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'Explosive questions': Court demands data from Austrian health ministry justifying Covid-19 rules

A powerful court has issued a 'please explain' requesting detailed data on hospitalisations, masks and vaccines to justify heavy-handed Covid-19 rules.

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 [@franks_chung](#)  **3 min read** February 1, 2022 - 7:00AM

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As the Omicron variant continues to spread, European leaders have adopted vaccine mandates to fight a new wave of Covid-19.

Austria's powerful Constitutional Court has demanded detailed data from the country's Health Ministry justifying the government's coronavirus response.

The 14-member court issued 10 sets of questions to the Health Ministry on January 26 in order to prepare for a "possible oral hearing" into a number of complaints it has received against Austria's Covid-19 measures.

The Health Ministry has until February 18 to respond.

Austria plans to ease some [restrictions from Tuesday](#) as its nationwide vaccine mandate, the first in Europe, comes into effect.

But in order to justify his government's heavy-handed rules, the court has asked Health Minister Wolfgang Mückstein to provide data across a broad range of topics including hospitalisations and deaths "with" as opposed to "from" Covid-19, the [efficacy of masks](#) and vaccines, and evidence supporting the now-rescinded "lockdown for the unvaccinated".

"The 'lockdown for the unvaccinated' is likely to be based, among other things, on the consideration that persons without Covid vaccination have a higher risk of hospitalisation than vaccinated persons, which is likely to entail a higher risk for the healthcare system," the court wrote.

"What is the effect of the 'lockdown for the unvaccinated' on the hospital burden, expressed in percentages?"

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Austria's vice chancellor Werner Kogler, left, and chancellor Karl Nehammer. Picture: Roland Schlager/APA/AFP

Two days after the letter was sent, Austria lifted the measure.

“We came to the conclusion that the lockdown for unvaccinated people in Austria is only justifiable in the event of the threat of an imminent overburdening of intensive-care capacity,” Mr Mückstein said at a press conference.

Austrian newspaper *Österreich* described the pointed questions from the court, laid out in a [five-page letter](#), as “explosive”.

“The main focus is on the burden on the health system, to which the measures were linked,” [the paper wrote](#).

“(The court) is interested in whether there was ever a threat of the health system being overloaded – a scenario that, according to the law, only justifies a lockdown.”

The letter began by citing a media report from October last year which stated that, as an example, patients in intensive care due to kidney failure who “happen to test positive” for Covid-19 “would count as Corona

cases”.

“The Constitutional Court therefore requests information as to whether the hospitalisation or death numbers given ... include all persons infected with SARS-CoV-2 who are hospitalised in normal or intensive care units or who have died ‘of or with’ SARS-CoV-2? If so, why is this method of counting chosen?” the letter said.

VERFASSUNGSGERICHTSHOF
Freyung 8, 1010 Wien
V 11/2022-4

Bundesminister für Soziales, Gesundheit,
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In obengenanntem Verordnungsprüfungsverfahren ergeht gemäß § 20 Abs. 3 VfGG die Aufforderung – auch zur Vorbereitung einer allfälligen mündlichen Verhandlung – **bis zum 18. Februar 2022** folgende Auskünfte zu erteilen:

1. In den Verordnungsakten zu den auf Grundlage des COVID-19-MG ergangenen Verordnungen wird insbesondere auf Zahlen von im Zusammenhang mit COVID-19 auf Normal- bzw. Intensivstationen hospitalisierten Personen sowie auf Zahlen verstorbener Personen Bezug genommen. Laut einem - exemplarisch genannten - Bericht der Tageszeitung "Die Presse" vom 11. Oktober 2021 ("Auch Geimpfte im Spital: Wirkt die Impfung überhaupt?") würden nach amtlichen Auskünften "etwa, wenn Patienten wegen Nierenversagen auf der Intensivstation liegen, die zufällig positiv auf Corona getestet werden", diese "als Coronafälle" zählen.

Der Verfassungsgerichtshof ersucht daher um Auskunft, ob die in den Verordnungsakten angegebenen Hospitalisierungs- bzw. Verstorbenenanzahlen alle mit SARS-CoV-2 **infizierten** Personen, die in Spitälern auf Normal- oder Intensivstationen untergebracht sind bzw. die "an **oder mit**" SARS-CoV-2 verstorben sind, umfassen? Wenn ja, warum wird diese Zählweise gewählt? Weiters ersucht der Verfassungsgerichtshof - gegebenenfalls - um Aufschlüsselung dieser Zahlen nach:

- Personen, die **an** COVID-19 verstorben sind, Personen, die **mit** COVID-19 verstorben sind, und Personen, die (asymptomatisch) mit SARS-CoV-2 verstorben sind.

- Personen, die **wegen** COVID-19 auf **Intensivstationen** hospitalisiert wurden, Personen, die wegen einer anderen Indikation auf Intensivstationen hospitalisiert wurden, aber auch an COVID-19 litten, und schließlich Personen, die wegen einer anderen Indikation auf Intensivstationen hospitalisiert wurden und (asymptomatisch oder mit mildem, an sich nicht hospitalisierungsbedürftigem Verlauf) mit SARS-CoV-2 infiziert waren.

- Personen, die **wegen** COVID-19 auf **Normalstationen** hospitalisiert wurden, Personen, die wegen einer anderen Indikation auf Normalstationen hospitalisiert wurden, aber auch an COVID-19

Austria's Constitutional Court has requested data from the Health Ministry.

The court asked for information on which virus variants were associated with these numbers, a breakdown by age cohort, and for “percentage allocation” outlining where infections occurred, such as family, work, shopping or leisure activities.

Another question asked, “By what factor does wearing an FFP2 mask indoors or outdoors reduce the risk of infection or transmission?”

A number of other questions related to vaccines, with the court requesting data on their efficacy in reducing severe illness, preventing transmission, and the durability of protection.

“By what factor does Covid vaccination reduce the risk of severe disease?” the court wrote.

“In media reports, there was talk of up to 95 per cent. Now, the general risk of dying from Covid-19 (not differentiated by age and health status) currently appears to be 0.1516 per cent.

“What does a stated vaccination efficacy of, for example, 95 per cent refer to? What do absolute and relative risk reduction mean in this context?”

The letter also requested the Covid-related hospitalisation risk over a one-year period for an unvaccinated 25-year-old compared with a double-vaccinated 25-year-old, and the same for a 65-year-old.

It concluded with a question about Austria's excess mortality statistics.





Protesters against the government's Covid-19 response in Vienna on January 8. Picture: Florian Wieser/APA/AFP

In December, the *Der Standard* newspaper reported that there were one-third fewer Covid-19 deaths in 2021 compared with the previous year, but that weekly excess mortality was higher.

“Is this true?” the letter asked. “If so, what was the total excess mortality in 2021 that could not be explained by Covid-19 deaths, and what is the explanation for this excess mortality?”

Austria has seen record high case numbers in recent days, fuelled by the Omicron variant.

Chancellor Karl Nehammer announced at [a press conference](#) on Saturday that starting on February 5, restaurants would be allowed to open until midnight, instead of 10pm.

Meanwhile, rules barring unvaccinated people from stores and restaurants will be phased out starting from February 12.

Austria recorded 34,748 new cases on Friday, but Mr Nehammer said low hospitalisation rates meant rules could begin to be eased.

Officials expect Austria’s Omicron wave to peak in the first week of February.

It comes as a number of countries across Europe begin a major easing of restrictions.

Denmark last week declared that Covid-19 was no longer a

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“socially critical disease”, with most rules to be scrapped from February 1.

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