

# District Court Weimar

Judgment of 11.01.2021, Az. 6 OWi - 523 Js 202518/20

German to English translation by Gary-leonard: Collis

Determination:

The Defendant is acquitted. The state treasury shall bear the costs of the proceedings and the necessary expenses of the Defendant.

Reasons:

I.

On April 24th, 2020 the Defendant stayed in the evening hours with at least seven other people in the backyard of the house X-Street 1 in W. to celebrate the birthday of one of the participants. The eight people involved were spread across seven different households. These findings are based on the credible information provided by the Defendant in the main hearing and the read out police report.

II.

This behavior on the part of the Defendant violated Section 2, Paragraph 1 and Section 3, Paragraph 1 of the Third Thuringian Ordinance on Measures Required to Curb the Spread of the Coronavirus SARS-CoV-2 (3rd ThürSARS-CoV-2 Measurement Regulation) of April 18 .2020 in the version dated April 23, 2020. These standards were as follows.

Section 2 (1): Being in public space is only permitted alone, with members of your own household and, in addition, at most with one other person outside the household.

Section 3 (1): Events, assemblies within the meaning of Section 1 of the Assembly Act in the version of November 15, 1978 (Federal Law Gazette I, p. 1789) in the currently applicable version; Demonstrations, gatherings and other gatherings with more than two people are prohibited with the exception that they are members of the same household and that at most one person outside the household is added. This also applies to meetings in church buildings, Mosques and synagogues as well as in worship rooms of other religious societies and ideological communities. Section 2 (2) 3rd ThürSARS-CoV-2-Eind MaßnVO; regulates exceptions to the prohibition according to Section 2 (1); for reporting by media representatives, the exercise of certain professional activities outdoors and the use of local public transport and motor vehicles, Section 3 (1) 2-4; regulated exceptions to the prohibition according to Section 3 Paragraph 1; for certain types of events, (public) meetings in closed rooms and in the open air, church services and other religious gatherings, funeral ceremonies and marriages. None of these exceptions are relevant here. This violation constitutes an administrative offense in accordance with Section 14 Paragraph 3 No. 2 and No. 3 of the 3rd ThürSARSCoV-2-MaßnVO i. V. with Section 73 Paragraph 1a No. 24 in conjunction with V. m. Section 32 sentence 1 IfSG. The person concerned was nevertheless acquitted for legal reasons, because Section 2 Paragraph 1 and Section 3 Paragraph 1 of the 3rd ThürSARS-CoV-2-Measurement Regulation, are unconstitutional and thus void.

The court itself had to decide on the constitutionality of the norms, because according to the established case law of the Federal Constitutional Court (fundamentally BVerfGE 1, 184 (195ff)) the submission obligation according to Art. 100 Abs. 1 GG; only applies to formal laws of the federal and state governments but also applies to material laws such as ordinances. Each court has to decide for itself whether the law is compatible with the constitution.

III. Section 2, Paragraph 1 and Section 3, Paragraph 1 of the 3rd ThürSARS-CoV-2-Measurement Regulation are unconstitutional for formal reasons, as the provisions that deeply affect fundamental rights are not covered by the statutory basis of authorization in the Infection Protection Act (IfSG).

- I. Pursuant to Article 80, Paragraph 1, Sentence 1 of the Constitution, the executive can be empowered by law to issue statutory instruments. According to Article 80, Paragraph 1, Sentence 2 of the Constitution, the content, purpose and extent of the authorization granted must be determined in the law. The Federal Constitutional Court has the resulting requirements for an empowering law in permanent case law with three mutually complementary concretization formulas, the so-called self-decision formula (the legislature itself has to decide which questions should be regulated by the statutory ordinance, which limits of standardization are set and what goal they are to serve; BVerfGE 2, 307 (334)), the program formula (the law must be able to determine which legislative program is to be implemented under ordinance; BVerfGE 5, 71 (77)) and the predictability formula (the Citizens must comply with the empowering that one can see in which cases and with what tendency the authorization is used and the content of the ordinance; BVerfGE 56, 1 (12)) is further explicated. In addition, it has developed what is known as the doctrine of materiality on the question of the degree of certainty of the authorization. According to the doctrine of materiality, the legislature must make all essential decisions in fundamental normative areas, especially in the area of the exercise of fundamental rights - insofar as this state regulation is accessible at all - and may not delegate these to the executive (BVerfGE 142, 1 (109); BVerfGE 98, 218 (251); BVerfGE 116, 24 (58)). The more significant legal ordinances or other legal acts of the executive intervene in fundamental rights, the more precise and intensive the provisions of the authorizing law must be. The Federal Constitutional Court sees the requirements of Article 80, Paragraph 1, Sentence 2 of the Constitution and the doctrine of materiality as congruent (BVerfGE 150, 1 (100)). If the requirements of the materiality doctrine are not satisfied by the authorizing law with regard to certain norms of an ordinance, this leads to the unconstitutionality of the norms of the ordinance (BVerfGE 150, 1 (209) BVerfGE 136, 69 (92)).

The legal basis for the so-called general ban on contact in question is Section 32 IfSG i. V. m. Section 28 para. 1 sentence 2 IfSG in the version of March 27, 2020. The general clause of Section 28 Paragraph 1 Sentence 1 IfSG does not have to be used in this respect (see Kießling / Kießling IfSG, Section 28 marginal numbers 35, 44). Section 28 (1) sentences 1 and 2 IfSG in the version dated March 27, 2020 quote:

(Paragraph 1) If sick people, suspects of illness, suspects of contagion or who have been eliminated, or if it emerges that a deceased person was ill, suspected of being sick or who had eliminated the disease, the competent authority shall take the necessary protective measures, in particular those mentioned in Sections 29 to 31, insofar as, and for as long as it is necessary to prevent the spread of communicable diseases; In particular, it can oblige people not to leave the place where they are located or only under certain conditions or not to enter places or public places specified by it, or only under certain conditions. (Clause 2) Under the conditions of Clause 1, the competent authority can restrict or prohibit events or other gatherings of people and close bathing establishments or communal facilities mentioned in Section 33 or parts thereof. "Since under" Gatherings of people ", majorities of at least three people are included an internal reference, or in external brackets, are to be understood (Kießling, loc. cit., marginal no. 38f), Section 2 para. 1 and the prohibition of collecting in Section 3 para. 1 3rd ThürSARS-CoV-2-MaßnVO can be understood under the wording of Paragraph 28 (1) sentence 2 IfSG subsume, however, for an encroaching measure such as a general ban on contact, Article 28 (1) sentence 2 IfSG is not a basis for authorization that meets the requirements of the materiality theory. A general ban on contact at least poses the question of the effectiveness of the guarantee of human dignity must be postponed at this point and is discussed under IV - a serious interference with the general freedom of action according to Article 2, Paragraph 1 of the Constitution, but also in the assembly, association and religion -, freedom of occupation and artistic freedom, not only because it addresses all citizens, regardless of whether they are suspected of illness or infection i. S. v. Section 28 Abs. 1 S. 1 IfSG or are not. By forbidding all citizens to come together with more than one person outside the household, although this is not only for the public space (Section 2 Paragraph 1 3rd ThürSARS-CoV-2-Measurement Regulation), but in accordance with Section 3 Paragraph 1 3. ThürSARS-CoV-2- Measurement Regulation also applied to private

residence, the fundamental rights of freedom are affected. The general ban on contact inevitably entails further restrictions on fundamental rights. So it is only logical that under the application of a general ban on contact, establishments of all kinds (Section 5 3rd ThürSARS-CoV-2-MaßnVO), retail stores, accommodation establishments (Section 6 3rd ThürSARS-CoV-2-MaßnVO) and restaurants (Section 7 3rd ThürSARS-CoV-2-MaßnVO) can also be closed or at least limited.

As a prerequisite for a general ban on contact before the creation of Section 28a IfSG with the law of November 18, 2020, the legislature only stipulated in Section 28 (1) IfSG that sick people, suspects, contagions etc. of a communicable disease were identified and that the measure only “As far as and as long as it is necessary to prevent the spread of the disease” may be made, whereby the latter is no more than an explicit reference to the principle of proportionality, which is already applicable. This only regulates the absolute minimum requirements. In this form, the law can only take individual measures such as the closure of (individual) bathing establishments mentioned in Section 28 (1) sentence 2 IfSG, but not a general ban on contact. Insofar as a general ban on contact can be constitutional at all (for more information on this under IV. And V.), at least a precise regulation of the arrangement requirements in the sense of a precise specification of the necessary risk situation would be required, but more specific regulations would also be necessary on the legal side (cf. Kießling, loc. Cit. Margin number 63; paper on freedom of rights in times of the pandemic, DRiZ, 2020, 180; baker, Corona in Karlsruhe, Verf(colour)Blog of March 25, 2020, <https://verfassungsblog.de/corona-in-karlsruhe-ii/> ; Möllers, Parliamentary self-empowerment in the shadow of the virus, VerfBlog v. March 26, 2020, <https://verfassungsblog.de/parlamentarischeselbstentmaechtigung-im-zeichen-des-virus/>

- II. In the meantime, there is broad consensus in jurisprudence and literature that Section 28 IfSG does not meet the requirements of the materiality doctrine with regard to the far-reaching encroachments on fundamental rights, including a ban on contact through the various corona regulations of the states. In the meantime, the legislature has tried to react to this by inserting Section 28a IfSG. However, in order to avoid the otherwise inevitable rejection of the ordinances, the case law has often pointed out that it is recognized that in the context of unforeseen developments for overriding reasons of the common good, unacceptable serious regulatory gaps for a transitional period on the basis of general clauses may be necessary and in this way to temporarily enable even very intrusive measures that would require special regulation (example: OVG NRW, decision of April 6, 2020 - 13 B 398 / 20.NE -, juris, Rn. 59 with reference to OVG NRW, judgment of July 5, 2013 - 5 A 607/11 juris, Rn. 97 ff .; Saarl. OVG, judgment of September 6, 2013 - 3 A 13/13 -, juris, Rn. 77 ff .; VGH Bad.-Württ., Judgment of July 22, 2004 - 1 S 2801/03 juris, Rn. 30; BVerfG, decision of November 8, 2012 - 1 BvR 22/12 -, juris, Rn. 25; BVerwG, decision from January 31, 2019 - 1 WB 28.17 - juris, Rn. 35; Bethge, curfew, VerfBlog v. March 24, 2020). These prerequisites exist because the corona pandemic is such an unprecedented event that the legislature could not be required to have made the necessary regulations in advance. There is also an urgent need for action, which would require temporary recourse to the general clause under infection protection law, to close serious gaps in protection that would no longer be justifiable if the opposing constitutional positions were weighed up (OVG NRW, decision of April 6, 2020 - 13 B 398 / 20.NE -, juris, para. 61).

The longer the restrictions on freedom in the Corona crisis lasted, the question was increasingly discussed in case law whether the “transition period” had not already expired [cf. for example BayVGH, decision of October 29, 2020 - 20 NE 20.2360 -, juris, which devotes a lot of space to this question and already at one point at least implicitly affirms it (margin No. 28 IfSG; were possibly still sufficient to cope with the danger situation that arose with an unprecedented pandemic ... **does not require a final decision at this point** ... "(emphasis added), then with the argument that the Bavarian state parliament has now called on the state government I have to work for the creation of specific authority norms in the IfSG, in the end to bring the question back into limbo and refrain from rejecting the challenged norm.]

- III. It can be irrelevant here whether the relativization of the validity of the doctrine of materiality made in this way is to be brought into line with the case law of the Federal Constitutional

Court (rejecting e.g. Möllers, op. Cit .: "Should we emerge from the crisis with the insight that fundamental norms of the division of labour between Parliament and government ... are temporarily subject to an unwritten constitutional emergency condition, that would be fatal. "), It should only be pointed out in this regard that the only decision of the Federal Constitutional Court cited in this context, the decision of 08.11.2012 - 1 BvR 22 / 12 -, can hardly be cited as evidence, since in this decision it was only left unopposed that the lower courts used the general police clause in proceedings for interim legal protection as a sufficient legal basis for a measure that may require a detailed authorization basis it would have considered, the decision on the question of the legal basis was thus transferred to the main proceedings. This decision does not say that legal loopholes can be closed by the executive under certain conditions through the application of general clauses and insofar as the requirements of the materiality theory are temporarily suspended.

Insofar as intervention-intensive measures, which in themselves require a special regulation, should only be permissible with recourse to general clauses in the context of "unforeseen developments", this requirement is not met here. As early as 2013, the Bundestag had a risk analysis prepared in cooperation with the Robert Koch Institute on a pandemic caused by a "Virus Modi-SARS", in which a scenario with 7.5 million (!) Deaths in Germany over a period of three Years and anti-epidemic measures were discussed in such a pandemic (Bundestag record 17/12051). The legislature could therefore have checked the regulations of the Infection Protection Act with regard to such an event, which was considered at least to be "conditionally probable" (probability of occurrence class C) and, if necessary, adjusted it.

In addition - and this argument is more important - that on April 18, 2020, the day of the enactment of the 3rd ThürSARS-CoV-2 Measurement Regulation, neither in Germany as a whole, nor in Thuringia, was there an epidemic situation, in view of which it was without the taking of drastic measures by the executive branch with recourse to the infection protection law general clause or the special authorizations of Section 28 Abs. 1 S. 2 IfSG (which also does not meet the requirements of the materiality theory) would have resulted in "no longer justifiable gaps in protection". **There was no "epidemic situation of national significance"** (Section 5 (1) IfSG), although the Bundestag has determined this with effect from March 28, 2020.

This assessment is based solely on the data published by the Robert Koch Institute:

- The peak of new COVID-19 cases (onset of illness = onset of clinical symptoms) was reached on March 18, 2020. This results from a 7 graph that has been published daily in the situation reports of the Robert Koch Institute since April 15, 2020 and which shows the development of new cases over time (e.g. management report of April 16, 2020, p. 6, Fig. 6). If you subtract the average incubation time of 5 days according to the Robert Koch Institute, the day of the peak of the new infections results on March 13th, 2020. At the time the lockdown began on March 22nd, 2020, the number of new infections had been falling for 10 days. The only restriction to be noted is that the Robert Koch Institute's determination of the course of new illnesses is subject to uncertainty insofar as it is based solely on the reported positive tests (and either the reported onset of the disease or - if not known - the estimated Onset of disease) and the number of tests performed was not constant. But since the weekly test numbers were increased from the 11th calendar week (09-15.03.) To the 14th calendar week - jumped from the 11th to the 12th calendar week, then only moderately – one would be expect a distortion on the back of the peak of the curve of new cases, it would have been registered "late" and could in reality have been a little before 03/18/2020. However, this point can be left open here, as it would only reinforce the present argument.
- Accordingly, there was no exponential increase in new infections before the lockdown. Although the number of positive tests increased from 7,582 in the 11th calendar week (09-15 March) to 23,820 in the 12th calendar week (16-22 March) and thus by 214%, this increase was primarily due to an increase in Test numbers from 127,457 (11th week) which reduced by 173% to 348,619 (12th week) (management report from April 15, 2020, table 4, p. 8) The proportion of positive tests in the total tests (so-called positive rate) only rose from 5.9% to 6.8%, which corresponds to an increase of only 15%.
- As can be seen from the Epidemiological Bulletin 17/2020 of the Robert Koch Institute, published on April 15, 2020, the effective reproduction number R, according to the

calculations of the RKI, already fell below value 1 on March 21, 2020  
([https://edoc.rki.de/bitstream/handle/176904/6650.2/17\\_2020\\_2.Artikel.pdf?sequence=3&isAllowed=y](https://edoc.rki.de/bitstream/handle/176904/6650.2/17_2020_2.Artikel.pdf?sequence=3&isAllowed=y))

and then remained approximately at value 1. With minor fluctuations, according to the explanations of the Robert Koch Institute (explanation of the estimate of the time-varying number of reproductions  $R$ ,

[https://www.rki.de/DE/Content/InfAZ/N/Neuartiges\\_Coronavirus/Projekte\\_RKI/RWert-Erlaeuterung.pdf?\\_\\_blob=publicationFile](https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Projekte_RKI/RWert-Erlaeuterung.pdf?__blob=publicationFile))

the number of reproductions reported on a certain day before the new infections in the period 13 to 8 days describes this day, this time delay must still be deducted, so that afterwards the  $R$  value (with a correction by 10 days) was already below 1 on March 11th, which corresponds to the above finding at the height of the new infections (see Kuhbandner Why the validity of the lockdown has not been scientifically proved,

<https://www.heise.de/tp/features/Warum-die-Wirksamkeit-des-Lockdownswissenschaftlich-nicht-bewiesen-ist-4992909.html?seite=all.>)

- Since the number of new infections had been falling since mid-March, it is not surprising that at no point in spring 2020 was there a specific risk of overloading the health system with a "wave" of COVID-19 patients. As can be seen in the DIVI Intensive Register, which was newly established on March 17, 2020, at least 40% of the intensive care beds in Germany were continuously free in March and April. In Thuringia, 378 intensive care beds were reported as occupied on April 3rd, 2020, 36 of them with COVID-19 patients. There were 417 (!) Free beds. On April 16, 2020, two days before the ordinance was issued, 501 intensive care beds were reported as occupied, 56 of them with COVID-19 patients. On the other hand, there were 528 (!) Free beds.

(<https://www.intensivregister.de/#/aktuelle-lage/zeitreihen>)

The increase in the total number of beds can be explained by the fact that initially not all clinics reported to the DIVI intensive register, only from 25 can it be assumed that almost all clinics reported on April 1st.) The maximum number of reported COVID-19 patients in Thuringia was 63 in spring (April 28th), so the number of COVID-19 patients was never in a range at which an overload of the health system would have been feared.

- This assessment of the actual dangers posed by COVID-19 in spring 2020 is confirmed by an evaluation of billing data from 421 clinics of the Quality Medicine Initiative (<https://www.initiative-qualitaetsmedizin.de/effekte-dersars-cov-2-pandemie-auf-die-in-patient-supply-in-the-first-half-year-2020>), which came to the conclusion that the total number of SARI cases (SARI = severe acute respiratory infection) treated in Germany in the first half of 2020 was 187, that was 174 Cases even lower than in the first half of 2019 (221,841 cases), although this also included the COVID-related SARI cases. According to this analysis, the number of intensive care cases and ventilation cases was also lower in the first half of 2020 than in 2019.

- The death statistics also support this finding. According to a special evaluation by the Federal Statistical Office

(<https://www.destatis.de/DE/Themen/GesellschaftUmwelt/Bevoelkerung/Sterbefaelle-Lebenserwartung/Tabellen/sonderauswertsterbefaelle.html?nn=209016>),

484,429 people died in Germany in the first half of 2020, in the first of 2019 there were 479,415, 2018 501,391, 2017 9,488,147 and 2016 461,055 people. In both 2017 and 2018 there were more deaths in the first half of the year than in 2020 (for further developments see CoDAG report No. 4 of the Institute for Statistics at Ludwig Maximilians University in Munich from December 11, 2020,

<https://www.covid19.statistik.unimuenchen.de/pdfs/bericht-4.pdf>).

- The horror scenarios that significantly influenced the decision on the lockdown in spring (more on this under V.1.) Were also based on false assumptions about the lethality of the virus (so-called infection fatality rate = IFR) and the question of the population existing, or missing basic immunity to the virus. The contagiousness, on the other hand, was not assessed as dramatically higher than that of an influenza virus from the start (the Robert Koch Institute gives the basic reproduction number  $R_0$  of SARS-CoV-2 as 3.3 - 3.8, in the case of influenza it is, according to the majority of information, at 1 - 3, in measles 12 - 18). According to a meta-study by the medical scientist and statistician John Ioannidis, one of the most cited scientists in the world, published in a WHO bulletin in October, the

median mortality is 0.27%, corrected 0.23% **and is therefore no higher than that of moderate Influenza epidemics**

([https://www.who.int/bulletin/online\\_first/BLT.20.265892.pdf](https://www.who.int/bulletin/online_first/BLT.20.265892.pdf)).

The median age of those who died from or with SARS-CoV-2 in Germany is 84 years (see RKI situation report of January 5, 2021, p. 8). And contrary to the original assumptions, which assumed a lack of immunity to the "new" virus, which is why 60-70% of the population would have to be infected to achieve herd immunity, up to 50% of the population would, through exposure to SARS-CoV-2, gain a basic immunity through cross-reactive T cells that arose from infections with previous corona viruses (Doshi, Covid-19: Do many people have pre-existing immunity?, <https://www.bmj.com/content/370/bmj.m3563>, also: SARS-CoV-2: Is the basic immunity greater than assumed?, DAZ.online from October 14, 2020, <https://www.deutsche-apotheker-zeitung.de/news/artikel/2020/10/14/sars-cov-2-is-the-basic-immunity-higher-than-assumed>).

Since after all there was no situation that would have led to "unacceptable gaps in protection" without drastic measures, Section 2 Paragraph 1 and Section 3 Paragraph 1 3rd ThürSARS-CoV-2-Measurement Regulation, also if one follows the legal opinion that in such a situation, recourse to general clauses is unconstitutional because of a violation of the requirements of the materiality theory.

- IV. The general ban on contact or the ban on gathering in accordance with Section 2, Paragraph 1 and Section 3, Paragraph 1 of the 3rd ThürSARS-CoV-2-Measurement Ordinance is unconstitutional for material reasons, because it protects human dignity, which is guaranteed as inviolable in Article 1 (1) of the Basic Law of the injured.

Inviolability of human dignity means that a violation of human dignity cannot be justified with other fundamental values of the constitution; the requirement of respect for human dignity is categorical. This does not mean, however, that the content of this requirement of respect, that which is owed to the dignity of the individual, could be determined independently of the specific situation. In particular, consideration for the dignity and life of others, shapes the content of the requirement of respect (Maunz / Dürig / Herdegen, GG, Art. 1 Para. 1 Rn. 46). B. physical coercion or deprivation of liberty in certain situations violate the dignity of the person concerned, but not in others. In the words of the Federal Constitutional Court: "As far as the principle of the inviolability of human dignity is concerned, everything depends on the determination of the circumstances under which it can be violated. This cannot be said in general, but only with regard to the specific case." (BVerfG NJW 1993, 3315). It remains undisputed that there are individual acts that represent a violation of dignity regardless of the purpose (finality) pursued with them. These include torture, genocide and mass displacement. In addition, there are certain actions that are injurious to dignity simply because of their finality, such as racial discrimination (Herdegen, op. Cit., Para. 47). Apart from these cases, it is always a matter of an overall evaluation. For this, the so-called object formula is often used by case law, according to which human dignity is affected if the material person is degraded to a mere object. This formula can only be operationalized to a limited extent insofar as it is not free from tautological elements. It can therefore only point the way in which cases of violation of human dignity can be found (BVerfG 30, 1 (25)). Pointing the way in this sense also appears to be an approach that conforms to the principle of human dignity as protection against criminal violations (Sachs / Höfling, GG Art. 1 margin number 18).

In relation to the present case, we observe the following results: A general ban on contact is a serious interference with civil rights. It is one of the fundamental freedoms of people in a free society that they can determine for themselves which people (provided they are willing) and under which circumstances they come into contact. The free encounter of people with one another for the most varied of purposes is at the same time the elementary basis of society. The state must refrain from any purposeful regulatory and restrictive intervention. The question of how many people a citizen invites to his home or how many people a citizen meets in public places to go for a walk, play sports, shop or sit on a park bench do not concern the state.

With the ban on contact, the state is attacking the foundations of society - albeit in good faith - by forcing physical distance between citizens ("social distancing"). Hardly anyone in Germany

could imagine in January 2020 that the state could forbid them to invite their parents to their home under the threat of a fine, unless the other members of their family were allowed to leave the house while so that others may enter. Hardly anyone could imagine that three friends could not be allowed to sit together on a park bench. Never before has the state thought of taking such measures to combat an epidemic. Even in the risk analysis "Pandemic by Virus Modi-SARS" (BT-Drs. 17/12051), which described a scenario with 7.5 million deaths, a general ban on contact (as well as curfews and the extensive shutdown of public life) was not considered. As anti-epidemic measures, in addition to quarantine of contact persons of infected people and isolation of infected people, only school closings, the cancellation of major events and hygiene recommendations are mentioned (BT-Drs. 17/12051, p. 61f).

Although it seems that in the months of the Corona crisis there was a shift in values with the result that processes that were previously regarded as absolutely exceptional are now perceived by many people as more or less "normal", which of course also includes the view of the Constitution has been changed, after what has been said there should be no doubt that with a general ban on contact, the democratic constitutional state is violating a right that has hitherto been taken for granted.

In addition, and as a separate aspect, it should be noted that the state, with the general ban on contact for the purpose of infection protection, treats every citizen as a potential threat to the health of third parties. If every citizen is viewed as a threat from whom others must be protected, he is also deprived of the opportunity to decide what risks he exposes himself, which is a fundamental freedom. Whether the citizen visits a café or a bar in the evening and accepts the risk of infection with a respiratory virus for the sake of sociability and *joie de vivre*, or whether she is more cautious because she has a weakened immune system and therefore prefers to stay at home, she is under the validity of a general ban on contact that is no longer a personal decision. The free subject, who takes responsibility for his own health and that of his fellow human beings, is suspended in this respect. All citizens are viewed by the state as a potential source of danger for others and thus as objects that have to be "distanced" by the state.

With the finding that the general ban on contact violates a prohibition and the citizen is treated as an object, it has not yet been decided whether this violates human dignity. In the context of the overall assessment, the question to be answered is whether there are fundamentally conceivable circumstances under which a general ban on contact could nevertheless be viewed as compatible with human dignity. Since a prohibition violation in the area of actions by the state that violates fundamental rights appears to be acceptable at best to avert a very exceptional emergency, this would only be acceptable in the event of a general health emergency - an impending collapse of the health system through overburdening, or the threat of deaths in completely different dimensions than those that occur regularly; outbreaks of flu - and only given if a substantial contribution to averting or limiting the state of emergency could be expected from the violation of fundamental rights. Neither was the case. It has already been shown that there was no general health emergency in Germany in spring. The fact that a general ban on contact is not expected to make a substantial contribution to positively influencing an epidemic is explained in more detail under V.

Under the actual circumstances, the state then violates the citizens' right to respect, which is marked with human dignity, with a general ban on contact.

- V. Insofar as the view that the norms in question violate human dignity is not followed, the norms in any case do not meet the requirement of proportionality.

The general ban on contact and the ban on gatherings encroach on the general ability to act in accordance with Article 2, Paragraph 1 of the Constitution and special fundamental rights. The examination can be limited here to the question of the proportionality of the interference with the general freedom of action, since if the proportionality of this interference is negative, the interference with the special fundamental rights (insofar as the interference does not go beyond the regulatory content of the ban on contact) are disproportionate.

1. Proportionality presupposes that an encroachment on fundamental rights pursues a legitimate goal, that the encroachment is suitable for promoting the achievement of the objective, that the encroachment is necessary because there is no more lenient means that is equally suitable, and that it is ultimately appropriate, i.e. is proportional in the strict sense. Initially, the only goal of the lockdown was to prevent the health system from becoming overloaded.

In the lockdown decision of March 22nd, 2020, the Federal Chancellor and the Prime Ministers of the federal states stated as the goal: "We must do everything to prevent an uncontrolled increase in the number of cases and to keep our health system efficient. The reduction of contacts is decisive for this."

(<https://www.bundesregierung.de/breg-de/themen/coronavirus/bessprechung-derbundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-vom-22-03-2020-1733248>).

In order to prevent the health system from being overloaded by an uncontrolled increase in the number of patients, the increase in new infections should be slowed down in order to spread the expected number of intensive care patients over a longer period of time ("flatten the curve"). This has also been the main goal of the Thuringian state government since the Thuringian Corona Containment Ordinance was passed on March 24th, 2020 and also the 3rd ThürSARS-CoV-2 Enimment Ordinance of April 18th, 2020, which once again advised the Federal Chancellor with the Prime Minister of the states on April 15, 2020, when it was decided to extend the lockdown. Since the spread of the virus was seen as inevitable, the initial aim was to keep the number of infections as low as possible. Only after it became clear that there would be no overloading of the health system, the mere minimization of the number of infections was increasingly named as the goal of the measures.

In order to understand the background to the lockdown decision, a strategy paper written by the Federal Ministry of the Interior in March entitled "How we get COVID-19 under control" is important (the classified paper is now publicly available on the Federal Ministry of the Interior's website

<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffnungen/2020/corona/szenarienpapier-covid19.html>).

In this paper, in a worst-case scenario, over a million deaths were forecast in Germany alone by the end of May 2020. In this scenario, the need for intensive care beds should, for the first time, exceed the number of beds available by April 9, 2020. The pandemic was described as the "greatest challenge since the end of the Second World War" - these are the words that the Chancellor used in her televised address on March 18, 2020, which suggests that the prognoses from the strategy paper played a decisive role in the decision on the lockdown. However, in March there were also contradictory statements by 14 renowned scientists - such as that of John Ioannidis, who pointed out in an article from March 17, 2020 that the data available so far could not support such scenarios (A fiasco in the making? As the coronavirus pandemic takes hold, we are making decisions without reliable data, StatNews 17.03.2020,

<https://www.statnews.com/2020/03/17/a-fiasco-in-the-making-as-the-coronavirus-pandemic-takes-hold-we-are-making-decisions-without-reliable-data/>).

Both goals - preventing overloading of the health system and minimizing infections - are basically legitimate goals of the legislator, but the proportionality test must be carried out separately for each goal. An isolated consideration of the general ban on contact to be assessed here from the other lockdown measures is hardly possible, but also not necessary, since the reduction of contacts represents the basic logic of lockdown. A general ban on contact must inevitably be accompanied by further measures such as the closure of facilities, since a general ban on contact in public and private spaces with simultaneous unrestricted opportunities for encounters in the cinema, theatre, concert, in sports facilities, in restaurants etc. would largely run empty.



2. Since it is considered sufficient for the suitability of a measure in the context of the proportionality test if it promotes the achievement of goals in any way, the general ban on contact can be viewed as appropriate with regard to both goals, since the reduction of contacts can undeniably contribute to the reduction of infections. (The question of the effectiveness of lockdowns has not yet been decided.)
3. In order to avoid overloading the health system, however, at the time of the adoption of the 3rd ThürSARS-CoV-2 Measurement Regulation, as already under III. 3. shows that the imposition of a general ban on contact and other lockdown measures are not required. However, since the legislator is to be given a margin of error, the question arises whether the state government at the time of the decree's scope of assessment came to a different assessment of the situation than the one presented here, and the order of a ban on contact (and other measures) to prevent overloading of the health system should be considered necessary.

In addition, it should be noted that the legislator must be expected to use the sources of knowledge available to him that can be evaluated by him in preparation for his decisions and to incorporate the knowledge gained in the decision-making process. Scope of assessment does not mean that the legislator would be allowed to "take one side" in the event of conflicting views and evaluations without exhausting his own knowledge. It also does not mean that, with reference to the fact that the Robert Koch Institute has been assigned a central position by the federal legislature in accordance with Section 4 IfSG in the assessment of the occurrence of infections, he can withdraw from the summarizing risk assessment contained in the daily situation reports and solely because of one Risk assessment for the health of the population as "high" or "very high" should consider drastic measures to be justified. The legislator bears full responsibility for the constitutionality of the ordinance he has issued and cannot delegate some of it to the Robert Koch Institute. In order to live up to this responsibility, he must - if necessary, of course with the help of professional expertise and advice - obtain his own expertise, which in the present case means that he is familiar with the data provided by the Robert Koch Institute and with data from other Sources that are accessible to him to deal with it.

Taking these requirements into account, the question of whether the legislator was allowed to consider the extension of the lockdown to be necessary to avert overloading of the health system must be answered with a clear "no". The data from the intensive care register was available to the regulatory authority; Regardless of this, he was able to query the situation in the Thuringian clinics without further ado and was very likely carried out. The data from the daily situation reports and the epidemiological bulletin 17/2020 of the Robert Koch Institute, already explained above, were also available to the prescribers. The graph of the course of the new illnesses was published for the first time in the situation report of April 15, 2020, and could therefore be taken into account by the regulator. Before that, the Robert Koch Institute had published a graph on the course of new cases for weeks, which was less precise because it did not estimate the onset of the disease in cases where the onset of the disease was not known, but instead used the reporting date (e.g. daily situation report from April 1st, 2020, p. 4, Fig. 3), but this graph also showed that the peak of new cases was reached in mid-March. The graph published on April 15, 2020 was therefore by no means surprising, but corresponded pretty much to what had been published for weeks in the situation reports on the course of the new cases. The regulator could then know that the number of new infections in Germany had been falling since mid-March. After that, there was no reason for him to believe that a wave of COVID-19 patients could still come to the Thuringian clinics. For this there should have been a trend reversal, of which there was no evidence whatsoever.

The regulator was also able to see from the data from the Robert Koch Institute that there was no evidence of the effectiveness of the lockdown decided on March 22, so that if the lockdown was lifted, a renewed increase in infections was not to be expected. Finally, it was also readily apparent to the legislator that even in the event of a renewed increase in new infections - contrary to the expectations resulting from

the previous course of the epidemic - due to the enormous number of free beds (528 free intensive care beds in 56 COVID-19 patients on April 16) there would still be enough time to react to the changed situation. Even if there was still a lack of confidence in the stability of the development despite the clear data situation, there was no reason for a precautionary extension of the lockdown. And last but not least, it should have given the state government food for thought and increased confidence in its own assessment of the situation that horror scenarios like the one from the strategy paper of the Federal Ministry of the Interior from March had clearly proved to be science fiction.

4. Insofar as the minimization of infections was pursued as an independent goal, regardless of the question of whether there was a threat of overloading the health system, the ban on contact is to be regarded as necessary with regard to this goal, since without a ban on contact the achievement of the goal will not be promoted in the same way could. But it is not proportionate in the strict sense.
  - a) To test proportionality in the narrower sense, the benefits of the measures and the costs, which are made up of the restrictions on freedom and their collateral damage and consequential costs, must be weighed against each other. For this, the advantages and disadvantages must be described, weighted and evaluated (Murswiek, Constitutional Problems of Combating Corona. Opinion for the Enquete Commission 17/2 "Corona pandemic" of the Rhineland-Palatinate State Parliament, p. 24, <https://dokumente.landtag.rlp.de/landtag/vorlagen/2-12-17.pdf>).
  - b) The benefit of the lockdown would be the number of prevented COVID-19 deaths and serious illnesses, whereby, precisely formulated. The question must be asked about the benefit that the legislature could legitimately expect at the time of the decree on April 18, 2020, taking into account its scope of assessment. It should be pointed out again that the regulator had to know that the number of new infections has been falling since mid-March, that the effective number of reproductions has fluctuated around 1 since the start of the lockdown on March 23, 2020, any positive effect that has already from three and a half weeks of Lockdowns was undetectable. The graph relating to the course of the new cases also showed an almost uniformly falling curve with no discernible gradation, so that an effect of the lockdown could not be read on it either. The data from the Robert Koch Institute gave no indication that the number of new cases could be significantly influenced by the extension of the lockdown with the regulation of April 18, 2020. The regulator could therefore only expect a very slight reduction in the number of new cases (and thus deaths). In fact, the update of the curve of new cases in the daily situation reports showed no recognizable effect of the extension of the lockdown even after April 18, 2020.

The fact that the lockdown has not had a measurable effect since March 23, is not surprising, as the WHO only admitted in a meta study published in October 2019 on the effectiveness of so-called non-pharmaceutical interventions (NPI) in influenza epidemics. The result was that there was little or no evidence at all for the effectiveness of all the measures investigated (closures of workplaces, quarantine, social distancing, etc.) (Non-pharmaceutical public health measures for mitigating the risk and impact of epidemic and pandemic influenza, [https://www.who.int/influenza/publications/public\\_health\\_measures/publication/en/](https://www.who.int/influenza/publications/public_health_measures/publication/en/)).

The court does not know whether this study was noted by the federal government or the state government prior to the decision on the lockdown, but given the seriousness of the consequences of the decision it could be expected that the available scientific knowledge on lockdowns or NPIs will be evaluated.

There are now several scientific studies that come to the conclusion that the lockdowns ordered in various countries during the corona pandemic were not

associated with a significant reduction in the number of illnesses and deaths. An observational study published in August in the journal *EClinicalMedicine* (Chaudhry, A country level analysis measuring the impact of government actions, country preparedness and socioeconomic factors on COVID-19 mortality and related health outcomes, <https://www.thelancet.com/action/showPdf?pii=S2589-5370%2820%2930208-X>), in which the 50 countries with the most registered cases of COVID-19 as of April 1st, 2020 are examined and data from publicly available figures for the period April 1st, 2020, came to the conclusion that the factors that correlate most strongly with the number of COVID-19 deaths in a country are the obesity rate, the mean age of the population and the extent of the income gap. On the other hand, no correlation could be established between the severity and duration of lockdowns and the number of COVID-19 deaths, between border closings and COVID-19 deaths and between mass tests carried out and COVID-19 deaths, which means there is no, or at least weak causality reports. These results were supported by a study published in November (De Laroche Lambert, Covid-19 Mortality: A Matter of Vulnerability Among Nations Facing Limited Margins of Adaptation <https://www.frontiersin.org/articles/10.3389/fpubh.2020.604339/full>), in which the influence of various factors on the number of COVID-19 deaths was examined for 160 countries, and most recently confirmed by a study by Bendavid / Ioannidis (Bendavid / Ioannidis, Assessing mandatory stay-at-home and business closure effects on the spread of COVID-19, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/eci.13484>; references to further studies at Kuhbandner, why the effectiveness of the lockdown has not been scientifically proven).

The lockdown, which was initially only ordered for one month ("breakwater lockdown") and has now been extended twice, evidently once again proves that lockdowns do not significantly influence the infection process and especially the number of fatal cases. According to the current thesis paper of the Schrappe group of authors (thesis paper 7 of January 10, 2021, p. 5, 24f, [http://www.matthias.schrappe.com/index\\_htm\\_files/Thesenpap7\\_210110\\_endfass.pdf](http://www.matthias.schrappe.com/index_htm_files/Thesenpap7_210110_endfass.pdf)), the lockdown policy is especially for the vulnerable groups, for which COVID-19 is the greatest danger, has no effect. The aforementioned CoDAG report No. 4 by the Institute for Statistics at LMU Munich comes to the same conclusion.

- c) With regard to the costs of the lockdown, it must first be stated again that the restrictions on freedom associated with the lockdown were the most comprehensive and far-reaching restrictions on fundamental rights in the history of the Federal Republic. This already shows that the restrictions on freedom are so important that they can at best be justified if the danger they were used to combat, was exceptionally great (Murswiek, op. Cit., P. 33) and through the lockdown measures at the same time, a great positive effect could be expected, but this was not the case after what has been stated above.

In addition to the immediate effect of the restrictions on freedom, there is also collateral damage and consequential damage. These can be differentiated (cf. Murswiek, loc. Cit., Pp. 33-38) as follows:

- aa) Damage that can be assessed economically
- 1) Loss of profits / losses of companies / craftsmen / freelancers that are the direct consequences of the restrictions on freedom addressed to them
  - 2) Loss of profits / losses of companies / craftsmen / freelancers that are indirect consequences of the lockdown measures (e.g. loss of

profits by suppliers of direct 19 bar Affected companies; loss of profit resulting from the interruption of supply chains and e.g. loss of production; loss of profit resulting from travel restrictions)

- 3) Loss of wages and salaries due to short-time work or unemployment
- 4) Bankruptcies / destruction of livelihoods
- 5) Follow-up costs of bankruptcies / destruction of livelihoods

In the publication Murswiek (op. Cit., P. 33f): "Most of this damage can be determined fairly precisely. They are certainly gigantic overall. You can get an idea of their magnitude if you keep in mind the sums of money the state is feeding into the economic cycle as corona aid. The "Corona protective shield" approved by the federal government includes EUR 353.3 billion in grants and an additional EUR 819.7 billion in guarantees, a total of over EUR 1 billion. As the federal government says, it is the largest aid package in the history of Germany. There is also aid from the federal states. Since the state aid largely comprises loans or loan guarantees, they are not necessarily offset by correspondingly high losses in the private sector. On the other hand, the private losses will in any case be significantly greater than the state compensation or aid money paid as lost grants. Never before in the history of the Federal Republic of Germany has economic damage of this magnitude been caused by a government decision. As far as the assessment of the damage to the private sector and private households is concerned, it must be taken into account that the losses have been partially compensated for by state benefits or are still being compensated for. The state benefits thus reduce the economic damage suffered by private economic agents. However, they do not reduce the overall economic damage, because they are a burden on public budgets and thus ultimately on taxpayers. These costs should not be ignored when calculating the disadvantages of the lockdown. "

#### bb) Life and health of people in Germany

- 1) The increase in domestic violence against children and women
- 2) Increase in depression as a result of social isolation
- 3) Anxiety psychoses / anxiety disorders as a result of corona fear
- 4) Other mental disorders / Nervous overload due to family / personal / professional problems as a result of the lockdown
- 5) Increase in suicides, for example as a result of unemployment or bankruptcy
- 6) Health impairments due to lack of exercise
- 7) Failure to operate, and inpatient treatment because for every hospital such bed, 20 were reserved for corona patients
- 8) Refrain from operations, inpatient treatment, visits to the doctor because patients fear infection with Covid-19

In any case, these consequences should have been roughly estimated before the decision on the lockdown. For the proportionality test, it is sufficient in the present case if individual highlights are examined for explanation:

Regarding 1): For Berlin, the Senate Department reported an increase in child abuse of 23% in the first half of 2020 (violence is escalating more and more frequently in Berlin. Publication; Der Tagesspiegel of July 2nd, 2020, <https://www.tagesspiegel.de/berlin/corona-krise-trifft-frauenund-kinder-besonders-gewalt-eskaliert-in-berlin-immer-haeufiger/25970410.html>). According to a representative survey study (Steinert / Ebert, violence against women and children in Germany during COVID-19-related exit restrictions, [https://drive.google.com/file/d/19WqpbY9nwMNjdqO4\\_FCqglfYyLJmBn7y/viiew](https://drive.google.com/file/d/19WqpbY9nwMNjdqO4_FCqglfYyLJmBn7y/viiew)),

during the lockdown in spring Around 3 percent of women in Germany were victims of physical violence at home, 3.6 percent were raped by their partner, and children were violently punished in 6.5 percent of all households. Regarding 5): The number of suicides that are statistically recorded in Germany is not yet available for 2020, but the following notification from the Berlin Senate Interior Administration provides an indication of a possibly significant increase in suicides: Until October, the Berlin fire brigade under the keyword "Almost strangled / hanging, now conscious with breathing difficulties" (mission code 25D03) 294 missions, in 2018 there were only seven and in 2019 only three such missions (possible suicide: number of rescue missions is increasing massively. Berliner Zeitung from November 10th, 2020, <https://www.berlinerzeitung.de/news/berliner-feuerwehr-zahl-der-einsaetze-wegen-moeglich-suiziden-stensmassiv-an-li.117723>)

Regarding 7): During the lockdown in spring, more than 908,000 operations were cancelled in Germany, not only so-called elective operations such as the implantation of knee and hip joint prostheses, knee joint arthroscopy, cataract operations, etc., but also 52,000 cancer operations (Almost one million operations were cancelled in Germany. Publication; WELT of May 29, 2020, <https://www.welt.de/wirtschaft/article208557665/Wegen-Corona-In-Deutschland-wurden-908-000-OPs-aufgeschoben.html> ). According to a meta-analysis published in the British Medical Journal in November (Hanna, Mortality due to cancer treatment delay: systematic review and meta-analysis, BMJ 2020, 371, <https://www.bmj.com/content/371/bmj.m4087>), a four-week postponement of cancer therapy increases the risk of death by six to 13 percent, depending on the type of cancer, a postponement of eight weeks for breast cancer increases the risk of death by 13 percent, and a postponement of twelve weeks by 26 percent. Without being able to quantify this here, there can be no doubt that the cancellation of operations also led to deaths in Germany.

Regarding 8): In a study by the Hochrhein Waldshut-Tiengen Clinic (Kortüm, Corona Independent Excess Mortality Due to Reduced Use of Emergency Medical Care in the Corona Pandemic: A Population-Based Observational Study, <https://www.medrxiv.org/content/10.1101/2020.10.27.20220558v1>) the excess mortality in the district of Waldshut (170,000 inhabitants) was examined in April 2020. An average of 165 people died there in April from 2016 to 2019; in 2020 there were 227, which corresponds to an excess mortality of 37 percent. Of the 62 additional deaths, only 34 could be associated with Corona, 28 and thus 45% of the excess mortality were due to other causes of death. The study authors attribute these cases to the reduced use of medical emergency structures, which is also supported by the fact that more than twice as many people were found dead alone at home than the comparative average. There are no similar studies for other regions in Germany in the period 1.-47. Calendar week with the average of the years 2016-2019 and the number of people who died with or from the SARS-CoV-2 virus shows that only 51.1% of excess mortality is due to people who died with or from the SARS-CoV-2 virus ( Kuhbandner, About the ignored collateral damage from lockdowns, <https://www.heise.de/tp/features/Ueber-die-ignorierten-Kollateralschaeden-von-Lockdowns4993947.html?seite=all>).

This does not mean that all other excess mortality deaths can be counted as collateral damage from the lockdown, in particular the high excess mortality in the 33rd calendar week is probably due to a heat wave. Nevertheless, these numbers give a clear indication of deaths that can be traced back to failure to use, or delayed use of medical care for fear of corona infections.

cc) Non-material damage:

- 1) Loss of education and impairment of the psychosocial development of children due to the absence or restriction of school lessons or the closure of other educational institutions
- 2) Loss of cultural stimuli / experiences due to the closure of theatres, concert or opera houses and many other cultural institutions
- 3) Loss of musical development opportunities through prohibitions that prevent making music together in orchestras or choirs
- 4) Loss of community experiences / personal social togetherness through prohibition of gatherings in associations, prohibition of events, prohibition of gatherings, closure of pubs, etc.
- 5) Restriction of social development opportunities for children by closing kindergartens
- 6) Isolation of children in apartments without contact with other children by closing schools, kindergartens and playgrounds

Regarding 1) School is not just a place for imparting knowledge, but a place for social learning. The school closures mean that social learning is practically completely eliminated, and the isolation of children and young people is encouraged. Home schooling cannot be done by parents in a migrant or less educated environment. The social division in society is therefore intensified. The learning of the German language by children from migrant families is also massively disrupted. There are now a large number of reports from authorities on these problems (for example: "What is the status in German language? It's catastrophic for a third of the students"; in publication; WELT from January 11, 2021, <https://www.welt.de/politik/germany/plus224000152/closed-schools-what-that-means-children-in-social-hot-spots.html>), scientific studies are - as far as can be seen - still pending.

dd) Follow-up costs:

- 1) Corona aid paid by the federal and state governments to economic entities
- 2) Tax losses as a result of the restriction of economic activity due to the lockdown
- 3) Short-term work benefits and unemployment benefits that had to be paid as a result of the lockdown
- 4) Social assistance for as a result of the Lockdown for people dependent on social assistance. The "Corona protective shield" alone, a legislative package passed on March 27, 2020, had a volume of 1.173 trillion euros (353.3 billion euros in aid, 819.7 billion euros in guarantees. The last federal budgets had one Volume of 356.4 billion euros (2019) and 346.6 billion euros (2018). Even if the guarantees given are not "lost" per se, the total burdens should reach the level of several federal budgets (Publication; Murswiek, loc. Cit., P. 38).

ee) Health and economic damage in countries of the Global South:

The spring lockdown in Thuringia was part of a lockdown made up of 16 lockdowns from the federal states, which encompassed Germany and which in turn must be seen in connection with the lockdown policy in almost all countries in the western world. It is therefore justified and necessary to ask about the effects of this policy on the countries of the Global South. The collateral damage that has already occurred or is still to be expected is enormous. The reasons are; the interruption of anti-tuberculosis programs, the interruption of vaccination programs against childhood diseases,

interruptions in the food supply due to the breakdown of supply chains, etc. The UN expects more than 10,000 children to starve per month in the first pandemic year (more than 10,000 children starve to death because of Corona every month, RP Online from 07/28/2020, [https://rp-online.de/panorama/coronavirus/mehr-als10000-kinder-verhungern-jeden-monat-krise-durch-corona-verschaerft\\_aid-52446949](https://rp-online.de/panorama/coronavirus/mehr-als10000-kinder-verhungern-jeden-monat-krise-durch-corona-verschaerft_aid-52446949)).

According to Federal Development Minister Müller, an additional 400,000 victims of malaria and HIV and half a million tuberculosis deaths as a result of the lockdown are expected in Africa alone (more corona victims from lockdown than from the virus: in Africa the crises have intensified massively, Berliner Zeitung from 01.10 .2020, <https://www.berliner-zeitung.de/gesundheitspolitik/mehr-tote-durch-lockdown-als-durch-corona-in-afrika-hat-die-pandemie-die-krisenmassiv-verschaerft-li.108228> ).

According to an article by John Ioannidis (Global perspective of COVID-19 epidemiology for a full-cycle pandemic, <https://onlinelibrary.wiley.com/doi/full/10.1111/eci.13423>), 1.4 million additional deaths from tuberculosis are to be feared in the next 5 years. In the long term, the excess mortality due to the measures will likely be significantly higher than the number of COVID-19 deaths.

Since the lockdown policy in Thuringia is part of a lockdown policy that affects almost all western industrialized countries - albeit a very small one, of course - these damages are, insofar as they do not result from political decisions for which the states concerned are responsible, but an indirect consequence of the Lockdowns in the industrialized countries are also proportionally attributable to it and therefore generally included in the proportionality test.

- d) Having said that, there can be no doubt that the number of deaths caused by lockdown policy measures alone is many times that of deaths prevented by lockdown. For this reason alone, the standards to be assessed here do not meet the requirement of proportionality. Added to this are the direct and indirect restrictions on freedom, the gigantic financial damage, the immense damage to health and ideal. The word “disproportionate” is too colourless to even suggest the dimensions of the event. The lockdown policy pursued by the state government in the spring (and now again), of which the general ban on contact was (and is) an essential part, is a catastrophic wrong political decision with dramatic consequences for almost all areas of people's lives, for society, for the state and for the countries of the Global South.