

LEGAL UPDATE

Care home allowed to close its doors during Covid-19 outbreak

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The District Court of North Holland recently issued a [decision](#) in interim relief proceedings in a case in which two daughters had claimed access to a care home in order to visit their mother who suffered from dementia. The care home had closed its doors from 29 December 2020 due to a coronavirus outbreak and had only made exceptions for relatives of residents who were in the final stage of life. The daughters argued that the ban on visits was in breach of the right to family life as provided for by Article 8 ECHR. They also submitted that, based on the applicable guidelines, the care home was supposed to review this on a case by case basis and that the general visiting ban was disproportionate given their mother's deteriorating health.

The District Court held that the right to family life is not unlimited and may be restricted if the health or the rights and freedoms of others are at stake. In that context, a weighing up of interests between the safety of residents, staff and society on the one hand and the residents' quality of life on the other, is required. Given the major outbreak at this care home, the uncertainty about how the virus spreads and the resultant risks for vulnerable individuals, the District Court found that this drastic measure was justified. Although this was a distressing situation given that the mother's health was deteriorating and her relatives were unable to visit her, the District Court did not find that the care home was obliged to make an exception to the visiting ban. There are lots of other distressing situations, after all, and allowing these daughters to visit would mean that other residents should also have to be allowed to receive visitors too, which would create an unacceptable risk of contagion.

After the first wave in the spring of 2020, there was consensus that the national visiting ban for nursing homes had had far-reaching consequences and that such a drastic measure should not be taken again. This decision confirms that nursing homes and care homes may still decide to implement a complete visiting ban if local circumstances give reason to do so.

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