Forum of Federations

Federalism and the COVID-19 crisis: A perspective from Germany

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According to the German Basic Law (BL) competences on health matters are distributed between the Federation and the Länder (States). The Federation has concurrent legislative power concerning *"measures to combat human and animal diseases which pose a danger to the public or are communicable…"* (Article 74 section 1 No 19 BL). The Länder execute Federal Laws in their own right, determining the executing authorities and the administrative procedures with mild legal supervision from the Federal government (Article 84 BL).

The Federation has used its competence to enact an Infection Protection Act (IFA) regulating the prevention and control of dangerous infections, the measures to fight them, and the collection of data. According to the IFA, Land governments and districts are expected to take the necessary action to prevent and repress infections. Each Land Ministry of Health can instruct the district departments and take measures for whole territory.

The Federation has only limited administrative capacity in the area of infection protection. The main agency of the Federal Health Ministry is the Robert Koch Institute - RKI (named after its first director and Nobel laureate). The institute provides scientific expertise in disease control and prevention, has a network of renowned scientists, and supports both the Federal and Land governments. It collects data and publishes medical and behavioural recommendations and standards which are widely respected. These, in turn, inform the actions and policies of public authorities.

Medical care is provided by a network of doctors as well as local and regional hospitals, which are owned by private companies, charitable institutions, local authorities, and states. These services are funded by the statutory health insurance system, to which employers and employees make assessed contributions on the basis of their gross wages and salaries. Traditionally, Germany possesses a dense hospital network with greater availability of intensive care beds and ventilators when compared with its other European neighbours.

The first COVID-19 case in Germany was discovered on 28 January 2020 in Bavaria. The patient was infected during a company meeting by a Chinese employee who had just arrived from China. The company and the local authorities acted very quickly and were able to trace back the contacts to find other infected persons and to stop further virus proliferation through quarantine. The next cases emerged near the border with the Netherlands in a town of 12,000 inhabitants. On 24 February a couple from the town tested positive. They had participated in a carnival event with more than 300 people some days before. The district authorities issued a quarantine order for all participants and closed schools. Because of the large number of participants at the event the authorities were not able to trace the virus back to Patient Zero, or to break the chain of infection. The number of infections increased dramatically, but the local hospitals were able to cope with the volume of patients. The district decided against a total quarantine of the town or the whole

district after consultation with the Land and the RKI. The next hot spots appeared after the return of large numbers of tourists from ski resorts in Italy and Austria during the early weeks of March. Due to the rapid increase in infections detected in March, more extensive measures were deemed necessary and the Länder initially banned events with more than 1,000 people, before further reducing the number down to 50. Some districts had already issued similar orders. This was followed by the closure of schools and universities, and subsequently the implementation of 'stay at home' orders. Bars, restaurants and retail shops, and all other non-essential businesses, were ordered to close. Bavaria was the first Land to establish these measures, and subsequently other states followed suit. The Federal government supported the states, gave advice via RKI, and tried to coordinate their actions - particularly procurement for the health sector.

As widely reported in the press, so far Germany has been able to mitigate the economic impact of the pandemic. As German workers are protected against dismissal and generously compensated for short term work, a sudden increase in unemployment and substantial loss of income among citizens has been avoided. Additionally, a large support package was offered to companies and the self-employed to help business endure the partial shutdown of the economy. The health sector is under stress but has not yet reached its limits. In fact, in recent weeks German treatment centres have taken in patients from neighbouring countries France and Italy, whose health systems have come under significant pressure during the pandemic. The upcoming weeks will show whether Germany can avoid the collapse of its health system and an intolerable death toll. More broadly, the pandemic has exposed insufficient preparations, vulnerable international supply chains, and a lack of international cooperation.

According to the polls, Germans are satisfied with the political leadership and appreciate the decisions are being made in the public interest. However, some journalists and politicians are criticizing the variation in policies across states and demanding more centralized decision making. On balance, however, Germany's decentralized system has fared well in helping the country cope with the virus. During the early stages of the pandemic it became clear that existing legal instruments were insufficient to respond to the crisis appropriately. Therefore, the Federation amended IFA without structural changes. Consequently, if parliament declares a nationwide epidemic emergency (as it has done during the current crisis), the Federal Health Ministry can now regulate by legislative decree issues such as: stricter control of immigration; the duty of transport operators and airports to cooperate and to provide information and data; the supply of medical goods; temporary suspension of medical standards; the limitation of patent rights; and coordination and data exchange with states and scientific institutions together with the RKI.