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THE CRUCIFIX IN CLASSROOMS
AN ALL-ITALIAN PROBLEM IN STRASBOURG

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Contents

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I. The Lautsi Judgment [1]

In a decision dated November 3, 2009, the Second Chamber of the Strasbourg Court concluded unanimously that the exposition of the crucifix in the classrooms of public schools in Italy violates Article 2 of the First Additional Protocol which reads as follows

"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 religions and philosophical convictions."

considered in conjunction with Article 9 of Convention, stating that

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.

1. *Lautsi c. Italie*, 3 November 2009, European Court of Human Rights, no. 30814/06 <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Lautsi&sessionid=38589312&skin=hudoc-en>.
For a thorough examination of the Italian judgments see Mancini, *Taking Secularism (not too) Seriously: the Italian Crucifix Case, in Religion and Human Rights* 2006, pp. 179 ff. On the way in which religious symbols convey religious beliefs and ideas see Ipgrave, *Crosses, Veils and Other People: Faith as Identity and Manifestation, in Religion and Human Rights*, 2007, pp.163 ff. On religious freedom under the ECHR, see Evans (C.), *Freedom of Religion under the European Convention on Human Rights*, Oxford, 2001. On the margin of appreciation doctrine in Strasbourg case-law, see Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Antwerp 2002 and Christoffersen, *Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights*, Dordrecht, 2009.

The applicant, Soile Lautsi, an Italian citizen of Finnish origin, had seized the Court with an application (no. 30814/06) submitted on behalf of herself and her two sons. Being an atheist, she argued that the exposition of the crucifix in the classrooms of the public school attended by her children was an unwarranted interference in her right to see her children receive a secular education.

The case indeed aroused an uproar in Italian public opinion, due to the fact that the issues involved are deeply and emotionally felt in political and cultural debate in Italy and, maybe also, for the peremptory language used by the Court, which concluded by stating that

"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" (para. 57).

We shall limit ourselves to some critical remarks concerning the way the Court has ruled on the exposition of religious symbols in the public space.

II. Strasbourg, France: Public Space as *Espace Publique?*

To begin with the beginning, I think it is useful to note, as others have, that the approach adopted by the Court on secularism is attested on positions decidedly out of date. The Court has clearly shown their attachment to the French model of secularism, which builds a neutral public space and void of any religious symbol, presenting it as the only model capable of ensuring pluralism and therefore the protection of different identities, all equally neutralized.

Adherence to such a point of view, however, leads the Court to disregard some peculiarity of the Italian case (a point we will discuss later), while heralding an outdated conception on religious freedom.

In my opinion, what is really important today is not to state that a State must be secular, but to imagine ways in which the State may regulate and protect religious freedom (and the Court itself recognized in its jurisprudence that there is a limit to the state's capability to act in the matter).

In multicultural societies such as increasingly are those of the States Parties to the Convention, a State is expected to pass laws that protect everyone's freedom to believe and find comfort in religious feeling (and of course also their freedom not to believe). Religious practice in a pluralistic and secular state could and should be viewed as an important element of the framework of a cohesive society, as a social value, rather than an element purporting social disruption.

III. The way the Court reaches her conclusions concerning the neutrality of teaching

Another puzzling element in the decision under review is the way the Court reaches argues to support her conclusion of the usefulness of the removal of religious symbols in educational environments.

The Court starts by stating that in matters of education only neutrality can ensure pluralism and therefore respect the right of all the parents to an education that reflects their religious or philosophical beliefs. Now, in my opinion, there is room for some criticism also in connection with this statement.

It is true that parents have the right to an education for their children in accordance with their religious or philosophical beliefs. It is also true that this right can only be protected through an education capable to ensure pluralism, avoiding indoctrination in favour of a particular religion. But from all this, it does not necessarily follow that the guarantee of pluralism is ensured only by a school environment where there are no religious symbols.

The precedents that the Court itself invokes all refer to the activity of teaching and its terms and not to the organization and furnishing of the premises where the teaching takes place. The logical leap is in my opinion in stating that the absence of religious symbols should be a precondition of a non-confessional teaching. Well, frankly I do not understand how avoiding the display of a religious symbol should imply a neutrality in teaching, if neutral teaching is expected to mean a teaching that is objective, non-sectarian, refraining from indoctrination.

This neutral teaching is indeed possible even in an environment staffed by religious symbols, the absence of which, however, in no way guarantees the neutrality and objectivity of the teaching, which depends to a greater extent, on the role of the teacher and his open-mindedness, rather than on a carefully furnished or non furnished environment.

In other words the idea that the absence of religious symbols is the only way to ensure an objective and non-sectarian education is therefore an impromptu “choice” of the

Court, which is not logically necessitated neither by the text of the Convention, nor by the Court case-law on the subject.

IV. Do the rights of the parents, of all the parents really matter?

I would also like to emphasize another logical limitation of the argument of the Court. If it is true that, from the way Article 2 is framed, the right of parents to have for their children an education in accordance with their beliefs holds central relevance, one cannot see why, assuming that there are parents who wish the presence of a religious symbol, they should give up asking for their right to be protected, just because other students or their parents consider the display of a religious symbol "emotionally disturbing".

I believe that Article 2 does not offer evidence to determine which rights and which parents should be protected in preference to others. So the choice of the Court in favour of protecting the rights of some parents, while protecting the rights of some, violates the rights of others.

Neither can I understand why "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" and how it is possible at this point to say that "Respect for parents' convictions with regard to education must take into account respect for the convictions of other parents". Which of them?

V. The Court's ideas on the Public Space in European States and the margin of appreciation

In conclusion, I would concede that may be the Court was forced to rule the way she did because she had no real precedent in her case-law.

The Court case-law in terms, concerns the wearing of clothing linked to religious beliefs, peculiarly (but not only, as the Leyla Sahin v. Turkey judgment by the ECHR shows) of immigrants, namely the Islamic headscarf and the Sikh turban in various places such as schools, workplaces and courtrooms, or on pictures stamped on official documents, while the present judgment relates to the presence of crucifixes in schools, courtrooms, and other public buildings.

Though the two questions share the idea of public space, in the sense that political and cultural controversy stems from different conceptions of public space, one does not need to stress that the wearing of religious symbols by individuals showing their beliefs in public involves problems of guaranteeing rights of individuals, and sometimes of individuals members of a religious minority, while the fact that State shows religious symbols in public spaces, sometimes stating that it is a legal obligation to show it, points to a different set of problems, namely those relating to the way that State protects religious pluralism, when the State has not (and modern western States have not) a State religion.

According to the Court, in fact, the only way to guarantee pluralism in a school and, in general, in the public space seems to be by forbidding the exposition of religious symbols. Ruling in this way, clearly the Court chooses a peculiar idea of regulating the use of religious symbols, the one obtaining in France, while in her case-law, she had recognized that it was not possible “to discern throughout Europe a uniform conception of the significance of religion in society”.

That is precisely why States enjoy a broad margin of appreciation and the Court has only the task of controlling the way states make use of this margin. At this point, we must ask why in this connection the Court has not granted the same margin of appreciation to the Italian authorities. All the more so, that if she had investigated the situation in this regard in other States she might have made interesting findings, especially in relation to the lack of uniformity on the basis of which the Court normally recognizes to the States a margin of appreciation.

A margin of appreciation would have proved particularly useful in this case, thus allowing the Court to take into account some features of the problem which are typically Italian. Undoubtedly, Italy is not a country like others, due to the strong influence that the Roman

Catholic Church has exerted in her political and cultural history. Public Space in Italy cannot be said to be the same as in other countries.

Anyway the debate on these items is, and perhaps shall remain, open.

EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF LAUTSI v. ITALY

(*Application no*. 30814/06)

JUDGMENT

STRASBOURG

3 November 2009

Referral to the Grand Chamber

01/03/2010

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 coAgent, 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 admis-

sibility 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 equip-

ment 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 mes-

sage 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 particu-

lar 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	Françoise Tulkens
Registrar	President

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