mass testing

cannot provide any information on 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 positive test carried out in each case (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 expert witness points out that the low specificity of the tests causes a high rate of false positive results, which lead to unnecessary personnel (quarantine) and social (e.g. schools closed, "outbreak reports") consequences until they turn out to be false alarms. The error, i.e. a high number of false positives, is particularly high in tests on people who have no symptoms.

It remains to be noted that, in principle, neither the PCR test nor the antigen rapid test can detect an infection with the SARS-CoV-2 virus, as has been demonstrated by the expert witness. Moreover, besides those described above, there are other sources of error, which are listed in the expert opinion as having serious effects, such that an adequate detection of the infection with SARS-CoV-2 in [the Federal Constitutive State, or Land, of] Thuringia (and nationwide) is not remotely possible.

In any case, the term "incidence" is misused by the Land executive. "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 people are tested in undefined periods of time, so that what is passed off as "incidence" is merely reporting data, pure & simple.

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

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

3. THE VIOLATION BY RAPID TESTS IN SCHOOLS OF THE RIGHT TO INFORMATIONAL SELF-DETERMINATION

The right to informational self-determination as part of the general right to personal privacy pursuant to Article 2(1) of the Basic Law is the right of the individual to determine, in principle, for himself or herself, the disclosure and use of information about their person. Such personal information also includes the result of a test. Furthermore, such a result is a personal health "data" within the meaning of the Data Protection Regulation (DSGVO) and is, in principle, of no concern to others.

This encroachment on fundamental rights is also unconstitutional. This is because, given the practical procedures of the testing in schools, it seems unavoidable that numerous other people (fellow pupils, teachers, other parents) would, for example, become aware of any "positive" test result.

This applies accordingly if similar test barriers are erected for access to shopping or cultural events.

Furthermore, compulsory testing of schoolchildren under regional [i.e. Land] law is not warranted by the Infection Protection Act (IfSG) – irrespective of the fact that this Act itself is subject to considerable constitutional objections.

According to § 28 IfSG, the competent authorities can take the necessary protective measures in the manner specified therein if "sick persons, persons suspected of being sick, persons suspected of being infected or of being carriers of germs", are identified. Pursuant to § 29 IfSG, these persons can be subjected to observation and must then also tolerate the necessary examinations.

In its decision of March 2, 2021, ref.: 20 NE 21.353, the Bavarian Administrative Court of Appeal refused to consider employees in nursing homes as sick, suspected of being sick or carriers from the outset. This must also apply to pupils. Even a classification as "suspected of being infected" is out of the question.

According to the adjudications of the Federal Administrative Court, anyone who, with sufficient certainty, has had contact with an infected person, is considered to be suspected of being infected within the meaning of § 2 No. 7 IfSG; a distant probability is not sufficient. It is necessary that the assumption that the person concerned has ingested pathogens is more probable than the opposite. The criterion for a suspicion of infection is, exclusively, the probability of a past infection process, cf. judgement 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 school children."

4 THE RIGHT OF CHILDREN TO EDUCATION AND SCHOOLING

On the children's right to education, the judge states: "Under Land [i.e. federal state] law, children of school age are not only subject to compulsory schooling law, but also have a legal right to education and schooling. This also follows 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 nations party to the treaty must not only make attendance at primary school compulsory and free of charge for all, but also must promote the development of various forms of secondary education of a general and vocational nature, make such education available and accessible to all children and must take

appropriate measures such as the introduction of free education and the provision of financial support in cases of need. In this, the educational goals contained in Article 29 of the UN Convention on the Rights of the Child are to be adhered to."

5. CONCLUSIONS

The judge summarised 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".

The PCR tests and rapid tests used are, in principle, not suitable on their own to detect an "infection" with the SARS-CoV-2 virus. This is already clear from the Robert Koch Institute's own calculations, as explained in the expert reports. According to RKI calculations, as expert Prof. Dr. Kuhbandner explains, the probability of actually being infected when receiving a positive result in mass testing with rapid tests, regardless of symptoms, is only two per cent 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 people, i.e. healthy people, for which there is no medical indication, cannot be imposed because it is disproportionate to the effect that can be achieved. At the same time, the regular compulsion to take the 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 primary schools, but rapid tests are carried out three times a week throughout the country, the expert witness Prof. Dr. Kuhbandner concludes: '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 completely inadequate description. Rather, it shows that the Land [i.e. federal state] legislature regulating this area has lost contact with reality to an unprecedented extent."