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## *Lautsi v. Italy* **An alliance against secularism**

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*Lautsi v. Italy*, best known as “the Crucifix case,” is a case of considerable importance. The importance rests not only in the political and legal aspects of the case, but also in the spiritual. The debate around the legitimacy of the presence of the symbol of Christ in Italian society is emblematic of a desire to secularize Europe. Confronted with this attempt at a complete de-Christianization of Europe, 20 European countries joined Italy’s side in an unprecedented attempt to reaffirm the legitimacy of Christianity in Europe.

The *Lautsi* case created commotion throughout Europe following the initial condemnation of Italy by the European Court of Human Rights (“ECHR” or “the Court”) and its bold pronouncement that the presence of Crucifixes in public school classrooms violated “human rights.”

Before the Strasbourg Court, Miss Lautsi argued that the mere presence of a crucifix in her children’s school violated her freedom of conscience and her right to have her children receive an education in conformity with her philosophical beliefs. The Court agreed with Miss Lautsi, stating that the presence of a religious symbol in public classrooms is *per se* bad and has no justification. Prior to the *Lautsi* judgment, the Court considered such matters (religious symbols within the public sphere) to fall within the sovereignty of the member States in order to respect the culture and traditions of each particular country. Moreover, the Court considered that the only limitation on educational matters was that States were not permitted to submit students to indoctrination or abusive proselytism.

Therefore, in order to provide legal grounds for its decision, the Court created a new obligation of “neutrality” under the Convention: “The State has a duty to uphold confessional neutrality in public education, where school attendance is compulsory regardless of religion, and which must seek to inculcate in pupils the habit of critical

thought.” The reference to “critical thinking” is nothing more than an attack on the so-called “irrationality” of religion. The Court went on to note that it “cannot see how the display in public school classrooms of a symbol that is reasonable to associate with Catholicism (the majority religion in Italy) could serve the educational pluralism which is essential for the preservation of ‘democratic society’ within the Convention meaning of that term.” Thus, according to the Court, the Convention requires European member States to be “areligious” in order to serve pluralism, the so-called cornerstone of “a democratic society.” In other words, the Court states in *Lautsi* that in order to be democratic, a State must renounce its religious identity. Italy appealed this decision to the Grand Chamber of the ECHR and the Court recently heard oral arguments on June 30th, 2010. The judgment will likely be issued this fall.

The *Lautsi* case has a unique importance—that of symbolism. The case is symbolic because it questions not only the legitimacy of the visible presence of Christ in the schools of Rome, but also in the whole of Europe. Thus, *Lautsi* is a symbol of the current conflict regarding the future of Europe’s religious and cultural identity. The conflict contains on one side proponents of the complete secularization of Europe, and on the other, those who desire an open Europe, one that is faithful to its true identity and historical roots. Proponents of secularization see secularism, however, as a solution to managing religious pluralism. Moreover, they perceive pluralism as an argument that justifies the imposition of secularism.

The so called “religious neutrality of society” (“secularization”) is nothing else but, concretely, the “de-Christianization” of European culture and society. This is not neutrality, and is, in fact, the farthest thing from it. “Secularization” is not a phenomenon that is purely spontaneous. On the contrary, it carries with it a bulk of intentional, political choices, choices such as the anti-Christian policies of France at the beginning of the 20<sup>th</sup> century and those currently being implemented by the Spanish government. The *Lautsi* case can be added to this list because it is a case based not on legal arguments, but first and foremost on political prejudices.

Europe is diverse, and only a minority of states—such as France—has officially renounced its Christian identity. Many others have remained faithful, or have returned to their religious heritage, such as some of the former communist countries. Religious pluralism, or cosmopolitanism, which serves as a paradigm for the jurisprudence of the Court, is actually a fiction that is foreign to most of Europe. While it is true that we are living in times in which national identities are challenged, the need for an identity is only that much stronger. Western Europe, since the end of the Second World War, claimed to assert the value of religious freedom. But this assertion was in fact a mere illusion. Religious freedom at that time was merely a legal doctrine; in reality, the value was that of tolerance. This is explained by the fact that religious minorities were at that time far less visible and had no intention of modifying the religious identity of their countries of adoption. The culture was uniform and there was no threat, no challenge to religion (Christianity) in the public arena. Today, this is no longer the case. The large presence of Islam in Europe now demands that a position be taken concerning religious freedom. This choice is not simply a philosophical stand, but bears major consequences on the reality of western religious identity. It is becoming increasingly clear that public institutions of Western Europe—the *Lautsi* case is only one example—respond by choosing to limit religious freedom and impose secularization on society. Instead of fostering a culture of values and truth, they promote a cultural model in which the absence of values

(neutrality) and relativism (pluralism) are values in themselves. These institutions are thus supporting a policy that wishes to be post-religious and post-identity, in short, post-modern; and this policy seeks to exclude all other systems, claiming, in essence, to be a philosophical monopoly.

It is in this context of the radicalization of secularization that the *Lautsi* case occurred. *Lautsi*, or at least what it represents, is the last major obstacle confronting the process of secularization since the debate concerning the Christian roots of Europe set forth in the preamble of the Constitutional Treaty.

The fact that a Court may have concluded that society must, in the name of religious freedom, renounce its religious identity in order to be democratic demands a reflection upon the evolution of this oxymoronic concept. *Lautsi* demonstrates how religious freedom, which was designed to protect society from the atheistic state, became *in fine* an instrument of the social de-legitimization of religion and the removal of religion from the public sphere to the private life of people as *individuals* (i.e., religious “privatization”). It also shows how religious liberty can actually be used against religion itself, providing the main conceptual tool for the secularization of society.

#### ***An inability to take into account collective identities***

The main flaw that appears in *Lautsi* is the inability of the modern concept of religious freedom to consider and respect the religious dimension of social life and the social dimension of religion. The theory behind the *Lautsi* decision is based on the exclusive recognition of the individual’s rights. The individual is said to possess a conscience, a conscience that is supposedly flawless by nature; and the individual is supposed to live in a society seen as axiologically (morally) neutral. This freedom of individual conscience is considered universal and essential because it is based in human nature and is the expression of one of the aspects of human dignity. On the contrary, since public society is regarded as a mere artificial entity serving the individual, the former is supposed to give way to the only legitimate authority, liberty, deriving from individual dignity.

Society’s religious identity is considered to have no value or legitimacy *per se*, but rather is regarded as a simple fact inherited from history. In many cases, it is recognized in international law that nations may hold subjective rights, such as the right to protect and transmit their cultural, linguistic, and ecological identity. This is not the case with their religious identity, however, despite the fact that this is one of the deepest components of a national identity. In terms of religion, nations are said to hold no rights. And according to the modern concept of religious freedom, only people, when taken individually, possess religious rights that can be used within the boundaries set by their respective national legislatures. Religions and various other societies, on the other hand, receive no such protection. Only each believer individually holds rights, and this right is first and foremost exercised against third party societies.

This type of religious freedom would then imply the neutralization of society’s religious identity—but this alleged religious neutrality is largely illusory. Indeed, if civil power can be indifferent to people’s personal convictions, it cannot be totally indifferent towards religion because religion is by nature a social phenomenon. Thus, pretending to be indifferent to religion is actually a denial of the core social dimension of religion. Not only that, but it limits religion to the private scope of personal convictions.

It is indeed the expression of a philosophical stand, as stated in *Lautsi*, that the State should act as if Italian society and culture were not religious at all. However, a State and its people necessarily have an identity, and this identity necessarily has a religious dimension. A State is not a concept or a neutral structure, nor is it distant and cold like a supranational bureaucratic institution. Rather, a State blossoms out of its people and develops its own history and identity. Symbols specifically help represent and incarnate components of social identity and, as a result, collective identity is built around such symbols. The religious dimension of the social identity of a people is constituted and displayed by a whole series of social habits such as public holidays, names, certain types of human relations, clothing, and diet. It is also exhibited by visible symbols such as the presence of crucifixes in schools, hospitals, plazas and squares, and public monuments.

In order to be consistent with the *Lautsi* ruling, the European Court should cease its practice of closing at Christmas and Easter. It should also adopt a new calendar with no references to Christ—such as the French revolutionaries did more than two centuries ago. Indeed, a society’s religious identity cannot be “neutralized.” It can be denied, fought against, and replaced, but not neutralized. In light of this, it is apparent that the real issue at the heart of the *Lautsi* case is one which questions the legitimacy of a supranational body unilaterally attempting to modify the religious identity of a country. This very same question is currently being posed to the Court of Strasbourg concerning the religious dimension of Swiss identity. Two complaints were made by Muslims, both of which concerned the Swiss constitutional ban to construct new minarets, following a recent referendum. The debate between the Swiss federal government and the Islamic groups is not a debate about religious freedom, but rather it is an identity struggle—how the Swiss view themselves as a people compared to what Muslim immigrants demand them to be.

Similar issues have been raised in France and Belgium concerning the Islamic veil, also known as the *burqa*. Generally, the arguments used to justify bans are only pretexts—the right “not to believe,” the right “not to see,” and the right “not to be seen”—these are only pseudo-legal arguments. The real debate is that which focuses on the religious dimension of a collective identity and the social dimension of religion. The problem is that the modern theory of religious freedom refuses to take these aspects into account because it is exclusively grounded on the absolutism of individual dignity. This legal theory of religious freedom is not capable of taking into account the Christian identity of Europe and this is exactly what *Lautsi* demonstrates. Therefore, the unprecedented political reaction following the decision in November 2009 has a considerable importance because it is precisely a reassertion of just the opposite—the legitimacy of Christianity in Europe as it is confronted by secularization. These countries petition the Court to give due and fair recognition to Europe’s identity and of the central role of Christianity in this identity.

### ***The conflicting approach of the individual versus society***

*Lautsi* also reveals that the way in which the Court of Strasbourg handles religious freedom is based on a conflicting conception of the relationship between the individual and society. That is, they are seen in an adversarial relationship rather than a complementary relationship. If society is the principle obstacle to individual freedom, then society is to be blamed for limiting freedom. Therefore, so the argument goes, society must step back and become as neutral as possible so that space can be made free for the individual conscience. This applies not only to society at large, but to all types of societies: nations, families, schools, etc. . . . This conflicting approach creates in the

individual a protesting mindset of “my rights” against those of the society as a whole. It is claimed that the right of Miss Lautsi’s children not to be compelled to see symbols of Christ should trump the will of the people of Italy, and even further, on all of the member States of the Council of Europe, without any compromise being possible. The absolutization of dignity and of individual autonomy leads to the absolutization of the right that guarantees it and to the annihilation of the interests of the State.

### ***Liberty against religion***

The *Lautsi* case should cause us to reflect about the danger of the secular concept of “religious freedom” because it leads to renouncing religion in the name of religious freedom and to defending religious freedom through the social eradication of religion. This is exactly what the Court did in *Lautsi*. It claimed to have defended religious freedom by suppressing religious symbols. This is indeed a true historical and conceptual reversal. After the Second World War, religious freedom was viewed as an instrument of defense of man’s transcendence against state nihilism. However, religious freedom was also probably the right that was most disrespected in Europe during the twentieth century, its enemies, the secularists, refusing to admit that religion and liberty are not necessarily antinomic. They use liberty against religion and even consider that their own individual freedom is violated by the mere manifestation of another’s religion.

Finally, as can be deduced from the European Court’s jurisprudence, “religious freedom” is no longer the “chief” fundamental right stemming directly from the transcendental nature of mankind. It is rather a secondary right, granted by the civil authority and derived from the ideal of “democratic pluralism.” This, again, is a conceptual reversal, making sentences such as “*religious freedom will guarantee pluralism, and therefore deserves to be protected,*” more and more common. The expression of religious convictions is thus limited by the demands of a neutral public order.

Moreover, in reality, religious liberty is gradually being reduced to merely freedom of faith, that is, the freedom to believe in something or not and this only in your own *personal* life. It is a mistake, however, to believe that faith is independent of religion. One is internal and the other is external, making the two complementary. To limit religious freedom (because religion would have no social legitimacy) in order to protect freedom of faith (as pure expression of human transcendence) would mean, for example, that prayers and family catechism would be forbidden within the family unit itself because of the invasion on the autonomy of the religious conscience of the child. If this were the standard, parents would have very few chances to transmit their faith to their own children. The same goes for society. If religion is removed from society, faith will be removed from the hearts of future generations.

This is the conclusion that was reached by the Strasbourg Court after *Lautsi* and several other cases. It is likely because the Court attacked the symbol of Christ that *Lautsi* provoked such an unprecedented political and social reaction never seen before in the history of the Council of Europe. Never has a decision from the Strasbourg Court been so vehemently condemned by not only believers, but also by “civil society” and many governments as well.

### ***An unprecedented political reaction***

Three weeks after the hearing, it seems increasingly clear that a considerable victory has been won against the process of secularization. While Italy has not yet achieved a legal

victory, it certainly has already secured a major political victory. Indeed, the fact that Italy has received official support from 20 European countries that have openly defended the legitimacy of Christian symbols in society, particularly within the classroom, is clear evidence of this political victory.

At the inception of the case, 10 countries entered the *Lautsi* case as “third party Amicus Curiae.” Each of these countries, Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, Romania, the Russia Federation, and San Marino, submitted a brief to the Court inviting it to overturn its first decision. It is important to note that these briefs not only contain a legal interest, but primarily are remarkable testimonies of their fidelity to their respective country’s culture and identity facing the imposition of a unique cultural model, that of pure secularization. Lithuania, for example, has not hesitated to analogize the *Lautsi* case to the religious persecution it suffered when it was forced to remove religious symbols from its country.

After the initial wave of ten, an additional ten countries joined Italy’s side. The governments of Albania, Austria, Croatia, Hungary, Macedonia (FYROM), Moldova, Poland, Serbia, Slovakia, and Ukraine have openly criticized the initial judgment and petitioned that the Court remember that it must respect the national identities and religious traditions of each of the 47 member States. Additionally, several governments specifically insisted on the fact that religious identity is at the root of European values and unity.

Therefore, including Italy, almost half of the member States of the Council of Europe (21 of 47) have openly opposed this attempt of forced secularization and affirmed the social legitimacy of Christianity in European society. Behind the legal arguments made in the defense of identities, cultures, and Christian national traditions, these 20 countries have publicly affirmed and defended their faithfulness to Christ himself, reminding Europe that the presence of Christ in society is “good *per se*.”

This coalition, which comprises most of Central, Balkanic, and Eastern Europe, highlights the permanent cultural division within Europe as a whole. It also demonstrates, however, that this division can be overcome, as shown by the level of support given to Italy by countries of the Orthodox tradition, whatever their political orientation may be at the moment.

### ***The importance of collaboration with the Orthodox churches against the progress of secularism***

The important support of countries of Orthodox tradition is largely a result of the determination of the Patriarchate of Moscow to defend itself against the rise of secularism. Implementing the request of Patriarch Cyril Moscow to “unite Christian churches against the progress of secularism,” Metropolit Hilarion has proposed the establishment of a “strategic alliance between Catholics and Orthodox” to defend together the Christian tradition “against secularism, liberalism and relativism prevailing in modern Europe” (Interview “Inside the Vatican,” April 24, 2005). Bishop Hilarion, Chairman of the Department of External Relations and “number two” of the Patriarchate of Moscow, provides a vivid description of secularism:

Militant secularism, quickly gaining in numbers in modern Europe, is also a pseudo-religion with its own solid doctrinal tenets and moral norms, its

own cult and symbols. As with 20th-century Russian communism, it also lays claims to a monopoly on world views and remains intolerant of competition. This is why leaders of contemporary secularism react uncomfortably to religious symbols and wince when God is mentioned. . . . Contemporary militant secularism, like Russian Bolshevism, views itself as a *Weltanschauung* destined to replace Christianity. Hence, it is neither neutral nor indifferent toward Christianity; rather, it is openly hostile to it. (Article “Christianity and the Challenge of Militant Secularism,” published on the personal website of Bishop Hilarion).

This analysis is consistent with the Holy Father, who indicated on January 24, 2008 to the Bishops of the Episcopal Conference of Slovenia that secularism is “different but no less dangerous than Marxism.”

This important phenomenon indicates that the “democratic transition” in the East was not accompanied by the “cultural transition” widely desired by the West. Today, we are witnessing a reverse movement in the return of the historical identity of Europe in the Orthodox model of the relationship between Church and the civil power. In fact, the wall of separation between civil and religious powers is giving way to collaboration for the common good. The civil and religious authorities regard this cooperation as legitimate and good in itself, and they do not understand the regular condemnation from the Strasbourg Court, which seeks to implement the strict separation of religion and State.

On top of that, this massive support from the East is likely to announce a major change in the dynamics of cultural construction of European unity. Indeed, it was always thought that European unity would inevitably be achieved from West to East (“a conquest of the East”) through the medium of economic and cultural liberalism. However, the *Lautsi* case sparked just the opposite: a movement of unity from East to West. Eastern Europe, relying on Catholicism, is opposed to the West, concerning both the defense of Christian culture and a proper conception of religious freedom. Clearly, the defenders of freedom against materialism are no longer where they were.

A certain discomfort was clearly present during the proceedings regarding the fact that these Eastern nations dared to challenge the correctness of the Court. This discomfort was evident, for instance, when it was time for the intervening member States to speak at the hearing. Normally, such a request does not pose any problem; each State is to receive a time of thirty minutes to present its arguments. In the *Lautsi* case, however, the States faced an estoppel. It was only after very insistent efforts that they achieved, collectively, a time of fifteen minutes to present their arguments. Some countries viewed this as an affront and as a reflex of self-defense by the Court.

This joint and mass action before the Court is truly an historic event. One question that arises for the immediate future is whether the Court will be able to maintain its ideological paradigm regarding religious matters in the face of such strong opposition. The coalition of 21 countries out of 47 of the Council of Europe specifically invites the Court to attempt to do so. Peremptorily refusing this request will directly threaten the legitimacy of the Court.

The Council of Europe, from which the Court of Strasbourg derives all its authority, stated in its founding Charter the “unshakable commitment” of the peoples of Europe to

the “spiritual and moral values which are their common heritage.” These spiritual and moral values are not private; they are constitutive of the religious identity of Europe and are recognized as essential to founding the European political project. As recently noted by the Holy Father, Christianity is the source of spiritual and moral values. This coalition of 21 countries demonstrates that it is possible to build the future of European society on this basis, requiring fidelity to Christ and the small price of a mindful reflection on the contemporary Western cultural model. Europe simply cannot face the future by renouncing Christ.

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