

Case Analysis

Right to Education in Conformity with Philosophical Convictions: Lautsi v Italy

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This article summarises and analyses the judgment of the European Court of Human Rights (ECtHR) in Lautsi v Italy. It compares the decision in Lautsi with earlier ECtHR judgments involving the principle of secularism in which the ECtHR upheld prohibitions on wearing the Islamic headscarf in public educational establishments.

In the case of *Lautsi v Italy*,¹ the applicant was an Italian national who brought her complaint in her own name and those of her two children, aged 11 and 13 years. At the relevant time, her children attended an Italian state school which displayed a crucifix in every classroom.

During a meeting organised by the school on April 22, 2002, the applicant suggested that the presence of the crucifix in classrooms was contrary to the principle of secularism in accordance with which she wished to educate her children. She pointed out that the Italian Court of Cassation had, in a judgment of March 1, 2000, already held that the presence of the crucifix in rooms at polling stations was contrary to the principle of secularism. On May 27, 2002, the school decided to leave crucifixes in the classrooms.

On July 23, 2002, the applicant issued proceedings before the Administrative Tribunal for the Veneto region, challenging the school's decision on the basis that the decision violated the principles of secularism and of impartiality in public administration. She asked that the Tribunal refer these questions to the Constitutional Court. On January 14, 2004, the Tribunal held that her application was not manifestly ill-founded and therefore referred the case to the Constitutional Court.

In an order of December 15, 2004, the Constitutional Court found that it did not have jurisdiction to hear the case because the disputed provisions were not included in a

¹ *Lautsi v Italy* (App. No. 30814/06), judgment of November 3, 2009 ECtHR.

statute but rather in rules which did not have the force of law. The case was referred back to the Veneto Administrative Tribunal.

In a judgment dated March 17, 2005, the Tribunal rejected the applicant's application. The Tribunal found that the crucifix was a symbol of Italian history and culture and, therefore, of Italian identity, and also a symbol of the principles of equality, liberty and tolerance as well as the secularity of the State. The applicant appealed to the Council of State.

In a judgment dated February 13, 2006, the Council of State dismissed her appeal, on the basis that the cross represented the secular values of the Italian Constitution and of civic life.

On July 27, 2006, the applicant applied to the European Court of Human Rights relying on art.9 of the European Convention on Human Rights (ECHR) and art.2 of Protocol No.1, and art.14 read in conjunction with those articles.

Decision

The Court held that the application was admissible.

There had been a violation of art.2 of Protocol No.1 considered in conjunction with art.9 ECHR. The Court recalled the principles elaborated in previous cases regarding the interpretation of art.2 of Protocol No.1, which it considered relevant to the present case:

- One must read the two sentences of art.2 of Protocol No.1 in light not only of each other but also, in particular, of arts 8, 9 and 10 ECHR.
- The second sentence of art.2 of Protocol No.1 was designed to safeguard pluralism in education (in both the public and the private sectors), which is fundamental to preserving a democratic society. Given the power of the modern state, public education assumed primary responsibility for fulfilling this objective.
- The school should not become a platform for missionary activity or preaching; rather, it should be a place where pupils encounter and acquire knowledge of different religions and philosophical convictions.
- The second sentence of art.2 of Protocol No.1 requires that the state ensure that the knowledge and information it imparts as part of its educational programmes is communicated objectively, critically and consistently with the principle of pluralism.
- The right to respect for the religious convictions of parents and the beliefs of children encompasses the right to believe or not to believe in a religion: both are protected under art.9 ECHR. The state's duty of neutrality and impartiality precludes any assessment by the state of the legitimacy of religious conviction or the means by which such conviction is expressed.

In light of these considerations, the state is under an obligation to refrain from imposing a belief, even indirectly, in places where people are under its control or where they are particularly vulnerable. The teaching of children represents a particularly acute example of such vulnerability, given that a child (depending on his or her maturity) has yet to develop the critical capacity which would be required to challenge the state's preference in religious matters.

In countries where the large majority of the population adhere to a particular religion, the manifestation, without some restriction as to place or form, of the rites and symbols

of that religion can constitute undue pressure on pupils who do not practise that religion or those who adhere to another religion.

The Court noted Italy's argument that the crucifix was a religious symbol but also represented other values including neutral and secular values referable to Italian history and tradition. However, in the Court's view, while the crucifix had a multitude of meanings, its religious symbolism was predominant. The presence of the crucifix in classrooms went beyond the use of symbols in specific historical contexts. The fact that the crucifix had a traditional symbolism in Italy did not deprive it of its religious character.

The Court further noted the applicant's complaint that the crucifix interfered with her convictions and the right of her children not to profess the Catholic faith. According to her, displaying the crucifix indicated that the State favoured the Catholic religion. The Court noted the official significance accorded by the Catholic Church to the crucifix as a fundamental symbol of Christ's message. As such, the Court accepted that the applicant's concern in this regard was not arbitrary.

The Court acknowledged that, given how the crucifix is displayed, it was impossible not to notice its presence in classrooms. In a public education context, it is necessarily seen as an integral part of the school environment and could therefore be understood to be a strong indication of the State's stance vis-à-vis religion. Pupils of all ages could feel that they were being educated in an environment directed towards a given religion. This could be troubling for pupils of other religions and those professing no religion.

The right not to believe is not limited to the absence of religious services and religious education; it extends to practices and symbols expressing a belief, a religion or atheism. This negative right warrants special protection if it is the state which expresses a belief and if people are placed in a situation from which they cannot remove themselves or can only do so by making a disproportionate effort or sacrifice.

The presence of one or more religious symbols cannot be justified by reference either to the demands of other parents who wish their children to receive a religious education in accordance with their convictions, or by arguing (as Italy did) that the display of such symbols was necessary to satisfy Christian political parties. The state is committed to neutrality in the public educational context in which the state must seek to inculcate critical thinking among pupils.

The Court did not see how the display in state school classrooms of a symbol which can reasonably be associated with Catholicism (the majority religion in Italy) could further the cause of plurality in education, which is fundamental to the democratic society conceived of by the Convention. The Court noted that the jurisprudence of the Italian Constitutional Court was generally heading in a similar direction.

Accordingly, the Court held that an obligation to display a symbol of a given religion in the exercise of public functions in relation to specific situations subject to governmental control, particularly in classrooms, restricts the right of parents to educate their children in accordance with their convictions as well as the right of schoolchildren to believe or not to believe. The Court further held that this measure violated those rights because the restrictions were not compatible with the duty incumbent on the state to respect neutrality in the exercise of public functions, in particular within the educational sphere.

The Court held that there was no need to examine the complaint under art.14 ECHR. The applicant was awarded €5,000 in respect of non-pecuniary damage, and the remainder of the claim for just satisfaction was rejected.

Comment

This case follows a series of European Court judgments upholding prohibitions on the wearing of the Islamic headscarf in public educational establishments because to do so infringed the domestic principles of secularism in the respective respondent states. Some of the notable cases in this series have been *Karaduman v Turkey*,² *Dahlab v Switzerland*,³ *Şahin v Turkey*⁴ and *Dogru v France*.⁵

Lautsi was determined under art.2 of Protocol No.1 in conjunction with art.9 ECHR. This is broadly consistent with the decision in *Folgerø v Norway*,⁶ in which the Court held that complaints concerning religious education should be considered under art.2 of Protocol No.1 as the *lex specialis* in the area of education.

However, in *Dogru v France*, a case concerning the expulsion of an 11-year-old schoolgirl for refusing to remove her headscarf during physical education classes, the Court decided the case under art.9, holding that it was not necessary to consider her complaint under art.2 of Protocol No.1. In *Şahin v Turkey*, a case concerning a woman excluded from studying at university for wearing a headscarf, the Grand Chamber decided that the prohibition did not violate either art.9 ECHR or art.2 of Protocol No.1. In *Karaduman v Turkey*, another case concerning a university student, the Commission decision concerned only art.9.

Regardless of these differences in the specific provisions under which the Court determined the cases, the general treatment by the Court of cases concerning religious symbols in public educational establishments has been broadly similar. In each case, the Court has found in favour of the party arguing for a secular approach.

At first blush, this seems logical, since the Court has frequently emphasised the importance of the state's role as a "neutral and impartial organiser of the exercise of various religions, faiths and beliefs" and stated that this role is "conducive to public order, religious harmony and tolerance in a democratic society".

However, a secular approach is not always one which displays tolerance, and the Court's jurisprudence in this area has to date failed to recognise this fact. The secular approach for which Ms Lautsi argued is distinguishable from that relied upon by the state party in each of *Karaduman*, *Şahin* and *Dogru*.

The Court's judgment in *Lautsi* requires the state to act neutrally and impartially within its classrooms towards and as between those who profess different beliefs or none. In *Lautsi*, the Court places the state under an obligation to refrain from imposing a belief, even indirectly, in places where people are under its control or where they are particularly vulnerable. This is consistent with and exemplary of the state's "neutral and impartial" role.

In *Karaduman*, *Şahin* and *Dogru*, the Court has permitted the state to discriminate against schoolchildren or university students professing their belief by wearing religious dress. The judgments in those cases go beyond ensuring that the state refrains from imposing a belief; they endorse the state's prohibition on individuals manifesting their

² *Karaduman v Turkey* (App. No.16278/90), Commission decision of May 3, 1993.

³ *Dahlab v Switzerland* (App. No.42393/98), decision of February 15, 2001 ECtHR.

⁴ *Şahin v Turkey* (2005) 44 E.H.R.R. 5 ECtHR.

⁵ *Dogru v France* (2009) 49 E.H.R.R. 8 ECtHR.

⁶ *Folgerø v Norway* (2007) 46 E.H.R.R. 47 ECtHR.

beliefs. The reasoning employed to arrive at this result could also justify a state bias against religious belief.

It might be argued that the state's obligation to refrain from imposing a belief also requires the state to ensure that, in the public sphere, individuals do not impose their beliefs on others. But such an argument ignores the right of the individuals wishing to profess their beliefs by wearing religious dress to do so, and draws too widely the boundary of the public sphere. A distinction can and should be drawn between, on the one hand, removing religious symbols from state classrooms—as in *Lautsi*—and, on the other hand, denying the right of state schoolteachers, schoolchildren and university students to wear religious dress—as in *Dahlab*, *Dogru*, and *Karaduman* and *Şahin* respectively. Classrooms do not have human rights.