



The President of the Grand Chamber
European Court of Human Rights
Council of Europe
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Bonn, 31st May 2010

THIRD-PARTY INTERVENTION

In the case of *Lautsi v. Italy* (Appl. No. 30814/06)

the Central Committee of German Catholics (Zentralkomitee der deutschen Katholiken – ZdK), represented by its President, Mr. Alois Glück,

the Social Weeks of France (Semaines Sociales de France – SSF), represented by its President, Mr. Jérôme Vignon, and

the Christian Associations of Italian Workers (Associazioni cristiane lavoratori italiani – ACLI), represented by its President Andrea Olivero

thank the President of the Grand Chamber for giving the opportunity to submit comments as a third party according to Article 36 para. 2 of the Convention and Article 44 of the Rules of Court. These comments are also supported by the following organisations which are associated with the three

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interveners in the network “IXE – Initiative of Christians for Europe”: Europejski Dom Spotkan – Fundacja Nowy Staw (Poland), Forum krestanskych institucii (Slovak Republic), Christian Academic Circle (Croatia).

I. Introduction

1. In the following, the third party would like to present some aspects to the Court which are, according to its conviction, of fundamental importance for the decision of the Grand Chamber in the case of *Lautsi*. Given their representativity, the intervening organisations believe that they are well placed to make a useful contribution to the Court’s proceedings. It is a pan-European point of view they would like to share, endorsed by Christians living in and working for a modern society characterised by values stemming also from the Christian heritage of Europe, including human dignity, respect for human rights, tolerance and mutual respect.

II. As to the Intervening Organisations

2. Going back to 1848, the Zentralkomitee der deutschen Katholiken (ZdK) is the representative organisation of laypersons active in the Catholic Church in Germany. It comprises:

- representatives of the 28 diocesan councils,
- representatives of some 120 Catholic associations, professional associations, lay movements and communities, a number of them active in the areas of public and private education (parents’, teachers’, students’ and youth organisations) and of integration of migrants,
- as well as prominent individuals from various areas of society, including policymakers at federal and regional level (members of Parliament from five political parties, government ministers and officials), academic scholars, business leaders, journalists and actors of cultural life. A number of these women and men are active in the policy areas of public education and integration of migrants.

The ZdK’s mission is to represent the concerns of millions of Catholics living in Germany in the public arena, to participate in shaping public policy and to advise the German Bishops’ Conference on issues of social, political and religious life. Another focus of the work of ZdK is the hosting of the German Katholikentag – a Catholic Convention gathering tens of thousands of participants every two years; it also co-hosts the Ecomenical Kirchentag which this year took place in Munich on 12 – 16 May.

The ZdK is recognized by the German Bishops’ Conference but acts in independence from it.

3. The *Semaines Sociales de France* were established in 1904 by two laymen in the spirit of Pope Leo XIII's encyclical "Rerum Novarum" (1891), which denounced the conditions of the working classes. From the very beginning, the *Semaines Sociales de France* endeavoured to promote the social teaching of the Church and to apply it to the society of our time. They strive to be present where topical questions arise to promote social thought, educate individuals and raise public awareness by convening each year a three-day national session that includes discussions and workshops and gathers around 4,000 participants.

The *Semaines Sociales* held more specialized sessions between the two wars, dealing not only with social problems but also with topics of major concern at the time, in particular peace and democracy. After the Second World War, the *Semaines Sociales* dealt with all major social issues, focusing on economics, in particular issues regarding developing countries and the phenomena of socialization.

Following various crises, the *Semaines Sociales* lost momentum in the 1970s, before experiencing a renaissance since the middle of the 1980s, under the presidencies of Jean Gélamur, Jean Boissonnat, Michel Camdessus and Jérôme Vignon. Today the *Semaines Sociales* feel much concerned with economic, political, cultural, scientific and technological changes, as well as with their impact on society and on the fulfilment of social responsibilities. The 2008 and 2009 sessions' topics were respectively the place of religion in the public sphere and the new solidarities; this year's session will address the crucial subject of migration.

In order to reflect the local reality, the *Semaines Sociales* rely on a network of regional branches that are inspired by the same values and the same spirit. In Europe, the *Semaines Sociales de France* are part of a network of social Christians in more than 20 different countries.

4. ACLI, *Associazioni cristiane lavoratori italiani*, bases its activities on the Gospel message and the doctrine of the Church. ACLI promotes the development of workers as individuals in a society where every person is guaranteed personal development in democracy and justice.

ACLI promotes through its network of local branches, services, enterprises and ad-hoc projects employment and active participation in social life. It upholds the rights and the development of workers, citizens and all those suffering from marginalisation and social exclusion.

ACLI, itself established as a non-profit organisation, is today the largest associations' network in Italy and it is also present in 40 countries worldwide. The Association has 980.000 members and 8.000 territorial structures on different levels including regional, provincial, and local branches. Over 3 million people use its services every year.

Since its foundation in 1944, ACLI has reached out beyond Italian national borders, along the routes traced by Italian emigration. ACLI is present in various European countries (Belgium, France,

Germany, England, Luxembourg, the Netherlands and Switzerland), in North and South America, Australia and South Africa.

The main fields of activity next to the promotion of social rights are among others: vocational training (Enaip); cultural activities (Unasp); the promotion of women (Coordinamento donne), of the elderly (Fap), and the young (Ga); the promotion of peace, international development and solidarity (Ipsia); the defence of immigrants' rights (Acli Colf and Progetto Immigrati).

The three abovementioned organisations are established as non-profit associations with legal personality under, respectively, German, French and Italian law.

III. As to the Comments in the Case of *Lautsi*

5. The intervening organisations, representing Catholic laypersons and among them Catholic parents, students and teachers from different European countries, would like to present to the Court their point of view both concerning the concrete issue of the display of the crucifix in classrooms in public schools and on the wider implications of the case of *Lautsi* on religious freedom and the place of religion in public life.

6. For most of the Catholic parents associated in the intervening organisations it is of outstanding importance that their Catholic belief is respected in the education of their children. In this respect, the intervening organisations give some remarks on what meaning the symbol of the crucifix has and what message it conveys in the eyes of Catholics represented by the third party.

The interveners agree with the Chamber that the cross has a plural meaning. The cross is on the one hand an emblem of Christian traditions and of a culture of the Occident marked by Christianity; on the other hand it is, however, primarily the central symbol of Christianity – i.e. not exclusively of a Catholic but interdenominational religious conviction. It is an expression of the Christian understanding of Easter: it is through Jesus' death on the cross that human suffering and failure, death itself is overcome; his death opens the perspective of eternal life. By means of the crucifixion and resurrection of Jesus Christ God manifests his comprehensive love for all mankind. Hence, the cross symbolizes redemption and calls at the same time upon us to overcome the human inclination to violence, to resist vengeance and retaliation; its public display reminds all human beings of a culture of respect, of human dignity, of tolerance and love for our enemies.

In sum, the meaning of the crucifix in its religious dimension does not comprise any aspects which are not compatible with the fundamental ideas or values of the Convention. To the contrary, it coincides with and underlines its values.

7. The intervening organisations disagree with the conclusion of the Chamber in the case of *Lautsi* (see § 55 of the judgment). The assumption that the mere presence of the crucifix in a classroom may be “emotionally disturbing” for some pupils is difficult to understand and to accept for the third interveners. The same applies to the passage of the Chamber judgment that could insinuate that displaying the cross could hinder the development of pupils’ critical thinking. Such statements or insinuations could, surely inadvertently, offend religious feelings of Christians in Europe. Furthermore, the assumption of the Chamber that the mere presence of the crucifix would inhibit the educational pluralism in public schools is not proved in any way. The Chamber judgment does not elaborate in which way – neither in the concrete situation nor in general – the crucifix really had an impact on the children or played a role in the lessons. In particular, nothing is mentioned that established a specific relevance of the Christian or Catholic faith in the daily life in the school in question. The fact alone that a single mother or father or a single pupil feels disturbed by the mere display of a symbol such as the crucifix in the classroom cannot be regarded as sufficient to assume an interference with a human right. In sum, the judgment of the Chamber does not concretely analyse in what respect the display of the crucifix, given the circumstances of the case, leads to an interference with the right to religious liberty, neither the liberty of the parents nor of the pupils.

8. Article 2 of Protocol No. 1 of the Convention provides for a right to education and, consequently, recognizes the competence of the State with regard to the educational system. In fulfilling its function in the field of education and teaching, the State has to ensure an open school environment which encourages inclusion rather than exclusion, regardless of the pupils’ social background, religious beliefs or ethnic origins. As the Court has emphasized on many occasions the State has to secure pluralism in public education. The setting and planning of the curriculum fall in principle within the competence of the Contracting States. In this respect, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind (see *Folgerø and Others v. Norway* [GC], No. 15472/02, judgment of 19 June 2007 § 84). The mere presence of the crucifix in classrooms of public schools does not amount to an integration of particular religious or philosophical messages in the school curriculum. It might rather be interpreted as a passive way of conveying basic moral values in public schools, which falls within the competence of the State to decide on the curriculum in schools.

As the Court held, Article 2 of Protocol No. 1 of the Convention does not permit parents to object to the integration of teaching or education of religious or philosophical subjects in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable (see *Folgerø and Others v. Norway* [GC], No. 15472/02, judgment of 19 June 2007 § 84; and *Kjeldsen*,

Busk Madsen and Pedersen v. Denmark, judgment of 7 December 1976, Serie A, No. 23, p. 26, § 53). The same consequence must be accepted in the present case: The Convention does not enshrine a right to parents that in public schools only moral values are conveyed which satisfy their convictions. Parents have to accept that in public schools not every single aspect of teaching and education is in compliance with their convictions. Indeed, this same point of the case-law referred to should presently apply *a fortiori*, given that this case is not about active teaching of a particular content but merely about the presence of a symbol.

9. As the Court has stated in the case of *Folgerø*, the second sentence of Article 2 of Protocol No. 1 implies that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (*Folgerø and Others v. Norway* [GC], No. 15472/02, judgment of 19 June 2007, § 84). The third party shares this view. Public schools are not the place for missionary activities. But the mere display of the crucifix in classrooms does not exceed this limit. It does not imply any kind of missionary activity and it cannot be qualified as any kind of indoctrination. Criteria for indoctrination could be the imposition of a conviction to the pupils, demanding a conviction being "true" or being exclusive. None of these criteria can be established when displaying the crucifix in a classroom. It is nothing but an offer to those who want to see it. Also in the specific case of *Lautsi*, no indication can be found that in the school concerned missionary activities or an undue imposition on the pupils took place.

10. In the case of *Lautsi*, the Grand Chamber faces the challenge of finding a delicate balance in at least three respects: a balance between rights and interests of believers of different faiths and of non-believers; a balance between individual fundamental rights (Article 9 of the Convention and Article 2 of Protocol No. 1 of the Convention) and the legitimate interests of society and of the State in cherishing the religious heritage of a country and of Europe; and a balance between formulating European human rights standards and recognising the rich diversity existing in Europe on how to deal with religion in public education and public life at large.

11. In finding a fair balance, it is, firstly, an important duty of the Grand Chamber to secure the rights of parents and pupils belonging to a religious minority. But, of course, also parents and pupils belonging to a religion that is in a majority position enjoy fundamental rights. The respect for parents' convictions and for children's beliefs required by Article 2 of Protocol No. 1 of the Convention is not only a right of parents who do not believe and do not belong to a church or any religious community but also a right of parents who wish their children to be brought up including

religious aspects in public education. In weighting the rights concerned, the Grand Chamber should pay due regard to both sides.

12. Secondly, a balance should be found also between fundamental rights at stake and legitimate interests of society and State. In the third party's view, European States should be allowed, where they so choose, to cherish and give room to the national and European religious heritage, in public schools and public life generally. They should be able to do so because they may legitimately consider this heritage, including the Christian faith and Christian traditions, as an important part of the fundamental value foundations that a society needs for its cohesion and a democracy for its sustained functioning. This aspect, which was not addressed in the Chamber judgment, should be recognised by the Grand Chamber as a general interest that a State *may* pursue.

13. Thirdly, with the concept of the margin of appreciation the case-law of the Court has developed a suitable instrument to define the function of the Court on the one hand and the duties of the Contracting States on the other hand, thus striking, again, a balance. The Court has to secure the rights guaranteed in the Convention as a common standard of human rights in the Contracting States. At the same time, it is for the Member States to the Convention to decide on the relationship between State and religion. In accordance with the established case-law of the Court, there are mainly two reasons to provide for a wide margin of appreciation to the Member States in the field of religious symbols in public schools and in public life. (1) A large diversity of models organising the relationship between State and religion exists in Europe. Consequently, there is also a large diversity of models ruling the question how to deal with religion and religious symbols in public schools and public life. Altogether, no common European standard can be established in this respect. Indeed, there is no commonly shared understanding in Europe of what exactly are the features of neutrality of a State vis-à-vis religions. (2) The organisation of the relationship between State and religion and, in particular, the place of religion in public schools are deeply rooted in the history, the tradition and the culture of a country. Therefore, the Court should not make categorical decisions on the display of religious symbols in public schools. It should leave a margin of appreciation to States in reserving to religion and to Europe's religious heritage the place they deem appropriate. This said, it is however for the Court to examine if a State in organising education in public schools under consideration of religious aspects and, in particular, in deciding on the question of religious symbols in public schools, respects the limits given by the fundamental rights of the Convention.

14. The intervening organisations are deeply committed to European integration, both within the EU and in the wider pan-European framework of the Council of Europe, for which the European Convention system is of pivotal importance. In their view it is of outstanding importance in the future for the building of a Europe of human rights that the Court supervises the observance of the human

rights guaranteed in the Convention. The concept of the margin of appreciation is well suitable to respect the cultural diversity also on the overarching level of the European Convention on Human Rights.

15. The Chamber judgment in the case of *Lautsi* led to some serious misunderstandings of its legal implications. Starting point of these misunderstandings were the statements of the Chamber concerning the negative freedom of religion guaranteed as a part of the religious freedom according to Article 9 of the Convention (see §§ 56-57 of the judgment). Occasionally, it even has been argued that after the judgment every religious symbol would have to be banned in public schools and in the public space in general. Therefore, the third party respectfully asks the Grand Chamber to dispel these misunderstandings and to clarify the scope of the negative religious freedom.

In doing so, the Grand Chamber should meticulously differentiate between various situations. It should be self-understanding that the display of a religious symbol in public in general is a question of exercising positive religious freedom. Accordingly, Article 9 of the Convention expressively guarantees to manifest the religion *in public*. The negative religious freedom of persons confronted with religious symbols in public cannot overrule the manifestation of the positive religious freedom. There is no right not to be confronted with religious (or political or other) symbols in public. Otherwise, every cross on the tower of a church, every Christian wayside shrine or every half-moon over the entry to a mosque would mean an interference with the right to religious freedom. On the other hand, display of religious symbols by public institutions is not, normally, in itself an exercise of positive religious freedom (leaving apart specific situations such as broadcasting or religious symbols worn by staff of those institutions); it may, however, well be a pursuit of the legitimate interest referred to at point 12 above. In the third party's view, negative religious freedom should not be stretched so far as to include a general right not to be confronted with any religious statements or symbols even where they are used or supported by public authorities or representatives. Religious statements or symbols emanating from or supported by the State should, at most, exceptionally be seen as affecting negative religious freedom in the context of very particular relations between the individual and the State – including the public school; in such a context the Court should then carefully assess whether there is at all an interference and if so, whether it is justified, as argued above.

16. The third party intervener wishes to offer a further consideration speaking in favour of the approach they recommend: It is indeed difficult, if not impossible, for the State to avoid taking any stance on the factor of religion, be it in public education or beyond. A strict avoidance by the State of any manifestation of or association with religious statements or symbols can in itself amount to – or at least be easily interpreted as – taking sides as well: namely with a secularist, a-religious

understanding of the world and the human condition. This is a problem that policymakers must be aware of when defining rules on the State's approach to religion and religious symbols. It is another good reason for the Court to refrain from imposing itself uniform rules in this area, but rather to leave the choices to the competent democratic institutions in each State.

17. In conclusion, the interveners would welcome if the Court refrained from striving towards greater constitutional homogenisation in Europe as regards the State's approach to religion. To the contrary, social reality today is more and more characterised by religious and cultural diversity; thus, it becomes a major challenge to establish a sound diversity management, based on common values of human dignity, respect for human rights, tolerance and mutual respect. The intervening organisations themselves, far from acting as a sort of pressure group at one end of the societal spectrum, are strongly engaged in that diversity management, through discussing and working for integration of migrants and through conducting interfaith and inter-cultural dialogue. They are deeply committed to the protection of cultural and religious minorities, and they acknowledge and value the Court's crucial role as ultimate guarantor of such protection. But, speaking from their experience, they urge the Court to leave to the Contracting States the margin of appreciation they need to find the appropriate balance in managing diversity while promoting a society's necessary value base, including through an appropriate presence of religion and Europe's religious heritage in public schools and public space.

For the **Zentralkomitee der deutschen Katholiken**



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p.o.

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