

German Administrative Law and the Covid-19 Pandemic

Overview on the fundamental rights affected by the protective measures against Covid-19 under the Infection Protection Act

Preliminary remark: Most protective measures against the spread of Covid-19 are issued in the form of *corona ordinances* (executive regulations) of the Land governments under sect. 32 read together with sect. 28 to 31 (esp. 28a) IPA. For two months in spring 2021, most severe measures were imposed nationwide directly by art. 28b IPA (so-called "federal emergency break").

Where the protective measures encroach on (interfere with) the fundamental rights, they are only lawful if they are justified by the fundamental right's limits [Grundrechts-Schranke] and respect the so-called "limits of limits" [Schranken-Schranken], in particular the principle of proportionality [Verhältnismäßigkeitsprinzip]. Since they serve the overriding interests to protect the life and health of citizens and public health, even severe and most severe restrictions can be justified. The decisive question in both, constitutional and administrative law, is if they are proportional (suitable, necessary and proportional in the strict sense) in the given situation, under the given circumstances, having regard to the existing experience and scientific knowledge at the time of the decision. The legality of the corona ordinances can be challenged with an application for judicial review of sub-legislative legal provisions before the Higher Administrative Courts under sect. 47 of the Code of Administrative Court Procedure.

1. Freedom of occupation (art. 12(1) BL)
 - includes the freedom to conduct a business
 - affected by restrictions on work and business, such as limitation of opening hours, long-term *general closure* or *capacity limits* for shops, markets, gastronomic establishments and other venues, businesses and premises, mandatory *work from home* or mandatory *hygiene concepts* (health protocols)
2. Freedom of movement (art. 11 BL)
 - the freedom of physical movement on the German territory
 - affected by *travel restrictions*, closure of public parks and beaches etc. and *curfew-like stay at home orders* for the nighttime (between 22:00 and 05:00)
3. Personal freedom (liberty) (art. 2(2) phrase 2 BL)
 - affected by the mandatory physical isolation (*segregation*) of persons confirmed or suspected to be infected
4. Freedom of assembly (art. 8 BL)
 - affected by *bans or limitations on demonstrations* and gatherings in large crowds
5. Freedom of religion (art. 4(1, 2) BL)
 - affected by *total bans* (at the beginning of the pandemic) and *limitations on public religious services*
6. Freedom of arts (art. 5(3) BL)
 - affected by the *ban of public concerts* and theatre performances and the *forced closure of museums and art galleries*
7. Freedom of science (art. 5(3) BL)
 - affected by *mandatory online teaching* and home office research
8. Right to school education (art. 2(1) read together with art. 7(1) BL)
 - affected by the long-term *closure of schools*
9. Protection of the family (art. 6(1) BL)
 - affected by the *ban or limitation of family gatherings*, wedding receptions and funerals and by *contact restrictions* preventing family members from meeting
10. Protection of marriage (art. 6(1) BL)
 - affected by *contact restrictions* preventing even spouses from meeting
11. General right of personality (art. 2(1) read together with art. 1(1) BL)
 - affected by the *massive contact restrictions* that could practically force individuals into loneliness
12. Right to informational self-determination (art. 2(1) read together with art. 1(1) BL)
 - the right to data protection
 - affected by *contact tracing*, *compulsory testing*, *mandatory registration of visitors* of gastronomic establishments and other venues and other collecting and processing of personal mobility and health data
13. Last but not least: general freedom of action (art. 2(1) BL)
 - the general freedom to do what you want and not to do what you don't want to do
 - affected by all measures prohibiting or ordering anything to the citizen, in particular *mandatory wearing of face-masks*, *hand-washing* and *physical distancing*, *contact restrictions* at public and private places, the prohibition to drink alcohol at certain public places and the *entry restrictions for non-EU citizens*