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RELIGIOUS EDUCATION IN PUBLIC SCHOOLS AND MINORITY RIGHTS: A
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The essay deals with religious education in public schools in Italy and Turkey in the light of the principle of State secularism, the strong religious roots of both countries, and growing religious pluralism in the society. The aim is to reflect on some major challenges religious teaching poses, to various forms, in public school curricula and to assesses whether the existing legal frameworks are capable of facing the challenges of religious diversity.

INTRODUCTION

Religious education in public schools reflects the attitude of the States towards religion and religious denominations.¹ Supplying students with religious studies, however, raises questions about the proper balance between children (and parental) educational rights, freedom of religion and belief, and the prohibition of discrimination on religious grounds. Moreover, the presence (or lack) of denominational teachings in public schools constitutes a highly controversial issue when religious minorities and atheists are involved.

Against this background, the essay deals with religious education in public schools in Italy and Turkey in the light of the principle of State secularism, the strong religious roots of both countries, and growing religious pluralism in the society. The essay adopts a comparative legal approach by highlighting strengths, weaknesses and gaps in the respective constitutional and legal frameworks. It also considers judicial approaches towards religious teachings in the State education system.

The aim is to reflect on some major challenges religious teaching poses, to various forms, in public school *curricula* and to assesses whether the existing legal frameworks are capable

¹ S. Cogliervina, *Religious Education in Italian public schools: what room for Islam?*, *Stato, Chiese e Pluralismo confessionale*, n. 29, 2017, pp. 1–15.

of facing the challenges of religious diversity. Furthermore, the essay is aimed at contributing to the debate on future perspectives on religious teaching in public schools.

I. CATHOLIC RELIGIOUS EDUCATION IN ITALIAN PUBLIC SCHOOLS' CURRICULUM

In Italy, the legal framework regulating religious education in the public-school system reflects the Italian model of *laicità* (secularism), as well as the complex relationships between the State, the Roman Catholic Church and other religious denominations.

While the secular character of the State is explicitly embedded neither in the Constitution nor in the law, the Constitutional Court derived it from the constitutional provisions concerning religious freedom.² In the seminal decision n. 203 of 1989 on the teaching of religion in public schools—which set the case law—the Court held secularism to be among the supreme constitutional principles. However, as the Court clarified, secularism does not imply the indifference of the State towards religion. On the contrary, the principle establishes the duty of the Republic to protect religious freedom and to ensure equality of treatment among religions in a context of confessional and cultural pluralism.³

In line with the positive connotation of secularism, the legal system welcomes the manifestation of the religious phenomenon in the public sphere by paying attention to both the individual and the institutional dimension of religious freedom⁴. Consequently, Italian *laicità*, as understood by the jurisprudence, open rooms for the teaching of both Catholic and non-Catholic religions in public schools. Nevertheless, substantial differences between Catholic religious education and other denominational courses exists.

The teaching of Catholicism in State funded schools (other than universities) it is primarily regulated by art. 9(2) of the Law n. 121 of 25 March 1985 and the Additional Protocol, ratifying and implementing the 1984 Concordat, known as the “Villa Madama” Agreements, between the State and the Holy See.⁵ Additional sources are the implementing

² See Italian Constitutional court decision nn. 203/1989; 259/1990; 13/1991; 195/1993; 421/1993; 334/1996; 329/1997; 508/2000; 327/2002.

³ See Italian Constitutional court decision n. 203, 12 April 1989, para. 4. The positive interpretation of secularism can be inferred from the constitutional jurisprudence on secularism. See Constitutional court n. 259 of 1990; n. 195 of 1993, n. 239 of 1997.

⁴ Religious freedom is directly addressed by art. 19 of the Italian Constitution. Other provisions related to religious freedoms are artt. 2, 3, 7, 8 and 20 of the Constitution dealing with both the private/individual and institutional dimension of religion.

⁵ Art. 9(4) of the Villa Madama Agreements provides: “The Italian Republic, recognizing the value of religious culture and taking into account that the principles of Catholicism are part of the historical heritage of the Italian people, will continue to ensure, within the framework of the purposes of schooling, instruction in the Catholic religion in public schools of all levels other than universities.”

agreements (*intese*) between the Ministry of Educational and the Episcopal Conference of Italy.⁶ By virtue of the Concordat and the agreements the Italian State is requested to guarantee Catholic religious teaching in public schools.

In the abovementioned decision n. 203/1989, the Constitutional Court upheld the legal framework regulating Catholic religious classes in schools' *curriculum* by affirming that Catholicism forms part of the *historical heritage of the Italian people*. In other words, the presence of Catholicism as a subject in State schools is justified by its cultural value in education.⁷ At the same time, the denominational nature of the teaching requires religious freedom of pupils and parental rights on education to be guaranteed. In this regard, the judges specified the nature of Catholic religious teaching as “subjectively optional” (*soggettivamente opzionale*)⁸. The students—or, up to the end of the intermediate schools, their families—are requested to declare the intention to sign up to the religious classes at the beginning of each academic year. However, Catholic religious teaching—and, potentially, all religious teachings—is also “objectively compulsory” (*oggettivamente obbligatorio*). This means that, once the students exercise the right to enroll in Catholic religious classes, they are obliged to attend for the entire duration of the school year.⁹ Moreover, as reminded by the constitutional and administrative jurisprudence, the State is required by the Concordat to arrange Catholic religious classes, irrespective of the pupils and families' requests.¹⁰

In brief, we may consider Catholic religious teaching to be a voluntary subject, but not an optional one. Firstly, as already mentioned, the pupils who choose Catholic religious education are obliged to attend the classes for the entire duration of the academic years.¹¹ Secondly, no compulsory classes or activities are offered as compulsory alternative to Catholic religious teaching. Indeed, the provision of compulsory alternative classes/activities for students non-attending Catholic teaching has been ruled

⁶ D.P.R. n. 751 of 1985; 202 of 1990; 175 of 2012.

⁷ Italian Constitutional court decision n. 203/1989, para. 7.

⁸ Italian Constitutional court decision nos. 203/1989 and 13/1991.

⁹ Italian Constitutional court decision n. 203/1989, para. 9.

¹⁰ See Italian Constitutional court decision n. 203/1989; Italian Council of State, sec. VI, decision n. 1006, 27 August 1988.

¹¹ In 2018 the Italian Council of State held that the pupils and their parents may decide to withdraw from Catholic religious classes at any time during the academic year. According to the Court, the decision not to attend Catholic religious teaching (or other religious classes) is a manifestation of pupils' freedom of religion and parental rights regarding education which shall not be subject to time constraints. (Decision n. 4634 of 19 March 2018). The decision at hand constitutes an “overruling” with respect to previous judgments issued by the Council on the right to “opt-in” religious classes and it has been subject to debate among the doctrine. For a detailed reconstruction of the administrative jurisprudence on Catholic religious classes, see M. Croce, *Giudice amministrativo e laicità dello Stato: il problematico séguito delle decisioni costituzionali sull'ora di religione*, in: P. Bonetti, A. Cassatella, F. Cortese, A. Deffenu, A. Guazzarotti (eds.), *Giudice amministrativo e diritti costituzionali*, Giappichelli, Torino, 2012 (e-book), p. 386 e ss.

discriminatory by the Constitutional court.¹² Catholic religious teaching is granted the same *status* of the other subjects as it forms part of the purposes of public education. As they are part of the school *curricula*, RE classes must be taught within the duration of the ordinary “school-time” and they concur to the final assessment of those students who decide to attend them.

Regarding the content of the syllabus, the concrete experience shows that the teachers tend to mention different religious traditions in their lectures. Despite this, the character of the teaching is essentially denominational and confessional. The *curricula* are agreed upon between the Ministry of Public Education and the Chairman of the Episcopal Conference of Italy (ECI). The teaching must *conform to the Catholic Church doctrine*¹³ and the textbook must receive the *nihil obstat* by the ECI and the local bishops. As for the teaching methodology, Catholic religious education must be provided *within the framework of the purposes of the school*,¹⁴ which means avoiding any form of indoctrination and discrimination. Finally, regarding financial and employment aspects, since 2003 teachers have been chosen by the diocesan bishop among those trained in theology and religious disciplines who won a regional competition.¹⁵ The State bears the financial burden for the activation of Catholic religious education.

The concept of *teaching/learning about religion*, i.e. a non-theological, cultural approach towards the religious phenomenon, is poorly developed in Italy.¹⁶ In this respect, the existing laws on public education does not provide for inter-religious educations as part of the regular school *curriculum* on the model of the multicultural faith education in UK, or the classes of “culture and religion” activated in some Swiss Cantons, nor other non-denominational teachings based on non-theological methodology and provided, for instance, in the secondary schools of the German *Länder*. Interestingly, compulsory *teaching about religion* from an historical perspective has been introduced in some *scuole paritarie*, which

¹² *Infra*, p. 7

¹³ Art. 5 of the Additional Protocol, Intesa art. 1.1, 1.2, 4.1.1.

¹⁴ The provisions of art. 9.2 of the Villa Madama Agreement have been implemented by subsequent Intese between the Ministry of Public Education and the Episcopal Conference of Italy (D.P.R. n. 751 of 1985; 202 of 1990; 175 of 2012).

¹⁵ Church authorities decide on the eligibility of the religious teachers (art. 1.2 d.p.r 751/85). The written certification (*nihil obstat*) can be withdraw under specific circumstances, e.g. if the teacher’s behavior is considered to be in conflict with the Catholic doctrine (Canon 805 c.i.c). If the religious authorities withdraw the recognition or if there are no students to form a class, then, the teacher will be assigned a different subject – if he is qualified to do so – or he/she will be given another job in the public sector (Law n. 186, 18 July 2003). See. V. Pacillo, *Contributo allo studio del diritto di libertà religiosa nel Rapporto di Lavoro Subordinato*, Giuffè, 2003, p. 334 e p. 363.

¹⁶ See A. Ferrari, S. Ferrari, *Religion and the Secular State: The Italian Case*, in: J. Martínez-Torrón, W. Cole Durham, *Religion and the Secular State: National Reports*, Digital Legend Press, 2015, pp. 466.

are private schools that are recognized by the State as having the same status of public schools under certain circumstances. For instance, the class about “History of Religions” integrates the *curriculum* in the Waldesian Liceo of Torre Pellice. The course is compulsory for all students and it is subject to specific assessment.¹⁷

II. MANDATORY “RELIGIOUS CULTURE AND ETHICS” CLASSES IN TURKEY

Until 1946, Turkish education followed the French model of *laïcité*, where no denominational classes are taught in public schools (with the exception of Alsace-Lorraine)¹⁸. Then, religious education was reintroduced in non-denominational public school¹⁹ as an elective subject in the fourth and fifth grades. In 1950 RE became compulsory and was extended to the secondary (1956) and high schools (1967) programs. The monopoly of the State on religious education in public schools was constitutionalized in 1946 (art. 24) and it remained unchallenged in the 1982 Constitution.

According to art. 24(4) of the Constitution religious and moral education: *shall be conducted under state supervision and control and they shall be one of the compulsory lessons in the curricula of primary and secondary schools*. Finally, according to the constitutional provisions at hand, *Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives*. The said article must be read together with art. 42 Const. on the right to education, which states that education must adhere to the *principles and reforms of Atatürk, based on contemporary scientific and educational principles, under the supervision and control of the State*.

¹⁷ For the Educational Plan 2019/2022, see the institutional website of the Waldesian High School www.liceovaldese.it

¹⁸ See J. Robert, *La France face à ses religions*, in: R. Bottoni et al. (eds.), *Religious Rules, State Law, and Normative Pluralism – A Comparative Overview*, Ius Comparatum – Global Studies in Comparative Law, Springer, 2018, p. 169.

¹⁹ In 1924 the Law on the Unity of Education abolished the medreses (private religious schools). In 1949 the Imam-Hatip high schools for imam were opened. They are denominational State schools under the authority of the Ministry of National Education. Classes on the Qur’an are also organized under the control of the Presidency of Religious Affairs. Currently, religious education in Turkey is State-sponsored. See E. Özbudun, *Constitution Writing in Turkey*, in: A.U. Bali, H. Lerner, *Constitution Writing Religion and Democracy*, Cambridge 2017, pp. 164–165.

Turkish educational system reflects the strong ties between two of the “Kemalist arrows”: nationalism and *laiklik* (secularism).²⁰ The State Education Act (Law n. 1739) of 1983²¹—which covers the organization and structure of the educational system and it establishes State's duties and responsibility concerning education—guarantees the right to education to all Turkish citizens, regardless to their language, race, sex and religion (artt. 4 and 7). Still, religious education forms part of public schools' *curricula*. One of the reasons is to be found in the cultural value associated to Muslim religion. The military drafters of the 1982 Constitution considered Muslim religious culture as a fundamental tool of nation-building and *a source of social cohesion*.²² Consequently, the State bears the duty to provide the citizens with the “correct” religious education.

The same approach towards the dominant religion is confirmed in the abovementioned Law n. 1739, according to which public education is primarily aimed at *raising all individuals of the Turkish Nation as citizens attached to Atatürk reforms and principles and to Atatürk nationalism as expressed in the Constitution*.²³ Once again, a strong link is established between nationalism, *laiklik* and education. In particular, art. 12 of Law 1739 states that *secularism is the basis of Turkish State education. Religious culture and ethics shall be among the compulsory subjects taught in primary and upper secondary schools and in schools of an equivalent level*.

The Guidelines issued by the Ministry of National Education provide that mandatory teaching of “Religious Culture and Ethics” shall be respectful of the principle of secularism, freedom of religion and conscience, freedom of thought and expression. Nevertheless, despite the name of the class and the government's guidelines, the teaching is predominantly denominational, as it mainly deals with theory, practice and rituals of Sunni (Hanafi) Islam.²⁴ Despite some references to rituals and holy books in other religion, emphasis is given to the Qur'an, the hadith and the life of the Prophet. The wider space

²⁰ After the instauration of the Republic, in 1923, and the 1937 constitutional reform secularism became one of the core principles of Turkish democracy, together with the other Kemalist “arrows”: Republicanism, Statism, Populism, Nationalism and Reformism. See, among others, R. Bottoni, *Secolarizzazione e modernizzazione nell'Impero ottomano e nella Repubblica di Turchia: alle origini del principio di laicità*, pp. 242–260; I.Ö. Kaboglu, *Le droit constitutionnel turc – entre coup d'état et démocratie*, 2nd ed., Harmattan, Paris, 2018, pp. 19–25.

²¹ Basic Law of National Education n. 1739 of 1973, as amended by the Law n. 2842 of 18 June 1898 and by the Law n. 4306 of 16 August 1997. At the constitutional level, the basic responsibilities of the State concerning education and training – being the schools private are established by art. 10, 24, 42, 62, 130, 131 and 132 of the 1982 Constitution.

²² E. Özbudun, op. cit., p. 166.

²³ Basic Law of National Education n. 1739 of 1973, as amended by the Law n. 2842 of 18 June 1898 and by the Law n. 4306 of 16 August 1997.

²⁴ F. Bilici, *L'enseignement religieux dans les écoles publiques turques: historique, programme, idéologie*, in: S. Akgonul, *Laïcité en débat. Principes et représentations en France et en Turquie*, URS, 2008.

given to Islam in “Religious Culture and Ethics” classes, may not be, in principle, incompatible with State secularism, as far as the State does not *pursue an aim of indoctrination*.²⁵ However, a closer look to the content of the *curricula* and the textbooks reveals that students are required to learn by heart several *surat* (verses) of the *Qur'an*. Moreover, primary relevance is given to the life of the Prophet Muhammad and the rituals of Sunni Islam. Interestingly, the classes address Islam *in relation* to other major denominations (Judaism, Christianity, Hinduism and Buddhism) so that a clear connection is established between Sunni Islam and Turkish national identity. Other religions and non-religious beliefs, such as atheism and agnosticism, are presented as “alien” from the national culture and poorly addressed.²⁶

III. THE RIGHT TO “OPT-IN” V. EXEMPTION RIGHTS

In Italy and Turkey, the favour granted to the respective majority religion raises complex issues regarding religious minority rights, as well as non-religious people.

In Italy, the denominational and confessional character of Catholic religious teaching and its integration in the regular school *curricula* has been questioned in the light of the safeguard of constitutional protected rights and freedoms, such as the freedom of religion and conscience, freedom of education, the respect of the parents' convictions and educative responsibilities. At the beginning of each academic year, therefore, students—or their parents until intermediate schools—are required to declare their intention to attend Catholic religious education. The choice must be renewed every academic year, upon request of the school authority, and it must not result in any form of proselytism or discrimination.

Students who decide not to attend the religious classes are not required to motivate their choice (not even on religious ground), nor they are discriminated against in terms of school-time or final assessment.²⁷ Students who decline the possibility to attend Catholic teaching may ask the school to provide them with alternative activities; but they may conduct

²⁵ European Court of Human Rights (ECtHR) *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, nos. 5095/71, 5920/72, 5926/72, para. 53; *W & D.M. and M and H.I. v. United Kingdom*, 6 March 1984, Decision on Admissibility, nos. 10228/82 and 10229/82 (joined).

²⁶ See: Ministry of National Education Decision n. 373, 19 September 2000 and Decision 16 n. of 31 March 2005 in *R. Kaymakcan, Yeni Ortaöğretim Din Kültürü ve Ahlak Bilgisi Öğretim Programı İnceleme ve Değerlendirme Raporu*, Education Reform Initiative, April 2007, p. 9; ECtHR, Cj., J.J. e E.J. v. Poland, 16 January 1996, Decision on Admissibility, no. 23380/94, ECtHR, *Ingeborg Folgerø and Others v. Norway*, 29 June 2007, Grand Chamber Decision, no. 15472/02.

²⁷ The final assessment on Catholic religious teachings consists of a motivated judgment by the teachers of Catholic religion, who enjoy the same status of the other teachers in the school commissions. A short opinion is written on a document that is separated with respect to the annual scholastic records.

autonomous studies and research activities,²⁸ or leave the school premises.²⁹ As ruled by the Constitutional Court, all possible alternative subjects are optional since the students who do not attend Catholic religious classes are considered to be in a “*stato di non obbligo*” (non-obligation status). With this formula, the Court aims at separating pupils' exercise of their constitutional right to religious freedom, i.e. the free choice to enroll (or not) in religious classes, from the selection of alternative activities. In other words, the decision regarding whether to attend Catholic religious classes or not rests—in the constitutional judges' intentions—a pure matter of conscience, which shall not be influenced by the availability of alternative subjects, nor by other utilitarian appraisals.

The promotional attitude of the Italian State towards Catholic religion is limited to guarantee the teaching of Catholicism in public schools to students who decide to *opt in*. However, it must not impact on the freedom of students who are not willing to attend the denominational classes. In light of these considerations, the Court affirms that the obligation to attend an alternative class would be discriminatory against those students who decide not to join Catholic religious studies.³⁰

In Turkey, all students are required to attend classes of “Religious Culture and Ethics” (*Din Kültürü ve Ahlak Bilgisi*). The *exemption right* exists for the officially recognized religious minorities under the Lausanne Treaty (1923).³¹ Following a proposal issued by the Ministry of Education, the Supreme Council of Education adopted the Decision n.1 of 9 July 1990, which allowed Christian and Jewish students to be exempted from compulsory religious classes in primary and secondary schools. The exemption procedure has been questioned by non-dominant religious minorities as it raises questions of compatibility with the constitutional principle of *laiklik* and minority rights.

Although the Turkish model of *laiklik* requires the withdrawal of religion from the (political and legal) public sphere, a confessional dimension of citizenship emerges in the domains of education. Unlike Italian pupils, Turkish students (and their parents) must declare their belonging to one of the recognized religious minority in order to be exempted from

²⁸ The autonomous activities are always conducted under the supervision of a teacher until secondary school.

²⁹ Italian Constitutional Court decision n. 13/1991.

³⁰ Italian Constitutional Court decision n. 203/1989.

³¹ The Lausanne Treaty (1923) grants recognised non-Muslim minorities the rights to non-discrimination (art. 39); to establish private schools, religious, social and charitable institution (art. 40); to receive education in their own language at the primary level in public schools (art. 41); the right to regulate matters concerning family law (art. 42), the free exercise of their religion (art. 43). Only Greek Orthodox Christians, Jews and Armenians are recognised.

religious classes. Students belonging to religious minorities are allowed, in principle, to attend “Religious Culture and Ethics” classes; however, *they must submit a written request from their legal representative*.³² In both cases, pupils and parents are obliged to publicly reveal their religious affiliations. Furthermore, students exempted from religious classes face indirectly discrimination in some admission exams—such as the “Transition from Primary to Secondary School Exams”—inasmuch as they include questions related to compulsory religious education.³³ Due to the fear of discrimination, both students and teachers tend to hide their religious identity. Finally, some specific teachings on Muslim religion are provided, such as the courses on the “Life of the Prophet Muhammad” and the “*Qu'ran*.” These classes are formally elective. However, pupils are often forced to enroll due to the inexistence of other non-religious elective activities and classes.³⁴

IV. NON-CATHOLIC RELIGIOUS EDUCATION IN ITALY: THE SYSTEM OF AGREEMENTS (*INTESE*) AND THE SITUATION OF ISLAM

When it comes to religious education in public school, there is a clear disparity between the legal framework applying to Catholic Church under art. 7 of the Constitution and the bilateral agreements (*intese*) signed between the State and religious denominations “different from Catholic Church” under art. 8(3) of the Constitution.³⁵

Non-Catholic religious confessions, which entered the agreements, can organize their own religious classes in public schools. The organizational model is similar to those provided for Catholic teaching in terms of collaboration between the State and the religious confessions. In this respect, the organization and content of the classes rest under the responsibility of each denomination and they are agreed upon with the school authorities. Pupils, parents, and teachers can demand for the organization of denominational teachings or classes about the “phenomenon of religion and its implications.”³⁶ However, some major differences exist between Catholic religious teaching and other religious classes.

Firstly, while under the 1984 Concordat the State is obliged to organize the teaching of Catholicism in public schools, irrespective of the number of the pupils and students who

³² See: Supreme Council of Education, Decision n.1 of 9 July 1990, cited in ECtHR, Hasan and Eylem Zengin v. Turkey, sez. II, App No. 1448/04, 9 October 2007, para. 18.

³³ See A.E. Gürçan, *The Problems of Religious Education in Turkey: Alevi Citizen Action and the limits of the ECtHR*, IPC-Mercator Policy Brief, 2015, p.

³⁴ See *ibid.*, p. 2.

³⁵ See F. Alicino, *La legislazione sulla base delle intese. I test delle religioni altre e degli ateismi*, Cacucci Editore, Bari, 2013.

³⁶ Art. 10 of the Agreement signed between the Waldesian Church and the Italian Government, signed on 21 February 1984 and executed by Law n. 449, 11 August 1994.

sign in for the classes, the organization of other religious teachings is subject to the request of each religious denomination to the school of pertinence of the religious minority. Secondly, non-Catholic religious classes are not part of the regular school *curricula*. Thirdly, Catholic religious teaching in public schools is State-funded, while other religious denominations must bear the cost of the organization of the classes. It is interesting to note that, so far, the religious confessions did not show particular interest in organizing denominational classes in public schools.

The confessional communities which did not entered into an agreement with the State do not enjoy the right to organize denominational teachings in public schools. It is the case of Muslim communities, whose growing presence in Italy raises questions over the appropriateness of the existing legal framework governing religious pluralism.

At present, Islamic organizations have not signed any agreement with the State.³⁷ Therefore, they must refer to the Law 1159/1929 on the “admitted cults” and the Royal Decree n. 289/1930. The latter rules that religious confessions without *intese* may sign an agreement with the Direction of the School Office aimed at organising religious education within the school premises, provided that there are no other places of worship with educational facilities in the proximity of the school.³⁸ As other religious teachings, the classes are optional, they do not form part of the regular *curricula*, they must be organized outside the school-time and they are fully founded by the religious confessions.

Some studies reveal that the request of Islamic religious education in public schools by the Muslim immigrants (and citizens) is increasing.³⁹ However, the Italian Islamic community did not use the possibility given by the Royal Decree 289.⁴⁰ The reasons are of both organizational and legal nature. Concerning the practical aspect of lodging a request for Islamic classes in public schools, the lack of initiative may be the result of a difficult dialogue between the Muslim minority and local public authorities. Moreover, Muslim community in Italy is mainly composed by immigrants who are familiar with neither the Italian language nor the bureaucratic system⁴¹. From a legal point of view, Islamic organizations and associations encounter several obstacles in acquiring legal recognition, weakening their

³⁷ See F. Alicino, *op. cit.*, pp.109–143.

³⁸ Art. 23 of Royal Decree n. 289 of 1930.

³⁹ See, among others, the research conducted at regional level by R. Guolo, *Islam e Scuola pubblica: orientamenti di genitori di religione islamica in Piemonte*, *Ricerche di Pedagogia e Didattica*, 4, 2, 2009.

⁴⁰ A. Ferrari, *La Scuola italiana di fronte al paradigma musulmano*, in: *Islam in Europa/Islam in Italia tra diritto e società*, Il Mulino, 2008, p. 190–191.

⁴¹ See S. Coglievina, *Religious Education in Italian public schools: what room for Islam?*, *Stato, Chiesa e Pluralismo confessionale*, n. 29, 2017, p. 6.

capacity to dialogue with the State institutions. Finally, legal recognition is also one of the prerequisites to sign an agreement with the State.

V. RELIGIOUS EDUCATION AND MUSLIM MINORITIES IN TURKEY: THE ALEVIS

The predominance of Sunni Islam in the curriculum of compulsory religious classes was brought to the attention of the national courts by the Alevi community, which filed the case before Turkish Supreme Administrative Court. However, their requests were systematically dismissed. Therefore, the Alevis applied before the European Court of Human Rights, accusing Turkey of violating art. 9 ECHR on freedom of thought, conscience and religion, alone and in conjunction with art. 14 ECHR on discrimination.⁴² In 2007, the Strasbourg judges issued a landmark decision on religious education in the case *Hasan e Eylem Zengin v. Turkey*.⁴³ At the time the application was lodged, Eylem Zengin was a student attending the 7th grade of the public school in Avcilar (Istanbul), where she attended the class in “Religious Culture and Ethics.” Since Eylem's family was adherent to Alevism, the father submitted a request to Turkish authorities seeking to obtain an exemption for his daughter from compulsory religious teaching. Following the refusal of the request, Hasan Zengin applied to the ECtHR against Turkey for the violation of art. 9 and P1–2 of the Convention.

Mr. Zengin accused the State of violating his parental right to choose the education his daughter was to receive, in conformity with the religious and philosophical convictions of her family. The applicants further affirmed that religious education in public schools was not taught in a critical, objective and pluralistic manner. In his defense, the Government underlined the discretionary power enjoyed by the State on the preparation and content of the school syllabus, which is decided by the Ministry of Education and not by religious authorities and, therefore, in compliance with the constitutional enshrined principle of secularism.⁴⁴ Moreover, the Government said, the classes *did not take into consideration the vision of members of mezhep (a branch of Islam) or tarikat (a religious order)*. In other words, Turkish authorities, relying on the opinions submitted by the Presidency of Religious

⁴² A. Parrilli, *Religious Freedom, Minority Rights and Turkish secularism. The case of the Alevi*, *Revista General de Derecho Publico Comparado*, 2018, p. 28.

⁴³ ECtHR, *Hasan and Eylem Zengin v. Turkey*.

⁴⁴ ECtHR, *Hasan and Eylem Zengin v. Turkey*.

Affairs (*Diyanet İşleri Başkanlığı*),⁴⁵ does not recognize the Alevi faith to have an autonomous religious nature. Alevism is listed as an “interpretation” of Islam.⁴⁶

In the case at hand, the Strasbourg Court did not uphold Turkish position regarding the nature of Mr. and Mrs. Zengin faith and considered Alevism to be *a religious conviction which has deep roots in Turkish society and history and that is has features which are particular to it [...]. It is thus distinct neither a sect nor a 'belief' which does not attain a certain level of cogency, seriousness, cohesion and importance*. Being Alevism a religion *per se*, the judges ruled that the syllabus content was insufficient to meet the criteria of objectivity and pluralism required in a democratic society and, thus, it was not respectful of parental religious and philosophical convictions. Then, the Court censored the exemption procedure, which does not provide sufficient protection to those parents' who have a religious or philosophical conviction other than that of the majority denomination (Sunni Islam).

Judges reasoned that, if compulsory classes on “Religious Culture and Ethics” are aimed to teach pupils about *different religious cultures, there is no reason to make it compulsory for Muslim children alone. Conversely, if the course is essentially designed to teach the Muslim religion, it is a course on a specific religion and should not be compulsory, in order to preserve children's and their parents' religious freedom*⁴⁷. Moreover, the right to be exempted is granted to Christian and Jews pupils only, while pupils and parents belonging to other streams of Islam are obliged to attend religious classes. Finally, the Court held, parents are subject to *a heavy burden ant to the necessity of disclosing their religious or philosophical convictions in order to have their children exempted from the lessons in religion*.⁴⁸ In conclusion, the Court ruled that Turkey violated art. 2 of Protocol n.1 of the Convention on the Right to Education.

⁴⁵ The Diyanet İşleri Başkanlığı (Presidency of the Religious Affairs) is the administrative body established under Act n. 429 of 3 March 1924 on the “Abolishment of the Ministry for Religious Affairs” (Seriye Vekaleti), which directly respond to the Prime Minister. The Diyanet regulates Islamic religious activities in compliance with the principle of secularism. Among its duties there are the financing and administration of the mosques; the employment of muftis, muezzin and imams. Serving as civil servants, they are part of the administration of the State. Consequently, they are required to adhere to the official interpretation of Sunni Islam. The same majoritarian interpretation which is endorsed in public school syllabus in the “Religious Culture and Ethics” classes. See, among others, I. Yilmaz, *Muslim Laws, Politics and Society in Modern Nation States. dynamic Legal Pluralisms in England, Turkey and Pakistan*, Routledge, 2005, p. 100; I.B. Gözaydın, *Diyanet and Politics. The Muslim World*, Vol. 98, April/July 2008, p. 218.

⁴⁶ In dismissing the application lodged by the Alevis, Turkish administrative court based the decision on some Opinions delivered by the Diyanet on the nature of the Alevi faith, even though such documents are not legally binding. Some of the Opinions are available on the Diyanet official website (www.diyamet.gov.tr/en-US) (last visited 01 September 2020).

⁴⁷ ECtHR, Hasan and Eylem Zengin v. Turkey, para 74.

⁴⁸ ECtHR, Hasan and Eylem Zengin v. Turkey, para 76.

Following *Zengin* judgment, the Turkish Council of State affirmed that, whilst the title of the class was “Religious Culture and Ethics,” the content of the teaching provided religious education on Sunni Islam. Thus, the teaching is not respectful of the constitutional principle of secularism. In 2011, the Alevi lodged another application to the ECtHR, challenging the content of religious classes and the exemption mechanisms. In *Mansur Yalçın and Others v. Turkey*, the ECtHR unanimously ruled the violation of parental rights on education once again.⁴⁹

Notwithstanding the decisions issued by the European Court of Human Rights and national judges, Turkey did not comply with the rulings—apart, obviously, from some cosmetic reforms of the *curricula*. Other petitions have been lodged to the Ministry of National Education and to the EU Parliament, calling for a revision of the religious classes' syllabus or the suppression of State-run compulsory religious education.

CONCLUSIONS

Both in Italy and Turkey religion is taught in public schools and education policies are mainly centrally planned. Historically, the teaching of religion has been dominated by the majoritarian religions (Catholicism in Italy, Sunni Islam in Turkey) which are considered to be a medium either for a better understanding of national history and culture, for the promotion of moral values and, especially in Turkey, as an instrument of nation building. The predominance of the majority religion in State-funded schools is debated in both countries, as it poses numerous challenges in terms of freedom of religion, parental rights on education and minority rights. Overall, the respective legal frameworks would need extensive reforms in order to better cope with the current challenges posed by religious pluralism.

In Turkey, both the content of the syllabus and the exemption procedure from the “Religious Culture and Ethics” (which, in principle, is not denominational) are questioned and they have been repeatedly censored by the European Court of Human Rights. One possible, viable reform of RE in Turkey may provide both non-Muslim communities recognised under the Treaty of Lausanne and non-religious people with the possibility to opt-out from compulsory religious education. This would undermine the legal framework governing minority rights in Turkey, and therefore it needs legislative and constitutional reforms. The very understanding of the concept of “religious minority” as accepted by the Turkish authorities would be questioned. In this respect, despite the consolidated narrative on the rupture with the Ottoman Empire, the approach to minority rights reveals the legacy

⁴⁹ ECtHR, *Mansur Yalçın and Others v. Turkey*, App. No. 21163/11, 16 September 2014.

of the Ottoman legal tradition and the *millet* system.⁵⁰ The Lausanne Treaty only addresses “non-Moslem” minorities. Therefore, there is no room for the Alevis—nor for other non-majoritarian streams within Islam—to be legally recognised as *an islamic community equal to, but different from, Sunnism*.⁵¹ The second option would be an extensive reform of the school *curricula* so to cover religious education in a pluralist and objective matter—as suggested by the Strasbourg Court in *Zengin case* (para 74). Moreover, it would be necessary to reform the content of those exams undertaken by all pupils, so to ensure that students who choose to opt-out from religious education are not discriminated against during their studies.

In Italy, several proposals have been advanced in order to take a step forward on the matter of religious education in public school. The options range from the introduction of compulsory teachings *about* religions, adopting historical and/or sociological perspectives, to inter-religious teachings within the syllabus of “Civic education.” However, despite some minor experiences of teachings *about* religions or inter-religious classes outside the regular school hours, the system did not undergo significant changes. Furthermore, a number of legislative proposals for a “Law on Religious Freedom” have been discussed from 1997 to the present date. Among the topics addressed by the draft bills, religious education is particularly controversial. A recent proposal provides for optional religious teachings to be activated upon students and parents request, within the framework of the activities aimed at promoting cultural, social and civil education of the pupils.⁵² The proposals do not question, in any way, the Concordatary/bilateral structure of the relationships between school and religious education, nor the privileged position of Catholic religious teaching in State-funded schools. The needs of Muslim families are taken into account on a case-by-case basis. However, the teaching of religion remains anchored to the existence of an agreement between the State and the recognised religious denominations. A further consideration to be made is that the *intese* do not solve the numerous challenges faced by non-Catholic religious denominations. The responsibility for the activation of religious

⁵⁰ See R. Bottoni, *La libertà religiosa in Turchia de la fin de l'Empire ottoman à la fondation de la République laïque*, in: B. Basdevant-Gaudemet, F. Jankowiak (eds.), *Le droit ecclésiastique en Europe et à ses marges (XVIIIe–XXe siècles)*. Actes du colloque du centre Droit et Sociétés religieuses, Université de Paris-Sud Sceaux, 12–13 October 2007, Peeters, Leuven, 2009, pp. 23–36; F. Öztürk, *Ottoman and Turkish Law*, Bloomington, iUniverse LLC, 2014, pp. 11–81; R. Bottoni, *La condizione giuridica delle minoranze non-musulmane in Turchia: a proposito di dure recenti documenti elaborati nell'ambito del Consiglio d'Europa*, Quaderni di Diritto e Politica ecclesiastica, n. 2, agosto 2010.

⁵¹ O. Akbulut, Z. Oya Usal, *Parental Religious Rights v. Compulsory Religious Education in Turkey*, International Journal on Minority & Group Rights, n. 15, 2008, p. 437.

⁵² See, art. 6 of the Legislative Proposal for a “Law on Religious Freedom,” in: R. Zaccaria, A. Domianello, A. Ferrari, P. Floris, R. Mazzola (eds.), *La legge che non c'è. Proposta per una legge sulla libertà religiosa in Italia*, Il Mulino, 2019, p. 32.

classes is subordinate to the organizational and financial capacity of the single confession and it is subject to the discretion of local administrations and school authorities.

