



European Humanist Federation

international non-profit association under Belgian law

Fédération Humaniste Européenne

association internationale sans but lucratif de droit belge

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PRESS STATEMENT - IMMEDIATE RELEASE

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Human Rights Court bows to pressure - overrules earlier unanimous judgement against crucifixes in classrooms

In a dramatic reversal of its original unanimous decision, the European Court of Human Rights has decided to allow Italy to retain its law requiring crucifixes to be displayed in every classroom in all public (non-religious) schools.

It bases its dubious finding on a view that this pervasive display of crucifixes falls short of indoctrination and is therefore within the 'margin of appreciation' allowing states some flexibility in how they implement human rights

This ruling means that States retain a much larger 'margin of appreciation' than expected: in effect, not only over *how* but even *whether* they protect some human rights. Laws in different states can now be directly incompatible with each other. Thus Italy can require display of crucifixes in its schools while Belgium and France prohibit them. The ruling marks a retreat from universal human rights, especially for matters relating to sensitive topics - such as wearing religious symbols or (as in the recent Irish abortion case) the right to reproductive health - on which individual states stand out against the broad consensus in Europe.

The Court accepted that the cross is "above all a religious symbol", contrary to Italy's contention it is instead a symbol of Italian identity. Italy had made the ludicrous claim that the crucifix has "an ethical meaning [that] evoked . . . non-violence, . . . the primacy of the individual over the group and the importance of freedom of choice, the separation of politics from religion. . . [carrying] a humanist message which could be read independently of its religious dimension . . . it was perfectly compatible with secularism and . . . could be perceived as devoid of religious significance" (*quoted from the original judgement's summary of Italy's case, para 35*).

David Pollock, President of the European Humanist Federation, said: "This highly regrettable judgement retreats from the clarity of the initial ruling that the State and its institutions must be impartial, not favouring one religion or belief over another. This principle is particularly important when the State is addressing school pupils, since they are not only immature and impressionable but also a captive audience.

“It is to be hoped that the [majority group of] judges were not yielding to the huge political pressure put on them by Italy and what looked like a ‘Holy Alliance’ of Catholic and Orthodox states that backed its appeal and by the Vatican, the Greek Orthodox Church and other reactionary religious interests whose fears of losing influence in an increasingly secular Europe will have been abated by this judgement.

“The idea that the crucifix is a harmless cultural item flies in the face of common sense. It is a portrayal of the execution of Jesus Christ, the founder of the Christian religion. It is a very powerful image and potentially a highly disturbing one to put before children. It is the image of a man being tortured to death. And the explanation for this horrific event is scarcely less disturbing: it is that he is being tortured because they, the children, are wicked and sinful. This is itself, of course, a religious doctrine, not a fact.

“However, the ruling runs so contrary to the established direction of educational policy in the Council of Europe and the OSCE and to the proclaimed secularism of the EU that it is unlikely to have a lasting effect. Europeans are voting with their feet, leaving the churches and giving little value to religion.” (See note.)

“Our sympathy goes to Soile Lautse and her family who for ten years have fought this case with dedication and principle.”

The Court’s ruling is doubly regrettable since it is clear from its past findings that the Italian Constitutional Court would have decided the case differently: in a case in 2000 it said that the Italian constitution requires the State to maintain “equidistance and impartiality” in matters of religion or belief, “without attaching importance to the number of adherents of this or that religion or the scale of social reactions to infringement of the rights of one or the other.” (See note.)

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NOTES TO EDITOR:

Background

In this case, a mother, Soile Lautsi, living in Abano Terme (Italy), demanded the right to educate her children according to her non-religious beliefs. She argued that the display of crucifixes in all classrooms of public schools attended by her children was contrary to the principle of secularism and would give children the message that the state was on the side of the Catholic church. Faced with the refusal of the school to remove the crucifix, she contested the law requiring crucifixes to be displayed through the Italian courts and finally to the European Court of Human Rights.

First judgement: Court condemns Italy

In a unanimous and clearly argued decision dated November 3, 2009¹ a panel of seven judges emphasized the importance of state neutrality: “The State has a duty to uphold confessional

¹ **Error! Main Document**

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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.” This imperative (the Court said) was especially important when the person confronted by a belief expressed by the State could not avoid it or do so only “by making disproportionate efforts and acts of sacrifice.”, as with pupils at school. [*Quotes from original judgement, paras 55-56*]

The Court ruled against Italy on the basis of the right of parents to educate their children according to their beliefs, a right protected by Article 2 of Protocol No. 1 to the European Convention on Human Rights, considered jointly with Article 9 of the Convention (freedom of thought, conscience and religion).

Strong reactions to the case

The ruling provoked much political reaction in Italy and across Europe. Right-wing politicians in Italy and elsewhere backed the Vatican in orchestrating a campaign of nationalistic outrage that found support mainly in eastern and central Europe, including from the Greek Orthodox Church. The Vatican led a chorus of indignation at this “interference” by the Court in Italian affairs. Soile Lautsi’s family was publicly insulted by politicians and received death threats.

The appeal

Italy then exercised its right to ask for the case to be referred to the Grand Chamber of the Court, composed of seventeen judges, according to a procedure reserved for exceptional cases. The Italian government argued that the crucifix is no longer a specifically Christian symbol but a “fact of nature” with a “neutral and secular” meaning related to Italian history and tradition.

Unprecedentedly, ten states intervened voluntarily to support Italy, forming a “Holy Alliance” between Catholic and Orthodox states (Armenia, Malta, Lithuania, San Marino, Monaco, Russia, Greece, Bulgaria, Romania and Cyprus). Thirty-three right-wing members of the European Parliament joined in. The Court also authorized the intervention of six NGOs, three defending secularism and three who defended the crucifix. (However, the European Humanist Federation’s powerfully argued submission² was not accepted.)

A hearing before the Grand Chamber was held on 30 June 2010. The delay since then (the judgement was expected in the autumn) is a clear indication of the difficulty the judges have found in constructing a half-way plausible basis for retreating from the clarity of the initial judgement.

European Policy and Opinion

Both the OSCE and the Council of Europe have endorsed purely educational, neutral approaches to religion in schools. See

- (a) the OSCE’s “Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools” (2007)³, prepared by a panel of experts on freedom of religion or belief
- (b) Council of Europe recommendation CM/Rec(2008)12 to member states on the

² http://www.humanistfederation.eu/download/277-EHF_cov_ltr_to_EcHR_re_Lautsi.pdf

³ http://www.osce.org/publications/odihr/2007/11/28314_993_en.pdf

dimension of religions and non-religious convictions within intercultural education, adopted by the Committee of Ministers on 10 December 2008⁴

The EU's Eurobarometer survey found in 2005 that in its then 25 member states only 52% of people believed in God while 18% rejected outright even the idea of 'some sort of spirit or life force'.⁵

In 2007 Eurobarometer found that 46% thought religion had too important a place in society. in 2007 Eurobarometer found that 46% thought religion had too important a place in society.⁶

Italian constitutional court

The Italian Constitutional Court did not hear the case before it went to Strasbourg, since its remit does not extend to administrative law. However, in its judgement no. 508 of 20 November 2000 "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)" (*summary quoted from the ECtHR's original judgement para 24, italics added*).

⁴ <http://tandis.odhr.pl/documents/hre-compendium/rus/CD SECT 1 laws/PR SEC 1/CoE CMRec 2008 12 ENG.pdf>

⁵ Eurobarometer special survey: Social values, Science and Technology (European Commission, June 2005) available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf

⁶ Eurobarometer 66: Public Opinion in the European Union (European Commission, September 2007) available at http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf

Italian arguments

national judgement prevails owing to wide differences of approach across Europe

even if laicite agreed, big margin of appreciation - ties to culture and history

overrates risk of emotional disturbance

innovatory judgement as indicated by parcity of references to old cases

judgement violates equidistance of state from religion / agnosticism / atheism - promotes atheism by

lack of religious symbols

the scope (implications?) of the judgement are undeniable - see reactions

judgement wrong in attributing the decision to the management of the school rather than a

democratic decision

huge and damaging implications