

George Meladze

LAUTSI V. ITALY

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The European Court of Human Rights' judgment was met with hysteria by Italian politicians. The Italian defence minister said, "That woman [Lautsi] and all those who made the judgment must be condemned to death".

Party groups have also tabled special addresses. Except on the far left, all politicians joined them in condemning the judgment. They proposed a special resolution stating that the government must demand adherence to the subsidiarity principle. Except on the far left, all political parties condemned the 3 November 2009 *Lautsi v. Italy* court verdict. In this "unprecedented" case, the court found displaying a crucifix in the classroom of an Italian public school to be incompatible with the convention. The judgment caused uproar in Italy and other catholic states.

The judgment was denounced by the Vatican as well. A Vatican spokesman, Federico Lombardi, said the crucifix was a fundamental sign of the importance of religious values in Italian history and culture, and a symbol of unity and welcoming for all of humanity – not of exclusion.

"The European court had no right intervening in such a profoundly Italian matter. It seems as if the court wanted to ignore the role of Christianity in forming Europe's identity", he said.

"The judgment must be rejected with firmness. Italy has its culture, its traditions and its history. Those who come among us must understand and accept this culture and this history. The ruling aimed to wipe out our Christian roots. We are in the process of creating a Europe with neither identity nor traditions"- commented Alessandra Mussolini.

On Facebook, 23,000 people joined a group to oppose the court decision.

However, secularist organizations expressed contradictory views.

"Interpreting the government's position, one sees that its arguments are similar to those of Islamic states that refuse to protect human rights. Accordingly, the arguments are inadmissible for liberal society", an Italian Humanist Association said.

The Lautsi case is not the first such case in Italian judicial history. Displaying crucifixes at public buildings is the norm in Italy. A Muslim parent, Adel Smith, and Judge Luigi Tosti tried to protest presenting such symbols in public places.

Smith, the head of the Union of Italian Muslims, succeeded in getting a court order to ban the official display of religious symbols at school. The decision was followed by a public uproar and the Supreme Court later abolished the order during a rehearing.

Tosti too had to overcome civil resistance. He was fined numerous times and sentenced to several months in jail for refusing to enter public buildings where Christian symbols were displayed.

“I went to school and saw that the cross in the classrooms. This doesn’t seem to be an innovation. In kindergarten, three crosses were displayed on the same wall. Catholicism is everywhere in Italy and sometimes it is disturbing, particularly if you are an atheist”, Lautsi said.

“The case was significant for me in terms of moral values rather than obtaining financial compensation. Italy regards itself as a secular state and it should honour this value”, she added.

HISTORICAL REVIEW – RELIGIOUS SYMBOLS IN ITALY

Legislation regulating the display of religious symbols at public institutions in Italy was adopted under Mussolini’s rule. At the advent of fascism, the state adopted a series of circulars aimed at enforcing the obligation to display the crucifix in classrooms. Each school in Italy had to have the image of the crucifix alongside Mussolini’s portrait. The parties claimed that exposing the cross and the Mussolini’s portrait stressed the separation of church and state.

The Education Ministry’s Circular No. 68, dated 22 November 1922 stated, “We order all of the municipalities of the Kingdom to restore in schools the two sacred symbols of faith and national sentiment”.

The Education Ministry’s Circular No. 2134-1867 dated 26 May 1926 stated, “The symbol of our religion, sacred to faith and patriotism, urges and inspires young students in universities and other higher educational institutions to sharpen their wits and intelligence to sustain the high duties that are their destiny”.

Article 119 of Royal Decree No. 1297 dated 26 April 1928 (Approval of the General Regulation of Primary Education Services) lists the crucifix among “equipment and materials needed for school classrooms”.

The Lateran Pacts, dated 11 February 1929, marked the “reconciliation” of the Italian state and the Catholic Church. Catholicism was confirmed as the official religion of the state. Article 1 of the treaty read: “Italy recognizes and reaffirms the principle enshrined in Article 1 of the Albertine Statute of the Kingdom of March 4, 1848 that the Catholic, Apostolic and Roman religion is the only religion of the state”.

The Catholic religion changed its status following ratification by Law No. 121, dated 25 March 1985, of the first provision of the Additional Protocol to the new Concordat with the Vatican, dated 18 February 1984, amending the Lateran Pacts of 1929. Under this provision, the principle proclaimed in the opening of the Lateran Pacts that the Catholic religion, the only religion of the Italian state, is no longer considered in force.

However, the issue of other laws regulating religiously significant matters has not been resolved. Just this legal gap led to a complex legal case that emerged in Lautsi's case. National courts considered that these regulations of religious symbols were still valid and useful for the case.

ARGUMENTS OF PARTIES PRESENTED AT THE EUROPEAN COURT OF HUMAN RIGHTS

The government presented an interesting position to make its arguments weightier. First, the government argued that the crucifix is a religious symbol, but it may also represent other values.

“The cross is certainly a religious symbol, but it also has other meanings. It would also have ethical significance”, the government said in a message. “Certainly, the values that underpin democratic societies today have their immediate origins also in the thinking of non-believers, even opponents of Christianity. However, the thought of these originators was nourished by Christian philosophy, not least because of their upbringing and the cultural milieu in which they were trained and lived. In conclusion, the democratic values of today are rooted in the more distant past – that of the Gospel message. The message of the cross would be a humanist message, which could be read independently of its religious dimension, consisting of a set of principles and values that form the basis of our democracies. Since the cross carried this message, it was perfectly compatible with secularism and accessible to non-Christians and non-believers, who might accept it since the cross evokes the distant origins of these principles and values. In conclusion, since the symbol of the cross could be seen as devoid of religious significance, its presence in a public place would not in itself affect the rights and freedoms guaranteed by the convention”.

FOR A FIRMER GUARANTEE, THE GOVERNMENT ADDED OTHER ARGUMENTS:

1. In accordance with long-standing tradition, the European court considers that the violation is a much more active interference than the mere display of a symbol for finding the infringement of rights and freedoms (*Folgerø and others v. Norway* [GC], no. 15472/02, CECHR 2007-VIII).

2. The crucifix is indeed displayed in the classroom, but it is not required of teachers or students to address the slightest sign of acknowledgement, reverence or mere recognition, let alone recite prayers in class. In fact, they are not even asked to pay any attention to the crucifix.

3. There is no European consensus on how in practice to interpret the concept of secularism. The prohibition of the mere display of symbols would give a predetermined material content to the principle of secularism contrary to the legitimate diversity of national approaches and would lead to unpredictable consequences.

4. Italy, though secular, has freely decided to keep the crucifix in classrooms for various reasons, including the need to find a compromise with the parties of Christian inspiration representing an essential part of the population and their religious sentiment. The government does not maintain that it is necessary, appropriate or desirable to keep the crucifix in classrooms, but the choice of keeping one is not political and therefore it is subject to the criteria of opportunity – not of legality.

5. Teaching in Italy is totally secular and pluralistic. The curriculum does not contain any reference to a specific religion and religious instruction is optional. A teacher is not forbidden from displaying religious symbols in the classroom.

THE APPLICANT OPPOSED THE GOVERNMENT WITH HER POSITION:

1. Despite varying interpretations, the crucifix has primarily a religious connotation. The fact that the cross may be “read” in other ways does not mean it loses its main religious connotation.

2. Favouring one religion by exposing a symbol gives students in public schools a sense that the state adheres to a particular religious belief. But under the rule of law, no person should perceive the state as being closer to one religious faith than to another, especially those who are more vulnerable because of their young age.

3. By requiring the display of crucifixes in classrooms, the state gives the Catholic religion a privileged position, which would lead to state interference with the right to freedom of thought, conscience and religion of the applicant and her children, and the right of the applicant to educate her children according to her moral and religious convictions, as well as to a form of discrimination against non-Catholics.

4. The undeniable pressure on minors is obvious. It gives the impression that the state is alien to those who do not identify with this religion.

The expert Greek Helsinki Monitor stated its position in relation to the case. First, it emphasized the symbolic meaning of crucifixion. It challenged the assertion of the Italian government that one must see in the cross anything other than a religious symbol and that the cross imports humanist values – such a position is offensive to the Church as a cross has just religious meaning for this body. Finally, other religions too would see the cross as a religious symbol.

The Greek Helsinki Monitor notes that according to the Toledo Guiding Principles on teaching about religions and beliefs in public schools (Council of Experts on the Freedom of Religion or Belief of the Organization for the Security and Cooperation in Europe), the presence of such symbols in public schools can be a form of implicitly teaching religion, for example, by giving the impression that this particular religion is favoured over others. If the court in the case of *Folgerø* (2004) found that participation in religious activities can affect children, then, according to the Greek Helsinki Monitor, the exhibition of religious symbols may also affect them.

COURT'S JUDGMENT

The case was significant from different perspectives. However, the court presented quite a brief and principled consideration of the cases. The court took into account the nature of the religious symbol and its impact on students of a young age, especially the children of the applicant. Indeed, in countries where the vast majority of the population belongs to a particular religion, the manifestation of rites and symbols of their religion without restriction on place or manner may constitute pressure on students who do not practise that religion or who adhere to another religion (*Karaduman v. Turkey*, Commission decision of May 3, 1993).

“55. The presence of the crucifix can be easily interpreted by students of all ages as a religious symbol and they will feel that they are being educated in a school environment characterized by a particular religion. What may be encouraging for some religious students can be emotionally disturbing for students from other religions or those who profess no religion. This risk particularly affects students belonging to religious minorities. The negative freedom is not limited to the absence of religious services or religious instruction. It covers the practices and symbols expressing, in particular or in general, a belief, a religion or atheism. This negative right deserves special protection if the state expresses a belief and if a person is placed in a situation from which he cannot escape or only by a disproportionate effort and cost.

56. The display of one or more religious symbols cannot be justified either by the request of other parents who want religious education consistent with their beliefs, nor, as the government argues, by the necessity of a compromise with political parties of Christian inspiration. Respect for the beliefs of certain parents in education must consider the beliefs of other parents. The state is obliged to maintain religious neutrality in public education where attendance is required irrespective of religion and must seek to instil critical thinking in students.”

The court considers that the presence of crucifixes in classrooms goes beyond the use of symbols in specific historical contexts, and their religious meaning was predominant. The court also believes that this argument was grounded with the Vatican's position. The latter officially declared that by displaying Christian symbols, Italy emphasized its Christian origins.

Accordingly, the court found grounds for the violation of rights and supported Lautsi's position in the case.

LAUTSI'S CASE – PRECEDENT FOR OTHER COUNTRIES

The court's judgment may significantly change European traditions, the Guardian wrote in November 2009. The judgment sparked outraged reactions in Poland and Lithuania. Supporters of Catholicism called the judgment "ideological persecution". However, it is not the first time the court has been criticized for the inappropriate protection of religious freedom.

The following reviews of several cases from European practice give a general idea about the prerequisites of Lautsi's case and the court's steps before making this judgment.

On July 29, 2009, the court stated its position about French legislation banning the display of religious symbols in public places. Special emphasis is placed on Muslim clothes. The court considered the appeal of French students inadmissible. The students appealed against the legislation and called it incompatible with the convention. However, the court handed down a decision saying France could take measures, including political party closures, to protect democracy and secularism.

The case of *Dogru v. France* dated 4 December 2008. Students in France were expelled from school after refusing to remove their headscarves to participate in their gym class. The court handed down the same decision and said the state could make better considerations about keeping order at school and the restriction was not a violation of the convention.

In the case of Leyla Sahin in 2005, a citizen disputed religious freedom, indicating particular articles. She said by banning headscarves in public buildings, Turkey violated her rights. The court reiterated that the state may impose regulation forms for religious freedom itself and has the right to have a secular position, including a certain limitation over believers' rights.

In the case of *Dahlabi v Switzerland* dated 15 February 2001, the court judged the citizen's right to wear traditional clothes at school where he had been a teacher. The court said the limitation was legal as far as a teacher is an example for children and his clothes could affect their religious views.

Domestic legislation has been developed simultaneously in various European countries. Eight German states banned religious clothes at schools, universities and public places. The German Constitutional Court prohibited the display of religious symbols at schools in 2003.

The Netherlands imposed different restrictions on wearing headscarves at different times. The Amsterdam and Utrecht municipalities even proposed cancelling welfare to unemployed women wearing headscarves as they drastically decrease employment opportunities in Christian countries.

Even at a glance, it is evident that religious symbols are a controversial topic in public and legal discussions in Europe. Lautsi's case is significant for several reasons. First, it extended the range of the conception of religious symbols and brought Christian symbols up for discussion. This is extremely rare in the European context and surely worth separate mention.

In addition, the court's judgment is highly interesting as far as it changed its traditional attitude to religious issues. Prior to Lautsi's case, the court avoided intervening in judging the lawfulness of state regulations. It preferred to judge as an indifferent observer. The court used arguments within the range of accordancy. It said the state had a wide range of tools for handling religious issues and would not interfere to change the order. This attitude is evident in all the above cases.

A court shows a different attitude in cases where not only religious freedom, but other rights come under question. In such cases, the court's position is more inflexible. For example, let's take the Brankevich case in 2007.

The Russian authority imposed a ban on a protestant group meeting and praying in public places. The authors of the prohibition believe that such meetings could run the risk of disorder much higher than when Muslim women wear headscarves. However, unlike the headscarf case, the court supported the position against the state. This judgment was likely affected by a ban on unifying and meeting. The court even pointed out the significance of the right of unification. It stated that despite the religious intention of the meeting, it is still essential to protect the right of meeting.

Now, we can only conclude that the court somehow divided the rights into religious and non-religious categories. In relation to non-religious rights, the court is active and ready to overlook the range of state abilities and to regulate public relations itself. If it finds out grounds for violation, then it often intervenes and contradicts the European convention in terms of rights.

As for religious rights, the court is more cautious when the state maintains a secular position – and vice versa. The court intervened actively when it observed a trend of religiousness in Italy. Moreover, a new trend becomes urgent. The court adheres to secular principles in member states and supports the separation of the state and the church. Lautsi's case is proof.

However, it is essential to interpret the court's judgment correctly. Rome Mayor Gianni Alemanno said, "The crucifix cannot be offensive to anyone". His words prove that the debate was heated. Of course, the court did not intend to offend anyone. The court adhered to its main principle – equal treatment.

The court's effectiveness in carrying its point is questionable. One cannot definitively say that the Grand Chamber will review and change the judgment. It is also unpredictable to what extent the court will further adhere to its principles, referring to the Lautsi case as a precedent for such cases as official symbols and religious symbols of the state, and the priority attitude of member states to certain churches (Greece, England, Scandinavian countries, Germany, etc).

It is interesting to review Lautsi's case in the Georgian context. It is normal to display icons, crosses and religious symbols at schools and public places. However, we cannot take this as an innovation

in legislation. Georgian legislation has regulated the issue of displaying religious symbols in a law on general education adopted five years ago. According to Georgian legislation, displaying religious symbols is permitted only for educational purposes. Therefore, Lautsi's case can be regarded as one more call to the state to observe legally established guarantees.