

Press Release of the European Court of Human Rights

CRUCIFIXES IN ITALIAN STATE-SCHOOL CLASSROOMS: THE COURT FINDS NO VIOLATION

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In today's Grand Chamber judgment in the case of *Lautsi and Others v. Italy* (application no. 30814/06), which is final¹, the European Court of Human Rights held, by a majority (15 votes to two), that there had been:

No violation of Article 2 of Protocol No. 1 (right to education) to the European Convention on Human Rights.

The case concerned the presence of crucifixes in State-school classrooms in Italy, which, according to the applicants, was incompatible with the obligation on the State, in the exercise of the functions which it assumed in relation to education and to teaching, to respect the right of parents to ensure such education and teaching in accordance with their own religious and philosophical convictions.

This press release is also available in French, Italian and German.

PRINCIPAL FACTS

The applicants are Italian nationals who were born in 1957, 1988 and 1990 respectively. The first applicant, Soile Lautsi, and her two sons, Dataico and Sami Albertin², live in Italy. In the school year 2001-2002 Dataico and Sami Albertin attended the Istituto comprensivo

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² "the second and third applicants": in her application the first applicant 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.

statale Vittorino da Feltre, a State school in Abano Terme. A crucifix was fixed to the wall in each of the school's classrooms.

On 22 April 2002, during a meeting of the school's governors, Ms Lautsi'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. Following a decision of the school's governors to keep religious symbols in classrooms, Ms Lautsi brought proceedings in the Veneto Administrative Court on 23 July 2002, complaining of, among other things, an infringement of the principle of secularism.

On 30 October 2003 the Minister of Education, Universities and Research – who in October 2002 had adopted a directive instructing school governors to ensure the presence of crucifixes in classrooms – joined the proceedings brought by Ms Lautsi. He argued that her application was ill-founded because the presence of crucifixes in State-school classrooms was based on two royal decrees of 1924 and 1928.³

In 2004 the Constitutional Court declared the question as to constitutionality, which had been referred to it by the Administrative Court, manifestly inadmissible on the ground that it was directed towards texts – the relevant provisions of the two royal decrees – which, not having the status of law, but only that of regulations, could not form the subject of a review of constitutionality.

On 17 March 2005 the Administrative Court dismissed the application lodged by Ms Lautsi. It held that the provisions of the royal decrees in question were still in force and that the presence of crucifixes in State-school classrooms did not breach the principle of the secular nature of the State, which was “part of the legal heritage of Europe and the western democracies”. The court took the view, in particular, that the crucifix 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 an “identity-linked value” for the Italian people, and that it should also be considered a symbol of a value system underpinning the Italian Constitution.

Ms Lautsi appealed to the *Consiglio di Stato*, which gave judgment on 13 April 2006 confirming that the presence of crucifixes in State-school classrooms had its legal basis in the royal decrees of 1924 and 1928 and, regard being had to the meaning that should be attached to the crucifix, was compatible with the principle of secularism. In so far as it symbolised civil values which characterised Italian civilisation – tolerance, affirmation of one's rights, the autonomy of one's moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination – the crucifix in classrooms could fulfil, in a “secular” perspective, a highly educational function.

³ 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).

COMPLAINTS, PROCEDURE AND COMPOSITION OF THE COURT

Relying on Article 2 of Protocol No. 1 (right to education) and Article 9 (freedom of thought, conscience and religion), the applicants complained of the presence of crucifixes in the classrooms of the State school formerly attended by Dataico and Sami Albertin.

Relying on Article 14 (prohibition of discrimination), they submitted that all three of them, not being Catholics, had suffered a discriminatory difference in treatment in relation to Catholic parents and their children.

The application was lodged with the European Court of Human Rights on 27 July 2006. In its Chamber judgment of 3 November 2009 the Court held that there had been a violation of Article 2 of Protocol No. 1 (right to education) taken together with Article 9 (freedom of thought, conscience and religion). On 28 January 2010 the Italian Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 1 March 2010 a panel of the Grand Chamber accepted that request. A Grand Chamber hearing took place on 30 June 2010 in Strasbourg.

In accordance with Article 36 § 2 of the European Convention on Human Rights and Rule 44 § 2 of the Rules of the European Court of Human Rights, leave to intervene in the written procedure⁴ was given to

- i) 33 members of the European Parliament acting collectively;
- ii) the following non-governmental organisations: Greek Helsinki Monitor⁵, *Associazione nazionale del libero Pensiero*, European Centre for Law and Justice, Eurojuris, acting collectively; International Committee of Jurists, Interights and Human Rights Watch, acting collectively; *Zentralkomitee der deutschen Katholiken: Semaines sociales de France* and *Associazioni cristiane lavoratori italiani*.
- iii) 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.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (France), *President*,
Christos **Rozakis** (Greece),
Nicolas **Bratza** (the United Kingdom),
Peer **Lorenzen** (Denmark),

⁴ Observations of third-party interveners: see §§ 47 to 56 of the judgment

⁵ Previously intervened before the Chamber

Josep **Casadevall** (Andorra),
Giovanni **Bonello** (Malta),
Nina **Vajić** (Croatia),
Rait **Maruste** (Estonia),
Anatoly **Kovler** (Russia),
Sverre Erik **Jebens** (Norway),
Päivi **Hirvelä** (Finland),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus),
Ann **Power** (Ireland),
Zdravka **Kalaydjieva** (Bulgaria),
Mihai **Poalelungi** (Moldova),
Guido **Raimondi** (Italy), *Judges*,
and also Erik **Fribergh**, *Registrar*.
Decision of the Court
Article 2 of Protocol No. 1

It could be seen from the Court's case-law⁶ that the obligation on the Member States of the Council of Europe to respect the religious and philosophical convictions of parents did not apply only to the content of teaching and the way it was provided; it bound them "in the exercise" of all the "functions" which they assumed in relation to education and teaching. That included the organisation of the school environment where domestic law attributed that function to the public authorities. The decision whether crucifixes should be present in State-school classrooms formed part of the functions assumed by the Italian State and, accordingly, fell within the scope of Article 2 of Protocol No. 1. That provision conferred on the State the obligation, in the exercise of the functions they assumed in relation to education and teaching, to respect the right of parents to ensure the education and teaching of their children in conformity with their own religious and philosophical convictions.

The Court found that, while the crucifix was above all a religious symbol, there was no evidence before the Court that the display of such a symbol on classroom walls might have an influence on pupils. Furthermore, whilst it was nonetheless 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, her subjective perception was not sufficient to establish a breach of Article 2 of Protocol No. 1.

The Italian Government submitted that the presence of crucifixes in State-school classrooms now corresponded to a tradition which they considered it important to perpetuate.

⁶ Judgments of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* of 7 December 1976 (§ 50); *Valsamis v. Greece* of 18 December 1996 (§ 27); *Hasan and Eylem Zengin v. Turkey* of 9 October 2007 (§ 49); and *Folgerø and Others v. Norway*, Grand Chamber judgment of 29 June 2007 (§ 84)

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. With regard to the first point, the Court took the view that, while the decision whether or not to perpetuate a tradition fell in principle within the margin of appreciation of the member States of the Council of Europe, the reference to a tradition could not relieve them of their obligation to respect the rights and freedoms enshrined in the Convention and its Protocols. Regarding the second point, noting that the Italian *Consiglio di Stato* and the Court of Cassation had diverging views on the meaning of the crucifix and that the Constitutional Court had not given a ruling, the Court considered that it was not for it to take a position regarding a domestic debate among domestic courts.

The fact remained that the States enjoyed a margin of appreciation in their efforts to reconcile the exercise of the functions they assumed 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. The Court therefore had a duty in principle to respect the States' decisions in those matters, including the place they accorded to religion, provided that those decisions did not lead to a form of indoctrination. Accordingly, the decision whether crucifixes should be present in classrooms was, in principle, a matter falling within the margin of appreciation of the State, particularly where there was no European consensus⁷. That margin of appreciation, however, went hand in hand with supervision by the Court, whose task was to satisfy itself that the choice did not amount to a form of indoctrination.

In that connection it observed that by prescribing the presence of crucifixes in State-school classrooms the Italian regulations conferred on the country's majority religion preponderant visibility in the school environment. In its view, that was not in itself sufficient, however, to denote a process of indoctrination on Italy's part and establish a breach of the requirements of Article 2 of Protocol No. 1. It referred on that point to its earlier case-law in which it had held⁸ that having regard to the preponderance of one religion throughout the history of a country the fact that the school curriculum gave it greater prominence than other religions could not in itself be viewed as a process of indoctrination. It observed that a crucifix on a wall was an essentially passive symbol whose influence on pupils was not comparable to that of didactic speech or participation in religious activities.

The Court also considered that the effects of the greater visibility which the presence of the crucifix gave to Christianity in schools needed to be further placed in perspective by consideration of the following points: the presence of crucifixes was not associated with compulsory teaching about Christianity; according to the Government, Italy opened up the school environment to other religions (pupils were authorised to wear symbols or

⁷ §§ 26 to 28 of the judgment.

⁸ *Folgerø and Others v. Norway*, Grand Chamber judgment of 29 June 2007, and *Hasan and Eylem Zengin v. Turkey*, Chamber judgment of 9 October 2007.

apparel having a religious connotation; non-majority religious practices were taken into account; optional religious education could be organised in schools for all recognised religious creeds; the end of Ramadan was often celebrated in schools, and so on). 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 had not asserted that the presence of the crucifix in classrooms had encouraged the development of teaching practices with a proselytising tendency, or claimed that Dataico and Sami Albertin had ever experienced a tendentious reference to the crucifix by a teacher. Lastly, the Court noted that Ms Lautsi had retained in full her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions.

The Court concluded that, in deciding to keep crucifixes in the classrooms of the State school attended by Ms Lautsi's children, the authorities had acted within the limits of the margin of appreciation left to Italy in the context of its obligation to respect, in the exercise of the functions it assumed 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. Accordingly, there had been no violation of Article 2 of Protocol No. 1 in respect of the first applicant. The Court further considered that no separate issue arose under Article 9.

THE COURT CAME TO THE SAME CONCLUSION REGARDING THE CASE OF THE SECOND AND THIRD APPLICANTS.

Article 14

In its Chamber judgment the Court had held that, regard being had to its conclusion that there had been 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.

After reiterating that Article 14 of the Convention had no independent existence, since it had effect solely in relation to the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols, the Grand Chamber held that, 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, it did not see in those complaints any issue distinct from those it had already determined under Article 2 of Protocol No. 1. There was accordingly no cause to examine that part of the application.

SEPARATE OPINIONS

Judges Bonello, Power and Rozakis each expressed a concurring opinion. Judge Malinverni expressed a dissenting opinion, joined by Judge Kalaydjieva. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.