

Court of Cassation, First Civil Section
Order No 6802 of 07 March 2023

Teaching of the Catholic religion -- personal separation between spouses -- religious freedom of the child -- exercise of parental authority -- shared custody -- best interests of the child

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The Court of Cassation, in its Order No. 6802/2023, intervened about the child's religious freedom in cases of personal separation between spouses. The conflict between legally separated parents, under shared custody of the child, over the 'religious' or 'secular' school in which to enroll the children, must be resolved by considering the children's overriding interest in a healthy and balanced growth.

The decision is in the wake of the constant orientation of jurisprudence, according to which the judging body's assessment must be based on the need not to introduce further fractures and discontinuities to those already present in the children as a result of the personal separation between the parents, with the aim of ensuring that the child has environmental continuity in the field in which his or her social and educational sphere is properly carried out (Court of Cassation no. 21553/2021; Court of Cassation no. 21916/2019; Court of Cassation no. 12954/2018; Court of Cassation no. 9546/2012).

The intervention of the judicial authority, pursuant to Article 337-ter of the Civil Code, therefore, legitimizes the restraint or restriction of the parents' religious freedom, if its exercise entails detrimental consequences for the child, compromising its psychological health and development. The weighing of the claims of the parents, who have different opinions on the religious orientation to be given to their daughter, must therefore be resolved considering the child's best interests. In the present case, it was appropriate to ascertain what commitment was required by the enrolment in religious instruction and what the child's needs were in relation to the child's interest in having a socio-environmental continuity in the school field, in which her social and educational sphere takes place for most of her daily time.

Therefore, the Court of Cassation overturned the decision on the merits, which had attributed only to the mother, the custodial parent, the decision as to whether or not to allow her daughter to participate in Catholic religious instruction, stating that in the event of a conflict between parents, the judge may intervene by adopting the most appropriate measures to protect the child's interests, even limiting the parents' religious freedom. This position is all the more understandable in light of the pedagogical statute of the so-called 'hour of religion', increasingly oriented not towards adherence to a specific religious creed but towards confrontation with the spiritual moment of religiosity, so much so as to speak of a 'hour of religions'.

FEDERICO GRAVINO