Redefining Religious Neutrality:  
*Lautsi vs. Italy* and the European Court of Human Rights

Tommaso Pavone

B.A., Public Policy, Gerald R. Ford School of Public Policy  
University of Michigan  
February 16th, 2011

Abstract

In 2001, Finnish-born Soile Lautsi, an Italian citizen and atheist, sued the Italian school that her two children attended for violating their right to religious freedom by displaying crucifixes in its classrooms. The case was thrown out by Italian administrative courts and the Italian Constitutional Court, so in 2006 Lautsi appealed the decision to the European Court of Human Rights (ECHR) in Strasbourg. The case became known as *Lautsi vs. Italy*, and in 2009, the Court ruled in favor of Lautsi, arguing that the display of crucifixes in Italian classrooms violates religious and educational freedoms guaranteed in Article 9 of the European Convention on Human Rights. The ruling caused an uproar in the Italian political sphere, and so Italy has proceeded to appeal the decision to the ECHR’s 17-member grand chamber. Regardless of the final outcome, the *Lautsi vs. Italy* case outlines the ECHR’s expanding role in ensuring religious neutrality on the part of European states. If the Court rules against Italy in the appeal it would lay the foundation for an unprecedented enlargement of its jurisprudence in cases of religious neutrality.

---

1 I would like to acknowledge the helpful feedback of Professor Carrie Walling at the Gerald R. Ford School of Public Policy regarding the content of this paper. All errors are my own.
1. Introduction

In 2001, Finnish-born Soile Lautsi, an Italian citizen and atheist, sued the Italian school that her two children attended for violating their right to religious freedom by displaying crucifixes in its classrooms.¹ The case was thrown out by Italian administrative courts and the Italian Constitutional Court, so in 2006 Lautsi appealed the decision to the European Court of Human Rights in Strasbourg (hereafter referred to as “the ECHR” or “the Court”). The case became known as Lautsi vs. Italy. Italy argued that "[T]he crucifix may be the expression of a Christian tradition, [but] Italy does not proselytize."² Lautsi, on the other hand, believes that crucifixes in Italian schools breach the separation of church and state and infringe upon her children's right to receive a secular education. In 2009, the Court ruled in favor of Lautsi, arguing that the display of crucifixes in Italian classrooms violates religious and educational freedoms. This caused an uproar in the Italian political sphere, particularly amongst conservative politicians, who argued that the crucifix is an important symbol of Italian culture. Italy has thus proceeded to appeal the decision to the ECHR’s 17-member grand chamber, and has been joined by multiple predominantly catholic nations in its appeal.³

This paper begins by providing an overview of the European Court of Human Rights (Section 2), an analysis of secularism in the Italian Constitution (Section 3), and an outline of the leadup to the Lautsi vs. Italy case (Section 4). It then expands on the case itself (Section 5) and the public controversy and appeal by the Italian state that followed (Section 6). Finally, the paper analyzes the implications of the case for the rest of Europe in Section 7. The primary argument is that regardless of its final outcome, the Lautsi vs. Italy case outlines the ECHR's expanding role in ensuring religious neutrality on the part of European states. If the Court rules against Italy in the appeal it would lay the foundation for an unprecedented enlargement of its jurisprudence in
cases of religious neutrality.

2. Background: The European Court of Human Rights

The European Court of Human Rights was established in the Council of Europe's European Convention on Human Rights of November 4th, 1950. The Convention reaffirmed the principles in the Universal Declaration of Human Rights (UDHR) of 1948 but also sought to "take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration." Indeed, instead of representing a series of ideals lacking an enforcement mechanism (as was the case with the UDHR), the Convention represents a binding document of international human rights law. It follows that to understand the ECHR and the *Lautsi vs. Italy* case, it is essential to begin with an overview the Convention and the legal framework which it created.

2.1 The European Convention on Human Rights

Although the Convention's ratification by European states ensures that it becomes part of their respective domestic laws, this fact is immaterial to some extent, since the Convention supersedes domestic law. In fact, the Convention is meant to serve as a blueprint to assess whether the domestic laws of European states are in compliance with European human rights norms. Because the Convention largely circumvents traditional notions of national sovereignty and reciprocity, which have limited both the legitimacy and enforcement of other human rights treaties, many scholars consider the Convention to be have a distinct sui generis nature. This "uniqueness" comes from the fact that "the Convention law transcends the traditional boundaries drawn between international and domestic law."5

Indeed, in some sense the Convention is neither exclusively a piece of international law
nor is it exclusively a piece of domestic law. Rather, it is a mixture of both. Although the Convention can be upheld by the European Commission, the Committee of Ministers of the Council of Europe, and the ECHR, the Convention is also upheld by domestic tribunals. Further, although the Convention binds state actions, as in many international law documents, it also expands civil rights for individuals in an attempt to "substitute for the particular systems of individual States a common European order." In other words, the Convention is so strongly integrated in the jurisdiction of both European supranational institutions and domestic institutions that it represents perhaps the strongest challenge to individual state sovereignty to date. In the words of the European Commission of Human Rights, a body created to complement the ECHR which would later be subsumed by the Court, the "overriding function" of the Convention is "to protect the rights of the individual and not to lay down between States mutual obligations which are to be restrictively interpreted having regard to the sovereignty of these States." It is in an attempt to enforce this expansion of individual human rights, along with the challenge to state sovereignty encompassed in this expansion, that the ECHR was created.

### 2.2 The Creation and Founding Principles of the Court

In an attempt to establish an unprecedentedly strong enforcement mechanism for European human rights norms, Article 19 of the Convention established the ECHR and delegated to it the responsibility "to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention." It took several years for the Court to actually be established, but in 1959 the ECHR officially opened its doors. A complementary body to the Court, the European Commission of Human Rights, was also established to investigate and refer possible human rights abuse cases to the Court (the Commission was subsumed by the Court in 1998).
Section 4 of the Convention, along with articles 38 through 56, outline the structure, mission, and jurisprudence of the ECHR. Article 45 states that the ECHR's jurisdiction "shall extend to all cases concerning interpretation and application" of the Convention. The Court is clearly meant to be a court of last resort for the resolution of human rights grievances, as Article 47 states that it can only consider cases after it has acknowledged "the failure of efforts for a friendly settlement." Article 38 outlines the Court's composition. Specifically, it states that the ECHR shall be made up of 47 judges (equal to the number of member states in the Council of Europe) elected for a period of nine years (Article 40). A President and Vice-President are then elected by the court for periods of three years (article 41). Articles 43 and 48 outline the procedures for the consideration of cases. Either the European Commission of Human Rights, or any party representing a national who alleges that a member state violated his/her human rights, can bring forth a case to the Court, after which a chamber of seven judges considers and rules on the case.9

Because its foundation and guiding principles lie exclusively in the Convention, the ECHR certainly possesses a sui generis nature of its own. In its Ireland v. U.K. judgment, the Court reaffirmed its mandate as follows:

"The Court's judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (Article 19)."10

By interpreting the Convention as a document whose legacy needs to be safeguarded through time, the Court thus laid a foundation for slowly expanding its jurisprudence and posing an increasingly frequent challenge to the national sovereignty of European states. This is a view that
Frenchman Jean Paul Costa, the current president of the ECHR, has carefully articulated. Indeed, in a recent interview Costa mentions the importance of the "growing impact of religious issues" and "the relationship of religion and state," citing the *Lautsi vs. Italy* case specifically.\(^{11}\)

### 2.3 The Court’s Expanding Jurisprudence on Religious Issues

As is implicit in the remarks of Jean Paul Costa, the Court's jurisprudence has largely been assumed to be both expansive and malleable by the Court itself. In other words, not only are the Court's founding principles, as found in the Convention, unprecedentedly expansive and strong with respect to human rights, but the Court has assumed an ever-enlarging role in enforcing human rights throughout Europe. Indeed, former ECHR Judge Walter Jean Ganshof van der Meersch argued that:

"The subject of human rights is not static. It is essentially dynamic... It is all the more irreconcilable with immobility in that many of its terms refer to extremely wide and sometimes indefinite nonlegal concepts which increase the role played by case law and, therefore, of judge-made law which is chiefly to be found in internal constitutional law and in the law of international organisations."\(^{12}\)

In short, the ECHR has taken on the responsibility to expand its jurisprudence over human rights. Of particular interest to the *Lautsi vs. Italy* case has been the Court's recent record with respect to enforcing Article 9 of the Convention, which provides Europeans with the right to freedom of religion and the right for parents to ensure an education for their children that is in accordance with their personal moral, religious, and philosophical beliefs. Until 1993, the Court never found that a European state violated Article 9 of the Convention.\(^{13}\) Thereafter, however, the ECHR has"[stressed] the role of the state as a neutral protector of religious freedom."\(^{14}\) In cases dealing
with the protection from religious persecution in the state of Georgia and with religious education in Turkey and Norway, which preceded the Italian crucifix case, the Court ruled that individuals have both a right to manifest or choose not to manifest their religious beliefs and affiliations. The state, on the other hand, is expected not to engage in any implicit or explicit endorsement of a religion, nor contribute to an environment that pressures individuals to declare their religious affiliation, to feel discriminated or persecuted because of their religion, or to conform to a predominant religion.\textsuperscript{15}

The Court has thus slowly moved from considering religious freedom to be a right subjected to "marginal appreciation," meaning that it may be subjected to slightly different interpretations in different states, to one that increasingly resembles a universal right to be applied equally everywhere.\textsuperscript{16} The Court has also emphasized that the notion of religious freedom has a dual meaning, one that is positive, or the right to practice any religion without discrimination, and one that is negative, or the ability of an individual to remain true to their secular ethos.\textsuperscript{17} It is therefore understandable that, despite the ECHR's ever-expanding case-load, it would have a strong interest in Soile Lautsi's claim that displaying crucifixes in Italian schools violated her, along with her children's, right to religious freedom and to a secular education.

3. Secularism and the Italian Constitution

In order to place the Lautsi vs. Italy case in proper context, it is not only important to understand the expansion of ECHR jurisprudence in matters of religious neutrality, but to also consider the domestic legal framework in Italy which allowed the situation to escalate from the domestic sphere to the European level.

First, unlike other European state constitutions, such as the French constitution, the word
"secularism" does not appear in the Italian constitution, nor is any notion of secularism explicit. Therefore, strict interpretations of the Italian constitution may reject the argument that crucifixes being displayed in public schools is an unconstitutional act. However, the Italian Constitutional Court, one of the two most powerful courts in Italy and the court of last resort dealing with issues of constitutional interpretation, has strongly emphasized the centrality of secularism to the Italian legal system.\(^{18}\) The Constitutional Court has cited Article 2 of the Italian constitution, which affirms the inalienable rights of individuals as "members of the social groups in which [they] find expression," along with Article 7, which declares that the "State and the Catholic Church are, each within their own sphere, independent and sovereign." Additionally, Article 8 declares that "all religious denominations are equally free."\(^{19}\)

In short, while secularism (laicità in Italian) is not explicit in the Italian constitution, what is explicit is the notion of religious freedom and equality. The Italian state is expected to maintain impartiality with regards to religion, but not a sense of total indifference and detachment, as is the case in France and the French interpretation of laïcité. To this end, there exist differing interpretations of whether the Italian constitution permits the Italian state to display crucifixes if it still exhibits impartiality towards all religions.\(^{20}\)

The situation is complexified further if one travels further back in Italian history. In the 1920s, two royal decrees were issued which mandated the display of crucifixes in public institutions, including state schools.\(^{21}\) The decrees, along with their vigorous enforcement by the Italian fascist regime which lasted nearly until the end of the Second World War, enabled Catholicism to become the official state religion of Italy. In 1948, however, Italy voted in a referendum to move from a monarchy to a parliamentary republic, approving a constitution that removed Catholicism from its recognized position as state religion.\(^{22}\)
There does exist, therefore, some precedent in Italy for Catholicism to receive a privileged position in state affairs. It is this perception of Catholicism's cultural and historical significance vis-a-vis the Italian nation that was evoked by the Italian state as it sought to defend itself before the ECHR and Lautsi's accusations.

4. Leadup to *Lautsi vs. Italy*

From 2001 through 2002, Soile Lautsi's two children, 11 year-old Dataico and 13 year-old Sam Albertin, began attending the Instituto comprensive statale Vittorino da Feltre, a public school in their hometown of Albano Terme. The region where Albano Terme is located, Veneto, is among the most strongly Catholic in all of Italy. The school displayed a crucifix in every classroom, including those where Lautsi's children received their education. Mrs. Lautsi informed the school that she felt that the display of crucifixes in the classroom infringed upon her right to provide a secular education for her children. She also referred to a 2000 ruling by the Italian Court of Cassation, the nation's court of last resort, which ruled that the display of the crucifix in polling stations violated the principle of state secularism.

In May of 2002 the school decided to continue to display crucifixes in the classroom, and two months later Lautsi brought forth a case to the Veneto Regional Administrative court, reiterating her belief that the display of the crucifix violates the principle of state secularism. Since administrative acts regulate crucifix displays, administrative courts represent the most competent judicial bodies to request their revocation. In January of 2004, however, the Court submitted the case to the Italian Constitutional Court, the supreme judicial body in Italy along with the Court of Cassation. The Court dismissed the case in December of 2004, arguing that it lacked jurisdiction over the case, and referred it back to the Administrative Court.
In 2005 the Administrative Court also dismissed Lautsi's case, arguing that displaying the crucifix in Italian schools was justified because of its historical and cultural significance. In 2006 Lautsi appealed to the Italian Consiglio di Stato, which dismissed the appeal on the grounds that the crucifix "had become one of the secular values of the Italian Constitution and represented the values of civil life." At that point, Lautsi brought forth the case the European Court of Human Rights.\(^{27}\)

5. **Battle in Strasbourg: Lautsi vs. Italy**

Both Soile Lautsi and the Italian state made impassioned cases before the Court. Soile Lautsi argued that she was challenging a "legacy of a religious conception" of the Italian state which conflicted with the state's duty to remain a secular entity, and which further conflicted with the provisions laid out in the European Convention on Human Rights. She argued that displaying the crucifix granted the Catholic Church a "privileged position" which violated the right to freedom of religion, conscience, and thought, along with Lautsi's right to provide her children with an education "in conformity with her moral and religious convictions." Evoking the European Convention on Human Rights, specifically Article 9, Lautsi's stance was that she had been prevented from having her children receive a secular education.\(^{28}\)

Additionally, Lautsi argued that the display of the crucifix was a form of discrimination against non-Catholics. Though she acknowledged that the crucifix had other symbolic meanings, Lautsi argued that the crucifix remains, above all else, a religious symbol, and that its display gave schoolchildren "the feeling that the State adhered to a particular religious belief." This was an even greater issue because of the impressionability of younger students. She argued that secularism demanded that the Italian state remain neutral and "keep an equal distance from all
religions." She concluded by stating that the Italian government should provide a learning environment in its schools that fosters "personal autonomy and freedom of thought," and that the Court should ask it to abide by the related provisions in the European Convention on Human Rights.\(^{29}\)

Conversely, the Italian government argued that the case was more of a philosophical than legal question, namely "to determine whether the presence of a symbol religious in origin and meaning was in itself capable of exerting influence over individual freedoms in a manner incompatible with the Convention." The government argued that the crucifix is not exclusively a religious symbol, but that it was also representative of values such as forgiveness, respect, tolerance, freedom, and humanism. These values, the state argued, could be shared by individuals regardless of religion, and were thus compatible with secularist principles.\(^{30}\)

Further, Italy argued that schoolchildren were not required to pay any attention to the crucifix. The government also argued that Lautsi's right to provide her children with a secular education was not being violated, since "education in Italy was entirely secular and pluralistic, school syllabuses contained no allusion to a particular religion and religious instruction was optional." The government also argued that the ECHR's case law conveyed the philosophy that the display of a religious symbol did not automatically violate the rights to religious freedom and expression. Finally, it stated that the crucifix had become a symbol of Italian culture, and therefore was in full compliance with provisions of separation between church and state outlined in the Italian Constitution. It emphasized that the issue of religious freedom had usually been enforced by the ECHR with some degree of "marginal appreciation" for domestic contexts, and that this case should be no different.\(^{31}\) It then concluded by asking the Court to dismiss the case.\(^{32}\)
On November 3rd, 2009, the ECHR ruled in favor of Lautsi. The Court argued that the Italian state had violated Article 9 of the European Convention on Human Rights which protects freedom of religion and of religious expression, and outlined that these rights can only be limited "in the interests of public safety, for the protection of public order, health, or morals, or the protection of the rights and freedoms of others." This was the first time the Italian state had ever been found to have violated Article 9. The Court also ruled that the Italian state had violated Article 2 in Protocol 1 (a series of amendments to the Convention), which outlines the right of parents to ensure that their children's education conforms "with their own religious and philosophical convictions." The Court stated that by displaying the crucifix in the classrooms where Lautsi's children were receiving their education, Lautsi's right to provide her children with a secular education was being infringed. The Court also required the Italian state to pay 5,000 euros to Lautsi to cover legal costs.

6. Post-Ruling Controversy and Italy’s Appeal

Within hours of the Court's ruling, the *Lautsi vs. Italy* case became a topic of significant controversy. Unsurprisingly, members of the Italian government and the Vatican issued the strongest denunciations of the decision. Italian Prime Minister Silvio Berlusconi criticized the ruling and declared that "this decision is not acceptable for us Italians. It is one of those decisions that make us doubt Europe's common sense." The right-wing and ethno-centrist Italian Northern League Party, whose support is strongest in northern Italy, helped distribute crucifixes to villages urging shopkeepers to display them prominently as a sign of protest. The Vatican argued that the Court's ruling was both "short-sighted and ideological." Additionally, the Vatican publicly regretted that the Court had deemed the crucifix to be a divisive symbol and
ignored its message of love and tolerance.

Perhaps the most vivid criticisms of the Court's rulings came from Italian Defense Minister Ignazio La Russa, a center-right member of Prime Minister Berlusconi's party, who strongly contested the court's rulings. In the traditionally animated and loud nature of Italian television, La Russa appeared on a daytime talkshow and addressed the ECHR and international human rights organizations by shouting "they can die. The crucifix will remain in all the classrooms of the schools, in all the public schools. They can die." 37

Clearly, although the ECHR's ruling was positively received by human rights organizations and many European citizens, the Court's decision also provoked significant anger, particularly among more conservative and religious Italian citizens who felt that the Court was directly attacking their Italian national identity. With this segment of the Italian public firmly behind it, in 2010, Italy appealed the court's decision to the ECHR's grand chamber, and was joined by several other European states, including Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, and Russia, who occupy the role of third parties in the case with the right to address the court with written observations.38 In other words, the third party states cannot address specifics of the Lautsi vs. Italy case, but they can offer more general statements regarding the issue of religious neutrality as it pertains to the ECHR's jurisprudence.39 In the summer of 2010, the Court began the hearings regarding Italy's appeal. Prominent legal scholar Joseph Weiler, Professor of Law at New York University, who had referred to the Court's decision as "an embarrassment,"40 argued strongly in favor of the Italian state. In his testimony, Weiler emphasized both the importance of the Court's ruling and criticized its previous decision:

"This case is not only about the crucifix, it's also about the tension between individual rights and collective identity, the tension between the role of courts and of political
democratic institutions, and the tension between the uniform values which the convention system espouses and the rich diversity that characterizes the European legal landscape... there is a view out there... that if you want to be democratic you cannot be religious, you have to consign religion to the private sphere. That is the American position. That is not the European position, unless you follow the Chamber and Lautsi. The European position is that you have to respect freedom of religion and freedom from religion but the state...can still define itself by reference to its religious heritage.”

Weiler, along with the Italian state, thus returned to the ECHR with a strategically cunning argument: whereas the aim of Article 9 of the Convention is to ensure religious freedom, and therefore diversity, the Court's decision was a clear infringement on the ability of a state to assume its own individual identity. In Weiler's words, "the message of tolerance towards the other should not be translated into a message of intolerance towards one's own identity.”

Weiler and the Italian state also drew comparisons with the United Kingdom, where the Monarch is both the Head of State and the Head of the Church of England, and with Denmark, where Lutheranism is the official Danish church. These arguments were made with renewed vigor, trying to capitalize on the Court's certain awareness regarding the controversy that surrounded the proceedings and its forthcoming second decision, much as it did with its first ruling. Conversely, Lautsi's lawyers sought to distract from the controversy and remind the Court of the reasons for its previous ruling, quoting Voltaire's view that the presence of the crucifix symbolized the "tyranny of the majority.”

Presently, the Court has yet to render a judgment regarding Italy's appeal.

7. The Road Ahead: Consequences and Implications of Lautsi vs. Italy

It is not likely, despite Italy's bolstered argument in favor of a reversal of the Court's decision,
that the ECHR will reject its previous ruling and side with Italy. Political scientists Gabriel and Liviu Andreescu argued as much by stating that "it is unlikely for the Grand Chamber to change the initial decision. This impression is shared by other experts working on the European Convention." This is largely due to the fact that though the Italian position is perhaps more strategic and compelling this time around, the underlying logic remains the same. To reverse the decision, therefore, would mean an admission by the Court that it had erred in its November 2009 ruling. The chances of such an acknowledgment are slim.

If the November 2009 ruling stands, the *Lautsi vs. Italy* case would become a seminal case in the history of the ECHR, European law and religious freedom, and the international human rights. It would provide the necessary precedent for the Court to enforce an increasingly more universal interpretation of the concept of religious neutrality a la France, where the state has to observe strict and absolute secularist principles. The foundation is thus laid for the Court to not only enforce the Lautsi ruling elsewhere throughout Europe, especially in states such as Armenia, Bulgaria, Cyprus, Greece, Lithuania, and Malta where crucifixes are often displayed in public spaces, but to expand the same logic to other issue areas. For example, Legal scholar Ian Leigh predicts that the ECHR may use the *Lautsi vs. Italy* case as a springboard for tackling the issue of conscientious and religious objection to military service.46

However, the ECHR's expanding jurisprudence does not come without obstacles. As European legal scholar Susanna Mancini argues:

"If the European Court, as the *Lautsi* case might suggest, abandons its traditional judicial self-restraint and becomes a true arbiter in highly divisive issues, such as religion, it will face many challenges. A crucial one will be to gain the confidence of European citizens, in order to avoid provoking populist resentments when establishing rights in a context of cultural controversy."
In short, there is a clear difference between the legal acceptance and the public acceptance of the Court's judgments. Though the ECHR's rulings are enforced and final, the Court possesses little ability to convince the European public, much of which remains highly tied to cultural and religious identities, to accept a greater degree of religious neutrality in the European public sphere. While promoters of secularism may thus have gained ground on the legal battlefield, the real conflict in the coming years is likely to be fought on the airwaves, in newspapers, and in campaign speeches. In this war for public acceptance of the ECHR's rulings, the fight is likely to remain contentious and unsettled for the foreseeable future.
Endnotes

6 Ibid.
9 Ibid.
15 Ibid.
19 Ibid.
20 Ibid.
21 Art. 19 of royal decree n. 1297 of 26 April 1928 and Art. 118 of royal decree n. 965 of 30 April 1924.
23 Ibid.


26 "Lautsi vs. Italy." Netherlands Institute of Human Rights. 2009.

27 Ibid.


29 Ibid.

30 Ibid.


32 Ibid.

33 Ibid.


37 La Russa, Ignazio. Interview in La Vita in Diretta, November 4th, 2009 <http://www.youtube.com/watch?v=lFdt9wEZv64>.

38 Italy Appeals Human Rights Court Ruling Banning Crucifix From Schools." Fox News, June 30th, 2010.


