

Minors, freedom of education and freedom of religion. Reflections in the margin of the Court of Cassation, Order No. 13570 of 16 May 2024.

Minors - parents' right to a child's education - 'secular' public school or 'religious' private school - overriding interest of the child in a healthy and balanced growth - Court of Cassation, Order of 16 May 2024 No. 13570

The Court of Cassation's Order No. 13570 of 16 May 2024 returned to address issues related to the child's educational choices where there is a conflict between legally separated parents.

In particular, the case concerned a married couple who, in defining the specific conditions of their divorce, could not reach an agreement on the choice of secondary school - whether 'religious' or 'secular' - in which to enrol their child. The mother, without the father's consent, had thus requested and obtained from the Court of Milan authorisation to enrol her child in the 'religious' private school he had already attended in the previous cycle of primary school. This decision was also confirmed by the Court of Appeal.

Both the trial judge and the court of second instance observed, in fact, that the child's hearing had revealed his concrete desire to continue his schooling at the religious institute he had already attended. Also in the light of the strong conflict between the parents, the judges therefore let the child's wishes prevail, in order to guarantee the stability and the relational and social continuity so important for his full and better psychophysical development.

However, an appeal against the Court of Appeal's decision was brought before the Court of Cassation. The appellant father complained both that there had not been an adequate comparison with the educational offer, the school environment, the logistical location and the costs of a public school, and that the principle of secularism had been violated since enrolment in a Catholic school would - in his opinion - have conditioned his son's free self-determination in religious matters.

The Supreme Court, having examined the appeal, has however endorsed the decisions on the merits and has not in fact departed from the orientation outlined in previous judgments on the subject: the guiding criterion of the judges' decisions - called upon to interfere, exceptionally, in the private life of the family where there is no agreement between the parents on important choices regarding the child's education - must necessarily be that of the child's preeminent interest in a "healthy and balanced growth" (see, among others, Court of Cassation, 7 March 2023, no. 6802;

Court of Cassation, 27 July 2021, no. 21552; Court of Cassation, 11 November 2020, no. 25310; Court of Cassation, 24 May 2020, no. 25310), among others, Cass., 7 March 2023, no. 6802; Cass., 27 July 2021, no. 21553; Cass., 11 November 2020, no. 25310; Cass., 24 May 2018, no. 12954; Cass., 1 February 2005, no. 1996).

An interest which, in the case in point, the Court of Cassation held to be guaranteed by enrolment in the public school of 'religious' inspiration where the minor had already acquired in the intervening school years positive social references for the formation and development of his personality. Once again, the need to ensure minors the «environmental continuity in the field in which their social and educational sphere properly takes place» was thus emphasised, without the difficulties linked to the separation of the parents implying further fractures and discontinuities, such as those that might result from attending a new school.

In this perspective, therefore, the authorised enrolment in a Catholic school does not appear to be detrimental to the parents' right and duty to educate their child in accordance with their innermost personal convictions, including those of a religious nature.

In fact, it is clear from the Court of Cassation's decision that the guarantee of the parents' individual rights of religious freedom must flex with respect to the protection of the child's primary interests, without the sole issue of the right to choose between a 'religious' private school or a 'secular' public school assuming preeminent importance.

The protection of the superior 'moral' or 'material' interest of the child involved presupposes, in effect, a broader factual assessment that takes into account the child's capacities, developmental and training needs, natural inclinations and aspirations, with a view to favouring those conditions and choices that are essential to guaranteeing the child's fundamental right to a development that is as balanced as possible, also thanks to the continuity of the educational pathway.

This is also the case where the best educational choice for the child should turn towards a 'religiously oriented solution'. In this regard, moreover, the Supreme Court also specified that the need to guarantee the child's self-determination in religious matters is to be considered recessive with respect to the latter's interest in satisfying his desire to continue attending a private Catholic school.

It is therefore interesting to observe how the order of the Supreme Court once again allows, through the use that is made of the general principle of the best interest of the child, to concretely protect the psychophysical, relational and social well-being of the minor in its various stages of

development, without the discordant opinions of the parents on educational choices - as externalizations of their respective individual rights of freedom, such as the right to religious freedom - being able to affect its stability.

The Supreme Court's orientation thus confirms the ever broader and more incisive attention to the position of the child within family relations, even more so in situations of particular vulnerability that, as in the case under consideration, appear to require greater consideration of the child's concrete interests in a perspective of effective guarantee of its fundamental rights.

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