

Tuscany Regional Administrative Court, Fourth Section, Judgment No. 792 of 28 July 2023

President: Eleonora Di Santo; Rapporteur: Katuscia Papi

(Religious instruction – Choice not to attend after the deadline – Unavailability of the right to freedom of conscience – Constitutionally oriented interpretation – Ordinary deadline)

In its ruling of 28 July 2023, the Regional Administrative Court of Tuscany overturned the refusals of the school headmaster, who refused to take note of the minor's and the family's choice not to attend religious instruction, as the deadline for the choice had expired. The Court ordered the school administration to pay the court costs.

The case started in the school year 2022/2023 but concerned the child's enrolment in the last year of primary school. While in the previous four years the child had attended Catholic religious instruction, on 18 March 2023 the parents informed the school headmaster that for the following year (2023/2024) they had changed their choice: their daughter would attend alternative education and no longer religious instruction.

The school headmaster rejected the request by email stating that the deadline for making the choice had expired on 30 January 2023 and giving the following reasoning: «the right to choose whether or not to avail of Catholic religious instruction is valid for the entire course of study, unless the person concerned decides exclusively on his or her own initiative to change this choice for the following year before the deadline for online enrolment».

The parents reiterated their request and tried, also through the intermediary of their lawyer, to settle the issue by pointing out that, according to the relevant case law, the school's actions were unlawful.

In the face of the administration's stubbornness in not recognising the illegitimacy of its action – moreover, with answers such as: «Dear Attorney, freedom of religion, which has nothing to do with religious instruction, is not at issue here. Reconsiderations are certainly allowed, but within the course of the study cycle. The deadlines for communication were well known to your assistant. Your request cannot be granted» – there remains no alternative but to appeal to the administrative courts.

The T.A.R. Toscana, rather self-evidently, noted the illegitimacy of the actions of the school headmaster in light of the recent pronouncement of the Council of State, Sixth Section, no. 4634 of 2018 (on which see in this *Review* MARCO CROCE, *Un overruling del Consiglio di Stato in materia di ora di religione?*, no. 2/2018) which clearly sanctioned the ordinatoriality of the terms and the right to change choice at any time, even while attending religious instruction in the same year.

The administrative judge therefore reiterated that «the teaching of the Catholic religion in schools has a strong impact on the religious freedom of students, since, as can be easily deduced from Article 4, paragraph 1, letter 'b' of Presidential Decree 751/1985, such teaching is not exclusively cultural in scope, but has a clearly confessional connotation ... It follows that the introduction of limits on the exercise of that choice ... necessarily entails a compression of religious freedom, an absolute and inviolable right of the human person».

In this regard, the terms concerning these choices must be understood as ordinal: «any objective or subjective delimitation, conditioning, or temporal limitation of the faculty of choice, would inevitably turn into an intolerable compromise of the fundamental religious and personal freedom of the student. Consequently, the choice of whether or not to avail oneself of the teaching of the Catholic religion may well be expressed, with binding effects for the scholastic institution, not only after the deadline for enrolment in the new year, but (in the light of a necessary constitutionally oriented reading of the rule in question) also during the course of the year».

MARCO CROCE