



REPUBLIC

ITALIAN

State Council

in court (Third Section)

President

pronounced the present

DECREE

on the appeal number of the general register 653 of 2021, proposed by Messrs. -OMISSIS- and -OMISSIS- on their own and in the capacity of exercising parental authority over the minor -OMISSIS-, represented and defended by the lawyers Francesco Scifo and Linda Corrias, with digital domicile as per PEC from the Registers of Justice;

versus

Presidency of the Council of Ministers, Autonomous Province of Bolzano, Headmaster -OMISSIS-, Ministry of Health, Ministry of the Interior, Ministry of Education, not constituted in court;

for the reform of the precautionary decree of the Regional Administrative Court for Lazio (First Section) n. -OMISSIS-, made between the parties, concerning the obligation of a mask at continuous school for under-12-year-olds;

Given the appeal and its annexes;

Given the petition for single precautionary measures proposed by the appellant, pursuant to art. 56, 62, co. 2 and 98, co. 2, cod. proc. amm. ;

Considering that the appeal against the precautionary single-law decree adopted by the President of the Regional Administrative Court, against the textual regulatory provision referred to in Article 56 of the Criminal Code, can be considered admissible only in completely exceptional cases of provision that has only the formal role of decree but substantially decision-making content;

Considering that such cases of actionable single-party measures having only the formal role of decree or "merely apparent decrees" are configured exclusively in the event that the single-law decision at first instance is not at all provisional and interim but defines or risks irreversibly defining the matter of the dispute, as in such cases the appellate judge has to intervene to restore the correct dialectic between monochromatic function and collegial function in the first instance;

Considering that, in the matter under examination, it appears:

- 1) that the respondent Administration has not yet filed, before the Lazio Regional Administrative Court, the documents that the first judge had ordered to produce within the period of 15 days, which has largely elapsed;
- 2) that such documents, which need to be filed promptly, are relevant for what concerns decisive profiles in the dispute in question;
- 3) that, in the case brought to the attention of this judge, the minor represented by the appellants today, parents of the same, has repeatedly documented with medical certificates, problems of lack of oxygenation due to the prolonged use of the PPE during all hours of lesson;
- 4) that, in the class attended by the minor, there is not even an oxygenation control device - oximeter, an instrument of minimal cost and very simple usability in cases such as the one proposed, by each teacher , to intervene at the very first signs of difficulty in breathing with PPE by the very young pupil;

Therefore, it was held that pending the meeting room already fixed before the TAR, the minor cannot be imposed on the use of PPE for the duration of the lessons, since the danger of respiratory fatigue - in the absence of constant verification with oximeter - too serious and immediate, nor obviously it is possible to hypothesize a suspension, up to the precautionary decision of the TAR, of the constitutionally protected right of the young student to attend the school course;

PQM

It accepts the precautionary petition, and suspends, with regard to the appellants, with regard to the obligation of the minor -OMISSIS- to wear the PPE during school hours, the enforceability of the contested Prime Ministerial Decree for the relative part;

The responsibilities related to the implementation of this decree remain the responsibility of the school that the minor attends.

This decree will be executed by the Administration and is deposited at the Secretariat of the Section which will notify the parties. Considering that the conditions referred to in Article 52, paragraphs 1, 2 and 5, of Legislative Decree 30 June 2003, no. 196, and of article 6, paragraph 1, letter f), of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, sends the Secretariat to proceed, in case of reproduction in any form, to obscuring of the personal details of the minor, of the subjects exercising parental authority or guardianship and of any other data suitable for identifying the same person reported in the sentence or in the provision.

So decided in Rome on January 26, 2021.

President
Franco Frattini

THE SECRETARY