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A Sensational Court Judgement from Weimar

English translation of the original German language article:

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

An early working translation subject to further revision from Howard Steen-network – 12th April 2021

On 8 April 2021, the Weimar Family Court ruled in summary proceedings (Ref.: 9 F 148/21) that two Weimar schools are prohibited with immediate effect from requiring pupils to wear mouth-nose coverings of any kind (especially qualified masks such as FFP2 masks), to comply with AHA minimum distance requirements, and/or to take part in SARS-CoV-2 rapid tests. At the same time, the court ruled that classroom instruction (face-to-face lessons instead of classroom instruction?) must be maintained ([full-text judgment](#), including three expert opinions).

For the first time, evidence has now been presented before a German court regarding the scientific meaningfulness and necessity of the prescribed anti-Corona measures. The expert witnesses were the hospital 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 according to § 1666 paragraph 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 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 can be initiated ex officio, both at the suggestion of any person, or without such a 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 - represented a present danger to the child's mental, physical or psychological well-being to such an extent that, if they continued without intervention, considerable harm could be expected with a high degree of certainty.

The judge stated: "Such a danger is present here because 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 are also already harmed. 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 under Article 2 of the Basic Law, as well as to the right under Article 6 of the Basic Law, to upbringing and care by the parents (also with regard to measures for health care and "objects" to be carried by children)..."

With his judgement, the judge confirmed the mother's assessment: "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, the school administrators, teachers and others could not invoke the State law regulations, on which the measures are based, because they are unconstitutional and thus null and void. Reason: they violate the principle of proportionality, rooted in the 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 the narrower sense - that is to say: when weighing the advantages and disadvantages they achieve. The measures that are not evidence-based, contrary to Section 1(2) IfSG, are already unsuitable to achieve the fundamentally legitimate purpose pursued by them, 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 disproportionate in the narrower sense, because the considerable disadvantages/collateral damage caused by them are not offset by any recognisable benefit for the children themselves or third parties," the judge said.

He clarified: "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 provisions, would have to prove with the necessary scientific evidence that the measures it prescribes are suitable to achieve the intended purposes and that they are

the measures it prescribes are suitable to achieve 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 people 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 '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 for this from scientific studies. On the contrary, all currently available scientific evidence suggests that masks have no effect on the incidence of infection. All the publications that are 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 modelling study, based on theoretical assumptions without real contact tracing, and from authors in 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, judged the court: "Every mask, as the expert further explains, must be worn correctly 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 population and, on the other hand, they are very often touched with the wearer's hands. This can also be observed with politicians who are seen on television. The population was not taught how to use masks properly, and it was not explained to them how to wash their hands, or how to carry out effective hand disinfection. Further, it was also 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 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 comes mainly from aerosol physicists who, according to the expert, are understandably unable to assess medical contexts from their field of expertise. The 'aerosol' theory is extremely harmful to human coexistence and leads to the fact that people can no longer feel

extremely harmful to 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 'unnoticed' transmission, the 'aerosol' theory leads to 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 which type of mask is basically suitable for what, or they do 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 there are no scientific studies on spacing, outside of medical patient care. 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 contacts when one of the two persons has symptoms of a cold can be described as a sensible measure. 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. Maintaining all-round distancing, is not an effective way to protect oneself if the contact 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 recognizable 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 has a respiratory infection."

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

"Pre-symptomatic 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 modelling is used.

From a systematic review with meta-analysis on Corona transmission in households published in December 2020, she contrasts 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 rather the possibility that the even more frequent hand-to-face contact, when wearing masks, 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 distance requirements 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 and very low evidence, because no really valid conclusions on the effect of masks in everyday life, and at schools, can be drawn from such studies due to the underlying methodology. Moreover, the results of the individual studies are heterogeneous and more recent observational studies also 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 has 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

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

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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 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 forensic work to amplify residual DNA from hair remains or other trace materials by means of PCR in such a way that the genetic origin of the 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 (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, specific diagnostic methods, such as the isolation of replicable viruses, must be used.

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

Of these sources of error, two striking ones are singled out:

One of these is the number of target genes to be tested. This was successively reduced from the original three to one, according to the WHO guidelines. 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, results in a result of 2,690 false positives based on a mean error rate determined in an interlaboratory comparison. Using 3 target genes would result in only 10 false positives.

If the 100,000 tests carried out were representative of 100,000 citizens of a city/county within 7 days, this reduction in the number of target genes used alone would 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 taken.

If the correct "target number" of three or even better (as e.g. in Thailand) up to 6 target 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.

The so-called Ct-value, i.e. the number of amplification/doubling steps up to which the test is operated and still considered "positive", is another source of error:

The expert 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) basis. In the Ct range 26-35, the test can only be considered positive if it is matched with virus cultivation. 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, if the test result does not correspond to the clinical findings of an examined person, a new sample must be taken and, a further examination must be carried out, as well as differential diagnostics carried out; only then can a positive test be counted, according to these guidelines.

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 evaluator 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 effect, i.e. a high number of false positives, is particularly strong in tests on symptomless people.

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

In any case, the term "incidence" is misused by the state legislator. "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 information of the court. In fact, however, undefined groups of people are tested in undefined periods of time, so that both what is passed off as "incidence" are merely simple raw reported data.

According to a meta-study by the medical scientist and statistician John Ioannidis,

one of the most cited scientists worldwide, and 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. 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 to privacy in 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 his or her personal data. Such personal data also includes a test result. Furthermore, such a result is personal health "data" within the meaning of the Data Protection Regulation (DSGVO), which in principle is of no concern to others.

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

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

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

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 excretors", are detected. 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 refused to consider employees in nursing homes as sick, suspected of being sick or excretors from the outset. This should also apply to pupils. However, a 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 sufficient probably of contact with an infected person, is considered to be suspected of being infected, within the meaning of § 2 No. 7 IfSG; a merely 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. 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: "School children are not only subject to compulsory schooling under State law, but also have a legal right to education and schooling. This also results 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 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 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 are to be adhered to."

5. Results

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:

" According to the explanations of the expert Prof. Dr. Kuhbandner and 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: '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.'

effects of wearing masks for a week in order to prevent just one injection per week.

*To call this result merely disproportionate would be a completely inadequate description. Rather, it shows that the State legislature regulating this area has become removed from the facts to an extent that seems historic." *