

*Intervention by the Autonomous Province of Bolzano on alternative teaching to religious instruction.*

In South Tyrol, according to the latest data, about 15% of students in state compulsory schools choose not to take religious instruction.

On 19 March last, in this regard, the Autonomous Province of Bolzano issued the implementing regulation of Provincial Law 1/2022, thus making it definitively operative, in particular in its article 30, which states: ‘For pupils who choose not to take part in Catholic religious instruction, compulsory participation in an alternative educational offer is provided’.

We note how this provision of the Autonomous Province of Bolzano, in providing for the compulsory nature of the ethics course as an alternative to Catholic religious instruction, presents an aspect worthy of note: sentence 203/1989 of the Constitutional Court, in fact, had *expressis verbis* provided, at no. The provision of another subject as compulsory for those who do not make use of it would be patently discriminatory to their detriment, because it was proposed in place of the teaching of the Catholic religion, almost as if the logical scheme of the alternative obligation ran between one and the other, when in the face of the teaching of the Catholic religion one is called upon to exercise a right of constitutional freedom that cannot be degraded, in its seriousness and commitment of conscience, to an option between equivalent school subjects. [...] For those who decide not to avail themselves of it, the alternative is a state of non-obligation. In fact, the provision of other compulsory teaching would constitute conditioning for that questioning of conscience, which must be kept attentive to its sole object: the exercise of the constitutional freedom of religion”; concepts reiterated and confirmed by judgement 13/1991, where the Constitutional Court, recalling judgement 203/1989, specified how the rationale of the same consisted in the denial of the equivalence and alternativeness between “the teaching of the Catholic religion and other scholastic commitment, so as not to condition from outside the individual conscience the exercise of a constitutional freedom, such as that of religion, involving the interiority of the person”.

Precisely on the basis of the fact that these two constitutional judgments clarified that “the teaching of the Catholic religion in State schools is compatible with the constitutional principles on religious freedom only if the religious instruction is configured as optional and extra-curricular teaching such as not to entail any *deminutio*”, it would be unconstitutional for a legislative measure, such as this law of the Autonomous Province of Bolzano, to force those who refuse religious instruction, exercising their right, to attend other courses<sup>1</sup>.

**Stefano Testa Bappenheim**

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<sup>1</sup> M. CROCE, *Della violazione della Costituzione tramite ordinanze ministeriali (con la collaborazione del Consiglio di Stato): il caso dell'ora di religione*, in *Quaderni costituzionali*, 2007, pp. 841 ss.; ID., *Un overruling del Consiglio di Stato in materia di ora di religione?*, in *Diritto e religioni*, 2018, 2, pp. 282 ss.