Office of the United Nations High Commissioner for Human Rights

Human Rights Council Branch – Complaint Procedure Unit

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7 October 2021

**Reference number: 20-1**

**Your App. No.:**

**- via Fax: +41 22 917 90 11 -**

**Annex 1 to the Complaint Procedure Form of Ms. Daniela Prousa**

Dear Madam or Sir,

Under assurance of proper authorization by my client Ms. Prousa I am sending you the present letter as attachment to the official Complaint Procedure Form.

On behalf of Ms. Prousa, I file a complaint against the Federal Republic of Germany, Free State of Bavaria, to report violations of my client’s fundamental rights.

This letter serves as **Annex I** to the official Complaint Procedure Form. In my remarks, I will therefore refer to its respective section.

## As to the Facts of the complaint and nature of the alleged violations (sec. III of the Official Complaint Procedure Form)

The complainant claims violations of her fundamental rights in the course of the ongoing Corona policy by the Government of the Free State of Bavaria, Germany. Her complaint is essentially based on two aspects which are, however, interdependent.

1. First it is the legal requirement to wear a face mask in central situations of daily life, especially when going to supermarkets and when using public transportation. The duty was introduced in spring 2020 and is still in place, violations of the provision are subject to a fine. The current ‘14th Bavarian Infection Protection Measures Ordinance’ (German: ‘14. Bayerische Infektionsschutzmaßnahmenverordnung’) contains the respective provisions in §§ 2, 19.

The complainant – a psychologist – argues that being forced to wear a face mask has significant negative effects on the mental, physical, and social health of the wearer.

Also, she claims that it has not yet been scientifically proven that the mask has a significant use in containing the spread of the virus in situations of everyday life, while case numbers decreased and reached the target value without legal mask obligations in supermarkets in March 2020.

1. Second the complainant argues that the governmental measures to contain the pandemic have been based on aggravated and misleading statistical figures, especially reported infection rates.

The responsible body in Germany for collecting and publishing these figures, the Robert-Koch-Institut (‘RKI‘), publishes data on the pandemic despite its methods of defining and calculating infection rates is highly questionable.

Apparently, by publishing much higher figures than scientifically justified, the RKI is set out to stir up fear among the population, thus reaching compliance with governmental measures.

It is in this context highly problematic that the RKI is no independent scientific body, but a governmental organization within the sphere of influence of the German Federal Ministry of Health. The data provided by the RKI are key for political decision-making in the pandemic; they should be collected and communicated by an independent agency.

Particularly problematic is how the RKI calculates the population’s infection rates. While the RKI counts *any* person receiving a positive PCR test as ‘Corona-case’ in its statistics, the complainant emphasizes the importance of the so-called Ct-value.

Representative of many other studies, the complainant refers to three publications which lead to the conclusion that the RKI’s data are misleading:

* Study by the University of Duisburg-Essen (06/2021):

In the study period (week 10-49 2020), an average of 60 %, up to 78 %, Corona "cases" (samples from the German municipality of Münster) were probably not infectious at all, due to the lack of inclusion of the Ct value.

Source: Stang et al., *„The performance of the SARS-CoV-2 RT-PCR test as a tool for detecting SARS-CoV-2 infection in the population”,* published 31 May 2021, Journal of Infection (83/2/237-279), available online under <https://doi.org/10.1016/j.jinf.2021.05.022>.

* Publication (01/2021) by the World Health Organisation on the interpretation of PCR test results:

The Ct value must be included in the interpretation of PCR test results (and thus implicitly on the generation of "case numbers").

Source: *“WHO Information Notice for Users 2020/05, Nucleic acid testing (NAT) technologies that use polymerase chain reaction (PCR) for detection of SARS-CoV-2”,* version 2of 20 January 2021, available online under <https://www.who.int/news/item/20-01-2021-who-information-notice-for-ivd-users-2020-05>.

* Meta-study including 79 individual studies (09/2020), published among others in the renowned *"The Lancet Microbe"*:

Even despite a high viral load in the respiratory tract (known to correspond to a low Ct value), SARS-CoV-2-RNA is detectable for weeks, even to months, but is never infectious after day 9 of an illness. This means that many persons whose PCR tests were positive are not able to infect another person with the virus. However, this finding did not play a role in the RKI's counting method. As already mentioned, the RKI counted – and still counts – any positive PCR test as relevant for the infection rate

Source: Cevik et al., *“SARS-CoV-2, SARS-CoV, and MERS-CoV viral load dynamics, duration of viral shedding, and infectiousness: a systematic review and meta-analysis”*, published 19 November 2020, The Lancet Microbe (2/1/E13 – E22), available online under <https://doi.org/10.1016/S2666-5247(20)30172-5>.

1. The applicant claims violations of her fundamental rights both by the obligation to wear a face mask as well as by the insufficient as well as misleading collection and use of data in the pandemic.

While the obligation to wear a face mask directly affects the complainant in her fundamental rights to health and freedom of action, the government’s data policy affects her more indirectly, nonetheless heavily.

Under the premise that most of the drastic measures which the Federal Republic of Germany as well as the Free State of Bavaria have implemented since the beginning of the pandemic in March 2020 are triggered by false and/ or misleading statistical figures, these measures amount to nothing less than state arbitrariness.

The complainant therefore refuses to abide by these rules, leading to severe consequences for her personal life: she was forced to give up her job and, in the end, has lost control over wide parts of her personal life, resulting in a clearly limited availability over her own life circumstances, even with regard to the basic provision of food and the opportunity to travel in means of public transportation.

I have attached the complainant’s latest pleading of 11 October 2021 to the European Court of Human Rights (ECHR) as **Appendix 1** to this letter. The pleading overlapped in time with the ECHR’s dismissal of her complaint of 7 October 2021. I refer to sec. 5 ff. of the pleading to make available to you a description of the complainant’s current deteriorated life circumstances.

1. The complainant has provided the ECHR with an extensive list of scientific proof for her claims. The list was attached as Annex to her individual complaint. The list has been handed in in German language, however, as it is possible to file a complaint in the language of one of the Council of Europe’s member states. In case you wish to gain access to more relevant scientific facts we ask you to either request the ECHR’s case file (App. No. 15293/21) or to let us know. We would then translate this specific part of the complaint in English and provide you with a copy.

## As to the Exhaustion of domestic remedies (sec. IV of the Official Complaint Procedure Form)

1. Extrajudicial activities:

* Open letter to main German news broadcast ‘Tagesschau‘, 6 April 2020
* Exchange of e-mails with Robert-Koch-Institut, April 2020
* Letter to the Bavarian ‘Council of Three: Fundamental Rights Protection’ (German: ‘Dreierrat Grundrechtsschutz’), 19 April 2020
* Petition to the German Parliament, the ‘Bundestag’, 26 April 2020
* Supervisory complaint on the Robert-Koch-Institut, 3 May 2020
* Letter to the Bavarian State Ministry for Health and Care, 7 May 2020
* Letter to the German Council on Ethics (‘Deutscher Ethikrat’), 9 June 2020
* Open Letter to several institutions of the Federal Republic of Germany, July 2020
* Letter to the Federal Attorney General (‘Generalbundesanwalt’), 2 August 2020
* Criminal Complaint against the Robert-Koch-Institut, 15 August 2020
* Letter to Tatiana Valovaya (Director-General of the United Nations at Geneva), July 2021
* Open letter to United Nations High Commissioner for Human Rights, Michelle Bachelet Jeria, 20 July 2021, during the complainant’s 1-person-demonstration in front of the OHCHR’s Geneva offices. The open letter is attached to this complaint as **Appendix 2**.

1. Exhaustion of domestic remedies:

* Proceedings before the Bavarian Constitutional Court (file number: Vf. 81-VII-20)
  + Urgent request for a temporary suspension of the enforcement of the rules that prescribe wearing the mask in certain situations. Request declined by decision of the Bavarian Constitutional Court on 29 October 2020.
  + Popular action (German: ‘Popularklage’) aimed at the declaration of unconstitutionality of the obligation to wear face masks in certain situations. Decision on the merits still pending.
* Proceedings before the Bavarian Higher Regional Administrative Court (file number: 20 NE 20.2202):

Urgent request for a temporary suspension of the enforcement of the rules that prescribe wearing the mask in certain situations. Request declined by decision of the Bavarian State Administrative Court on 15 October 2020.

* Proceedings against the Robert-Koch-Institut before the Administrative Court Berlin (first instance) and the Higher Regional Administrative Court Berlin-Brandenburg (second instance), file numbers OVG 1 RS 4/20 and OVG 1 S 119/20:

The RKI should be court-ordered to refrain from making certain misleading statements with regard to their communication of infection rates and Corona cases. Request declined by decision of the Higher Regional Administrative Court Berlin-Brandenburg on 27 November 2020.

* Proceedings before the German Federal Constitutional Court (file numbers: 1 BvQ 164/20 and 1 BvQ 8/21):

Urgent requests for a temporary suspension of the enforcement of the rules that prescribe wearing the mask in certain situations. Requests declined by decisions of the German Federal Constitutional Court on 13 January 2021 and 3 February 2021.

* Proceedings before the European Court of Human Rights (App. No. 15293/21):
  + Request for interim measures aimed at the suspension of the obligation to wear FFP2-masks in shops in Bavaria, to order the Federal Republic of Germany to publish differently the statistics on Covid-19-cases in Germany and to take similar measures. Declined by decision of the ECHR on 23 March 2021. The decision is attached as **Appendix 3** to this letter.
  + Individual Complaint to declare the above mentioned measures as violations of several articles of the European Convention of Human Rights. Declined by decision of the ECHR on 30 September 2021. The decision is attached as **Appendix 4** to this letter.

## Closing Remarks

As I hope to have depicted in the present letter, the complainant has gone beyond herself to fight human rights violations and state arbitrariness in the course of Corona policies by the Federal Republic of Germany as well as the Free State of Bavaria.

After having *done what she could* Ms. Prousa demonstrated for one month straight in front of the OHCHR’s Geneva offices to gain attention and make decision-makers understand her claims. Please find attached some photographs of the protest attached to this letter as **Appendix 5.**

Ms. Prousa was forced to return to Bavaria due to a lack of financial resources in October 2021. Her situation has deteriorated ever since. Due to ever stricter regulations for the use of public transportation (only when vaccinated, recovered, or tested), she finds herself in a small village with even the means of public transportation taken away from her.

Yours faithfully

Dxxx Rxxx

Rechtsanwalt / Attorney at Law

**Appendices:**

**Appendix 1:** Pleading of 11 October 2021 to the European Court of Human Rights

**Appendix 2:** Open letter to United Nations High Commissioner for Human Rights, Michelle Bachelet Jeria, 20 July 2021

**Appendix 3:** Decision on interim measures by the European Court of Human Rights on 23 March 2021, App. No. 15293/21

**Appendix 4:** Decision by the European Court of Human Rights on 30 September 2021, App. No. 15293/21

**Appendix 5:** Pictures of Ms. Prousa’s 1-person-protest during July 2021.