Reply to the reading of the indictment

I. (Introduction)

High Court,

first of all I would like to introduce myself very briefly.
I am 60 years old and grew up in a musical household. After my military service in northern Germany, I studied law in Regensburg and completed my legal clerkship. After that, I came to Thuringia because my wife at the time was studying to be a cellist at the FRANZ LISZT SCHOOL of Music in Weimar.

I am a father of three children. My son and my two daughters are 26, 24 and 22 years old. Since their mother became mentally ill when our youngest child started school and was no longer interested in our children for many years, I have been raising our three children alone ever since.

My initial professional stations in Thuringia led me to the Suhl District Court and the Erfurt Public Prosecutor's Office.

At the public prosecutor's office, I worked in the very department that today represents the prosecution. At that time, the department was a focal point for dealing with the so-called SED injustice. I myself was the department head responsible for legal proceedings against former judges and prosecutors of the GDR.

The work in the department was difficult. On the one hand, we were confronted with expectations of intensive criminal prosecution. On the other hand, we often had reservations against the background of the constitutionally prescribed prohibition of retroactivity, which could not be overcome without recourse to the famous "Radbruch formula. Occasionally, we department heads were cited for our concerns.

Even then, I learned a lot about the hinges between the state and the judiciary.

I have been working at the District Court of Weimar since the fall of 1996. In addition to guardianship, accommodation and probate matters, I have consistently worked primarily in family law.

II. (The "essential finding of the investigation").

I would like to comment on the matter as follows.

The preliminary proceedings against me began almost exactly two years ago. Today we are sitting here and I still don't know why.

My **defense counsel, Dr. Strate,** and I have commented in detail on all important points in several, in part very extensive, written submissions. I expressly refer to these.
However, if I look at the "essential result of the investigations", i.e. the part of the indictment that is not read out, my astonishment could not be greater. My astonishment at what the public prosecutor's office deals with, how they do it and, last but not least, what is missing.
This is because the public prosecutor's office should have essentially reproduced the results of the investigation in context and dealt with them in detail.

How does the prosecution actually justify its complete failure to do so?

Answer: Not at all - it just does.

I feel completely unheard. That is why I am now trying to describe once again how my decision of April 2021 came about.

III. (The history until the initiation of the procedures on 15.03.2021)

1. (baseline)

The initial situation was as follows:
As 2021 begins, the daily lives of school children in particular have been very much on my mind.

Their school day was characterized above all by the obligation to wear masks throughout the entire school day and to maintain unnatural distances to classmates, especially distances that were not appropriate for children. In addition, there were cancelled lessons and so-called distance lessons.
And all this despite the fact that numerous studies had already been known since the mid-2020s, according to which children rarely pass on the Corona virus.

Again and again, I was asked by families how these measures burdened them and their children. Quite a few children suffered from headaches and other complaints, and reacted with reluctance or refusal to go to school.
In addition, the teachers intervened when a child took off the mask even for a moment to breathe. In some cases, the children were then exposed in front of the class.
I was also regularly asked whether this could not be judicially reviewed and at least restricted. At the same time, however, most families made it clear to me that they were afraid of such a judicial review because they feared reprisals for their children as a result.

The idea of proceedings for endangering the welfare of children after
§ 1666 BGB was now in the air for me as a family judge.

So-called child custody cases, i.e. above all proceedings concerning parental custody, contact and the endangerment of the child's welfare, have always been the most important for me in my work as a family court judge.

And in the past we have had many proceedings in family court in which a threat to the child's well-being was assumed, God knows, even for lesser interventions than for measures that prevented the child from taking sufficient breaths with every breath.

In the weeks leading up to April 2021, I began discussing such issues with a few col- leagues at KRiStA, the Network of Critical Judges and Prosecutors.

For explanation I must preface the following. The KRiStA network was only founded online in the spring of 2021. Personally, we all did not know each other at all yet. At the time of my decision in April 2021, I did not know anyone in the network personally either, the only exception being my court colleague Mr. Guericke.

When we discussed with each other, we were at first nothing more than small tiles on the screen. I occasionally took part in such discussions in loose succession. But certainly not, as the indictment claims somewhere, on February 3, 2021: that was the day I celebrated my birthday.

The colleague Prestien had the idea to examine the pending questions about a procedure because of child welfare endangerment according to § 1666 BGB. Section 1666 (4) of the German Civil Code has the following wording:

"(4) In matters of personal care, the court may also take measures with effect against a third party."

We discussed this with those interested in family law. We quickly agreed that the wording of the provision in Section 1666 (4) of the German Civil Code (BGB) does not impose any restrictions on considering teachers and school principals as third parties within the meaning of this provision to whom family court orders can be issued.

This also emerged from the commentary literature. For example, Johannsen/Henrich/Althammer-Jokisch, Familienrecht, 7th ed., 2020, § 1666 marginal no. 124: "Third party within the meaning of the provision is any person not entitled to custody." Similarly in Staudinger/Coester (2020) BGB § 1666 Rn. 237: "Third party within the meaning of the provision is any non-parent."

We then further reviewed the commentary literature. A decision by a higher court that would have contradicted this was nowhere to be found.
Quite the opposite was even in the Palandt the decision of the AG Kassel of 19.04.1996 *(DAVormund 1996, 411; in addition also: Co- ester in Staudinger BGB, 2020, § 1666, Rnr. 237; Joksich, in Jo- hannsen/Henrich/Althammer, BGB, 7th ed. 2020, § 1666, Rn.*
124; Lugani, in MüKo BGB, 8th ed. 2020, § 1666, para. 214, 215).
mentioned. The Kassel Local Court had decided that a psychiatric clinic with a closed department for child and adolescent psychiatry - and thus a public administrative body - could also be a "third party" within the meaning of Section 1666 (4) of the German Civil Code. In the order, the Kassel Local Court had obliged a locally competent psychiatric clinic to admit a child as an inpatient by way of a temporary injunction under section 1666 of the German Civil Code. The clinic had previously refused to admit the child due to overcrowding. According to the district court, the clinic in question was obliged to admit the child because of its regional obligation to provide care.

In our discussion regarding the interpretation of the law, Article 3 of the UN Convention on the Rights of the Child, which has been unconditionally in force as a federal law since July 15, 2010, was still decisive for us.
Article 3(1) of the UN Convention on the Rights of the Child states that the best interests of the child shall be a primary consideration in all actions concerning children.
In Article 3(2) of the UN Convention on the Rights of the Child, the States Parties, including the Federal Republic of Germany,

undertake to *provide* the child with *"such protection and care as are necessary for his or her well-being; to this end they shall take all appropriate legislative and administrative measures."*

We agreed that it follows from this binding obligation to provide children with an official procedure for their well-being and to interpret existing provisions in accordance **with international law,** including Section 1666 (4) of the German Civil Code.

For many years, Mr. Prestien has been running a homepage on questions of the best interests of the child. On this website, he has made available a sample proposal formulated by him.

For us as family court judges, it is a matter of course that we can suggest to those directly affected or to their environment that suitable cases of child welfare endangerment be brought to the attention of the family court.
For example, it would not be legally objectionable if I, as a family court judge, were to call in a newspaper interview for suspected cases of child welfare being endangered by domestic violence to be reported to the family court. Nor would it be objectionable if I, as a family court judge, were to call upon children or their parents to report to the family court and request the initiation of child welfare proceedings if I considered the mandatory wearing of masks at school to be potentially dangerous to the welfare of the child, and I could also provide support in this regard.
The fact that we as family judges are entitled and obligated to do so is one of the many consequences of official proceedings that the public prosecutor's office still does not see.

Finally, the following must be taken into account. Even if I had "initiated" the proceedings and even if this were prohibited, the elements of § 339 StGB would still not be fulfilled: Because the alleged "initiation" by me should have taken place of course **in the run-up to the** proceedings initiated then on 15.03.2021. In this respect, however, it would be from the outset (still) lacking for § 339 StGB required **lead or decision of a case** (*see also Stein/Deiters in: SK-StGB, 9th ed. 2016, § 339 marginal no. 32)* and in addition to a - for this necessary - **essence**

judicial activity *(cf. Fischer, StGB, 68th ed. 2021, § 339 marginal no. 5) are* **missing**. This is because, in terms of time, these terms cover the period from the initiation of the proceedings to the decisions on the conclusion of the proceedings *(Sin- ner in: Matt/Renzikowski, StGB, 2nd ed. 2020, § 339 marginal no. 12; von der Heide; NJ 1990, 252, and 1994, 67).*

Since a **possible previous announcement of a procedure** is a minus to a legally completely correct initiative activity in the context of the § 24 FamFG, it is **completely irrelevant** whether the suggestions of the child mother from the initiated procedures were possibly announced and made known to me already before 15 March 2021 or not.03.2021 were announced and made known to me or not (indictment page 5 with reference to an e-mail from me of 08.03.2021 to the expert Prof. Dr. med. Kappstein and another of 14.03.2021 to the expert Prof. Dr. Kuhbandner).

At this point, however, I would like to emphasize that although I should have been able to initiate the proceedings on which my decision of April 2021 is based without further ado, I did not actually initiate them. The child's mother, who initiated the proceedings, brought the matter to the family court on her own initiative.

This seemed to me and to all of us to point out a procedural way forward, but of course it was still a long way from solving the problems at hand in the matter itself.
As I had been doing since around the beginning of 2021, I now increasingly asked myself many questions that seemed important to me for a factual and legal evaluation of the new measures in everyday school life. How endangered were children and young people actually by the pandemic? Could a possible pandemic-related danger to children be reduced or eliminated by the masks and the other measures? Conversely, what harm were the measures likely to cause? Which outweighed the advantages or disadvantages of the measures?

These questions later became, in expanded form, the 18 detailed legal guidance I provided during the proceedings and which is also reproduced in full in my April 2021 decision.

However, it also became clear to me that these and other questions could only be answered in the necessary depth with the help of an expert.

2. (Selection of reviewers)

While searching for qualified experts, I finally came across the name of Prof. Dr. Kappstein and asked her by e-mail whether she would be willing and able to give an expert opinion on the questions I thought necessary in the event that such proceedings were pending. She said yes for some questions and recommended Prof. Dr. Kuhbandner from Regensburg and Prof. Dr. Kämmerer from Würzburg for the other questions. In response to my inquiry by e-mail, they declared that they would be able to give an expert opinion on the other questions.

I thanked the three scientists and told them that I would come back to the matter if I actually had to conduct a corresponding procedure.

I would like to emphasize that the qualifications of all three potential appraisers were the decisive criterion for me.

All three reviewers appointed later are professors with doctorates and habili- tations at German universities.

- Prof. Dr. med. Ines Kappstein, hygienist, is a specialist in microbiology, virology and infection epidemiology as well as a specialist in hygiene and environmental medicine. Her habi- litation was in hospital hygiene. For many years, she was the head physician for hospital hygiene in

active in various clinics. She has also provided numerous court opinions for more than thirty years.

- Prof. Dr. Christof Kuhbandner is Professor of Psychology, Chair of Educational Psychology at the University of Regensburg and an expert in the field of scientific methods and diagnostics.

- Prof. Dr. rer. biol. hum. Ulrike Kämmerer represents at the University Hospital Würzburg, Women's Hospital, in particular the main areas of human biology, immunology and cell biology. She received her doctorate in the field of virus recognition. It should be noted in passing that the expert was also heard as an expert by the Federal Administrative Court on 07.06.2022 on the PCR test and other issues, in the context of the military appeal proceedings pending there at the time.

That seemed to me to be the maximum possible qualification. More was not possible in my eyes.
That the three scientists are members of the association Mediziner und Wissenschaftler für Gesundheit, Freiheit und Demokratie e.
V. (MWGFD) or at least should have been at that time, was not known to me at the time of my decision. I neither asked about it nor was I informed about it. It would still be unclear to me today what relevance this should have.
In my entire professional life so far, I have never (!) asked a (potential) appraiser about his or her club memberships. In my opinion, only the scientific qualification counts and this was present here.

The public prosecutor's office does not even bother to check whether the expert opinions obtained stand up to scientific criteria and the standards of expert opinions in court.
The public prosecutor's office also otherwise avoids any question of substance.

How does the public prosecutor's office actually justify its claim, made nonetheless, that from the

Would the selection of experts result in a supposed lack of objectivity on my part?

Answer: Not at all - it just does!
The mere further assertion of the public prosecutor's office that the experts are "critical of the measures" cannot**,** even if it were true, **constitute** a substantive examination of the expert opinions. Insofar as the (scientifically active) experts should have already appeared in advance with publications on the evidentiary topics, it already follows from the provision in § 18.3 No. 2 of the BVerfGG that this is irrelevant. According to this provision, a Federal Constitutional Court judge who has already expressed a scientific opinion on a legal question that may be significant for the proceedings is not thereby excluded from exercising his judicial office.
The same applies, of course, to experts who have already published scientifically on possible evidentiary issues.

3. (ex officio procedure in the event of a risk to the welfare of a child)

When reading the indictment it became clear to me that the public prosecutor's office, despite possible assurances to the contrary, does not take into account that proceedings due to child endangerment according to § 1666 BGB (German Civil Code) are so-called "child endangerment proceedings".
are official proceedings pursuant to section 24 FamFG. This means that the proceedings are initiated ex officio and do not require an application pursuant to section 23 FamFG.

Many years ago, I once took an advanced training course in child custody cases with an experienced superior court judge.
This was exactly the topic she dealt with. She made it very clear to us that all essential proceedings in the field of child and guardianship law - with the exception of custody proceedings pursuant to § 1671 of the German Civil Code (BGB) - are official proceedings, including contact proceedings, but above all, of course, proceedings for endangering the best interests of the child.

As a family court judge, I can initiate such proceedings - and am even obliged to do so - if I become aware of circumstances that give rise to the suspicion that the welfare of a child is at risk.
It is precisely the nature of proceedings initiated by the court, in particular proceedings under § 1666 of the German Civil Code, that they are "initiated" by me as a judge, and that I as a judge cannot therefore be reproached for taking initiatives, but am even expected to do so. And if I am allowed to "initiate" the proceedings, I may of course also prepare them; preparation is a natural part of initiation.
It is only through my preparation that I gain clarity as to whether there is a suspicion that a child's well-being is at risk.
And only when I confirm this suspicion through my preparation do I have the prerequisites for initiating such proceedings. Only with this suspicion can I initiate it and must I initiate it.

Although third parties can at least suggest the initiation of such proceedings in accordance with § 24 I FamFG, this is not necessary. But even after such a suggestion, I open the proceedings ex officio, because I always open them ex officio if there is a suspicion of a risk to the welfare of the child; with or without a suggestion.

For me as a family judge, it was and still is sometimes a question of weighing up whether I should initiate proceedings without a suggestion or whether it would be more sensible and responsible to react to a suggestion first, if one is forthcoming. This was also the case with my decision in April 2021.

I had already considered opening such proceedings ex officio, even without an explicit suggestion. However, since, as already mentioned, many families feared reprisals for their children in the event of a judicial review, it initially seemed better to me if parents expressed their willingness to endure possible disadvantages for their children by suggesting such proceedings. As I understand it, consequences of this kind must also be included in a comprehensive consideration.

My considerations on this point were then superfluous, because finally, without my intervention, a mother appeared in the form of Mrs. Barth, who was willing to submit the matter to the family court on **her own initiative.**
I would therefore like to point out once again that I did **not** initiate the proceedings in the sense in which the prosecution has accused me of doing so, even if this would have been expressly permissible in my opinion.

At the suggestion of the child's mother, I then initiated the main proceedings *(9 F 147/21)* and the temporary injunction proceedings (*9 F 148/21) in* this matter on March 15, 2021, in accordance with section 24 of the Family Proceedings Act and section 1666 of the Civil Code.

IV. (The further course of the proceedings)

After that, I did two more things, namely to appoint a procedural counsel for the two children and to obtain expert opinions on the basis of a corresponding evidence resolution.

1. (procedural counsel)

In recent years, I have mainly appointed Ms. Zöllner, a lawyer from Apolda, as procedural counsel in many child custody cases and therefore initially considered appointing her this time as well. However, from remarks she made I gathered that she would not be so keen to act as procedural counsel in proceedings with this subject matter. In order not to put her in the embarrassment of having to either refuse or reluctantly take on this task, I asked a few others who had been recommended to me, but none of whom was willing to take on this task.

It was only with Ms. Peupelmann that I was lucky.
I first became aware of the name of Ms. Peupelmann in connection with my research into a possible case. Until then I did not know her. This also applies to the children she later represented and their parents. Whether and, if so, when, as I have taken from the files, attorney Peupelmann already knew

I don't know whether Ms. Peupelmann was actually looking specifically for children who fall within my area of responsibility at an earlier point in time for a child welfare endangerment procedure. You would have to ask Ms. Peupelmann herself. In any case, my jurisdiction is known or easily researched by many attorneys and other offices in the district, so no one needs to ask me themselves.

In this context, I can only point out that I have been known for quite some time as someone who, for legal reasons, looked with skepticism at the effectiveness of the measures to contain the Corona pandemic. The lawyers and participants who regularly or only occasionally took part in my hearings were aware that for some time now I had expressly pointed out the statutory provision of § 176 GVG at the beginning of each hearing. According to this provision, persons participating in the hearing may not cover their faces, either in whole or in part, during the hearing. The reference to this was regularly recorded in the minutes. This was and is well known in legal circles. It is possible that Attorney Peupelmann also learned of this and from this developed the idea of wanting to bring proceedings before me.

It had already become clear to me from various conversations with lawyers on the fringes of negotiations that it would not be easy to find legal assistance in proceedings relating to the Corona problem, whether as a guardian ad litem, as a representative of parents or with some other task. Since I had not had the slightest contact with Ms. Peupelmann before, I naturally first obtained her telephone consent to take over the guardianship in the two proceedings, even if this was not specifically noted in the files. In doing so, I had also gained the impression that she was capable of doing so.

How does the public prosecutor's office justify its claim that I did not check the suitability of Ms. Peupelmann as a possible counsel for the proceedings?

Answer: Not at all - she simply claims it.

And apart from the fact that an alleged lack of review would not have been an elementary violation of law, the public prosecutor's office also nowhere substantiates whether Ms. Peupelmann was actually unsuitable. The statement that she was allegedly "critical of the measures" is, of course, no justification.

Since a guardian ad litem should be appointed as soon as possible, Ms. Peupelmann and the child's mother were contacted in parallel, which the indictment fails to mention on page 6. After Ms. Peupelmann had declared her willingness to take over, however, I hesitated at first to appoint her, because in proceedings with so much that was new, I would have liked to have someone in the proceedings whom I already knew from negotiating sessions. That is why I decided to try to find such a representative after all. For this purpose, I turned to Bert Krenzer, an experienced family law specialist from the law firm Bergerhoff Rechtsanwälte in Weimar. Mr. Krenzer has regularly participated in my negotiations for many years. He thanked me for thinking of him, but asked for time to think it over. He would first have to discuss this question with his law firm. In response to my inquiry, Attorney Krenzer explained one or two days later that unfortunately he could not take on the task. He had discussed the matter in detail with his entire office the day before. They had come to the conclusion that the task was interesting, but could not be taken on for other reasons.

It finally became clear to me that I would probably receive such an answer from many law firms for man- dat political reasons. Only after Mr. Krenzer had refused to take over the task of the guardian ad litem, I then appointed Ms. Peupelmann as the children's guardian ad litem.

2. (expert opinion, issuance of the order for evidence)

I then issued a decision on evidence and sent it, as well as the decision appointing the guardian ad litem, to all parties involved, including the Free State of Thuringia via the responsible ministry.
I have already commented on the selection of the experts.

On page 7 above of the indictment, the public prosecutor's office accuses me of having issued the evidentiary decisions in the main proceedings and not in the temporary injunction proceedings, i.e. exactly as provided for by law. This is because in temporary injunction proceedings, only present evidence is admissible within the framework of the only required prima facie evidence, Sections 51, 30, 31 (2) FamFG. Evidentiary decisions cannot therefore be taken in the temporary injunction proceedings.

How does the public prosecutor's office justify the fact that it actually accuses me of having complied with the legal provisions by issuing the order for evidence in the main proceedings?

Answer: Not at all - it just does.

The public prosecutor's office then expands its accusation on page 7 in the middle of the indictment to the effect that findings from the main proceedings cannot be transferred to the temporary injunction proceedings. It believes that it can read this out of Section 51 (3) FamFG, which regulates the transfer of procedural acts from the temporary injunction proceedings to the main proceedings.

From which the prosecution concludes that the reverse case is inadmissible. This is simply wrong.

As a family court judge, I decide in accordance with Section 30 (1) FamFG at my due discretion whether to establish the relevant facts by a formal taking of evidence in accordance with the provisions of the civil procedure (strict evidence procedure) or in the free evidence procedure. For my proceedings for the issuance of a temporary injunction, it was even sufficient if the prerequisites for the injunction were made credible, §§ 51 (1) sentence 2, 31 FamFG, which is a lower degree of probability than the full conviction of the existence of the relevant facts required in the main proceedings. For the free evidence, all conceivable evidence that could have contributed to my conviction can be considered as evidence. I would therefore have been able to use the expert opinions in the temporary injunction proceedings even if they had been commissioned by another court. Or if they had been printed in a professional journal. To put it casually: In the free evidence procedure, I can take anything from anywhere.
The transfer of (partial) findings from the main proceedings to the temporary injunction proceedings is therefore not only quite unproblematic, it is even the legal normal case in practice: some findings have already been made in the main proceedings, but the proceedings are not yet ready for a decision because, for example, certain procedural acts are still missing. At the same time, however, the findings that have already been made have condensed into an urgent need within the meaning of § 49 FamFG for the issuance of a temporary injunction: then I can and must issue such an injunction. This standard case is likely to occur several times a month in every family court department in Germany.

How does the public prosecutor's office justify disregarding this fundamental legal regulation and accusing me once again of having complied with the legal provisions?

Answer: Not at all - it just does!

The experts received the decision from me in advance by e-mail so as not to waste time unnecessarily. The expert opinions were sent in the same way: in advance by e-mail and then by regular mail.
The report of the trial counsel arrived practically at the same time as the expert opinions.

(That the consultation of the experts (in advance) by mail is legally possible, also in terms of cost law, and in view of the principle of acceleration of § 155 FamFG even required, my **defense counsel Dr. Strate** had already explained with reference to relevant commentary literature (*SS of 20.09.2021, p. 8, SS of 11.06.2022, p. 10)).*

Of course, in contrast to what is stated in the indictment, I was able to instruct the experts in the course of the commissioning of the expert witnesses in advance by mail to include in the expert opinion not only the core questions but also legal information which I still intended to provide to the parties involved. If, therefore, the experts are asked during their examination of the witnesses whether they could explain why they were also given **legal information on** March 15, 2021, as part of the expert's assignment, which was **not yet part of the file at that time, it is** overlooked that **this is not at all important.** These references did not have to be part of the file at that time, it is sufficient that I still intend to give such references to the parties involved. Exactly that I did already on the next day, the 16.03.2021, according to the procedure file 9 F 147/21.

The only thing that would have been objectionable was if I had informed the experts of legal advice that I supposedly still intended to give to the parties involved, but had then not put this into practice without informing the experts. But that is not what happened.

As far as I asked the expert Prof. Dr. Kuhbandner to include examples of calculations in his expert opinion, p. 862, this was done in view of the fact that a professional discussion of the decision to be made by me seemed to be possible or at least could not be excluded. This applies in particular in view of the fact that after more than one year with the pandemic I have made the first judicial decision, which takes the trouble at all to consult expert opinions for the clarification of the facts, and this, as far as evident, not only in Thuringia, but altogether in the German-speaking area. Examples of calculations lead to greater clarity, which can promote objective discussion and acceptance among those directly involved.

As far as it is claimed in the investigation file on page 933 that with the request to the expert Prof. Dr. Kuhbandner to insert calculation examples in his expert opinion, inadmissible influence was exerted on the expert opinion, since an initial version of the expert opinion had not yet been available at that time, this completely ignores the legal situation. Already in his pleading of 20.09.2021, there page 3 to 9 (5), my **defense counsel Dr. Strate** had pointed out that the court has to direct (!) the activity of the expert and can give him instructions (!) for the kind and extent of his activity, § 404a Abs. 1 ZPO. § 404a Abs. 2 ZPO regulates further that the court is to hear the expert before writing the question of proof, to instruct it into its task (!) and to explain to it on request the order (!) has. This is exactly what I have done. The request to include examples of calculations in the expert opinion is part of the concrete assignment of the expert without any problems.

3. **(Content of the expert opinions and legal hearing)**

For me, the triggering moment for the issuance of my temporary injunction was, in addition to the report received from the procedural committee, the expert reports, which led to the following results in all detail: There is a lot of evidence for possible damages on a physical, psychological and social level, which can be associated with prolonged mask wearing. In turn

there is no scientific evidence that the wearing of masks could contribute in **real terms** to reducing the incidence of infection. At least not when the masks are worn by laypersons and children under everyday conditions. The tests used are again unsuitable for measuring the incidence of infection; moreover, they are not used for asymptomatically positively tested persons according to the WHO guidelines known since January 2021 (cf. also my legal notice No. 12 in my decision of 08.04.2021, there in section A: V.).

This "finding" already meant that the children were threatened with further damage without any relevant benefit. This meant that there was imminent danger for me and I therefore considered the prerequisites for the issuance of a temporary injunction according to § 49 FamFG to be given, which meant that I was also obliged to issue such an injunction; I no longer had any discretion *(Feskorn in: Zöller, Zivilpro- zessordnung, 33rd ed. 2020, § 49 FamFG).*

In addition, there was the following: Finally, the expert opinion of Prof. Dr. med. Kappstein not only showed that there is no scientific evidence that the wearing of masks by the population could contribute to a reduction of the incidence of infection. **Rather,** it was found that, on the contrary, there is a possibility that the even more frequent hand-face contact when wearing masks **increases** the **risk of** coming into contact with the pathogen oneself or bringing fellow human beings into contact with it. Even if a person has already disinfected his or her hands many times in one day, this becomes pointless if this person then involuntarily touches the frequently contaminated mask, as any layperson does, and then uses his or her own hand to bring the viruses to their ports of entry in the area of the mucous membranes of the upper respiratory tract (eyes, nose, mouth). According to the report, the reason for this is that the correct use of masks is not always easy to achieve among medical personnel, while among the general public all the requirements that are considered indispensable cannot even begin to be implemented. Not only schoolchildren, but also adults, including all the politicians seen on television, are unable to do this.

I had to postpone and make up for the outstanding hearings as well as statements on the expert opinions, Sections 159 (3), 160 (4) FamFG.

At this point, I would like to point out that for the planned hearing of the children and their parents, the requested statement of the legal counsel should first be awaited. This is a common procedure, which is described by the public prosecutor's office on page 7 above of the indictment as "arbitrary" in a completely irrelevant way. This is because, as a rule, the hearings of the parties involved can be arranged in a more targeted and gentle manner if the report of the trial counsel is already available. There were initially no indications that this could not be waited for as an exception. Moreover, the parties involved could not yet be heard on the expert opinions after the initiation of the proceedings, because these first had to be obtained and were not yet available.

However, the content of the expert opinions and the report of the procedural counsel were so explosive that a decision had to be made immediately.
My duty as a family judge to examine the issuance of a temporary order without delay in proceedings due to a risk to the welfare of the child pursuant to section 157 *(*3) FamFG exists throughout the proceedings *(Hammer in: Prütting/Helms, FamFG, 4th ed. 2018, section 157, marginal no. 31).*

4. **(The extension of the decision to the remaining children of the two schools).**

In my decision of 08.04.2021, in section A: III under the heading "The concrete situation of the children involved in their schools", the personal situation of the two children for whom the proceedings were initially suggested is described in detail and precisely on the basis of the representation of the children's procedural counsel.

From this description, however, it is not only the situation of the two children for whom the procedure was initially suggested that becomes clear. It became equally clear to me that the situation for all other children at these two schools is exactly identical. For this reason - i.e. not without reason and certainly not "arbitrarily", as the indictment on page 6 accuses me of! - I have extended the decision to the other children of these two schools according to § 24 FamFG in connection with § 1666 paragraph 4. I extended the decision to the other children of these two schools according to § 24 FamFG in connection with § 1666 paragraph 4 BGB and justified this at the very end of the decision, there was no need for a "suggestion".

I had to postpone and catch up on outstanding hearings and shareholdings because of the perceived imminent danger. In the process

Because of the imminent danger and the resulting urgency, I merely overlooked the fact that among the other children at the two schools there might also be some who belong to the department of a colleague. I would have excluded those children who do not fall within my letter competence with a half-sentence, if I had not overlooked this.

The public prosecutor's office accuses me of violating the right to be heard. However, it does **not** take into account that hearings can be held at a later date in the event of danger, as is the case here.

What is the prosecutor's justification for not considering the catch-up nature of hearings in cases of imminent danger?

Answer: Not at all - it just does!

Moreover, even in the absence of imminent danger, the postponement of a hearing until after the resolution had been adopted would not have been an elementary violation of the law.

V. (My decision on 08.04.2021)

When I made my decision on April 8, 2021, I not only considered the respective opposing position for all points that were actually or legally relevant from my point of view, but also actually took it on a trial basis. I place myself in addition inwardly on exactly the opposite point of view and discuss all arguments with myself under reversed signs. With this change of perspective, I test what seems more convincing to me. In a sense, I am my own "advocatus diaboli", i.e. my own "lawyer of the devil", in order to test the resilience of arguments.
This is how I arrived at the result of my decision.

After closing time on 08.04.2021, I placed my printed and signed decision with the files in my office on the desk of my office manager, Ms. Großmann, where I always put things that are in a hurry.
Thus, for me, the order was also issued, at least if one follows the Munich Commentary (*since I have renounced the original with the will to announce in the direction of the office and the original has come into the sphere of power of the office, MüKo FamFG/Ulrici, 3rd ed. 2018, FamFG § 38 Rdnr. 29).*

The next morning, the decree note dated 08/04/2021 was signed by Clerk Kraneis because Ms. Grossmann did not want to sign it.

VI. (Child welfare endangerment)

In my decision, I affirmed that the **welfare of the child was at risk.** Where would be here the not only incorrect, the not only unjustifiable, but even more **the serious distance from law and order**? Nowhere! The decision I have made is essentially based on the extensive expert opinions that have been obtained in order to establish the risk to the welfare of the child. As shown, the qualified experts have affirmed in lieu of an oath that they have provided their expert opinions impartially and to the best of their knowledge and belief. Everything that the State Attorney's Office accuses me of has not had the slightest influence on the content of the expert opinions. **If the experts had received the expert opinion order with the same evidentiary questions from another court, they would have prepared exactly the same expert opinions.** In order to present the assumption of a child's well-being being endangered not only as wrong, not only as unjustifiable, but as a serious distance from law and justice, the investigators would have to deal intensively with the reasoning of the decision made and thus as its integral part with the expert opinions obtained and prove or at least first of all explain in a comprehensible way at which point and by what means such a serious distance from law and justice is supposed to have taken place here.

Does the public prosecutor's office even deal with the expert opinions in a single sentence and try to justify even rudimentarily why the assumption of a child's well-being being endangered should not only be an incorrect, not only an indefensible decision, but even more a serious distance from law and order?

Answer: Not at all - she just leaves it!

Instead, the indictment insinuates that I was never concerned with the welfare of the children Maurice and Leon Barth (page 4 above of the indictment).

Does the public prosecutor's office substantiate this allegation even rudimentarily?

Answer: Not at all - she just leaves it!

Instead, the prosecution continues with further insinuations.

Thus, the public prosecutor's office insinuates that I wanted to make a decision that could not be contested (page 2 above of the indictment).
Does the public prosecutor's office justify this insinuation?
Answer: Not at all - it simply leaves it!

It would also be difficult to justify this. Firstly, such a supposed wish on my part would be factually irrelevant and secondly, the accusation would also be legally incorrect. It is true that temporary orders under § 57 sentence 1 FamFG are in principle not contestable. However, if, as here, a decision was made without an oral hearing due to urgency, an application can be made under section 54(2) FamFG for a new decision to be made on the basis of an oral hearing that would have had to be scheduled at short notice. This new decision on parental custody would then have been appealable under section 57 sentence 2 no. 1 FamFG, according to the Jena Higher Regional Court in its decision of 14 May 2021, 1 UF 136/21, juris para. 33. The Free State of Thuringia (or another party) could therefore have simply and comprehensively applied under section 54(2) FamFG for a new decision on the basis of an oral hearing.

Furthermore, the indictment accuses me, also on page 2 above, of having wanted to make a decision "with broad public impact".
This, too, is not only irrelevant in terms of the facts. In addition, this is precisely why specialist journals, legal portals such as juris and others exist and press releases are issued so **that** decisions can be made known and widely discussed. Precisely because I was concerned about the well-being of the children, such a discussion would also have been necessary.

So one insinuation follows the other. That still disgusts me today!

Finally, the prosecution also claims that the review of the rapid tests and the presence lessons were not part of the trial material, only the masks. Contrary to the prosecution (page 5, page 1 above and page 8 of the indictment), the masks were not the **subject of the proceedings in** both the main proceedings and the preliminary injunction proceedings,

but **the measures required under § 1666 of the German Civil Code (BGB) to avoid endangering the welfare of children**. **For me,** these necessary measures **included, in particular, the review of the PCR tests and the rapid tests,** because they were used to derive the supposed necessity for the regulations ordered at the schools, such as masks and distance requirements. Likewise, from the point of view of avoiding a risk to children's well-being, this included the maintenance of **classroom attendance**. The fact that the school closures were unnecessary and caused manifold damage to the children is, incidentally, now a consensus even among those who originally advocated these measures.
The subject matter of the proceedings is not determined by the person who possibly initiates the proceedings, but by me as the judge who initiates the proceedings ex officio, with or without a suggestion. Here, too, it becomes clear to me once again that the public prosecutor's office basically treats the proceedings for endangering the welfare of a child like an application procedure, which it is **not.**
The incomprehension of the official channels of proceedings for endangering the welfare of children runs through the indictment like a red thread.

Since the public prosecutor's office does not ask any substantive questions, it also misses the fact that the results of the expert opinions obtained have been fully and impressively confirmed to date. The evidence for this is now almost unmanageable.
Merely by way of example, it should be mentioned that the expert committee for the evaluation of corona measures according to Section 5 (9) of the Infection Protection Act has already officially stated in its report of June 30, 2022, that a correlation between the level of incidence and the strength of the measures is not discernible https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/S/Sachverstaendigenausschuss/220630_Evaluationsbericht_IFSG_NEU.pdf, there p. 70.
That the mask obligation in the school was likewise unnecessary, as that in the expert opinion obtained in my procedure the expert Professor Dr. med. Kappstein already in April 2021 determined, confirmed itself likewise in many cases.
The Cochrane Society, whose publications are considered the gold standard in evidence-based medicine, concluded in a meta-study published Jan. 30, 2023, that mask-wearing has little or no epidemiologic effect with respect to the spread of covid-19. (https://www.cochrane-library.com/cdsr/doi/10.1002/14651858.CD006207.pub6/full).

The public prosecutor's office essentially accuses me of alleged procedural violations and an alleged misinterpretation of the law (Section 1666 (4) of the German Civil Code).
However, according to the established case law of the Federal Court of Justice *(BGH, 18.08.2021, 5 StR 39/21, juris marginal no. 34), a* decision must be made "on the basis of an overall assessment of all objective and subjective circumstances". For this, neither my motives nor the in halting questions can remain out of consideration. For the weight and the extent of an alleged elementary violation of law of which I am accused, the possible consequences are of essential importance.

How does the public prosecutor's office justify the fact that it does not even begin to deal with the mandatory questions of content?

Answer: Not at all - she just leaves it!

The prosecution obviously assumes that the Corona measures were "right" and criticism of them was "wrong", and seems to expect that I (and any other judge) should have based my work on this view as generally proven facts that should not be questioned further. This is a real **prejudice**.

As with the prosecution's lack of understanding of the proceedings before the family court, this **prejudice runs** like a red thread through the indictment. From this **prejudice,** the public prosecutor's office develops its accusations of, among other things, alleged lack of objectivity and alleged bias.

If the prosecution justifies its prejudice that the Corona measures are "correct" from the outset, i.e. untested, and criticism thereof "wrong"?

Answer: Not at all - she just leaves it!

And so the **prejudices of** the prosecution become the basis of criminal charges against me.

In doing so, the public prosecutor's office misses the fact that, with its own logic, one could just as well say "right" the other way around: Whoever considers the Corona measures to be "right" from the outset, i.e. unchecked, and considers criticism of them to be "wrong"?
"wrong", he is "not objective" and he is "biased".

For me, on the other hand, one of my core duties as a judge is to conduct an unrestricted examination of the facts, also and especially vis-à-vis the executive branch. That is what I have endeavored to do.

VII. (Once again on the core allegations of the prosecution)

High Court, at the beginning I said that I do not know why we are sitting here after two years.

Why?

I don't know because, especially on an issue that at least at the time was stirring up the country so much, I made a scrupulous effort to do everything the way I always did when I was initiating child welfare endangerment proceedings.

What is the prosecution actually accusing me of?
There are **three allegations** that form the core of the indictment:

1. **She claims that I have usurped my jurisdiction.**

I checked my **competence** when initiating the proceedings and considered it to be given. That this is at least one possible view of the matter is already clear from the fact that the Jena Higher Regional Court, in its order of May 14, 2021 *(1 UF 136/21),* allowed the appeal on a point of law to the Federal Court of Justice - which is only admissible if admitted - on the grounds that the legal question is of fundamental importance *(Section 17 a (4) sentence 5 GVG)*. Even from the viewpoint of the Higher Regional Court, the matter was by no means clear-cut, because otherwise it would be unnecessary for the Federal Court of Justice to comment on the matter.
At this point at the latest, the public prosecutor's office should have dropped the accusation of assuming jurisdiction.
For if, in the view of the Higher Regional Court, the legal question can only be clarified by a decision of the Federal Supreme Court, a contrary opinion is not unreasonable (and certainly not an elementary breach of law) and for this reason alone cannot be the basis for the accusation of obstruction of justice.

In addition, there is this: The Münster Administrative Court has also ruled in two similar cases *(26.05.2021, 5 L 339/21; 31.05.2021, 5 L 344/21)* that the legal disputes were not based on public law disputes, but rather

"were caused by the

Family courts to be initiated ex officio by child custody cases". This opinion has been confirmed by the Federal Administrative Court on the same grounds *(BVerwG, 16.06.2021, 6 AV 1/21, 6 AV 2/21; also BVerwG 21.06.2021, 6 AV 4/21).* In its decisions of 06.10.2021 (*in another case, XII ARZ 35/21)* and of 03.11.2021 (*in the case at hand, XII ZB 289/21), the* Federal Court of Justice (and subsequently *the* public prosecutor's office in Erfurt) ignores the conflicting decisions of the Münster Administrative Court and the Federal Administrative Court.

The Federal Court of Justice even goes so far as to repeatedly cite the decision of the Federal Administrative Court of June 21, 2021 as evidence for its own statements, but conceals the fact that the Federal Administrative Court took the exact opposite view that there was **no** dispute under public law.

The public prosecutor's office proceeds similarly: it quotes the decision of the Federal Court of Justice of October 6, 2021, XII ARZ 35/21, and immediately in the following paragraph almost verbatim sentences from the decision of the Federal Administrative Court of June 16, 2021, 6 AV 1/21, juris, marginal no. 7, which clearly contradicts this view. However, the prosecution simply takes over the sentences that are still in the subjunctive in the Federal Administrative Court into the indicative.

It is true that the Federal Administrative Court does not say that Section 1666 (4) of the German Civil Code is a sufficient basis for issuing orders to the authorities. The Federal Administrative Court does not even deal with this in detail. However, unlike the OLG Jena, it clearly separates this question from the question of legal recourse. **And unlike the Federal Court of Justice, the Federal Administrative Court considers legal recourse to the family courts to be given.**

In any case, the two decisions of the Federal Court of Justice do not change the fact that my opinion on the jurisdiction or the given legal recourse to the family courts is also held by other courts up to the Federal Administrative Court.

I have carefully thought through the possible legal positions. Nothing else is expressed in the chat with my colleague Ms. Gloski quoted in the investigation file.
Besides, this chat proves above all that I had and have nothing to hide, but - on the contrary - let colleagues participate in my thought process. This alone leads the theory of a big conspiracy, which the public prosecutor's office obviously seems to follow, ad absurdum. Even after the chat with my colleague, I have

I have given the matter further intensive consideration and have finally come to the firm conclusion that the family courts have jurisdiction and that recourse to the ordinary courts is very well open.

How does the public prosecutor's office justify completely ignoring the case law, which up to the Federal Administrative Court also considers my competence to be given?

Answer: Not at all - it just does!

I have already commented in detail **on** the **scope of § 1666 (4) of the German Civil Code.**

From this, it is clear from the literature and case law that my view that holders of sovereign authority can be third parties within the meaning of Section 1666 (4) of the German Civil Code (BGB) is not only not unjustifiable as such but, moreover, is even well justifiable, so that I cannot be accused of an elementary violation of the law as a result.

At this point, I will therefore only mention that the 7th Criminal Division of the Erfurt Regional Court, in its decision of June 9, 2021 *(7 Qs 131/21),* also left the question of whether § 1666 Paragraph 4 of the German Civil Code entitles the family court to issue orders to authorities open, because - according to the division's reasoning - it is a legal question that cannot be answered without further ado, but requires a more precise legal examination.
This alone leads to the fact that my interpretation of § 1666 (4) BGB is in any case not unjustifiable (and certainly not an elementary breach of the law), so that it too cannot be the basis for an accusation of obstruction of justice.

How does the public prosecutor's office justify its complete disregard of this opinion of the 7th Criminal Chamber of the Regional Court of Erfurt?

Answer: Not at all - it just does!

2. **The public prosecutor's office accuses me of having "initiated".**

In the matter itself, I have examined whether I see sufficient indications for a **suspicion** of a risk to the welfare of the child.
I had already mentioned that I had been repeatedly asked by families about the question of a possible risk to the well-being of a child and had therefore already begun to deal with the underlying factual questions. By this **preparatory occupation with the factual** questions I had reached a state of knowledge, on the basis of which I affirmed the **suspicion of** a child welfare endangerment clearly.
And as a family court judge, who is allowed to initiate proceedings ex officio and, if necessary, must do so, with or without a suggestion, I may of course also prepare them.
And whether the suggestion about the procedures was announced to me in advance is therefore, in my opinion, all the more irrelevant.

Therefore, I dutifully **initiated the** two proceedings, but did **not initiate** them in the sense meant by the prosecution, even if I would have been allowed to do so. This is how I have proceeded for more than 26 years when I initiate proceedings for endangering the welfare of a child.

At the moment when I affirm the **suspicion of** a risk to the welfare of a child, I am no longer neutral. This is not because I have formed a preliminary opinion on the facts of the case by affirming the suspicion. However, this is always the case when I initiate proceedings because of a risk to the welfare of a child, and it does **not** make me **biased.** Because only with such a suspicion may - and must - I initiate such proceedings in the first place.

Incidentally, for me, the affirmation of such a suspicion means that I naturally remain open to results. That is not a contradiction. After all, I have initiated and conducted enough proceedings in the past to endanger the well-being of children in which the initial suspicion was not confirmed for me and I then discontinued them.

Apart from the fact that I did not initiate the proceedings: How does the public prosecutor's office justify accusing me of "initiating" the proceedings, although this is precisely what constitutes the core of official proceedings?

Answer: Not at all - it just does!

3. **The public prosecutor's office believes that I was biased and should have reported this myself.**

First of all: My suspicion that a child's well-being was at risk did not remain a secret, because it became obvious when the proceedings were initiated.
I also informed all parties involved of the initiation of the proceedings, including the Youth Welfare Office, the two schools attended by the two children for whom the proceedings had initially been suggested, and of course the Free State of Thuringia via its responsible ministry.

Likewise, the appointment of the guardian ad litem was communicated to all the previous parties.

And finally, I disclosed that an evidentiary hearing was to be held, on what issues it was to be held, how it was to be held, namely by obtaining expert opinions, and by which experts the expert opinions were to be rendered.
All of this was made known to all parties involved, including the Free State of Thuringia, by sending the decision to take evidence.
No objections to this were raised. A motion of bias against the experts (or against me) - even if I do not know how this should have been justified - was not filed by anyone, not even by the Free State of Thuringia.

By the way, according to the wording of § 48 ZPO, it does not matter whether I have considered myself biased or not, that is legally irrelevant! According to **§ 48 ZPO,** self-rejection consists of *"a judge ... giving notice of a relationship that could justify a rejection"*.

What *"ratio"* would that have been?
It was all obvious, so what else should I have told whom? In view of these circumstances, it is **not** justifiable that a duty to self-disclose should have existed here, the violation of which should then also have been an elementary violation of the law in the sense of a legal breach.

The WhatsApp I sent to Ms. Masuth on 06.03.2021 does not change this. In it, I had canceled my participation in an event (a "Monday walk" was meant) in order to avoid a
"bias problem."

The background was as follows: At the beginning of 2021 I had sporadically participated in so-called.
"Monday Walks" in Weimar. I experienced that even the most objective criticism of the so-called Corona measures was defamed in such a nasty way that I could never have imagined before.
It became clear to me, should I ever have to decide as a judge about questions from this topic circle, I could not exclude such unobjective reproaches alone because of the simple participation in such a "Monday walk" also opposite my person up to the point that possibly completely groundless "bias reproaches" would be constructed, that becomes just clear. Therefore the refusal!

On the other hand**,** I can only point out once again that I was not biased, but had the suspicion of a risk to the welfare of a child and that this is also the necessary prerequisite to be able and to have to initiate proceedings because of a risk to the welfare of a child.
Secondly, I also did not consider myself biased and **thirdly,** as just mentioned, this would have been legally irrelevant, § 48 ZPO.

A case of **"pre-referral"** pursuant to Section 41 No. 4 - 8 ZPO **does not exist**. According to the decision of the Federal Court of Justice of 12.04.2016 *(VI ZR 549/14, juris marginal no. 8),* however, a prior referral that does not lead to the exclusion of the judge pursuant to Section 41 No. 4 - 8 of the Code of Civil Procedure is generally not suitable to give rise to an apprehension of partiality.
So there was nothing to share.

At the same time, the public prosecutor's office claims that I was **"preliminarily involved" in** the matter. How does it do that?

By ignoring that an official procedure like that after § 1666 BGB can and must be initiated by me as a judge, with or without suggestion to it. Independently of the fact that I did not initiate it at all!
And by further ignoring that I, as a judge who can and must initiate proceedings, may of course also prepare them. And by finally separating the preparation from the actual proceedings **completely arbitrarily** and describing it as a supposed "preliminary referral", which I should have reported according to § 6 FamFG, § 48 ZPO.

How does the public prosecutor's office justify the fact that it <u>completely arbitrarily excluded</u> the - not unlawful - preparation of the trial from

from the entire proceedings, which should have been initiated by me as family judge?

Answer: Not at all - it just does!

And how does the public prosecutor's office justify its assertion that this kind of alleged "prior referral" should lead to bias? Which I then allegedly should also have communicated (even if, as already explained, according to § 48 ZPO, it does not even matter)?

Answer: Not at all - it just does!

Because the public prosecutor's office realizes that this mere assertion of bias is no justification, it further claims that I was biased because I was not neutral. The public prosecutor's office again wants to infer that I was not neutral from the non-legal preparation of the proceedings.

How does the prosecution justify the fact that at this point, at the latest, it is finally going around in circles with the indictment?

Answer: Not at all - it just does!

This is because I am never neutral when initiating proceedings because of a risk to the welfare of a child. Only when I have affirmed a corresponding initial suspicion of a child's well-being being endangered, may I and must I even initiate proceedings.

4. **The public prosecutor's office claims that I acted intentionally. How do they justify this?**

Answer: Not at all - it just does!

A justification is also simply impossible if there are already no objective facts on which the imputed intent could have been directed at all.

VIII. (Conclusion)

Result: The public prosecutor's office makes accusations, but usually does not substantiate them at all or only in a completely untenable manner.

Instead, the indictment reveals a **profound lack of understanding of** the nature of an amicable proceeding in family court.
Perhaps one follows from the other.

Thus, the public prosecutor's office still does not realize that my suspicion of a risk to the welfare of a child is a necessary prerequisite for initiating proceedings at all. Instead, they **arbitrarily** reinterpret such a suspicion and the necessary preparation of the proceedings as a supposed lack of objectivity, which on top of that should have been reported as a possible bias. Finally, according to § 48 ZPO, this is also legally irrelevant. In my opinion, this turns the legal situation upside down! And also this outrages me until today deeply!

And something else follows from the fundamental lack of understanding of the state prosecution for the official proceedings before the family court: We are now faced with a **hearing of evidence** that is dedicated with great zeal to clarifying all kinds of questions that are **completely irrelevant to the decision to** be made.

Thank you very much!

Christian Dettmar