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The Position of Non-religious People in Europe:
The Lautsi Case and Wider Considerations

EUROPEAN HUMANIST FEDERATION

THE LAUTSI CASE

The decision of the European Court of Human Rights last November in the case of *Lautsi v. Italy* upheld the principle of the neutrality of the state in relation to religious and philosophical convictions - that is, the principle of secularism - which is progressively being recognised in national and international institutions and indeed in the judgements of the Court as the best - perhaps even the only - way of guaranteeing freedom of religion or belief for everyone.

There was a huge public outcry in Italy when the Court's judgement was published - but it came in a well orchestrated manner from a highly vocal, intensely Catholic minority of politicians and priests. They quickly contrived to spread their expressions of outrage to the Greek Orthodox Church and to right-wing Catholic members of the European Parliament.

Our Italian colleagues tell us that this outcry was widely deplored there, as is illustrated by the letter dated 2 February 2010 that was sent to the Court by 121 Italian organisations wishing to dissociate themselves from the hysterical reaction of some populist politicians. They wrote:

> The political debate that followed in Italy has been vicious and violent against nonbelievers, non-Catholics, heterodox Catholics and, last but not least, the judges of the European Court of Human Rights. Individually and on behalf of the thousands members of our groups and millions of other Italians we would like to thank the European Court and apologize for the insulting behaviour of Italian government members. We hereby dissociate ourselves from their speeches and comments.
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> Our country suffers more and more the political influence of the hierarchy of the Catholic church. The fewer people follow their directives the more they demand, call for privilege and taxpayers' money, raise their voice in order to impose their will on non-Catholics' lives and behaviours. Moreover most political leaders are keen to accept their requests disrespectful of rights and liberties, lives and personal stories, beliefs and choices of millions of citizens. . .
>
> Some of us are believers and we all do respect believers, but we cannot accept one religion, not even the most powerful, to be imposed to everyone.

Nevertheless Italy of course lodged an appeal to the Grand Chamber of the Court, and the judgement is awaited. Tonight I want to examine some of the claims made by those who deplored the Lautsi judgement - mainly the claims in the appeal mounted by Italy rather than the purely nonsensical protests from wilder sources. I am relying principally on Italy's written submission to the Court of 28 January.

The first thing to say is that, contrary to the claims of our opponents, secularism in this sense of neutrality or impartiality is not hostile to religion. Many religious people strongly support secularism: not only is it a guarantee for religion against state interference, it is also a guarantee for the individual believer no less than for unbelievers against oppressive intervention by religion in everyday life.

Nor does secularism require that religious people be excluded from the public arena. It is totally compatible with the full exercise of the rights guaranteed by Articles 9 and 10 of the European Convention. It applies the same rules to religious people as to non-religious people, and Humanists certainly play a full part in the public square. Opposition to secularism actually amounts - almost by definition - to a claim for superior rights for some over others and it comes largely from powerful churches and religious organisations concerned to defend their existing privileges.

Now, for reasons of history some states recognise an official or established church, and this is currently considered compatible with the European Convention on Human Rights - although we suggest that this contention is supportable most easily where the recognition has least effect on those of other beliefs or none. However, growing numbers of states are officially secular or neutral. They recognise that in the area of religion or belief there can be no certainty, let alone proof, of contending beliefs and that in the interests of non-discrimination between citizens the state should treat all beliefs equally and maybe somewhat distantly. These neutral, secular states include Italy - in 1989 the Italian Constitutional Court ruled that secularism was “a supreme principle of the state”.

If the principle of impartiality is important, it must be of particular importance where children are concerned - and the Lautsi case of course concerned children. At school they are a captive audience. Their minds are suggestible and immature. They are susceptible to impressions from their surroundings and from the behaviour of others that would have little impact on a mature adult. Article 2 of the first Protocol to the European Convention on Human Rights recognises that parents’ wishes for their children’s education in matters concerning religion or belief must not be overridden by the state. This Article (as the Court found) protects parents’ wishes that their children should not be exposed to such powerful impressions.

It follows that education concerning religion or belief in public schools (other than any with a specific religious character that are freely chosen by parents) should be neutral or impartial as between different beliefs. An impartial approach to education about religions and beliefs, respecting the autonomy of the child and the wishes of the parents, is of course entirely compatible with making it clear to pupils that the whole disputed area is of considerable importance to the individual and to society.

This is an area where policy is developing rapidly and uniformly both nationally and internationally - see, for example, the Council of Europe’s Recommendation CM/Rec(2008)12 from the Committee of Ministers to member states on the Dimension of Religions and Non-religious Convictions within Intercultural Education (adopted by the Committee of Ministers on 10 December 2008 at the 1044th meeting of the Ministers’ Deputies) and the OSCE’s own "Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools" (November 2007). It is, incidentally, outrageous that Italy should have referred to the Toledo guidelines in its submission of 28 January as being silent on the crucifix issue: all that the guidelines say (at page 74) is that the “complicated issues” of

"religious symbols, religious attire and religious holidays . . . are beyond the scope of the present document".

Impartiality - secularism, neutrality - is the principle that underlies the European Union's coupling of "philosophical and non-confessional organisations" with "churches and religious associations or communities" and requiring an "open, transparent and regular dialogue" with both - see Article 17 of the Treaty on the Functioning of the European Union as amended by the Lisbon Treaty. It is an undeniable trend across Europe, the logical consequence of the increasing importance given to human rights and non-discrimination and of the decline in religious belief and the decline in the importance of religion even for those who do believe.

These phenomena have often been demonstrated. For example, academic studies reported in the relevant chapter of the Cambridge Companion to Atheism[1] suggest that across Europe between one-third and one-half of the population has no religion, and as long ago as 2005 Eurobarometer found that only 52% of EU citizens said they believed in God[2].

These principles of impartiality, secularism, neutrality, we suggest, are those that informed the Court's judgement in the Lautsi case and that should inform its consideration of Italy's appeal. Are these principles compatible with the compulsory display in classrooms of public schools of the crucifix, or will such display inevitably suggest to pupils that the school and, behind it, the state supports and promotes a particular system of belief, namely, Roman Catholicism? Surely the latter.

Parenthetically, let me add that a ruling against the display of crucifixes is perfectly compatible with allowing pupils to wear religious symbols or dress. Pupils are not representatives of the state: they do not carry the authority of the school. Pupils have a *prima facie* right under Article 9 to wear religious symbols if they wish: any limitation has to be justified as required in the public interest in one of the ways allowed under the same Article. But none of these exceptions to the general freedom to manifest a religion or belief under Article 9 could remotely be applied to justify retention of crucifixes in classrooms.

Italy's submission of 28 January seems to us as laymen illogical and ill conceived. It repeatedly fails to make the vital distinction between the state and non-state actors: for example, it suggests with a hyperbolic disregard for logic that is surely more suitable for the popular press than for a court of law that the removal of crucifixes from state school classrooms would require in turn that cathedrals should be removed from city centres - para. 15C. It also attaches no weight to the special susceptibility of children to implicit religious messages.

The submission sees absence of religious symbols as implicit endorsement of atheism (para. 3E). Italy argued:

> "If the state were to decide . . . to do away with the religious symbol from the

[1] Phil Zuckerman: 'Atheism: Contemporary Numbers and Patterns' in The Cambridge Companion to Atheism, ed. Michael Martin, Cambridge University Press, 2007; ISBN 978-0-521-60367-6

[2] 52% stated that they believed in a god, 27% believed there was some sort of spirit or life force while 18% did not believe there was any sort of spirit, god or life force. 3% declined to answer - see http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf

> public space, it would be siding in favor of a given philosophical conviction and would become party of the ideology advocated by the applicant who is a militant atheist belonging to the union of atheists and rational agnostics …" (59')
>
> "If the state were to do away with such symbols, it would be siding for a given philosophy and the Court itself said that there is freedom of religion but also the freedom not to believe. So equidistance means that you must be equidistant from a given religion but also from a given philosophy. So such decision of the state would not be neutral." (1:00)[3]

Ludicrously, Italy is pretending to be unable to conceive of the possibility of a state adopting a neutral position!

As we understand it, there are two key points argued against the Court's judgement in *Lautsi*:

(a) that the crucifix is not a religious symbol - or at least not to a sufficient extent to justify the Court's finding; and

(b) that the discretion (the "margin of appreciation") enjoyed by states is anyway sufficient to allow the Italian government to require the compulsory display the crucifix in public schools.

Let me point out, by the way, that both these arguments concede the basic logic of the Court's judgement. However, we wish to dispute both points.

The crucifix as a religious symbol

The crucifix is a portrayal of the execution of Jesus Christ, the founder of the Christian religion. This is the central and defining event in Christian history and doctrine. It is undeniable that it is a religious symbol. It is an image that stands firmly in the religious tradition of a suffering god.

Moreover, it is a very powerful image and potentially a highly disturbing one to put before children. It is the image of a man being tortured to death. And the explanation for this horrific event is scarcely less disturbing: it is that he is being tortured because they, the children, are wicked and sinful. This is itself, of course, a religious doctrine, not a fact.

It is impossible to minimise the power of such an image on an unformed mind, and so it was not capricious but entirely reasonable for Mrs Lautsi not to want her children exposed to it, day in, day out, as an idea endorsed by a supposedly secular school. It is patronising and unjustified for Italy to argue (paragraph 3C) that the Court's judgement overrated "emotional disturbance" and to contend therefore that Mrs Lautsi's rights under Article 2 of protocol 1 were not, or not seriously, infringed.

Italy's alternative contention is that the crucifix is a symbol not of Christianity but of Italy. But the crucifix is found in Roman Catholic churches and other premises throughout the world, not just in Italy. It is not used on the Italian flag. It is not waved by Italian spectators at international football matches or Italian audiences in the Eurovision Song Contest. Rather, it is a relic of centuries past when Italy was not a secular state but in large part ruled by the Pope. It is displayed on public buildings - in schools and in courts - as an

[3] http://strasbourgobservers.com/2010/07/08/lautsi-and-the-empty-wall/

anachronistic sign of that religious authority.

Margin of appreciation

The justification of the so-called "margin of appreciation" lies in the wish of the Court to recognise that the cultural, historic and philosophical differences between states party to the Convention may justify marginally different interpretations of the Convention. That such differences exist is undeniable, but they do not justify breaches of the Convention, and that they should be used to justify *prima facie* breaches of individual human rights is regrettable. However, such differences are rapidly diminishing as Europe become more united and homogeneous, and we must hope that the Court will therefore be increasingly wary of acceding to self-defensive arguments by states based on the margin of appreciation.

In any case, the idea of the margin of appreciation is directed at the *way* that states implement the Convention, not at *whether* it is implemented at all. The margin of appreciation is not a licence to suppress the human rights of unpopular minorities.

Let us examine the proposition implicit in the argument for applying a margin of appreciation. This has been popularly expressed as the need to recognise that the case involves a "clash of rights" between the Italian majority and a trouble-making mother. But majorities (as the Court should least of all need to be reminded) have no right to remove the human rights of even one individual contrary to the law and the Convention. Otherwise we shall soon see majorities denying the rights of unpopular minorities - the Roma are already experiencing this persecution but noone (I hope) is arguing that the Roma's rights must be ignored because of the "rights" of the majority to be rid of them. Majority rights could equally give rise to demands that those accused of terrorism be subject to summary justice, from which it is a quick descent into mob rule.

Some even have ventured dangerously near to suggesting that in multicultural (meaning in practice multi-faith) communities *groups* have human rights. Italy's submission (at para. 24) is on these lines. But so-called group rights are an automatic denial of the human rights of individuals within those groups – especially individuals who think for themselves and question group norms - and those who customarily suffer oppression, such as women, gays, and ethnic minorities. Giving rights to religious groups is a most dangerous step – it is (for example) the demand of the Islamist states at the United Nations who wish to suppress free thought and criticism of religion. They would take great comfort from a finding by the Court in favour of Italy.

We observe a pattern in Italy and elsewhere in Europe that as the number of people in the pews and the seminaries falls catastrophically the churches make growing demands for institutional privileges and special treatment for the religious. We must hope that the Court is not misled by the clamour or by defensive reaction of the Italian state into changing its verdict. It has at times in the past - for example in *Wingrove v. The United Kingdom* (19/1995/525/611) - been too amenable to government arguments based on the cultural sensitivities of a small minority that provide a useful shield for long-standing legal abuses of human rights. Acceding to Italy in this case would represent a serious blow to the steady progress of the past few years towards outlawing discrimination founded on religion or belief and towards recognition of the right not to be imposed upon by religion that must be guaranteed to that large but often invisible minority: those, so frequently overlooked, who live without religion.

Vera Pegna is now going to say a few words on this wider question of the position of people in Europe who live without religion.

29 September 2010