

SECOND DIVISION

CASE LAUTSI c. ITALY

(Application No.o 30814/06)

JUDGEMENT

STRASBOURG

November 3, 2009

This decision will become final in the circumstances defined in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case 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,
Andras Sajó,
Işıl Karakaş, Judges,
and Sally Dollé Section Registrar,

Having deliberated in private on October 13, 2009,

Makes this judgement, adopted this date:

PROCEDURE

1. At the root of the matter is an application (no 30814/06) brought against the Italian Republic by a national of that State, Mme Soile Lautsi ("the applicant") referred to the Court July 27, 2006 under section 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). She acts on her behalf and on behalf of her two children, Sami and Dataico Albertin.

2. The applicant is represented by Mr N. Paoletti, a lawyer in Rome. The Italian Government ("Government") is represented by its agent, Mme E. Spatafora and his deputy co-Agent, Mr

N. Lettieri.

3. The complainant alleged that the display of the cross in the classrooms of public schools attended by her children was an interference incompatible with freedom of belief and religion as well as the right to education and teaching consistent with her religious and philosophical convictions.

4. On 1 July 2008, the Court decided to communicate the request to the Government. Pursuant to the provisions of Article 29 § 3 of the Convention, it decided to consider at the same time the admissibility and merits of the case.

5. Both the applicant and the Government each filed written observations on the merits (Rule 59 § 1).

IN FACT

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant resides in Abano Terme and has two children, Sami and Dataico Albertin. The latter, aged eleven and thirteen, attended in 2001-2002 public school "Istituto Statale comprensivo Vittorino da Feltre", Abano Terme.

7. The classrooms all had a crucifix, which the applicant considered contrary to the principle of secularism by which she wanted to educate her children. She raised the issue during a meeting organised on April 22, 2002 by the school and argued that, in the Court of Cassation (Case no 4273 1 March 2000), the presence of crucifixes in the rooms used as polling stations for voting in political elections had already been found to violate the principle of a secular state.

8. On May 27, 2002, the school management decided to leave the crucifixes in classrooms.

9. On July 23, 2002, the applicant challenged that decision before the Administrative Court of the Veneto region. Relying on Articles 3 and 19 of the Italian Constitution and Article 9 of the Convention, she alleged breach of the principle of secularism. In addition, she denounced the violation of the principle of impartiality of public administration (Article 97 of the Constitution). So she asked the court to refer to the Constitutional Court the question of constitutionality.

10. On October 3, 2007, the Ministry of Education adopted the directive no. 2666 which recommended that school principals display the crucifix. It joined the proceedings, and insisted that the situation complained of was based on Article 118 of Royal Decree no. 965 of April 30, 1924 and Article 119 of Royal Decree no. 1297 of April 26, 1928 (previous provisions of the Constitution and the agreements between Italy and the Holy See).

11. On January 14, 2004, the Administrative Court of Veneto decided, given the principle of secularism (Articles 2, 3, 7, 8, 9, 19 and 20 of the Constitution), that the question of constitutionality was not manifestly ill based and therefore appealed to the Constitutional

Court. In addition, given academic freedom and the obligation to attend school, the presence of the crucifix was imposed on students, parents and teachers and promoted Christianity over other religions. The applicant made herself a party in proceedings before the Constitutional Court. The Government maintained that the presence of crucifixes in classrooms was a "natural act", because it was not only a religious symbol but also the "flag of the Catholic Church", which was the only church named in the Constitution (Article 7). It was therefore considered that the crucifix was a symbol of the Italian State.

12. By order of December 15, 2004 no. 389, the Constitutional Court considered itself incompetent because the contested provisions were not included in legislation but in the regulations, which had no force of law (paragraph 26 below).

13. The proceedings before the administrative court resumed. By a ruling of March 17, 2005 no. 1110, the Administrative Court dismissed the appeal by the applicant. It held that the crucifix was both a symbol of history and Italian culture, and therefore the Italian identity, and the symbol of the principles of equality, freedom and tolerance and the secular state.

14. The applicant appealed to the Council of State.

15. By a decree of February 13, 2006, the Council of State rejected the appeal on the grounds that the cross had become one of the secular values of the Italian Constitution and represented the values of civilian life.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The obligation to display the crucifix in classrooms dates back to a time prior to the unification of Italy. Indeed, under Article 140 of Royal Decree no. 4336 of September 15, 1860 of the Kingdom of Piedmont-Sardinia "Each school must without exception be provided with a crucifix (...).

17. In 1861, at the birth of the Italian State, the Statute of the Kingdom of Piedmont-Sardinia in 1848 became the Italian Statute. It stated that "the Catholic Apostolic and Roman religion [was] the only state religion. The other existing religions [were] accepted in accordance with the law."

18. The capture of Rome by the Italian army on September 20, 1870, after which Rome was annexed and proclaimed capital of the new Kingdom of Italy, caused a crisis in relations between the state and the Catholic Church. By Law no. 214, May 13, 1871, the Italian state unilaterally introduced regulations on relations with the Church and the Pope was given a number of privileges related to the ordinary conduct of religious activity.

19. At the advent of fascism, the state adopted a series of circulars aimed at enforcing the obligation to display the crucifix in classrooms.

Circular of the Ministry of Education no. 68, November 22, 1922 stated: "In recent years, in many primary schools in the Kingdom the image of Christ and the King's portrait have been removed. This constitutes a flagrant and intolerable violation of regulations and especially

an affront to the dominant religion of the state and the unity of the nation. We therefore order all municipalities of the Kingdom to restore in schools that lack them the two sacred symbols of faith and national sentiment."

Circular of the Ministry of Education no. 2134-1867 from May 26, 1926 stated: "The symbol of our religion, sacred to the 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".

20. Article 118 of Royal Decree no. 965 of April 30, 1924 (Rules of secondary schools of the Kingdom) reads: "Each school must have the national flag, every classroom the image of the crucifix and the portrait of King."

Article 119 of Royal Decree no. 1297 of April 26, 1928 (approval of the General Regulation of primary education services) lists the crucifix among "equipment and materials needed for school classrooms".

National courts have held that these provisions are still in force and applicable to this case.

21. The Lateran Pacts, signed February 11, 1929, marked the "reconciliation" of the Italian State and the Catholic Church. Catholicism was confirmed as the official religion of the Italian 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".

22. In 1948 the Italian government adopted its republican constitution.

Article 7 of the latter explicitly recognizes that the State and the Catholic Church are, each in its place, independent and sovereign. The relationship between the state and the Catholic Church is regulated by the Lateran Pacts and modifications thereof accepted by both parties do not require constitutional revision procedure.

Article 8 states that religious denominations other than Catholic "have the right to organize under their own rules, as long as they are not inconsistent with Italian law". The relationship between the State and these other faiths "is set by law on the basis of agreements with their respective representatives".

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

24. The Italian Constitutional Court in Case No. 508 of November 20, 2000 summed up its jurisprudence by stating the fundamental principles of equality of all citizens irrespective of religion (Article 3 of the Constitution) and equal freedom of all religions before the law (Article 8) entails that the attitude of the State must be marked by impartiality and

equidistance, without attaching importance to the number of adherents of one religion or another (see Case no. 925/88, 440/95, 329/97) or the extent of social reactions to the violation of rights of one or the other (see Case no. 329/97). The equal protection of the conscience of every person who subscribes to a religion is independent of the religion chosen (see Case no. 440/95), which is not in contradiction with the possibility of a different regulation of the relationship between the state and different religions within the meaning of Articles 7 and 8 of the Constitution. Such a position of impartiality and equidistance reflects the principle of secularism which the Constitutional Court has drawn from the standards of the Constitution and which has the nature of a "supreme principle" (see Case nos. 203/89, 259/90, 195/93, 329/97), which characterizes the state in the sense of pluralism. Beliefs, cultures and different traditions must live together in equality and freedom (see no 440/95).

25. In its Decision No. 203 of 1989, the Constitutional Court considered the issue of the non-compulsory nature of teaching of Catholic religion in public schools. On this occasion, it stated that the Constitution included the principle of secularism (Articles 2, 3, 7, 8, 9, 19 and 20) and the confessional character of the state had been explicitly abandoned in 1985, under the Additional Protocol to the new Accord with the Holy See.

26. The Constitutional Court, asked to rule on the obligation to display the crucifix in public schools, made the order of December 15, 2004 no 389 (paragraph 12 above). Without ruling on the merits, it stated that the case was clearly inadmissible the issue as it was to do with regulations that did not have the force of law, which therefore fell outside its jurisdiction.

LAW

I. ON THE ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 CONSIDERED IN CONJUNCTION WITH ARTICLE 9 OF THE CONVENTION

27. The complainant alleges on her behalf and on behalf of her children that display of the cross in public schools attended by them constituted an interference incompatible with its duty of providing them with education and teaching in conformity with her religious and philosophical convictions within the meaning of Article 2 of Protocol No. 1, a provision 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 religious and philosophical convictions. "

Moreover, the complainant alleged that the display of the cross also infringed her freedom of belief and religion under Article 9 of the Convention, which states:

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 disputes this contention.

A. Admissibility

29. The Court finds that the objections raised by the applicant are not manifestly ill-founded within the meaning of Article 35.3 of the Convention. It also notes that they incur no other ground of inadmissibility. It decides therefore that they are admissible.

B. Substance

1. Arguments of the parties

a) The applicant

30. The applicant has provided the history of the relevant provisions. She observed that the display of the crucifix is based, according to national courts, on the provisions of 1924 and 1928 which are considered still to be in force, although prior to the Italian Constitution and the 1984 agreement with the Holy See and the Additional Protocol thereto. However, the contested provisions were beyond the control of the constitution, since the Constitutional Court could not rule on their compatibility with fundamental principles of Italian law because of their regulatory nature.

The provisions in question are the heritage of a religious conception of the state that now clashes with its need to be secular and that ignores the rights protected by the Convention. There is a "religious question" in Italy, because, by requiring the display of crucifixes in classrooms, the state gives to 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.

31. According to the applicant, the crucifix has in fact first and foremost a religious connotation. The fact that the cross may be "read" in other ways does not mean it loses its main connotation, which is religious.

Favoring one religion by exposing a symbol gives students in public schools - including particularly the children of the applicant - 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 another, especially not those who are more vulnerable because of their young age.

32. For the applicant, this has implications *inter alia* of an undeniable pressure on minors and gives them the impression that the state is alien to those who do not identify with this religion. The concept of secularism means that the state must be neutral and be equidistant *vis à vis* religions, because it should not be perceived as being closer to some people than others.

The state should guarantee all citizens freedom of conscience, starting with a public education suitable to build a person's autonomy and freedom of thought, out of respect for the rights guaranteed by the Convention.

33. As to whether a teacher would be free to expose other religious symbols in classrooms, the answer is negative, given the absence of provisions to permit it.

b) The Government

34. The Government noted at the outset that the question raised by this application went beyond the proper area of law to encroach on the field of philosophy. It is in effect a matter of determining whether the presence of a symbol that has a religious origin and significance is in itself a factor likely to affect individual liberties in a manner incompatible with the Convention.

35. If the cross is certainly a religious symbol, it also has other meanings. It would also have an ethical significance, understandable and meaningful regardless of adherence to religious tradition or history as it speaks of principles that can be shared outside the Christian faith (non-violence, equal dignity of all human beings, justice and sharing, the primacy of the individual over the group, and the importance of freedom of choice, separation of politics from religion, love of one's neighbour going so far as forgiveness of enemies). Certainly, the values that underpin democratic societies today have their immediate origins also in the thinking of nonbelievers, even of 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 nonbelievers, who might accept it since it 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 display in a public place would not in itself affect the rights and freedoms guaranteed by the Convention.

36. According to the Government, this conclusion is confirmed by analysis of the jurisprudence of the Court which requires a much more active interference than the mere display of a symbol for a finding of infringement of rights and freedoms. Thus, it is an active interference that resulted in the violation of Article 2 of Protocol No. 1 in the case of

Folgerø (Folgerø and others v. Norway[GC], no. 15472/02, ECHR 2007-VIII).

In this case, it is not the freedom to join or not to join a religion that is at stake, because in Italy this freedom is fully guaranteed. It is not freedom to practise religion or not to practise one; 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.

Finally, the freedom to educate children according to parents' convictions is not in question: teaching in Italy is totally secular and pluralistic, the curriculum does not contain any reference to a specific religion and religious instruction is optional.

37. Referring to the decision in *Kjeldsen, Busk Madsen and Pedersen* (December 7, 1976, series A, no. 23), where the Court found no violation, the Government argues that, whatever its evocative force, an image is not comparable to the impact of active, daily and prolonged behaviour such as teaching. In addition, it was always possible to educate one's children to private school or at home by tutors.

38. National authorities have considerable discretion in matters so complex and delicate, closely related to culture and history. Display of a religious symbol in public places would not exceed the margin of appreciation left to States.

39. This is especially true since in Europe there are a variety of attitudes on the subject. For example, in Greece all civilian and military ceremonies include the presence and active participation of an Orthodox clergyman; in addition, on Good Friday, national mourning may be declared and all offices and shops closed, as in Alsace.

40. According to the Government, the display of the cross does not undermine the secular state, a principle enshrined in the Constitution and the agreements with the Holy See. It would not indicate a preference for one religion, because it invoked a cultural tradition of humanistic values shared by people other than Christians. In conclusion, display of the cross did not disregard the duty of impartiality and neutrality of the state.

41. Moreover, there is no European consensus on how in practice to interpret the concept of secularism, so that states should have a wider discretion in the matter. Specifically, if there is a European consensus on the principle of the secular state, there certainly is not on its practical implications and its implementation. The Government asked the Court to exercise caution and restraint and to refrain therefore give a precise content of up to prohibit the mere display of symbols. Otherwise, it 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.

42. The Government does not maintain that it is necessary, appropriate or desirable to maintain the crucifix in classrooms, but the choice of keeping it or not is political and therefore subject to the criteria of opportunity and not of legality. In the history of the evolution of domestic law outlined by the complainant, which the Government does not

dispute, it was necessary to understand that 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 which represent an essential part of the population and their religious sentiment.

43. As to whether a teacher is free to display other religious symbols in classrooms, no provision prohibited it.

44. In conclusion, the Government asked the Court to dismiss the complaint.

c) The intervening party

45. The Greek Helsinki Monitor ("the GHM ") challenges the arguments of the respondent Government.

The cross and even more so the crucifix, can only be seen as religious symbols. The GHM also challenges the assertion that one must see in the cross anything other than a religious symbol and that the cross imports humanist values; he believes that such a position is offensive to the Church. In addition, the Italian Government could not have pointed to even a single non-Christian who would agree with this theory. Finally, other religions would see the cross as a religious symbol.

46. If we follow the Government's argument that display of the crucifix requires no acknowledgement, no attention, we could wonder why the crucifix is displayed at all. The display of such a symbol could be seen as the institutional veneration of it.

In this regard, the GHM notes that according to the Toledo Guiding Principles on Teaching about religions and beliefs in public schools (Council of Experts on Freedom of Religion or Belief of the Organization for Security and Cooperation in Europe (OSCE)), the presence of such a symbol in a public school can be a form of implicit teaching of religion, for example by giving the impression that this particular religion is favoured over others. If the Court in the case of *Folgerø*, found that participation in religious activities can affect children then, according to the GHM, the exhibition of religious symbols may also affect them. It is necessary also to consider situations where children or their parents may fear retaliation if they chose to protest.

3. Findings of the Court

d) General principles

47. Regarding the interpretation of Article 2 of Protocol No.1, in the exercise of functions that the state assumes in the field of education and teaching, the Court reached in its case law the principles set out below that are relevant in this case (see in particular *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Case of December 7, 1976, series A no.23, pp. 24-28, §§ 50-54, *Campbell and Cosans v. United Kingdom*, Case of February 25, 1982, series A no 48, pp. 16-18, §§ 36-37, *Valsamis v. Greece*, Case of December 18, 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 read in the light not only of each other, but also, in particular, of Articles 8, 9 and 10 of the Convention.

(b) The right of parents to respect for their religious and philosophical beliefs relates to the fundamental right to education and the first sentence does not distinguish, any more than the second, between public education and private education. The second sentence of Article 2 of Protocol No. 1 aims at safeguarding the possibility of pluralism in education, something essential to the preservation of the "democratic society" such as is conceived by the Convention. Due to the power of the modern state, it is especially through public education that this goal needs to be achieved.

(c) Respect for parents' convictions should be possible through an education capable of providing a school environment that is open and inclusive rather than exclusive, regardless of students' backgrounds, religious beliefs or ethnicity. The school should not be the scene of proselytizing or preaching, it should be a meeting place of different religions and philosophical convictions, where students can acquire an understanding of 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 education and training, should ensure that the information or knowledge included in syllabuses is conveyed in an objective, critical and pluralistic manner. It is forbidden to pursue an aim of indoctrination that might be considered as not respecting the religious and philosophical convictions of parents. That is the boundary that must not be crossed.

(e) Respect for parents' religious convictions and beliefs of children involves the right to believe in a religion or not 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 terms of Article 11, *Young, James and Webster v. United Kingdom*, August 13, 1981, §§ 52-57, Series A no. 44).

The duty of neutrality and impartiality of the state is incompatible with any judgement on its part of the legitimacy of religious beliefs or ways of expressing them. In the context of education, neutrality should ensure pluralism (*Folgerø*, supra, § 84).

b) Application of these principles

48. For the Court, these considerations lead to the obligation of the State to refrain from imposing beliefs, even indirectly, in places where people are dependent on it or in places where they are particularly vulnerable. The schooling of children is a particularly sensitive because in this case, the binding power of the state is imposed on minds that still lack (depending on the level of maturity of the child) the critical capacity to allow them to distance themselves from the message implied by a preferential choice expressed by the State in religious matters.

49. In applying the above principles to this case, the Court must consider whether the respondent State by requiring the display of crucifixes in classrooms ensured in the exercise of its functions of education and teaching that knowledge was disseminated in an objective, critical and pluralistic way that respected the religious and philosophical convictions of parents, in accordance with Article 2 of Protocol No. 1.

50. In considering this question, the Court will take into account the particular nature of the religious symbol and its impact on students of a young age, especially children of the applicant. Indeed, in countries where the vast majority of the population belong to a particular religion, the manifestation of the rites and symbols of this religion without restriction of place and manner, may constitute a pressure on students who do not practise that religion or those who adhere to another religion (*Karaduman v. Turkey*, Commission decision of May 3, 1993).

51. The Government (paragraphs 34-44 above) justifies the requirement (or fact) of display of the crucifix by reference to the positive moral message of the Christian faith, which transcends the secular constitutional values, to the role of religion in Italian history and to the roots of this tradition in the country. It attributes to the crucifix a neutral and secular meaning by reference to the history and traditions of Italy, which are closely related to Christianity. The Government argued that the crucifix is a religious symbol but it may also represent other values (see Administrative Court of Veneto, no 1110 March 17, 2005, § 16, paragraph 13 above).

In the opinion of the Court, the symbol of the crucifix has a plurality of meanings among which the religious meaning is predominant.

52. The Court considers that the presence of crucifixes in the classrooms goes beyond the use of symbols in specific historical contexts. It has also decided that the traditional character, in the social and historical sense, of a text used by parliamentarians to take an oath does not deprive the oath of its religious nature (*Buscarini and others v. San Marino* [GC], no. 24645/94, ECHR 1999-I).

53. The complainant alleges that the symbol clashes with her convictions and violates the right of her children not to profess the Catholic religion. Her convictions reach a level of seriousness and consistency sufficient for the obligatory presence of the crucifix to be reasonably understood by her as being in conflict with them. As an interested party she sees in the display of the crucifix a signal that the state is on the side of the Catholic religion. This is the meaning officially held by the Catholic Church, which gives the crucifix a fundamental message. Therefore, the applicant's anxiety is not arbitrary.

54. The convictions of Mme Lautsi also cause her concern owing to the impact of display of the crucifix on her children (paragraph 32 above), aged at the time eleven and thirteen. The Court recognizes that, as it is on display, it is impossible not to notice the crucifix in classrooms. In the context of public education, it is necessarily perceived as an integral part of school and can therefore be regarded as a "powerful external symbol" (*Dahlab v. Switzerland* (déc.), no. 42393/98, ECHR 2001-V).

55. The presence of the crucifix can be easily interpreted by students of all ages as a religious symbol and they will feel 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 an effort and cost that are disproportionate.

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 necessary compromise with political parties of Christian inspiration. Respect for beliefs of parents in education must take into account compliance with the beliefs of other parents. The state is obliged to religious neutrality in public education where attendance is required irrespective of religion and must seek to instill in students critical thinking.

The Court does not see how display in classrooms of public schools of a symbol that it is reasonable to associate with Catholicism (the majority religion in Italy) could serve the educational pluralism that is essential to the preservation of a "democratic society" as conceived by the Convention. The Court notes in this connection that the jurisprudence of the Constitutional Court goes in the same direction (see paragraph 24).

57. The Court believes that the required display of a symbol of a given religious confession in the exercise of public functions relating to specific situations under government control, particularly in classrooms, restricts the right of parents to educate their children according to their beliefs and the right of schoolchildren to believe or not believe. The Court considers that this constitutes a violation of these rights because the restrictions are inconsistent with the duty of the State to respect neutrality in the exercise of its public functions, particularly in the field of education.

58. Accordingly, there has been a violation of Article 2 of Protocol No. 1 in conjunction with Article 9 of the Convention.

II. ON THE ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

59. The applicant submits that the breach she denounced in terms of section 9 of the Convention and Article 2 of Protocol No. 1 also infringes the principle of non-discrimination enshrined in Article 14 of the Convention.

60. The Government rejected this argument.

61. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it encounters no other ground of inadmissibility. It is therefore necessary to declare it admissible.

62. However, given the circumstances of this case and the reasoning which led it to find a violation of Article 2 of Protocol No. 1 in conjunction with Article 9 of the Convention (paragraph 58 above), the Court considers there is no need to consider the case additionally in terms of Article 14 taken alone or combined with the above provisions.

III. ON THE IMPLEMENTATION OF ARTICLE 41 OF THE CONVENTION

63. Under Article 41 of the Convention,

"If the Court finds a violation of the Convention or its Protocols, and if the internal law of the High Contracting Party allows only a partial recompense for the consequences of this violation, the Court grants the aggrieved party if necessary, equitable satisfaction. "

A. Damages

64. The applicant seeks the payment of a sum of at least EUR 10 000 for moral damages.

65. The Government considers that a finding of infringement would be adequate. Alternatively, it considers that the amount claimed is excessive and unsupported and seeks dismissal or reduction in equity.

66. Since the Government has not expressed its readiness to review the provisions governing the presence of crucifixes in classrooms, the Court considers that, unlike what happened in the case *Folgerø and others* (cited above, § 109), the finding of a violation does not suffice in this case. Therefore, acting in equity, it awards EUR 5,000 as moral damages.

B. Costs

67. The applicant seeks EUR 5 000 for costs and expenses incurred in the Strasbourg proceedings.

68. The Government notes that the applicant has not substantiated her claim, and suggests the rejection thereof.

69. According to the jurisprudence of the Court, an applicant can obtain reimbursement of his costs and expenses only insofar as they are real, necessary and reasonable. In this case, the applicant has not produced any evidence to support her claim. The Court therefore decides to reject it.

C. Default interest

70. The Court considers it appropriate to base the rate of interest on the interest rate on the marginal lending facility from the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the application admissible;

2. Rules there has been a violation of Article 2 of Protocol No. 1 considered in conjunction with Article 9 of the Convention;

3. Rules there is no need to examine the complaint under Article 14 taken alone or in conjunction with Article 9 of the Convention and Article 2 of Protocol No. 1;

4. Rules

a) that the respondent State must pay to the applicant within three months from the day the decision becoming final in accordance with Article 44 § 2 of the Convention, 5 000 (five thousand) euros pecuniary damage, plus any amount that may be chargeable to tax;

b) that from the expiry of that period until settlement, this amount will increase by simple interest at a rate equal to the marginal lending facility from the European Central Bank applicable during this period, increased by three percentage points;

5. Rejects the demand for fair satisfaction for the remainder.

Done in French, and notified in writing by November 3, 2009, pursuant to Article 77 §§ 2 and 3 of the Regulation.

Sally Dollé Françoise Tulkens
Clerk Chair

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