

German Administrative Law and the Covid-19 Pandemic

I. Covid-19 in Germany

- according to official statistics,² until 11.2021 ca. 5 (of 84) million and until 02.2023 ca. 38 million inhabitants were infected and ca. 97.000 resp. 168.000 died
- in 02.2023, ca. 76 % of the population are fully vaccinated and ca. 64 % boosted
- five waves of Covid-19: in spring 2020, autumn/winter 2020/21, spring 2021, autumn/winter 2021/22 (→ Delta) and winter/spring 2021/22 (→ Omicron)
- strong opposition of corona sceptics (→ "Querdenker"), conspiracy believers and anti-vaxxers to the protective measures against Covid-19 (= Covid-19 restrictions)

II. Constitutional backgrounds of the fight against Covid-19

- German admin. law strongly influenced by the Basic Law (= BL), esp. fundamental rights (= f.r.)³ and constitutional principles

1. The first dimension of fundamental rights: fundamental rights as defensive rights

- Covid-19 restrictions primarily a classical f.r. issue
- Covid-19 restrictions the *most comprehensive and far-reaching restrictions on f.r. in recent German history*, affecting seriously a wide range of important rights (see attached overview)
- no "state of emergency" under the Basic Law, but depending on the situation, even most severe restrictions can be classically justified by the fundamental rights' limits, since they *serve the overriding interests* to protect life and health of citizens and public health, in particular to prevent the collapse of the healthcare system

2. The second dimension of fundamental rights: the state's duties of protection

- state *must* take effective measures against spread of Covid-19 because it must *not only respect but also protect* actively the citizen's rights (here: the rights to life and physical integrity, art. 2(2) phrase 1 BL)
 - f.r. cannot only be violated by excessive but also by insufficient Covid-19 restrictions or enforcing of restrictions
- the doctrine of "duties of protection" [grundrechtliche Schutzpflichten] of the Federal Constitutional Court (= FCC)
 - see in particular BVerfGE 88, 203⁴; 115, 118; 121, 317; 157, 30
 - The f.r. represent an objective system of values to be realized in all spheres of life. The state must not only respect but also protect them by active intervention against threats emanating from other persons or nature. The obligation also derives from the guarantee of human dignity, to which the f.r. are closely related. All state authority has the duty "to respect and protect" human dignity (art. 1(1) phrase 2 BL).
 - see for a similar approach the doctrine of "positive obligations" of the European Court of Human Rights
- however, state enjoys *wide margin of appreciation and discretion*, whose limits are still diffuse
 - a "prohibition of insufficient means" ["Untermaßverbot"] with unclear contours
 - in complex problem situations, the doctrine allows only to identify obvious and serious failures of protection

3. The principle of the rule of law and its sub-principles (art. 20(3) BL and special provisions)

- a core principle of the modern constitutional state
- the comprehensive German concept of "Rechtsstaat" [state based on the rule of law] includes numerous formal and material (substantial) principles of law
- most relevant elements: primacy of the law, separation of powers, principles of statutory reservation, definiteness and proportionality

4. In particular: the principle of proportionality (→ see lecture of NIELS PETERSEN)

- the most important legal principle at all, derived from both, the f.r. and the principle of the rule of law
- every measure encroaching on fundamental rights must
 - pursue a *legitimate aim* under the Constitution
 - be *suitable* to pursue that aim
 - be *necessary* to achieve the pursued aim
 - be *proportional in the strict sense* (appropriate, reasonable) to pursue that aim (requires → balancing)

5. In particular: the principle of effectiveness of legal norms

- rule of law demands not only not to contravene the law but also to work with it (interpret, apply, execute and enforce it) in a way that it becomes effective (has steering effect) in practice
 - the need for *effet utile* - particularly stressed in EU law but also considered as a matter of course in German law
- this requires to *enforce the law* not only in favor but also *against the citizen*
 - a state tolerating that parts of the population ignore legal provisions is not a "Rechtsstaat"
- insufficient enforcement would further violate the f.r. of *equality before the law* (art. 3(1) BL)
 - since it would allow brazen perpetrators to continue their life without much restrictions, while the good, law-abiding citizens suffer

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² Underlined text passages indicate links to relevant internet resources. Just *click on the link* in the pdf file!

³ On terminology: Fundamental rights [Grundrechte, also translated as "basic rights"] are the human rights anchored as constit. rights in the Basic law.

⁴ Entscheidungen des Bundesverfassungsgerichts [Decisions of the Federal Const. Court], vol. 88, p. 203 ff.; see here link to English translation.

III. Responsibilities and main instruments in the fight against Covid-19 (overview)

1. Comprehensive regulation of infection control in a federal statute: the *Infection Protection Act (= IPA)* of 2000 [Infektionsschutzgesetz]⁵
 - a general law for the protection against all kinds of infectious diseases, based on the Federation's concurrent legislative competence for measures to combat publicly dangerous or communicable human diseases (art. 74(1) no. 19 BL)
 - provides the *legal basis and guidance for the Covid-19 restrictions* but generally does not regulate them itself
2. Execution of the federal infection protection law by the Länder
 - in their own right and responsibility (standard under art. 83 BL)
 - a) *Corona ordinances* of the Land governments as central legal instrument
 - executive-made regulations based on a special authorisation (sect. 32 read together with sect. 28 to 31, esp. 28a IPA)
 - limited in time and frequently prolonged, updated or replaced
 - subject to judicial review by the Higher Administrative Courts (sect. 47 Code of Admin. Court Procedure = CACP)
 - important in practice: interim protection by interim orders (sect. 47(6) CACP)
 - these are the legal norms that directly impose the Covid-19 restrictions
 - despite coordination efforts, substantially and technically rather heterogeneous in the various Länder
 - some Länder initially issued administrative decisions [Verwaltungsakte] in the special form of general orders [Allgemeinverfügungen], but since this instrument is reserved to regulate individual cases, its use was controversial
 - b) Execution and enforcement of the corona ordinances by the counties and communes, acting as local health offices [Gesundheitsämter] and other "competent authorities"
 - local health offices often overburdened by the unforeseen workload (esp. for contact tracing)
 - c) Other executive and enforcement measures of the Land and local government authorities
 - in particular orders of segregation by the health offices (sect. 30 IPA)
 - in particular enforcement measures of the local public security authorities and the *police* (a Land authority)
3. National regulation of special health care issues in special ordinances of the Federal Government or the Federal Ministry of Health
4. Support by an advanced federal scientific institution: the Robert Koch Institute in Berlin
 - a national scientific authority for the prevention of communicable diseases and early detection and prevention of the spread of infections, inspired by the model of the American CDC
 - 1.500 staff, several high profile advisory scientific committees
 - no regulative powers but *scientific advice* (incl. guidelines and recommendations that serve as scientific reference), compilation of *statistics*, cooperation with foreign and intern. authorities (esp. WHO), and *coordination* of the cooperation of the Länder and the Federal Government during an epidemic situation of national scope
 - very present throughout the pandemic, target of a hacker and arson attack in October 2020

IV. The Infection Protection Act in the fight against Covid-19

1. An overchallenged law, unprepared for Covid-19, amended again and again chaotically during the pandemic
 - 10 major and several smaller amendments between 03.2020 and 12.2022
 - new regulations often limited in time
 - frequent total revisions of the same central provisions cause risk of confusion in the legal discourse
 - no foresightedly designed graduated system with coherent terminology and regulatory technique but *spontaneous reactions of an overwhelmed legislator* to the rapid developments of the pandemic and the populations's reactions
 - reading the law and its amendments in sequence, *one can feel the panic of the driven legislator*
2. An initial general authorisation to take all "necessary protective measures" for the control of infectious diseases (sect. 28 IPA)
 - few classical measures regulated explicitly
 - technically, this clause can serve - and has served for 8 months - as legal basis for any Covid-19 restrictions, but in view of their serious impact on f.r. it was finally considered appropriate to regulate measures more in detail (see below, IV.4)
3. A far-reaching concept of "*epidemic situation of national scope*" (sect. 5 IPA)
 - introduced as central concept of infection protection law by amendment of 27.03.2020
 - situation needs to be formally declared and reconfirmed all 3 months by the German Bundestag
 - lasted from 25.03.2020 to 25.11.2021
 - numerous far-reaching legal consequences, e.g.
 - special regulatory powers of the Federal Ministry of Health, even to allow certain derogations from statutory law
 - authorisation of severe & very severe special protective measures (see below, IV.4)
 - compensation for loss of earnings for working parents who need to look after their children themselves during the closure of schools and child care facilities (sect. 56 IPA)

⁵ Long title: Law on the Prevention and Control of Infectious Diseases in Humans (Infection Protection Act - IPA) [Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz - IfSG)] of 20.07.2000.

4. Explicit authorisation of severe & very severe *special protective measures* for the prevention of the spread of Covid-19 in an epidemic situation of national scope (sect. 28a IPA)
 - introduced by amendment of 18.11.2020
 - technically a clarifying concretisation, by way of examples, of the possible Covid-19 restrictions under sect. 28 IPA
 - a broad collection of harsh & very harsh measures with detailed guidelines, mostly taking up what was already practiced but deemed impossible before the pandemic:
 - imposition of mandatory face masks, physical distancing and hygiene concepts (health protocols) in public space
 - imposition of mandatory saving and processing of contact data of customers, guests or event participants
 - ban of alcohol in public space
 - ban of recreational, cultural and sports events
 - ban or imposition of obligations on assemblies, demonstrations and religious meetings
 - closure or restriction of gastronomic establishments, shops, businesses, childcare facilities, schools, universities etc.
 - travel and accomodation restrictions and even *curfews and contact restrictions* in the public and private space
 - measures must follow a *graduated system focusing primarily on the 7-day incidence* per 100.000 inhabitants (initially of infections, later of hospitalised persons); the most severe measures may only apply on a subsidiary basis
 - corona ordinances must be limited in time (generally 4 weeks, sect. 28a(5))
5. Temporary direct imposition and detailed regulation of most severe nationwide protective measures: the "*federal emergency break*" (sect. 28b IPA)
 - in force from 23.04. to 30.06.2021
 - the federal legislator's reaction to the refusal of some Land governments in spring 2021 to resharpen their corona ordinances appropriately when after a premature ease of restrictions the number of infections dangerously exploded
 - a reaction to a clear failure to perform the state's duties of protection
 - an interesting sign of a *crisis of German federalism* but also of a *lack of trust of the legislator in the executive*
 - a *catalogue of horror* like in an apocalyptic movie: an extensive collection of harshest nationwide protective measures, *directly imposed and regulated in detail* by the IPA, which applied automatically in all counties with a 7-day incidence of infections of more than 100/100.000:
 - serious restrictions on private meetings with persons from outside the own household⁶
 - restrictions on free movement between 22:00 and 05:00
 - general closure of cultural institutions and venues, recreational facilities, gastronomic establishments (except for delivery) and shops and markets (except for some branches and for picking up pre-ordered goods)
 - ban on accomodation for touristic purposes
 - far-reaching restrictions on face-to-face teaching in schools, universities and other institutions of education (sect. 28b(3))⁷
 - far-reaching restrictions on sports
 - restrictions on body-related services (except for some branches in case of testing)
 - mandatory offer to office employees to work from home (sect. 28b(7))
 - but no restrictions on assemblies and religious gatherings (sect. 28b(4));Federal Government entitled to decree further or ease restrictions (sect. 28b(6))
 - controversial for *cutting off the legal protection before the administrative courts*
 - sole remaining legal remedy: constitutional complaint before FCC
 - FCC (BVerfGE 159, 223) did not consider this a violation of the guarantee of individual legal protection (art. 19(4) BL) or the principle of separation of powers (art. 20(4) BL)

V. Covid-19 restrictions and the principle of proportionality

- proportionality main legal problem of Covid-19 restrictions, resulting in numerous relevant court decisions
1. General aspects
 - a) Individual assessment with regard to the specific situation
 - examination of the individual measure, as such and in context, with regard to the specific circumstances of place and time, established experience and available scientific expertise
 - identical measures in different countries or regions, at different phases of the pandemic or under different knowledge about the virus and the disease need to be evaluated differently
 - example: business lockdowns need to be shorter in countries without or with weaker social security systems
 - many severe measures only proportional as *stop-gap measures* until vaccination became available
 - after that, excluding unvaccinated persons (e.g. from bars, restaurants & events) became a suitable milder alternative
 - b) Margin of appreciation and evaluation of the authorities
 - courts cannot replace their assessment by their own but are limited to control if it is tenable, in particular well-reasoned, taking account of available experience and knowledge
 2. The suitability of the restrictions
 - measure must be conducive to fight Covid-19
 - all measures ensuring physical distance between human beings are suitable, even if they are harsh
 - initial doubts concerning mandatory mask-wearing were cleared up by science
 - cf. Higher Administrative Court Koblenz, 06.06.2020 - 6 B.10669/20; Higher Admin. Court Weimar, 13.06.2020, 3 EN 374/20; Higher Admin. Court Münster, 29.07.2020, 13 B 675/20.NE

⁶ FCC, BVerfGE 159, 223, federal emergency break I: did not violate fundamental rights.

⁷ FCC, BVerfGE 159, 355, federal emergency break II: did not violate right to school education or rights of parents.

3. The necessity of the restrictions

- measure must be the least intrusive act of intervention that is equally conducive (→ no milder alternative)
- this requires to *think!*
 - e.g. no curfew-like measures if gathering restrictions are sufficient
 - e.g. no general ban of drive-in cinema shows, even with large audiences, since customers are isolated from each other in their cars (Higher Admin. Court Berlin-Brandenburg, 21.07.2020, OVG 11 S 65/20)
 - e.g. no obligation to wear face mask when alone in the car (→ example from Jakarta)
 - however, capacity limits for wedding parties can be necessary because partying typically leads to closer physical contact of larger number of persons (Higher Admin. Court Lüneburg, 13.08.2020, 13 MN 290/20)
- measures must be *limited in time*: increasing duration requires increasingly sustainable fact-based evidence of risks feared from repealing or moderating them (Saarland Constitutional Court, 28.04.2020, Lv 7/20)
- no comprehensive prohibitions if *targeted restrictions* are sufficient
 - often ignored at the beginning of the pandemic
 - no ban of public demonstrations and religious events if precautions in hygiene concepts (capacity restrictions, face masks, no loud singing or praying etc.) can avoid infections and compliance is ensured
 - FCC, 15.04.2020, 1 BvR 828/20; 17.04.2020, 1 BvQ 37/20: discretionary decision about approval under conditions required
 - FCC, 29.04.2020, 1 BvQ 44/20: *no total ban of Friday prayers in Mosques*
 - no complete lockdown of restaurants but limitation to selling food for take-away
 - no lockdown of shisha bars if elaborate precautions (exclusive use of shishas, intensive room ventilation etc.) can avoid infections (Higher Admin. Court Lüneburg, 27.07.2020, 13 MN 272/20)
 - however, total lockdown of discotheques in 2020 necessary (Higher Admin. Court Münster, 08.07.2020 - 13 B 870/20)
 - the restrictions must also be *sufficiently targeted*: no general exclusion, even if with a few exceptions, of unvaccinated persons from the retail sector (Higher Admin. Court Lüneburg, 16.12.2021, 13 MN 477/21)
- special restrictions for vulnerable groups (e.g. elderly) no suitable milder alternative to general restrictions because actually everybody can spread and suffer from the coronavirus
- problem: **necessary to close the borders with little affected neighbouring states?**
 - a panic reaction at the beginning of the pandemic and a dark stain in the history of European integration

4. The proportionality of the restrictions in the strict sense

- the burden imposed must not be out of reasonable proportion to the aim in view (requires → *thorough balancing*)
 - not every necessary measure is allowed and no objective of the state is absolute!
 - however, the state's duty to protect life and health carries great weight in the balancing ...
- even essential measures must be *limited in time*, since they will cause unbearable burden in the long run
- often *exceptions* from general prohibitions can avoid excessive burdens
 - example: exceptions from the curfew-like stay at home orders, e.g. for medical emergency, work, physical exercise and parental contact and care (see on this aspect BVerfGE 159, 223, 351 [no. 296])
- moreover, comprehensive *accompanying state support measures* have alleviated the severity of restrictions
 - 130 billion € of economic aid to businesses, self-employed and freelancers
- Problems for discussion:
 - **proportional to close all clubs, bars and restaurants for long periods of time?**
 - proportional to ban hotel accommodation for guests from Corona hotspots?
 - **proportional to deny entry to non-EU citizens, separating unmarried life partners, over a long period of time?**
 - **proportional to keep dying patients in absolute isolation, separated from families and friends?**

VI. The enforcement of the Covid-19 restrictions

1. The instruments of enforcement

- concretisation of the citizen's obligation in the concrete situation in an *administrative decision* and enforcement of this decision by the means of admin. enforcement law
- *revocation of business licenses* on grounds of unreliability of the holder after serious or continuous infringements despite official intervention
- independent measures, such as *prohibiting further business activity* of businesses that do not need a license on grounds of unreliability, *dissolving demonstrations* as a threat to public security or *banning local religious communities from holding public religious services* during the pandemic
- most important in practice: imposition of a *regulatory fine* under the Act on Regulatory Offences [Ordnungswidrigkeitengesetz] for a regulatory offence under sect. 73 IPA
 - in some cases up to 2.500 €, in general up to 25.000 €, details regulated in the *schedules of penalties* of the Länder
 - fine imposed by local admin. authority but citizen can file objection to the local district court

2. The enforcement in practice

- a) In general consistent enforcement of the Covid-19 restrictions
- authorities have expanded their staff, patrol in crowded public places and carry out systematic and random *on-site inspections*, also by *undercover inspectors*, in bars, restaurants and other businesses with high Covid-19 potential
 - enforcement mainly by personal appeal (in minor cases) or regulatory fines for offenders
 - in many Länder, persistent offenders in the business sector face high fines up to 25.000 €

- b) Challenges and failures to enforce Covid-19 restrictions
- difficult enforcement of mandatory wearing of face masks on public transport
 - since vehicles often overcrowded and measures time-consuming in case of persistent refusers
 - difficult enforcement of access restrictions for unvaccinated persons
 - since anti-vaxxers often use forged vaccination certificates
 - difficult enforcement of the ban of prostitution as a body-related professional service
 - since it did not suspend the phenomenon but pushed it into the illegal, making the women more vulnerable
 - *difficult enforcement of curfew-like stay at home orders for the nighttime*
 - since due to the many exceptions streets eventually not empty
 - *difficult enforcement of contact restrictions to only a few visitors in the private sphere*
 - how to do without encroaching excessively on privacy?
 - *significant shortcomings in the enforcement of Covid-19 restrictions at demonstrations* of corona sceptics
 - spectacular cases in Berlin (29.08.2020), Leipzig (07.11.2020), Frankfurt (14.11.2020) and Kassel (20.03.2021)
 - authorities imposed conditions and admonished chairs and participants to comply, but did not intervene, not disband the demonstration or not disperse the demonstrators after persistent non-compliance
 - a surrender of the "Rechtsstaat" and misapplication of de-escalation strategy
 - in most Länder *health offices refused to enforce mandatory vaccination of staff of health and care facilities*
 - due to serious staff shortage in these facilities; enforcement would have caused serious problems
 - problem: does rule of law allow **unrealistic law** that is predictably not universally respected and cannot be enforced?

VII. Conclusion

- What about YOUR EXPERIENCE IN YOUR COUNTRY?

Further Reading (selection in English)

Andelković, Luka: The elements of Proportionality as a Principle of Human Rights Limitations, *Law and Politics* 15 (2017), no. 3, 235, <http://casopisi.junis.ni.ac.rs/index.php/FULawPol/article/view/2988>

Bunke, Christian; Vofßkuhle, Andreas: German Constitutional Law. Introduction, Cases and Principles, 2019, no. 123 ff. (on the principle of proportionality), 188 ff. (on the duties of protection)

Coglianesi, Cary; Mahboubi, Neysun A.: Administrative Law in a Time of Crisis: Comparing National Responses to Covid-19, *Administrative Law Review* 73 (2021), 1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3841755

Kropp, Sabine; Schnabel, Johanna: Germany's response to Covid-19. Federal coordination and executive politics, in: Rupak Chattopadhyay; Felix Knüpling; Diana Chebenova; Liam Whittington and Phillip Gonzales (editors), *Federalism and the Response to Covid-19. A Comparative Analysis*, 2022, p. 84 ff., <https://doi.org/10.4324/9781003251217>

Lübbe-Wolff, Gertrude: The Principle of Proportionality in the Case-Law of the German Federal Constitutional Court, *Human Rights Law Journal* 34 (2014), 12, www.researchgate.net/publication/326782433_The_Principle_of_Proportionality_in_the_Case-Law_of_the_German_Federal_Constitutional_Court

Kaiser, Anna-Bettina; Hensel, Roman: Federal Republic of Germany: Legal Response to Covid-19, in: Jeff King; Octávio LM Ferraz a.o. (editors), *The Oxford Compendium of National Legal Responses to Covid-19 [OCC19]*, doi: 10.1093/law-occ19/e2.013.2

Münchov, Sebastian von: The Legal and Legitimate Combat Against COVID-19: German Curfew-related Case Law, *Connection QJ* 19 (2020), no. 2, 49, www.jstor.org/stable/26937609

Schmitz, Thomas: Covid-19 response and human rights - comments from the German and European perspective, in: Yusuf Saefudin, Muhammad Bagus Tri Prasetyo, Sinta Lidang Mutiara, Amardiyasta Galih Pratama (editors), *Proceedings of the 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*, Purwokerto, 03.-04.11.2020, 2020, p. 277 ff., www.atlantis-press.com/proceedings/icolgas-20/125948288

Starck, Christian: State Duties of Protection and Fundamental Rights, *PER/PELJ* 3 (2000) no. 1, <https://journals.assaf.org.za/per/article/view/2882>

See further, as examples for a thorough proportionality test, Federal Constitutional Court, order of 19.11.2021, federal emergency break I, *BVerfGE 159, 223* (297 ff., 351 ff.), English translation at www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/11/rs20211119_1bvr078121en.html (no. 166 ff., 274 ff.), on the curfew-like stay at home orders and the contact restrictions, and Federal Constitutional Court, order of 19.11.2021, federal emergency break II, *BVerfGE 159, 355* (405 ff.), English translation at www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/11/rs20211119_1bvr097121en.html (no. 109 ff.), on school closures. See for a general compendium of relevant German jurisprudence *Palser, Steffen; Schlege, Uwe P.; Möller, Axel a.o.*: Über 750 Gerichtsentscheidungen zum Coronavirus. Rechtsprechung rund um die Coronavirus-Pandemie [More than 750 Court Decisions on the Coronavirus. Jurisprudence related to the Coronavirus Pandemic], part 1 and 2, www.etl-rechtsanwaelte.de/aktuelles/erster-gerichtsentscheidungen-zum-coronavirus, and [/weitere-gerichtsentscheidungen-zum-coronavirus](http://www.etl-rechtsanwaelte.de/weitere-gerichtsentscheidungen-zum-coronavirus), 28.12.2021 and 06.01.2022.

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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*