

Historic Court Judgment in Germany: “Threat to the Well-Being of Children”. No Masks, No Social Distance, No More Tests for Students.

"Danger to the mental, physical or emotional well-being of the child"

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The Weimar District Court has ruled that the obligation to wear a mask, to maintain minimum distances and to perform rapid tests in schools pose a threat to the mental, physical or emotional well-being of the child. So serious that, without any intervention, significant harm to children can be foreseen with a high degree of certainty. The judge stated in his decision:

“There is such a risk here. Because the children are not only endangered in their mental, physical and spiritual well-being, but are also currently damaged by the obligation to wear face masks during school time and to keep their distance from one another and from other people. This violates numerous rights of children and their parents under the law, the constitution and international conventions. This applies in particular to the right to free development of personality and to physical integrity from Article 2 of the Basic Law as well as to the right from Article 6 of the Basic Law to education and care by parents (also with regard to health care measures and ‘objects’ to be carried by children).”

The entire judgment (Weimar District Court, decision of April 8th, 2021, Az .: 9 F 148/21) comprises 178 pages and is a general statement with the Corona regulations in schools. You can find it under this post.

It is astonishing that initially nothing about the judgment could be found in the big media, at least about Google. Only smaller sites like [2020 News report](#). It was only after the report here that major media outlets such as Focus Online followed suit. Even in the headline, they are scolding judges and framing in the interests of the government ([dubious expert reports as the basis - questionable judgment: Weimar District Court prohibits the use of masks and tests in schools](#)). This silence or this scolding of the judges is extremely remarkable for a democratic media landscape. Even if it is only a judgment from the first instance that is very likely to be overturned by a higher instance: it is an important document in contemporary history. It remains to be seen with excitement whether a discrediting campaign against the judge will be started soon, as was the case in January against a judge at the Weimar District

Court, who passed a judgment critical of the Corona measures ([see here](#)). According to the lawyers, the present judgment was not passed by the same judge. This is a family judge.

In the judgment it says:

I. The directors and teachers of the schools for children A, born on ... and B, born on ..., namely the state regular school X, Weimar, and the state primary school Y, Weimar, as well as the superiors of the school management are prohibited for them and all to order or prescribe the following to other children and pupils taught at these schools:

- to wear face masks of all kinds in class and on the school premises, in particular mouth and nose covers, so-called qualified masks (surgical mask or FFP2 mask) or others,
- Maintain minimum distances between each other or to other people that go beyond what was known before 2020,
- to take part in rapid tests to determine the SARS-CoV-2 virus

II. The directors and teachers of the schools for children A, born on ... and B, born on ..., namely the state regular school X, Weimar, and the state primary school Y, Weimar, as well as the superiors of the school management are offered for these and all other children and pupils taught at these schools to maintain face-to-face teaching at the school.

As a justification, the judge stated: "The children are harmed physically, psychologically and educationally and their rights are violated, without this being of benefit to the children themselves or to third parties." The judge came to the conclusion that the school administrators and teachers could not rely on the state regulations on which the measures are based. This is because these regulations are unconstitutional and therefore void. The judge justified this with the fact that they violated the principle of proportionality and thus the rule of law.

The judgment states:

"According to this principle, also known as the prohibition of excess, the measures envisaged to achieve a legitimate purpose must be suitable, necessary and proportionate in the narrower sense - that is, when weighing the advantages and disadvantages achieved with them. The measures that are not evidence-based, contrary to Section 1 (2) IfSG, are already unsuitable for achieving the fundamentally legitimate purpose they pursue, namely avoiding overloading the health system or reducing the rate 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 they cause are not offset by any discernible benefit for the children themselves or for third parties," the judge explained.

He also noted a "lack of benefit from wearing a mask and observing distance regulations for the children themselves and third parties":

"To the court's conviction, she summarized that the effectiveness of masks for healthy people in public has not been proven by scientific evidence. Likewise, 'third-party protection' and the 'unnoticed transmission', with which the RKI justified its

'reassessment', are not supported by scientific facts. Plausibility, mathematical estimates and subjective assessments in opinion contributions cannot replace population-based clinical-epidemiological studies. Experimental studies on the filter performance of masks and mathematical estimates are not suitable for proving effectiveness in real life. The international health authorities are in favor of wearing masks in public spaces, but also say that there is no evidence from scientific studies for this. Rather, all currently available scientific results suggest that masks have no effect on the infection process. All publications that are cited as evidence for the effectiveness of masks in public spaces do not allow this conclusion. This also applies to the so-called Jena study, as the expert explains in detail in the report. "

The ruling on the Jena study also states:

"Because in the Jena study - like the vast majority of other studies, a purely mathematical estimation or modeling study based on theoretical assumptions without real contact follow-up with authors from the field of macroeconomics without epidemiological knowledge - As explained in detail by the expert, the decisive epidemiological circumstance is not taken into account that the infection values already fell significantly before the introduction of the mask requirement in Jena on April 6, 2020 (about three weeks later in the whole of Germany) and there was no relevant at the end of March 2020 There was more infection in Jena. "

In the judgment of the judge, the dangers of wearing a mask are pointed out:

"Every mask must be worn correctly, as the appraiser explains, in order to be effective in principle. Masks can become a contamination risk if 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 their hands. This can also be seen in politicians who can be seen on television. The population was not taught how to use masks correctly, there was no explanation of how to wash your hands while on the move or how to effectively disinfect your hands. It also failed to explain why hand hygiene is important and how to be careful not to touch your eyes, nose and mouth with your hands. The population was virtually left alone with the masks. The risk of infection is not only not reduced by wearing the mask, but is increased by incorrect handling of the mask. In her report, the expert explains this in detail as well as the fact that and for what reasons it is "unrealistic" to achieve the appropriate use of masks by the population. "

The transmission of the corona virus through "aerosols" is not medically plausible and scientifically unproven, the judge continued:

"According to the most recent presentation of the transmission routes by the WHO (from 01.12.2020), the new coronavirus (like all other respiratory viruses) transmitted through (large) pots of respiratory secretions and through direct and indirect contact with the respiratory secretions of infected people. Aerosol transmission outside of medical care (where aerosol-producing measures may be used, such as open endotracheal suctioning of intubated patients) cannot be ruled out, but a detailed examination of all published clusters, for which the respective authors postulated aerosol transmission or at least considered it likely, suggested, according to the WHO, that transmission via so-called large droplets and / or contaminated objects (i.e. contact) could also explain the pathogen transmission within these clusters. The other

international health authorities (ECDC, CDC) also agree that the pathogen causing COVID-19 - like other viral respiratory pathogens - is mainly transmitted via large droplets and contact [117, 118]. The RKI does not commit itself and considers aerosol transmission to be possible in principle, but does not emphasize this transmission route [119]. The role of airborne transmission in SARS-CoV-2 is scientifically at least unclear. “

The transmission by aerosols is a hypothesis that goes back mainly to aerosol physicists, who, according to the expert, cannot understandably assess medical contexts from their area of expertise, according to the court's statements: The * aerosol theory is extremely harmful for the coexistence of the People as a whole and has a destructive effect on contacts between people of all ages. Therefore, in appropriately planned epidemiological investigations, direct and indirect contacts - via (large) droplets and / or contact (especially hand contact) - must be reliably excluded in order to be able to consider airborne transmission. “

The explanations of the policy on masks, first fabric masks in 2020, then since the beginning of 2021 either surgical masks or FFP2 masks, lacked any clear line, according to the judge's ruling. Surgical masks and FFP masks are medical masks, but have different functions and are therefore not interchangeable:

“Either the politicians who made these decisions themselves did not understand what type of mask is basically suitable for, or it does not matter to them only on the symbolic value of the mask. From the expert's point of view, the mask decisions made by politics are incomprehensible and, to put it mildly, can be described as implausible. “

With reference to the expert Prof. Dr. Kuhbandner writes the court that “so far there is no high-quality scientific evidence that wearing face masks can significantly reduce the risk of infection. According to the expert's findings, the recommendations of the RKI and the S3 guideline of the professional associations are based on observational studies, laboratory tests on the filter effect and modeling studies, which only provide low and very low levels of evidence, because no really valid conclusions on the effect from such studies due to the underlying methodology can be removed from masks in everyday life and at schools. In addition, the results of the individual studies are heterogeneous and more recent observational studies also provide contradicting results. “

In addition, according to the judge,

“the extent to which the risk of infection can be reduced by wearing a mask in schools is very low, because infections very rarely occur in schools even without masks. Accordingly, the absolute risk reduction is so low that a pandemic cannot be fought in a relevant way with it ... According to the expert, the currently allegedly increasing number of infections in children is in reality due to the fact that the number of tests in the children was in the previous one Weeks has increased sharply. Since the risk of infection in schools is very small, even with a possible increase in the infection rate with the new virus variant B.1.1.7 in the range assumed in studies, the virus spread in schools is not expected to increase significantly. This little benefit is offset by numerous potential side effects related to the physical, psychological and social well-being of children that many children would have to suffer to prevent a single infection. The expert presents these in detail, among other things, using the register of side effects published in the journal Pediatric Journal. “

Under the heading “The unsuitability of PCR tests and rapid tests for measuring the infection rate” it says in the judgment:

“Already the expert Prof. Dr. med. In her report, Kappstein points out that only genetic material can be detected with the PCR test used, but not whether the RNA comes from viruses that are capable of infection and therefore capable of replication (= capable of reproduction). The reviewer Prof. Dr. rer. biol. hum. In her molecular biology expert report, Kämmerer confirms that a PCR test – even if carried out correctly – cannot make any statement as to whether a person is infected with an active pathogen or not. Because the test cannot differentiate between “dead” matter *, e.g. a completely harmless genome fragment as a remnant of the fight of the body’s own immune system against a cold or flu (such genome fragments can still be found many months after the immune system “takes care of” the problem hat) and “living” matter, ie a “fresh”, reproductive virus. For example, PCR is also used in forensics to reproduce residual DNA from hair residues 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”). “

The judge continues:

“Even if everything is done” correctly “when performing the PCR including all preparatory steps (PCR design and establishment, sampling, preparation and PCR execution) and the test is positive, ie: one If the genome sequence recognizes 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 tested positive has a replicating SARS-CoV -2 infected and therefore contagious = dangerous for other people.

Rather, to determine an active infection with SARS-CoV-2, additional, specifically diagnostic methods such as the isolation of viruses that are capable of replicating must be used.

Regardless of the fundamental impossibility of determining an infection with the SARS-CoV-2 virus with the PCR test, the results of a PCR test also depend on the statements of the expert Prof. Dr. Treasurer from 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 a few (apparently) positive results are achieved. “

The “result” at the end of the 178 page long judgment says:

“The compulsion imposed on school children to wear masks and to keep their distance from one another and from third parties harms the children physically, psychologically, educationally and in their psychosocial development, without any more than marginal benefit for the children themselves or third parties.

Schools do not play a major role in the “pandemic” event.

The PCR tests and rapid tests used on their own are in principle not suitable for determining an “infection” with the SARS-CoV-2 virus.

According to the explanations in the expert report, this already results from the own calculations of the Robert Koch Institute. According to RKI calculations, such as expert Prof. Dr. Kuhbandner explains, in mass tests with rapid tests, regardless of symptoms, the

probability of actually being infected if a positive result is obtained is only two percent with an incidence of 50 (test specificity 80%, test sensitivity 98%). That would mean: For every two genuinely positive quick test results there would be 98 false positive quick test results, all of which would then have to be retested with a PCR test.

A (regular) compulsion for mass testing without cause on asymptomatic, i.e. healthy people, for whom the medical indication is already lacking, cannot be imposed because it is disproportionate to the effect that can be achieved with it. At the same time, the regular compulsion to take a test puts the children under psychological pressure, because their ability to go to school is constantly put to the test.

Based on surveys in Austria, where masks are not worn in primary schools, but rapid tests are carried out three times a week nationwide, according to the explanations of the expert Prof. Dr. Cow bandner:

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

To describe this result as disproportionate would be a completely inadequate description. Rather, it shows that the state legislature regulating this area has gotten far removed from the facts and has assumed dimensions that appear to be historical.

By ordering such measures, the well-being of the children is endangered, as shown, § 1666 BGB. The teachers are therefore not allowed to order them. They cannot invoke the relevant state ordinances and the cited general decree, since they, because of their unsuitability to achieve the desired goals, in any case violate the principle of proportionality because of their disproportionate nature and are therefore unconstitutional and null and void.

In addition, the children have a legal right to accessible school lessons.

According to the current state of the investigation, it appears very likely that this result will be confirmed in the main proceedings. Further details are left to a decision there.

In the context of an assessment of the consequences, when issuing an interim order, the disadvantages that arise if the regulation sought by the parents of the children are not initially made by the family court in the interim order, but then later in the main proceedings, and the effects that arise if the family court already meets the regulation sought by the parents of the children in the preliminary injunction procedure, but later does not confirm it in the main proceedings.

The disadvantages for the children if the intended regulation is delayed by the family court predominate considerably.

In any case, the parents are not able to avert the danger, § 1666 BGB. With the Easter holidays coming to an end, there is also an urgent need to act immediately.

After all that, the decision evident from the tenor was necessary. Since the classmates of the children named in the tenor are affected in the same way, the court made its decision in favor of them.

Here is the verdict:



Amtsgericht Weimar, Beschluss vom 08.04.2021, Az.: 9 F 148/21

hat das Amtsgericht Weimar durch ...

im Wege der einstweiligen Anordnung beschlossen:

- I. **Den Leitungen und Lehrern der Schulen der Kinder A, geb. am ..., und B, geboren am ..., nämlich der Staatlichen Regelschule X, Weimar, und der Staatlichen Grundschule Y, Weimar, sowie den Vorgesetzten der Schulleitungen wird untersagt, für diese und alle weiteren an diesen Schulen unterrichteten Kinder und Schüler folgendes anzuordnen oder vorzuschreiben:**
 1. **im Unterricht und auf dem Schulgelände Gesichtsmasken aller Art, insbesondere Mund-Nasen-Bedeckungen, sog. qualifizierte Masken (OP-Maske oder FFP2-Maske) oder andere, zu tragen,**
 2. **Mindestabstände untereinander oder zu anderen Personen einzuhalten, die über das vor dem Jahr 2020 Gekannte hinausgehen,**
 3. **an Schnelltests zur Feststellung des Virus SARS-CoV-2 teilzunehmen.**

- II. **Den Leitungen und Lehrern der Schulen der Kinder A, geb. am ..., und B, geboren am ..., nämlich der Staatlichen Regelschule X, Weimar, und der Staatlichen Grundschule Y, Weimar, sowie den Vorgesetzten der Schulleitungen wird geboten, für diese und alle weiteren an diesen Schulen unterrichteten Kinder und Schüler den Präsenzunterricht an der Schule aufrechtzuerhalten.**

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