



Kurzinformation

The Reform of the Act on the Prevention and Control of Infectious Diseases in Man

1. Legislative Amendments on the Protection against Infection Act

The „Infection Protection Law“ named „Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen“ („Infektionsschutzgesetz“ – IfSG) contains extensive powers for the prevention and control of communicable diseases.

The „Infektionsschutzgesetz“ was generally implemented by the Federal States as a separate responsibility. The regulation of measures for the prevention and control of communicable diseases is the competence of the public authorities responsible under the laws of the federal states. Up to now, the Federal Government did not have any supplementary competence for measures to prevent and control communicable diseases, even in the event of a crisis.

Under normal circumstances, this distribution of competence has so far been sufficient to prevent the spread of communicable diseases.

Due to the epidemic caused by the novel coronavirus SARS-CoV-2, the Bundestag has declared an epidemic situation of national importance. In order to prevent destabilisation of the entire health system, the Federal Government must be enabled to implement protective measures quickly.

For this reason, the Bundestag adopted amendments to the „Infektionsschutzgesetz“ on 25 March 2020 (<https://www.gesetze-im-internet.de/ifsg/BJNR104510000.html>). This enables the Federal Ministry of Health to implement a series of measures - limited in time until the 31st of March 2021 at the latest.

With the amendments in Section 5¹ and Section 28² to the „Infektionsschutzgesetz“, the Federal Ministry of Health has been authorized to adopt measures for the basic supply of pharmaceuticals, including narcotics, medical devices, laboratory diagnostics, aids, items of personal protective equipment and products for disinfection, as well as to strengthen human resources in the health care system.

The amended Section 5 of Infektionsschutzgesetz gives the Federal Ministry of Health the competence to enact these measures by „Anordnungen“ and „Rechtsverordnungen“ (legislative decree) without the consent of the Bundesrat.

By the „Rechtsverordnungen“ in Section 5 (2) no. 3, no. 4, no. 7 und no. 8 IfSG, the legislative body empowers the Federal Ministry of Health to permit exceptions to statutory provisions.

The "Anordnungen" in Section 5 (2) no. 1, no. 2, no. 5 and no. 6 IfSG are administrative acts, which directly define the subjective-public rights or obligations of the persons involved.

The provision of Section 28 (1) sentence 1 IfSG has been drafted as a general clause to enforce necessary protective measures. With the amendment to the law, the competent authority can now explicitly oblige people to not leave the place where they are located or to not enter certain places or public places.

2. Parliamentary supervision

The Bundestag can recall the declaration of the epidemic situation of national importance if the conditions for its determination are not fulfilled anymore (Gesetzesentwurf der Fraktionen der CDU/CSU und SPD, Deutscher Bundestags-Drucksache 19/18111 vom 24. März 2020, S. 15, 19).

Furthermore, the Federal Ministry of Health must submit a report on the findings from the corona pandemic to the Bundestag by the 31st of March 2021. The reporting obligation will ensure that the Bundestag is informed about the outcome of the epidemic caused by the novel coronavirus SARS-CoV-2 (Deutscher Bundestags-Drucksache 19/18111 vom 24. März 2020, S. 19).

3. Judicial Review

The measures imposed under the „Infektionsschutzgesetz“ can be appealed to the Administrative Courts and the Constitutional Court in summary proceedings. Within the framework of the proportionality test, the courts will decide on a case-by-case basis, whether the protection of the health of the general public outweighs the individual interests of those seeking legal protection.

1 https://www.gesetze-im-internet.de/ifsg/_5.html

2 https://www.gesetze-im-internet.de/ifsg/_28.html