

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: Germany

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1 Measures taken by government/public authorities impacting on specific freedoms

Please briefly describe the main developments, between 1 September – 31 October 2020, in the legal framework and related measures adopted in your country in response to the Coronavirus pandemic with respect to emergency laws/state of emergency, freedom of assembly and freedom of movement.

1.1 Emergency laws/states of emergency

In **Germany**, until 31 October 2020, no state of emergency has been declared. The application of Art. 35 Paragraphs 2 and 3 and Art. 91 of the *Grundgesetz*¹, which would form the basis for a state of emergency, is not perceived as a possibility, for they are aiming at combating natural or otherwise caused disasters or the fight against insurrections.² Government action to fight infectious diseases falls under the 2001 Infection Protection Law (Infektionsschutzgesetz, IfSG).³ The power to adopt the measures stipulated in the Infectious Diseases Act lies generally with the authorities of the federal states (*Länder*). However, the Bundestag declared an ‘epidemic situation of national relevance’ in March, which granted more powers to the Ministry of Health. Within the division of responsibilities in Germany’s federal system, in case of a pandemic, the Federation plays a coordinating role, promoting a unified approach to fighting the pandemic and running public information campaigns, as well as making recommendations to the federal states. These recommendations are often discussed and then decided upon jointly in conferences of the chancellor with the heads of governments of the federal states.

1.2 Freedom of assembly

According to Article 8, Paragraph 1 of the *Grundgesetz*⁴, everybody in Germany has the right to assemble peacefully and without weapons without registration or permission. For meetings in the open air, this right may be limited by law. The relevant regulations can be found in the Federal Assembly Act (*Versammlungsgesetz*).⁵ The federal states (*Länder*) are entitled to issue their own assembly acts, which a few have made use of. They are also responsible for the implementation of the assembly laws.

During the Corona Pandemic, most federal states have introduced general restrictions and requirements on gatherings, for example concerning the number of participants and distancing rules.

Local restrictions

In Germany, in a video conference on 29 September 2020, the Chancellor and the heads of government of the federal states decided to react to the pandemic in two steps in the future.⁶

¹ www.gesetze-im-internet.de/gg/art_91.html

² Rixen, Stefan (2020), *Grenzenloser Infektionsschutz in der Corona-Krise? Konturen eines grundrechtssensiblen Pandemie-Krisenrechts*, in: *Recht und Politik*, 56 (2), 109–117.

³ www.gesetze-im-internet.de/ifsg/index.html

⁴ www.gesetze-im-internet.de/gg/art_35.html; www.gesetze-im-internet.de/gg/art_8.html;

⁵ www.gesetze-im-internet.de/versammlg/BJNR006840953.html

⁶ Germany, Federal Government (Bundesregierung) (2020), Videoschaltkonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder, 29 September 2020, available at www.bundesregierung.de/breg-de/aktuelles/videoschaltkonferenz-der-bundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-am-29-september-2020-1792240; Germany, Federal Ministry of Health (Bundesministerium für Gesundheit) (2020), Coronavirus SARS-CoV-2: Chronik der

Accordingly, private celebrations should take place in public rooms with a maximum of 50 people if 35 new infections per 100,000 inhabitants are found within 7 days. From 50 new infections per 100,000 inhabitants within 7 days, private celebrations should take place in public spaces with a maximum of 25 people.

In **Germany**, in a resolution of the conference between the Chancellor and the heads of government of the federal states **on 14 October 2020**, it was decided that **celebrations in family or with friends** should be further restricted.⁷ From an incidence-rate of 35 new infections per 100,000 inhabitants in one week, there should be a limit of 25 participants in the public and 15 participants in the private space. All German citizens were called upon to consider carefully whether, how and to what extent private celebrations are necessary. In addition, the federal government and the federal state governments recommended introducing **a curfew in restaurants** and a **restriction of the number of participants at events** above an incidence of 35 new infections per 100,000 inhabitants. If the limit of 50 new infections per 100,000 inhabitants is exceeded within the last 7 days, the federal states are expected to take stricter local restriction measures: These include the limitation of the number of participants at events to 100 people, introduction of contact restrictions in public space to a maximum of 10 people and the binding introduction of a curfew at 11 p.m. for restaurants including a general ban on selling alcohol outside, as well as binding restrictions on the number of participants for celebrations to 10 participants in public spaces and to 10 participants from a maximum of two households in private spaces.

In the face of the increasing number of people infected with coronavirus (SARS-CoV-2) in almost all parts of Germany, in a video conference between the Chancellor and the heads of government of the federal states on 28 October 2020, the measures were again tightened significantly and the Federal Chancellor and the Heads of Government of the federal states have adopted the following decision which will enter into force from 2 November 2020 throughout Germany:⁸ People may only go out with members of their own household and of one further household, up to a maximum of ten people in either case; people are asked to generally refrain from non-essential travel for personal reasons; accommodation in Germany will only be provided for necessary and explicitly non-tourism purposes; institutions and facilities classified as recreational will be closed (e.g. theatres, opera houses, cinemas, amusement parks, recreational and amateur sport); events for the purposes of entertainment are prohibited; restaurants and cafés, as well as bars, clubs, discotheques, pubs and similar establishments will be closed.

However, the implementation of the regulations is the responsibility of the federal states. **For example, on 29 October 2020, Berlin has issued the following regulations that come into force on 2**

bisherigen Maßnahmen, 29. September 2020, available at www.bundesgesundheitsministerium.de/coronavirus/chronik-coronavirus.html

⁷ Germany, Federal Government (Bundesregierung) (2020), *Konferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder*, 14 October 2020, available at www.bundesregierung.de/resource/blob/975226/1798920/9448da53f1fa442c24c37abc8b0b2048/2020-10-14-beschluss-mpk-data.pdf?download=1

⁸ Germany, Federal Government (Bundesregierung) (2020), *Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder*, 28 October 2020 available at www.bundesregierung.de/resource/blob/997532/1805024/5353edede6c0125ebe5b5166504dfd79/2020-10-28-mpk-beschluss-corona-data.pdf?download=1

November 2020⁹: Staying in public space as well as staying in closed rooms is only permitted alone, with members of your own household and a maximum of two other people from different households and for people from a maximum of two households.¹⁰ Events in closed rooms are now only allowed with up to 50 people. Events with up to 100 people are allowed outdoors. Bars and restaurants are closed. There is no limit to the number of participants in **political demonstrations**.¹¹ However, distance rules must be observed.¹² Therefore, the number of permitted participants depends on the meeting place. Organisers of demonstrations must develop a concept of how the distance and hygiene rules can be guaranteed. In Berlin, some of the measures decided in October have been challenged by the courts. At the beginning of October, the Berlin Senate decided that restaurants, bars and pubs must be closed between 11 p.m. and 6 a.m. from 10 October 2020.¹³ On 16 October 2020, the Berlin Administrative Court had already declared the curfew to be disproportionate, but the decision only applied to the bars that had complained against the regulation.¹⁴ With the new regulation on October 29, it was decided to close all bars and restaurants.¹⁵

1.3 Freedom of movement

Regulations for travel outside of Germany

In **Germany**, since 1 October 2020, new travel regulations are in effect for individual countries¹⁶, replacing the general travel warning for non-European countries that existed until 30 September 2020.

⁹ Germany; Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), 'Senat beschließt zehnte Änderung der Infektionsschutzverordnung', press release, 29 October 2020, available at www.berlin.de/rbmskzl/aktuelles/pressemitteilungen/2020/pressemitteilung.1010986.php

¹⁰ Germany; Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), *Informationen zum Coronavirus, Abstands- und Hygieneregeln*, 02 November 2020, available at www.berlin.de/corona/massnahmen/abstands-und-hygienerregeln/

¹¹ Germany, Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), *Informationen zum Coronavirus, Abstands- und Hygieneregeln*, 02 November 2020, available at www.berlin.de/corona/massnahmen/abstands-und-hygienerregeln/

Germany, Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), *SARS-CoV-2-Infektionsschutzverordnung*, available at www.berlin.de/corona/massnahmen/verordnung/;

B.Z. Zeitung (2020), *Der große Überblick über die aktuellen Corona-Regeln in allen Bundesländern*, 23 October 2020, available at www.bz-berlin.de/deutschland/der-grosse-ueberblick-ueber-die-aktuellen-corona-regeln-in-allen-bundeslaendern

¹² RBB24 (2020), 'Berliner Senat beschließt Maskenpflicht für Demonstrationen', 01.09.20, available at www.rbb24.de/politik/thema/2020/coronavirus/beitraege_neu/2020/09/berliner-senat-will-maskenpflicht-fuer-demonstrationen.html

¹³ Germany, Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), 'Sperrstunde in Berlin beginnt am Freitagabend um Mitternacht', 09 October 2020, available at www.berlin.de/aktuelles/berlin/6319833-958092-sperrstunde-in-berlin-beginnt-am-freitag.html

¹⁴ Berlin Administrative Court (2020), 'Berliner Sperrstunde für Gaststätten vorerst suspendiert (Nr. 49/2020)', press release, 16 October 2020, available at www.berlin.de/gerichte/verwaltungsgericht/presse/pressemitteilungen/2020/pressemitteilung.1004950.php

¹⁵ Germany; Der Regierende Bürgermeister von Berlin, Senatskanzlei (2020), 'Senat beschließt zehnte Änderung der Infektionsschutzverordnung', press release, 29 October 2020, available at www.berlin.de/rbmskzl/aktuelles/pressemitteilungen/2020/pressemitteilung.1010986.php

¹⁶ Germany, Federal Foreign Office (Auswärtiges Amt) (2020), *Reisewarnungen anlässlich der COVID-19-Pandemie*, 1 October 2020, available at www.auswaertiges-amt.de/de/ReiseUndSicherheit/covid-19/2296762

A travel warning for unnecessary tourist trips applies in principle to all countries that are classified as risk areas by the federal government. Travel warnings are lifted for countries where the incidence of infection is low. A travel warning is an urgent appeal by the Federal Foreign Office not to travel and there are regulations to be observed after returning from a risk area.

In **Germany**, according to the Federal Ministry of the Interior, Building and Community¹⁷, as of 27 October 2020, Germany allows unrestricted entry for residents of the following countries: Australia, New Zealand, Singapore, Thailand and Uruguay. In addition, the list is to be expanded to include Japan, South Korea, and China as soon as the possibility of mutual entry is confirmed. For all persons residing in a third country that is not included in this list, the current restrictions on travel continue to apply, i.e. these persons may enter Germany only if they serve in an important role or if there is an urgent need for their travel. The restrictions do not apply to German citizens. EU citizens and nationals of the United Kingdom, Liechtenstein, Switzerland, Norway and Iceland and the members of their immediate family (spouse, unmarried minor children, parents of minors) are exempted from the travel restrictions. The same applies to third-country nationals who already have a longer-term right of residence in an EU member state or a Schengen country or the United Kingdom (residence permit or long-term visa) and the members of their immediate family.

Current quarantine regulations and COVID-19 tests

In **Germany**, the individual Länder are responsible for quarantine regulations. As of 29 September 2020, according to the Federal Foreign Office¹⁸ and the Federal Ministry of Health¹⁹, upon entry into Germany following a stay in a risk area²⁰ within the last 14 days, it is mandatory to absolve a corona test or go directly to one's home – or destination – upon arrival and remain isolated for a period of two weeks (home quarantine). The coronavirus test results may not be older than 48 hours. During the quarantine period, you are not allowed to leave your house or apartment, nor to receive guests.²¹ The obligation to self-isolate at home does not apply in the case of transit through Germany. In this case, however, you are obliged to leave Germany immediately. If you can prove by a test that you are not infected with COVID-19, no quarantine is necessary in most federal states. However, some federal states require you to take another test after a few days.

¹⁷ Germany, Federal Ministry of the Interior, Building and Community (Bundesministerium des Inneren, für Bau und Heimat) (2020), Coronavirus: Frequently Asked Questions, available at www.bmi.bund.de/SharedDocs/faqs/EN/topics/civil-protection/coronavirus/coronavirus-faqs.html

¹⁸ Germany, Federal Foreign Office (Auswärtiges Amt)(2020), Information on entry restrictions and quarantine regulations in Germany, 21 October 2020, available at www.auswaertiges-amt.de/en/coronavirus/2317268

¹⁹ Germany, Federal Ministry of Health (Bundesministerium für Gesundheit) (2020), orders concerning travel after the determination of an epidemic situation of national significance by the German Bundestag (unofficial translation), 29 September 2020, available at www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/C/Coronavirus/2020-09-29_Orders_concerning_travel_Germany.pdf

²⁰ Robert Koch Institute (2020), Information on the designation of international risk areas, 30 October 2020, available at www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Risikogebiete_neu.html

²¹ Germany, Federal Ministry of Health (Bundesministerium für Gesundheit) (2020), Current information for travellers, available at www.bundesgesundheitsministerium.de/coronavirus/current-information-for-travellers.html

Travel restrictions within Germany

When traveling within Germany, the regulations of the federal states apply.²² After a telephone meeting on 7 October 2020, the chancellor, and the heads of government of the federal states called on all citizens to avoid unnecessary trips to and from risk areas within Germany.²³ The government of the federal state and the governments of the federal states also agreed that the federal states should take precautions so that tourist travellers from risk areas with more than 50 new infections per 100,000 inhabitants within the last 7 days can only be accommodated if they have a negative test result for an infection with SARS-CoV. Although many federal states subsequently implemented these requirements, many regulations were overruled in court decisions or withdrawn by the federal states.²⁴ Most recently, on 27 October 2020, following a decision by the Higher Administrative Court, the accommodation ban for tourist from risk areas in the state of Saxony-Anhalt was lifted.²⁵ However, the overnight stay ban for tourist trips still applies in Hamburg.²⁶ Travelers from risk areas from other federal states may only be accommodated in hotels if they can show a negative corona test that is not older than 48 hours. Tourists must confirm in writing that they have not been in a domestic risk area in the past 14 days or that they have a negative corona test.

2 Implications of Covid-19 and measures to contain it on specific social rights

Please provide information on legislation/measures taken by the government/public authorities, between 1 September – 31 October 2020, in response to COVID-19 that have impacted negatively on relevant social rights with respect to two of the following areas of life: education, work, health care and housing.

2.1 Health care

In **Germany**, elderly care in nursing homes was particularly affected by restrictive measures in response to COVID-19. In a resolution of the conference between the Chancellor and the heads of

²² Germany, Federal Government (Bundesregierung) (2020), *Regelungen während der Corona-Pandemie Informationen für Reisende und Pendler*, available at www.bundesregierung.de/breg-de/themen/coronavirus/faq-reisen-1735032; Federal Ministry of Health, Current information for travellers, available at www.bundesgesundheitsministerium.de/coronavirus/current-information-for-travellers.html

²³ Germany, Federal Government (Bundesregierung) (2020), *Telefonschaltkonferenz des Chefs des Bundeskanzleramts mit den Chefinnen und Chefs der Staats- und Senatskanzleien der Länder*, 7 October 2020, available at www.bundesregierung.de/breg-de/themen/buerokratieabbau/telefonschaltkonferenz-des-chefs-des-bundeskanzleramts-mit-den-chefinnen-und-chefs-der-staats-und-senatskanzleien-der-laender-am-7-oktober-2020-1796770

²⁴ For an overview of the regulations see www.deutschlandfunk.de/corona-uebersicht-der-beherbergungsverbote-in-den.1939.de.html?drn:news_id=1187430 or www.adac.de/news/beherbergungsverbot-corona-hotspots/

²⁵ Higher Administrative Court of the state of Saxony-Anhalt (2020), 'Beherbergungsverbot in Sachsen-Anhalt vorläufig außer Vollzug gesetzt', press release, 27 October 2020, available at https://ovg.sachsen-anhalt.de/aktuelles/pressemitteilungen/?tx_tsarssinclude_pi1%5Buid%5D=137997&tx_tsarssinclude_pi1%5Baction%5D=single&tx_tsarssinclude_pi1%5Bcontroller%5D=Static&cHash=6deb47a0cc98ac82c78e6b07be94da2f

²⁶ Legal Tribune Online (2020), 'OVG kippt Beherbergungsverbot im Norden', 26 October 2020, available at www.lto.de/recht/nachrichten/n/ovg-schleswig-holstein-3mr4720-vg-hamburg-7e433720-beherbergungsverbot-corona-reise-urlaub-deutschland/

government of the federal states on 14 October 2020, it was highlighted that the respective regulations in the federal states should not lead to a complete social isolation of nursing homes residents.²⁷ In the video conference between the Chancellor and the heads of government of the federal states on 28 October 2020, this demand was repeated in the resolution that was subsequently adopted.²⁸ Nevertheless, extensive restrictions on visits in nursing homes continue to exist in many federal states.²⁹ The visit restrictions mean a high burden for the nursing home residents and their health, also because usually relatives do a not inconsiderable part of the nursing care in nursing homes.³⁰ In addition, visits and social contact are essential for the health and mental well-being of the residents.

According to the federal interest group for old people and people in need of care (*Bundesinteressensvertretung für alte und pflegebetroffene Menschen, BIVA*), at the end of October the rise in corona infections is again causing disproportionate restrictions on visits to nursing homes.³¹ Some facilities adapt the right to visit to the corona incidence value, impose visiting and exit bans or high requirements for visitors from inner-German risk areas. Since October, extensive quarantine measures have been taken both for infected residents and for entire facilities.³² In regards to Article 25 of the Charter of Fundamental Rights of the European Union³³, in which the Union recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life, these restrictions are partly judged as problematic.³⁴ The federal interest group for old people and people in need of care fears a repetition of the severe isolation of residents from spring.

In order to ensure the best possible protection and enable safe contacts even when the number of infections increases, the resolution of the conference between the Chancellor and the heads of government of the federal states of 28 October 2020 stipulates that rapid tests should be used quickly

²⁷ Germany, Federal Government (Bundesregierung) (2020), *Konferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder*, 14 October 2020, available at www.bundesregierung.de/resource/blob/975226/1798920/9448da53f1fa442c24c37abc8b0b2048/2020-10-14-beschluss-mpk-data.pdf?download=1

²⁸ Germany, Federal Government (Bundesregierung) (2020), *Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder*, 28 October 2020, available at www.bundesregierung.de/resource/blob/997532/1805024/5353edede6c0125ebe5b5166504dfd79/2020-10-28-mpk-beschluss-corona-data.pdf?download=1

²⁹ An overview of the current regulations of the federal states with regard to visits to care facilities can be found here: www.biva.de/besuchseinschraenkungen-in-alten-und-pflegeheimen-wegen-corona/

³⁰ Deutsche Alzheimer Gesellschaft e.V. (2020), *Aktuelle Informationen zum Umgang in Zeiten von Corona*, available at www.deutsche-alzheimer.de/ueber-uns/presse/aktuelles-zur-corona-krise.html

³¹ Federal interest group for old people and people in need of care (Bundesinteressensvertretung für alte und pflegebetroffene Menschen) (2020), *Erneute Abschottung von Pflegeheimen: BIVA-Pflegeschutzbund empfiehlt Klageweg bei Besuchsverboten*, 27 October 2020, available at www.biva.de/erneute-abschottung-von-pflegeheimen/

³² See for example: Rhein-Neckar-Zeitung (2020), *Corona-Ausbruch scheint vorerst gestoppt*, 26 October 2020, available at www.rnz.de/nachrichten/region_artikel,-anna-scherer-haus-bammental-corona-ausbruch-scheint-vorerst-gestoppt-update- arid,566816.html

³³ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at: www.refworld.org/docid/3ae6b3b70.html

³⁴ Federal interest group for old people and people in need of care (Bundesinteressensvertretung für alte und pflegebetroffene Menschen) (2020), *Erneute Abschottung von Pflegeheimen: BIVA-Pflegeschutzbund empfiehlt Klageweg bei Besuchsverboten*, 27 October 2020, available at www.biva.de/erneute-abschottung-von-pflegeheimen/

and with priority in the area of nursing home care.³⁵ With the new test regulation, the federal government has ensured that the costs of the recently available SARS-CoV2 rapid tests for regular tests of residents, their visitors and staff would be covered.

The rights of nursing home residents have also been strengthened by a ruling by the Minden Administrative Court, which lifted the isolation of a nursing home resident.³⁶ The court decision was directed against the restriction of the federal state of North Rhine-Westphalia and is not binding for other courts.

2.2 Education

Unequal distribution of educational opportunities especially during home-schooling

In **Germany**, with the increase in the number of infected people in autumn, the number of students or pupils who are in quarantine and are thus doing home-schooling increases. At the end of September, an estimated 50,000 children were already in preventive corona quarantine.³⁷ The lack of adequate conditions for home-schooling makes effective access to education difficult for many children. Those children of single parents or of parents who are socio-economically burdened or who live in shared accommodation are particularly affected.³⁸ In his supplement to the Parallel Report of the National CRC Monitoring Mechanism, the German Institute for Human Rights points out that the partial switch to digital learning was unable to reach all school children because not all of them had the necessary technology (devices and internet access) or assistance available at home and because some teachers were not prepared for the switch.³⁹ In addition, the social security administration was not flexible enough to permit an appropriate response to the pandemic's consequences:⁴⁰ In some cases, additional benefits to cover expenses that were obviously necessary – e.g. to pay for a mobile

³⁵ Germany, Federal Government (Bundesregierung) (2020), *Videokonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder*, 28 October 2020, available at www.bundesregierung.de/resource/blob/997532/1805024/5353edede6c0125ebe5b5166504dfd79/2020-10-28-mpk-beschluss-corona-data.pdf?download=1

³⁶ Süddeutsche Zeitung (2020), 'Gericht kippt NRW-Verordnung zu Corona im Pflegeheim', 15 October 2020, available at www.sueddeutsche.de/panorama/urteile-minden-gericht-kippt-nrw-verordnung-zu-corona-im-pflegeheim-dpa.urn-newsml-dpa-com-20090101-201015-99-955832; Westdeutscher Rundfunk, 'Corona: Verwaltungsgericht Minden hebt Isolierung einer Pflegeheimbewohnerin auf', 15 October 2020, available at www1.wdr.de/nachrichten/westfalen-lippe/pflegeheim-isolation-corona-gericht-aufgehoben-100.html

³⁷ Der Spiegel (2020), 'Bundesweit 50.000 Schüler in Corona-Quarantäne', 26 September 2020, available at www.spiegel.de/panorama/bildung/corona-50-000-schueler-in-deutschland-in-quarantaene-a-b5461a45-90d8-4d19-9791-1b87ceb57c2f

³⁸ Springer, C. (2020), *Zivilgesellschaft in der Verantwortung, Drei Spannungsfelder von Solidarität in der Krise*. In: Die Corona-Gesellschaft. Analysen zur Lage und Perspektiven für die Zukunft. Transcript Verlag, Bielefeld, p. 168

³⁹ Deutsches Institut für Menschenrechte (2020), Supplement to the Parallel Report of the National CRC Monitoring Mechanism, Berlin, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Ergaenzung_zum_Parallelbericht_der_Monitoring_Stelle_UN_KRK.pdf; Deutsches Jugendinstitut (German Youth Institute): *Kind sein in Zeiten von Corona: Erste Studienergebnisse*. Accessible at: www.dji.de/themen/familie/kindsein-in-zeiten-von-corona-studienergebnisse.html

⁴⁰ Deutsches Institut für Menschenrechte (2020), Supplement to the Parallel Report of the National CRC Monitoring Mechanism, Berlin, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Ergaenzung_zum_Parallelbericht_der_Monitoring_Stelle_UN_KRK.pdf

device – had to be obtained through the courts and were only granted after delays.⁴¹ The lockdown also revealed the necessity for action in Germany to realise children’s rights in relation to the digital environment, access to digital learning devices and services and use of learning opportunities as well as to the teaching of digital literacy.⁴² In order to promote the digitisation of schools, Germany has increased its investments in the School Digital Pact to 6.5 billion euros.⁴³ The funding can be used, for example, to procure suitable end devices for teachers. In addition, pupils in need can receive digital devices through their schools.

3 Negative impact on social rights for vulnerable groups including measures to address this

Please select and provide information concerning two groups whose social rights were particularly negatively impacted with respect to developments/measures adopted in relation to COVID-19, between 1 September – 31 October 2020. For each of the two groups selected – highlight which social rights were most impacted. Also, identify any government and related measures that were introduced to alleviate the negative impact on these groups.

During the pandemic it became clear that some of the state requirements to fight the corona pandemic cause greater consequences for vulnerable groups than for the rest of the population.⁴⁴

3.1 Nursing home residents and especially nursing home residents with cognitive impairments

In **Germany**, in a position paper from 8 September 2020 the federal interest group for old people and people in need of care pass the measures and their consequences for people living in nursing homes in review.⁴⁵ The authors point out that the visiting and exit bans had a particular impact on the social participation of people with care needs and increased their social exclusion. The residents of nursing homes experienced a sudden closure; external contacts were no longer possible from one day to the next. Visits from relatives were no longer allowed. The contacts between the residents were also very limited, they sometimes had to spend weeks in room quarantine. There were no exceptions to these

⁴¹ See, for example, the ruling of the Higher Social Court of North Rhine-Westphalia from 25 May 2020: LSG NRW, L 7 AS 719/20 B ER. In this case, a pupil was able to have the cost of a tablet to use for schoolwork recognised as a covered extra expense caused by the pandemic.

⁴² Deutsches Institut für Menschenrechte (2020), Supplement to the Parallel Report of the National CRC Monitoring Mechanism, Berlin, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Ergaenzung_zum_Parallebericht_der_Monitoring_Stelle_UN_KRK.pdf

⁴³ Germany, Federal Government (Bundesregierung) (2020), Informationen für Familien, 6 October 2020, available at www.bundesregierung.de/breg-de/aktuelles/familien-in-corona-zeit-1738334

⁴⁴ Springer, C. (2020), Zivilgesellschaft in der Verantwortung, *Drei Spannungsfelder von Solidarität in der Krise*, In: Die Corona-Gesellschaft. Analysen zur Lage und Perspektiven für die Zukunft. Transcript Verlag, Bielefeld, p. 167

⁴⁵ Federal interest group for old people and people in need of care (Bundesinteressensvertretung für alte und pflegebetroffene Menschen) (2020), *Ein halbes Jahr Corona im Pflegeheim – Was uns die Krise lehrt. Lebensqualität und Infektionsschutz aus Sicht des Verbraucherschutzes*, Positionspapier, 08 September 2020, available at www.biva.de/positionspapier-corona-im-pflegeheime-was-uns-die-krise-lehrt/

rules, not even for residents with dementia who were not capable of understanding the sudden prohibitions on contact or meeting at a great distance behind dividing windows.

The measures and recommendations issued by the local authorities were very general, most of them did not even regulate important issues such as the residents' possibilities to exit the nursing homes to go for a walk. Overall, this led to a shift of responsibilities to the facility management of the nursing homes, giving them more decision-making authority. When weighing up a restriction of the residents' rights of freedom against a possible infection in the nursing home with the result of negative press the facility management often opted for what they considered to be the safe way: Their actions were particularly strict and the recommendations were implemented without assessing the individual case. For instance, it has happened that they issued two-week room quarantines for residents who had left the nursing home "on their own" to go for a walk in the garden. Due to the restrictions necessary therapies were not carried out, which often led to shortcomings in care (for example pressure sores).

In **Germany**, the German Alzheimer's Society reports that the regulations have serious consequences especially for people with cognitive impairments who do not understand the new situation.⁴⁶ When visits decrease and people who are familiar keep distance, people with cognitive impairments feel alone. Contact restrictions with relatives can lead to restlessness and aggressiveness for people with advanced dementia. This in turn may lead to a more frequent use of sedating drugs and neuroleptics that would otherwise not be necessary. Relatives usually support nursing care in nursing homes. The Alzheimer Society therefore expresses its concern that, with restricted visits, the necessary emotional affection for residents with dementia is no longer possible.

In a non-representative survey with more than thousand participants, including above all relatives, on possibilities for visits in nursing homes and the consequences of social isolation, the federal interest group for old people and people in need of care (*Bundesinteressensvertretung für alte und pflegebetroffene Menschen*, BIVA) illustrates that the consequences of the restriction of visiting regulations to people living in nursing homes are judged as grave:⁴⁷ For instance 65 percent of the interviewees report that they have noticed a decline in the cognitive abilities of the people in need of care and even 80 percent complain that their zest for life seem to have decreased.

3.2 Immigrant children and home-schooling

Quarantine measures have a particularly strong impact on education for children in collective accommodation facilities, such as initial reception facilities or shared accommodation for asylum seekers and refugees. In September and October 2020, some facilities were being quarantined.⁴⁸ With the augmentation of infection rates, it is to be expected that this may increasingly be the case in the coming time. In his supplement to the Parallel Report of the National CRC Monitoring Mechanism, the German Institute for Human Rights points out that the switch to home-schooling can lead to a deprivation of the right to education for many children living in reception centres or shared

⁴⁶ Deutsche Alzheimer Gesellschaft e.V. (2020), *Aktuelle Informationen zum Umgang in Zeiten von Corona*, available at www.deutsche-alzheimer.de/ueber-uns/presse/aktuelles-zur-corona-krise.html

⁴⁷ Federal interest group for old people and people in need of care (2020), *Ernüchterndes Umfrageergebnis: Besuchsmöglichkeiten in Pflegeheimen sind unzureichend und die Folgen der sozialen Isolation gravierend*, 29 May 2020, available at www.biva.de/umfrage-besuche-im-pflegeheim-noch-unzureichend/

⁴⁸ See for example: Norddeutscher Rundfunk (2020), 'Corona-Fälle: Flüchtlingsheim unter Quarantäne', 4 October 2020, available at www.ndr.de/nachrichten/hamburg/Corona-Faelle-Fluechtlingsheim-unter-Quarantaene,coronalage108.html or Süddeutsche Zeitung (2020), 'Tests nach Corona-Ausbruch in Flüchtlingsunterkunft', 19 October 2020, available at www.sueddeutsche.de/politik/fluechtlinge-kassel-tests-nach-corona-ausbruch-in-fluechtlingsunterkunft-dpa.urn-newsml-dpa-com-20090101-201019-99-03624

accommodation.⁴⁹ In many cases, children there have no access to mobile devices enabling them to use digital learning offerings as a substitute for school learning and/or have no adequate setting in which to learn available due to the closure of common rooms in the shared accommodation. The Berlin Refugee Council, the Federal Workers' Welfare Association as well as the Federal Association for Unaccompanied Minors also report that it is not possible to compensate this situation with the help of volunteers, as they can no longer access the accommodations during quarantine measures. The Berlin Senate Department for Education, Youth and Family adds that for children and young people who have had little education in their lives and may never have attended school, schooling through digital offers can be extremely difficult.

⁴⁹ Deutsches Institut für Menschenrechte (2020), Supplement to the Parallel Report of the National CRC Monitoring Mechanism, Berlin, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Ergaenzung_zum_Parallelbericht_der_Monitoring_Stelle_UN_KRK.pdf; For a more in-depth treatment of this problem see www.gew.de/aktuelles/detailseite/neuigkeiten/wie-die-pandemie-die-bildungschancen-gefluechteter-kinder-und-jugendlicher-verschlechtert/