

The constitutional court  
The constitutional court  
Freyung 8, A-1010 Vienna  
www.verfassungsgerichtshof.at  
V 436/2020-15

10. December 2020

IN THE NAME OF THE REPUBLIC!

The constitutional court has, under the chairmanship of the President

DDr. Christoph GRABENWARTER,

in the presence of the Vice-President

Dr. Verena MADNER

and the members

Dr. Markus ACHATZ,

Dr. Wolfgang BRANDSTETTER,

Dr. Sieglinde GAHLEITNER,

Dr. Andreas HAUER,

Dr. Christoph HERBST,

Dr. Michael HOLOUBEK,

Dr. Helmut HÖRTENHUBER,

Dr. Claudia KAHR,

Dr. Georg LIENBACHER,

Dr. Michael RAMI,

Dr. Johannes SCHNIZER and

Dr. Ingrid SIESS-SCHERZ

as a vocal leader, in the presence of the Constitution, legal assistant

Mag. Chiara SCHÖGGL

as a Secretary,

V 436/2020-15

10.12.2020

2 of 58

on the request of the mj. \*\*\*\*\*, the mj. \*\*\*\*\*, the  
\*\*\*\*\* and the \*\*\*\*\*, all \*\*\*\*\*,  
\*\*\*\*\*, all represented by the Mag. Günter

Novak Kaiser Rechtsanwalt GmbH, Raffaltplatz 6, 8850 Murau, § 5 Abs. 1 in connection with investment B, Z 4.2, § 7 Abs. 3, 4 and 6 as well as section 35 of the regulation of the Federal Minister for education, science and research to address the COVID-19 Consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBl. II 208/2020, in eventu §§ 4 to 20, and Appendix A and B of the C-SchVO, BGBl. II 208/2020, in eventu, the C-SchVO, BGBl. II 208/2020, entirely as a law cancel illegal, in its present non-public session in accordance with Article 139 B-detected VG to the right:

I.

1. § 5 Abs. 1 in connection with Annex B, Z 4.2 and § 7 Abs. 3, 4 and 6 of the Regulation of the Federal Minister for education, science and research to address the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBl. II, no 208/2020, were unlawful.

2. The law identified provisions are no longer apply.

3. The Federal Minister for education, science and research is immediate promulgation of these sayings in the Federal law Gazette II required.

4. In addition, the application will be rejected.

**II.**

The Federal government (Federal Minister for education, science and research) guilty, the request of the parties that the € 3.379,20 certain Process cost replace within a period of 14 days in the case of any other execution.

### **Reasons for the decision**

**I.**

#### **Request**

Having regard to article 139, Para. 1 Z 3 B-VG, requests the applicant to § 5 Abs. 1 in Conjunction with Annex B, Z 4.2, § 7 Abs. 3, 4 and 6 as well as article 35 of regulation 1

V 436/2020-15

10.12.2020

3 of 58

the Federal Minister for education, science and research to tackle the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBl. II 208/2020, in eventu §§ 4 to 20, and Appendix A and B of the C-SchVO, BGBl. II 208/2020, in eventu, the C-SchVO, BGBl. II 208/2020, entirely the law should be repealed.

**II.**

#### **Law**

1.

The regulation of the Federal Minister for education, science and research to address the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBl. II 208/2020, was as follows (the contested Provisions are highlighted):

"208. Regulation of the Federal Minister for education, science and research to address the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO)

On the basis of §§ 6, 10, 21b, 23, 29, 39, 58 to 63c, and 68 to 81 of the School Organisation Act, Federal Law Gazette BGBl. No 242/1962, §§ 18 to 21, 23, 25, 43 to 50, and 82m of the

School Education Act, BGBl. No 472/1986, section 72b of the School education act for working adults, College and preparatory courses, BGBl. I No 33/1997,

§§ 5 Abs. 3, 17 and 42 of the agricultural and forestry Federal education act, Section 119 of the forest act 1975 and section 16e of the school time law 1985, BGBl. No 77/1985, last amended by BGBl. I no 23/2020, is in Agreement-

take a with the Federal Minister for agriculture, regions, and tourism prescribed:

Scope

**§ 1.** This regulation shall apply to the school organisation act (in the Following: SchOG), BGBl. No 242/1962, as well as in art. V Z 2 of 5. SchOG-Novelle, BGBl. No 323/1975, and in the agricultural and forestry Federal education law, BGBl. No 175/1966, as well as in the forestry act 1975, BGBl. No 440/1975 regulated public and private schools, with the exception of the professional schools.

1. Section

## General Provisions

### Arrangement of mobile teaching

**§ 2.** (1) The classes are held by way of derogation from § 10 and § 43 Abs. 1 of the School Education Act, BGBl. No 472/1986 and of §§ 11, 12 and 43 SchUG-BKV for all pupils and students at schools in the scope of

2

V 436/2020-15

10.12.2020

4 of 58

of § 1, except those referred to in Para. 2, from 16. March 2020 until the end of the School year 2019/20 as ortsungebundener classes.

(2) The classes are held for all students at the preschool level as well as the first to eighth grade of 18. March 2020 until the end of the School year 2019/20 as ortsungebundener classes.

### Electronic Communication

**§ 3.** Electronic communication for the purposes of this regulation, includes digital and analog communication.

(1) Digital communication is the Transmission of data and messages through Computer networks, particularly the Internet, in particular, the use of E-Mail, learning and work platforms, Internet telephony, and transmission of sound and sound and video transmission.

(2) Analog communication the direct communication with audio is (Telephony).

(3) for the purposes of instructional design, including the Individual Learning support, and assessment of achievement and performance assessment, for consultation

the school partnership bodies, and for the Information of students and Pupils, students and education in school administration are eligible to, School management and teachers ' private contact information of students and Pupils, students and guardians process.

### Exceptions to the location-independent teaching

**§ 4.** From the location-independent classes which are excluded in Appendix A above-mentioned types of schools, schools, school levels, classes, or groups, or parts of this.

### Protection measures in case of exceptions to the location-independent teaching (Classroom)

**§ 5.** (1) The General hygiene regulations for the containment of the COVID-19 Pandemic, in accordance with Appendix B, and the outgoing directions of School authorities for schools and the school Board in a particular case must be observed.

(2) In the case of pupils and students, which is a high-risk group belong to, or with members of a risk group in the same household life, can, as well as the school Board, on the application of location-independent education Performance findings by means of electronic communication to arrange. The

V 436/2020-15

10.12.2020

5 of 58

Application is by submission of a medical certificate or an official To justify the arrangement on the quarantine.

(3) violations of these rules and instructions are breaches of duty.

Instructional design in ortsunge transferrin-bound teaching

§ 6. (1) The teaching and educational work, and the communication between Pupils, students, guardians, teachers and the head of the school is carried out by means of electronic communication, in particular, the preparation of the course material, by giving written Work orders, the use of learning platforms and direct communication by at least covering audio transmission or audio and video transfers. The Lessons is such that pupils and students the opportunity to Questions to the teachers in oral or written Form.

(2) An electronic communication with pupils, or Students by means of audio, or audio and video transmission needs in principle, class or group publicly for all students the class or group.

(3) pupils and students are to participate in the mobile learning using electronic communication to predetermined times obliged, when ordered to do so by the teacher, it is the student or the student is technically possible and no reasons in accordance with § 45 Abs. 1 SchUG is available. A technical impossibility due to the Student or the students or their guardians to be credible to make.

Teaching organization in the case of a temporary exception to the mobile Teaching (Classroom Teaching)

§ 7. (1) in accordance with Appendix students or students of A Schools, classes, or parts of these, from the ubiquitous teaching be excluded. This may be determined in derogation of § 8a of the School organisation act, from the 4. Section and section 63, or section 64 of the education act, the

4. Portion of the SchUG-BKV and section 8a of the agricultural and forestry The Federal education act, in whole, or temporarily or in part, by the school management after the principles and the extent of the subsequent paragraphs arranged be.

(2) The organisation of Teaching has to be carried out in accordance with the distance bid. At any time a Meter is at least the distance between two persons not in the the common household life, to be complied with.

(3) classes in approximately two equal, fixed, groups of between which no Change can take place, to be shared. At 18 or less

V 436/2020-15

10.12.2020

6 of 58

Pupils per class has eliminated the division, if the Hygiene Directive can be complied with in accordance with Appendix B.

(4) The classes and groups operating in layer alternately in the Classroom in the school to teach, in the sum of two successive following weeks of School, all teaching units of the curriculum Hours plan a week to take place and the number of days in the Classroom teaching for both groups should be as equal as possible. Mandatory organizational

Reasons

can

individual

Hours

or  
Items

as

ortsungebundener classes are held.

(5) Blocked classes can number up to the maximum extent of the hours be carried out at the time of the entry into force of this Regulation applicable plan until the end of the year would have.

(6) On school days, which for a group in accordance with Para. 3 no Classroom teaching takes place, are for the time of the hours scheduled Teaching a class in mobile classroom. This is the fulfilment of to limit of issued work orders.

(7) the head of The school supplementary teaching can take up during the school day to The maximum extent of the number of hours per Week of the applicable curriculum arrange.

Performance assessment and performance assessment by means of electronic communi-  
cation

**§ 8.** (1) The oral performance of the pupils as well as Students in each of the objects can by way of derogation from § 18 Abs. 1 and 10, § 20 Abs. 1 to 4, section 23 and section 23a SchUG and §§ 19 to 23a SchUG-BKV, by means of

electronic communication and evaluated are identified. In the case of Pupils or students who belong to a risk group or the with members of a risk group in the same household, can the Executive Board at the request of a written power fixed reticle positions, and Performance findings to other kind of order.

(2) school administration, school management and teachers may, for the purpose of Testing and assessment, all for the fulfilment of the tasks referred to in Abs. 1 necessary information to electronically process.

Principles of performance appraisal

**§ 9.** (1) The provisions of § 2, Para. 8, § 3 Abs. 1 lit. c sublit. aa, § 7, as well as § 20 Abs. 1 the last clause of the first sentence of the performance assessment of manufacturing processes

V 436/2020-15

10.12.2020

7 of 58

order (LBVO) are not on the performance appraisal of the school year 2019/20 apply. The students of 16. March up to the

An exception to the location-independent teaching, in accordance with Appendix A provided Services are exclusively as an employee in accordance with § 4 Abs. Values 1 LBVO.

Of pupils by means of electronic communication

the transmitted data can be considered records in accordance with § 4 Abs. 3 LBVO used be.

(2) by way of Derogation from § 20 Abs. 6 SchUG has the class meeting on Monday or Tuesday of the last week before the end of the year 2019/20 to take place. For decisions pursuant to § 13 Abs. 3 a conference for up to can The end of the year 2019/20 take place.

(3) by way of Derogation from § 19a Abs. 1, a student or a student up to the can The end of the year 2019/20 without an early warning is Available an Individual Learning support are encouraged.

## Electronic Conferences

**§ 10.** (1) To the deliberations and resolutions of conferences, Commissions and school partnership bodies may electronically invited and this can be carried out electronically.

(2) conferences and school partnership bodies are by way of derogation from the § 20 Abs. 6, § 63 Abs. 7 and § 64 Abs. 11 SchUG and § 58 Abs. 6 SchUG-BKV a quorum for a decision in the case of physical holding required number of members is at the same time in the virtual space is present.

(3) decisions may be taken during the electronic conference, recorded in writing, and then in the Circulation path electronically be drawn.

The end of the year for optional subjects and optional Exercises

**§ 11.** By way of derogation from article 2, Para. 2 Z 1 of the school act in 1985 ending in the Teaching year 2019/20 for optional subjects and optional Exercises on 17. In may 2020.

Upgrades to foreign-language school abroad

**§ 12.** The decision in accordance with § 25 Abs. 9 SchUG is the beginning of the foreign language school attendance in foreign countries to be based on the planned period, if the school attendance abroad because of the COVID-19 pandemic in advance been completed.

English support measures

V 436/2020-15

10.12.2020

8 of 58

**§ 13.** (1) To determine the Language level and the required Language competence of pupils, at the time of the entry into force of of this regulation, a remedial class in accordance with § 8 Abs. 2 of the School Organisation Act, Federal Law Gazette BGBl. No 242/1962 visit, the standardized Test procedure by way of derogation from § 18 Abs. 14 SchUG, at the request of a Guardian or a teacher within the last four weeks of the The teaching year. In the case of pupils, in which on the At the end of the school year 2019/20, no testing took place, two in the first Weeks of the school year 2020/21 such be carried out.

(2) The testing to determine the language object according to § 4 Abs. 2a of the Education law for the school year 2020/21, within the last four Weeks of the year 2019/20 perform.

(3) When testing to determine the Language level of a student or a student, or in the summer semester 2020 in a English remedial course, a result in accordance with § 18 Abs. 14 Z is 1 or 2 SchUG, so decides the class or school conference on the performance assessment for the Level of education and the Memorandum on the permission to Ascend.

(4) For students, a remedial class or a English support course two-after you have run the supplementary lessons to Weeks after the start of the school year 2020/21, a new testing to take place.

Laying early part of the tests

**§ 14.** By way of derogation from § 36 Para. 3 and 3a and section 64 of the SchUG is the head of the school can

early partial exams final exams from the academic year 2019/20

on the main date of the school year 2020/21 embarrassed.

2. Section

Regulations for the primary school and special school (1. to 4. School level)

Teaching Resources, Teaching Material

**§ 15.** (1) For pupils on the 1. to 4. School level are in need in addition to the teaching by means of electronic communication, the appropriate Teaching materials in printed Form for pickup at the school site to the To make it available.

(2) the head of The school plans, in deviation from prescribed teaching, except of Curricula for the teaching of religion, and by way of derogation from section 63a Para. 2 SchUG

authorized, in consultation with the classroom teacher in teaching material from To move a school year 2019/20 in the academic year 2020/21. The displacement is to be recorded in the class register of the respective class.

V 436/2020-15

10.12.2020

9 of 58

(3) The curriculum of the elementary school due to the school organisation act, BGBl. No 242/1962, as last amended by Federal law BGBl. I No 23/2020, in particular § 6 and § 10, and article II of the Federal law, the minorities school act for Carinthia is changed, BGBl. No. 420/1990, as amended, to the effect that the teaching of the subject Movement and Sport of 18. May 2020 until the end of the year 2019/20 not applicable.

Day of school

**§ 16.** (1) Notwithstanding §§ 3 and 9 of school time law 1985, the last may Lesson of the school day until the end of the school year 2019/20, not after 11.30 am start. The care part of all-day school is not allowed to shape the end of the last lesson to begin.

(2) by way of Derogation from §§ 3 and 9 of the school act of 1985 and section 63a SchUG can

the head of the school until the end of the school year 2019/20 with a staggered start the school day provide for, if this is in compliance with the distance bid is appropriate.

(3) When students in the ortsunge tied-teaching support need, they are to be supervised in the school and in one of the individual learning time, full day of school to shape the appropriate Learning support supported. These students do not take classes the other group in accordance with § 7 Abs. 4 part.

Performance assessment over the school year 2019/20

**§ 17.** By way of derogation from the provisions of §§ 20 Abs. 1 to 5, 22 and 25 Abs. 2 and 3, SchUG and in the assessment of Subjects of the School year 2019/20, with Not enough permission to Ascend to note. In the case of a Non-sufficient a decision by the school conference is not required. If more than one is Not sufficient demand, the Memorandum of The consent of the school Committee.

3. Section

Rules for the New middle school, the special school (5. to 9. School level) and the Polytechnic school

Curriculum, teaching material and teaching resources

**§ 18.** (1) For students on the 5. to 9. School level are in need in addition to the teaching by means of electronic communication, the appropriate

Teaching materials in printed Form for pickup at the school site to the  
To make it available.

V 436/2020-15

10.12.2020

10 of 58

(2) the head of The school plans, in deviation from prescribed teaching, except of  
Curricula for the teaching of religion, and by way of derogation from section 63a Para. 2  
SchUG

authorized, in consultation with the teachers curriculum from the

To move a school year 2019/20 in the academic year 2020/21. The shift is in the

To write a class book the class.

(3) the curricula of The (new) middle school, with the exception of those under  
particular account of the sporting or skiing, training, and the  
Polytechnic school due to the school organisation act, Federal law Gazette BGBl.  
No 242/1962, as last amended by Federal law BGBl. I No 23/2020,  
in particular, the §§ 6, 21b and 29, and article II of the Federal act,  
the minorities school act for Carinthia, is amended, BGBl.

No. 420/1990, as amended, to the effect that the teaching of movement object  
and Sport of 18. May 2020 until the end of the year 2019/20

not applicable.

Day of school

**§ 19.** (1) by way of Derogation from §§ 3 and 9 of the school act, 1985 may,  
the last lesson, except at the Polytechnic school, hour of a

Not to start the school day until the end of the school year 2019/20, after 13.30. The

Care part of full day school forms before the end of the last

Lesson start.

(2) Notwithstanding §§ 3 and 9 of school time law 1985, §§ 63 and 64 SchUG can  
the head of the school until the end of the school year 2019/20 with a staggered start  
the school day provide for, if this is in compliance with the distance bid  
is appropriate.

(3) When students in the ortsunge tied-teaching support  
need, they are to be supervised in the school and in one of the  
individual learning time the whole day of school to shape the appropriate Learning support  
supported. These students do not take classes  
the other group in accordance with § 7 Abs. 4 part.

Performance assessment over the school year 2019/20

**§ 20.** By way of derogation from the provisions of §§ 20 Abs. 1 to 5, 22 and 25

Abs. 2 and 3, SchUG and in the assessment of Subjects of the  
School year 2019/20, with Not enough permission to Ascend to

note. In the case of a Non-sufficient a decision is the

Class meeting is not required. If more than one is Not sufficient demand, the note  
the approval of the class meeting.

V 436/2020-15

10.12.2020

11 of 58

4. Section

General secondary school

Curriculum, teaching material and teaching resources

**§ 21.** (1) For students of the 5. to 8. School level are in need

in addition to the teaching by means of electronic communication, the appropriate



Teaching materials in printed Form for pickup at the school site to the  
To make it available.

(2) The Executive Board shall be authorised, in consultation with the teaching  
Teacher curriculum in deviation from the prescribed curricula, except of  
The curriculum for religious education by the academic year 2019/20 in the school year  
To move 2020/21. The shift is in the class register of the respective  
To note class.

(3) the curricula of The General education that high schools, with the exception  
taking particular account of the sporting or ski sport  
Training as well as School experiments with special regard to the Sports,  
organization law, BGBl be due to the School. No 242/1962, last  
as amended by the Federal act BGBl. I no 23/2020, in particular §§ 6  
and 39, and article II of the Federal act, with the  
Minority is amended school act for Carinthia, Federal law Gazette BGBl. No. 420/1990, so  
abge-  
changes, the teaching subject movement and sports of 18. May 2020  
up to the end of the year 2019/20 not applicable. Semester and  
Observation examinations are permitted.

Day of school

§ 22. (1) by way of Derogation from section 3 of the school act of 1985 is allowed to the last  
Teaching hour to the end of the school year 2019/20, up to and including 8. School level  
to begin to 13.30. The care part of all-day school  
must not begin before the end of the last lesson.

(2) by way of Derogation from section 3 of the school act of 1985 and section 64 of the  
SchUG can the

Head of the school until the end of the school year 2019/20 with a staggered start of the  
School day provide for, if this is in compliance with the distance bid is appropriate.

(3) If pupils up to and including the 8. School level in the  
mobile lessons require care, so you are in the school  
supervise and in an individual learning time of all-day school  
to support appropriate Learning support. These students  
do not take the lessons of the other group in accordance with § 7 Abs. 4 part.

Semester exams

V 436/2020-15

10.12.2020

12 of 58

§ 23. The semester examinations at the time of entry into force are  
this regulation, applicable laws and regulations apply, unless  
Following no deviating provisions are made:

1. Repetition of semester exams at least two weeks  
after the last exam, to organise.

2. In the context of the location-independent teaching, the oral are  
Semester examinations the use of digital communication in accordance with section 8  
perform. These oral semester exams will have a maximum of 30 minutes  
but not longer than for the extraction of a secure assessment is required  
is to last.

3. Semester exams from the summer semester of 2018/19 in the case of must,  
more than two is Not enough in the semester examinations of the  
Winter semester 2019/20, and the summer semester 2020, at the latest until

30. November 2020 to take place. To the completion of the semester examination takes the student or the students in the classes of the next higher school level.

4. In a day for a pupil more than two may

Semester tests will be carried out.

Supplementary exams

**§ 24.** For supplementary tests relating to the winter semester 2019/20 should the Date is not after the re-examinations provided for days of the the next school year.

Performance assessment over the school year 2019/20

**§ 25.** By way of derogation from the provisions of §§ 20 Abs. 1 to 5, 22 and 25 Abs. 2 and 3, SchUG and in the assessment of Subjects of the School year 2019/20, with Not enough permission to Ascend to note. In the case of a Non-sufficient a decision is the Class meeting is not required. If more than one is Not sufficient demand, the note the consent of the class meeting.

Entrance exams

**§ 26.** By way of derogation from § 3a Abs. 6 and § 9 Abs. 2 of the Procedural Regulation, BGBl Started. II, no. 217/2006, as last amended by BGBl. II, no 12/2019

took tests in school year 2019/20 on Wednesday and Thursday the last week of the teaching year. Of School, except- V 436/2020-15

10.12.2020

13 of 58

len, taking particular account of the sporting or ski sport

Training, if the provisions of the hygiene policy are adhered to.

6. Section

Arrangements for vocational middle and higher schools

Curriculum and teaching material

**§ 27.** (1) The Executive Board shall be authorised, in consultation with the teaching Teacher curriculum in deviation from the prescribed curricula, except of The curriculum for religious education by the academic year 2019/20 in the school year To move 2020/21. The shift is in the class register of the respective To note class.

(2) the curricula of The vocational middle and higher schools due to the school organisation act, Federal law Gazette BGBl. No 242/1962, as last amended by the Federal act BGBl. I no 23/2020, in particular the §§ 6, 55a, 58 to 64, 66, and 73 to 81, § 5 of the agricultural and forestry The Federal education act and the forest act 1975 and article II of the Federal act, with the is changed to the minorities school act for Carinthia, Federal law Gazette BGBl. No. 420/1990, as amended, to the effect that the teaching of movement object and sports from the 4. May 2020 until the end of the year 2019/20 not applicable. In the case of schools, except under special consideration the athletic or sport of skiing training, if the provisions of the Hygiene Directive are complied with. Semester exams and Observation examinations are permitted.

Day of school

**§ 28.** By way of derogation from section 3 of the school act of 1985 and section 64 of the SchUG can the

Head of the school until the end of the school year 2019/20 with a staggered start of the

School day provide for, if this is in compliance with the distance bid is appropriate.

Semester exams

**§ 29.** The semester examinations at the time of entry into force are this regulation, applicable laws and regulations apply, unless Following no deviating provisions are made:

1. Repetition of semester exams at least two weeks after the last exam, to organise.

2. In the context of the location-independent teaching, the oral are Semester examinations the use of digital communication in accordance with section 8 perform. These oral semester exams will have a maximum of 30 minutes V 436/2020-15

10.12.2020

14 of 58

but not longer than for the extraction of a secure assessment is required is to last.

3. Semester exams from the summer semester of 2018/19 in the case of must, more than two is Not enough in the semester examinations of the Winter semester 2019/20, and the summer semester 2020, at the latest until 30. November 2020 to take place. To the completion of the semester examination takes the student or the students in the classes of the next higher school level.

4. In a day for a pupil more than two may Semester tests will be carried out.

Supplementary exams

**§ 30.** For supplementary tests relating to the winter semester 2019/20 should the Date is not after the re-examinations provided for days of the the next school year.

Performance assessment over the school year 2019/20

**§ 31.** By way of derogation from the provisions of §§ 20 Abs. 1 to 5, 22 and 25 Abs. 2 and 3, SchUG and in the assessment of Subjects of the School year 2019/20, with not enough permission to Ascend to note. In the case of a Non-sufficient a decision by the school conference is not required. If more than one is Not sufficient demand, the note, the The consent of the school Committee.

Entrance exams

**§ 32.** By way of derogation from § 3a Abs. 6 and § 9 Abs. 2 of the Procedural Regulation, BGBl Started. II, no. 217/2006, as last amended by BGBl. II, no 12/2019

took tests in school year 2019/20 on Wednesday and Thursday the last week of the teaching year. With the exception of Schools under special consideration of the sports and ski sport Training, if the provisions of the hygiene policy are adhered to.

Last school levels, in vocational middle schools

**§ 33.** (1) For the last grade of secondary technical and vocational schools ends the lessons of the year 2019/20, with the exception of the free items and non-binding Exercises on 16. March 2020 from the respective regulation of the School authority of the dates of the final examination, due to the School time law 1985 resulting time. For the last level of education of the higher V 436/2020-15

10.12.2020

15 of 58

Schools in accordance with § 1 Abs. 1 the lessons of the year 2019/20 ends at 3. In may 2020.  
The

Students remain students of the school to the

The Sunday before the start of the written examinations.

(2) For pupils of the last school vocational medium-level

Schools from the 4. May 2020 until the end of the teaching year the teaching plan moderate  
Teaching in the school to take place. The teaching year for free items  
and optional Exercises will end on 4. In may 2020.

(3) The curricula for the graduating classes of the vocational schools,  
organization law, BGBl be due to the School. No 242/1962, last  
as amended by the Federal act BGBl. I no 23/2020, in particular the §§ 6,  
55a and 58 to 64, as well as of article II of the Federal act, with the  
Minorities school act for Carinthia, is amended, BGBl. No. 420/1990,  
amended to the effect that the teaching subject movement and sports from the  
4. May 2020 not applicable up to the end of the year 2019/20.

Elimination of preliminary examinations

**§ 34.** The preliminary examinations in accordance with §§ 42 and 52 of the examination  
regulations for vocational schools and colleges to

Main futures 2020/21 omitted. In the assessment of the audit areas of

Preliminary examination is the assessment of final level of education (in schools,

a Semester report is issued in accordance with § 22a SchUG, the last

both Semester) in which the corresponding Subjects

have been informed, should be consulted.

7. Section

Entry into force and expiry

**§ 35.** This regulation shall enter into force retroactively with 16. March 2020 and with  
The end of the school year 2020/21 to be in force.

Appendix A

Exceptions to the location-independent teaching

1. Pupils of final classes of medium and higher  
Schools

Pupils of final classes are objects, in

what is the teaching according to the regulation on preparation and implementation of  
final exams for the academic year 2019/20, BGBl. II, no 167/2020,

as last amended by BGBl. II, no 198/2020, takes place from 4. In may 2020, from the

location-independent teaching, except, with the exception of students

and students from those schools, which on the 4. and 5. In may 2020, the organiza-

V 436/2020-15

10.12.2020

16 of 58

toric conditions for the implementation of the hygiene measures  
need to be created.

2. Pupils at primary schools and special schools (up to and including

4. School level)

2.1 The pupils are from the age of 18. In may of the school Board in the

Extent, in accordance with § 7 of the non-location-specific classes to exclude.

2.2 pupils of the school for the completion of

voluntary Bike check, as part of the non-binding Exercise

Education or as a school-related event 4. May from location-independent Lessons are excluded.

3. Students (New) secondary schools and special schools (from the 5. School level)

The students are from the age of 18. In may of the school Board in accordance with § 7 from the non-location-specific classes to exclude.

4. Students at Polytechnic schools

4.1 The students are from 3. June of the school Board in accordance with § 7 from the non-location-specific classes to exclude.

4.2 For the implementation of the profession(choice)decision, the school Board may Students from non-location-specific classes to exclude.

5. Pupils at General secondary schools

5.1 the pupils of The 5. up to 8 of schooling are from the age of 18. May of the School Board in accordance with § 7 of the non-location-specific classes to exclude.

5.2 the pupils of The 9. up to the penultimate level of education, up from 3. June of the Executive Board in accordance with § 7 of location-independent education exclude.

6. Students of vocational middle and higher schools

6.1 the students of The 9. up to the penultimate level of education, up from 3. June of the Executive Board in accordance with § 7 of location-independent education exclude.

V 436/2020-15

10.12.2020

17 of 58

6.2 students of classes, the main holiday for longer than nine Weeks, as well as the final classes of the forest school can take

18. In may of the school Board in accordance with § 7 of location-independent education be excluded.

Appendix B

General hygiene rules to curb the COVID-19 pandemic (Hygiene Directive)

1. Distance Requirement (Minimum)

It is, in principle, to the whole of the school grounds is always a distance of at least one Meter to other persons not in the the common household life, to be complied with.

2. Measures to comply with the distance bid

2.1 Time-Delayed Day Of Class

In particular, the Arrival in the school, the beginning and the end of the Lessons, the breaks, the Lunches, the Pick up or Leave the

School, etc. of pupils in the different classes can

if necessary, the time offset is designed to be a mixture of the

To prevent pupils and students.

2.2 requirements for the Move in the school building

To comply with the distance bid, the Executive Board may, in addition or by way of derogation from the School or house rules, rules for Entering and Leaving the school grounds and the school building as well as the movement on General areas in the school building meetings (e.g. one-Way systems).

2.3 Separate and constant premises

Only the teachers will move between classrooms; of these, is excluding teaching in the required function (workshops, Laboratories, division in groups etc language.).

2.4 avoiding direct body contact

Any kind of direct physical contact, except in medically necessary To avoid cases.

3. Avoid personal collections

V 436/2020-15

10.12.2020

18 of 58

Assemblies are not permitted. This also includes student meetings

The framework of the student Council.

4. Respiratory hygiene

4.1 The rooms are at least once every hour for a period of five

Minutes of airing.

4.2 the mouth and nose area of the cover at the end of the mechanical protective device (MNS)

All persons in the school building must a the mouth and nose area cover the end of the mechanical protective device to wear. The teaching time is except."

2.

The regulation of the Federal Minister for education, science and research to address the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBl. II 208/2020, idF BGBl. II 248/2020, was excerpts as follows:

"Protective measures in the case of exceptions to the location-independent teaching (Classroom)

§ 5. (1) The General hygiene regulations for the containment of the COVID-19 Pandemic, in accordance with Appendix B, and the outgoing directions of School authorities for schools and the school Board in a particular case must be observed.

(2) In the case of pupils and students, which is a high-risk group belong to, or with members of a risk group in the same household life, can, as well as the school Board, on the application of location-independent education Performance findings by means of electronic communication to arrange. The Application is by submission of a medical certificate or an official To justify the arrangement on the quarantine.

(3) violations of these rules and instructions are breaches of duty.

[...]

Teaching organization in the case of a temporary exception to the mobile Teaching (Classroom Teaching)

§ 7. (1) in accordance with Appendix students or students of A Schools, classes, or parts of these, from the ubiquitous teaching be excluded. This may be determined in derogation of § 8a of the School organisation act, from the 4. Section and section 63, or section 64 of the education act, the

3

V 436/2020-15

10.12.2020

19 of 58

4. Portion of the SchUG-BKV and section 8a of the agricultural and forestry  
The Federal education act, in whole, or temporarily or in part, by the school management after  
the principles and the extent of the subsequent paragraphs arranged  
be.

(2) The organisation of Teaching has to be carried out in accordance with the distance bid.

At any time a Meter is at least the distance between two persons not in the  
the common household life, to be complied with.

(3) classes in approximately two equal, fixed, groups of between  
which no Change can take place, to be shared. At 18 or less

Pupils per class has eliminated the division, if the

Hygiene Directive can be complied with in accordance with Appendix B.

(4) The classes and groups operating in layer alternately in the

Classroom in the school to teach, in the sum of two successive  
following weeks of School, all teaching units of the curriculum

Hours plan a week to take place and the number of days in the

Classroom teaching for both groups should be as equal as possible. Mandatory

organizational

Reasons

can

individual

Hours

or

Items

as

ortsungebundener classes are held.

(5) Blocked classes can number up to the maximum extent of the hours  
be carried out at the time of the entry into force of this

Regulation applicable plan until the end of the year

would have.

(6) On school days, which for a group in accordance with Para. 4 no

Classroom teaching takes place, are for the time of the hours scheduled

Teaching a class in mobile classroom. This is the fulfilment of

to limit of issued work orders.

(7) the head of The school supplementary teaching can take up during the school day to

The maximum extent of the number of hours per Week of the applicable curriculum

arrange.

[...]

6. Section

Entry into force and expiry

§ 35. (1) This regulation shall enter into force retroactively with 16. March 2020 and with  
The end of the school year 2020/21 to be in force.

(2) The following provisions of this regulation, as amended by

the regulation BGBl. II, no 248/2020 occur as follows in and out of power:

V 436/2020-15

10.12.2020

20 of 58

1. The promulgation clause, the § 1, § 7 Abs. 6 and 8, § 8 Abs. 1, § 9, Para. 1

and 3, § 13 Abs. 1 and 2, § 14, § 16 Abs. 1, § 17, § 18 Abs. 3 (Anm.: of the

The amendment is not affected), § 19 Abs. 1, § 20, § 22, Para. 1, § 25, the Heading of the

5. Section, the provisions of § 27 Para. 2, § 31, and the Headline of the 6. Stepping

with the end of the day of promulgation in the Federal law Gazette in force, and with  
The exception of § 7, Para. 6 and 8, with the end of the school year 2020/21 to be in force;

2. the Appendix A, 2., 5. and 6. Part, as well as Annex B, 2. to 4. Part with contact  
End of the day of promulgation in the Federal law Gazette in force;

3. Section 7 and appendices A and B occur with the end of the school year 2019/20  
to be in force.

[...]

## Appendix B

General hygiene rules to curb the COVID-19 pandemic

(Hygiene Directive)

### 1. Distance Requirement (Minimum)

It is, in principle, to the whole of the school grounds is always a distance of  
at least one Meter to other persons not in the  
the common household life, to be complied with.

### 2. Measures to comply with the distance bid

#### 2.1 Time-Delayed Day Of Class

In particular, the Arrival in the school, the beginning and the end of the  
Lessons, the breaks, the Lunches, the Pick up or Leave the  
School, etc. of pupils in the different classes can  
if necessary, the time offset is designed to be a mixture of the  
To prevent pupils and students.

#### 2.3 Separate and constant premises

Only the teachers will move between classrooms; of these,  
is excluding teaching in the required function (workshops,  
Laboratories, division in groups etc language.).

### 3. Avoid personal collections

V 436/2020-15

10.12.2020

21 of 58

Meetings are in accordance with the events and

Meetings of shareholders pursuant to §§ 1 and 2 of Z 1 of the COVID-19-measures act,  
BGBl. I No.

12/2020, as last amended by Federal law BGBl. I no 23/2020 and §

15 of the epidemics act 1950, Federal law Gazette BGBl. No 186/1950, as last amended by  
the

The Federal Law BGBl. I no 23/2020 applicable regulations in the respective  
the version applicable is permitted.

### 4. Respiratory hygiene

4.1 The rooms are at least once every hour for a period of five  
Minutes of airing.

4.2 the mouth and nose area of the cover at the end of the mechanical protective device  
(MNS)

All persons in the school building can a the mouth and nose area  
cover the end of the mechanical protective device to wear."

3.

Section 45 of the Ordinance of the Federal Minister for education, science and  
Research to address the COVID-19 consequences in the school system for the school year  
2020/21 (COVID-19-school regulation 2020/21 – C-SchVO 2020/21), BGBl. II  
384/2020, was as follows:

"Out of force of other legal rules come



§ 45. (1) The regulation of the Federal Minister for education, science and Research to address the COVID-19 consequences in the school system for the School years 2019/20 and 2020/21 (C-SchVO), BGBl. II, no 208/2020, as last amended by the regulation, BGBl. II, no 248/2020, occurs by way of derogation from section 35 of the said

Regulation, the following override:

1. § 17 the last sentence of § 20 of the last sentence of § 24, § 25 of the last sentence of § 30 and § 31 of the

the last sentence of the expiry of the 30. September 2020;

2. § 13 Abs. 1, the second and third sentence and Para. 4 with the end of the 31. October 2020;

3. Section 23 Z 3 and 4 as well as section 29 of the Z 3 and 4 with the end of the 30. November 2020;

4. § 14, § 15 Abs. 2, § 21 Abs. 2, § 27 Abs. 1 and § 34 to the end of the School year 2020/21;

5. moreover, with the entry into force of the regulation, BGBl. II, no 384/2020.

(2) The regulation of the Federal Minister for education, science and Research to address the COVID-19 to follow in the professional education for the School years 2019/20 and 2020/21 (COVID-19-vocational school regulation – C-

4

V 436/2020-15

10.12.2020

22 of 58

BSchVO), BGBl. II, no 164/2020, as last amended by regulation BGBl. II

No 194/2020, occurs by way of derogation from section 17 of the said regulation, as follows to be in force:

1. §§ 12 and 13 with the end of the school year 2020/21;

2. moreover, with the entry into force of the regulation, BGBl. II No 384/2020."

4.

The relevant provisions of the Federal law on the procedure of Teaching and education in the school organization act controlled schools (School Education Act – SchUG), BGBl. 472/1986 (WV) idF BGBl. I 80/2020, excerpts are as follows:

"SCHOOL rules

Obligations of the student

§ 43. (1) The students are required, through their employees and their classification in the community of the class and the school in the fulfillment of the task of the

Austrian school (§ 2 of the school organisation law) to participate and

to promote the teaching work (§ 17). You have the classes (and the

Care part of all-day school forms to be signed which they are)

to attend regularly and on time, the necessary teaching resources

to bring the school rules and the house rules. You have

furthermore, arrangements and contracts in the framework of the individual

To provide learning support sequence and arrangements, in accordance with § 19 Para. 3a, in the framework of

the early warning system have been taken to comply.

(2) The pupil is on the order of the school principal, a Department, Board, of a professional Board or a teacher, committed deliberately by him

induced damage or dirtiness of the school property and to eliminate school facilities, provided that this is reasonable.

[...]

Design of school life and quality assurance

§ 44. (1) The competent Federal Minister has, by regulation, the detailed

Rules about the behaviour of the students in the school, in

School events (§ 13) and at school-related events (§ 13a), on measures

for the safety of the students in the school, at school events and in the case of school-related events, as well as to enable a proper

The school is in operation on the basis of this section and taking into account the

The age of the students, the school and the school tasks assigned to

5

V 436/2020-15

10.12.2020

23 of 58

adopted. The school forum (§ 63a) and / or the school community Committee (section 64)

can in addition, to the extent required by the specific circumstances, a

House rules have been adopted; she is of the competent school authority is to be informed of

and stop in the school to be announced. In the house rules

can according to the mission of the school (type of school, type of school), the age

Students as well as to the other conditions at the site (eg,

Composition of class, school-Autonomous profile formation, participation in projects or

School partnerships, regional conditions) school

Behaviour agreements for students, teachers and guardians, as a school community

and measures for the promotion of school quality are determined, wherein the

Agreement of all education is to seek a partner. The house rules of a

Private school may not affect their particular goals.

(2) The contract on the inclusion in the private school (§ 5 Abs. 6) can the

The behavior of the students in the school and at school events, on

Measures for the safety of the students in the school and at school events

as well as to permit of an orderly school operation rules

included, the of the in accordance with Para. 1 to be adopted regulation of the competent

The Federal Minister, vary or add to. Such additions or

Deviations of the competent education authority are to be brought to the attention of.

[...]

The participation of the school of education

§ 47. (1) In the framework of the participation of the school in the education of the pupils (§ 2

of the school organisation act) has the teacher in his teaching and

Education work, the education situation, a reasonable personality and

community to apply a means of education, in particular

Recognition, invitation, or rebuke can be. These Measures

can also from the class of the Board of management and the school (Department Board), in

special cases pronounced by the competent school authority

be. The first sentence in the also applies to educators and casual educators

Care part of all-day school forms.

(2) If it's for educational reasons or to maintain the

Order appears to be necessary, the head teacher of a student in a

Parallel class, and the course even vocational schools also in a different course

put. If such a measure does not suffice found

can be, can the school conference (in schools, in departments

on are arranged, in the Department conference) the submission of an application  
Exclusion of the student (§ 49 Abs. 2) threaten.

(3) Corporal punishment, abusive language, and Collective punishment  
prohibited.

(4) In the framework of the participation in the education of the student's behavior can  
outside the school are taken into account; I can only measures  
according to the Abs. 1 and § 48 is set to be. A punishment for a behavior, the  
V 436/2020-15

10.12.2020

24 of 58

A cause of action of the parent or guardian of the child and youth welfare,  
other administrative authorities or the courts, is inadmissible.

[...]

Exclusion of a pupil

§ 49. (1) If a student of his duties (§ 43) in a serious way  
hurt, and the application of educational resources in accordance with section 47 or  
Measures in accordance with the house rules is unsuccessful or if the behavior of a  
Student a permanent danger of classmates or others in the school  
persons employed in terms of their morals, physical safety or  
Property is to exclude the student from school. In General  
compulsory schools is the exclusion is only permitted if the behavior of the  
Student a permanent danger of classmates or others in the school  
persons employed in terms of their morals, physical safety or  
Property rights and the fulfilment of the school obligation is secured.

(2) In the Presence of the prerequisites pursuant to Para. 1, the school conference has (  
Schools are divided into departments, the Department of conference) a  
To request exclusion of the student to the appropriate school authority.  
The student is before the decision on the application the opportunity to  
To give a justification. In addition, the parent or legal guardian the opportunity  
to give to the opinion. The school conference for their advice, for  
and against the exclusion of reasons to speak to be considered and their  
To justify the request. A second copy of the request shall be sent to the student.

(3) The responsible school authority has to pronounce in the event of danger in delay, and that  
the student is suspended from school. The suspension is allowed to  
with a maximum of four weeks to be measured; it is a matter of urgency,  
as soon as in the course of the procedure, that the conditions referred to in Para. 1  
not, or is no longer given. The student is entitled, during the  
Suspension on the perceived curricula regularly to  
inform. At the end of a year of Teaching the students is the opportunity to pass  
an assessment test according to § 20 Abs. To give 2, to the extent that an assessment  
because of the duration of the suspension otherwise would not be possible.

(4) The responsible school authority has the following implementation  
Investigative proceedings to determine the termination of the exclusion proceedings, if the  
Requirements within the meaning of Para. 1 for an exclusion are not available. You can at the  
same time

the student, a notification is given or a measure according to § 47 Para. 2 arrange,  
if his behavior is not justified an exclusion, but he otherwise violates  
his duties has failed. Otherwise, by the competent education authority  
Exclusion of the student by a decision to pronounce.

(5) The exclusion in the school or on all schools  
a to-be-specified radius extend. Of the various  
V 436/2020-15

10.12.2020

25 of 58

Forms of exclusion in each case is to pronounce only those of the Form, with the help of the  
intended purpose within the meaning of Para. 1 can already be achieved.

(6) [...]

(7) In the event of exclusion, the inclusion in a school is that

The exclusion extends, neither as extraordinary nor as extraordinary students  
allowed. The admission to an external students examination (§ 42) will not depart from it  
touched.

(8) The exclusion authority of that school, which made him legally  
spoken has to be restricted, at the request of the student or cancelled, if  
and as far as the reasons for its imposition cease to apply, or the  
Security purpose can be achieved in other ways.

(9) for pupils of General compulsory schools measures referred to in Para.

1 goal lead, so a measure takes the place of exclusion

according to the Abs. 3 (the suspension) and the initiation of a proceeding pursuant to section  
8 of the

Compulsory education act in 1985.

[...]

Rights and obligations of the guardian

§ 61. (1) have The legal guardians have the right and the duty to

Teaching and educational work of the school to support. You have the right to

Consultation as well as proposals and opinions. You are

obliged the students with the necessary teaching resources

and to the conscientious performance of the school resulting

Obligations of the student and to the promotion of the school community

(§ 2) contribute to. Furthermore, you have the student in compliance with the arrangement

tions and orders in the context of the individual Learning support in the best way possible

to support and concerned with agreements according to § 19 Abs.

3a were taken in the framework of the early warning system with them to meet.

(2) without Prejudice to the representation rights of the parent or guardian in accordance with  
section 67 of the

as well as the activities of the parents Association within the meaning of section 63 of the

Guardians have the right to representation of interests to the teachers, the

Head of school (Department Board), and the school authorities by the

Class parent representatives (§ 63a Abs. 5), or by their representatives in the

School Community Committee (§ 64 Abs. 6). They have the following rights:

1. Rights of participation:

a) the right to a hearing,

b) the right to Information on all matters which the parents and

Students relate General,

c) the right to submit proposals and opinions,

V 436/2020-15

10.12.2020

26 of 58

d) the right to participate in teachers ' conferences, with the exception of deliberations  
and Decision-making on matters of performance appraisal

of individual students and of § 20 Para. 6, § 25 and § 31b, as well as service legal Affairs of the teachers, and with the exception of the participation Teacher conferences for the election of teacher representatives; this right does not exist in schools,

which class forums § 63a Abs are set up (. 1),

e) the right to an opinion in the choice of teaching AIDS;

2. Participation rights:

a) the right to codecision with the threat of the application on Exclusion,

b) the right to share in the decision on the application for exclusion of a Student;

c) the right to codecision in the determination of teaching AIDS.

(3) have The legal guardians for the leadership of the Amtsschriften the School required documents and information, as well as significant Changes to this information without delay to the school to inform. [...]

Setting deadlines and academic year overall arrangements for the School-years 2019/20 and 2020/21 as a result of measures to combat COVID-19

Section 82m. (1) In exception to the provisions of this Federal law of the Federal Minister for education, science and research for the school years 2019/20 and 2020/21, with regulation

1. existing dates by way of derogation and statutory deadlines shorten, extend or postpone,

2. the Executive Board, authorize, or undertake, in consultation with the each of the Teaching subjects teaching teachers of the division of educational and teaching tasks and teaching material in the Curricula on the various school levels or Semester depart

Remedial teaching to arrange the obligatory visit to the subject-related Learning time mandatory or supplemental instruction to provide, arrange,

3. the use of electronic communications for the holding of Conferences, for teaching and performance assessment and evaluation rules, V 436/2020-15

10.12.2020

27 of 58

4. for types of school, types of schools, schools, school locations, individual classes or groups or parts of these in ortsunge transferrin-bound teaching Testing and assessment rules and

5. the head of the school, the lesson time will authorize, or commit, certain classes of the objects are in part or entirely on parts Year to pull together.

This regulation must period specifying the validity of and a new Control those statutory provisions designate from which to deviate and can retroactively with 16. March 2020 to come into force.

(2) in addition to teaching lessons, to understand the in addition to the teaching schedule, prescribed Hours are to be held to in the hours of scheduled classes are not treated or in the to handle mobile redirects which class developed curriculum.

Supplementary classes and remedial classes from throughout the school year Teachers or student teachers to be carried out. Participation in

this lesson can be used as a volunteer or for individual students mandatory to be regulated.

(3) Ortsungebundener teaching includes the teaching of curriculum and the Support of pupils and students in the use of electronic Means of communication, the provision of which by the Federal Ministry of Education, science and research is supported, (guided Work) without the physical presence of a majority of students at the same place."

5.

Section 8 of the Ordinance of the Federal Minister for education and the arts, from the 24. June

1974 relating to the school's rules and regulations, BGBl. 373/1974, idF BGBl. II 256/2020 (in

Following: school rules) is:

"§ 8. (1) In the context of § 47, Para. 1 of the school education act are the following Education resources to apply:

a) in case of a positive behavior of the student:

Encouragement

Recognition,

Praise,

Thanks;

b) in the case of a misconduct of the student:

Prompt,

Rebuke,

Placing orders for subsequent performance missed obligations,

Advisory and belehrendes conversation with the student,

Advisory and belehrendes conversation in the presence of the

Guardian

6

V 436/2020-15

10.12.2020

28 of 58

Warning.

The above-mentioned means of education from the teacher, from the class Board, and from the head of school, in special cases, by the competent education authority, be applied.

(2) educational activities should if possible be made directly and in a meaningful reference to the behavior of the student are. To the students be insightful and the education of the student-promoting effect."

**III.**

### **Application submission and pre-trial**

1.

The applicant set out her concerns as follows (without the Original contained highlighting):

"2 the facts of the case

2.1 The applicants are Austrian citizens. The First Applicant

visited the second grade of the elementary school in 8843 St. Peter am kammersberg.

The second applicant visited the first class of NMS in 8843 St. Peter

Chamber mountain. The First and second applicants have the right to take the stationary teaching (classroom teaching) is true. The residential classes of the

The second and third applicants will be held as follows: The classes were divided into two groups. It is a change of groups takes place daily, to visit brick-and-mortar classroom, instead. The First and The second applicant therefore visit every second day of the stationary Lessons. In the Third and fourth applicants are the parents of the The first and second applicants. The Third and Fourth applicants to enter the School building to contact the respective teachers, in Consultation hours and parent conference days. The music lessons of the first applicant takes place just as in school buildings. For this purpose, the applicant needs the The help of the Third - or Fourth-applicants, to your musical instrument in the To bring to the classroom. The Third and Fourth applicants, therefore, have the To enter the school building.

[...]

3 admissibility of the individual application

3.1 The contested regulation, the addresses in the first line

School staff as well as students, the hygiene regulations to curb the COVID-19 pandemic in accordance with the Annex B but also to all Persons entering the school building. By this regulation, therefore, are the First and second applicants and the Third and Fourth applicants as Parents and legal representatives, due to their duty of care to the Contact with the teaching staff and to help their children against- to make, the school building must enter affected.

7

V 436/2020-15

10.12.2020

29 of 58

3.2 The C-SchVO of the defendant was with 13.05.2020 announced. The C-SchVO acts for the applicant immediately, without a notice or a Verdict would have been.

3.3 The C-SchVO violated the applicant directly in your constitutionally guaranteed Right to:

i. equality before the law (Art 2 Art and Art 7 Para 1 B-VG) in the offered differentiation between the to be imposed measures for the Addressing the COVID-19 consequences with regard to the necessary measures due to the actually infected persons in the respective school districts and objective is not justified and not on the current Data and information-based rules and regulations (General Principle of objectivity). In addition, contrary to the principle of Objectivity the principle of Equality were

the impact of the regulations on the mental health of children

not determined. As an Austrian citizen, applicants are

The holder of fundamental rights of the principle of Equality, of a mere citizen, the right.

II. protection of life and limb, and in which the Wearing of a mouth and

The nose area covering mechanical protection device in the school building

prescribes. The right to Carry, handle and Store the mouth and

Nose guard is operating in daily life and in school in General, for people –

especially for children - is not possible. The incorrect Carry handle and

The mouth and nose and stow protective mask increases the risk of infection of the

COVID-19 Virus. Generally speaking, the incorrect Carry, handle and Store increased

the mouth-and-nose-protection mask, the formation of viruses and germs. The

Applicants are, therefore, in their physical integrity as a carrier of the  
The mouth nose mask as well as a Person in the vicinity of other  
Mouth-nose protection masks-supporting people affected. In addition, the First and  
The second applicant, on the basis of § 5 of the iVm system B and § 7 of the regulation  
fought measures as a result of the lack of social contacts, in their  
mental health is affected.

III. In addition, violated the regulation, the First and second applicants  
in their constitutionally guaranteed fundamental right to education (Art 2  
1. ZP ECHR) by the classes of the First and second applicants divided interior  
were, and teaching scheduled classes a week, in the sum of two  
consecutive school weeks takes place. The First and  
Second applicants are, therefore, only every second day, over a period of about  
a year of teaching.

3.4 A current concern of the applicant is located, as there is no other  
a reasonable way to avert the unlawful procedure the applicants for the  
Available.

The individual application is therefore admissible.

4 statement of the against the contested regulation on the provision of existing  
Concerns

V 436/2020-15

10.12.2020

30 of 58

4.1 violation of the principle of equality according to Art 2 Art and Art 7 Para 1 B-VG  
The C-SchVO violated the principle of equality under Art 2 Art and Art 7 Para 1 B-VG.  
As an Austrian citizen, the applicant's fundamental rights are a carrier of the  
Principle of equality, of a mere citizen, the right. A regulation violates the  
Principle of equality, if it is based on a par unlawful act,  
unprofessional differentiations make necessary differentiations, or  
objectively justified arrangements (General principle of Objectivity).

4.1.1 The basic reproduction number of the SARS-CoV-2 is 3.6 (Worst Case  
Scenario). The basic reproduction number of measles is, according to  
Physician, Department head of the AGES and adviser to the Minister of health Franz  
Allerberger, at 18. The basic reproduction number of measles is therefore a  
5faches higher than that of SARS-CoV-2. A measles case in schools, so is  
only the school in which the measles case occurred for approximately 21  
Days closed. Despite the 5-fold lower reproduction number of SARS  
CoV-2 with the C-SchVO measures until the end of the school year  
2020/21 taken to school everyday for the whole of Austria, over a whole  
The school year also affect. Such a long scope of  
prescribed measures is therefore not justified objectively and is not contrary to the  
Principle of equality.

4.1.2 The regulation differentiated in terms of the measures to be applied  
not, at the respective Infection levels at the locations of the respective  
Schools. The district of Murau in Styria, Austria (20 inhabitants per km<sup>2</sup>), in which the  
Applicants have their residence listed for comparison to other  
A low number, with Corona districts-Infected. In may 2020, the state was  
in the district with a total of 7 with Corona-Infected, with the 07.05.2020  
already 5 as recovered were considered. In the district of Murau, the majority are, therefore,  
The school district free of with the Corona-Infected. The defendant would therefore have  
in terms of the need for, and the range of the applicable



To differentiate measures had, how many on Virus-infected persons in the the school regulation are districts under a offered  
Differentiation of the measures to be applied, as they are not between those School districts which have no or only a few with Corona Infected compared to those School districts differentiated with multiple with Corona Infected.

4.1.3 Virus shedders children like adults are. Of the outbreaks, the AGES-documented, according to the information provided by the Department head of the AGES

not a single one on a child. In addition, could not, according to the AGES Clusters in schools and in the public sector are demonstrated.

4.1.4 In the ORF-show 'In the centre', said the Professor of medicine Andreas Sönnichsen, that schools actually no role in the spread of the Virus play [...].

V 436/2020-15

10.12.2020

31 of 58

4.1.5 Not kindergartens or schools were in Austria, the large Viruses flock, but the Tyrolean ski resorts. As profile reported, the 57 percent the infections keep track of alone on the Tyrolean Ski Mecca of Ischgl and back.

4.1.6 The Use of a General mask duty is not scientifically proved.

The Federal Ministry of social Affairs, health care and consumer protection developed a manual on the right Wear and the right hand have a mouth-nose protection in the amount of 8 pages, on the Homepage of the The Ministry will be made available for Download. The right to Bear the mouth-nose protection the AGES head of Department gave in an Interview with the Profile (may 2020 edition): 'are There anywhere instructions on how to get to the mouth Nose protection, correctly handle and to store. And you know what? I, myself, as a Professor of Hygiene, can't get it, my cloth mask according to the Not to be stowed in a bus so that I touch you on the outside!'

4.1.7 With the Wearing of a mouth-nose protection are more negative Implications for the support of the associated: In the event of incorrect use Mouth and nose protection is a high risk of infection of SARS-CoV-2 Virus.

By the false sense of security, the required minimum distance, the indeed, the Transmission of the Virus is no longer prevented, often complied with. A Carry handle and Stow the mouth nose protective mask is, therefore, without the risk of the additional production of viruses and germs and the Increase the risk of Infection with the SARS-CoV-2Virus in everyday life and in the The school day is not possible.

4.1.8 The principle of Objectivity the principle of Equality also requires the reasonable determination of the basis for decision-making. Due to the above Described is of a sufficient determination of the basis for decision-making based on the available data and information on the part of the defendant not to be expected. In § 5 in conjunction with Annex B of the contested regulation with regard to

the wearing of a mouth-nose protection for all persons in the The school building, as well as according to § 7 Para 3, 4 and 6 of the C-SchVO is due to the above-described

Facts are not objectively justified.

4.2 violation of the protection of a body and a life gem. Article 8 of the ECHR

4.2.1 The regulation violated according to the law on the protection of life and limb. Art. 8 of the ECHR. By article 8 of the ECHR, the will is also a sphere, so the right of each People to self-determination, protected. The man has himself; he determines what to do with all of the relevant information, his spirit and soul life, as well as with his body is done. Injury to the body, which are not borne by the will of the person Concerned, will, therefore, in the The area of the protection of article 8 ECHR. As a result, and in addition, article 8 requires The ECHR, the respect of the entire physical-mental integrity. Unjustified interference by harmful emissions, or medical Measures of any kind are prohibited.

4.2.2 The incorrect Use of the mouth-nose protection for the load-bearing Person and also for persons in the environment of the mouth, nose and protective carrying Person dangerous. On the one hand, the mouth-nose protection masks due to the V 436/2020-15

10.12.2020

32 of 58

incorrect use of viruses and germ-catcher, on the other hand, increases the incorrect use of the mouth-nose protection, the risk of Infection for other People. A use – hands-Wear,, Store, without the The achievement of the specified risks in everyday life/school life for the Norm-addressees possible. In section 5 of the iVm of the Supplement B contested measure – Wear

one of the mouth and nose area, and covering the mechanical protection device – intervenes in the physical integrity of the applicant, as this prescribed measure adverse health effects relating to the The applicant as a carrier of the mouth, nose masks, and as a people, the in the School buildings with other mouth-nose-mask-wearing people in contact come to go hand in hand. On the basis of the present data and information (see also point. 4.1.3 to 4.1.6), it can not be assumed that the measures for the protection of the health of the population - General interests of the population –are required. Since the Wearing of a mouth-nose-Protection, the risk of Contagion is not reduced, but even increased, the Adoption of the contested regulations in the C-not justified SchVO and in any case not proportionate.

4.2.3 on the basis of the prescribed measure – dividing the class into two groups the social contacts, the absence of the children. Consequences for the children psyche according to the psychologists, Fears, learning problems, lack of Development steps. Children will be taught without the Need for a threat situation, the in fact, there is not, which can lead to a mental impairment can. In § 5 and § 7 of the regulation contested measures the mental health of the children. The interference with the right to Protection of life and the life of the children is due to the fact that of the documented outbreaks, not a single one goes back to a child who Cluster in schools not proven could be and, in the opinion of medical professionals the Dissemination of the Virus is not in connection with schools, necessary, not justified and not proportionate.

4.3. Right to education article 2. 1. ZP ECHR

The regulation violated the right to education gem. Article 2. 1. ZP OF THE ECHR.

4.3.1 The right to education under article 2. 1. ZP, of the ECHR includes the Case law of the European court of human rights, not only the

Mediation of Knowledge, but the entire process by which in a Company adults to the children, their Beliefs, their culture and other values give, as well as the promotion of spiritual experience and the Character formation of the children in the school system and outside school facilities.

4.3.2 The right to education requires, of its nature, ' the legal regulation the entire education system. The state is not entitled to do so, but also required. Him being in the organization of the school, the Setting of the lesson plan and its implementation is another Discretion, since the rules can change according to time and place, depending on the V 436/2020-15

10.12.2020

33 of 58

Needs and resources of the community and of individuals'. Legal Regulations need to be in the public interest and are proportionate, may neither the essence of the fundamental right to violate against the European people breached the Convention on the rights freedoms, and the right to non-discriminatory access to education and the need to Parents ' rights true.

4.3.3 Pursuant to Art 7 Para 3 of the C-SchVO classes must be roughly in the same fixed, groups, between which no exchange is allowed to take place, shared be. At 18 or fewer students per grade, the division has to be omitted if the hygiene Directive can be complied with in accordance with Appendix B.

4.3.4 The classes and groups are in the layer of the gem operating alternately. the type 7, Para 4 C-SchVO in the classroom in the school to teach, in the Sum of two consecutive weeks of School all classes the curricular timetable of a week to take place and the number the days of the classroom teaching for both groups as possible should be of equal size. The Art 7, Para 3, 4, 6 C-SchVO in the case of a breach of the right to education, as the class a number of students over the age of 18, in groups, or if in General, the Hygiene Directive can not be complied with in accordance with Appendix B, is divided, and the curricular timetable of a week as a result of now, in the sum of two consecutive school weeks is taking place. This intervention is up to the The end of the school year 2020/21 provided.

4.3.5 was already running in the points 4.1.3 – 4.1.5, the Figures of the AGES of the documented outbreaks, not only on a child back. A Cluster of schools could not be demonstrated.

Due to the limitation of the teaching scheduled teaching in schools (Half of the teaching time) until the end of the school year 2020/21 is not in the the public interest is not justified and is not proportionate. To The protection of the interests of the entire population in terms of risk of Infections, fought the measures in the regulation are, therefore, not expedient and necessary."

2.

The Federal Minister for education, science and research, as regulation, decree, be refunded to the authority a Statement, but no files relating to the status of the contested regulation submitted. In the reimbursed Expression follows the concerns of the applicant as countered:

"[...]

## II.

To the process requirements

Application legitimacy

8

V 436/2020-15

10.12.2020

34 of 58

3. According To Article 139, Para. 1 Z 3 B-VG the constitutional court (in the detects Following so or a constitutional Court) on the illegality of the regulations on The request of a Person directly by this act of conformity in their To be a right to appeal claims that if the regulation without the precipitation of a court decision and without the adoption of a decision for this Person became effective.

4. It is assumed that the effect of the standard, by which the The applicant complained considered. It is, therefore, a fundamental requirement for the Application of legitimacy that regulation in the legal sphere of the applicant Person directly, so directly, and currently engages. This is then the case, if the applicant is a norm-addressee of the contested provision and if the contested regulation, the applicant actually and currently relates to.

5. The immediate and current concern is for each of the contested To establish provisions (see, to about the constitutional Court 18. September 2015, V110/2015; VfSlg. 17.266/2004; 17.094/2003; 16.968/2003; 16.042/2000; furthermore VfSlg. 11.684/1988; 11.347/1987). The challenge to a whole Regulation is inadmissible if his Claim to not all Provisions of the regulation, the applicant is immediately in his Right (disadvantage) affect (VfSlg. 20.053/2016; 17.094/2003).

6. That said applies even if the contested provision was already out of Power was set. As the constitutional Court in settled case-law, has pointed out, unfolds in the time of the decision of the court of justice already except Force standard for the legal sphere of the applicant's regularly the more an application justifying immediate effect. The Goal a method according to article 139, Para. 1 Z 3 B-VG is the unlawful standard without delay, with the General effect of the law was to remove. The Effect of the regulation is, however, your lapse in the rule ceased to exist (VfSlg. 18.714/2009; 18.295/2007; 18.151/2007; 16.145/2001; 15.116/1998; 14.033/1995 among others).

7. Since the subject of the Audit is always determined by the application itself, the relationships presented apply even if a contested Provision has been replaced by an identical provision, as it is for the Exchange of the test object in a standard test procedure before the The constitutional court is not a legal hand (VfSlg. 18.295/2007; 16.280/2001; 15.021/1997; 13.794; iZm the Präjudizialität a determination VfSlg. 18.138/2007).

8. In Accordance With § 57 Para. 1 Constitutional Court Act 1953 – VfGG BGBl. No 85/1953 each application, a regulation must be deemed unconstitutional cancel, the request included either the regulation, and all the content or that certain parts of the regulation be repealed as a violation of the law be. The application has the against the legality of the regulation speaking of the concerns the President. It is, therefore, a necessary

V 436/2020-15

10.12.2020

35 of 58

Process condition of each of the examination procedure according to article 139, Para. 1 B-VG that

the (Individual) application, the request for the waiver as well as a

A statement of the concerns it contains against the constitutionality of the repealed standards in the Individual speak. According to the case law of the constitutional Court, it is sufficient

not that certain Law with the statement to be fought, you violated – even if unspecified – provisions of the Constitution.

The applicant must be presented separately, from which

Reasons, the contested norms of the alleged

Constitution adversities attributable to be. This follows already from the fact that the constitutional Court

in the assessment of the (Individual) application, the allegations of the

Applicant is limited. If – as in this case, several concerns

delivered and different rules (and it was only eventualiter)

to be fought, it is also the responsibility of the applicant, the respective concerns

the various waiver request cf. assign (in such Compendium.

16.507/2002; 16.711/2002; 13.123/1992, 11.970/1989; 11.610/1988; 8594/1979

ua). The constitutional Court considers it as his duty, a lump sum presented

Concerns individual provisions, and so – as it were, by way of example

to clarify, the Argument for the applicant (see VfSlg. 16.507/2002

the cited case law).

For the application of legitimacy concerning § 5, Para. 1 iVm Z 4.2 of Annex B to C-SchVO idF

BGBI. II 208/2020 ('mask'duty')

9. The applicants argue that, by § 5 Abs. 1 'as well as' (meaning probably: in

Connection with) the phrase 'All persons in the school building must a the

The mouth and nose area of the cover at the end of the mechanical protective device to wear'

the Z 4.2 of Appendix B in your constitutionally guaranteed rights

affected to be.

10. The relevant Claim of the applicant from 25. May 2020 refers

on the obligation to Wear a mouth-nose protection (in the Following

so, or MNS) within the school building according to § 5 Abs. 1 iVm Z 4.2 of the plant

B C-SchVO idF of regulation BGBI. II, no 208/2020.

11. Due to the low and declining Infection rates as well as the positive

Development of the epidemiological situation regarding this Novel Coronavirus

(Severe Acute Respiratory Syndrome Coronavirus-2 and SARS-CoV-2) and the

this respiratory disease COVID triggered-19 from the was

Federal Ministry of social Affairs, health care and consumer protection (in further consequence

or BMSGPK) with 29. In may 2020, the possibility of a loosening of the

Measures to combat the proliferation of COVID-19 to be announced.

Then Minister for education, science and were on the part of the Federal

Research (in the Following, one way or BMBWF), the corresponding adaptations in

With respect to the Wearing of the MNS in the school field with regulation BGBI II Nr.

248/2020 made. Through amendment of Annex B, in particular. of the 4. Part

concerning respiratory hygiene, has been changed to Z 4.2 to the extent that a MNS

can be worn, but not worn, it must be. The amendment is with the end of the day of the announcement of the 2. June 2020, thus with 3. June 2020, entered into force.

V 436/2020-15

10.12.2020

36 of 58

12. The present application relates therefore to a at the time Decision of the constitutional Court already repealed version of the Appendix B of the C-SchVO and therefore also on the validity of word order:

'All persons in the school building must a the mouth and nose area cover the end of the mechanical protective device to wear. The teaching time is except.'

13. The Annex B defines a behavior with regard to exceptions from the mobile Instruction. It is, therefore, only pupils or students, in accordance with Appendix A are excluded from the non-location-specific classes to apply.

From the remote classroom students can only be

be excluded, the pupils or students of a school for which ortsungebundener lessons has been arranged, are. The nomadic Instruction for all students ends due to its temporary

Arrangement in accordance with section 2 of the regulation in any case with the end of the school year

2019/20. The term of the school year, is by § 2 of school time law 1985, BGBl. No.

77/1985, (in the Following, one way or SchZG), is determined. The provisions of § 5 Abs. 1 iVm part 4 (respiratory hygiene) Z 4.2 of Appendix B the idF of regulation BGBl. II, no. 208/2020 unfolds already at the time of submission of the application by this

Condition the area from the first Monday in September 2020 for the

Länder of Burgenland, lower Austria and Vienna, and from the second Monday in September 2020 for the länder of Carinthia, upper Austria, Salzburg, Styria, Tyrol and Vorarlberg have no legal effect.

14. The applicants of the decision of the constitutional Court is missing at least in the time the required, current affected by § 5 Abs. 1 iVm Z 4.2 of Appendix B idF BGBl. II, no 208/2020 (obligation to Wear a mouth-nose protection in the school building). The Arguments the applicant refers to a

Version of the contested provision, which – if you are in at the time of Application in Validity status – it has now been amended. By the applicants to the Guided effects of the § 5 Abs meeting. 1 iVm Z 4.2 of Annex B to C-SchVO idF

the regulation BGBl. II, no 208/2020 of the repeal of the

the provision in question as amended is not more to be eliminated (cf.

for this purpose, VfSlg. 14.033/1995). Thus, there is a lack of legitimacy to their

Contestation (see VfSlg. 16.280/2001; 14.313/1995; 13.794/1994 and

13.057/1992). The application is available in this point, therefore, because of the lack of the immediate concern must be dismissed as inadmissible.

The contingent applications for the waiver of §§ 4 to 20 C-SchVO and the ge- the entire regulation

15. The applicant of the request in eventualiter the lifting

§§ 4 to 20 and annexes A and B of the C-SchVO and the repeal of the the entire C-SchVO. You fail, however, these requests by

Claim for a specific affected by these provisions to under the walls.

V 436/2020-15

10.12.2020

37 of 58

16. The first applicant is a student of a primary school, the  
The second applicant, a student of a New middle school. Neither the First or Second - the  
The third claimant or the Fourth claimant from the personal or

the scope of application

- § 4 iVm Z 1, 4, 5, 6 of the Appendix A C-SchVO (exceptions to the  
mobile education relating to the pupils of final classes

middle and higher schools, students of Polytechnic

Schools, in General secondary as well as vocational middle and  
higher schools),

- of § 13 of C-SchVO (remedial measures) or

- Section 14 of the C-SchVO (installation of early partial exams final  
Tests)

the contested regulation is recorded and can therefore not directly

their legal sphere to be affected. A immediate affected by § 12

C-SchVO (Upgrades to foreign-language school attendance in foreign countries) is neither  
the application itself nor the underlying facts of the case to

refer to. In these points of procedure subject to an application as inadmissible  
reject.

17. The applicants are also of the further provisions of

contested regulation is not directly affected (cf. in the section

relating to the Polytechnic school, the 4. The section pertaining to the

Allgemein Bildende höhere Schule, the 5. The vocational section relating to medium and  
secondary schools, cf. to point the information. 5 f). A current

Affected by the entire regulation is also put forward as to why the

appropriate application therefore be dismissed as inadmissible.

An object of dispute and contestation of the scope

18. According to settled case-law of the constitutional Court are the limits of the waiver

a check on the constitutionality of the law provision as to

that the with of the repealed Law were inseparable

provisions are recognised in full, however, the content of

of the remaining law-in part due to the repeal not complete

Importance of change

learns

(in

about

CC

15.10.2016,

G183/2016;

VfSlg. 16.074/2001; 19.322/2000). The volume to be tested of a and at most

repealed provision is to be so distinguished, on the one hand, not more

from the legal inventory is eliminated, as in the removal of a

permissibly asserted illegality is not necessarily required.

19. In conjunction with the applicants to put forward

constitutional concerns the Evenutalanträge, § § 4 to 20, as well as the

Appendices A and B of the C-SchVO, or the entire regulation should be repealed,

in terms of the challenge scope to be broad. The

Contesting the scope is pulled further, as for the elimination of the raised

Illegality would be necessary, and for this reason, as inadmissible reject.

V 436/2020-15

10.12.2020

38 of 58

20. Out of procedural caution is nevertheless on the whole in Proposals advanced by the law to have been received.

III.

Representation of the legal situation

The content, structure and objectives of the C-SchVO

21. COVID-19 is a Novel Coronavirus, SARS-CoV-2 caused and until the end of the year 2019 unidentified infectious disease, which for the first time in the year 2019 in the city of Wuhan (province of Hubei) described and in January of 2020, first of all, in the people's Republic of China to the epidemic developed. Due to the rapid increase in the number of cases worldwide, said the WHO on 11. March 2020 the outbreak officially a pandemic. Up to this time, there were more than 118,000 cases from 114 countries and a total of 4291 fatalities have been reported. In mid-March, 2020, the European Region was according to the WHO, to the epicenter of the pandemic and reported about 40% of the world's confirmed cases. With a Stand of 28. April 2020 accounted for 63% of the world by the Virus-related mortality in the European Region. To in addition to were one of the first recommendations of the WHO, frequent hand washing and the observance of a corresponding Respiratory hygiene, the observance of intervals of one Meter to fellow human beings and the Avoid of close physical Contacts ('social

distancing')

(<http://www.euro.who.int/de/health-topics/health-emergencies/coronaviruscovid-19/novel-coronavirus-2019-ncov> access on 10. June 2020).

22. With BG BGBI. I no 13/2020, as well as articles 16 to 21 of the 3. Covid-19-Act (BGBI. I no 2020/23) were also in response to the in Europe as a worldwide, pandemic spread of Novel Coronavirus (SARS-CoV 2), the associated disease of the respiratory tract (COVID-19), and by the end of February 2020 until the middle of March 2020, the sudden increase of the case, in the figures, school law a number of provisions adopted in a situation-appropriate Response of the school system of allow you to should (see, to about the definition of Deadlines and academic year overall arrangements for the school year 2019/20 and 2020/21 as a result of measures to combat COVID-19 in § Section 82 of the school education act, BGBI. No 472/1986, in the Following way or SchUG, the appropriate organisation of schools legal basis in § 132c SchOG and school regulations in § 16e SchZG). Carrying out this the retroactive was 16. March 2020 in Implementing regulation to address the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO) have been adopted.



23. The C-SchVO applies in the SchOG, as well as in art. V Z 2 of 5. Scho Gnovelle, BGBl. No 323/1975, and in the agricultural and forestry The Federal Education Act, BGBl. No 175/1966, as well as in the forestry act 1975, BGBl. No 440/1975

regulated public and private schools. On vocational schools, is only the Annex B apply.

V 436/2020-15

10.12.2020

39 of 58

24. The C-SchVO is divided into six sections. The 1. Section meets General rules for the organization of Teaching and instructional design. Including schemes fall into about

- for the implementation of a location-independent teaching, and a Presence teaching, ESP. teaching in the mobile teaching and lesson organization of the classroom activities,
- for the use of electronic communication between the members of the School community (including 'e-learning' or 'distance learning'),
- to General principles of performance assessment,
- to students in English support classes or courses,
- and for final examination.

25. Sections 2 to 5 will meet for specific types of school school organisation and education law and school law provisions (in about concerning the teaching materials, the curriculum, the school day etc).

26. The Appendix A to this regulation governs the exceptions mobile lessons. Since the scope of the C-SchVO on a number of different school types and school levels is related, differentiated the Appendix A to the pupils of the respective school types and School Levels (Elementary School, New Middle School, Special School, Polytechnic School, General secondary and vocational secondary, and higher Schools) and for pupils in the final classes of medium and higher schools. Appendix B (General hygiene regulations to curb the COVID-19 pandemic (hygiene Directive')) governs the General hygiene guidelines and is divided into provisions relating to the distance requirement, to avoid People collections, as well as to respiratory hygiene.

Ortsungebundener teaching and classroom teaching

27. Basically, the C-SchVO constituted the ubiquitous teaching ('distance learning') as a General rule, and applies by way of derogation, according to differentiated

the respective type of school, exceptions concerning the mobile Teaching ('Classroom').

28. Ortsungebundener teaching includes the teaching of curriculum and the Support of pupils and students in the use of electronic Means of communication, the provision of which is supported by the BMBWF, (derived from Work) without the physical presence of a majority of Students in the same place (cf. § 82h Abs. 3 SchUG). § 6

C-SchVO meets all pertinent regulations for the teaching and Teaching design. The nomadic education is provided in the Form of a steady (electronic) communication between students and Teachers, as well as the guardian and the school administration. The Teaching in the mobile teaching is in the preparation

Teaching substance and the Grant of written work orders. The direct communication between the students and the Teachers in the area of sound and sound - or video transmission, as well as the possibility for written and oral feedback to the pupils' questions to the To ensure teachers.

V 436/2020-15

10.12.2020

40 of 58

[...]

29. The classroom teaching takes place at the school site under special organisational arrangements to the risk of infection with the SARS-CoV-2 Virus to minimize as far as possible and thus a further dissemination on the backburner to keep (Avoid personal collections, observance of a Minimum distance of at least one Meter between the people, reduction of The number of persons in school buildings and on school grounds). § 7 C-SchVO allows the Executive Board the organization of a 'layer operation', so a daily basis alternate location-independent teaching and classroom teaching for different groups of students. This is to ensure that, within two consecutive school weeks for a class or group all lehrplanbzw. hours of timetabled lessons are held in units of a week (§ 7 Abs. 3 and 4, C-SchVO).

[...]

Protection measures, rights and obligations under the C-SchVO  
30. An essential task of the Austrian school it is for children and To provide young people an environment in the best possible physical and mental development is intended to ensure, in order for this to be healthy, health and responsible people can grow conscious (school health education and promotion, see article 14, Para. 5a B-VG and § 2, Para. 1 School Organisation Act – SchOG, BGBl. No 242/1962). School Health education and promotion describes the process, students to enable a higher level of self-determination about their health and they enable to strengthen your health and is also known as The teaching principle in the curricula, cf. the principle established (let The teaching principle of health education, circular No. 7/1997 write; furthermore, section 66a SchUG concerning the health care of school youth).

31. The tasks of the Austrian school (art. 14, Para. 5a B-VG and § 2 of the Federal law on school organisation school organisation act (in the Following so or: SchOG), BGBl. No 242/1962) in the can only partnership interaction between students, parents and teachers met. Therefore, the 'school rules', to be referred to 9 controls. Section of the SchUG the school Together, the members of the school community-students live and work, Parents and guardians, teachers and educators, and recreation teachers – by the definition of a set of Rights and obligations relating to the The design of the school life. § 43 Abs. 1 SchUG on standardized a catalog Student obligations on the harmonisation of coexistence in the school and the Backup the lessons are used (cf. section 17 of the SchUG). More these duties the students for meets the regulation of the Federal Minister Education and the arts on the school's rules and regulations, Federal law Gazette no.

373/1974, (in other  
Result: so or school rules).

32. The C-SchVO concretized and adapted to the rights and the obligations individual members of the school community in connection with the COVID-V 436/2020-15

10.12.2020

41 of 58

19 pandemic. Including the right to notice and the duty to comply with certain Protection measures to prevent the spread of SARS-CoV-2, to Reduction of the infection pressure and the velocity of propagation as well as for the protection of persons, inbs. At-risk groups, prior to the COVID-19-disease. The school and the classroom plays in which a large Number of people of various ages for extended periods of time in closed Spaces to interact, a crucial role.

33. For the conduct of class room teaching, the C-SchVO in addition to places special school organisation and legal arrangements (see under PT. 29) special duties of the members of the school community, in particular. Students and students and teachers, fixed. Section 5 of the C-SchVO iVm of Annex B of the C-SchVO therefore the obligation to comply with certain hygiene rules [...]

34. The Appendix B of the C-SchVO idF BGBl. II, no 208/2020 saw the point 'Respiratory hygiene' for all in the school building and the occupants of the obligation Wearing a mechanical MNS before. The exception to this was the Teaching time in the classrooms due to the school organisation law Measures a reduction in the there during the lessons and the compliance with the Minimum containment level as well as regular 'air' is possible. [...]

35. With regulation Federal law Gazette II no. 248/2020 adaptations in relation to the were Wear of the MNS in the school sector can be made to the Appendix B of the C-SchVO amended. Due to the entry into force of the determination of the end of the day the Proclamation is, therefore, from the 3. June 2020, any obligation, in To wear the school building a MNS, where the possibility of such to use voluntary, still remains. The 4. Part of Annex B in the current version now reads:

'4.2 the mouth and nose area of the cover at the end of the mechanical protective device (MNS) All persons in the school building, a mouth and The nose area of the cover at the end of the mechanical protective device to wear.'

V.  
To the concerns of the applicant

To article 2 StGG, article 7 B-VG (General principle of Objectivity)

36. First, can the question of objectivity, in particular, to the factual Justification and need for action in connection with the Avoidance of people, collections, and the Wear of a mechanical Mouth-nose-protection, on the already given Statements to the Federal government in other proceedings before the constitutional court, in particular G 180/2020, G 195/2020 and G 202/2020 and G 213/2020, be referred to.

Park school of legal measures on regional case numbers

37. The applicants consider that due to the C-SchVO, ESP. in § 5 Abs. 1 iVm Appendix B of the C-SchVO idF BGBl. II 208/2020 ('mask' duty'), and in § 7 Abs. 3, 4 and 6 C-SchVO (exchange between ortsunge tied-teaching and presenting-V 436/2020-15

10.12.2020

42 of 58

unterricht) in your Constitution legally guaranteed employee right to equality before the law and in the completion of hurt. The contested Provisions were, therefore, irrelevant. Essentially, it is argued, the Regulation does not differentiate according to the particular Infection to be paid to the specific

School sites or in the individual school districts. So Murau in the district in Styria is a relatively low number of infected persons to list. A differentiation between school districts according to the Number of infected persons would have been made therefore.

38. The school district are to be used only for public compulsory schools. The Division of school gem belongs to districts. Art. 14, Para. 3 lit a to the outside of the organization

public compulsory schools. Thus, the Federal legislator, in this The area of the principle legislation, the implementing legislation and Completion

is the responsibility of the Countries (cf. the

Compulsory Education, Attitude, Principle, Law, BGBl. No 163/1955). The establishment (formation, Modification, and

Repeal), the school district is carried out by regulation of the Department of Education.

The relevant provisions differentiate, in turn, to the individual

The Type Of School (Elementary School, New Middle School, Polytechnic School, Special School

and vocational school). In addition, article 13 allows the

Compulsory school attitude act implementing provisions of the school attendance outside the resident district also (Sprengel foreign school), the German Federal transnational fende the school district, or special emphasis-related Sprengel (Permission Sprengel).

39. In Austria there is, therefore, a large number of school districts of different size and with varying catchment areas. The school district are thus, do not necessarily coincide with district or ward boundaries.

Accordingly, the population can vary in number and population density as well as, ultimately, the number of pupils in the Districts. [...]

40. The protection against hazards for the General health of the

Population, including the national health crisis management falls

in addition, according to the Federal ministries act 1986 – BMG, Federal law Gazette BGBl. No 76/1986, in the

Area of enforcement of the BMSGPK. This is the leadership of the official responsibility of Register of notifiable diseases in accordance with § 4 of the epidemics act 1950,

BGBl. No 186/1950, and the establishment of the Epidemiological reporting system

(EMS). This provides the common database of all Austrian district

administrative authorities (BVB), all over the country medical directorates, the BMSGPK and the AGES is. It primarily serves the BVB for the fulfilment of the tasks

Implementation of surveys on the Occurrence of notifiable diseases to the

The prevention of the proliferation and control of notifiable Diseases and the fulfilment of the tasks of the country's main men in the context of their The coordination function. The school administration is not for this data Available.

41. The catchment areas of middle and high schools are considerably larger as those of compulsory schools. They exceed state boundaries, and extending, in the case of a significant number of schools due to high special V 436/2020-15

10.12.2020

43 of 58

Training on the entire Federal territory. The children and young people of Multi-child families visit often to different school sites and different types of school, as well as in the case of the Complainant.

42. The school district or school site - based records to pay Infection not exist. Such records as to the number of infected, diseased or convalescent persons in a particular school district due to have in the preceding paragraphs above, no sound

Statement of values about the infection density or the risk of infection in an area or for students and their families.

43. The school of legal measures Leave on SARS-CoV-2 on the Infection rates in individual school districts or schools would not, therefore, factually moderate and does not purpose. A focus on a specific Sprengel size would Sprengel schools without a School (middle and high schools: AHS, BMS, BHS, luf BSch) not at all capture, could be a number of factors and would thus be arbitrary.

As for the Claim that schools are COV-2 would not be in the spread of SARS relevant

44. The applicant in the procedure of the present application, that of 'the outbreaks, which documented the AGES' not one for a child go back. This reasoning is based on the media coverage, ESP. in an Interview from Univ. Prof. Dr. Franz Allerberger, head of the business unit for Public health, the Austrian Agency for health and Food safety GmbH (AGES), in the magazine profile from the 10. In may 2020. Therefore, schools and kindergartens, not 'would flock to the big Virus', son but the Tyrolean ski resorts. Therefore, the measures taken were objectively not well-founded.

45. The applicants refer in their Argumentation mainly on the statements Univ. Prof. Dr. Allerberger of 10. In may 2020, which in the The framework of the epidemiological evaluation of the created clusters and the assignment the cases of these clusters refers to.

46. In the cited Interview Univ grants.Prof. Dr. Allerberger, a, that kids would just excrete virus as adults.

47. The data collection of the BMSGPK that were in the age group A 5-to 14-Year-old on 9. June 2020 so far, 433 infections, and in the age group the 15 to 24-Year-old in 1588 infections are detected.

48. It follows that children and young people with the SARS-CoV-infected 2 Virus can be and also to COVID-19 can develop. The C-SchVO serves the The promotion of health, protection of the pupils and contributes to to fulfill the constitutional duties of the Austrian school.

49. The applicant also ignored the fact that the school is also a  
The workplace for a variety of people, about teachers, school managers, educators,  
V 436/2020-15

10.12.2020

44 of 58

Leisure educators and other school personnel. This is a  
Spread of SARS-CoV-2 on the operation of the school participating adults  
Persons are not excluded. The National education report to 2018 shows also  
a clear Preponderance of teachers from the 51. Age, where this  
the country's teaching staff more the case than in the Federal education

([https://www.bifie.at/wp-content/uploads/2019/03/NBB\\_2018\\_Band1\\_Indikator\\_B.pdf](https://www.bifie.at/wp-content/uploads/2019/03/NBB_2018_Band1_Indikator_B.pdf) access  
on 9. June 2020). Austria were far in the school year 2018/19

a total of 1.135.143 students of approx. 129.358 teachers and

Teachers (incl. Karen graced persons) in Austrian schools. Of

108.742 teachers (FTE) in this school year 14.585

Teaching people 45 to 49 years of age. In the age group of 50 to 54 - Year-old

under 17.465 teachers taught, the age group of 55 to 59 - Year-old

outweighs

it

with

19.567

Teachers

([https://www.statistik.at/web\\_de/statistiken/menschen\\_und\\_gesellschaft/bildung/schulen/lehrpersonen/122120.html](https://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bildung/schulen/lehrpersonen/122120.html) access on 9. June 2020).

SARS-CoV-2, COVID-19 in General, and in comparison with other display charge-  
gene diseases (measles)

50. The applicants argue that the basic reproduction number of

SARS-CoV2 at a maximum of 3.6 sun, while the basic reproduction number of measles 18

amounts and is therefore many times higher than in the case of SARS-CoV-2. Nevertheless,

will in the event of a measles case, only the school in question for a

certain period of time closed. The measures relating to the COVID-19

Pandemic would, however, 2020/21, all schools up to the end of the school year

concern.

51. In the event of gross ignorance of the law, the applicant overlooked the fact that the

The complaint as drawn, measures according to § 7 Abs. 3, 4 and 6 C-SchVO

(ortsungebundener teaching/classroom teaching) is not up to the end of the school year

2020/21, but by the end of the current school year 2019/20 are provided.

3. June 2020 not for people in school buildings in addition,

Commitment to Carry a MNS (see under PT. 35 f).

52. The applicant with be confused school legal measures

Arrangements in accordance with the epidemic law of 1950. The closure of a teaching  
institution, a

Kindergarten or a school in the event of a notifiable disease

(in the measles, or the Novel Coronavirus, cf. § 1 Abs. 1 Z 1

Epidemic act of 1950) is one of the competent district administrative authority

operative and of the competent school authority measure to be implemented

according to § 18 of the epidemics act 1950. With the implementation of the epidemics act  
1950 is

in Essence, the BMSGPK (see section 51 of the epidemics act 1950) entrusted.

In contrast, the arrangement of the mobile is where the teaching by the BMBWF for its sphere of action prescribed school organization and education legal action.

53. The applicant also different situation, misjudge. 10. June 2020 no vaccine is available against infection with the Novel-V 436/2020-15

10.12.2020

45 of 58

transparent Coronavirus protects. When a vaccine for protection against COVID-19 will be available, is currently not to say (cf. the Robert Koch Institute, <https://www.rki.de/SharedDocs/FAQ/COVID-Impfen/COVID-19-Impfen.html>, Access on 5. June 2020).

54. Measles is a highly contagious infectious disease with serious Consequences of a disease and is caused by the measles virus. It is a for decades, well-known and well-studied pathogens. Against the Measles disease an effective vaccine is available in Austria.

Accordingly, the virus exist in respect of measles in Austria high Vaccination rates

(cf.

<https://www.sozialministerium.at/Themen/Gesundheit/Impfen/Masern--Elimination-und-Durchimpfungsraten/Durchimpfungsraten---Nationaler-Aktionsplan.html>). With Stand 20.05.2020 25 in the year 2020 in Austria Measles cases have been reported. In the year 2019 151 total Measles case reports registered (as of 15.01.2020).

55. Alone with the comparison of basic reproduction no pay

To demonstrate lack of objectivity. In particular, the so far missing scientific Processing of the SARS-COV-2 eruption, the Absence of a vaccine, the rapid Proliferation and the global infection numbers to show the current time the factual difference.

For the objective justification of the wearing of a mouth-nose protection

56. The applicants submit that the Use of a General mask is the duty of scientifically not occupied. The recommendations for proper use of the BMSGPK, as well as the statements of Univ.-Prof. Dr. Allerberger (AGES) would indicate that with the Wear of a MNS a number of negative effects for the carrier to be connected. This is a high risk of infection, and would, false sense of security, to the neglect of the due

Minimum distance and the additional production of viruses and germs through the handle, Carry and Store the MNS count.

57. On the question of the effect of a mouth-nose protection is allowed on the Comments the Federal government in the above-mentioned procedures, as well as the information of the BMSGPK

(cf.

[https://www.sozialministerium.at/Informationen-zumCoronavirus/Coronavirus---Haeufig-gestellte-Fragen/FAQ--MechanischeSchutzvorrichtung-\(MNS\).html](https://www.sozialministerium.at/Informationen-zumCoronavirus/Coronavirus---Haeufig-gestellte-Fragen/FAQ--MechanischeSchutzvorrichtung-(MNS).html), accessed on 9. June 2020) are referred to.

In addition, recommendations for the Wearing of the MNS of the existence of European centre for the prevention and control of diseases

(<https://www.ecdc.europa.eu/en/publications-data/using-face-maskscommunity-reducing-covid-19-transmission> access on 9. June 2020) and the John Hopkins University (<https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-face-masks-what-you-need-to-know>, Access on 9. June 2020).

58. In the scheme of issues, it is up to the legislature, Average considerations turn off (in about CC 14.06.2018, G57/2018 or 28.09.2017, G31/2017). Due to the many school parties operating V 436/2020-15  
10.12.2020

46 of 58

People of different ages (see under PT. 49) and of the special Nature of the interaction in a school in the Form of teaching and Education work, is it objectively justified, the above recommendations throughout the school field. The stage of the re-recording Teaching work at the school site in the Form of a partial presence teaching required, therefore, to correspond with the BMSGPK, of the AGES, as well as of the Austrian society for Hygiene, Microbiology and Preventive medicine (ÖGHMP) recommended measures, an adaptation of the rights and Obligations of the students and the teachers.

59. In the case of the use of the legal-political design of the game space to achieve a goal, here the goal of health protection and the prevention of the further spread of SARS-CoV-2, it is essential, what is the severity the legal consequence of a legal measure for the Affected as a result. A lack of objectivity is not in the present case, because of this reduced to the necessary level and by objective and proper starting points was determined.

60. The obligation to Carry the MNS was only for the first two Weeks after the recording of the classroom activities in the school buildings and could be as a result of the positive epidemiological development with 3. June 2020 be omitted. The obligation to Carry the MNS stock to the individual Days of class room teaching, where the time of teaching in the The classroom itself was excluded. As a result, the MNS was, therefore, only for short time spans to bear. In the light of § 5 Abs. 1 iVm Z 4.2 the Appendix B of the C-SchVO to be objectively justified. For the objective justification of the alternate mobile Sub-education and classroom teaching

61. The applicant does not argue that the division of the classes would be factually and also, with negative health consequences go hand in hand. By the The division of the classes would be missing the children's social contacts, what to mental health problems would be misleading. Also, would the children 'without a threat is not conveyed, of the reigns'.

62. Contrary to the claims of the applicant, there is yet no proof to ensure that the division of school classes to mental health problems of the Students would lead. If the class as a social Frame of reference of the students is an essential educational function met, the permanent or temporary formation of groups of students in the School legislation, the everyday procedure in the operation of the school (cf. section 8a of the SchOG and §§ 9 ff SchUG). In many Subjects the Teaching in small groups. As examples of the lessons in may



Foreign languages, religious education (especially of communities with low student numbers), the lessons in practical items vocational education and teaching in primary schools with a low

V 436/2020-15

10.12.2020

47 of 58

Number of students (which is the lower limit for school locations in the The country's execution laws usually 10 students) are given.

63. The school year is school-free periods (school days, holidays) in a structured way (cf. § 2 SchZG). There is and was in the past years, and Decades, no evidence that temporary part a school class to mental impairment of the pupils can lead.

64. That the students only through the action of the C-SchVO a in the eyes of the applicant is not an existing threat suggests would, is mindful of the Europe or the Austria-wide measures to Controlling the spread of the SARS-CoV-2 Virus and to prevent COVID-19 diseases, almost all areas of public and private Life in the concern (plant closures, prohibitions of entry, mask duty The food trade, border controls, as well as the regular comprehensive and intensive coverage in all the media including social media), incorrect.

65. To the statement of the allegedly 'non-existent threat', the in view of the existing information and data material for SARS-CoV-2 Virus and the COVID-19 disease is incorrect, the on the Comments Federal government in other proceedings before the constitutional court, in particular, G 180/2020, G 195/2020 and G 202/2020 and G 213/2020, velvet Side dishes will be pointed out.

66. School health education a serves, among other things, the education and training of Health literacy, i.e. the ability to information the health to find relating to, understand, evaluate and apply correctly. It is Children and young people is quite reasonable, with topics relating to the SARS-CoV-2, and COVID-19 to confront, especially as these day-to-day with these Themes come in contact. Evidence of a risk to the mental Health of pupils due to the confrontation with the Measures of the C-SchVO are not used beyond that. On the other hand, avoidance of people, collections, and keeping a distance of at least one Meter substantial protection measures, the scientifically proven worldwide to curb the spread of the SARS-CoV-2, and Protection

before

a

COVID-19-disease

help

can

(cf.

<https://www.sozialministerium.at/Informationen-zum-Coronavirus/Coronavirus--Haeufig-gestellte-Fragen/FAQ--Gesundheit-und-Pflege.html>,

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> access on 9. June 2020). § 7 C-SchVO is, therefore, not irrelevant.

The concerns regarding article 8 of the ECHR (right to respect for Private and Family life)

67. The applicants consider that due to the (already repealed) obligation the Wearing of the MNS during the stay in the school building or on School grounds in her by article 8 ECHR to respect for the Private and family life violated. By Wearing the MNS will supporting the Person and their environment at risk, and thus § attack 5, Para. 1 iVm Z 4.2 the V 436/2020-15

10.12.2020

48 of 58

Appendix B C-SchVO idF BGBl. II 208/2020 in the physical integrity of the Applicant.

68. The right to respect of private life should be private to the Individual, a Secure the area in which he wants to develop his personality freely and unfold can and protects the privacy of life, the right to freedom of Design of life (in such Compendium. 19.665/2012 mwN), as well as the physical and mental integrity of the person (in such Compendium. 20.258/2018, Constitutional court 21. September 2015, E332/2015).

69. Article 8 of the ECHR is a substantive law of title. Interventions in this fundamental right must be provided, therefore, by law, a specific, a legitimate aim and necessary in a democratic society to be (Proportionality in the wider sense). State measures must The achievement of this objective, suitable, necessary and appropriate (Proportionality in the narrower sense) be. As legitimate objectives article called 8 of the ECHR

in addition to the national security and the protection of the public peace and Order, the protection of the health and protection of the rights and Freedoms of others.

70. The procedures subject to an obligation to Wear a MNS is based to § 5 Abs. 1 iVm Z 4.2 of Appendix B of the C-SchVO idF BGBl. II, no 208/2020, which is an implementing provision of the school education act, and the neither the education law nor a higher-level regulation or another law contradicts.

71. The Regulation followed with the C-SchVO the goal, the implementation of a safe and secure school teaching in the school building, despite the simultaneous The presence of the students and the teachers in enclosed spaces to ensure. In addition, with the regulation of the pandemic to Spread of SARS-CoV-2 Virus and the COVID-19-disease in the best possible way aside to be kept, with the school due to the affected Number of persons with a significant role. This legitimate intervention objectives.

72. The MNS carries detectable to a reduction of virus spread in a room at. Thus, the use of a MNS of a series of is scientific and medical (research)institutions is recommended.

The Wearing of the MNS will be bid in the C-SchVO in addition to the distance, the Avoidance of people, collections, and other organizational Measures as one of many precautions regulated.

73. The Wearing of the MNS is especially needed in situations where compliance with the distance bid may not always be adhered to. This

the case is then, if many different people over a longer duration in confined spaces come together. This is particularly true in the Face to face teaching, in which a large number of children and young people from different households of changing teachers in the school building to be kept informed.

V 436/2020-15

10.12.2020

49 of 58

74. The correct use of the MNS is for the foreign - and self-protection of a Central importance. Concrete evidence of negative health consequences by the temporary Wearing of a MNS in healthy children, adolescents or adults existed, however, contrary to the claims

Complainant does not. The correct use of the MNS and the placement, that the MNS is not able to protect alone completely, is through a Variety of age-adequate educational material in the schools, communicates, whereby the placement of a 'false sense of Security' is kept on the backburner is.

([https://www.bmbwf.gv.at/Ministerium/Informationspflicht/corona/corona\\_schutz.html](https://www.bmbwf.gv.at/Ministerium/Informationspflicht/corona/corona_schutz.html) as well as <https://www.gemeinsamlesen.at/corona> the 9. June 2020).

75. The obligation to Wear a MNS in the school sector, is also relatively. In relation to the various scientific Facilities occupied Benefit of the measure and its restricted total duration and taking into account the tightly drawn material, and local Area the obligation to Carry an MNS application has been ultimately a a necessary Minimum. In contrast, the interest in the weighs Minimize the risk of infection and spread of risk in the context of the Präsenzunterricht accordingly difficult. The measure is therefore proportionate.

76. There is no undue intervention in the reason is therefore right to respect for the Private and family life.

The concerns regarding article 2 1. ZPEMRK (right to education)

77. The applicants consider that by § 7 of the C-SchVO, ESP. by the alternate holding of ortsunge tied-teaching and classroom teaching in their fundamental right to education under article 2 of 1. ZPEMRK hurt.

78. Article 2 1. ZPEMRK determined that the right to education is denied to anyone may be. The state has in the exercise of it on the territory of the Education and teaching tasks undertaken, the right of parents to and the education and teaching in conformity with their own religious and ideological Beliefs to ensure. According to the constant Rsp of the constitutional Court is the protection of a discrimination-legitimate this free To ensure access to all existing educational establishment (cf. VfSlg. 19.955/2015; 19.349/2011; 14.886/1997).

79. According to the basic law, to proceed to judgment Rsp of the ECtHR, the state has there, where he met a educational task of the ideological

To respect the beliefs of the parents (ECtHR 18.12.1996, the case of Valsamis, 21.787/93, Z27; ECtHR, 29.6.2007, case of Folgerø et al., Appl. 15.472/02, Z84; ECtHR 3.11.2009, case Lautsi, 30.814/06).

80. The state, in accordance with article 2 1. ZPEMRK but not the obligation, education in accordance with the specific (or religious) ideological Beliefs of the

To ensure parents in state educational institutions. Article 2 1. ZPEMRK  
the States does not, in your teaching and education  
V 436/2020-15

10.12.2020

50 of 58

To disseminate information and impart knowledge, directly or  
indirectly philosophical nature. However, he is obliged, in  
to ensure that the information disseminated objective, critical and pluralistic  
be.

81. Article 2 1. ZPEMRK is violated if the classes are in a one-sided,  
biased and, therefore, indoctrinating manner, as  
Not respect the philosophical Convictions of the parents can be seen  
could (indoctrination prohibition; see ECtHR 7.12.1976, case of Kjeldsen, ua, eg.,  
5095/71 ua., Z53, as well as ECtHR, case of Folgerø et al., Z84).

82. In connection with article 2 of the 1. ZPEMRK is to be noted that this  
without explicit rules subject to proportionate

The restriction is, however – unlike article 8 of the ECHR – not an exhaustive list  
legitimate intervention targets. The ECtHR emphasized the  
Discretion of the legislature of the member States, it follows that the  
legal regulation of educational institutions in time and place may vary  
and, depending on the needs and resources of the public  
must be (ECtHR 10.11.2005, case of Leyla Sahin, 44.774/98, Z154; ECtHR, case of  
Folgerø et al., Z84).

83. Neither of the nomadic education, the classroom  
prevent access to educational institutions in a discriminatory way and  
Way. The alternate holding of ortsunge transferrin-bound teaching and  
The classroom is a school organization legal precaution,  
the continuation of the teaching work in all types of school and for all  
Levels of education also guaranteed in the light of the current risk situation. The  
discrimination-free access to public schools in Austria is  
not affected. The C-SchVO governs specific arrangements for the  
Teaching and no teaching of ideological views. The control of the  
§ 7 C-SchVO lays out clearly that the teaching is such that all  
curriculum Compulsory subjects are taught and all students  
and students receive the same number of teaching units.

84. An intervention in accordance with art. 2 1. ZPEMRK is not therefore."  
3.

The Federal Minister for the EU and the Constitution has made a Statement, in  
the Statement of the Federal Minister for education, science and  
Research is referenced. In addition, the court expert to be the Constitution  
Information and studies on the effectiveness of the mouth-nose protection  
submitted to:

"1. [Supplement] hygiene measures, an information leaflet of the Austrian  
Society for Hygiene, Microbiology and preventive medicine from the 10.5.2020  
concerning 'Sensible hygienic measures against the Transmission of  
SARSCoV-2';

9

V 436/2020-15

10.12.2020

51 of 58

2. [Supplement] Hygiene tip: Update to the special tip 2020: use of masks in the event of bottlenecks – better to have a textile mask delivery extra production as a no mask. Information sheet of the German society for Hospital hygiene e. V. 29. March 2020;
3. [Supplement] Risk Assessment, Update: Coronavirus disease in 2019 (COVID-19) in the EU/EEA and the UK – ninth update, 23 April 2020; European Center for Disease Prevention and Control. 23. April 2020;
4. [Supplement] the Jena study on the mask of duty: Mitze/Kosfeld/Rode/woods, Mask duty, and their effect on the Corona-pandemic: What is the world of Jena learn can. 3. June 2020;

5.  
[Supplement]  
Study  
about  
Distance rules  
and

Mouth-Nose Protection:

Chu/Akl/Duda/Solo/Yaacoub/Schünemann, Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis. 1. June 2020."

#### **IV.**

#### **Considerations**

##### **1.**

#### **To the admissibility of the application**

##### 1.1.

According To Article 139, Para. 1 Z 3 B-VG, the constitutional court recognizes the Illegality of the regulations, on application by a Person which, directly to be the result of this illegality their Rights have been infringed claims, if the regulation without precipitation of a court decision or without Adoption of a decision for this Person is to become effective. As the The constitutional court in VfSlg. 8058/1977 beginning permanent Case law has pointed out, is therefore a fundamental prerequisite for the Application of legitimacy that regulation in the legal sphere of the concerned Person engages, directly and – in the case of their illegality, were injured. Hiebei has assumed the constitutional court from the request submission and the to only check whether the applicant's out-run effects such are, as art. 139, Para. 1 Z 3 B-VG as a prerequisite for the Application of legitimacy calls for (cf. e.g. VfSlg. 8594/1979, 15.527/1999, 16.425/2002 and 16.426/2002).

##### 1.2.

With your to article 139, Para. 1 Z 3 B-VG-based request, the request Applicant, § 5 Abs. 1 iVm of Annex B, Z 4.2, § 7 Abs. 3, 4 and 6 as well as section 35 of the CSchVO, idF BGBl. II 208/2020, as a law to repeal illegal, because they are the Obligation to Wear a mouth-nose protection in the school building and the division of

10

11

V 436/2020-15

10.12.2020

52 of 58

of classes in two groups and the alternating classroom teaching in their  
The right to equality before the law (article 2 StGG, article 7 B-VG), on Private and  
Family life (article 8 ECHR) and their right to education (article 2, 1. ZPEMRK)  
would hurt.

1.3.

The application is admissible insofar as it is contrary to § 5 Abs. 1 iVm Annex B, Z 4.2  
as well as § 7 Para. 3, 4, and 6 C is SchVO:

1.3.1.

The First and second applicant are the rules on the  
Obligation to Wear a mouth-nose protection in the school building and  
on the division of classes and the alternating classroom  
directly in their legal sphere is affected. The contested provisions  
also, the third applicant and the Fourth applicant concern directly,  
the parents and guardians of school-age First - and  
The second applicant in accordance with § 61 Abs. 1 SchUG are obliged, in the conscientious  
Fulfilment of school attendance obligations of the student –  
thus imposed on those by the contested provisions –  
act.

1.3.2.

At the time of the transfer of your application to the constitutional court,  
25. May 2020, were the above-mentioned provisions of the C-SchVO in the  
Version BGBI. II 208/2020 in force. In the result of it was first by the  
Regulation, with the regulation of the Federal Minister for education, science  
and research to address the COVID-19 consequences in the school system for the  
School years 2019/20 and 2020/21 (C-SchVO) is amended, BGBI. II 248/2020, the  
Appendix B, Z 4.2 the C-amended SchVO to the extent that the word "must" by the  
Word "can be replaced" and the phrase "The teaching time is  
"was the exception repealed. With the promulgation of the regulation of the  
Federal Minister for education, science and research to address the COVID-19  
Consequences in the school system for the academic year 2020/21 (COVID-19-school  
regulation  
2020/21 – C-SchVO 2020/21), BGBI. II 384/2020, were contested  
Provisions fully in force. The contested provisions of the  
C-SchVO, BGBI. II 208/2020, therefore, with the expiration of the 2. June 2020, and of the  
3. September 2020 no longer in force.

12

13

14

V 436/2020-15

10.12.2020

53 of 58

That § 5 Abs. 1 iVm Annex B, Z 4.2 and § 7 Abs. 3, 4 and 6 C-SchVO in the  
Time of application – properly contested version way – BGBI. II  
208/2020 in the sequence, as shown above, except for force, harm  
with views of the V 411/2020 the beginning of the end of the case-law of the  
Constitutional court (VfGH 14.7.2020, V 411/2020; 14.7.2020, G 202/2020 ua.).

1.3.3.

Since no other process barriers are coming forth, is  
the application admissible to the extent of the § 5 Abs. 1 iVm Annex B, Z 4.2  
as well as § 7 Para. 3, 4 and 6 C-SchVO refers to.

1.4.

To the extent that the application is contrary to § 35 C-SchVO, BGBl. II 208/2020, is, he proves to be inadmissible:

In Accordance With § 57 Para. 1 VfGG of the application against the law Regulation speaking, concerns the President. The reasons for the alleged illegality, are not precise in writing, the concerns are conclusive and verifiable to demonstrate (cf. e.g. VfSlg. 13.571/1993, 13.652/1993; CC 11.6.2018, V20/2018). The application form must, with sufficient clarity removed to be applied to which piece of legislation to repeal Determination in opposition to and what are the reasons for this Thesis speak (VfSlg. 14.802/1997, 17.752/2006; The Constitutional Court 28.2.2020, V 3/2020). It is it is not the task of the constitutional court, a lump sum of concern each of the provisions to assign and, as it were, by way of example, the To clarify the argument for the applicant (VfSlg. 17.099/2003, 17.102/2003).

The applicant in terms of section 35 of the C-SchVO, BGBl. II 208/2020, only that, according to this provision, the regulation retroactively with 16. March 2020, and with the end of the school year 2020/21 except force. It in addition is more in this determination in the further application is not expressly referred to.

2.

**In the case of**

2.1.

The constitutional court has initiated a request Procedure for the examination of the lawfulness of a regulation in accordance with article 139 B-to restrict the VG to the discussion of the asserted concerns (cf. VfSlg. 11.580/1987, 14.044/1995, 16.674/2002). He has thus only

15

16

17

18

19

20

V 436/2020-15

10.12.2020

54 of 58

to assess whether the contested provision in the explanatory Memorandum to the Application

set out

Reasons

illegal

is

(VfSlg. 15.644/1999,

17.222/2004).

2.2.

To the extent permissible, if the application is justified.

2.2.1.

The applicants argue that § 5 Abs. 1 iVm of Annex B, Z 4.2, as well as § 7 Abs. 3, 4 and 6 C-SchVO, BGBl. II 208/2020, contrary to article 2 StGG and article 7 of the

Abs. 1 B-VG, contrary to article 8 of the ECHR as well as articles 2 1. ZPEMRK violated.  
You

explain your concerns to the Essentials combined with the  
Regulation donors, the decision-making basis for the contested  
Arrangements have not been determined sufficiently.

2.2.2.

The C-SchVO, BGBl. II 208/2020, leaning, according to the promulgation of clause  
several school legal provisions of the SchOG, the SchUG, of SchUG-BKV,  
of the agricultural and forestry Federal education act, the forestry act, 1975  
as well as the school time law 1985.

2.2.3.

The legislature has the 3. COVID-19-act, BGBl. I 23/2020, on the  
Challenges in education on the basis of the COVID-19-pandemic responding  
and in the school law, Federal laws additional  
Regulation appropriations for the BMBWF created (see § 82, SchUG, § 132c SchOG, § 72b  
SchUG-BKV, section 42 of the agricultural and forestry Federal education law, § 16e  
School time law 1985). With the 3. COVID-19-act, BGBl. I 23/2020, should the  
BMBWF obtain a sufficient statutory authorization to the required  
chen schemes to address the COVID-19 effects triggered in the  
To can education be adopted, and the warranty of the education  
ensure (IA 402/A 27. GP, 33 et seq.).

2.2.4.

As the constitutional court in its decisions in each case  
14. July 2020, V 363/2020 and V 411/2020 has been detected, the  
Legislator to the Regulation according to art. 18, Para. 2 B-VG Appreciation and  
Forecast, game rooms concretization of the law to grant and the situation-related  
the regulation of donor see, e.g. Compendium of CC decisions to leave (. 15.765/2000).  
However, it is

the main objectives to guide the administration act,  
the regulation empowerment in your overall connection with sufficient-

21

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V 436/2020-15

10.12.2020

55 of 58

to see the clarity be. For the determination of requirements, the  
the Constitution to the legislature (VfSlg. 19.899/2014 mwN), it is  
on the process thing, and on the regulatory context. The  
The constitutional court has also repeatedly argued that the principle of  
Before the determination of administrative action in cases  
spans may be, in which a rapid access and the consideration of  
a variety of local and temporal differences for a meaningful and  
effective regulation being necessary, which is also a purpose related to the  
Determination of the legislature by an indefinite law terms  
and the General clause can be-like regulations (see VfSlg. 17.348/2004  
mwN). In relevant constellations of the standard the purpose of areas that a  
at the time of their adoption urgently required – under certain circumstances, under



facilitated requirements resulting measure then unlawful and set aside if the reason for cancelling falls Fort (see VfSlg. 15.765/2000).

Leave the legislator with regard to certain actual developments the Regulation, the decision of which of a number of possible, different far, right intense he of restrictive measures his prognosis, according to and in consideration of the interests concerned for considers it necessary, has the Regulation of its decision on the in the specific Situation temporally and factually possible (see VfSlg. 15.765/2000) and a reasonable level of information about the relevant circumstances on which the Act is based largely, and after carrying out the necessary To make balancing of interests. In the process, he must determine the circumstances and this Regulation adoption process according to hold a Review of the law to ensure uniformity of regulation (VfSlg. 11.972/1989, 17.161/2004, 20.095/2016). The law determines the regulation the content of not so, that the regulation of content follows Essentially from the law, but it opens the scope for the administration as far as that under-different regulation content can follow from the law, the Regulation according to the law of the relevant circumstances, according to determine in the regulation adoption process also comprehensible hold on, so that can be verified, whether the concrete Regulation regulation complies with the law in the concrete Situation (which is the core of the Jurisprudence, according to which the law must be determined to such an extent "that any Vollziehungsakt measured in terms of the law on its legality can be", see e.g. VfSlg. 12.133/1989). In this respect, the demo differ-

26  
V 436/2020-15

10.12.2020

56 of 58

democratic legislation, and in General, abstract law-making by the Management by means of regulations in accordance with art. 18, Para. 2 B-VG. The Determination of effects and, therefore, the rule of law and democratic determination of the legislature by art. 18, Para. 2 B-VG, the goal is a corresponding Binding of the specific regulation adopting from.  
2.2.5.

These Considerations, in the present context, on the education legal regulation appropriations transferred. Regulations for the Management of COVID-19-triggered consequences in the school system need to under uncertainty conditions are met. The impact and the Dissemination of COVID-19 subject to the necessary forecast. In front of the Background of the art. 18, Para. 2 B-VG of the BMBWF, as a Regulation, therefore, the perception of the school's legal regulation appropriations-gene conferred decision-making period, make to the extent traceable to and to lay open, as he documented in the regulation adoption procedure which is the information basis of the regulation decision is based and the offered Balancing of interests is done. The requirements for this may not to be spanned. Rather, it depends on what the specific Situation possible and reasonable. The existing time pressure the appropriate meaning.

For the assessment of the constitutional court of the time, therefore, the Adoption of the contested provisions of the Regulation and the underlying files even documentation significantly. To Answering the question of whether the contested provisions of the Regulation with the the respective legal basis in the line, it also comes on the Compliance with certain requirements of the files even documentation in the The procedure of regulation adoption of, but is not an end in itself. If for the management of situations in which measures on the basis of forecasts taken by the management to avert possible risks must be legally significant are given, comes such Requirements for a major, the legality of administrative action-locking Function.

2.2.6.

The BMBWF has, despite a request from the assungse- of justice no records relating to the formation of the C-SchVO,

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V 436/2020-15

10.12.2020

57 of 58

BGBI. II 208/2020, submitted. For the constitutional court, therefore, is not can be seen, what are the bases for the decision, the Regulation at the time of his Decision students have passed, the obligation impose, in the of the regulation referred to areas of a To parts mouth, nose and to wear protection, as well as school classes in two groups and this alternately in the classroom and in the school to teach.

2.2.7.

For the constitutional court is not comprehensible why the Regulation encoder with the contested – out force – Regulations has kept the measures taken is necessary. Therefore, it is noted that this was illegal. In this result, it is unnecessary the further in the application, to § 5 Abs. 1 iVm Annex B, Z 4.2 as well as section 7 Abs. 3, 4 and 6 of the C-SchVO, BGBI. II 208/2020, concerns to respond.

**V.**

**Result**

1.

§ 5 Abs. 1 in connection with Annex B, Z 4.2 and § 7 Abs. 3, 4 and 6 of the Regulation of the Federal Minister for education, science and research Addressing the COVID-19 consequences in the school system for the school years 2019/20 and 2020/21 (C-SchVO), BGBI. II 208/2020, with the adoption of the regulations BGBI. II 248/2020 and BGBI. II 384/2020, with the end of the 2. June 2020, and of the 3. September 2020 no longer in force. The constitutional court has therefore, in accordance with article 139, Para. To 4 B-VG on the finding that section 5 of the Abs. 1 in connection with Annex B, Z 4.2 and § 7 Abs. 3, 4 and 6 of the Regulation of the Federal Minister for education, science and research Addressing the COVID-19 consequences in the school system for the school years 2019/20

and  
2020/21 (C-SchVO), BGBl. II 208/2020, was illegal.

2.

In addition, the application is rejected as inadmissible.

3.

The saying that point 1. the above-mentioned requirements more are to be applied, based on article 139, Para. 6, the second sentence B-VG.

4.

The obligation of the Federal Minister for education, science and Research for the immediate promulgation of the decision on the part of the law of conformity and the related other sayings from erfließt

Article 139 Abs. 5, the first sentence B-VG and § 59 Abs. 2 VfGG, in conjunction with section 4 Para. 1 Z 4 BGBIG.

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34

V 436/2020-15

10.12.2020

58 of 58

5.

This decision was accepted according to § 19. 4 VfGG without oral Negotiation in a non-public meeting to be taken.

6.

The decision on costs is based on § 61a VfGG. In the awarded Cost is sales tax in the amount of € 523,20, a dispute in the enjoyed Supplement The amount of € 436,- as well as the replacement of the entry fee in the amount of € 240,- included.

Vienna, on 10. December 2020

The President:

DDr. GRABENWARTER

Secretary:

Mag. SCHÖGGL

35

36