

Lautsi v. Italy: Deference to State Sovereignty from on High as the Cross Remains Nailed to Italian School Walls

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I. OVERVIEW

Soile Lautsi sent her two middle school aged children, Sami and Dataico, to Istituto comprensivo statale Vittorino da Feltre, an Italian state-run school in Abano Terme.¹ While she and her husband were nonreligious and wished to raise their children without any particular religious upbringing, their children’s state-run school in Abano Terme had crucifixes on the wall of each classroom.² The father brought the Lautsi family’s disagreement with the presence of religious symbols, including the crucifix, in classrooms to a meeting of the school’s governors on April 22, 2002.³ The governors refused to remove the religious symbol by a vote of ten to two, thus deciding that the crucifixes would remain on May 27, 2002.⁴ Being unsatisfied by the school’s internal decision, Mrs. Lautsi then brought a case to the Veneto Administrative Court on July 23, 2002, to contest the school’s decision.⁵ She based her complaint primarily on the principle of secularism found in the Italian Constitution and the European Convention on Human

1. Lautsi & Others v. Italy [GC] (*Lautsi II*), App. No. 30814/06, para. 10 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search Application Number “30814/06”).

2. *Id.*

3. *Id.* para. 11.

4. *Id.*

5. *Id.* para. 12.

Rights for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as well as the Italian Constitution's principle of the impartiality of public administrative authorities.⁶ In October of 2002, the Italian Minister of Education, Universities, and Research joined the proceedings against the complainant, arguing that her claim was ill-founded because articles 118 and 119 of two royal decrees from the 1920s mandated the presence of crucifixes in the classrooms of public schools.⁷ Ultimately, the Administrative Court dismissed the complaint on March 17, 2005, ruling that articles 118 and 119 of the royal decrees were still good law and that the presence of a primarily religious symbol in public schools did not offend the notion of secularism adopted by Italy and other European democratic states.⁸ The Consiglio di Stato, the Supreme Administrative Court, affirmed this decision in its judgment of April 13, 2006.⁹

The complaint reached the European Court of Human Rights (ECHR) Second Section, with the applicants, Mrs. Lautsi and her two (now adult) children, alleging violations of article 2 of Protocol No. 1 to the European Convention on Human Rights and article 9 of the European Convention on Human Rights.¹⁰ The Chamber found for the applicants in its judgment of November 3, 2009, holding that both article 2 of Protocol No. 1 and article 9 had been violated.¹¹ On January 28, 2010, the Italian government requested the case be referred to the Grand Chamber, and on March 1, 2010, a panel of the Grand Chamber granted

6. *Id.*

7. *Id.* para. 13. Both article 118 of royal decree no. 965 of April 30, 1924, and article 119 of royal decree no. 1297 of April 26, 1928, were specifications forcing state-run classrooms to have crucifixes on the walls under decrees governing internal regulations of middle schools (royal decree no. 965) and general regulations of primary education (royal decree no. 1297). *Id.*

8. *Id.* para. 15. Prior to the 2005 dismissal, the Administrative Court referred the constitutional question to the Constitutional Court on January 14, 2004, asking how and if the principles of a secular state found in the Constitution coincided with: (1) Articles 159 and 190 of legislative decree no. 297 of April 16, 1994, which approved a single text to meld currently enforceable legislative provisions on education and schools; (2) the directives of article 118 of royal decree no. 965 of April 30, 1924, which specified that each state classroom must contain a portrait of the king and a crucifix; (3) article 119 of royal decree no. 1297 of April 26, 1928, which specified that each classroom must have a crucifix; and (4) article 676 of legislative decree no. 297 (mentioned above), which stated that provisions not included in the single text remained in force unless the provisions are contrary or incompatible with the single text and are repealed. Ultimately, the Constitutional Court found the question of constitutionality inadmissible because the question relied on the royal decrees, which are only regulatory texts and thus could not be the subject of a constitutionality review. *Id.* paras. 13-14, 16.

9. *Id.* para. 16.

10. *Id.* para. 29.

11. *Id.* para. 30.

the request.¹² The European Court of Human Rights Grand Chamber *held* that an Italian mandate requiring crucifixes on public school classroom walls did not violate the European Convention on Human Rights' guarantees of a right to education and freedom of thought, conscience, and religion, and found this primarily religious symbol's presence in state-run classrooms was within Italy's margin of appreciation. *Lautsi & Others v. Italy [GC] (Lautsi II)*, App. No. 30814/06, paras. 63-78 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "30814/06").

II. BACKGROUND

A. *Theoretical and Historical Place of Religious Freedom in Western Civilization*

The concept of freedom of religion and conscience is a cornerstone of Western liberal democracy and is considered a fundamental civil liberty.¹³ Beyond classical Greek and Roman democratic ideals, Western civilization grew from two distinct and often conflicting traditions: Christianity (Western civilization as Europe was referred to as Christendom until the modern era) and the ideals of the Enlightenment.¹⁴ It is these two traditions that form the heated battles in cases, like the noted case, broadly concerning religion's place (if any) in the public sphere of the state.¹⁵ Christianity, the historically dominant religion of Western civilization through the Protestant and the Catholic churches, retained influence in Europe. Simultaneously, separating church and state, brought by the Enlightenment's ideals of freedom of conscience,

12. *Id.* para. 5.

13. See Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, 12 PHIL. & PUB. AFF. 4 (1983), *reprinted in* INTERNATIONAL POLITICS: ENDURING CONCEPTS AND CONTEMPORARY ISSUES 83, 84 (Robert J. Art & Robert Jervis eds., 7th ed. 2005) (arguing that liberalism's foundation is in the individual's civil rights such as freedom of religion and that liberalism distinguishes between "negative freedoms," or those freedoms from arbitrary authority, such as freedom of conscience, and "positive freedoms" such as those social rights necessary to "protect and promote the capacity for freedom"); Samuel P. Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFF. 3 (1993), *reprinted in* INTERNATIONAL POLITICS: ENDURING CONCEPTS AND CONTEMPORARY ISSUES, *supra*, at 415, 424 (discussing ideals uniquely integral to Western civilization liberalism, human rights, liberty, and the specific idea within freedom of religion regarding separation of church and state).

14. James Kurth, *Western Civilization, Our Tradition*, 39 INTERCOLLEGIATE REV. 5, 5 (2003-2004).

15. See *id.*

the power of religious minorities, and of the fallible human being,¹⁶ shifted the political nexus gradually away from “Christendom” towards a “Western civilization” driven by liberal democratic ideals of civil liberties.¹⁷ The degree to which religion is separated from state is seen in this contrast between the positive and/or negative freedom of religion (freedom to and freedom from), and the historical framework of a civilization founded on Christian ideals (and often ruled by the Church).¹⁸ The historical influence of the Church in a nation’s founding, along with contemporary ideals of the importance of religion or secularization to a society, is critical to answering this question.¹⁹

Importantly, the ECHR in the noted case recognizes that given the disparate histories of each European country, their state or dominant religion (Protestant, Catholic, or Orthodox), and varying social attitudes, there is no current European consensus on the place of secularism, or whether religious freedom even equates to secularism.²⁰ Despite these histories, European proponents of liberalism, who strongly favor state neutrality towards religion, recognize the increasing European trend of diversity in cultures and religions—a heterogeneous trajectory necessitating pluralism and neutrality.²¹ How a liberal democratic state configures religion’s place in its governmental, social, cultural, and political life is hotly debated (as evidenced by the noted case’s opposing sides and many intervening parties) because there are conflicting views on exactly what the relationship between church and state should be, further reflecting the “different viewpoints about the role of religion in a pluralistic society.”²² These differing viewpoints manifest themselves in a continuum of religion’s configuration with the state: from secularization

16. EUROPEAN LIBERAL FORUM, SEPARATION OF CHURCH AND STATE IN EUROPE: WITH VIEWS ON SWEDEN, NORWAY, THE NETHERLANDS, BELGIUM, FRANCE, SPAIN, ITALY, SLOVENIA, AND GREECE 3 (Fleur de Beaufort, Ingemund Hägg & Patrick van Schie eds., 2008) [hereinafter EUROPEAN LIBERAL FORUM].

17. See Kurth, *supra* note 14, at 6.

18. See Alfred C. Stepan, *Religion, Democracy, and the “Twin Tolerations,”* 11 J. DEMOCRACY 37, 39-42 (2000) (comparing how the fifteen EU Member States in 1990, five of which had established religions, dealt to varying degrees with the “‘twin tolerations’ of freedom for democratically elected governments and freedom for religious organizations in civil and political society”). See generally EUROPEAN LIBERAL FORUM, *supra* note 16 (discussing the historical and cultural context under which various European states have dealt and continue to deal with freedom of religion to varying degrees in their liberal democracies).

19. See Stepan, *supra* note 18, at 39-42.

20. John Witte, Jr. & Nina-Louisa Arold, *Lift High the Cross?: Contrasting the New European and American Cases on Religious Symbols on Government Property*, 25 EMORY INT’L L. REV. 5, 28 (2011).

21. EUROPEAN LIBERAL FORUM, *supra* note 16, at 1.

22. Andrea Pin, *Public Schools, the Italian Crucifix, and the European Court of Human Rights: The Italian Separation of Church and State*, 25 EMORY INT’L L. REV. 95, 99-100 (2011).

to separation of church and state (from strict to more relaxed), to the idea of state neutrality and tolerance of religion, to a state with an established religion with tolerance for religious freedom.²³ The American tradition favors a strict wall of separation between church and state, creating a secularization that many European countries are hesitant to adopt; rather, they endorse a neutral or plural idea of the state that recognizes in its civil and political society a role for religion, particularly those states like Italy with such a strong historical presence and power of the Church within the state.²⁴

Unlike the American constitutional framework of separation of church and state, as evidenced by the First Amendment's Establishment Clause, the European Convention on Human Rights does not delineate if and how religion can function within the public sphere of signatory states.²⁵ Despite silence in the text, implicit in the European Convention on Human Rights is a duty of the state to be neutral and impartial with regards to religion.²⁶ Like the United States' First Amendment guarantees of each citizen's free exercise of religion, article 9 of the European Convention on Human Rights also guarantees signatory states' citizens' rights to freedom of religion (as well as thought and conscience), and this right encompasses the freedom to manifest one's beliefs at least up to certain outlined limitations.²⁷

23. See Witte & Arold, *supra* note 20, at 5 (noting the historical position of the United States, a "champion of strict separation of church and state," as moving to a more accommodating view of religion in civil life while certain European countries are moving towards stronger policies of secularization); see also Stepan, *supra* note 18, at 39-41, 42, tbl.1 (noting the varying degrees of religious freedom available in European democracies from secularization, from a "hostile" separation of church and state, to a more "friendly" separation of church and state, to established state religions but with the freedom to worship and toleration of other religions).

24. Lautsi & Others v. Italy [GC] (*Lautsi II*), App. No. 30814/06, para. 47 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "30814/06") ("The position adopted by the Chamber was . . . an expression of the values of a secular State. To extend it to the whole of Europe would represent the 'Americanisation' of Europe in that a single and unique rule and a rigid separation of Church and State would be binding on everyone.").

25. See discussion of the European Convention on Human Rights art. 9, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention on Human Rights]; *infra* Part II.C.

26. See *Lautsi II*, App. No. 30814/06, para. 60 (maintaining that article 9 "imposes on Contracting States a 'duty of neutrality and impartiality,'" while the text of the article does not explicitly mention this duty).

27. See European Convention on Human Rights, *supra* note 25, art. 9.

B. The Italian Conception of Religious Freedom: Religious Symbols, Education, and Government Property

Of the European countries, Italy's relationship between church and state, given its historical, legal, cultural, and geographical ties with the Catholic Church, has been incredibly complicated, particularly in the arena of religious symbols in the public sphere.²⁸ Because of these factors, the philosophical description of Italy's church-state relationship is *laicità*, although scholars and Italians debate about *laicità*'s precise meaning in Italy.²⁹ While often mistakenly defined as secularism, this term *laicità* (*laïcité*, *laicismo*, *laïcisme*, or *laicidad*) is more nuanced than pure secularism, depending on the European state employing it, and has slightly different yet practically important definitions.³⁰ For example, unlike the Italian conception, the French concept of *laïcité* is defined as secularism and reflects a strict neutrality of the state in terms of the plurality of views with a rigid separation of church and state; for example, the state gives no financial or other support to religious institutions, nor does it allow any religious symbols, such as personal dress, in state-run schools.³¹ This French concept of *laïcité* derived from the ultimate sovereignty and importance of the French state over individual identifiers (including religion), requires not only that the government be neutral but even individuals to be religiously neutral in the public sphere.³² The Italian conception of *laicità* is more anomalous but is generally a less rigid separation of church and state than the French concept, with neutrality as a cornerstone, but also including acceptance of religion and recognition of Catholicism's place in its history.³³ *Laicità* in Italy derives from the Italian Risorgimento of the nineteenth century in which liberals supported strict separation of church and state and protection of both the positive and negative religious freedoms; today, this separation has become less strict but still includes a fundamental idea of neutrality in institutions, while not required for individuals.³⁴

Legally, from the Italian Unification of 1861 through the Lateran Pacts of 1929 during the fascist era, Roman Catholicism was the official state religion of Italy, thus giving religion a codified and welcomed place

28. Pin, *supra* note 22, at 98.

29. *Id.* at 99. ("The disagreement is so striking that both those who endorse and those who oppose the public display of religious symbols refer to the principle of *laicità*.")

30. EUROPEAN LIBERAL FORUM, *supra* note 16, at 5.

31. Alenka Kuhelj, *Religious Freedom in European Democracies*, 20 TUL. EUR. & CIV. L.F. 1, 16-17 (2005).

32. EUROPEAN LIBERAL FORUM, *supra* note 16, at 4.

33. *See id.* at 4; Pin, *supra* note 22, at 123-24.

34. EUROPEAN LIBERAL FORUM, *supra* note 16, at 4.

in the state.³⁵ With the adoption of the post-fascist, post-WWII, republican constitution in 1948, a gradual move away from the intermingling of church and state occurred.³⁶ Article 19 of the constitution provides the guarantee of freedom of religious expression for all, both minorities and Catholics, in public and in private, provided that public morality is not offended.³⁷ Article 7 delineates the independent and sovereign realms of the state and the Catholic Church, and article 8 provides non-Catholic religions equal freedom before the law, including the right to freely organize provided that they do not set themselves up “against the Italian legal order.”³⁸ Decades later in 1985, the church was officially separated from the state by removal of the Catholic Church as the official state religion and striking that portion of the Lateran Pacts.³⁹

Beyond the constitutional provisions dealing with religion’s place within the state are Italian regulations, which dictate the interplay between religion, specifically religious symbols, and schools.⁴⁰ Even prior to Italian unification, the state obligated schools to display the crucifix in classrooms, and this tradition has been carried through the twenty-first century.⁴¹ After unification, the laws of Piedmont-Sardinia became the Italian Constitution, including those mandating crucifixes in classrooms as well as establishing Catholicism as the state religion, while declaring tolerance for other religions “in accordance with the law.”⁴² Again, during the fascist era of the 1920s, circulars and royal decrees reminded public schools of their duty to hang Christian symbols on classroom walls.⁴³ Of particular importance in the noted case were the

35. *Lautsi v. Italy (Lautsi I)*, App. No. 30814/06, paras. 16-21 (Eur. Ct. H.R. Nov. 3, 2009), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search Application Number “30814/06”). Most significantly, the Lateran Pacts created a sovereign nation for the Catholic Church, the Vatican, which provided complete independence for the Vatican from the Italian state. See Pin, *supra* note 22, at 113.

36. See *Lautsi I*, App. No. 30814/06, para. 22.

37. Pin, *supra* note 22, at 112.

38. *Lautsi I*, App. No. 30814/06, para. 22 (internal quotation marks omitted). The Lateran Pacts remained in force, though, explicitly with the adoption of article 7, they changed nothing in the agreement. *Id.*

39. *Id.* para. 23.

40. *Id.* paras. 16-20.

41. *Id.* para. 16. (“Article 140 of the Kingdom of Piedmont-Sardinia’s Royal Decree no. 4336 of 15 September 1860 required ‘each school without fail [to] be equipped . . . with a crucifix.’” (alteration in original)).

42. *Id.* para. 17 (internal quotation marks omitted).

43. *Id.* paras. 19-21. In 1922, a Ministry of Education circular from the fascist Italian state ordered municipal authorities to restore “the two sacred symbols of faith and national consciousness [the image of Christ and the King’s portrait]” to schools, after finding that recent removals of “the image of Christ and the King’s portrait” were “manifest and intolerable”

royal decrees of 1924 and 1928, because the Minister of Education relied on these decrees to again remind municipal authorities of their duties to ensure that public schools hang crosses in classrooms.⁴⁴ Article 118 of royal decree no. 965 (April 30, 1924) dealing with the rules of secondary schools mandated that each school must hang a crucifix and the King's portrait in each classroom, and article 119 of royal decree no. 1297 of April 26, 1928, dealt with general rules of public education and listed among necessary equipment and material in classrooms the crucifix.⁴⁵

A popular interpretation of the Italian Constitution among Italian courts and popular opinion had identified the benefit, rather than harm, that religion's presence in public institutions could have in a pluralist society.⁴⁶ In Mrs. Lautsi's case before the Administrative Court, for example, the court held that the royal decrees of the 1920s were still valid law while simultaneously recognizing the importance of neutrality of the state and plurality of religious tolerances.⁴⁷ The court reasoned that, in a sense, the cross as a religious symbol was pluralistic because it represents not just Catholicism, Italy's majority religion, but also Christianity as a whole.⁴⁸ It also reasoned that despite being primarily a religious symbol, the crucifix serves as a cultural and historical symbol representing the development of Italian and European identity.⁴⁹ Further, the Administrative Court argued that the cross serves as a symbol of the Italian Constitution's core value system because it was Christianity that formed the basis of the ideas of tolerance, equality, and personal freedom leading later to the Enlightenment's ideals of a secular modern state providing freedom of religion and a friendly separation of church and state.⁵⁰

breaches of regulation and "above all an attack on the dominant religion of the State and on the unity of the Nation." *Id.* para. 19.

44. See *Lautsi & Others v. Italy* [GC] (*Lautsi II*), App. No. 30814/06, paras. 13-15 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "30814/06").

45. *Lautsi I*, App. No. 30814/06, para. 20.

46. Pin, *supra* note 22, at 100. In a 1989 judgment concerning noncompulsory Catholic instruction in public schools, the Constitutional Court of Italy ruled that the Constitution guarantees the principle of secularism, which does not mean indifference to religions by the state but a guarantee by the state of citizens' freedom of religion in "confessional and cultural pluralism." *Lautsi II*, App. No. 30814/06, para. 23.

47. *Lautsi I*, App. No. 30814/06, para. 13.

48. *Lautsi II*, App. No. 30814/06, para. 15 (citing to *Lautsi I*, App. No. 30814/06, paras. 51-52).

49. *Id.*

50. *Id.* The Administrative Court's usage of the term "secular state" must be construed as, not the rigid French or historically American model disallowing any confluence of church and state, but just the absence of a church-controlled state, state mandated religion, and similar relationships.

While the Italian definition of *laicità* has traditionally been less hostile towards religion and more welcoming of religion's presence in public institutions than the French, scholars note a shift towards a more neutrality-based definition of this concept by Italian courts, which recognizes the current plurality of religions and beliefs in Italian society and also reflects the views of neutrality and impartiality towards the church-state relationship in the European Convention on Human Rights.⁵¹ The Italian Constitutional Court first explicitly referred to the concept of religious "neutrality" of the state in a 1997 decision regarding different fiscal treatment under Italian tax law towards Jewish institutions versus Catholic ones.⁵² In this case, for the first time, the court required the state to be neutral in its treatment of all religions.⁵³ Similarly, in a case before the Court of Cassation in 2000, the court held that the presence of a crucifix at a polling station⁵⁴ violated the constitutional guarantee of secularism, meaning impartiality of the state and freedom of conscience for those who do not believe in the cross.⁵⁵ The court rejected the argument approved by other courts in prior decisions that the crucifix could be displayed on government property because it is not a religious but a cultural symbol and that the cross symbolizes a neutral universal value.⁵⁶ The court found the primarily religious symbol's presence in a public government space was not an impartial and neutral display by the state and violated *laicità*.⁵⁷ The citizen who had been prosecuted for refusing his civic duty of manning a polling station because of his discomfort with the presence of crucifixes there was excused because the court found that the crucifix violated *laicità* as meaning neutrality and impartiality.⁵⁸

51. See Pin, *supra* note 22, at 124-25. Pin cites the shift towards neutrality beginning with a 1995 case before the Constitutional Court in which it partially struck down, for equality's sake, a provision of the Italian penal code dating from the 1930s that punished offenses against "God and the persons and symbols venerated by the state religion." To conform with *laicità* and equality of religion, the code struck the "persons and symbols" portion and reconfigured the first portion to protect offenses against the divine by believers of all faiths. *Id.* at 125.

52. *Id.* at 126.

53. *Id.*

54. The polling station was actually a public school in which crucifixes were present, although the room in which the pollster would have worked did not have a crucifix. *Id.* at 128.

55. *Lautsi II*, App. No. 30814/06, para. 23.

56. *Id.*

57. *Id.*

58. Pin, *supra* note 22, at 129.

C. *ECHR Treatment of Religious Freedom: Religious Symbols, Education, and Government Property*

The European Convention on Human Rights and its Protocols provide a legal framework for signatory nations' citizens to bring cases before the ECHR that violate the Convention or its Protocols. The Convention provides the ECHR with the competency to interpret the Convention and issue binding and enforceable decisions on signatory states.⁵⁹ While not addressing the legality of the narrow issue of the presence of religious symbols in state-run schools, the European Convention on Human Rights does provide a legal framework for the interplay between the freedoms of education and religion (or nonreligion).⁶⁰ Article 9 guarantees all signatory nations' citizens the right to freedom of thought, conscience, and religion.⁶¹ Article 9.1 includes the freedom to alter one's belief or religion and the "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."⁶² The ECHR has interpreted the duty of freedom of thought, conscience, and religion as imposing on states a "duty of neutrality and impartiality."⁶³ Article 9.2 places limitations on the 9.1 freedom to manifest one's religion or belief that are quite wide—the law is based on necessity for democracy, public order, health or morals, or to protect others' freedoms.⁶⁴ In recent decades, some European states have outwardly claimed article 9.2 limitations on religious manifestations based on the need for "public order" and "protection of the rights and freedoms of others," while these limitations have ultimately been motivated by political and social views.⁶⁵ One of the cases in which the ECHR allowed state bans on individual manifestations of religion in

59. Dragoljub Popovic, *Prevailing of Judicial Activism over Self-Restraint in the Jurisprudence of the European Court of Human Rights*, 42 CREIGHTON L. REV. 361, 374-75 (2009).

60. *Lautsi II*, App. No. 30814/06, para. 29.

61. European Convention on Human Rights, *supra* note 25, art. 9.

62. *Id.*

63. *Lautsi II*, App. No. 30814/06, para. 60.

64. *Id.* para. 29.

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.

European Convention on Human Rights, *supra* note 25, art. 9.2.

65. Kuhelj, *supra* note 31, at 1; *see also* discussion *infra* of the French law against religious clothing, often referred to as the headscarf ban in schools.

public,⁶⁶ particularly in schools, is *Şahin v. Turkey*, in which the ECHR held that a Turkish university's ban against females wearing Muslim headscarves was not a violation of the woman's rights to manifest religion under article 9.⁶⁷ The court reasoned that one's ability to manifest her religion could be limited per article 9.2 based on protecting "public order" and protecting the "rights and freedoms of others" because in a state based constitutionally on secularism and wary of fundamental religious sects and the protection of gender equality, the Islamic headscarf worn in public schools can be prohibited to protect this greater social good.⁶⁸

Article 2 of Protocol No. 1 governs the right to education, with its first sentence promising that "[n]o person shall be denied the right to education."⁶⁹ The second sentence guarantees the right of parents' educational desires to be "respect[ed]" by the state.⁷⁰ Ultimately, the ECHR maintains that determinations of how to educate its citizens—both in terms of planning the curriculum and how to organize the school environment—must be made by the individual signatory states, giving deference to the states by allowing certain limitations on the right to education based on state regulations.⁷¹ The ultimate question to be determined in whether religion's presence in education is a violation of article 2 of Protocol No. 1 is if objectivity and pluralism have been maintained without any transgression towards indoctrination and thus overstepping the bounds of respecting parental religious and philosophical convictions.⁷² Similarly, the second sentence does not give

66. These primarily involve Islamic female religious clothing and headdress, hence the "veil jurisprudence" coinage. See Susanna Mancini, *The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence*, 30 CARDOZO L. REV. 2629, 2643 (2009).

67. *Şahin v. Turkey* [GC], App. No. 44774/98, paras. 121-23 (Eur. Ct. H.R. Nov. 10, 2005), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "44774/98").

68. *Id.* paras. 113-15. Of note in this judgment is the explicit notion that curbing an individual's right to religious expression could be based on state constitutional values of secularism if secularism is seen as necessary to protect a democratic state, as Turkey asserts. *Id.* paras. 113-14.

69. European Convention on Human Rights, *supra* note 25, Protocol No. 1, art. 2.

70. *Id.* "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." *Id.*

71. *Lautsi & Others v. Italy* [GC] (*Lautsi II*), App. No. 30814/06, para. 69 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "30814/06").

72. See *Folgerø & Others v. Norway* [GC], App. No. 15472/02, para. 84(h) (Eur. Ct. H.R. June 29, 2007), <http://www.echr.coe.int/echr/en/hudoc> (follow "HUDOC database" hyperlink; search Application Number "15472/02").

parents a broad right for their children to “be kept ignorant about religion and philosophy in their education.”⁷³ In *Folgerø v. Norway*, the Grand Chamber did not find a violation of article 2 of Protocol No. 1’s requirement of pluralism and objectivity because it did not find the religious and philosophical curriculum, which focused most extensively on Christianity, to rise to the level of indoctrination.⁷⁴ Conversely, the court held that a partial exemption provision from this religious curriculum did not adequately fulfill the article 2 of Protocol No. 1 requirement of “respect” for parental beliefs in the way to educate and teach their children because it caused too great an intrusion into a parent’s (and child’s) private life and personal religious and philosophical values.⁷⁵

A common principle in interpreting the religious freedoms in education encompassed by article 9 and article 2 of Protocol No. 1 has been the ECHR’s judgments concerning states’ laws either prohibiting or allowing religious symbols in state schools. The ECHR grants states a “wide margin of appreciation,” as with other church-state determinations.⁷⁶ A main factor in the ECHR Grand Chamber’s reasoning to give such deference to signatory states is the lack of a European consensus on the presence of religious symbols in state schools.⁷⁷ Only three signatory states actually outright forbid the presence of religious symbols in public schools.⁷⁸ Most famous among these is France and its 2004 legislative ban on conspicuously religious clothing or symbols worn by students in public schools (often called its “veil jurisprudence”).⁷⁹ Coincidentally, by citing to the principle of margin of appreciation for a state that has long placed a penultimate value on strict secularism and recognizing that the “public order” and “health” exceptions to the freedom to manifest one’s religion in article 9 were not violated, the ECHR in *Dogru v. France* upheld the 2004 French ban on religious clothing in schools, “known as the [l]aw ‘on

73. *Id.* para. 89.

74. *Id.* para. 78.

75. *Id.* para. 100. Parents could also send a note to the school, opting their children out of certain portions that, from their point of view, consisted of practicing or adhering to another religion or philosophy. Parents were required to provide reasoning for wanting their child to be opted out, and even if these requests were deemed reasonable, the student would not necessarily be exempted from the part of the curriculum requested. *Id.* paras. 96, 98-99.

76. *See Mancini, supra* note 66, at 2656-57; Witte & Arold, *supra* note 20, at 52.

77. *Lautsi & Others v. Italy* [GC] (*Lautsi II*), App. No. 30814/06, paras. 26-28, 70 (Eur. Ct. H.R. Mar. 18, 2011), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search Application Number “30814/06”).

78. *Id.* para. 27.

79. *See Mancini, supra* note 66, at 2643.

secularism.”⁸⁰ Conversely, only five states, including Italy, require religious symbols in state schools, while another handful of states have certain public schools with religious symbols that are not specifically mandated by law.⁸¹ In the noted case, as in *Dogru v. France*, the ECHR upheld the Italian regulations (via the royal decrees of the 1920s) mandating a particular relationship between church and state in terms of religious symbols in schools; although, conversely, the Italian law did not require strict secularism by banning religious symbols worn by individuals in schools, instead it mandated a religious symbol.⁸²

In *Lautsi I*, the Second Section of the ECHR, unlike the Grand Chamber after it, found the mandated presence of crucifixes in Italian public school classrooms to be a violation of the European Convention on Human Rights’ guarantees of freedom of thought, conscience, religion, and education—both for students and their parents to educate them according to their own religious and philosophical convictions.⁸³ Based on its interpretation of article 2 of Protocol No. 1, the court reasoned that the principles embodied in the article and defined by case law established the state’s duty not to impose beliefs, even symbolically, in locations where people are dependent or especially vulnerable, such as where children are taught.⁸⁴ It also reasoned that the display of a symbol so closely associated not just with Christianity, generally, but the state’s majority religion (Catholicism), in particular, violated the state’s obligation to uphold “confessional neutrality” in public education.⁸⁵ In *Lautsi I*, the Second Section analogized the crucifixes on the walls to

80. See *Dogru v. France*, App. No. 27058/05, paras. 30-31, 71-73 (Eur. Ct. H.R. Dec. 4, 2008), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search Application Number “27058/05”).

The Court also notes that in France, as in Turkey or Switzerland, secularism is a constitutional principle, and a founding principle of the Republic, to which the entire population adheres and the protection of which appears to be of prime importance, in particular in schools. The Court reiterates that an attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one’s religion and will not enjoy the protection of Article 9 of the Convention.

Id. para. 72 (internal citations omitted).

81. *Lautsi II*, App. No. 30814/06, para. 27. For a discussion of supreme court cases of signatory states regarding litigation of religious symbols in schools, which shows no uniformity in decision, see *id.* para. 28.

82. *Id.* paras. 70-71.

83. *Lautsi & Others v. Italy (Lautsi I)*, App. No. 30814/06, paras. 57-58 (Eur. Ct. H.R. Nov. 3, 2009), <http://www.echr.coe.int/echr/en/hudoc> (follow “HUDOC database” hyperlink; search Application Number “30814/06”).

84. *Id.* paras. 48, 54.

85. *Id.* para. 56. “In the context of teaching, neutrality should guarantee pluralism.” *Id.* para. 47(e).

powerful external symbols violating a neutral educational environment and thus becoming indoctrination. The court compared the noted case to *Dahlab v. Switzerland*, in which the court found the state's prohibition on a primary school teacher wearing Muslim headscarf not to violate article 2 of Protocol No. 1.⁸⁶ The court there reasoned that the headscarf constituted a powerful external symbol rising to the level of indoctrination and that the Swiss prohibition protected the confessional neutrality of schools as well as the religious beliefs of her students and their parents.⁸⁷ In terms of parental rights to educate their children in accord with their beliefs, the court focused on the duty of respect that the state must have for the diverse convictions of all parents in regards to upholding confessional neutrality in public education.⁸⁸

III. THE COURT'S DECISION

In the noted case, the Grand Chamber of the ECHR ultimately deferred to the Italian tradition of *laicità*, presently defined as a softer separation of church and state than French *laïcité*, and a neutral state able to simultaneously recognize its majority religion.⁸⁹ The Grand Chamber examined the narrow issue of the compatibility of the crucifix as a religious symbol in public schools with the European Convention on Human Rights article 9 and article 2 to Protocol No. 1, not expanding the question to the compatibility of religious symbols in other locations nor religion within the state generally.⁹⁰ The court began its analysis by stating that the test of the legality of the crucifixes in state schools requires examining article 9 and article 2 to Protocol No. 1, particularly focusing on the limitations to the manifestation of the second sentence, together.⁹¹ The test of an article 9 violation is whether the state met its "duty of neutrality and impartiality."⁹² Article 2 to Protocol No. 1's requirement of states to "respect" parental religious and philosophical convictions in education. While setting a standard, this article does not create a one-size fits all rule, and instead, courts must give a "wide margin of appreciation" to states in determining if they met the "respect"

86. *Lautsi II*, App. No. 30814/06, para. 73.

87. *Id.*

88. *Id.* para. 56. The ECHR does not believe that the display of any religious symbol, or multiple religious symbols, is justified by either the desires of other parents or a need for political compromise with Christian parties. *Id.*

89. See Witte & Arold, *supra* note 20, at 7, 9, 11.

90. *Lautsi II*, App. No. 30814/06, para. 57.

91. *Id.* para. 59.

92. *Id.* para. 60.

threshold.⁹³ Similar to this wide margin of appreciation to determine if “respect” is met, the court analogized the religious symbols in schools to its case law on religion in the school curriculum, finding that, like the setting and planning of the curriculum, the school environment “[f]alls within the competence of the contracting state.”⁹⁴ However, here, the margin of appreciation is limited: the state must respect pluralism and objectivity in education. Therefore, anything that falls below indoctrination in education is allowed under article 2 of Protocol No. 1.⁹⁵

Applying these tests to the facts of Mrs. Lautsi’s case, the Grand Chamber ultimately reversed the decision of the Second Section by finding that the Italian regulation mandating the presence of crucifixes in public school classrooms did not violate Mrs. Lautsi’s parental rights or her children’s rights as guaranteed by the European Convention on Human Rights.⁹⁶ The court found that the Italian regulations mandating the crucifixes in schools were within the margin of appreciation of Italy in setting the school environment, and did not violate the educational neutrality and impartiality required of the state. The court also found that the regulation did not violate the pluralism required by the state in allowing its citizens’ freedom of religion, thought, and conscience.⁹⁷ The Grand Chamber acknowledged that the crucifix, which had been a part of the debate in the lower court, is primarily a religious symbol but also accepted the government’s argument that the crucifix serves as an “identity-linked” symbol to Italy’s historical and cultural traditions.⁹⁸ The Grand Chamber reasoned from this assumption that the “decision [of] whether or not to perpetrate a tradition” is one of many considerations of the state in education and in creating its church-state/culture-state relationship, which falls within the margin of appreciation.⁹⁹ Similar to the multiple purposes argument of the symbol beyond a religious one within the margin of appreciation of the state, the court’s emphasis in finding plurality maintained and the neutrality and impartiality of the state intact was evidence of Italy’s religious toleration of a plurality of minority religions.¹⁰⁰ The Grand Chamber highlights examples of Italy’s accommodation of minority religions such as: allowing Muslim students to celebrate religious holidays (sometimes in school); accommodating

93. *Id.* para. 61.

94. *Id.* para. 62.

95. *Id.*

96. *Id.* paras. 77-78.

97. *Id.* paras. 64-73.

98. *Id.* paras. 66-67.

99. *Id.* para. 68.

100. *Id.* para. 60.

students in minority religions that conflicted with schooling schedules; and allowing Muslim girls to wear headscarves in school; listing these reflects the court's view that a pluralistic church-state relationship has been maintained.¹⁰¹

The court also based its decision to allow a religious symbol on the lack of evidence proving that religious symbols on the walls of schools actually negatively affect and impact children. Thus, the high court strikes down a primary foundation of the lower court's reasoning: that children are fragile in development and by seeing the symbol of the state's majority religion plastered on the classroom wall, a child (particularly not of the majority religion) would be negatively affected on a daily basis.¹⁰² The court also reasoned that the cross on the wall does not constitute a "powerful external symbol" (as it had in finding the teacher's Muslim headscarf one in *Dahlab*) and therefore, was not an integral part of the school environment.¹⁰³ Another crucial argument in the court's reasoning was that a "passive symbol" merely hanging on a wall in a school does not rise to the level of indoctrination because it cannot be equated to compulsory religious teaching.¹⁰⁴

The court similarly found that the royal decree did not violate the parental right of Mrs. Lautsi to educate her children according to her beliefs.¹⁰⁵ The court reasoned that a parent's subjective perception that the state has not respected her right to educate her children in conformity with her own religious and philosophical beliefs (here atheism) does not sufficiently establish a breach of article 2 of Protocol No. 1.¹⁰⁶ It further reasoned that, along with finding that indoctrination did not occur by the mere presence of a passive religious symbol (with cultural, historical, and constitutional symbolism as well), Mrs. Lautsi retained her full right as a parent to educate her children in line with her own philosophical convictions.¹⁰⁷ The court found no usurpation of her parental teaching role because of the presence of the cross on her children's classroom walls.¹⁰⁸

Judge Rozakis, joined by Judge Vajić, wrote a separate concurrence that agreed with the majority's decision but distinguished their reasoning on a proportionality test. The test balanced the right of a parent to ensure

101. *Id.* para. 74.

102. *Id.* paras. 66, 73.

103. *Id.* para. 73.

104. *Id.* paras. 72-74.

105. *Id.* paras. 66, 75-76.

106. *Id.* para. 66.

107. *Id.* paras. 72, 74-75.

108. *Id.* para. 75.

her children's education in accordance with her own religious and philosophical beliefs with the right of the majority of Italian society to display religious symbols as manifestations of their belief.¹⁰⁹ The judges find both competing rights, that of the parent and that of the majority of society, have legal protections in article 9 of the European Convention on Human Rights and article 2 of Protocol No. 1.¹¹⁰ Ultimately, though, the judges determined that under the proportionality test, the rights (or values) of society outweigh parental rights to educate and teach their children in accordance with their religious and philosophical values.¹¹¹ Primary among its reasoning is that in looking at the case law of the European Convention on Human Rights, while other guarantees are gaining increased protection, such as the right to education, the right of parents under article 2 of Protocol No. 1's second sentence is not "gaining weight in the balancing exercise of the proportionality test."¹¹² Similarly important in the concurrence's reasoning is the notion that because of a new multicultural and multiethnic Europe, children learn from people and places well beyond the classroom or their parents, so both are less influential in child development.¹¹³ The judges also note that because of the multilayered society that is Europe, schools cannot be expected to entertain every parent's individual educational desires for their children.¹¹⁴

Judge Bonello concurred alone, agreeing with the Court's decision of no violation of the European Convention on Human Rights or its Protocol No. 1. Judge Bonello found that the applicants failed to prove by any convincing evidence that by viewing the crucifix a European citizen gave up the complete right to manifest an individual religious belief or nonreligious belief.¹¹⁵ He relied primarily in his reasoning on the idea that the history of a nation—its customs, culture, and those symbols and qualities that make up its national identity—must not be erased in the name of ethical determinations of political correctness.¹¹⁶ He emphasized that a supranational judicial body lacked the power to "disregard the cultural continuum of a nation's flow through time" and it must not ignore "what, over the centuries, has served to mould and

109. *Id.* (Rozakis & Vajić, JJ., concurring).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* para. 2.11 (Bonello, J., concurring).

116. *Id.* paras. 1.1-3 ("A court of human rights cannot allow itself to suffer from historical Alzheimer's").

define the profile of a people.”¹¹⁷ The crucifix is to him, as argued by the government, not only a religious symbol but also a symbol of Italy’s cultural heritage and personality.¹¹⁸ He also made a distinction between the article 9 protection of freedom of religion and the guarantee of secularism, noting that the European Convention on Human Rights’ freedom of religion and freedom from religion stops “well short” of promoting secularism.¹¹⁹ In terms of the parents’ rights, he did not believe that the “mute presence” of a symbol, one viewed as culturally integral, is powerful enough to violate this right because, as the majority also found, indoctrination does not occur with a “passive” symbol.¹²⁰ His final point was that one parent’s desires cannot override the parental desires of the other twenty-nine students’ to have the crucifix present.¹²¹

While agreeing in the judgment, Judge Power’s concurrence focused on nuances that he felt the majority did not address in correcting the Chamber’s 2009 judgment, such as the notion that a preference for secularism is not neutral because secularism is an ideology, like religions are.¹²² He defined confessional neutrality in public education as pluralism not secularism.¹²³ He also noted that article 9’s test is not whether something is offensive but whether it is coercive.¹²⁴ Applying this test to the facts, he did not find that a symbol alone can have a coercive effect.¹²⁵ He made a final interesting point in explaining the crucifix’s passivity by arguing that the crucifix represents just one of many points of view in a pluralistic society.¹²⁶

Judge Malinverni, joined by Judge Kalaydjieva, dissented and disagreed with the majority’s finding that the presence of crucifixes in public school classrooms was within Italy’s margin of appreciation.¹²⁷ The judges were disturbed by the court’s use of the doctrine of the margin of appreciation (and the wide scope with which it is used) because they found the court’s main reason for relying on the doctrine,

117. *Id.* para. 1.1.

118. *Id.* para. 1.2.

119. *Id.* paras. 2.5-6 (“The Convention proves to be quite helpful with its detailed and exhaustive inventory of what freedom of religion and conscience really means Freedom of religion is *not* secularism. Freedom of religion is *not* the separation of Church and State In Europe, secularism is optional, freedom of religion is not.”).

120. *Id.* para. 3.2.

121. *Id.* para. 3.5.

122. *Id.* (Power, J., concurring).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* (Malinverni & Kalaydjieva, JJ., dissenting).

that of a lack of European consensus on the presence of religious symbols, is too indefinite to draw that conclusion.¹²⁸ Even the Italian basis in law, the judges noted, is weak because royal decrees, having no Parliamentary or democratic basis, provide the legal basis.¹²⁹ The dissent also interpreted a positive obligation of the state from article 2 of Protocol No. 1 by its use of the term “respect” in regards to the right of parents in ensuring that education and teaching is in conformity with their religious and philosophical beliefs.¹³⁰ Similarly, the dissent found the presence of a crucifix violated Protocol No. 1’s mandate of the principle of neutrality, and thus plurality, that must be present in the school environment.¹³¹ Particularly because primary and secondary schooling is compulsory, and the school setting is an especially vulnerable environment, the dissent further found the crucifix in that context to be a violation of educational neutrality.¹³²

IV. ANALYSIS

Almost no issue in the western world and affecting democratic states is more controversial than that of religion’s place in government and how a state configures its church-state relationship, not just in law but in practice. As the decision moved through the ECHR and the final decision of the Grand Chamber was handed down, beyond the numerous intervening states on both sides of the argument and the numerous nongovernmental organizations intervening in the case, the media, online world, and scholarly literature filled with discussion of the place of religion, particularly religious symbols, in government run schools.¹³³

128. *Id.* The judges note that in addition to Italy, Austria, Poland, and parts of Germany are the only other signatory nations to the European Convention on Human Rights with laws expressly mandating the presence of religious symbols in public schools, while the great majority of states have no specific regulations either mandating or proscribing such symbols. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* Unlike the majority of concurrences, the dissent found that religious symbols are not merely passive but as symbols are a “part of the school environment” and infringe on the neutral education that children are entitled to receive. Similarly, unlike the majority or concurrences, the dissent found the crucifix in the school setting to be a predominantly and blatant religious symbol of a religious origin with no redeeming quality of culture or history divorced from the religion. *Id.*

132. *Id.*

133. *See id.*; John Hooper, *Human Rights Ruling Against Classroom Crucifixes Angers Italy*, GUARDIAN, Nov. 3, 2009, <http://www.guardian.co.uk/world/2009/nov/03/italy-classroom-crucifixes-human-rights>; Lourdes Peroni, *Lautsi v. Italy: Possible Implications for Minority Religious Symbols*, STRASBOURG OBSERVERS BLOG (Mar. 31, 2011), <http://strasbourgoobservers.com/2011/03/31/lautsi-possible-implications-for-minority-religious-symbols/>; *Court Reaffirms Importance of Neutrality in Classroom but Rules That Crucifixes Can Stay*, INTERRIGHTS,

After the decision in the noted case, many human rights groups were up in arms, finding that this decision marked a “lost opportunity” for Europe to continue the march towards secularization and full separation of church and state. These groups also saw the decision as clearly defining a European-wide stance on the important human right of freedom of religion. Human rights groups saw the Grand Chamber decision as a total retreat not only from the prior ECHR logic but also a gross misinterpretation of what neutrality means.¹³⁴ By affirming the standard as confessional neutrality in education and yet allowing the majority religion in schools, the ECHR showed not total neutrality but a preference for a particular religion by the state.¹³⁵

Despite, and perhaps even because of, the stated narrow question the Grand Chamber answered,¹³⁶ the implications of this decision generate fear that when a majority religion of a state is endorsed in such a crucial public space, as a state-run school, what stops it from endorsing the same in other public spheres? The ramifications of the case, when viewed against other ECHR religious freedom cases, create a negative air of contradiction. On the one hand, when the majority religion is involved, the state can endorse it and take a very arguable nonneutral stance by allowing its presence. Conversely, if a minority religion is present in a public place, as it was with the Muslim teacher who wore a headscarf in a public school in *Dahlab*, the state can ban even individual expression of religion. This same result for minority religious nonprotection (allowance of the state to assert a “public order” or another article 9.2 limitation to prevent an individual’s religious manifestation) shows to many an inconsistency in the ECHR between legality under article 9 and article 2 of Protocol No. 1 of state laws and regulations that ban certain minority religions’ presence in the state, and, under the same articles, legality of local or state jurisprudence that requires or allows majority religion’s presence in state matters.¹³⁷ The one common thread between the ECHR upholding both the French veil “secularization law”

<http://www.interights.org/lautsi/index.html> (last visited Apr. 16, 2012) [hereinafter INTERIGHTS]. See generally Witte & Arold, *supra* note 20; Pin, *supra* note 22.

134. See, e.g., Lautsi v. Italy—*A Lost Opportunity*, EUROPEAN HUMANIST FED’N, <http://www.humanistfederation.eu/lautsi-v-italy-a-lost-opportunity/> (last visited Apr. 16, 2012) [hereinafter *A Lost Opportunity*].

135. See INTERIGHTS, *supra* note 133.

136. *Lautsi II*, App. No. 30814/06, para. 57 (stating that the court is focused only on the question of crucifixes in state-run public school classrooms).

137. See generally Pin, *supra* note 22 (discussing the blatant differences between cases on both the ECHR and state constitutional levels that deal with Christianity as implicated in the realm of religion in schools and Islam on the other—the former often welcome, while the other is highly disfavored in the public sphere of education, particularly post-9/11).

banning blatant and conspicuous religious symbols and clothing in public schools, and the fascist-era Italian royal decrees *mandating* crucifixes' presence on public school classroom walls, is the handy deference rationale: "margin of appreciation."¹³⁸ While below the surface and on the issue level the Court seems to make biased and contradictory holdings in its case law depending on whether the majority or a minority religion is at question, the ECHR ultimately determines whether or not a state has violated the European Convention on Human Rights' guarantees of freedom of religion by first giving a wide margin of appreciation to the states; thus assuming that their internal laws and regulations conform to the limits put on religious freedom by the articles.¹³⁹ This may indicate a huge bias towards majority religions and a bending of the state and the ECHR to pressures of the church in historically Catholic and Orthodox states,¹⁴⁰ but it could also mark, as Judge Bonello's concurrence argues, a supranational court not wanting to meddle deeply in state affairs, particularly when historical, social, and cultural questions are so deeply tied to one religious symbol and one religion.

V. CONCLUSION

The noted case, while keeping in line with the ECHR's deference to states in their determinations of creating the educational curriculum and environment and creating the church-state relationship, is an uneasy way to close the door on the purpose of the human right of religious freedom on the opposite end of the spectrum from the prohibition on religious symbols cases (e.g., the 2004 French "secularism" ban on Muslim headscarves and other ostentatious religious symbols). As the French

138. See *supra* Part II.C for a discussion of the ECHR and Member State case law on various nuanced issues involving religion symbols (and curriculum) in schools and Part II.B for discussion of Italian cases concerning church and state.

139. The limitation of article 9.2, as can be seen in *supra* Part II.C's discussion of ECHR case law, is very easy for a state to claim in minority religion cases. Additionally, article 2 of Protocol No. 1's interpreted threshold for religion in schools to be considered a violation of neutrality and impartiality in education being indoctrination is an incredibly high threshold to be met before the state will be considered to be not "respecting" a parent's individual right or the students' right to education.

140. See *A Lost Opportunity*, *supra* note 134.

It is to be hoped that the 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 judgment.

Id.

case lowered citizens' guarantees of the right of the positive "freedom to" profess a religion, the noted case lowers citizen's guarantees of the right of the negative "freedom from" state-imposed religion. While the historical and cultural contexts of Italy and other various European countries are often quite different and represent disparate experiences with religion and the state they all seem to warrant a supranational court to interpret international law on a "margin of appreciation" basis. Thus, while the supranational court respects national sovereignty, the ultimate purpose of the court—to protect signatory state's citizens' human rights found in the European Convention on Human Rights—gets conflated by this weakening of the freedom from state sponsored religious symbols in public schools.

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