

In Germany, anti-virus measures stumble in courts

October 16 2020



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A Berlin court on Friday overturned an order for restaurants and bars to close early, the latest in a slew of legal rulings upending measures taken by Germany's national and local governments to fight coronavirus transmission.

The latest judicial setback for authorities in the German capital came on

the heels of other court challenges over another controversial restriction banning hotel stays for domestic travellers from regions with high infection rates.

The legal tangle added another layer to confusion over rules agreed between states and Chancellor Angela Merkel's federal government but which are in reality left up to regional authorities of Germany's 16 states to implement.

On Friday, an order by Berlin authorities for restaurant and bars to close from 11 pm to 6 am became the latest to fail before the court, a ruling that could have a huge impact on a sector severely hit by the pandemic.

The German capital's administrative court noted that new infections in Germany currently mostly stem from private gatherings of family and friends, at community facilities, meat-processing plants, religious gatherings or in connection with travel.

"It was not apparent" that closing food and drink establishments early would help fight contagion, the court found in the case brought by 11 restaurant and bar owners.

The measure, which came in force on October 10, was therefore a "disproportionate encroachment on the freedom" of the industry, the court said.

Berlin authorities plan to appeal the ruling.

Health Minister Jens Spahn said he was "very disappointed" at the ruling, saying the logic behind the measure was right because "there is no doubt that in big cities... especially in the late hours, what is happening in private and public places is a driver of current infections".

The capital, known for its vibrant nightlife, had imposed the curb as new daily infections in Germany soared past 7,000—a record since the pandemic started.

Bar owner Mike Stolz, who was among plaintiffs in the Berlin case, said the restrictions had wiped out his business.

"It was a dramatic week. Our business really starts from 10pm so you can say it was a complete loss in earnings because guests basically didn't go out at all," he told AFP, voicing relief that the court sided with him.

Federalism tangle

Under rules agreed by premiers of Germany's 16 states and Merkel, local authorities are required to impose early closing hours for restaurants or bars once new infection numbers climb above the threshold of 35 per 100,000 people in seven days.

More drastic restrictions are imposed when the daily caseload climbs to 50 per 100,000 people.

Cologne, Frankfurt and Hamburg are among the cities that have put in place early closure hours for restaurants and bars.

A slew of other curbs were agreed by Merkel and state premiers on Wednesday for so-called corona hotspots, including caps on the number of people gathering indoors and a ban on late-night alcohol sales.

But Germany's federal system means that states have the freedom to implement what they wish.

With the new round of restrictions meeting with greater resistance than in March and April when whole industries were ordered shut to fight

transmission, some states where infection rates are comparatively low have simply chosen to ignore measures agreed with Merkel's government.

'Rebel who saved autumn holidays'

A restriction that has particularly angered holidaymakers and guesthouse owners is a ban on hotel or holiday home stays on domestic travellers from zones where infection levels are high.

Up and down the country, individuals have taken legal action.

An administrative court in Baden-Wuerttemberg on Thursday overturned the ban in the southwestern state, in a case brought by a family from North Rhine-Westphalia who had made a vacation booking there.

Finding that it was a violation of the freedom of movement, the court said Baden-Wuerttemberg authorities failed to provide proof that hotels were fuelling contagion.

The ruling was swiftly followed by a similar one in Lower Saxony, in a case brought by guesthouse manager Jens Lutz dubbed the "rebel" who "saved autumn holidays" by Bild daily.

Several states including Bavaria and Hesse have since said they would cancel the ban.

Only the northern states of Schleswig-Holstein and Hamburg have so far managed to score wins in court over the rule.

A survey by ARD broadcaster found that two in three Germans want common rules across the country rather than a patchwork of regulations decided by states.

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Citation: In Germany, anti-virus measures stumble in courts (2020, October 16) retrieved 24 April 2024 from

<https://medicalxpress.com/news/2020-10-germany-anti-virus-stumble-courts.html>

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