ANNEX II

EUROPEAN COURT OF HUMAN RIGHTS
Lautsi v. Italy: Third party intervention by the European Humanist Federation

The European Humanist Federation (EHF) is an international non-profit organisation registered in Belgium in 1992. Its objects, as defined in its by-laws, are "to promote secularism and a humanist vision of cultural, social and ethical values in Europe and to work for social and cultural progress." It unites over 40 organisations in twenty countries across Europe, with contacts in many more.

The EHF warmly welcomed the decision of the Court last November in the case of *Lautsi v. Italy*. The judgement upheld the principle of the neutrality of the state in relation to religious and philosophical convictions - that is, the principle of secularism - which is fundamental to the objectives of all our member organisations and is progressively being recognised in national and international institutions and (may we suggest?) in the judgements of the Court as the best - perhaps even the only - way of guaranteeing freedom of religion or belief for everyone.

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 it), nor does it require that religious people be excluded from the public arena. It is totally compatible with the full exercise of the rights guaranteed by Article 9 of the European Convention. Opposition to it amounts - almost by definition - to a claim for superior rights for some over others.

We realise that for reasons of history some states recognise an official or established church, and that 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 - and these include Italy. 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.

If the principle of impartiality is important, it must be of particular importance where children are concerned. 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 Convention recognises that parents' wishes for their children's education in matters concerning religion or belief must not be overridden by the state. This Article must (as the Court found) protect 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 those with a specific religious character that may nevertheless be offered by the state and freely

chosen by parents) should be neutral or impartial as between different beliefs. This is an area where policy is developing rapidly and uniformly both nationally and internationally - see, for example, the OSCE's "Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools" (November 2007)[1] and 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). 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.

Similarly, 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 decline in religious belief (academic surveys reported in the relevant chapter of the Cambridge Companion to Atheism[2] suggest that across Europe between one-third and one-half of the population has no religion) and the decline in the importance of religion even for those who do believe (similarly demonstrated in many surveys).

These are the principles, we suggest, that should underlie the Court's 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?
We suggest, parenthetically, 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. 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.

We have read Italy's submission of 28 January. We do not venture to judge its legal validity, but as laymen we find its arguments illogical and ill conceived. For example, vital distinctions between the state and non-state actors are not made (as in the suggestion that it would follow from the removal of crucifixes from state school classrooms that cathedrals should be removed from city centres - para. 15C). Absence of religious symbols is seen as implicit endorsement of atheism (para. 3E), excluding the possibility of a neutral position.

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[1] The reference in Italy's submission of 28 January to the Toledo guidelines' silence on the crucifix is misleading: all that the guidelines (page 74) say is that the "complicated issues" of "religious symbols, religious attire and religious holidays . . . are beyond the scope of the present document".

[2] 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

No weight is attached to the special susceptibility of children to implicit religious messages.

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

We note that both 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.

The 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 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 the Court should therefore be increasingly wary of acceding to self-defensive arguments by states based on the margin of appreciation.

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. Our Italian colleagues tell us that it 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. We quote from their own English version of their letter in case it is not before the Court:

> 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.

The pattern of demands by churches growing as their following diminishes is one that we have observed elsewhere in Europe. The Court should not be misled by the clamour or by defensive reactions by the Italian state into changing its verdict. The Court has at times in the past - as (we suggest) 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 devastating 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 of that large but often invisible minority: those, so frequently overlooked, who live without religion.

We draw the Court's attention, finally, to 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 does not 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 demanding 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, Roma and other 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.

23 May 2010