



Do Germany's Covid Measures Violate the Constitution?

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I. The Legal Framework

1. The Constitutional Framework

- **Basic Law's Emergency Constitution from 1968 provides for war, civil unrest and natural catastrophes only**
- **No health emergency**
- **No residual general provision**
- **No suspension of constitutional rights**

2. Statutory Law – Changes to the Federal Infections Protection Act

- **“Epidemic emergency of national concern” was introduced into the Federal Infections Protection Act**
- **Such an epidemic emergency was declared by the Bundestag**

3. The *Länder's* “Covid Regulations”

- ***Länder* issued several Covid Regulations ordering the essential anti-covid-measures like bans on gatherings**

II. Two Current Constitutional Law Issues

1. Constitutional Rights During the Covid Crisis

- No suspension of constitutional rights under the Basic Law
- The weaknesses of the proportionality principle in times of crisis
- Example: Freedom of assembly

2. Introducing an Unconstitutional Delegation to the Executive through § 5 Infection Protection Act?

- Problem: Once an “epidemic emergency of national concern” is declared, § 5 section 2 gives to the Federal Minister of Health the power to issue regulations that may deviate from a number of federal statutes *on health issues*
- Provision raises constitutional doubts, but opening floodgates is quite a different matter

III. Summary

Thank you for your attention!

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