Case: Lautsi vs. Italy (2011)

Learning about the right to education AND FREEDOM OF RELIGION in the context of THE CRUCIFIX DISPLAY IN THE CLASSROOM

LEARNING ABOUT THE RIGHT TO EDUCAITON IN THE CONTEXT OF

ECHR Article(s): **Article 2 of Protocol No. 1 “Right to education”, ECHR Article 9 “Freedom of thought, conscience and religion”**

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SUMMARY

Through a discussion of the Lautsi case, students will learn the basic interpretative principles of the European Court of Human Rights (the Court), specifically the principles used when deciding whether the presence of the crucifix in the school constitutes a violation of the right to education and freedom of thought, conscience and religion of the children and parents of secular convictions.. The students will hence see one example of the “problems” that cultural and religious pluralism can carry.

In the pedagogical part, students will read one story which is similar to Lautsi case and they will need to decide what they would do if in that situation. Also, they will have a debate about Lautsi case and they will get their own judgment of this case. The goal is for students to see how cultural and religious pluralism is wide in school area, but there aren’t enough stories about this. They will learn to respect diversity in school.

# A Landmark decision

## A.0 Rationale: why this Article? Why this judgment??

This judgment in particular is important for students to understand one of the dimensions Article 2 of the Protocol No. 1 provides in order to protect their right to education, as well as the right of parents to ensure education in conformity with their religious and philosophical convictions. This article deals with the positive obligation of the State to respect, when exercising functions it assumes in relation to education and teaching, the aforementioned parents’ right. There is also the negative obligation requiring the State to refrain from denying the right to education.

**Protocol No. 1** = Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952.

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**Positive obligations** = which require positive intervention by the State

**Negative obligations** = which require the State to refrain from interference

Lautsi judgment is of importance also because it associates right to education to the freedom of thought, conscience and religion (Article 9 of the Convention) and it deals with religious pluralism and its consequences related to these rights.

**When can a case be brought before the ECtHR-?**

Only after domestic remedies have been exhausted, meaning that applicants complaining of violations of their rights must first take their case through the courts of the country concerned, up to the highest possible level of jurisdiction.

## A.1 Background and facts

### A.1.1 Applicants

Applicants are Ms Lautsi and her two sons, resident in Italy. Latter attended a State school in which there were **crucifixes** fixed to a wall **in each classroom**. Applicants are of secular convictions and found this practice to interfere with their rights under article 9/ECHR and article 2/Protocol 1.

**Applicant** = person who requests something, a petitioner before the court

**Respondent/plaintiff**= party against whom a motion/petition is filed

There were also third party interveners involved in the case:

* thirty-three members of the European Parliament acting collectively

**Secularism** = principle of separation between government institutions and the persons mandated to represent the State from religious institutions and religious dignitaries

* four non-governmental organisations acting in their own name
* six non-governmental organisations acting collectively as two groups
* governments of Armenia, Bulgaria, Cyprus, the Russian Federation, Greece, Lithuania, Malta, Monaco, Romania and the Republic of San Marino

Most of the interveners supported the State of Italy.

### A.1.2 Case summary

In 2002 Mr Lautsi raised the question of the presence of religious symbols in classrooms during a school governor’s meeting, wondering whether they ought to be removed but the majority’s decision was to keep them. Soon afterwards, Ms Lautsi contested this decision before the Italian court of **first instance**, complaining of an **infringement of the principle of secularism**. She supported her claims with the provisions of Italian Constitution on the principle of equality and religious freedom, as well as Article 9 of the ECHR. Minister of Education’s response was that the presence of crucifixes was based on royal decrees of 1924 and 1928 mandating the presence of crucifixes in each classroom. First instance court dismissed the application ruling that decrees were still in force and that the principle of secularism **was not incompatible** with the presence of crucifixes in classrooms, explaining their historical and cultural importance as a symbol, possessing “identity-linked value for Italian people”. It went on to emphasize significant role of Christianity throughout Europe’s history and its values which can be regarded as values of modern, western, society so that the crucifixes can also be regarded as a symbol of value system which is also of secular nature.

**Article 9:**

1. Everyonehastheright to freedomofthought, conscienceandreligion; thisrightincludesfreedom to change hisreligion or beliefandfreedom, eitheralone or incommunitywithothersandinpublic or private, to manifest hisreligion or belief, inworship, teaching, practiceandobservance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Ms Lautsi then appealed to the Italian **Supreme Court** which **confirmed** the first instance court’s decision.

The applicants brought the case before the **European Court of Human Rights** and complained that the fact that crucifixes were on the classrooms’ walls was **a breach of the right to education** (Article 2 of the Protocol No.1) **and the freedom of thought, conscience and religion** (Article 9 of the Convention).

**Article 2**: No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

In 2009 the **Chamber** held that there **had been violations** of both provisions. It recalled that case-law on Article 2 of the Protocol established an obligation on States to refrain from imposing beliefs in places where persons were particularly vulnerable. It also concluded that the religious meaning of the crucifix was in fact predominant and that it (crucifix) was capable of clashing with the secular convictions of the first applicant and of being emotionally disturbing for pupils of non-Christians or those who professed no religion. Chamber emphasized that the State had a duty to uphold confessional neutrality in public education and this had not been possible in that kind of environment. It concluded that the compulsory display of crucifix restricted the right of parents to educate their children in conformity with their convictions (Article 2 of the Protocol) and the right of schoolchildren to believe or not to believe (Article 9 ECHR). This happened because the restrictions were incompatible with the State’s duty to respect neutrality in the exercise of public authority, particularly in the field of education.

At the European Court of Human Rights judges sit in Committee of 3, Chambers of 7 and Grand Chamber of 17 judges.

A **Committee** decides in well-founded cases and those where there is a well-established case-law.

**Chamber** usually decides, by a majority vote.

**Grand Chamber** hears cases either after relinquishment of jurisdiction by a Chamber or when a request for referral – appeal - has been accepted (as in Lautsi case).

The Government of Italy **appealed** to the decision which was then brought before the **Grand Chamber**.

### A.1.3 KEy questions before the court

**Compatibility** of the presence of crucifixes in Italian State-school classrooms with the requirements of Article 2 of the Protocol 1 and Article 9 of the Convention. In particular, the Court dealt with the issue whether the **State’s duty** to respect philosophical convictions of the parents and the negative obligation to ensure freedom of religion were **breached**.

## A.2 Court response to the questions asked

Grand Chamber explained that the Article 2 of the Protocol 1 was a *lex specialis* in relation to Article 9 of the Convention in the area of education and teaching, meaning the emphasis was on Article 2 of the Protocol 1.

***Lex specialis***= a rule should be taken into consideration before some other rule or principle, as a special rule in relation to the general one

According to Article 2/Protocol 1, States have a **positive obligation** when ensuring that parents can raise their children in line with their parents’ religious and philosophical convictions. Also, States enjoy **wide margin of appreciation** in determining the steps necessary to ensure compliance with the Convention the margin being wide in matter of religious symbols in schools However, the margin is limited by a prohibition of indoctrination and obligation to employ the curriculum in an objective, critical and pluralistic manner enabling pupils to develop a **critical mind**, especially in relation to religion, in a **calm atmosphere free of any proselytism**. State is **forbidden to pursue an aim of indoctrination** that might be considered as not respecting parents’ religious and philosophical convictions and undermining cultural pluralism. That is the limit that the States must not exceed.

This Court held that the margin was **not exceeded** in this case. The Court held that the crucifix is above all a religious symbol; however there was no evidence that its **mere presence** may have had an influence on the pupils. Although the first applicant may have observed the display as a lack of respect for her right, her **subjective** perception was **not** in itself sufficient to establish a breach of Article 2/Protocol 1.

By prescribing the presence of crucifixes in the classrooms country’s majority religion did become preponderantly visible, however this was **insufficient** to denote a process of indoctrination and establish a breach of Article 2/Protocol 1. It agreed that a crucifix on a wall is an **essentially passive symbol**, not comparable in influence to that of didactic speech or participation in religious activities. The Court underlined that:

* the presence of crucifixes is not associated with compulsory teaching about Christianity,
* that Italy is opened to all religious views,
* that there was nothing to suggest that the authorities were intolerant of pupils with other religious convictions and
* that the applicants did not assert that this presence had encouraged the development of teaching practices with a proselytising tendency, or claim that the second and third applicants had ever experienced a tendentious reference to that presence by a teacher in the exercise of his or her functions.

As regards Article 9, which was only held applicable in relation to the first applicant’s children, the Court held that having that there was no violation of Article 2 of the Protocol 1, since the mere presence of the crucifix could not undermine children’s right to education, there were no separate issues arising in relation to the freedom of thought, conscience and religion.

## A.3 **Court conclusions**

Italian authorities acted **within the limits** of the margin of appreciation left to the respondent State in the context of its obligations enshrined in the Convention. There was **no violation** of Article 2 of the Protocol 1 and no separate issues arose under Article 9 of ECHR.

## A.4 Concurrent opinionS and dissents, if relevant

**Concurrent (agreeing)** opinion of Judge Bonello stated that the presence of the crucifix might have as well been the betrayal of the principle of secularism; however this doctrine was not enshrined in the Convention, nor was it a necessary constitutive element of the freedoms of conscience and of religion. Therefore it was for Italian authorities to enforce secularism, not for the Court. Furthermore, it continued that article 2/Protocol 1 speaks of “teaching” and concluded that a mute presence of a crucifix did not amount to it.

**Dissenting (disagreeing)** joint opinions of Judges Malinverni and Kalaydjieva: criticism of Grand Chamber’s use of margin of appreciation in this case based on a non-existing European consensus. By reference to some European Constitutional Court’s judgments, they contested the Grand Chamber’s opinion in the extent that a since “primary and secondary schooling are compulsory, the State should not impose on pupils, against their will and without their being able to extract themselves, the symbol of a religion with which they do not identify.”

## A.5 Main principles

Interpretation of the right to education in relation to the freedom of religion

Article 2 of Protocol 1 is ***lex specialis*** in relation to article 9 of the Convention, meaning it’s taken into consideration before the later as a special rule in relation to the general one. But nevertheless, Article 2 of Protocol 1 should be interpreted in light of Article 9, meaning that the right to education is respected in full amount when ensuring that pupils as individuals are completely free to choose their own religion, have their own opinion on the subject matter.

Right to education should be **interpreted in the light** of article 9, guaranteeing freedom of thought, conscience and religion, which also imposes duty of neutrality and impartiality on Contracting States. States’ role is to help maintain public order, religious harmony and tolerance in a democratic society, particularly between opposing groups which are especially common nowadays when cultural pluralism is a fact in most states. States have responsibility for ensuring, neutrally and impartially, the exercise of various religions, faiths and beliefs.

**Positive obligation** of State – generally requires some positive intervention by the State – as implied in Article 2 of Protocol 1 when referring to “respect“, it means that the States should undertake necessary measures to safeguard children’s right to education and parents’ right to ensure such education in conformity with their convictions which implies all children; therefore Italy cannot impose obligatory teaching of all students in an unilateral way which is opposite to some children’s/their parents’ beliefs and their religion/culture but should undertake measures to safeguard everyone’s interests.

**Margin of appreciation** means that States have, due to their many differences, some discretion and flexibility when interpreting the Convention. In the present case the Court held that the decision on the presence of religious symbols in school environment, including the classrooms falls within the scope of that margin, the margin being limited by a prohibition of indoctrination and obligation to employ the curriculum in an objective, critical and pluralistic manner.

# B Educational activities

## B.1 Activity Plan

In educational part, students will read one story which is similar to Lautsi case and they will need to decide what they would do if they were in that situation. Also, they will have a debate about Lautsi case and they will get their own judgment of this case. The goal is for students to see how cultural pluralism is wide in school area, but there aren’t enough stories about this. They will learn to respect diversity in school. Pogledaj što sam napisala gore

Concept / Topic: Learning about right to education (Article 2, protocol 1) related to freedom of thought, conscience and religion in the context of cultural pluralism (Article 9) and learning about right to religion

Goals: Students will learn about the ECHR principles applied in freedom of religion and the right to education cases. By the end of the learning sessions the students will understand the meaning of cultural and religious pluralism and how to manage diversity in education.

Learning objectives:

Knowledge and understanding:

•Understand what Article 2, Protocol 1 and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stand for.

• Understand what the cultural pluralism and diversity in education and how can they behave in this environment.

• Promote democracy, development, social justice, communal harmony, solidarity and friendship among people and nations.

•Learn about the functioning of the ECHR.

Skills and dispositions:

• Acquire the skills of argumentation.

• Recognize violation of article 2, protocol 1 and article 9 of the Convention.

•Active listening and communication: being able to express one’s own opinion, listen to other points of view, and to and evaluate both.

•Cooperation skills in group work.

Values and attitudes:

• Raise awareness about the fact that everyone has experienced prejudice and discrimination and that it comes in a variety of forms (not just racial).?? Is this judgment really about this

• respect for the self and the others.

• empathy and solidarity with others and commitment to supporting those whose human rights are denied.

Grade: 10-12

Two class period (2 times 2 class periods)

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| --- | --- | --- | --- |
| **Time** | **Learning activity Diversity in education****Aims / contentMethod – Teacher activities – students activities** | **Assignment category** | **Material** |
| 45min | Activity No. 1.Learning objectives: Knowledge and understanding:•Understand what Article 2, protocol 1 and Article 9 in the European Convention for the Protection of Human Rights and Fundamental Freedoms stand for.• Understand what is cultural pluralism and diversity in education and they can behave in this environment.Skills and dispositions:• Recognize violation of article 2, protocol 1 and article 9 of the Convention• Active listening and communication: being able to listen to different points of view, to express one’s own opinions and evaluate both.Values and attitudes: • Raise awareness about the fact that everyone has experienced prejudice and discrimination and that it comes in a variety of forms (not just racial).1. Introduce the activity to students by projecting *Article 2 of the Protocol no.1* on schoolboard:

*„No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”*This should remain projected during the whole class period. Let someone read it out loud.1. Teacher will divide students into groups and give them a couple of minutes to think about this article and then ask groups what this article stands for and whether they agree with its content. Teacher can ask students whether they think their right to education was ever denied and if so, under what circumstances. Also, they can discuss about what they think that means if someone doesn’t have right to education.This should be written down to the board for everyone to see it.
2. After this, teacher will give students hand-out: The Story of George.Question they need to think about after reading it is: If you were George, what would you do? Explain.
3. Teacher will give some questions to students for focus. They need to think about them and answer, discuss about them.

Activity No. 2.Learning objectives: Knowledge and understanding:• Promote democracy, development, social justice, communal harmony, solidarity and friendship among people and nations.•understand the way ECHR functions in practice.Skills and dispositions:• argumentation skills• skills of cooperating in group work.Values and attitudes:• respect for self and others.• empathy and solidarity with others and a commitment to support those whose human rights are denied.1. Students are already divided in 2 groups, now called the applicant and the respondent group. They should in re-play the case in their own way.2. They will be given the basic information and they will be discussing the case, stating their own arguments and then rule the case. 3. Afterwards, they will be given the real case and real arguments. Then follows the debate on the case. 4. When the debate is over, students should be asked on their opinion about the case and what have they learned in this class about human rights. What about the prejudice they may have? Did they overcome it or maybe this debate and this class unit helped them to rethink the prejudice they have? | Individual workGroup workWork in pairIndividual workGroup workDebate | Hand-out 1Hand-out 2:Story of GeorgeHand-out 3Hand-out 4:Case Lautsi (Basic information about the case)Hand-out 5:Case Lautsi (Courts judgement and reasoning) |
| **Didactical approach** |
| • Students will be formed in groups of six people the most – group work.• Teacher should involve all students, with method of conversation. Also, students should have enough time for all assignments and to think about what they want to say or ask the teacher.• Teacher should be a good moderator in debate which will be kept.• Teacher should allow students to do their work, not work for them.• Teacher should be conscious of the class unit’s priority – which is the most important.• Repetition is good for the students – teacher should repeat a couple of times what she/he said to students.• Teacher should watch carefully for the signs of confusion – then she/he may ask students to explain in it their own words.• Teacher should allow students to ask the questions as they come up, not after (if they have a question, they won’t be able to listen the teacher with the question on their mind). |

## B.2 Material

Handouts (students) – Hand-out 1,2,3,4.

Guidelines (teachers) –Guideline 1,2.
Copy of Student Hand-out *Article 2 of the Protocol No. 1*, Student Hand-out *Lautsi Case,* PC, projector, Guidelines for teacher.

## B.3 Suggestions for National implementation – Contextualization – Use

Pre-service teacher training:

Teachers can use this class unit for learning about ECHR practise so they could teach their students about human rights and how to protect them.

It can be used also for workshops in which students can participate, or it can be used as an example of good practice in school learning.

In-service teacher training

It can be used in form of seminars or professional meetings for teachers who want to teach about human rights and international justice in their classes.

It can be used for educating teachers about Human Rights and ECHR practice.

National curricula

These can be used as extra-curricular activities like whole subject or projects within the regular/obligatory subjects.

## B.4 Additional Ressources

- Domestic law documents

- Other cases presented before the ECHR

- Other international human right documents such as: Universal Declaration of Human Rights, International Pact on Civil and political Rights etc.

**Handout 1**

**Protocol 1, Article 2**: No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

**ECHR, Article 9:**

1. Everyonehastheright to freedomofthought, conscienceandreligion; thisrightincludesfreedom to change hisreligion or beliefandfreedom, eitheralone or incommunitywithothersandinpublic or private, to manifest hisreligion or belief, inworship, teaching, practiceandobservance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

**Hand-out 2: The George Manson Story**

George Manson, a seventh-grade English teacher in the middle school received a call from the father of one of his students, Rema Assadi, a Muslim girl who had brought home a novel she had selected from George’s list of recommended books. The novel, one that had been chosen by librarians in the state as among the best modern fiction for middle schoolers, concerned an American girl going to school in London whose 11-year-old brother had been killed by a bomb detonated by a Muslim girl attempting to avoid an arranged marriage to a man in his 50s who already had two other wives. The book contained numerous stereotypes of Muslims, portraying them as abusers of women, anti-Semitic, under the control of their religious leaders, and prone to violence. Both Rema and her family were upset and frightened at the thought that other students in the class would be reading this book. After the violent attacks on September 11, 2001, the family feared a major backlash against Muslims.

Mr Assadi told George that his religious community was mounting a letter-writing and e-mail campaign aimed at publisher of the book, trying to persuade the company to recall it. In the meantime, he asked, would George please take the book off his recommended reading list? And would he talk to his students about the book, making sure they understood how biased it was?

**Hand-out 3**

1. Has anyone attended a religious service with you who belongs to different religion? What is it like for you? Do you feel strange? Why?
2. Do you know how the parochial school differs from a secular public school? Do you know someone who attends it?
3.

How and in what ways do you think religious knowledge should be a part of public schooling?

**Hand-out 4: Basic information about the Lautsi case**

Mrs Lautsi, mother of two boys who were attending public school in Italy, acted as the applicant versus the State of Italy. Because of the presence of crucifixes in each school classroom and her being an agnostic supporter, she claimed that the principle of secularism had been infringed by this presence and that her children’s right to education (Article 2 of Protocol 1) was violated, as well as the right to freedom of thought, conscience and religion (Article 9 ECHR). The procedure in Italy was not successful for the applicants so they decided to bring the case before the European Court for Human of Human Rights.

**Guideline 1**

Given the world today and constant migrations people are involved in throughout the last century or so, the demographic scale of most societies is changing. While before they were mostly homogenous, nowadays there are many people withdifferent cultural, ethnical, religious origins inhabiting one country which creates cultural pluralism.This situation often leads to various conflicts in society because of diversity in understanding many life principles.

Teacher is expected to explain to students how these conflicts can manifest themselves by giving examples (e.g. teachers/students discriminated for their religious head covers).

Mozemotakostavit?

**Hand-out 5: Court's judgment and reasoning**

**1.**Italian authorities acted within the limits of the margin of appreciation left to the respondent State in the context of its obligations enshrined in the Convention. There was no violation of Article 2 of the Protocol 1 and no separate issues arose under Article 9 of ECHR.

**2.** The fact that States have a positive obligation when ensuring that parents can raise their children as they feel is desirable does not mean that parents can require some particular teaching form or parts of the curricula because setting and planning of the curriculum are State’s assignments.

So, even though States can include any information they want, still these information have to be presented objectively, critically, in a pluralistic manner and preventing proselytism. States are forbidden even to encourage indoctrination in favour of any part of the society. Court held that in this case the presence made country’s majority religion preponderantly visible, however this was insufficient to denote a process of indoctrination and establish a breach of Article 2/Protocol 1.

Court said that the margin was not exceeded because the presence of crucifixes was not followed by religious/philosophical-oriented teaching that would be forced on pupils and he cross was indeed only a passive symbol on the wall.

Additional remarks were that:

* the presence of crucifixes is not associated with compulsory teaching about Christianity,
* that Italy is opened to all religious views,
* that there was nothing to suggest that the authorities were intolerant of pupils with other religious convictions and
* that the applicants did not assert that this presence had encouraged the development of teaching practices with a proselytising tendency, or claim that the second and third applicants had ever experienced a tendentious reference to that presence by a teacher in the exercise of his or her functions.

It referred to Government’s argument on narrowing Court’s jurisdiction and stated that the obligation to “respect” (Article 2/Protocol 1) binds States in the exercise of all functions which they assume in relation to education and teaching. Hence, this includes the presence of crucifixes. Although Italy claimed that crucifix is a part of country’s tradition, the Court reminded that a reference to tradition cannot relieve a Contracting State of its obligations under ECHR. However, given that the Contracting States do in fact enjoy a margin of appreciation in this field it is Court’s duty to respect their decisions in these matters, providing that those decisions do not lead to a form of indoctrination.

In relation to the applicants, Court held that the mere presence of crucifixes and a violation of right to education emerging from it was a subjective perception, not in itself sufficient to establish a breach of Article 2/Protocol 1.

**Teacher Guideline 2**

**Role of a debate moderator**

1. **Starts a debate**: announces a topic, introduces teams and clarifies rules.
2. **Ensures the application of rules**, time table and form of debate.
3. With his/her discretionary power **leads a debate** within formal but important rules:
4. Not allowing argumentum ad personam
5. Not allowing insulting
6. Not allowing vulgar expressions or other immoral phrases. One will sanction:
7. warning
8. warning with the apology request
9. repeated warning with threat of excluding
10. excluding a participant
11. forbidding to go outside of topic
12. forbidding the repeating of already told arguments
13. taking a word when one is talking too long or too often
14. including „silent“ people

**Teacher Guideline 1**

**Debate**

**Necessary conditions for debate:**

* a controversial issue
* the importance of the issue for the discussion

**Participants:**

* moderator
* two teams presenting two different attitudes
* adjudicators (court)

**Valorisation:**

* voting after the debate (to measure influence of the debate one should measure attitudes before and after the debate)

**Rules:**

* all participants are informed about the rules before the debate (e.g. rules about the time of preparation, forbidden arguments etc.)
* moderator takes care weather rules are being applied

**Time table:**

* introduction by the moderator
* forewords of team's representatives (1 minute each)
* debate (10 minutes)
* closing words of the team’s representatives (1 minute each)
* judgement

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