# Religionsfreiheit in Europa

Hans Michael Heinig*

Rezension zu *Antje von Ungern-Sternberg*, Religionsfreiheit in Europa. Die Freiheit individueller Religionsausübung in Großbritannien, Frankreich und Deutschland – ein Vergleich, Tübingen (Mohr Siebeck – Ius Ecclesiasticum, Band 86), 2008, XXIII, 404 Seiten, ISBN 978-3-16-149682-0

1. Die aus dem Amt scheidende deutsche Richterin am Europäischen Gerichtshof für Menschenrechte, Renate Jaeger, wurde unlängst von der Süddeutschen Zeitung (Ausgabe Nr. 236 vom 12. Oktober 2010, S. 6) gefragt, ob angesichts der unterschiedlichen religionsrechtlichen Systeme in Europa eine einheitliche europäische Perspektive auf die religiösen Konflikte in den europäischen Gesellschaften nicht an ihre Grenzen stoße. Ihr Antwort: Menschenrechte würden im EGMR „als etwas von der Religion Getrenntes empfunden", mit der Konsequenz, „dass die Religionsferne unserer Urteile sehr viel evidenter ist als beim Bundesverfassungsgericht". Deutschland bringe zwar den großen Kirchen, nicht aber anderen Religionsgemeinschaften wohlwollende Neutralität entgegen. Dieses Modell sei europaweit eine Ausnahme, erzeuge Diskriminierungen und sei den Kollegen am Gerichtshof, die nicht so kirchennah wie die Richter am Verfassungsgericht in Karlsruhe seien, nur schwer zu vermitteln.

Die Aussagen sind aus mehrerlei Gründen bemerkenswert. Sie sind unhistorisch, soweit sie die ambivalente Entstehungsgeschichte der Menschenrechte im Kontext christlich geprägter Gesellschaften eindimensional auflösen. Sie sind uninformiert, soweit sie übergehen, dass in Deutschland neben den beiden großen Kirchen auch alle anderen dazu bereiten Religions- und Weltanschauungsgemeinschaften an den Förderungs- und Kooperationsstrukturen des Grundgesetzes partizipieren. Solche Strukturen gibt es in unterschiedlicher Form zudem in weiten Teilen Europas. Unabhängig von staatskirchenrechtlichen Systemfragen wirft vor allem der Islam in seiner religiösen und organisatorischen Vielfalt (in ganz Europa) religionsrechtliche Integrationsprobleme auf. Seitens des deutschen Staates wird seit geraumer Zeit der klare Wille artikuliert, diese Probleme zu überwinden; dazu müssen die

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Muslime in Deutschland freilich auch die ihnen obliegende organisatorische Bringschuld erbringen. Von einer systematischen Diskriminierung der kleineren Religionsgemeinschaften in Deutschland kann deshalb schwerlich gesprochen werden. Die Einlassungen der Richterin, die vor ihrem Wechsel nach Straßburg zehn Jahre am Bundesverfassungsgericht tätig war, sind aber auch in rechtswissenschaftlicher Hinsicht erstaunlich. Denn die von der SZ angesprochenen methodischen und verfassungstheoretischen Probleme im Spannungsfeld von durch die EMRK europaweit garantierter Religionsfreiheit und unterschiedlichsten religionsrechtlichen Systemen in den fast 50 Signatarstaaten werden schlicht übergangen: Lässt sich ein gemeineuropäischer Besitzstand in Fragen der Religionsfreiheit ausmachen? Welche Standards in Fragen religiöser Freiheit und Gleichheit können von einem überstaatlichen Gerichtshof angesichts der von der Menschenrechtskonvention bewusst unangetastet gelassenen religionsrechtlichen Heterogenität in Europa gesetzt werden? Wie viel durch den EGMR erzeugter Anpassungsdruck ist nötig, wie viel noch zulässig? Welche Instrumente stehen zur Verfügung, das rechte Verhältnis zwischen der Durchsetzung gemeineuropäischer Mindeststandards und der Wahrung der religionspolitischen Souveränität der Unterzeichnerstaaten der EMRK zu wahren?

2. Wer an Fragen dieser Art interessiert ist, darf sich wertvolle Erkenntnisse versprechen, wenn er *Antje von Ungern-Sternbergs* Buch „Religionsfreiheit in Europa“ zur Hand nimmt. Die von *Stefan Kadelbach* betreute Dissertationsschrift bietet einen Vergleich der Freiheit individueller Religionsausübung in Großbritannien, Frankreich und Deutschland und setzt dabei einen starken Akzent auf die Rolle der EMRK für diesen Schutz. Sie reiht sich ein in eine Fülle neuerer Titel mit Interesse an europäischen Entwicklungen und/oder rechtsvergleichendem Ansatz auf dem Gebiet des Religionsrechts (insb. *C. Walter*, Religionsverfassungsrecht, 2006; *S. Mückl*, Europäisierung des Staatskirchenrechts, 2005). Innerhalb dieses Schriftenensembles gewinnt die Arbeit von Frau *von Ungern-Sternberg* ein eigenständiges Profil durch die Konzentration auf Fragen des individualrechtlichen Schutzes. Die thematische Selbstbeschränkung hat zur Konsequenz, dass Aspekte der korporativen Religionsfreiheit, freiheitsrechtlich fundierte Leistungs- und Förderungsansprüche sowie die vielfäligen sonstigen Bestimmungen des staatlichen und unionalen Religions- und Staatskirchenrechts zur Seite treten und nur insoweit gestreift werden, als sie für die individuelle Religionsausübungsfreiheit von besonderer Bedeutung sind.

Will man sinnvoll Rechtsvergleichung betreiben, muss man das Vergleichsmaterial beschränken, zugleich aber methodisch ausweisen, mit welchen Gründen die notwendige

Auswahl vorgenommen wurde. Das ist im Grunde ein Dilemma – selten gelingt beides gleich überzeugend. Die von *v. Ungern-Sternberg* vorgenommene thematische Beschränkung auf Fragen der individuellen Religionsfreiheit erscheint vor dem Hintergrund des vorliegenden Schrifttums legitim – auch wenn damit die Gefahr verbunden ist, die komplexen religions(verfassungs)rechtlichen Regelungsgefüge samt ihrer spezifischen historischen, kulturellen, politischen und rechtssystematischen Kontexte in ihrer Bedeutung für die individuelle Religionsausübungsfreiheit nicht immer adäquat zu fassen zu kriegen. Begründungsbedürftig ist zudem die Auswahl der zu vergleichenden Rechtsordnungen. Hierzu finden sich bei *von Ungern-Sternberg* nur wenige Ausführungen. Die Autorin betont in der Einleitung die Unterschiede zwischen Deutschland, Frankreich und Großbritannien in „Tradition und Konzeption des Grundrechtsschutzes im allgemeinen und der Religionsfreiheit im besonderen“ (S. 3). Tatsächlich lebt das Buch in der Folge stark von der Spannung, die sich aus dem Kontrast einer staatskirchlichen, laizistischen und kooperativ-paritätischen religionsrechtlichen Tradition sowie aus den tiefgreifenden Unterschieden zwischen Frankreich, Großbritannien und Deutschland im Verständnis, in den Funktionen und in den Institutionen des Grundrechtsschutzes ergeben. So gesehen sind die Referenzordnungen glücklich gewählt. Freilich wäre eigens zu klären, ob diese Länderauswahl eingedenk der Unterschiede in der generellen Grundrechtskonzeption auch dem Bemühen um die Herausarbeitung gemeineuropäischer Standards dienlich ist. Über alle Signatarstaaten der Menschenrechtskonvention hinweg betrachtet, stehen Frankreich und Großbritannien in Fragen der der Grundrechtsbindung des Gesetzgebers und der Möglichkeiten ihrer gerichtlichen Durchsetzung vielleicht eher für Sonderwege und (ausgerechnet) das deutsche Grundgesetz (inzwischen) für einen europäischen Mainstream.

3. Die Arbeit von *v. Ungern-Sternberg* gliedert sich in sechs Kapitel. Der Aufbau folgt einem klassischen Schema: Geschichte, Völkerrecht und Unionsrecht werden einleitend abgehandelt (S. 7 ff.). Kapitel 2 widmet sich dem Schutz der Religionsausübungsfreiheit durch die EMRK. Dem folgen Länderberichte zu Frankreich (Kap. 3), Großbritannien (Kap. 4) und Deutschland (Kap. 5). Das Schlusskapitel dient dann dem Vergleich und der Synthesenbildung.

a) Über die Anlage des ersten Kapitels kann man stolpern. Geschichte und internationales Recht werden gemeinsam unter „Rahmen der Religionsausübung“ abgehandelt. Sind das nicht sehr verschiedene „Rahmen“ – die völker- und unionsrechtlichen Vorgaben einerseits und die Genesen der sozio-politischen Kontexte andererseits (in ihren jeweiligen Verquickungen von blutiger Konfessionsspaltung, Verfolgung religiöser Minderheiten, Tolerierungsstrategien und

tatsächlicher Verwirklichung reziproker Anerkennung als Freie und Gleiche im Zuge der Ausbildung allgemeiner Grund- und Menschenrechtsstandards)? Mit solchen Fragen hält sich die Verfasserin nicht lange auf. Die Darstellung des „geschichtlichen Rahmens“ bietet gleichwohl einen knappen, aber kenntnisreichen Einblick in den historischen Resonanzraum des Themas. Das Völkerrecht jenseits der EMRK und das Unionsrecht werden hingegen etwas stiefmütterlich behandelt. Positiv gewendet könnte man auch sagen, dass sich die Verfasserin auf ihr eigentliches Thema konzentriert.

b) Den anschließenden Kapiteln zur EMRK und zu den drei Referenzstaaten liegt eine gemeinsame Matrix zugrunde, die im Vergleichsabschnitt im Detail explizit heraus präpariert wird, die die Darstellung vorher aber schon erkennbar prägt. Hierdurch kann der Eindruck entstehen, das Buch weise Redundanzen auf. Doch gewisse Wiederholungen sind notwendige Folge einer skrupelhaften Aufarbeitung des herangezogenen Materials, das eben zunächst länderbezogen entfaltet und dann noch einmal in einer systematischen Gesamtschau präsentiert wird.

Um unterschiedlichen Dimensionen der Religionsausübung nachgehen zu können, entwickelt *von Ungern-Sternberg* vier Typen religiöser Verhaltensweisen von Individuen (S. 5 und öfter): (I.) Gottesdienst und rituelle Handlungen, (II.) die Verkündigung religiöser Botschaften (Glaubensweitergabe), (III.) Verhaltensweisen, „die der Befolgung als zwingend empfundener religiöser Pflichten dienen“ (Gewissensfreiheit) sowie (IV.) die Beachtung sonstiger religiöser Bräuche im Alltag (religiöse Lebensführung). Jeder Typus kennt Subtypen, z.B. für die Gewissensfreiheit das Recht zur Kriegsdienstverweigerung, sonstige Verpflichtungen gegenüber dem Staat sowie die Freiheit zum Mitwirken bei bioethisch umstrittenen Handlungen oder für die Freiheit zur Glaubensweitergabe die Unterscheidung zwischen Meinungsäußerung gegenüber Dritten und Kindererziehung. Mit diesen feingliedrigen Differenzierungen im Hintergrund befragt die Autorin unterschiedliche Normkomplexe divergierender Normhierarchie und –typen, also Verfassungsrecht, Gesetzesrecht, Richterrecht, gebundenen Verwaltungspraxis, daraufhin, welche Verhaltensweise wie intensiv wodurch geschützt und welche Grenzen in den Rechtsordnungen gezogen werden. Dabei unterscheiden die Ausführungen zwischen dem subordinationsrechtlichen Freiheitsschutz gegenüber dem Staat und Schutzwirkungen im Privatrecht, wobei hier nochmals zwischen Arbeitsrecht, freiwillig eingegangenen Verpflichtungen und sonstigem Privatrecht (wie dem Erb- und Deliktsrecht) differenziert

wird. Diese aufwendige Typen- und Subtypenbildung ist überzeugend konzipiert und führt zu tragfähigen Vergleichsergebnissen.

Einleitend wird im jedem Kapitel auf die Besonderheiten der Referenzrechtsordnung eingegangen. Im Anschluss werden die relevanten Normen vorgestellt und die Grundzüge der (höchst- wie der sonstigen fachgerichtlichen) Rechtsprechung zu den einzelnen Themenfeldern skizziert. Auf diese Weise bewältigt *von Ungern-Sternberg* große Informationsmengen. Die Zahl der berücksichtigten Entscheidungen aus der jeweiligen Rechtsprechung ist beeindruckend. Sie behandeln Einzelfragen wie die nach der Schulbefreiung in öffentlichen Schulen für einzelne Fächer und Tage oder nach der Zulässigkeit religiös konnotierter Kleidung im öffentlichen Dienst und in der Privatwirtschaft ebenso wie die großen Grundsatzprobleme. Die da wären: Was ist Religion aus freiheitsrechtlicher Perspektive überhaupt? Wie weit reicht der Schutz der Religionsausübung? Wie geht man mit religiös motivierten Handlungen um, deren religiöse Bedeutung nach außen für Dritte nicht ohne weiteres erkennbar ist? Meint Freiheit der Religionsausübung eine Art religiöse Handlungsfreiheit oder ist ein spezifischer Bezug zu den religiösen Überzeugungen geltend zu machen bzw. eine besondere Form der Handlung an den Tag zu legen (Kultus etc.)? Ist auf den Glauben des einzelnen abzustellen, selbst wenn dieser in der relevanten Einzelfrage von der Gemeinschaft, der er sich zugehörig erklärt, abweicht? Oder markiert das religiöse Kollektiv den grundrechtlichen Schutz individueller Religionsausübung? Sind nur Handlungen geschützt, die vorzunehmen der Gläubige meint gezwungen zu sein? Oder zählen auch Motive religiöser Traditionspflege? Und schließlich: Wie verhalten sich allgemeines Gesetz, d.h. die vom demokratischen Gesetzgeber ohne diskriminierende Absicht und besonderem Religionsbezug erlassenen Regelungen, zur individuellen Betroffenheit in der Religionsausübung?

c) Ein wichtiger Nebenstrang der Arbeit widmet sich der Bedeutung von Diskriminierungsverboten für den effektiven Schutz der Religionsausübung. Großbritannien bietet *von Ungern-Sternberg* dazu reichlich Anschauungsmaterial. Weniger intensiv leuchtet sie hingegen aus, wie Antidiskriminierungsrecht den sozialproduktiven Nutzen religiöser Freiheit auch beschädigen kann. Nicht ganz zufällig dazu ein Beispiel aus Frankreich: Dort wird gegenwärtig das Votum der französischen Antidiskriminierungsbehörde diskutiert, nach dem eine privat betriebene Kinderkrippe – in einer Banlieue-Siedlung gelegen und integrations- wie arbeitsmarktpolitisch ein Vorzeigeobjekt – die Ganzkörperverschleierung einer Erzieherin dulden muss. Begründung der Behörde: da die private Einrichtung nicht dem

staatlichen Laizitätsgebot unterworfen sei, dürfe sie die Religionsfreiheit der Mitarbeiter nicht diskriminierend einschränken. Da wundert nicht, dass in Frankreich über ein generelles Burka-Verbot nachgedacht wird: Man kann das Religionsrecht auch so unglücklich konstruieren, dass staatlich verordnete Religionsverdrängung oder schleichende Islamisierung als die einzig möglichen Alternativen erscheinen, statt auf die konstruktive Gestaltungskraft gesellschaftlicher Freiheit zu setzen.

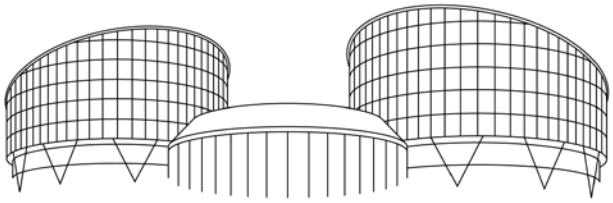
4. In der Gesamtschau zeigt die Arbeit von *v. Ungern-Sternberg* anschaulich, dass die Referenzrechtsordnungen in Fragen des Schutzes der individuellen Religionsausübung bis in den Details der Einzelfragen vor vergleichbaren lebensweltlichen Problemen und rechtsdogmatischen Herausforderungen stehen. Diese Homogenität über alle Systemunterschiede hinweg steht für einen Grundbestand geteilter Religions- wie Rechtskultur in den europäischen Gesellschaften. Die Religionsrechtskultur wird jedoch ebenso durch unterschiedliche Problemlösungen geprägt. Mal sind die Differenzen grundsätzlicher Natur, mal zeigen sie sich auch nur in Nuancen. Der große Verdienst der Arbeit von *v. Ungern-Sternberg* ist es, mit Sinn für die einzelnen Problemfelder beides, sowohl die Gemeinsamkeiten wie auch die Unterschiede, entlang tragfähiger thematischer Systematisierungen aufzubereiten und offen zu legen.

Gerne wüsste man mehr über die tieferliegenden Gründe: Warum wird wann welche Lösung gewählt? Welche Alternativen werden diskutiert? Welche Pfadabhängigkeiten bestehen? Welche gesellschaftlichen Entwicklungen und Konflikte bewirken Veränderungen? Um Fragen dieser Art beantworten zu können, sind sozio-kulturelle Kontextvergleiche ebenso notwendig wie eine intensive Auseinandersetzung mit dem wissenschaftlichen Schrifttum, sind theoretische Einbettungen ebenso vorzunehmen wie rechtsdogmatische Systematisierungen. Die Arbeit von *v. Ungern-Sternberg* bietet in dieser Hinsicht keine umfassenden Antworten, aber doch immerhin gewisse Orientierungen. Der Einfluss religiöser Konflikt- als religionsrechtlicher Identitätsfindungsgeschichte wird ebenso erkennbar wie der der Korrelation von Demokratie- und Grundrechtskonzeptionen. Doch weil sich *von Ungern-Sternberg* auf Normtext und Rechtsprechung konzentriert, dringt sie zu wichtigen Problemen nicht immer vor: So wäre etwa der Frage nachzugehen, ob Konzeptionen der Schutzbereichsbeschränkung sich an kohärenten Kriterien orientieren, die eine willkürfreie, faire und freiheitsadäquate Handhabung der einzelnen Fälle ermöglichen. Schaut man sich die Entscheidungen, die eine restriktive Linie in der Schutzbereichsbestimmung fahren an, wird man daran zweifeln dürfen.

Pointierte Kritik solcher Art findet sich bei *von Ungern-Sternberg* selten. Dies fördert den Eindruck hoher wissenschaftlicher Sachlichkeit, geht aber zuweilen zulasten der analytischen Tiefenschärfe. So hätte die Rechtsprechungspraxis des Europäischen Gerichtshofs für Menschenrechte durchaus eine distanziertere Betrachtung verdient. Der Gerichtshof unterliegt als überstaatliches Gericht mit der begrenzten Aufgabe, menschenrechtliche Mindeststandards in den Signatarstaaten durchzusetzen, besonderen Arbeitsbedingungen und Funktionszwängen. Diese bedürfen einer systematischen, für die Rechtsfindung relevanten Aufarbeitung. Daran fehlt es in Straßburg zuweilen – man überlege nur, wann und wie die Figur des margin of appreciation verwendet findet (oder auch nicht). Umso schwerer wiegt, dass der Gerichtshof sich lange Zeit bei der Prüfung einer Verletzung von Art. 9 EMRK schwer damit tat, eine sinnvolle, d.h. die Rationalität und Vorhersehbarkeit der Entscheidung sichernde Linie in der Frage auszubilden, auf welcher Prüfungsstufe mit welchen Argumentationsfiguren für Fragen der Religionsausübungsfreiheit typische Probleme abgearbeitet werden. Mittlerweile ist dem Mangel dogmatischer Grundausstattung abgeholfen – die Rechtsprechung hat nachgesteuert.

Zugleich wirft die jüngere Spruchpraxis des EGMR neue Fragen auf. *v. Ungern-Sternbergs* Dissertation zeigt in ihren facettenreichen Länderstudien, dass Europa in Fragen der Religionsfreiheit von einer prekären Balance zwischen Rechtseinheit und Lösungsvielfalt geprägt ist. In der Vergangenheit hat der EGMR das Gleichgewicht zwischen einheitlichem Mindestschutz und signatarstaatlicher Varianz bewusst unangetastet gelassen. Diese Selbstbeschränkung war gleichsam in das Erbgut der EMRK eingelassen. Ob Mutation oder Evolution: Zunehmend scheint sich Straßburg zu einem gesamteuropäischen Paraverfassungsgericht zu entwickeln, das nicht nur Mindeststandards durchsetzt, sondern für sich in Anspruch nimmt, vielfältige Abwägungsentscheidungen bis in detaillierte Verästelungen hinein für ganz Europa treffen zu können. In Fragen der Religionsfreiheit sprechen etwa die jüngsten Entscheidungen des EGMR zum Schulkreuz in Italien oder zum kirchlichen Arbeitsrecht in Deutschland (aus der Zeit nach Erscheinen des hier besprochenen Bandes) für einen solchen Trend. Wohlgemerkt: in der Sache vermögen die gefundenen Ergebnisse durchaus zu überzeugen. Doch die Rechtsprechung des EGMR hat sich nicht nur am Maßstab der Sachgerechtigkeit, sondern auch an dem der funktionalen Richtigkeit und demokratischen Akzeptanz messen zu lassen. Insoweit stellt sich schon die im eingangs erwähnten SZ-Interview aufgeworfene und von der deutschen Richterin am EGMR, Renate Jaeger, unbeantwortet gelassene Frage, ob es dem EGMR gut zu Gesicht steht, starken Homogenisierungsdruck in Fragen des Religionsrechts zu erzeugen. Jaegers Einlassungen

wirken da fast wie eine Drohung: Religionsferne statt kulturelle Vielfalt sollen die Religionsfreiheit in Europa bestimmen. *Antje von Ungern-Sternbergs* fundierte und kompetente Darstellung zeigt, dass der Gerichtshof mit einer solchen Agenda der Religionsfreiheit in Europa nicht gerecht würde.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

**CASE OF LAUTSI AND OTHERS v. ITALY**

*(Application no. 30814/06)*

JUDGMENT

STRASBOURG

18 March 2011

*This judgment is final but may be subject to editorial revision.*

**In the case of Lautsi and Others v. Italy,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Peer Lorenzen,
Josep Casadevall,
Giovanni Bonello,
Nina Vajić,
Rait Maruste,
Anatoly Kovler,
Sverre Erik Jebens,
Päivi Hirvelä,
Giorgio Malinverni,
George Nicolaou,
Ann Power,
Zdravka Kalaydjieva,
Mihai Poalelungi,
Guido Raimondi, *judges*,

and Erik Fribergh, *Registrar*,

Having deliberated in private on 30 June 2010 and on 16 February 2011,

Delivers the following judgment, which was adopted on the last-mentioned date:

# PROCEDURE

1. The case originated in an application (no. 30814/06) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Ms Soile Lautsi ("the first applicant") on 27 July 2006. In her application she stated that she was acting in her own name and on behalf of her children Dataico and Sami Albertin, then minors. The latter, who have subsequently come of age, confirmed that they wished to remain applicants ("the second and third applicants").

2. The applicants were represented by Mr N. Paoletti, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora, and their deputy co-Agents, Mr N. Lettieri and Ms P. Accardo.

3. The application was allocated to the Court's Second Section (Rule 52 § 1 of the Rules of Court). On 1 July 2008 a Chamber of that Section, composed of the following judges: Françoise Tulkens, Antonella Mularoni,

Vladimiro Zagrebelsky, Danutė Jočienė, Dragoljub Popović, András Sajó and Işıl Karakaş, decided to give notice of the application to the Government; applying the provisions of Article 29 § 3 of the Convention, it also decided to rule on the admissibility and merits of the application at the same time.

4. On 3 November 2009 a Chamber of the same Section, composed of the following judges: Françoise Tulkens, President, Ireneu Cabral Barreto, Vladimiro Zagrebelsky, Danutė Jočienė, Dragoljub Popović, András Sajó and Işıl Karakaş, declared the application admissible and held unanimously that there had been a violation of Article 2 of Protocol No. 1, taken together with Article 9 of the Convention, and that it was not necessary to examine the complaint under Article 14 of the Convention.

5. On 28 January 2010 the Government asked for the case to be referred to the Grand Chamber by virtue of Article 43 of the Convention and Rule 73. On 1 March 2010 a panel of the Grand Chamber granted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicants and the Government each filed further written observations on the merits.

8. Leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2) was given to thirty-three members of the European Parliament acting collectively, the non-governmental organisation Greek Helsinki Monitor, which had previously intervened before the Chamber, the non-governmental organisation *Associazione nazionale del libero Pensiero*, the non-governmental organisation European Centre for Law and Justice, the non-governmental organisation Eurojuris, the non-governmental organisations International Committee of Jurists, Interights and Human Rights Watch, acting collectively, the non-governmental organisations *Zentralkomitee der deutschen Katholiken, Semaines sociales de France* and *Associazioni cristiane lavoratori italiani*, acting collectively, and the Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, Monaco, Romania and the Republic of San Marino.

The Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, and the Republic of San Marino were also given leave to intervene collectively in the oral procedure.

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 30 June 2010 (Rule 59 § 3).

There appeared before the Court:

(a) *for the respondent Government*
Mr Nicola LETTIERI, *co-Agent*,
Mr Giuseppe ALBENZIO, *Adviser*;

(b) *for the applicants*

Mr Nicolò PAOLETTI, *Counsel*,
Ms Natalia PAOLETTI,
Ms Claudia SARTORI, *Advisers*;

(c) *for the Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, and the Republic of San Marino, third-party interveners*:

Mr Joseph WEILER, Professor of Law, New York University, *Counsel*,
Mr Stepan KARTASHYAN, Deputy Permanent Representative of Armenia to the Council of Europe,
Mr Andrey TEHOV, Ambassador, Permanent Representative of Bulgaria to the Council of Europe,
Mr Yannis MICHILIDES, Deputy Permanent Representative of Cyprus to the Council of Europe,
Ms Vasileia PELEKOU, Deputy Permanent Representative of Greece to the Council of Europe,
Mr Darius ŠIMAITIS, Deputy Permanent Representative of Lithuania to the Council of Europe,
Mr Joseph LICARI, Ambassador, Permanent Representative of Malta to the Council of Europe,
Mr Georgy MATYUSHKIN, Government Agent of the Russian Federation,
Mr Guido BELLATTI CECCOLI, co-Agent of the Government of the Republic of San Marino, *Advisers*.

The Court heard addresses by Mr Nicolò Paoletti, Ms Natalia Paoletti, Mr Lettieri, Mr Albenzio and Mr Weiler.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

10. The first applicant and her two sons, Dataico and Sami Albertin, also applicants, were born in 1957, 1988 and 1990 respectively. They are resident in Italy. In the school year 2001-2002 Dataico and Sami attended the Istituto comprensivo statale Vittorino da Feltre, a State school in Abano Terme. A crucifix was fixed to the wall in each of the school's classrooms.

11. On 22 April 2002, during a meeting of the school's governors, the first applicant's husband raised the question of the presence of religious

symbols in the classrooms, particularly mentioning crucifixes, and asked whether they ought to be removed. On 27 May 2002, by ten votes to two with one abstention, the school's governors decided to keep religious symbols in classrooms.

12. On 23 July 2002 the first applicant contested that decision in the Veneto Administrative Court, complaining of an infringement of the principle of secularism, relying in that connection on Articles 3 (principle of equality) and 19 (religious freedom) of the Italian Constitution and Article 9 of the Convention, and on the principle of the impartiality of public administrative authorities (Article 97 of the Constitution).

13. On 3 October 2002 the Minister of Education, Universities and Research adopted Directive no. 2666, instructing the competent services of his Ministry to take the necessary measures to see to it that school governors ensured the presence of crucifixes in classrooms (see paragraph 24 below).

On 30 October 2003 the Minister joined the proceedings brought by the first applicant. He argued that her application was ill-founded since the presence of crucifixes in the classrooms of publicly run schools was based on Article 118 of royal decree no. 965 of 30 April 1924 (internal regulations of middle schools) and Article 119 of royal decree no. 1297 of 26 April 1928 (approval of the general regulations governing primary education; see paragraph 19 below).

14. By a decision of 14 January 2004 the Administrative Court referred to the Constitutional Court the question of the constitutionality, with regard to the principle of the secular character of the State and Articles 2, 3, 7, 8, 19 and 20 of the Constitution, of Articles 159 and 190 of legislative decree no. 297 of 16 April 1994 (approving the single text bringing together the legislative provisions in force regarding education and schools), in their "specifications" resulting from Articles 118 and 119 of the above-mentioned royal decrees, and of Article 676 of the same legislative decree.

Articles 159 and 190 make municipalities responsible for purchasing and supplying the furniture of primary and middle schools. Article 119 of the 1928 decree specifies that each classroom must have a crucifix and Article 118 of the 1924 decree that each classroom must have a portrait of the king and a crucifix. Article 676 of legislative decree no. 297 stipulates that provisions not included in the single text remain in force, "with the exception of provisions contrary to or incompatible with the single text, which are repealed".

By a decision of 15 December 2004 (no. 389), the Constitutional Court declared the question as to constitutionality manifestly inadmissible, on the ground that it was in reality directed towards texts which, not having the status of law, but only that of regulations (the above-mentioned Articles 118 and 119), could not form the subject of a review of constitutionality.

15. On 17 March 2005 the Administrative Court dismissed the application. After ruling that Article 118 of the royal decree of

30 April 1924 and Article 119 of the royal decree of 26 April 1928 were still in force and emphasising that "the principle of the secular nature of the State [was] now part of the legal heritage of Europe and the western democracies", it held that the presence of crucifixes in State-school classrooms, regard being had to the meaning it should be understood to convey, did not offend against that principle. It took the view, in particular, that although the crucifix was undeniably a religious symbol, it was a symbol of Christianity in general rather than of Catholicism alone, so that it served as a point of reference for other creeds. It went on to say that the crucifix was a historical and cultural symbol, possessing on that account an "identity-linked value" for the Italian people, in that it "represent[ed] in a way the historical and cultural development characteristic of [Italy] and in general of the whole of Europe, and [was] a good synthesis of that development". The Administrative Court further held that the crucifix should also be considered a symbol of a value system underpinning the Italian Constitution. It gave the following reasons:

> "... 11.1. At this stage, the Court must observe, although it is aware that it is setting out along a rough and in places slippery path, that Christianity, and its older brother Judaism – at least since Moses and certainly in the Talmudic interpretation – have placed tolerance towards others and protection of human dignity at the centre of their faith.
>
> Singularly, Christianity – for example through the well-known and often misunderstood "Render unto Caesar the things which are Caesar's, and unto ..." – through its strong emphasis placed on love for one's neighbour, and even more through the explicit predominance given to charity over faith itself, contains in substance those ideas of tolerance, equality and liberty which form the basis of the modern secular State, and of the Italian State in particular.
>
> 11.2 Looking beyond appearances makes it possible to discern a thread linking the Christian revolution of two thousand years ago to the affirmation in Europe of the right to liberty of the person and to the key elements in the Enlightenment (even though that movement, historically speaking, strongly opposed religion), namely the liberty and freedom of every person, the declaration of the rights of man, and ultimately the modern secular State. All the historic phenomena mentioned are based to a significant extent – though certainly not exclusively – on the Christian conception of the world. It has been observed – judiciously – that the rallying call "liberty, equality, fraternity" can easily be endorsed by a Christian, albeit with a clear emphasis on the third word.
>
> In conclusion, it does not seem to be going too far to assert that, through the various twists and turns of European history, the secular nature of the modern State has been achieved at a high price, and was prompted in part, though of course not exclusively so, by a more or less conscious reference to the founding values of Christianity. That explains why in Europe and in Italy many jurists belonging to the Christian faith have featured among the strongest supporters of the secular State. ...
>
> 11.5 The link between Christianity and liberty implies a logical historical coherence which is not immediately obvious – like a river in a karst landscape which has only

recently been explored, precisely because for most of its course it flows underground – partly because in the constantly changing relations between the States and Churches of Europe it is much easier to see the numerous attempts by the Churches to meddle in matters of State, and vice versa, just like the frequent occasions on which Christian ideals have been abandoned, though officially proclaimed, in the quest for power, or on which governments and religious authorities have clashed, sometimes violently.

11.6 Moreover, with the benefit of hindsight, it is easy to identify in the constant central core of Christian faith, despite the inquisition, despite anti-Semitism and despite the crusades, the principles of human dignity, tolerance and freedom, including religious freedom, and therefore, in the last analysis, the foundations of the secular State.

11.7 By studying history carefully, from a suitable distance, not from up close, we can clearly perceive an affinity between (but not the identity of) the "hard core" of Christianity, which, placing charity above everything else, including faith, emphasises the acceptance of difference, and the "hard core" of the republican Constitution, which, in a spirit of solidarity, attaches value to the freedom of all, and therefore constitutes the legal guarantee of respect for others. The harmony remains, even though around those cores – both centred on human dignity – there have been numerous accretions of extraneous elements with the passage of time, some of them so thick as to obscure the core, particularly the core of Christianity. ...

11.9 It can therefore be contended that in the present-day social reality the crucifix should be regarded not only as a symbol of a historical and cultural development, and therefore of the identity of our people, but also as a symbol of a value system: liberty, equality, human dignity and religious toleration, and accordingly also of the secular nature of the State – principles which underpin our Constitution.

In other words, the constitutional principles of freedom have many roots, which undeniably include Christianity, in its very essence. It would therefore be something of a paradox to exclude a Christian sign from a public institution in the name of secularism, one of whose distant sources is precisely the Christian religion.

12.1 This court is admittedly not unaware of the fact that, in the past, other values have been attributed to the symbol of the crucifix, such as, at the time of the Albertine Statute, the sign of Catholicism understood as the State religion, and therefore used to Christianise and consolidate power and authority.

The court is well aware, moreover, that it is still possible today to give various interpretations of the sign of the cross, and above all a strictly religious meaning referring to Christianity in general and Catholicism in particular. It is also aware that some pupils attending State schools might freely and legitimately attribute to the cross values which are different again, such as the sign of an unacceptable preference for one religion in relation to others, or an infringement of individual freedom and accordingly of the secular nature of the State, or at the extreme limit a reference to temporal political control over a State religion, or the inquisition, or even a free catechism voucher tacitly distributed even to non-believers in an inappropriate place, or subliminal propaganda in favour of Christian creeds. Although all those points of view are respectable, they are ultimately irrelevant in the present case. ...

12.6 It must be emphasised that the symbol of the crucifix, thus understood, now possesses, through its references to the values of tolerance, a particular scope in

consideration of the fact that at present Italian State schools are attended by numerous pupils from outside the European Union, to whom it is relatively important to transmit the principles of openness to diversity and the refusal of any form of fundamentalism – whether religious or secular – which permeate our system. Our era is marked by the ferment resulting from the meeting of different cultures with our own, and to prevent that meeting from turning into a collision it is indispensable to reaffirm our identity, even symbolically, especially as it is characterised precisely by the values of respect for the dignity of each human being and of universal solidarity. ...

13.2 In fact, religious symbols in general imply a logical exclusion mechanism, as the point of departure of any religious faith is precisely the belief in a superior entity, which is why its adherents, the faithful, see themselves by definition and by conviction as part of the truth. Consequently, and inevitably, the attitude of the believer, faced with someone who does not believe, and who is therefore implicitly opposed to the supreme being, is an attitude of exclusion. ...

13.3 The logical mechanism of exclusion of the unbeliever is inherent in any religious conviction, even if those concerned are not aware of it, the sole exception being Christianity – where it is properly understood, which of course has not always been and still is not always the case, not even thanks to those who call themselves Christian. In Christianity even the faith in an omniscient god is secondary in relation to charity, meaning respect for one's fellow human beings. It follows that the rejection of a non-Christian by a Christian implies a radical negation of Christianity itself, a substantive abjuration; but that is not true of other religious faiths, for which such an attitude amounts at most to the infringement of an important precept.

13.4 The cross, as the symbol of Christianity, can therefore not exclude anyone without denying itself; it even constitutes in a sense the universal sign of the acceptance of and respect for every human being as such, irrespective of any belief, religious or other, which he or she may hold. ...

14.1 It is hardly necessary to add that the sign of the cross in a classroom, when correctly understood, is not concerned with the freely held convictions of anyone, excludes no one and of course does not impose or prescribe anything, but merely implies, in the heart of the aims set for education and teaching in a publicly run school, a reflection – necessarily guided by the teaching staff – on Italian history and the common values of our society legally retranscribed in the Constitution, among which the secular nature of the State has pride of place. ..."

16. The first applicant appealed to the *Consiglio di Stato* (Supreme Administrative Court), which confirmed that the presence of crucifixes in State-school classrooms had its legal basis in Article 118 of the royal decree of 30 April 1924 and Article 119 of the royal decree of 26 April 1928 and, regard being had to the meaning that should be attached to it, was compatible with the principle of secularism. On that point it found in particular that in Italy the crucifix symbolised the religious origin of values (tolerance, mutual respect, valorisation of the person, affirmation of one's rights, consideration for one's freedom, the autonomy of one's moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination) which characterised Italian civilisation. In that sense, when displayed in classrooms, the crucifix could fulfil – even in a "secular"

perspective distinct from the religious perspective to which it specifically referred – a highly educational symbolic function, irrespective of the religion professed by the pupils. The *Consiglio di Stato* held that the crucifix had to be seen as a symbol capable of reflecting the remarkable sources of the above-mentioned values, the values which defined secularism in the State's present legal order.

In its judgment (no. 556) dated 13 April 2006 the *Consiglio di Stato* gave the following reasoning:

> "... the Constitutional Court has accepted on a number of occasions that secularism is a supreme principle of our constitutional order, capable of resolving certain questions of constitutional legitimacy (among numerous judgments, see those which concern the provisions relating to the compulsory nature of religious teaching in school or the jurisdiction of the courts over cases concerning the validity of marriages contracted according to canon law and recorded in the registers of marriages).
>
> This is a principle which is not proclaimed in express terms in our Constitution, a principle which is rich with ideological resonances and has a history full of controversy, but one nevertheless which has a legal importance that can be deduced from the fundamental norms of our system. In reality the Court derives this principle specifically from Articles 2, 3, 7, 8, 19 and 20 of the Constitution.
>
> The principle uses a linguistic symbol ("secularism") which indicates in abridged form certain significant aspects of the above-mentioned provisions, the content of which established the operating conditions under which this symbol should be understood and function. If these specific operating conditions had not been established, the principle of "secularism" would remain confined to ideological conflicts and could be used only with difficulty in a legal framework.
>
> In that framework, the operating conditions are of course determined by reference to the cultural traditions and the customs of each people, in so far as these traditions and customs are reflected in the legal order, and this differs from one nation to another. ...
>
> In the context of this court and the problem placed before it, namely the legitimacy of displaying the crucifix in classrooms, on the part of the competent authorities acting pursuant to the regulations, what has to be done in practice is the simpler task of verifying whether that requirement does or does not infringe the content of the fundamental norms of our constitutional order, that give form and substance to the principle of "secularism" which now characterises the Italian State and to which the Constitutional Court has referred on a number of occasions.
>
> Quite clearly, the crucifix is in itself a symbol that may have various meanings and serve various purposes, above all for the place in which it has been displayed.
>
> In a place of worship the crucifix is properly and exclusively a "religious symbol", since it is intended to foster respectful adherence to the founder of the Christian religion.
>
> In a non-religious context like a school, used for the education of young people, the crucifix may still convey the above-mentioned values to believers, but for them and for non-believers its display is justified and possesses a non-discriminatory meaning from the religious point of view if it is capable of representing and evoking

synthetically and in an immediately perceptible and foreseeable manner (like any symbol) values which are important for civil society, in particular the values which underpin and inspire our constitutional order, the foundation of our civil life. In that sense the crucifix can perform – even in a "secular" perspective distinct from the religious perspective specific to it – a highly educational symbolic function, irrespective of the religion professed by the pupils.

Now it is obvious that in Italy the crucifix is capable of expressing, symbolically of course, but appropriately, the religious origin of those values – tolerance, mutual respect, valorisation of the person, affirmation of one's rights, consideration for one's freedom, the autonomy of one's moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination – which characterise Italian civilisation.

Those values, which have pervaded traditions, a way of life, the culture of the Italian people, form the basis for and spring from the fundamental norms of our founding charter – contained in the "Fundamental Principles" and the first part – and especially from those which the Constitutional Court referred to and which delimit the form of secularism appropriate to the Italian State.

The reference, via the crucifix, to the religious origin of these values and their full and complete correspondence with Christian teachings accordingly makes plain the transcendent sources of the values concerned, without calling into question, rather indeed confirming the autonomy of the temporal power vis-à-vis the spiritual power (but not their opposition, implicit in an ideological interpretation of secularism which has no equivalent in the Constitution), and without taking anything away from their particular "secular" nature, adapted to the cultural context specific to the fundamental order of the Italian State and manifested by it. Those values are therefore experienced in civil society autonomously (and not contradictorily) in relation to religious society, so that they may be endorsed "secularly" by all, irrespective of adhesion to the creed which inspired and defended them.

As with any symbol, one can impose on or attribute to the crucifix various contrasting meanings; one can even deny its symbolic value and make it a simple trinket having artistic value at the most. However, a crucifix displayed in a classroom cannot be considered a trinket, a decorative feature, nor as an adjunct to worship. Rather, it should be seen as a symbol capable of reflecting the remarkable sources of the civil values referred to above, values which define secularism in the State's present legal order. ..."

## II. DEVELOPMENT OF THE RELEVANT DOMESTIC LAW AND PRACTICE

17. The obligation to hang crucifixes in primary school classrooms was laid down in Article 140 of royal decree no. 4336 of 15 September 1860 of the Kingdom of Piedmont-Sardinia, promulgated in accordance with Law no. 3725 of 13 November 1859, which provided: "each school must without fail be equipped with ... a crucifix" (Article 140).

In 1861, the year which saw the birth of the Italian State, the 1848 Statute of the Kingdom of Piedmont-Sardinia became the Constitution of

the Kingdom of Italy; it provided in particular: "the Roman Catholic Apostolic religion shall be the only religion of the State [and] other existing creeds shall be tolerated in conformity with the law".

18. The capture of Rome by the Italian army on 20 September 1870, following which the city was annexed and proclaimed capital of the new Kingdom of Italy, caused a crisis in relations between the State and the Catholic Church. By Law no. 214 of 13 May 1871 the Italian State unilaterally regulated relations with the Church, granting the Pope a number of privileges for the orderly conduct of religious activity. According to the applicants, the display of crucifixes in schools fell little by little into disuse.

19. During the fascist period the State took a series of measures aimed at ensuring compliance with the obligation to display the crucifix in classrooms.

For instance, on 22 November 1922 the Ministry of Education sent out a circular (no. 68) with the following wording: "... in the last few years in many of the Kingdom's primary schools the image of Christ and the portrait of the King have been removed. That is a manifest and intolerable breach of the regulations and especially an attack on the dominant religion of the State and the unity of the Nation. We therefore order all municipal administrative authorities in the Kingdom to restore, to those schools which lack them, the two sacred symbols of the faith and the consciousness of nationhood."

On 30 April 1924 royal decree no. 965 of 30 April 1924 was adopted. This decree laid down the internal regulations governing middle schools (*ordinamento interno delle giunte e dei regi istituti di istruzione media*). Article 118 provided:

> "Each school must have the national flag and each classroom must have a crucifix and a portrait of the King".

Article 119 of royal decree no. 1297 of 26 April 1928, approving the general regulations governing the provision of primary education (*approvazione del regolamento generale sui servizi dell'istruzione elementare*), provides that the crucifix must form part of the "necessary equipment and supplies in school classrooms".

20. The Lateran Pacts, signed on 11 February 1929, marked the "Conciliation" of the Italian State and the Catholic Church. Catholicism was confirmed as Italy's official religion, Article 1 of the Conciliation Treaty being worded as follows:

> "Italy recognizes and reaffirms the principle established in the first Article of the Italian Constitution dated March 4 1848, according to which the Roman Catholic Apostolic religion is the only State religion."

21. In 1948 Italy adopted its republican Constitution, Article 7 of which provides: "The State and the Catholic Church, each in its own order, shall be independent and sovereign ... their relations shall be regulated by the Lateran Pacts [and] amendments to the Pacts accepted by both parties shall

not require proceedings to revise the Constitution." Article 8 provides: "All religious creeds shall be equally free before the law ... religious creeds other than Catholicism shall have the right to organise in accordance with their own statutes, in so far as these are not incompatible with the Italian legal order [and] their relations with the State shall be determined by the law on the basis of agreements with their respective representatives".

22. The Protocol to the new concordat, of 18 February 1984, ratified by Law no. 121 of 25 March 1985, states that the principle laid down in the Lateran Pacts, that the Catholic religion is the only State religion, is no longer in force.

23. In a judgment of 12 April 1989 (no. 203), rendered in a case which raised the question of the non-compulsory nature of Catholic religious instruction in State schools, the Constitutional Court held that the principle of secularism was derived from the Constitution, ruling that it implied not that the State should be indifferent to religions but that it should guarantee the protection of the freedom of religion in a context of confessional and cultural pluralism.

Dealing in the present case with an application concerning the conformity of the presence of crucifixes in State-school classrooms with the principle of secularism, the Constitutional Court ruled that it did not have jurisdiction, since the texts which required the presence of the crucifix were only regulations (decision of 15 December 2004, no. 389; see paragraph 14 above). When called upon to examine this question, the *Consiglio di Stato* held that, regard being had to the meaning that should be attached to it, the presence of the crucifix in State-school classrooms was compatible with the principle of secularism (judgment of 13 February 2006, no. 556; see paragraph 16 above).

In a different case, the Court of Cassation had taken the contrary view to that of the *Consiglio di Stato* in the context of a prosecution for refusing to serve as a scrutineer in a polling station on the ground that a crucifix was displayed there. In its judgment of 1 March 2000 (no. 439), it held that the presence of the crucifix infringed the principles of secularism and the impartiality of the State, and the principle of the freedom of conscience of those who did not accept any allegiance to that symbol. It expressly rejected the argument that displaying the crucifix was justified in that it was the symbol of "an entire civilisation or the collective ethical conscience" and – here the Court of Cassation cited the terms used by the *Consiglio di Stato* in an opinion of 27 April 1988 (no. 63) – also symbolised "a universal value independent of any specific religious creed".

24. On 3 October 2002 the Minister of Education, Universities and Research issued the following instruction (no. 2666):

> "... The Minister

... Considering that the presence of crucifixes in classrooms is founded on the provisions in force, that it offends neither against religious pluralism nor against the objectives of multicultural education of Italian schools and that it cannot be considered a limitation of the freedom of conscience guaranteed by the Constitution, since it does not refer to a specific creed but constitutes only an expression of Christian civilisation and culture, and that it therefore forms part of the universal heritage of mankind;

Having assessed, with respect for different allegiances, convictions and beliefs, the desirability of requiring all schools, within the limits of their own autonomy and by decision of their competent collegiate organs, to set aside part of their premises to be used, without any obligation and without any fixed hours being appointed, for contemplation and meditation by those members of the school community who so wish;

Issues the following instruction:

The Ministry's competent service ... shall take the necessary measures to see to it that:

1) school governors ensure the presence of crucifixes in classrooms;

2) all schools, within the limits of their own autonomy, and by decision of the members of their collegiate organs, set aside part of their premises to be used, without any obligation and without any fixed hours being appointed, for contemplation and meditation by those members of the school community who so wish ...".

25. Articles 19, 33 and 34 of the Constitution are worded as follows:

**Article 19**

"Everyone is entitled to freely profess their religious beliefs in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided that they are not offensive to public morality."

**Article 33**

"The Republic guarantees the freedom of the arts and sciences, which may be freely taught.

The Republic lays down general rules for education and establishes State schools of all branches and grades. ..."

**Article 34**

"Schools are open to everyone.

Elementary education, given for at least eight years, is compulsory and free. ..."

## III. OVERVIEW OF LAW AND PRACTICE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE WITH REGARD TO THE PRESENCE OF RELIGIOUS SYMBOLS IN STATE SCHOOLS

26. In the great majority of member States of the Council of Europe the question of the presence of religious symbols in State schools is not governed by any specific regulations.

27. The presence of religious symbols in State schools is expressly forbidden only in a small number of member States: the former Yugoslav Republic of Macedonia, France (except in Alsace and the *département* of Moselle) and Georgia.

It is only expressly prescribed – in addition to Italy – in a few member States, namely: Austria, certain administrative regions of Germany (*Länder*) and Switzerland (*communes*), and Poland. Nevertheless, such symbols are found in the State schools of some member States where the question is not specifically regulated, such as Spain, Greece, Ireland, Malta, San Marino and Romania.

28. The question has been brought before the supreme courts of a number of member States.

In Switzerland the Federal Court has held a communal ordinance prescribing the presence of crucifixes in primary school classrooms to be incompatible with the requirements of confessional neutrality enshrined in the Federal Constitution, but without criticising such a presence in other parts of the school premises (26 September 1990; ATF 116 1a 252).

In Germany the Federal Constitutional Court has ruled that a similar Bavarian ordinance was contrary to the principle of the State's neutrality and difficult to reconcile with the freedom of religion of children who were not Catholics (16 May 1995; BVerfGE 93,1). The Bavarian parliament then issued a new ordinance maintaining the previous measure, but enabling parents to cite their religious or secular convictions in challenging the presence of crucifixes in the classrooms attended by their children and introducing a mechanism whereby, if necessary, a compromise or a personalised solution could be reached.

In Poland the Ombudsman referred to the Constitutional Court an ordinance of 14 April 1992 issued by the Minister of Education prescribing in particular the possibility of displaying crucifixes in State-school classrooms. The Constitutional Court ruled that the measure was compatible with the freedom of conscience and religion and the principle of the separation of Church and State guaranteed by Article 82 of the Constitution, given that it did not make such display compulsory (20 April 1993; no. U 12/32).

In Romania the Supreme Court set aside a decision of the National Council for the Prevention of Discrimination of 21 November 2006 recommending to the Ministry of Education that it should regulate the

question of the presence of religious symbols in publicly run educational establishments and, in particular, authorise the display of such symbols only during religious studies lessons or in rooms used for religious instruction. The Supreme Court held in particular that the decision to display such symbols in educational establishments should be a matter for the community formed by teachers, pupils and pupils' parents (11 June 2008; no. 2393).

In Spain the High Court of Justice of Castile and Leon, ruling in a case brought by an association militating in favour of secular schooling which had unsuccessfully requested the removal of religious symbols from schools, held that the schools concerned should remove them if they received an explicit request from the parents of a pupil (14 December 2009; no. 3250).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 AND ARTICLE 9 OF THE CONVENTION

29. The applicants complained of the fact that crucifixes were affixed to the wall in the classrooms of the State school attended by the second and third applicants. They argued that this infringed the right to education, guaranteed by Article 2 of Protocol No. 1 in the following terms:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

They also contended that these facts infringed their right to the freedom of thought, conscience and religion enshrined in Article 9 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

### A. The Chamber's judgment

30. In its judgment of 3 November 2009 the Chamber held that there had been a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention.

31. First of all, the Chamber derived from the principles relating to the interpretation of Article 2 of Protocol No. 1 established in the Court's case-law an obligation on the State to refrain from imposing beliefs, even indirectly, in places where persons were dependent on it or in places where they were particularly vulnerable, emphasising that the schooling of children was a particularly sensitive area in that respect.

The Court went on to say that among the plurality of meanings the crucifix might have the religious meaning was predominant. It accordingly considered that the compulsory and highly visible presence of crucifixes in classrooms was capable not only of clashing with the secular convictions of the first applicant, whose children attended at that time a State school, but also of being emotionally disturbing for pupils of non-Christian religions or those who professed no religion. On that last point, the Chamber emphasised that the "negative" freedom of religion was not limited to the absence of religious services or religious education: it extended to practices and symbols expressing, in particular or in general, a belief, a religion or atheism. It added that this "negative right" deserved special protection if it was the State which expressed a belief and dissenters were placed in a situation from which they could not extract themselves if not by making disproportionate efforts and sacrifices.

According to the Chamber, the State had a duty to uphold confessional neutrality in public education, where school attendance was compulsory regardless of religion, and which had to seek to inculcate in pupils the habit of critical thought. It observed in addition that it could not see how the display in State-school classrooms of a symbol that it was reasonable to associate with the majority religion in Italy could serve the educational pluralism which was essential for the preservation of "democratic society" within the Convention meaning of that term.

32. The Chamber concluded that "the compulsory display of a symbol of a particular faith in the exercise of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restrict[ed] the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe". The practice infringed those rights because "the restrictions [were] incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education" (§ 57 of the judgment).

## B. Arguments of the parties

### *1. The Government*

33. The Government did not raise an objection of inadmissibility.

34. They regretted that the Chamber had not had available to it a comparative law study of relations between the State and religions and on the question of the display of religious symbols in State schools. They asserted that the Chamber had thus deprived itself of an essential element, since such a study would have shown that there was no common approach in Europe in these fields, and would accordingly have led it to the finding that the member States had a particularly wide margin of appreciation; consequently, the Chamber, in its judgment, had failed to take that margin of appreciation into consideration, thus ignoring one fundamental aspect of the problem.

35. The Government also criticised the Chamber's judgment for deriving from the concept of confessional "neutrality" a principle excluding any relations between the State and a particular religion, whereas neutrality required the public administrative authorities to take all religions into account. The judgment was accordingly based on confusion between "neutrality" (an "inclusive concept") and "secularism (an "exclusive concept"). Moreover, in the Government's view, neutrality meant that States should refrain from promoting not only a particular religion but also atheism, "secularism" on the State's part being no less problematic than proselytising by the State. The Chamber's judgment was thus based on a misunderstanding and amounted to favouring an irreligious or antireligious approach of which the applicant, as a member of the Union of atheists and rationalist agnostics, was asserted to be a militant supporter.

36. The Government went on to argue that it was necessary to take account of the fact that a single symbol could be interpreted differently from one person to another. That applied in particular to the sign of the cross, which could be perceived not only as a religious symbol, but also as a cultural and identity-linked symbol, the symbol of the principles and values which formed the basis of democracy and western civilisation; it appeared, for instance, on the flags of a number of European countries. Whatever the evocative power of an "image" might be, in the Government's view, it was a "passive symbol", whose impact on individuals was not comparable with the impact of "active conduct", and no one had asserted in the present case that the content of the teaching provided in Italy was influenced by the presence of crucifixes in classrooms.

That presence was the expression of a "national particularity", characterised notably by close relations between the State, the people and Catholicism attributable to the historical, cultural and territorial development of Italy and to a deeply rooted and long-standing attachment to

the values of Catholicism. Keeping crucifixes in schools was therefore a matter of preserving a centuries-old tradition. The Government argued that the right of parents to respect for their "family culture" ought not to infringe the community's right to transmit its culture or the right of children to discover it. Moreover, by contenting itself with a "potential risk" of emotional disturbance in finding a breach of the rights to education and freedom of thought, conscience and religion, the Chamber had considerably widened the scope of those provisions.

37. Referring in particular to the *Otto-Preminger-Institut v. Austria* judgment of 20 September 1994 (Series A no. 295-A), the Government contended that, although account should be taken of the fact that the Catholic religion was that of a large majority of Italians, this was not in order to make that fact into an aggravating circumstance, as the Chamber had done. On the contrary, the Court should acknowledge and protect national traditions and the prevailing popular feeling, and leave each State to maintain a balance between opposing interests. Moreover, it was the Court's case-law that school curricula or provisions establishing the preponderance of the majority religion did not in themselves point to undue influence on the part of the State or attempted indoctrination, and that the Court should respect constitutional traditions and principles relating to relations between the State and religions – including in the present case the particular approach to secularism which prevailed in Italy – and take into account the context of each State.

38. Considering in addition that the second sentence of Article 2 of Protocol No. 1 was applicable only to school curricula, the Government criticised the Chamber's judgment for the finding of a violation without any indication of how the mere presence of a crucifix in the classrooms where the first applicant's children were taught was capable of substantially reducing her ability to bring them up in conformity with her convictions, the only reason given being that pupils would feel that they were being educated in a school environment marked by a particular religion. That reason was erroneous when judged by the yardstick of the Court's case-law, from which it could be seen in particular, firstly that the Convention did not prevent member States from having a State religion, or from showing a preference for a particular religion, or from providing pupils with more extensive religious teaching in relation to the dominant religion, and secondly that account had to be taken of the fact that the educational influence of parents was much greater than the school's.

39. In the Government's view, the presence of crucifixes in classrooms made a legitimate contribution to enabling children to understand the national community in which they were expected to integrate. An "environmental influence" was all the more improbable because children in Italy received an education which helped them to develop a critical outlook on the question of religion, in a dispassionate atmosphere from which any

form of proselytising was excluded. Moreover, Italy had opted for a benevolent approach to minority religions in the school environment: Italian law currently conferred the right to wear Islamic headscarves and other apparel or symbols with a religious connotation; the beginning and end of Ramadan were often celebrated in schools; religious instruction was permitted for all recognised creeds; and the needs of pupils belonging to minority faiths were taken into account, with Jewish pupils, for example, being entitled not to sit examinations on Saturdays.

40. Lastly, the Government emphasised the need to take into account the right of parents who wanted crucifixes to be kept in classrooms. That was the wish of the majority in Italy and was also the wish democratically expressed in the present case by almost all the members of the school's governing body. Removing crucifixes from classrooms in such circumstances would amount to “abuse of a minority position” and would be in contradiction with the State's duty to help individuals satisfy their religious needs.

*2. The applicants*

41. The applicants submitted that the display of crucifixes in the classrooms of the State school attended by the second and third applicants constituted an illegitimate interference with their right to the freedom of thought and conscience and infringed the principle of educational pluralism in that it was the expression of the State's preference for a particular religion in a place where conscience was formed. By expressing that preference the State was also disregarding its obligation to give special protection to minors against any form of propaganda or indoctrination. Moreover, according to the applicants, since the educational environment was thus marked by a symbol of the dominant religion, the display of the crucifix which they complained of infringed the second and third applicants' right to receive an open and pluralistic education aimed at the development of a capacity for critical judgement. Lastly, as the first applicant was in favour of secularism, it infringed her right to have her children educated in conformity with her own philosophical convictions.

42. The applicants argued that the crucifix was without a shadow of a doubt a religious symbol and trying to attribute a cultural value to it savoured of an attempt to maintain a hopeless last-ditch defence. Nor did anything in the Italian legal system justify the assertion that it was a symbol of national identity: according to the Constitution, it was the flag which symbolised that identity.

Moreover, as the German Federal Constitutional Court had pointed out in its judgment of 16 May 1995 (see paragraph 28 above), giving the crucifix a profane meaning would move it away from its original meaning and help divest it of its sacred nature. As to the assertion that it was merely a “passive symbol”, this ignored the fact that like all symbols – and more than all

others – it gave material form to a cognitive, intuitive and emotional reality which went beyond the immediately perceptible. The German Federal Constitutional Court had, moreover, made that finding, holding in the judgment cited above that the presence of crucifixes in classrooms had an evocative character in that it represented the content of the faith it symbolised and served as "publicity material" for it. Lastly, the applicants pointed out that in the *Dahlab v. Switzerland* decision of 15 February 2001 (no. 42393/98, ECHR 2001-V), the Court had noted the particular power that religious symbols exerted in the school environment.

43. The applicants contended that every democratic State had a duty to guarantee the freedom of conscience, pluralism, equal treatment of beliefs and the secular nature of institutions. The principle of secularism required above all neutrality on the part of the State, which should keep out of the religious sphere and adopt the same attitude with regard to all religious currents. In other words, neutrality obliged the State to establish a neutral space within which everyone could freely live according to his own beliefs. By imposing religious symbols, namely crucifixes, in classrooms, the Italian State was doing the opposite.

44. The approach advocated by the applicants was thus clearly distinct from State atheism, which amounted to denying the freedom of religion by imposing a secular viewpoint in an authoritarian manner. Seen in terms of the State's impartiality and neutrality, secularism was on the contrary a means of securing the religious and philosophical freedom of conscience of all.

45. The applicants further contended that it was essential to give special protection to minority beliefs and convictions, in order to preserve those who held them from a "despotism of the majority", and that too was a reason for removing crucifixes from classrooms.

46. In conclusion, the applicants argued that although, as the Government maintained, removing crucifixes from State-school classrooms would take away part of Italian cultural identity, keeping them there was incompatible with the foundations of western political thought, the principles of the liberal State and a pluralist, open democracy, and respect for the individual rights and freedoms enshrined in the Italian Constitution and the Convention.

### C. Submissions of the third-party interveners

#### *1. The Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta and the Republic of San Marino*

47. In their joint observations submitted at the hearing, the Governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania,

Malta and the Republic of San Marino indicated that in their view the Chamber's reasoning had been based on a misunderstanding of the concept of "neutrality", which the Chamber had confused with "secularism". They pointed out that there was a huge diversity of Church-State arrangements in Europe and that more than half the population of Europe lived in non-secular States. They added that State symbols inevitably had a place in state education and that many of these had a religious origin, the Cross – which was both a national and a religious symbol – being the most visible example. In their view, in non-secular European States the presence of religious symbols in the public space was widely tolerated by the secular population as part of national identity. States should not have to divest themselves of part of their cultural identity simply because that identity was of religious origin. The position adopted by the Chamber was not an expression of the pluralism manifest in the Convention system, but an expression of the values of a secular State. To extend it to the whole of Europe would represent the "Americanisation" of Europe in that a single and unique rule and a rigid separation of Church and State would be binding on everyone.

In their submission, favouring secularism was a political position that, whilst respectable, was not neutral. Accordingly, in the educational sphere a State that supported the secular as opposed to the religious was not being neutral. Similarly, removing crucifixes from classrooms where they had always been would not be devoid of educational consequences. In reality, whether the State opted to allow or prohibit the presence of crucifixes in classrooms, the important factor was the degree to which the curriculum contextualised and taught children tolerance and pluralism.

The intervening Governments acknowledged that there might be circumstances where the arrangements by the State were unacceptable. The burden of proof should remain on the individual, however, and the Court should intervene only in extreme cases.

*2. The Government of the Principality of Monaco*

48. The intervening Government declared that they shared the viewpoint of the respondent Government according to which the crucifix was a "passive symbol" that was found on the coats of arms and flags of many States and in the instant case reflected a national identity rooted in history. Furthermore, being indivisible, the principle of State neutrality required the authorities to refrain from imposing a religious symbol where there had never been one and from withdrawing one that had always been there.

*3. The Government of Romania*

49. The intervening Government submitted that the Chamber had taken insufficient account of the wide margin of appreciation available to the

Contracting States where sensitive issues were involved and that there was no European-wide consensus. They pointed out that the Court's case-law recognised in particular that the States enjoyed a wide margin of appreciation regarding the wearing of religious symbols in State schools; in their submission, the same should apply to the display of religious symbols in such schools. They also pointed out that the Chamber judgment had been based on the premise that the display of religious symbols in State schools breached Article 9 of the Convention and Article 2 of Protocol No. 1, which conflicted with the principle of neutrality because, where applicable, Contracting States were compelled to intervene with a view to removing those symbols. In their view, that principle was better served where decisions of this type were taken jointly by teachers, pupils and parents. In any event, as it was not associated with particular religious obligations, the presence of the crucifix in classrooms did not sufficiently affect the religious feelings of those concerned for there to be a violation of the aforementioned provisions.

*4. The non-governmental organisation Greek Helsinki Monitor*

50. According to the intervening organisation, the crucifix could not be perceived as anything other than a religious symbol, so that displaying it in State-school classrooms could be seen as an institutional message advocating a particular religion. It pointed out that in the case of *Folgerø* the Court had held that the participation of pupils in religious activities could in fact influence them, and considered that the same was true where they were taught in classrooms where a religious symbol was displayed. It also drew the Court's attention to the fact that children or parents who were bothered by this might refrain from protesting for fear of reprisals.

*5. The non-governmental organisation* Associazione nazionale del libero Pensiero

51. The intervening organisation, which considered that the presence of religious symbols in State-school classrooms was incompatible with Article 9 of the Convention and Article 2 of Protocol No. 1, submitted that the restrictions imposed on the applicants' rights were not “prescribed by law” within the meaning of the Court's case-law. It pointed out in that connection that displaying the crucifix in State-school classrooms was prescribed not by law but by regulations adopted during the fascist era. It added that those regulations had in any event been implicitly repealed by the Constitution of 1947 and the Law of 1985 ratifying the agreements amending the Lateran Pacts of 1929. It pointed out that the Criminal Division of the Court of Cassation had ruled accordingly in a judgment of 1 March 2000 (no. 4273) in a similar case relating to crucifixes displayed in polling stations and that it had confirmed that approach in a judgment of 17 February 2009

concerning crucifixes displayed in courtrooms (without, however, ruling on the merits). There was therefore a conflict of case-law between the *Consiglio di Stato* – which, on the contrary, held that the relevant regulations were applicable – and the Court of Cassation that affected the principle of legal security, which was the pillar of a State governed by the rule of law. As the Constitutional Court had declined jurisdiction, there was no mechanism in Italy whereby this conflict could be resolved.

*6. The non-governmental organisation European Centre for Law and Justice*

52. The intervening organisation submitted that the Chamber had wrongly addressed the question raised by the case, which was whether the Convention rights invoked by the first applicant had been violated merely on account of the presence of the crucifix in classrooms. Its view was that they had not. Firstly, the "personal convictions" of the first applicant's children had not been violated because they had neither been compelled to act against their conscience nor prevented from acting according to their conscience. Secondly, their "innermost convictions" and the first applicant's right to ensure their education in conformity with her own philosophical convictions had not been violated because her children had neither been forced to believe nor prevented from not believing. They had not been indoctrinated; nor had they been the subject of misplaced proselytism. The intervening organisation submitted that the Chamber had been mistaken in holding that a State's decision to display crucifixes in classrooms was contrary to the Convention (which was not the question that had been submitted to it). In doing so, the Chamber had created "a new obligation relating not to the first applicant's rights, but to the nature of the "educational environment". In the intervening organisation's submission, it was because it had been unable to establish that the first applicant's children's "innermost or personal convictions" had been violated on account of the presence of the crucifix in the classrooms that the Chamber had created a new obligation to ensure that the educational environment was entirely secular, thus exceeding the scope of the application and the limits of its jurisdiction.

*7. The non-governmental organisation Eurojuris*

53. The intervening organisation agreed with the Chamber's conclusions. After reiterating the relevant provisions of Italian positive law – and underscoring the constitutional value of the principle of secularism – it referred to the principle established in the Court's case-law to the effect that school should not be a place for proselytism or preaching. It also referred to cases in which the Court had examined the question of the wearing of Islamic veils in educational establishments. It went on to point out that the

presence of crucifixes in Italian State-school classrooms had been prescribed not by law but by regulations inherited from the fascist era which reflected a confessional conception of the State today that was incompatible with the principle of secularism laid down in positive constitutional law. It firmly rejected the reasoning of the Italian Administrative Court, according to which prescribing the presence of crucifixes in State-school classrooms was still compatible with that principle because they symbolised secular values. In its submission, it was a religious symbol with which non-Christians did not identify. Moreover, by obliging schools to display it in State-school classrooms the State conferred a particular dimension on a given religion, to the detriment of pluralism.

*8. The non-governmental organisations International Commission of Jurists, Interights and Human Rights Watch*

54. The intervening organisations submitted that the compulsory display of religious symbols such as the crucifix in State-school classrooms was incompatible with the principle of neutrality and the rights guaranteed to pupils and their parents under Article 9 of the Convention and Article 2 of Protocol No. 1. In their submission, educational pluralism was an established principle, upheld not only in the Court's case-law but also in the case-law of a number of supreme courts and in various international instruments. Furthermore, the Court's case-law supported a duty of State neutrality and impartiality as among religious beliefs in the provision of public services, including education. They pointed out that this principle of impartiality was recognised not only by the Italian, Spanish and German Constitutional Courts but also, in particular, by the French *Conseil d'Eta*t and the Swiss Federal Court. They added that, as several supreme courts had held, State neutrality as among religious beliefs was particularly important in the classroom because, school being compulsory, children were vulnerable to indoctrination at school. They went on to reiterate the Court's finding that, although the Convention did not prevent States from imparting through teaching or education information or knowledge of a religious or philosophical kind, they had to ensure that this was done in an objective, critical and pluralistic manner, and free of any indoctrination. They stressed that the same applied to all functions carried out in the area of education and teaching, including the organisation of the school environment.

*9. The non-governmental organisations* Zentralkomitee der deutschen katholiken, Semaines sociales de France *and* Associazioni cristiane lavoratori italiani

55. The intervening organisations stated that they agreed with the Chamber that, whilst the crucifix had a plural meaning, it was primarily the central symbol of Christianity. They added, however, that they disagreed

with its conclusion, and found it difficult to understand how the presence of crucifixes in classrooms could be "emotionally disturbing" for some pupils or hinder the development of their critical thinking. In their submission, that presence alone could not be equated with a religious or philosophical message; it should rather be interpreted as a passive way of conveying basic moral values. The question accordingly had to be regarded as one that fell within the competence of the State when deciding on the curriculum in schools; parents had to accept that certain aspects of State-school education could not be entirely in keeping with their convictions. They added that a State's decision to display crucifixes in State-school classrooms did not mean that it pursued an aim of indoctrination prohibited by Article 2 of Protocol No. 1. They maintained that a balance had to be found in the present case between the rights and interests of believers and non-believers, between the fundamental rights of individuals and the legitimate interests of society, and between the formulation of standards relating to fundamental rights and maintaining the diversity existing in Europe. In their submission, the Court should leave a wide margin of appreciation to the States in this area because the organisation of the relationship between the State and religion varied from one country to another and – in particular regarding the place of religion in State schools – was deeply rooted in the history, tradition and culture of a country.

*10. Thirty-three members of the European Parliament acting collectively*

56. The interveners pointed out that the Court was not a constitutional court and had to respect the principle of subsidiarity and recognise a particularly broad margin of appreciation in favour of Contracting States not only regarding the relationship between the State and religion but also where they carried out their functions in the area of education and teaching. In their view, by taking a decision whose effect would be to make it compulsory to remove religious symbols from State schools, the Grand Chamber would be sending a radical ideological message. They added that it was clear from the Court's case-law that a State which, for reasons deriving from its history or its tradition, showed a preference for a particular religion did not exceed that margin. Accordingly, in their opinion, the display of crucifixes in public buildings did not conflict with the Convention, and the presence of religious symbols in the public space should not be seen as a form of indoctrination but the expression of a cultural unity and identity. They added that in this specific context religious symbols had a secular dimension and should therefore not be removed.

## D. The Court's assessment

57. In the first place, the Court observes that the only question before it concerns the compatibility, in the light of the circumstances of the case, of the presence of crucifixes in Italian State-school classrooms with the requirements of Article 2 of Protocol No. 1 and Article 9 of the Convention.

Thus it is not required in this case to examine the question of the presence of crucifixes in places other than State schools. Nor is it for the Court to rule on the compatibility of the presence of crucifixes in State-school classrooms with the principle of secularism as enshrined in Italian law.

58. Secondly, the Court emphasises that the supporters of secularism are able to lay claim to views attaining the "level of cogency, seriousness, cohesion and importance" required for them to be considered "convictions" within the meaning of Articles 9 of the Convention and 2 of Protocol No. 1 (see *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 36, Series A no. 48). More precisely, their views must be regarded as "philosophical convictions", within the meaning of the second sentence of Article 2 of Protocol No. 1, given that they are worthy of "respect 'in a democratic society'", are not incompatible with human dignity and do not conflict with the fundamental right of the child to education (ibid.).

### *1. The case of the first applicant*

#### a. General principles

59. The Court reiterates that in the area of education and teaching Article 2 of Protocol No. 1 is in principle the *lex specialis* in relation to Article 9 of the Convention. That is so at least where, as in the present case, the dispute concerns the obligation laid on Contracting States by the second sentence of Article 2 to respect, when exercising the functions they assume in that area, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (see *Folgerø and Others v. Norway* [GC], no. 15472/02, § 84, ECHR 2007-VIII, § 84).

The complaint in question should therefore be examined mainly from the standpoint of the second sentence of Article 2 of Protocol No. 1 (see also *Appel-Irrgang and Others v. Germany* (dec.), no. 45216/07, ECHR 2009-...).

60. Nevertheless, that provision should be read in the light not only of the first sentence of the same Article, but also, in particular, of Article 9 of the Convention (see, for example, *Folgerø*, cited above, § 84), which guarantees freedom of thought, conscience and religion, including the freedom not to belong to a religion, and which imposes on Contracting States a "duty of neutrality and impartiality".

In that connection, it should be pointed out that States have responsibility for ensuring, neutrally and impartially, the exercise of various religions, faiths and beliefs. Their role is to help maintain public order, religious harmony and tolerance in a democratic society, particularly between opposing groups (see, for example, *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005-XI). That concerns both relations between believers and non-believers and relations between the adherents of various religions, faiths and beliefs.

61. The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see *Campbell and Cosans*, cited above, § 37).

Nevertheless, the requirements of the notion of "respect", which appears also in Article 8 of the Convention, vary considerably from case to case, given the diversity of the practices followed and the situations obtaining in the Contracting States. As a result, the Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. In the context of Article 2 of Protocol No. 1 that concept implies in particular that this provision cannot be interpreted to mean that parents can require the State to provide a particular form of teaching (see *Bulski v. Poland* (dec.), nos. 46254/99 and 31888/02).

62. The Court would also refer to its case-law on the place of religion in the school curriculum (see essentially *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, §§ 50-53, Series A no. 23; *Folgerø*, cited above, § 84; and *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, §§ 51 and 52, ECHR 2007-XI).

According to those authorities, the setting and planning of the curriculum fall within the competence of the Contracting States. In principle it is not for the Court to rule on such questions, as the solutions may legitimately vary according to the country and the era.

In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum.

On the other hand, as its aim is to safeguard the possibility of pluralism in education, it requires the State, in exercising its functions with regard to education and teaching, to take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit

that the States must not exceed (see judgments cited above in this paragraph, §§ 53, 84 (h) and 52 respectively).

**b. Assessment of the facts of the case in the light of the above principles**

63. The Court does not accept the Government's argument that the obligation laid on Contracting States by the second sentence of Article 2 of Protocol No. 1 concerns only the content of school curricula, so that the question of the presence of crucifixes in State-school classrooms would fall outside its scope.

It is true that a number of cases in which the Court has examined this provision concerned the content and implementation of the school curriculum. Nevertheless, as the Court has already emphasised, the obligation on Contracting States to respect the religious and philosophical convictions of parents does not apply only to the content of teaching and the way it is provided; it binds them "in the exercise" of all the "functions" – in the terms of the second sentence of Article 2 of Protocol No. 1 – which they assume in relation to education and teaching (see essentially *Kjeldsen, Busk Madsen and Pedersen*, cited above, § 50; *Valsamis v. Greece*, 18 December 1996, § 27, *Reports of Judgments and Decisions* 1996-VI; *Hasan and Eylem Zengin*, cited above, § 49; and *Folgerø*, cited above, § 84). That includes without any doubt the organisation of the school environment where domestic law attributes that function to the public authorities.

It is in that context that the presence of crucifixes in Italian State-school classrooms is to be placed (see Article 118 of royal decree no. 965 of 30 April 1924, Article 119 of royal decree no. 1297 of 26 April 1928 and Articles 159 and 190 of legislative decree no. 297 of 16 April 1994 – paragraphs 14 and 19 above).

64. In general, the Court considers that where the organisation of the school environment is a matter for the public authorities, that task must be seen as a function assumed by the State in relation to education and teaching, within the meaning of the second sentence of Article 2 of Protocol No. 1.

65. It follows that the decision whether crucifixes should be present in State-school classrooms forms part of the functions assumed by the respondent State in relation to education and teaching and, accordingly, falls within the scope of the second sentence of Article 2 of Protocol No. 1. That makes it an area in which the State's obligation to respect the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions comes into play.

66. The Court further considers that the crucifix is above all a religious symbol. The domestic courts came to the same conclusion and in any event the Government have not contested this. The question whether the crucifix

is charged with any other meaning beyond its religious symbolism is not decisive at this stage of the Court's reasoning.

There is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed.

However, it is understandable that the first applicant might see in the display of crucifixes in the classrooms of the State school formerly attended by her children a lack of respect on the State's part for her right to ensure their education and teaching in conformity with her own philosophical convictions. Be that as it may, the applicant's subjective perception is not in itself sufficient to establish a breach of Article 2 of Protocol No. 1.

67. The Government, for their part, explained that the presence of crucifixes in State-school classrooms, being the result of Italy's historical development, a fact which gave it not only a religious connotation but also an identity-linked one, now corresponded to a tradition which they considered it important to perpetuate. They added that, beyond its religious meaning, the crucifix symbolised the principles and values which formed the foundation of democracy and western civilisation, and that its presence in classrooms was justifiable on that account.

68. The Court takes the view that the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State. The Court must moreover take into account the fact that Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development. It emphasises, however, that the reference to a tradition cannot relieve a Contracting State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols.

As regards the Government's opinion on the meaning of the crucifix, the Court notes that the *Consiglio di Stato* and the Court of Cassation have diverging views in that regard and that the Constitutional Court has not given a ruling (see paragraphs 16 and 23 above). It is not for the Court to take a position regarding a domestic debate among domestic courts.

69. The fact remains that the Contracting States enjoy a margin of appreciation in their efforts to reconcile exercise of the functions they assume in relation to education and teaching with respect for the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (see paragraphs 61-62 above).

That applies to organisation of the school environment and to the setting and planning of the curriculum (as the Court has already pointed out: see essentially the judgments cited above in the cases of *Kjeldsen, Busk Madsen and Pedersen*, §§ 50-53; *Folgerø*, § 84; and *Zengin*, §§ 51-52; paragraph 62 above). The Court therefore has a duty in principle to respect the Contracting States' decisions in these matters, including the place they

accord to religion, provided that those decisions do not lead to a form of indoctrination (ibid.).

70. The Court concludes in the present case that the decision whether crucifixes should be present in State-school classrooms is, in principle, a matter falling within the margin of appreciation of the respondent State. Moreover, the fact that there is no European consensus on the question of the presence of religious symbols in State schools (see paragraphs 26-28 above) speaks in favour of that approach.

This margin of appreciation, however, goes hand in hand with European supervision (see, for example, *mutatis mutandis*, *Leyla Şahin*, cited above, § 110), the Court's task in the present case being to determine whether the limit mentioned in paragraph 69 above has been exceeded.

71. In that connection, it is true that by prescribing the presence of crucifixes in State-school classrooms – a sign which, whether or not it is accorded in addition a secular symbolic value, undoubtedly refers to Christianity – the regulations confer on the country's majority religion preponderant visibility in the school environment.

That is not in itself sufficient, however, to denote a process of indoctrination on the respondent State's part and establish a breach of the requirements of Article 2 of Protocol No. 1.

The Court refers on this point, *mutatis mutandis*, to the previously cited *Folgerø* and *Zengin* judgments. In the *Folgerø* case, in which it was called upon to examine the content of "Christianity, religion and philosophy" (KRL) lessons, it found that the fact that the syllabus gave a larger share to knowledge of the Christian religion than to that of other religions and philosophies could not in itself be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination. It explained that in view of the place occupied by Christianity in the history and tradition of the respondent State – Norway – this question had to be regarded as falling within the margin of appreciation left to it in planning and setting the curriculum (see *Folgerø*, cited above, § 89). It reached a similar conclusion in the context of "religious culture and ethics" classes in Turkish schools, where the syllabus gave greater prominence to knowledge of Islam on the ground that, notwithstanding the State's secular nature, Islam was the majority religion practised in Turkey (see *Zengin*, cited above, § 63).

72. Furthermore, a crucifix on a wall is an essentially passive symbol and this point is of importance in the Court's view, particularly having regard to the principle of neutrality (see paragraph 60 above). It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities (see on these points *Folgerø* and *Zengin*, cited above, § 94 and § 64 respectively).

73. The Court observes that, in its judgment of 3 November 2009, the Chamber agreed with the submission that the display of crucifixes in classrooms would have a significant impact on the second and third

applicants, aged eleven and thirteen at the time. The Chamber found that, in the context of public education, crucifixes, which it was impossible not to notice in classrooms, were necessarily perceived as an integral part of the school environment and could therefore be considered "powerful external symbols" within the meaning of the decision in *Dahlab*, cited above (see §§ 54 and 55 of the judgment).

The Grand Chamber does not agree with that approach. It considers that that decision cannot serve as a basis in this case because the facts of the two cases are entirely different.

It points out that the case of *Dahlab* concerned the measure prohibiting the applicant from wearing the Islamic headscarf while teaching, which was intended to protect the religious beliefs of the pupils and their parents and to apply the principle of denominational neutrality in schools enshrined in domestic law. After observing that the authorities had duly weighed the competing interests involved, the Court held, having regard above all to the tender age of the children for whom the applicant was responsible, that the authorities had not exceeded their margin of appreciation.

74. Moreover, the effects of the greater visibility which the presence of the crucifix gives to Christianity in schools needs to be further placed in perspective by consideration of the following points. Firstly, the presence of crucifixes is not associated with compulsory teaching about Christianity (see the comparative-law information set out in *Zengin*, cited above, § 33). Secondly, according to the indications provided by the Government, Italy opens up the school environment in parallel to other religions. The Government indicated in this connection that it was not forbidden for pupils to wear Islamic headscarves or other symbols or apparel having a religious connotation; alternative arrangements were possible to help schooling fit in with non-majority religious practices; the beginning and end of Ramadan were "often celebrated" in schools; and optional religious education could be organised in schools for "all recognised religious creeds" (see paragraph 39 above). Moreover, there was nothing to suggest that the authorities were intolerant of pupils who believed in other religions, were non-believers or who held non-religious philosophical convictions.

In addition, the applicants did not assert that the presence of the crucifix in classrooms had encouraged the development of teaching practices with a proselytising tendency, or claim that the second and third applicants had ever experienced a tendentious reference to that presence by a teacher in the exercise of his or her functions.

75. Lastly, the Court notes that the first applicant retained in full her right as a parent to enlighten and advise her children, to exercise in their regard her natural functions as educator and to guide them on a path in line with her own philosophical convictions (see, in particular, *Kjeldsen, Busk Madsen and Pedersen* and *Valsamis*, cited above, §§ 54 and 31 respectively).

76. It follows from the foregoing that, in deciding to keep crucifixes in the classrooms of the State school attended by the first applicant's children, the authorities acted within the limits of the margin of appreciation left to the respondent State in the context of its obligation to respect, in the exercise of the functions it assumes in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

77. The Court accordingly concludes that there has been no violation of Article 2 of Protocol No. 1 in respect of the first applicant. It further considers that no separate issue arises under Article 9 of the Convention.

*2. The case of the second and third applicants*

78. The Court considers that, when read as it should be in the light of Article 9 of the Convention and the second sentence of Article 2 of Protocol No. 1, the first sentence of that provision guarantees schoolchildren the right to education in a form which respects their right to believe or not to believe. It therefore understands why pupils who are in favour of secularism may see in the presence of crucifixes in the classrooms of the State school they attend an infringement of the rights they derive from those provisions.

However, it considers, for the reasons given in connection with its examination of the first applicant's case, that there has been no violation of Article 2 of Protocol No. 1 in respect of the second and third applicants. It further considers that no separate issue arises in the case under Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

79. The applicants submitted that because the second and third applicants had been exposed to the crucifixes displayed in the classrooms of the State school they attended, all three of them, not being Catholics, had suffered a discriminatory difference in treatment in relation to Catholic parents and their children. Arguing that “the principles enshrined in Article 9 of the Convention and Article 2 of Protocol No. 1 are reinforced by the provisions of Article 14 de la Convention”, they complained of a violation of the latter Article, which provides:

> “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

80. The Chamber held that, regard being had to the circumstances of the case and the reasoning which had led it to find a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention, there was no

cause to examine the case under Article 14 also, whether taken separately or in conjunction with those provisions.

81. The Court, which notes that little argument has been presented in support of this complaint, reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols.

Proceeding on the assumption that the applicants wished to complain of discrimination regarding their enjoyment of the rights guaranteed by Article 9 of the Convention and Article 2 of Protocol No. 1 on account of the fact that they were not adherents of the Catholic religion and that the second and third of them had been exposed to the sight of crucifixes in the classrooms of the State school they attended, the Court does not see in those complaints any issue distinct from those it has already determined under Article 2 of Protocol No. 1. There is accordingly no cause to examine this part of the application.

## FOR THESE REASONS, THE COURT

1. *Holds*, by fifteen votes to two, that there has been no violation of Article 2 of Protocol No. 1 and that no separate issue arises under Article 9 of the Convention;

2. *Holds* unanimously that there is no cause to examine the complaint under Article 14 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 March 2011.

| | |
|---|---|
| Erik Fribergh | Jean-Paul Costa |
| Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Rozakis joined by Judge Vajić;
(b) Concurring opinion of Judge Bonello;
(c) Concurring opinion of Judge Power;
(d) Dissenting opinion of Judge Malinverni joined by Judge Kalaydjieva.

J.-P.C.
E.F.

# CONCURRING OPINION OF JUDGE ROZAKIS JOINED BY JUDGE VAJIĆ

The main issue to be resolved in this case is the effect of the application of the proportionality test to the facts. Proportionality between, on the one hand, the right of parents to ensure their children's education and teaching in conformity with their own religious and philosophical convictions, and, on the other hand, the right or interest of at least a very large segment of society to display religious symbols as a manifestation of religion or belief. Consequently, both the competing values involved in this case are simultaneously protected by the Convention, through Article 2 of Protocol No. 1 (the *lex specialis*), read in the light of Article 9 of the Convention, in so far as the parents are concerned, and Article 9 of the Convention, in so far as society's rights are concerned.

Concerning, first, the parents' right, the Court's judgment underlines that the word "respect" in the second sentence of Article 2 of Protocol No. 1 "means more than 'acknowledge' or 'take into account'; in addition to a primarily negative obligation, it implies some positive obligation on the part of the State" (see paragraph 61 of the judgment). Yet the respect due to the parents, even in the form of some positive obligation, "does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum" (see paragraph 62).

This last reference to the Convention's case-law needs, I think, some further analysis. It is indisputable that Article 2 of Protocol No. 1 enshrines the fundamental right to education: a sacrosanct individual right – which undoubtedly can also be seen from the angle of a social right – that seems to be constantly gaining ground in our European societies. However, while the right to education constitutes one of the cornerstones of the protection of individuals under the Convention, the same cannot be said with equal force, to my mind, of the subordinate right of parents to ensure their children's education in accordance with their religious or philosophical beliefs. Here matters differ considerably, for a number of reasons:

(i) that right, although linked to the right to education, does not directly vest in the basic recipient of the right, namely, in the recipient of the education, that is, the one who has the right to be educated. It vests in the parents – whose direct right to education is not at stake in the circumstances – and is limited to one aspect of education alone: <u>their</u> religious and philosophical convictions.

(ii) although there is admittedly an obvious relationship between the education that children receive in their schools and the religious and philosophical ideas and opinions, deriving from convictions, which exist in the family environment – a relationship that requires a degree of

harmonisation in these matters between the school and home environments – Europe has nevertheless changed dramatically regarding this aspect as well as others since Protocol No. 1 was adopted. Most of us now live in multicultural, multi-ethnic societies within our national States, a feature which has become a common characteristic of those societies, and children living in that environment are exposed, in their everyday life, to ideas and opinions which go beyond those emanating from school and their parents. Human relations outside the parental roof and modern means of communication undoubtedly contribute to that effect. As a consequence, children become accustomed to receiving a variety of frequently conflicting ideas and opinions and the role of both school and parents in these matters has become relatively less influential.

(iii) as a result of the changed composition of our societies, it is increasingly difficult for a State to cater for the individual needs of parents on educational issues. I would go as far as saying that its main concern, and this is a valid concern, should be to offer children an education which will ensure their fullest integration into the society in which they live and prepare them, in the best possible way, to cope effectively with the expectations that that society has of its members. Although this characteristic of education is not a new one – it has existed since time immemorial – it has recently acquired more obvious importance because of the particularities of our era and the composition of societies today. Again, the duties of the State have largely shifted from concerns of parents to concerns of society at large, thus reducing the extent of the parents' ability to determine, outside the home, the kind of education that their children receive.

In conclusion, it seems to me that, unlike other guarantees of the Convention, in respect of which the case-law of the Convention has increased the purview of protection, including the right to education, the right of parents, under the second sentence of Article 2 of Protocol No. 1, does not seem realistically to be gaining weight in the balancing exercise of the proportionality test.

At the other end of the spectrum, representing the other limb of the proportionality equation, lies the right of society, as reflected in the authorities' measure in maintaining crucifixes on the walls of State schools, to manifest their (majority) religious beliefs. Does this right, in the circumstances of the case, override the right of parents to educate their children in accordance with their religion and – more specifically in the circumstances of the present case – their philosophical convictions?

The answer should be given by interpreting the Convention case-law and applying it to the particular circumstances of this case. And the first question which must be settled is the issue of a European consensus. Is there any European consensus on the matter – allowing, imposing or prohibiting

the display of Christian religious symbols in State schools – which should determine the position of the Court on the matter?

The answer emerges clearly from this very judgment of the Court, and from the part dealing with the overview of law and practice in the member States of the Council of Europe with regard to the presence of religious symbols in "State schools" (see paragraphs 26 et seq.): there is no consensus among European States prohibiting the presence of such religious symbols, and few States expressly forbid them. There is, of course, a growing trend towards proscribing the possibility of displaying crucifixes in State schools – mainly through rulings of the higher national courts – but the number of States that have adopted measures prohibiting the display of crucifixes in public places and the extent of domestic judicial activity do not allow the Court to presume that a consensus has been reached against displaying them. This is particularly true if one takes into account that there are a number of States in Europe where the Christian religion is still the official or predominant religion and, moreover, as I have just underscored, that a number of States clearly allow, through their law or practice, crucifixes to be displayed in public places.

It should be observed here, while we are on the subject of a consensus, that the Court is a court of law, not a legislative body. Whenever it embarks on a search for the limits of the Convention's protection, it carefully takes into consideration the existing degree of protection at the level of the European States; it can, of course, afford to develop that protection at a level higher than the one offered by a specific respondent State, but on condition that there are strong indications that a great number of other European States have already adopted that degree of protection, or that there is a clear trend towards an increased level of protection. That principle cannot positively apply in the present case, although there is admittedly an emerging trend towards prohibiting the display of religious symbols in public institutions.

In view of the fact that there is still a mixed practice among European States on the issue, the only remaining guidance for the Court in achieving the correct balance between the rights involved comes from its prior case-law. The keywords deriving from the prior case-law are "neutrality and impartiality". As the Court has noted in the present judgment, "States have responsibility for ensuring, neutrally and impartially, the exercise of various religions, faiths and beliefs. Their role is to help maintain public order, religious harmony and tolerance in a democratic society, particularly between opposing groups" (see paragraph 60, *in fine*).

It is, I think, indisputable that the display of crucifixes in Italian State schools has a religious symbolism that has an impact on the obligation of neutrality and impartiality of the State, despite the fact that in a modern European society symbols seem to be gradually losing the very important weight that they used to have in the past and more pragmatic and

rationalistic approaches now determine, for large segments of the population, the real social and ideological values.

The question which therefore arises at this juncture is whether the display of the crucifix not only affects neutrality and impartiality, which it clearly does, but whether the extent of the transgression justifies a finding of a violation of the Convention in the circumstances of the present case. Here I conclude, not without some hesitation, that it does not, in accordance with the main reasoning of the Court's approach and, more particularly, the role of the majority religion of Italian society (see paragraph 71), the essentially passive nature of the symbol, which cannot amount to indoctrination (see paragraph 72), and also the educational context within which the crucifix appears on the walls of State schools. As the judgment has pointed out, "[f]irstly, the presence of crucifixes is not associated with compulsory teaching about Christianity ... Secondly ... Italy opens up the school environment in parallel to other religions. The Government indicated in this connection that it was not forbidden for pupils to wear Islamic headscarves or other symbols or apparel having a religious connotation; alternative arrangements were possible to help schooling fit in with non-majority religious practices; ... and optional religious education could be organised in schools for 'all recognised religious creeds'..." (see paragraph 74 of the judgment). These elements, demonstrating a religious tolerance which is expressed through a liberal approach allowing all religions denominations to freely manifest their religious convictions in State schools, are, to my mind, a major factor in "neutralising" the symbolic importance of the presence of the crucifix in State schools.

I would also say that this same liberal approach serves the very concept of "neutrality"; it is the other side of the coin from, for example, a policy of prohibiting any religious symbols from being displayed in public places.

# CONCURRING OPINION OF JUDGE BONELLO

1.1 A court of human rights cannot allow itself to suffer from historical Alzheimer's. It has no right to disregard the cultural continuum of a nation's flow through time, nor to ignore what, over the centuries, has served to mould and define the profile of a people. No supranational court has any business substituting its own ethical mock-ups for those qualities that history has imprinted on the national identity. On a human rights court falls the function of protecting fundamental rights, but never ignoring that "customs are not passing whims. They evolve over time, harden over history into cultural cement. They become defining, all-important badges of identity for nations, tribes, religions, individuals".[1]

1.2 A European court should not be called upon to bankrupt centuries of European tradition. No court, certainly not this Court, should rob the Italians of part of their cultural personality.

1.3 I believe that before joining any crusade to demonise the crucifix, we should start by placing the presence of that emblem in Italian schools in its rightful historical perspective. For many centuries, virtually the only education in Italy was provided by the Church, its religious orders and organisations – and very few besides. Many, if not most schools, colleges, universities and other institutes of learning in Italy had been founded, funded, or run by the Church, its members or its offshoots. The milestones of history turned education and Christianity into almost interchangeable notions, and because of this, the age-old presence of the crucifix in Italian schools should come as no shock or surprise. In fact, its absence would have come as a surprise and a shock.

1.4 Until relatively recently, the "secular" State had hardly bothered with education, and, by default, had delegated that primary function to Christian institutions. Only slowly did the State start assuming its responsibilities to educate and to offer the population some alternatives to a virtual religious monopoly on education. The presence of the crucifix in Italian schools only testifies to this compelling and millennial historical reality – it could loosely be said that it has been there since schools have been there. Now, a court in a glass box a thousand kilometres away has been engaged to veto overnight what has survived countless generations. The Court has been asked to be an accomplice in a major act of cultural vandalism. I believe William Faulkner went to the core of the issue: the past

1. Justin Marozzi, *The Man who Invented History*, John Murray, 2009, p. 97.

is never dead. In fact it is not even past.[2] Like it or not, the perfumes and the stench of history will always be with you.

1.5 It is uninformed nonsense to assert that the presence of the crucifix in Italian schools bears witness to a reactionary fascist measure imposed, in between gulps of castor oil, by *Signor* Mussolini. His circulars merely took formal notice of a historical reality that had predated him by several centuries and, *pace* Ms Lautsi's anti-crucifix vitriol, may still survive him for a long time. This Court ought to be ever cautious in taking liberties with other peoples' liberties, including the liberty of cherishing their own cultural imprinting. Whatever that is, it is unrepeatable. Nations do not fashion their histories on the spur of the moment.

1.6 The scansion of the Italian school calendar further testifies to the inextricable historical links between education and religion in Italy, obstinate ties which have lasted throughout the centuries. School children to the very present day toil on the days consecrated to the pagan gods (Diana/Luna, Mars, Hercules, Jove, Venus, Saturn) and rest on Sunday (*domenica*, the day of the Lord). The school calendar apes the religious calendar closely – holidays double the Christian ones: Easter, Christmas, Lent, Carnival (*carnevale*, the time when church discipline allowed the consumption of meat), the Epiphany, Pentecost, the Assumption, Corpus Domini, Advent, All Saints, All Souls: an annual cycle far more glaringly non-secularist than any crucifix on any wall. May it please Ms Lautsi, in her own name and on behalf of secularism, not to enlist the services of this Court to ensure the suppression of the Italian school calendar, another Christian-cultural heritage that has survived the centuries without any evidence of irreparable harm to the progress of freedom, emancipation, democracy and civilisation.

**What rights? Freedom of religion and conscience?**

2.1 The issues in this controversy have been fudged by a deplorable lack of clarity and definition. The Convention enshrines the protection of freedom of religion and of conscience (Article 9). Nothing less, obviously, but little more.

2.2 In parallel with freedom of religion, there has evolved in civilised societies a catalogue of noteworthy (often laudable) values cognate to, but different from, freedom of religion, like secularism, pluralism, the separation of Church and State, religious neutrality, religious tolerance. All of these represent superior democratic commodities which Contracting

2 *Requiem for a nun*, 1951.

States are free to invest in or not to invest in, and many have done just that. *But these are not values protected by the Convention*, and it is fundamentally flawed to juggle these dissimilar concepts as if they were interchangeable with freedom of religion. Sadly, traces of such all but rigorous overspill appear in the Court's case-law too.

2.3 The Convention has given this Court the remit to enforce freedom of religion and of conscience, but has not empowered it to bully States into secularism or to coerce countries into schemes of religious neutrality. It is for each individual State to choose whether to be secular or not, and whether, and to what extent, to separate Church and governance. What is not for the State to do is to deny freedom of religion and of conscience to anyone. An immense, axiomatic chasm separates one prescriptive concept from the other non-prescriptive ones.

2.4 Most of the arguments raised by the applicant called upon the Court to ensure the separation of Church and State and to enforce a regime of aseptic secularism in Italian schools. Bluntly, that ought to be none of this Court's business. This Court has to see that Ms Lautsi and her children enjoy to the full their fundamental right to freedom of religion and conscience. Period.

2.5 The Convention proves to be quite helpful with its detailed and exhaustive inventory of what freedom of religion and conscience really means, and we would do well to keep these institutional constraints in mind. Freedom of religion is *not* secularism. Freedom of religion is *not* the separation of Church and State. Freedom of religion is *not* religious equidistance – all seductive notions, but of which no one has so far appointed this Court to be the custodian. In Europe, secularism is optional, freedom of religion is not.

2.6 Freedom of religion, and freedom from religion, in substance, consist in the rights to profess freely any religion of the individual's choice, the right to freely change one's religion, the right not to embrace any religion at all, and the right to manifest one's religion by means of belief, worship, teaching and observance. Here the Convention catalogue grinds to a halt, well short of the promotion of any State secularism.

2.7 This Court's rather modest function remains that of determining whether the exposure in State schoolrooms of what to some is a Christian symbol and to others a cultural gadget in any way interfered with Ms Lautsi's and her children's basic right to freedom of religion – as defined by the Convention itself.

2.8 I believe anyone could persuasively try to argue that the presence of the crucifix in Italian State schools might possibly offend the doctrine of secularism and that of the separation between Church and State. At the same time I do not believe that anyone can persuasively plead that the presence of a crucifix interfered in any way with the Lautsis' right to profess any religion of their choice, to change their religion, not to have any religion at all or to manifest their beliefs, if any, by worship, teaching and observance, or with their right to reject outright anything they may consider insipid superstitious junk.

2.9 With or without a crucifix on a schoolroom wall, the Lautsis enjoyed the most absolute and untrammelled freedom of conscience and religion as demarcated by the Convention. The presence of a crucifix in a State classroom might conceivably be viewed as a betrayal of secularism and an unjustifiable failure of the regime of separation between Church and State – but these doctrines, however alluring and beguiling, are nowhere mandated by the Convention, nor are they necessary constitutive elements of the freedoms of conscience and of religion. It is for the Italian authorities, not for this Court, to enforce secularism if they believe it forms part, or should form part, of the Italian constitutional architecture.

2.10 Seen in the light of the historical roots of the presence of the crucifix in Italian schools, removing it from where it has quietly and passively been for centuries, would hardly have been a manifestation of neutrality by the State. Its removal would have been a positive and aggressive espousal of agnosticism or of secularism – and consequently anything but neutral. Keeping a symbol where it has always been is no act of intolerance by believers or cultural traditionalists. Dislodging it would be an act of intolerance by agnostics and secularists.

2.11 Millions of Italian children have, over the centuries, been exposed to the crucifix in schools. This has neither turned Italy into a confessional State, nor the Italians into citizens of a theocracy. The applicants have failed to unfurl before the Court any evidence at all that those exposed to the crucifix forfeited in any way their complete freedom to manifest their individual and personal religious belief, or their right to repudiate any religion. The presence of a crucifix in a schoolroom does not seem to have hindered any Italian in his or her liberty to believe or to disbelieve, to embrace atheism, agnosticism, anti-clericalism, secularism, materialism, relativism, or doctrinaire irreligion, to recant, apostatise, or to embrace whatever creed or “heresy” of their choice they find sufficiently appealing, with the same vigour and gusto others freely embrace a Christian faith. Had any such evidence been adduced, I would have been strident in my voting for finding a violation of the Convention.

**What rights? Right to education?**

3.1 Article 2 of Protocol No. 1 guarantees the right of parents to ensure that the *teaching* their children receive is in conformity with their own religious and philosophical convictions. The Court has to supervise and ensure respect for this right.

3.2 Does the mere silent and passive presence of a symbol in a classroom in an Italian school amount to "teaching"? Does it hinder the exercise of the guaranteed right? Try hard as I might, I fail to see how. The Convention specifically and exclusively bans any *teaching* in schools unwelcome to parents on religious, ethical and philosophical grounds. The keyword of this norm is obviously "teaching" and I doubt how far the mute presence of a symbol of European cultural continuity would amount to teaching in any sense of that fairly unambiguous word.

3.3 In my view, what the Convention prohibits are any indoctrination, arrant or devious, the aggressive confiscation of young minds, invasive proselytism, the putting in place by the public educational system of any obstacle to the avowal of atheism, agnosticism or alternative religious options. The mere display of a voiceless testimonial of a historical symbol, so emphatically part of the European heritage, in no way amounts to "teaching", nor does it undermine in any meaningful manner the fundamental right of parents to determine what, if any, religious orientation their children are to follow.

3.4. But, even assuming that the mere existence of a mute object should be construed as "teaching", the applicants have failed to answer the far more cardinal question of proportionality, intimately related to the exercise of fundamental rights when these conflict with the rights of others – the weighting to be given to the various competing interests.

3.5 All the parents of all the thirty pupils in an Italian classroom enjoy equally the fundamental Convention right to have their children receive teaching in conformity with their own religious and philosophical convictions, at least analogous to that of the Lautsi children. The parents of one pupil want that to be "non-crucifix" schooling, and the parents of the other twenty-nine, exercising their equally fundamental freedom of decision, want that schooling to be "crucifix" schooling. No one has so far suggested any reason why the will of the parents of one pupil should prevail, and that of the parents of the other twenty-nine pupils should founder. The parents of the twenty-nine have the fundamental right, equivalent in force and commensurate in intensity, to have their children receive teaching in conformity with their own religious and philosophical

convictions, be they crucifix-friendly or merely crucifix-indifferent. Ms Lautsi cannot award herself a licence to overrule the right of all the other parents of all the other pupils in that classroom, who want to exercise the same right she has asked this Court to inhibit others from exercising.

3.6 The crucifix purge promoted by Ms Lautsi would not in any way be a measure to ensure neutrality in the classroom. It would be an imposition of the crucifix-hostile philosophy of the parents of one pupil, over the crucifix-receptive philosophy of the parents of all the other twenty-nine. If the parents of one pupil claim the right to have their child raised in the absence of a crucifix, the parents of the other twenty-nine should well be able to claim an equal right to its presence, whether as a traditional Christian emblem or even solely as a cultural souvenir.

**An aside**

4.1 Very recently, this Court was called upon to determine whether a ban ordered by the Turkish authorities on the distribution of Guillaume Apollinaire's novel *Les onze mille verges* could be justified in a democratic society. That novel would only fail to qualify as fierce pornography through the most lavish disregard of contemporary standards of morality.[3] Yet the Court manfully saved that smear of transcendental smut on the ground that it formed part of European cultural heritage.[4]

4.2 It would have been quite bizarre, in my view, for this Court to protect and redeem an under-the-counter, over-the-borderline discharge of nauseous obscenity on the ground of its distinctly faint "European heritage" merit, and, in the same breath, deny European heritage value to an emblem recognised over the centuries by millions of Europeans as a timeless symbol of redemption through universal love.

3. Wikipedia classifies this work as "a pornographic novel" in which the author "explores all aspects of sexuality: sadism alternates with masochism; ondinism/scatophilia with vampirism; paedophilia with genrontophilia; masturbation with group sex; lesbianism with homosexuality ... the novel exudes an infernal joy".
4. *Akdaş v. Turkey*, no. 41056/04, 16 February 2010.

# CONCURRING OPINION OF JUDGE POWER

This case raises issues as to the scope of certain provisions of the Convention and the Grand Chamber's rectification of a number of errors in the Chamber's Judgment was both necessary and appropriate. The core correction consists in the finding that the decision as to whether crucifixes should be present in state-school classrooms is, in principle, a matter falling within the margin of appreciation of a respondent state (§ 70). In exercising its supervisory role, the Court has confirmed its earlier case law[1] to the effect that the 'preponderant visibility' within a school environment which a state may confer on a country's majority religion is not, in itself, sufficient to indicate a process of indoctrination such as would establish a breach of the requirements of Article 2 of Protocol No. 1 (§ 71).

The Grand Chamber has also corrected the rather speculative conclusion in the Chamber judgment (see § 55) as to the "particularly strong" risk of emotional disturbance which the presence of a crucifix may pose to children of minority religions or none. Given the critical role of "evidence" in any Court proceedings, the Grand Chamber has correctly noted that there was no evidence opened to the Court to indicate any influence which the presence of a religious symbol may have on school pupils (§ 66). While acknowledging as "understandable" the first applicant's perception of a lack of respect for her rights, the Grand Chamber has confirmed that her subjective perception is not sufficient to establish a breach of Article 2 of Protocol No 1. The first applicant may have taken offence at the presence of a crucifix in classrooms but the existence of a right 'not to be offended' has never been recognised within the Convention. In reversing the Chamber's judgment, the Grand Chamber does no more than confirm a body of settled jurisprudence (notably under Article 10) which recognises that mere 'offence' is not something against which an individual may be immunized by law.

However, there was another fundamental and, in my view, erroneous conclusion in the Chamber's Judgment upon which the Grand Chamber did not comment and which, to my mind, merited clarification. The Chamber referred, correctly, to the State's duty to uphold confessional neutrality in public education (§ 56). However, it proceeded, to conclude, incorrectly, that this duty required the effective preference or elevation of one ideology (or body of ideas) over all other religious and/or philosophical perspectives or world views. Neutrality requires a pluralist approach on the part of the State, not a secularist one. It encourages respect for all world views rather than a preference for one. To my mind, the Chamber Judgment was striking in its failure to recognise that secularism (which was the applicant's

1. See *Folgerø and Others v. Norway* [GC], no. 15472/02, § 89, ECHR 2007-VIII; see also *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, § 63, ECHR 2007-XI.

preferred belief or world view) was, in itself, one ideology among others. A preference for secularism over alternative world views—whether religious, philosophical or otherwise—is not a neutral option. The Convention requires that respect be given to the first applicant's convictions insofar as the education and teaching of her children was concerned. It does not require a preferential option for and endorsement of *those* convictions over and above all others.

In his separate opinion, Judge Bonello has pointed to the fact that within the European tradition, education (and, to my mind, the values of human dignity, tolerance and respect for the individual, without which there can be no lasting basis for human rights protection) is rooted, historically, inter alia, within the Christian tradition. To prohibit in public schools, regardless of the wishes of the body politic, the display of a symbol representative of that (or indeed any other religious) tradition and to require of the State that it pursues not a pluralist but a secularist agenda, risks venturing towards the territory of intolerance – a concept that is contrary to the values of the Convention.

The applicants complain of an alleged violation of their rights to freedom of thought, conscience and religion. I can find no interference with their freedom to manifest their personal beliefs. The test of a violation under Article 9 is not "offence" but "coercion".[2] That article does not create a right not to be offended by the manifestation of the religious beliefs of others even where those beliefs are given 'preponderant visibility' by the State. The display of a religious symbol does not compel or coerce an individual to do or to refrain from doing anything. It does not require engagement in any activity though it may, conceivably, invite or stimulate discussion and an open exchange of views. It does not prevent an individual from following his or her own conscience nor does it make it unfeasible for such a person to manifest his or her own religious beliefs and ideas.

The Grand Chamber has found that the presence of the crucifix is, essentially, a passive symbol and it regards this point as being of great importance having regard to the principle of neutrality. I agree with the Court in this regard insofar as the symbol's passivity is not in any way coercive. However, I would have to concede that, in principle, symbols (whether religious, cultural or otherwise) are carriers of meaning. They may be silent but they may, nevertheless, speak volumes without, however, doing so in a coercive or in an indoctrinating manner. The uncontested evidence before the Court is that Italy opens up the school environment to a variety of religions and there is no evidence of any intolerance shown towards non-believers or those who hold non-religious philosophical convictions. Islamic headscarves may be worn. The beginning and end of

2. See *Buscarini and Others v. San Marino* [GC], no. 24645/94, ECHR 1999-I; see also the *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, 16 December 2004.

Ramadan are “often celebrated”. Within such a pluralist and religiously tolerant context, a Christian symbol on a classroom wall presents yet another and a different world view. The presentation of and engagement with different points of view is an intrinsic part of the educative process. It acts as a stimulus to dialogue. A truly pluralist education involves exposure to a variety of different ideas including those which are different from one's own. Dialogue becomes possible and, perhaps, is at its most meaningful where there is a genuine difference of opinion and an honest exchange of views. When pursued in a spirit of openness, curiosity, tolerance and respect, this encounter may lead towards greater clarity and vision as it fosters the development of critical thinking. Education would be diminished if children were not exposed to different perspectives on life and, in being so exposed, provided with the opportunity to learn the importance of respect for diversity.

# DISSENTING OPINION OF JUDGE MALINVERNI JOINED BY JUDGE KALAYDJIEVA

*(Translation)*

1. The Grand Chamber has reached the conclusion that there has not been a violation of Article 2 of Protocol No. 1 on the ground that "the decision whether crucifixes should be present in State-school classrooms is, in principle, a matter falling within the margin of appreciation of the respondent State" (see paragraph 70, and also paragraph 69).

I have difficulty following that line of argument. Whilst the doctrine of the margin of appreciation may be useful, or indeed convenient, it is a tool that needs to be handled with care because the scope of that margin will depend on a great many factors: the right in issue, the seriousness of the infringement, the existence of a European consensus, etc. The Court has thus affirmed that "the scope of this margin of appreciation is not identical in each case but will vary according to the context ... . Relevant factors include the nature of the Convention right in issue, its importance for the individual and the nature of the activities concerned".[1] The proper application of this theory will thus depend on the importance to be attached to each of these various factors. Where the Court decrees that the margin of appreciation is a narrow one, it will generally find a violation of the Convention; where it considers that the margin of appreciation is wide, the respondent State will usually be "acquitted".

In the present case it is by relying mainly on the lack of any European consensus that the Grand Chamber has allowed itself to invoke the doctrine of the margin of appreciation (see paragraph 70). In that connection I would observe that, besides Italy, it is in only a very limited number of member States of the Council of Europe (Austria, Poland, certain regions of Germany (*Länder*) – see paragraph 27) that there is express provision for the presence of religious symbols in State schools. In the vast majority of the member States the question is not specifically regulated. On that basis I find it difficult, in such circumstances, to draw definite conclusions regarding a European consensus.

With regard to the regulations governing this question, I would point out in passing that the presence of crucifixes in Italian State schools has an extremely weak basis in law: a very old royal decree dating back to 1860, then a fascist circular of 1922, and then royal decrees of 1924 and 1928. These are therefore very old instruments, which, as they were not enacted by Parliament, are lacking in any democratic legitimacy.

1. *Buckley v. the United Kingdom*, 25 September 1996, § 74, *Reports of Judgments and Decisions* 1996-IV.

What I find more important, however, is that where they have been required to give a ruling on the issue, the European supreme or constitutional courts have always, without exception, given precedence to the principle of State denominational neutrality: the German Constitutional Court, the Swiss Federal Court, the Polish Constitutional Court and, in a slightly different context, the Italian Court of Cassation (see paragraphs 28 and 23).

Be that as it may, one thing is certain: the doctrine of the margin of appreciation should not in any circumstances exempt the Court from the duty to exercise the function conferred on it under Article 19 of the Convention, which is to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. Now, the wording of the second sentence of Article 2 of Protocol No. 1 confers a *positive* obligation on States to respect the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions.

That positive obligation derives from the verb "respect", which appears in Article 2 of Protocol No. 1. As the Grand Chamber has rightly pointed out, "in addition to a primarily negative undertaking, this verb implies some positive obligation on the part of the State (see paragraph 61). Such a positive obligation can, moreover, also be inferred from Article 9 of the Convention. That provision can be interpreted as conferring on States a positive obligation to create a climate of *tolerance* and *mutual respect* among their population.

Can it be maintained that the States properly comply with that positive obligation where they mainly have regard to the beliefs held by the majority? Moreover, is the scope of the margin of appreciation the same where the national authorities are required to comply with a *positive* obligation and where they merely have to comply with an obligation *of abstention*? I do not think so. I incline, rather, to the view that where the States are bound by positive obligations their margin of appreciation is reduced.

In any event, according to the case-law, the margin of appreciation is subject to European supervision. The Court's task then consists in ensuring that the limit on the margin of appreciation has not been overstepped. In the present case, whilst acknowledging that by prescribing the presence of crucifixes in State-school classrooms the regulations confer on the country's majority religion preponderant visibility in the school environment, the Grand Chamber has taken the view that "that is not in itself sufficient, however, to ... establish a breach of the requirements of Article 2 of Protocol No. 1". I cannot share that view.

2. We now live in a multicultural society, in which the effective protection of religious freedom and of the right to education requires strict State

*neutrality* in State-school education, which must make every effort to promote pluralism in education as a fundamental feature of a democratic society within the meaning of the Convention.[2] The principle of State neutrality has, moreover, been expressly recognised by the Italian Constitutional Court itself, in whose view it flows from the fundamental principle of equality of all citizens and the prohibition of any discrimination that the State must adopt an attitude of impartiality towards religious beliefs.[3]

The second sentence of Article 2 of Protocol No. 1 implies that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that knowledge is conveyed in an objective, critical and pluralistic manner. Schools should be a meeting place for different religions and philosophical convictions, in which pupils can acquire knowledge about their respective thoughts and traditions.

3. These principles are valid not only for the devising and planning of the *school curriculum,* which are not in issue in the present case, but also for the *school environment.* Article 2 of Protocol No. 1 specifies that in the exercise of *any* functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. In other words, the principle of State denominational neutrality applies not only to the *content* of the curriculum, but *the whole educational system.* In the case of *Folgerø* the Court rightly pointed out that the duty conferred on the States under that provision "is broad in its extent as it applies not only to the *content* of education and the manner of its provision but also to the performance of *all the 'functions'* assumed by the State".[4]

This view is shared by other both domestic and international bodies. Thus, in its General Comment No. 1, the United Nations Committee on the Rights of the Child has affirmed that the right to education refers "not only to the content of the curriculum, but also the educational processes, the pedagogical methods and the *environment* within which education takes place, whether it be the home, school, or elsewhere"[5], and also that "*the school environment itself* must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups".[6]

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2. *Manoussakis and Others v. Greece*, 26 September 1996, § 47; *Kokkinakis v. Greece*, 25 May 1993, § 31.
3. Italian Constitutional Court, judgment no. 508/2000.
4. *Folgerø and Others v. Norway*, 29 June 2007, § 84. Our italics.
5. Committee on the Rights of the Child, General Comment No. 1, of 4 April 2001, "The Aims of Education", para. 8. Our italics.
6. *Idem*, para. 19. Our italics.

The Supreme Court of Canada has also observed that the school environment is an integral part of discrimination-free education: "In order to ensure a discrimination-free educational *environment*, the *school environment* must be one where all are treated equally and all are encouraged to fully participate."[7]

4. *Religious symbols* are indisputably part of the school environment. As such, they might therefore infringe the duty of State neutrality and have an impact on religious freedom and the right to education. This is particularly true where the religious symbol is imposed on pupils, even against their will. As the German Constitutional Court observed in its famous judgment: "Certainly, in a society that allows room for differing religious convictions, the individual has no right to be spared from other manifestations of faith, acts of worship or religious symbols. This is however to be distinguished from a situation created by the State where the individual is exposed without possibility of escape to the influence of a particular faith, to the acts through which it is manifested and to the symbols in which it is presented"[8]. That view is shared by other supreme or constitutional courts.

Thus, the Swiss Federal Court has found that the duty of denominational neutrality incumbent on the State is of special importance in State schools, where schooling is compulsory. It went on to say that, as guarantor of the denominational neutrality of the school system, the State could not, where teaching was concerned, manifest its own attachment to a particular religion, be it a majority or a minority one, because certain people may feel that their religious beliefs are impinged upon by the constant presence at school of the symbol of a religion to which they do not belong.[9]

5. The *crucifix* is undeniably a religious symbol. The respondent Government argued that, in the context of the school environment, the crucifix symbolised the religious origin of values that had now become secular, such as tolerance and mutual respect. It thus fulfilled a highly educational symbolic function, irrespective of the religion professed by the pupils, because it was the expression of an entire civilisation and universal values.

In my view, the presence of the crucifix in classrooms goes well beyond the use of symbols in particular historical contexts. The Court has moreover held that the traditional nature, in the social and historical sense, of a text used by members of parliament when swearing loyalty did not deprive the

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[7] Supreme Court of Canada, *Ross v. New Brunswick School District no. 15*, para. 100.

8. German Constitutional Court, BVerfGE 93, I I BvR 1097/91, judgment of 16 May 1995, § C (II) (1), non-official translation.

[9] Swiss Federal Court, ATF 116 Ia 252, *Comune di Cadro*, judgment of 26 September 1990, § 7.

oath to be sworn of its religious nature.[10] As observed by the Chamber, negative freedom of religion is not restricted to the absence of religious services or religious education. It also extends to symbols expressing a belief or a religion. That negative right deserves special protection if it is the State which displays a religious symbol and dissenters are placed in a situation from which they cannot extract themselves.[11] Even if it is accepted that the crucifix can have multiple meanings, the religious meaning still remains the predominant one. In the context of state education it is necessarily perceived as an integral part of the school environment and may even be considered as a powerful external symbol. I note, moreover, that even the Italian Court of Cassation rejected the argument that the crucifix symbolised values independent of a particular religious belief (see paragraph 67).

6. The presence of crucifixes in schools is capable of infringing religious freedom and schoolchildren's right to education to a greater degree than religious apparel that, for example, a teacher might wear, such as the Islamic headscarf. In the latter example the teacher in question may invoke her own freedom of religion, which must also be taken into account, and which the State must also respect. The public authorities cannot, however, invoke such a right. From the point of view of the seriousness of the infringement of the principle of State denominational neutrality, this will accordingly be of a lesser degree where the public authorities tolerate the headscarf in schools than where they impose the presence of crucifixes.

7. The impact which the presence of crucifixes may have in schools is also incommensurable with the impact that they may have in other public establishments, such as a voting booth or a court. As the Chamber rightly pointed out, in schools "the compelling power of the State is imposed on minds which still lack the critical capacity which would enable them to keep their distance from the message derived from a preference manifested by the State" (see § 48 of the Chamber judgment).

8. To conclude, effective protection of the rights guaranteed by Article 2 of Protocol No. 1 and Article 9 of the Convention requires States to observe the strictest denominational neutrality. This is not limited to the school curriculum, but also extends to "the school environment". As primary and secondary schooling are compulsory, the State should not impose on pupils, against their will and without their being able to extract themselves, the symbol of a religion with which they do not identify. In doing so, the respondent Government have violated Article 2 of Protocol No. 1 and Article 9 of the Convention.

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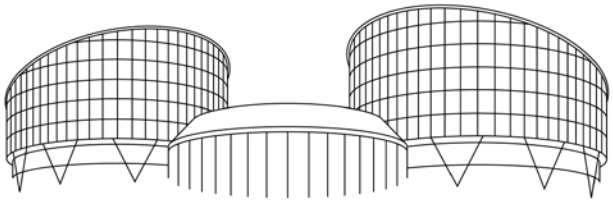
10. *Buscarini and Others v. San Marino* [GC], no. 24645/94, ECHR 1999-I.
11. *Lautsi v. Italy*, no. 30814/06, § 55, 3 November 2009.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF LAUTSI v. ITALY

*(Application no. 30814/06)*

JUDGMENT

STRASBOURG

3 November 2009

Referral to the Grand Chamber

01/03/2010

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Lautsi v. Italy,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş, *judges,*

and Sally Dollé, *Section Registrar,*

Having deliberated in private on 13 October 2009,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 30814/06) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Italian national, Ms Soile Lautsi ("the applicant"), on 27 July 2006. She brought the proceedings in her own name and on behalf of her two children, Dataico and Sami Albertin.

2. The applicant was represented by Mr N. Paoletti, a lawyer practising in Rome. The Italian Government ("the Government") were represented by their Agent, Ms E. Spatafora and their deputy co-Agent, Mr N. Lettieri.

3. The applicant alleged that the display of the sign of the cross in the classrooms of the Italian state-school attended by her children constituted interference incompatible with the freedom of belief and religion and with the right to education and teaching in conformity with her religious and philosophical convictions.

4. On 1 July 2008 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided that the admissibility and merits of the application should be examined together.

5. The applicant and the Government each filed written observations on the merits of the case (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant lives in Abano Terme and has two children, Dataico and Sami Albertin. The two boys, aged eleven and thirteen respectively, attended in 2001-2002 the Istituto comprensivo statale Vittorino da Feltre, a state-school in Abano Terme.

7. The applicant considered the school's practice of displaying a crucifix in each of the classrooms contrary to the principle of secularism in accordance with which she wished to bring up her children. She raised the question at a meeting held by the school on 22 April 2002, pointing out that the Court of Cassation, in judgment no. 4273 of 1 March 2000, had ruled that the presence of a crucifix in the polling stations prepared for political elections was contrary to the principle of the secular basis of the State.

8. On 27 May 2002 the school's governors decided to leave the crucifixes in its classrooms.

9. On 23 July 2002 the applicant challenged that decision in the Veneto Regional Administrative Court. Relying on Articles 3 and 19 of the Italian Constitution and Article 9 of the Convention, she alleged an infringement of the principle of secularism. She also complained of a breach of the principle of impartiality on the part of public administrative authorities, (Article 97 of the Constitution). She was thus asking the Regional Administrative Court to refer the question of constitutionality to the Constitutional Court.

10. On 3 October 2007 the Ministry of Education adopted Directive no. 2666, which recommended that school principals display crucifixes. It joined the proceedings, arguing that the situation complained of was based on Article 118 of Royal Decree no. 965 of 30 April 1924 and Article 119 of Royal Decree no. 1297 of 26 April 1928 (provisions pre-dating the Constitution and the agreements between Italy and the Holy See).

11. On 14 January 2004 the Veneto Regional Administrative Court ruled that, regard being had to the principle of secularism (Articles 2, 3, 7, 8, 9, 19 and 20 of the Constitution), the question regarding the constitutionality of the practice was not manifestly ill-founded and accordingly referred it to the Constitutional Court. In addition, in view of the freedom of education and the obligation to attend school, the presence of crucifixes was imposed on pupils, their parents and their teachers and favoured the Christian religion to the detriment of other religions. The applicant joined the proceedings in the Constitutional Court. The Government maintained that the presence of crucifixes in classrooms was “natural”, on the ground that the crucifix was not only a religious symbol but also the “banner of the Catholic Church”, which was the only church mentioned in the Constitution (Article 7). The crucifix therefore had to be regarded as a symbol of the Italian State.

12. In decision no. 389 of 15 December 2004 the Constitutional Court ruled that it did not have jurisdiction, seeing that the provisions complained of were not provisions of statute law but were contained in regulations, which did not have legal force (see paragraph 26 below).

13. The proceedings in the administrative court resumed. In judgment no. 1110 of 17 March 2005 the administrative court dismissed the applicant's complaint. It held that the crucifix was both the symbol of Italian history and culture, and therefore of Italian identity, and the symbol of the principles of equality, freedom and tolerance and of the State's secular basis.

14. The applicant appealed to the *Consiglio di Stato*.

15. In a judgment of 13 February 2006 the *Consiglio di Stato* dismissed the appeal, ruling that the cross had become one of the secular values of the Italian Constitution and represented the values of civil life.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The obligation to display crucifixes in classrooms pre-dates the unification of Italy. Article 140 of the Kingdom of Piedmont-Sardinia's Royal Decree no. 4336 of 15 September 1860 required “each school without fail [to] be equipped ... with a crucifix”. ».

17. In 1861, the year in which the Italian State came into being, the 1848 Statute of the Kingdom of Piedmont-Sardinia became the Constitution of Italy. It stipulated that “the Roman catholic apostolic religion [was] the only State religion. Other existing religions [were] tolerated in accordance with the law”.

18. The capture of Rome by the Italian army on 20 September 1870, following which Rome was annexed and proclaimed capital of the new Kingdom of Italy, led to a crisis in relations between the State and the Catholic Church. By Law no. 214 of 13 May 1871 the Italian State unilaterally regulated relations with the Church and granted the Pope a number of privileges to ensure the lawful conduct of religious activity.

19. After the advent of fascism the State issued a series of circulars intended to enforce compliance with the obligation to display crucifixes in classrooms.

The Ministry of Education's circular no. 68 of 22 November 1922 contained the following text: “In recent years the image of Christ and the King's portrait have been removed from many of the Kingdom's primary schools. That is a manifest and intolerable breach of the regulations and above all an attack on the dominant religion of the State and on the unity of the Nation. We therefore order all municipal administrative authorities in the Kingdom to restore to those schools which no longer have them the two sacred symbols of faith and national consciousness.”

The Ministry of Education's circular no. 2134-1867 of 26 May 1926 asserted: “The symbol of our religion, sacred for the faith and for national

consciousness, exhorts and inspires our studious youth, busy sharpening in our universities and other higher education establishments their wit and intelligence with a view to discharging the great responsibilities to which they are called."

20. Article 118 of Royal Decree no. 965 of 30 April 1924 (Rules of the Kingdom's secondary schools) reads: "Each school must have the national flag and each classroom a crucifix and the King's portrait".

Article 119 of Royal Decree no. 1297 of 26 April 1928 (Approval of the general rules governing primary education services) lists crucifixes among the "necessary equipment and material in school classrooms".

The national courts have ruled that those two provisions are still in force and apply to the present case.

21. The Lateran Pacts, signed on 11 February 1929, marked the reconciliation between the Italian State and the Catholic Church. Catholicism was confirmed as Italy's official religion. Article 1 of the Lateran Treaty reads: "Italy recognises and reaffirms the principle enshrined in Article 1 of the Kingdom's Albertine Statute of 4 March 1848, according to which the Roman catholic apostolic religion is the only State religion of the State."

22. In 1948 the Italian State adopted its republican Constitution.

Article 7 of the Constitution explicitly acknowledges that the State and the Catholic Church are, each in its own sphere, independent and sovereign. Relations between the State and the Catholic Church are governed by the Lateran Pacts and amendments to those agreements accepted by both parties do not require any procedure for revision of the Constitution.

Article 8 provides that non-catholic religions "are entitled to organise in accordance with their own rules, in so far as they do not set themselves up against the Italian legal order". Relations between the State and these other religions must be "laid down by law on the basis of agreements with their respective representatives".

23. The catholic religion's status changed as a result of the ratification, by Law no. 121 of 25 March 1985, of the first provision of the Protocol to the new Concordat with the Vatican of 18 February 1984, amending the Lateran Pacts of 1929. That provision held that the principle originally proclaimed in the Lateran Pacts, that the catholic religion was the only religion of the Italian State, should be considered to be no longer in force.

24. In judgment no. 508 of 20 November 2000 the Italian Constitutional Court summarised its case-law as follows, affirming that the fundamental principles of equality between all citizens without distinction of religion (Article 3 of the Constitution) and equal freedom for all religions before the law (Article 8) required the State's attitude to be marked by equidistance and impartiality, without attaching importance to the number of adherents of this or that religion (see judgments nos. 925/88, 440/95 and 329/97) or the scale of social reactions to infringement of the rights of one or the other (see

judgment no. 329/97). Equal protection of the conscience of each adherent of a religion does not depend on the religion chosen (see judgment no. 440/95), a principle which is not in contradiction with the possibility of regulating relations between the State and the various religions in different ways for the purposes of Articles 7 and 8 of the Constitution. Such a position of equidistance and impartiality reflects the principle of secularism which the Constitutional Court derived from the provisions of the Constitution and which has the character of a "supreme principle" (see judgments nos. 203/89, 259/90, 195/93 and 329/97), defining the State as a pluralist entity. The various beliefs, cultures and traditions must coexist in equality and freedom (see judgment no. 440/95).

25. In judgment no. 203/89 the Constitutional Court examined the question of the non-compulsory nature of the teaching of the catholic religion in state-schools. On that occasion it affirmed that the Constitution contained the principle of secularism (Articles 2, 3, 7, 8, 9, 19 and 20) and that the religious nature of the State had been explicitly abandoned in 1985, by virtue of the Protocol to the new agreements with the Holy See.

26. When called upon to rule on the obligation to display crucifixes in state-schools, the Constitutional Court delivered its decision no. 389 of 15 December 2004 (see paragraph 12 above). Without ruling on the merits, it declared the question put to it manifestly ill-founded because it related to regulations, without legal force, which consequently fell outside its jurisdiction.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1, TAKEN TOGETHER WITH ARTICLE 9 OF THE CONVENTION

27. The applicant alleged in her own name and on behalf of her children that displaying the sign of the cross in the state-school the latter attended constituted interference incompatible with her right to ensure that they receive education and teaching in conformity with her religious and philosophical convictions within the meaning of Article 2 of Protocol No. 1, which provides:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The applicant further alleged that displaying the sign of the cross also infringed her freedom of belief and religion, protected by Article 9 of the Convention, which provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

28. The Government rejected that argument.

## A. Admissibility

29. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible for any other reason. They must therefore be declared admissible.

## B. Merits

### *1. Arguments of the parties*

#### a. The applicant

30. The applicant supplied an account of the history of the relevant provisions. She observed that displaying the crucifix was based, according to the Italian courts, on provisions dating from 1924 and 1928 considered to be still in force, although they pre-dated the Italian Constitution and the 1984 agreements with the Holy See and the Protocol thereto. But the constitutionality of the provisions complained of had not been tested because the Constitutional Court had been unable to rule on the question whether they were compatible with the fundamental principles of the Italian legal order on account of their origin in regulations.

The provisions concerned were the legacy of a religious conception of the State which in present-day Italy was now in conflict with the State's duty of secularism, and infringed the rights protected by the Convention. There was a "religious question" in Italy, since by requiring the crucifix to be displayed in classrooms the State was granting the Catholic Church a privileged position which amounted to State interference with the right to freedom of thought, conscience and religion of the applicant and her children and the applicant's right to bring up her children in conformity with

her moral and religious convictions, and a form of discrimination against non-Catholics.

31. The applicant argued that in reality the crucifix, over and above all else, had a religious connotation. The fact that the cross "could be interpreted in other ways" did not take away its main connotation, which was a religious one.

Favouring one religion by the display of a symbol gave state-school pupils – including the applicant's children – the feeling that the State adhered to a particular religious belief, whereas, in a State governed by the rule of law, no-one should perceive the State to be closer to one religious denomination than another, especially persons who were more vulnerable on account of their youth.

32. The applicant submitted that the situation she complained of, among other consequences, led to pressure being undeniably exerted on minors and the impression given that the State was estranged from those who did not share Christian beliefs. The concept of secularism required the State to be neutral and keep an equal distance from all religions, as it should not be perceived as being closer to some citizens than to others.

The State should guarantee all citizens freedom of conscience, beginning by providing a public education service equipped to foster personal autonomy and freedom of thought, in accordance with respect for the rights guaranteed by the Convention.

33. As to whether a teacher would be free to display other religious symbols, the answer would be negative, since there were no provisions permitting that practice.

**b. The Government**

34. The Government observed at the outset that the question raised by the present application went beyond the strictly legal sphere and impinged on that of philosophy. The point was to determine whether the presence of a symbol religious in origin and meaning was in itself capable of exerting influence over individual freedoms in a manner incompatible with the Convention.

35. While the sign of the cross was certainly a religious symbol, it had other connotations. It also had an ethical meaning which could be understood and appreciated regardless of one's adhesion to the religious or historical tradition, as it evoked principles that could be shared outside Christian faith (non-violence, the equal dignity of all human beings, justice and sharing, the primacy of the individual over the group and the importance of freedom of choice, the separation of politics from religion, and love of one's neighbour extending to forgiveness of one's enemies). Admittedly, the immediate origin of the values which formed the foundations of present-day democratic societies was also to be found in the thought of authors who were non-believers or even opponents of

Christianity. However, the thought of those authors had been enriched by Christian philosophy, if only on account of their upbringing and the cultural environment in which they had been formed and in which they lived. In conclusion, the democratic values of today were rooted in a more distant past, the age of the evangelic message. The message of the cross was therefore a humanist message which could be read independently of its religious dimension and was composed of a set of principles and values forming the foundations of our democracies.

As the cross conveyed that message, it was perfectly compatible with secularism and accessible to non-Christians and non-believers, who could accept it in so far as it evoked the distant origin of the principles and values concerned. In conclusion, as the symbol of the cross could be perceived as devoid of religious significance, its display in a public place did not in itself constitute an infringement of the rights and freedoms guaranteed by the Convention.

36. The Government argued that the above conclusion was supported by an analysis of the Court's case-law, which a much more active interference than the mere display of a symbol for there to be a finding of an infringement of rights and freedoms. It was for example an active interference which led the Court to find a violation of Article 2 of Protocol No. 1 in the *Folgerø case* (*Folgerø and Others v. Norway,* [GC], no. 15472/02, ECHR 2007-VIII).

In the present case it was not the freedom to adhere or not adhere to a religion which was in issue, since in Italy that freedom was fully guaranteed. Nor was it a matter of the freedom to practise a religion or practise none; though the crucifix was indeed displayed in classrooms, teachers and pupils were not required to make the slightest gesture which might constitute a salutation or mark of respect to it or a mere acknowledgment of its presence, and still less to say prayers in class. In fact, they were not asked to pay any attention to the crucifix whatsoever.

Lastly, the freedom of parents to bring up children in conformity with their own convictions was not in issue; education in Italy was entirely secular and pluralistic, school syllabuses contained no allusion to a particular religion and religious instruction was optional.

37. Referring to the *Kjeldsen, Busk Madsen and Pedersen* judgment (7 December 1976, Series A no. 23), in which the Court found no violation, the Government submitted that, however great its evocative force, an image was not comparable with the impact of an active, daily conduct extending over a long period such as teaching. Moreover, it was possible to have one's children educated in private schools or taught at home by tutors.

38. The national authorities enjoyed a wide margin of appreciation in relation to such complex and sensitive questions, closely linked to culture and history. The display of a religious symbol in public places did not exceed the margin of appreciation left to States.

39. That was all the more true because in Europe there were varied ways of approaching the question. In Greece, for example, all civil and military ceremonies required the presence and active participation of an Orthodox priest; in addition, on Good Friday national mourning was proclaimed and all offices and businesses were closed, as they were in Alsace.

40. The Government asserted that the display of the sign of the cross did not undermine the secular foundations of the State, a principle which was enshrined in the Constitution and the agreements with the Holy See. Nor was it the sign of preference for one religion, since it was a reminder of a cultural tradition and humanist values shared by persons other than Christians. In short, displaying the sign of the cross did not breach the State's duty of impartiality and neutrality.

41. Furthermore, there was no European consensus on the way to interpret the concept of secularism in practice, so that States had a wider margin of appreciation in the matter. More precisely, although there was a European consensus concerning the principle of the secular nature of the State, there was no such consensus about its practical implications or the way to bring it about. The Government asked the Court to show caution and reserve and consequently to refrain from giving a precise definition going so far as to prohibit the mere display of symbols. Otherwise, it would be giving a predetermined substantive content to the principle of secularism, and that would run counter to the legitimate diversity of national approaches and lead to unforeseeable consequences.

42. The Government did not contend that it was necessary, advisable or desirable to keep crucifixes in classrooms, but that the decision whether to keep them there was a political one and therefore one to be taken on the basis of what was expedient, rather than according to legal considerations. In the historical evolution of domestic law described in the brief account given by the applicant, which the Government did not contest, it had to be understood that the Italian Republic, although secular, had freely decided to keep crucifixes in classrooms for various reasons, including the need to reach a compromise with political parties having Christian leanings that represented an essential part of the population and its religious feelings.

43. As to the question whether a teacher would be free to display other religious symbols in a classroom, there was no provision which formed an impediment.

44. In conclusion, the Government asked the Court to dismiss the application.

#### c. The third-party intervener

45. Greek Helsinki Monitor (“GHM”) contested the arguments of the respondent Government.

In their submission, the sign of the cross, and still more the crucifix, could only be considered religious symbols. GHM also challenged the

assertion that the cross was anything other than a religious symbol and that the cross conveyed humanist values; such a position was insulting to the Church. In addition, the Italian Government had not instanced even a single non-Christian who agreed with that theory. Lastly, other religions saw in the cross only a religious symbol.

46. The Government's argument that the display of the crucifix required neither a salutation nor a sign of attention raised the question why in that case the crucifix was displayed. Display of such a symbol could be perceived as an indication that it was the object of institutional veneration.

In that connection, GHM observed that, according to the Toledo guiding principles on teaching about religions and beliefs in public schools (Council of experts on freedom of religion and belief of the Organization for Security and Cooperation in Europe ("the OSCE")), the presence of such a symbol in a public school may constitute implicit teaching of a religion, for example by giving the impression that that particular religion is favoured vis-à-vis others. If the Court could declare, in the *Folgerø* case, that participation in religious activities could influence children, then GHM considered that the display of religious symbols might do the same. It was also necessary to bear in mind situations in which children or their parents might be afraid of reprisals if they decided to protest.

*3. The Court's assessment*

**a. General principles**

47. As regards the interpretation of Article 2 of Protocol No. 1 in relation to exercise of the functions the State assumes in the field of education and teaching, the Court has established in its case-law the principles set out below, which are relevant in the present case (see, in particular, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 24-28, §§ 50-54; *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, pp. 16-18, §§ 36-37; *Valsamis v. Greece*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2323-2324, §§ 25-28; and *Folgerø and Others v. Norway* [GC], 15472/02, ECHR 2007-VIII, § 84).

(a) The two sentences of Article 2 of Protocol No. 1 must be interpreted not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p. 26, § 52).

(b) It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching. The second sentence of Article 2 of Protocol No. 1 aims at safeguarding the possibility of pluralism in education which

possibility is essential for the preservation of the "democratic society" as conceived by the Convention. In view of the power of the modern State, it is above all through State teaching that this aim must be realised.

(c) Respect for parents' convictions must be possible in the context of education capable of ensuring an open school environment which encourages inclusion rather than exclusion, regardless of the pupils' social background, religious beliefs or ethnic origins. Schools should not be the arena for missionary activities or preaching; they should be a meeting place for different religions and philosophical convictions, in which pupils can acquire knowledge about their respective thoughts and traditions.

(d) The second sentence of Article 2 of Protocol No. 1 implies that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded

(e) Respect for parents' religious convictions and for children's beliefs implies the right to believe in a religion or not to believe in any religion. The freedom to believe and the freedom not to believe (negative freedom) are both protected by Article 9 of the Convention (see, in relation to Article 11, *Young, James and Webster v. the United Kingdom*, 13 August 1981, §§ 52-57, Series A no. 44).

The State's duty of neutrality and impartiality is incompatible with any kind of power on its part to assess the legitimacy of religious convictions or the ways of expressing those convictions. In the context of teaching, neutrality should guarantee pluralism (see *Folgerø*, cited above, § 84).

**b. Application of the above principles**

48**.** The Court takes the view that these considerations entail an obligation on the State's part to refrain from imposing beliefs, even indirectly, in places where persons are dependent on it or in places where they are particularly vulnerable. The schooling of children is a particularly sensitive area in which the compelling power of the State is imposed on minds which still lack (depending on the child's level of maturity) the critical capacity which would enable them to keep their distance from the message derived from a preference manifested by the State in religious matters.

49. In applying the above principles to the present case, the Court must consider whether the respondent State, when imposing the display of crucifixes in classrooms, ensured that in exercising its functions of educating and teaching knowledge was passed on in an objective, critical and pluralist way, and respected the religious and philosophical convictions of parents, in accordance with Article 2 of Protocol No. 1.

50. In order to examine that question, the Court will take into account in particular the nature of the religious symbol and its impact on young pupils, especially the applicant's children, because in countries where the great majority of the population owe allegiance to one particular religion the manifestation of the observances and symbols of that religion, without restriction as to place and manner, may constitute pressure on students who do not practise that religion or those who adhere to another religion (see *Karaduman v. Turkey*, Commission decision of 3 May 1993).

51. The Government (see paragraphs 34-44 above) justified the obligation to display (or the fact of displaying) the crucifix by referring to the positive moral message moral of Christian faith, which transcended secular constitutional values, to the role of religion in Italian history and to the deep roots of religion in the country's tradition. They attributed to the crucifix a neutral and secular meaning with reference to Italian history and tradition, which were closely bound up with Christianity. They submitted that the crucifix was a religious symbol but one which could equally represent other values (citing the Veneto Regional Administrative Court's judgment no. 1110 of 17 March 2005, § 16, see paragraph 13 above).

In the Court's opinion, the symbol of the crucifix has a number of meanings among which the religious meaning is predominant.

52. The Court considers that the presence of the crucifix in classrooms goes beyond the use of symbols in specific historical contexts. It has moreover held that the traditional nature, in the social and historical sense, of a text used by members of parliament when swearing loyalty did not deprive the oath to be sworn of its religious nature (*Buscarini and Others v. San Marino* [GC], no. 24645/94, ECHR 1999-I).

53. The applicant alleged that the symbol conflicted with her convictions and infringed her children's right not to profess Catholicism. Her convictions are sufficiently serious and consistent for the compulsory presence of the crucifix to be capable of being understood by her as being incompatible with them. She sees the display of the crucifix as a sign that the State takes the side of Catholicism. That is the meaning officially accepted in the Catholic Church, which attributes to the crucifix a fundamental message. Consequently, the applicant's apprehension is not arbitrary.

54. Ms Lautsi's convictions also concern the impact of the display of the crucifix on her children (see paragraph 32 above), who at the material time were aged eleven and thirteen. The Court acknowledges that, as submitted, it is impossible not to notice crucifixes in the classrooms. In the context of public education they are necessarily perceived as an integral part of the school environment and may therefore be considered “powerful external symbols” (see *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V).

55. The presence of the crucifix may easily be interpreted by pupils of all ages as a religious sign, and they will feel that they have been brought up

in a school environment marked by a particular religion. What may be encouraging for some religious pupils may be emotionally disturbing for pupils of other religions or those who profess no religion. That risk is particularly strong among pupils belonging to religious minorities. Negative freedom of religion is not restricted to the absence of religious services or religious education. It extends to practices and symbols expressing, in particular or in general, a belief, a religion or atheism. That negative right deserves special protection if it is the State which expresses a belief and dissenters are placed in a situation from which they cannot extract themselves if not by making disproportionate efforts and acts of sacrifice.

56. The display of one or more religious symbols cannot be justified either by the wishes of other parents who want to see a religious form of education in conformity with their convictions or, as the Government submitted, by the need for a compromise with political parties of Christian inspiration. Respect for parents' convictions with regard to education must take into account respect for the convictions of other parents. The State has a duty to uphold confessional neutrality in public education, where school attendance is compulsory regardless of religion, and which must seek to inculcate in pupils the habit of critical thought.

The Court cannot see how the display in state-school classrooms of a symbol that it is reasonable to associate with Catholicism (the majority religion in Italy) could serve the educational pluralism which is essential for the preservation of "democratic society" within the Convention meaning of that term. It notes in that connection that the Constitutional Court's case-law also takes that view (see paragraph 24).

57. The Court considers that the compulsory display of a symbol of a particular faith in the exercise of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe. It is of the opinion that the practice infringes those rights because the restrictions are incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education.

58. Consequently, there has been a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

59. the applicant submitted that the interference she complained of under Article 9 of the Convention and Article 2 of Protocol No. 1 also infringed the principle of non-discrimination, enshrined in Article 14 of the Convention.

60. The Government rejected that argument.

61. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

62**.** However, having regard to the circumstances of the case and the reasoning which led it to find a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention (see paragraph 58 above), the Court considers that there is no cause to examine the case under Article 14 also, whether taken separately or in conjunction with the above-mentioned provisions.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

64. The applicant claimed a sum amounting to at least EUR 10,000 for non-pecuniary damage.

65. The Government submitted that the finding of a violation would be sufficient. In the alternative, they argued that the sum claimed was excessive and unsupported and asked for the claim to be dismissed or reduced on an equitable basis.

66. As the Government have not expressed their readiness to review the provisions governing the presence of crucifixes in classrooms, the Court considers that, unlike the situation in the *Folgerø and Others* case (judgment cited above, § 109), the finding of a violation would not be sufficient in the present case. Consequently, ruling on an equitable basis, it awards EUR 5,000 in respect of non-pecuniary damage.

### B. Costs and expenses

67. The applicant claimed EUR 5,000 for the costs and expenses incurred during the Strasbourg proceedings.

68. The Government observed that the applicant's claim was not supported by any evidence and asked the Court to reject it.

69. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and were reasonable as to quantum. In the present case

the applicant did not produce any documentary evidence in support of her claim for reimbursement. The Court therefore decides to reject it.

### C. Default interest

70. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of Protocol No. 1 taken together with Article 9 of the Convention;

3. *Holds* that there is no cause to examine the complaint under Article 14 whether taken separately or in conjunction with Article 9 of the Convention and Article 2 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention], EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 3 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President