



LEGAL MEMORANDUM

ECHR - LAUTSI v. ITALY APRIL 2010

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INTRODUCTION

The Second Section of the European Court of Human Rights (“the Court”) in *Lautsi v. Italy*¹ held the Italian Government to an inappropriate standard, demanding that the State “uphold *confessional neutrality* in public education”² when it determined that that the Italian government may not merely display a crucifix in state school classrooms because of the potential coercive effect. The *Lautsi* Court seriously erred when it determined that Italy violated Article 2 of Protocol No. 1, taken in conjunction with Article 9 of the European Convention on Human Rights (“ECHR” or “Convention”) because it excluded pivotal considerations due the member states, such as the margin of appreciation and the manner of state action.

As the Court has recognized time and again, the Council of Europe member states must be given a wide margin of appreciation on matters of education and religion. The European Court of Human Rights has never before imposed principles of pluralism in a vacuum, and it cannot do so now. Demanding the newly minted standard of “confessional neutrality” apart from Italy’s history and tradition cannot be done without flagrantly disrespecting federalism safeguards set in place. When determining whether a state has made an unreasonable distinction, the Court may not ignore the wide margin of appreciation due to member states concerning their spiritual and moral values, which form their common heritage:

¹ *Lautsi v. Italy*, no. 30814/06, § 55, 3 November 2009 (referred to the Grand Chamber on 01 March 2010).

² *Id.* § 56.

[T]he Court cannot disregard those legal and factual features which characterize the life of the society in the State which, as a Contracting Party, has to answer for the measure in dispute. In so doing it cannot assume the rôle of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention.³

In this case, Italy decided to display crucifixes in state school classrooms as part of the overall educational process, which cannot reasonably be classified as a “distinction” or even a decision that “regulates” student conduct. However, the *Lautsi* Court applied Convention principles as if Italy’s decision were a regulation of student conduct, agreeing with the applicants that Italy “takes the side of Catholicism”.⁴ Inanimate symbols alone, without any written or oral directive, can neither be considered a state regulation of religious conduct nor viewed as having any significant effect on behavior. Even if the crucifix display could be viewed as a “regulation”, (which it cannot) the Court did not properly consider Italy’s legal and educational history and traditions, and thus disregarded “those legal and factual features which characterize the life of society in [Italy]”. Furthermore, whatever *de minimis* effect displaying a crucifix may have on student thought or conscience, the effect fails to rise to the level of a violation under Article 2 of Protocol No. 1, considered in conjunction with Article 9 of the European Convention on Human Rights.

I. Italy Must Be Permitted to Regulate Education According to Its Own Historical and Cultural Traditions Within the Wide Margin of Appreciation Given Under the European Convention on Human Rights, Particularly Where There Is No Consensus Among the Member States as to Questions of State and Religion.

The Court in *Lautsi* erred because it failed to consider the case based upon the proper margin of appreciation due Italy as a member state of the Council of Europe. The Court additionally failed to consider Italy’s unique country conditions and imposed a standard of “neutrality” akin to that which is imposed by France or Turkey, for example—member states of wholly different historical backgrounds and cultural conditions. Among the member states, there are widely varying applications of legal principles and governmental policies. France applies its own historically defined policy of *laïcité*—secularism in its strictest sense.⁵ While Britain, Germany, and Italy have well-established religious identities, France proclaims itself a “*laïc*” state.⁶ In France (and Turkey also), “*laïcité* indicates an active program whereby the country is promoted as fundamentally politically independent of any religious authority and in which a need for public order can be used to justify interference with freedom of religion—a form of anti-religion to deal with the excesses of religion”.⁷ Italy’s historical foundations with regard to law, education, and traditions cannot be compared.

A. Comparing Member States’ “Secularism” Paradigms

The French and Italian governmental paradigms fundamentally differ. France operates under a uniquely stringent form of secularism. Notably, “France’s conception of secularism is *the most*

³ *Belgian Linguistic Case*, no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 23 July 1968, Part I.B. § 10, ECHR Series A, No. 6.

⁴ *Lautsi*, *supra* note 1 § 53.

⁵ See Laura Barnett, *Freedom of Religion and Religious Symbols in the Public Sphere* 1-3, 26-29 (Canada Library of Parliament PRB 04-41E Sept. 22, 2008), <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0441-e.pdf>.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

rigidly defined, with strictly enforced policies that keep religion out of the public sphere. . . . In France, civil rights do not exist as natural rights that an individual may assert against the state; rather, they are ‘the natural right to enjoy freedoms defined and delimited exclusively’ by state law”.⁸ Further, France “abides by a secular tradition which sees national republican identity as taking precedence over individual identity, with ethnic belonging and religious differences relegated to the private sphere”.⁹ The educational system, for example, is viewed as “a means of integration, leading ultimately to cultural assimilation”; “Laïc schools are seen as a place where equality reigns and where girls can be safe from the exigencies of their family and religion in order to become truly French”.¹⁰ The system is based on a “fundamental notion of French identity that directs the state’s entire policy”.¹¹ The same is not true for confessional states, or even those states with deep roots in a confessional form of government, such as Italy.

The European Court of Human Rights has recognized France’s ability to restrict some religious conduct because of the margin of appreciation afforded to member states (within the confines of the Convention), based on France’s unique form of government. Thus, in *Sahin v. Turkey*,¹² the Grand Chamber of the Court noted that in France, “secularism is regarded as one of the cornerstones of republic values”. However, the notions of secularism and its applications are diverse among the member states. As the Court itself observed in 2005, the Islamic headscarf attire in State education has been debated across Europe for the past twenty years.¹³ In *Sahin*, the Court compared the laws of several states regarding the Islamic headscarf in schools, noting the states which have regulated the wearing of Islamic headscarves (France, Turkey, Azerbaijan, and Albania, among others),¹⁴ as well as those states which have *permitted* them (Austria, Germany, the Netherlands, Spain, Sweden, Switzerland, and the United Kingdom).¹⁵

That some states prohibit the Islamic headscarf (such as was the case in *Dahlab v. Switzerland*¹⁶, wherein the Court accepted the potential difficulty in the State’s assessing “the impact of a powerful external symbol”) does not necessarily mean that all states which permit Islamic headscarves violate the Convention. Relying on *Dahlab*, the *Lautsi* Court made this error by assuming, without seriously analyzing relevant and specific country factors, that the crucifix displays in public schools constitute “powerful external symbols” that violate Convention principles.¹⁷ In fact, the *Lautsi* Court could only state that crucifixes “may” be considered “powerful external symbols”¹⁸; this ambiguity highlights the Court’s error all the more.

In addition, the *Lautsi* Court incorrectly drew an analogy to the situation in *Dahlab*. First, the claim in *Dahlab* was not brought under Article 2 of Protocol No. 1, but rather under Article 9, alone. Thus, through its analogy, the *Lautsi* Court converted Italy’s decision to display a crucifix within its margin of appreciation concerning educational matters into a regulation on religious exercise to be assessed as an interference with the applicant’s rights solely under Article 9 of Convention. This is error, because, in *Dahlab*, it was the *state* that determined the symbol was

⁸ *Id.* at 26 (emphasis added).

⁹ *Id.* at 28.

¹⁰ *Id.*

¹¹ *Id.* at 29.

¹² *Sahin v. Turkey* [GC], no. 44774/98, § 56 ECHR 2005-XI.

¹³ *Id.* §55.

¹⁴ *Id.* §§ 55-56,

¹⁵ *Id.* § 58.

¹⁶ *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V (the Court found the applicant’s claim inadmissible).

¹⁷ *Lautsi*, *supra* note 1, § 54.

¹⁸ *Id.*

too powerful, motivating its prohibition on religious exercise. Thus, the question before the Court in *Dahlab* pertained to whether the state exceeded its margin of appreciation in making a determination as to the level of power in a religious symbol. By contrast, the *Lautsi* Court itself determined the crucifix *may* be too powerful—*contrary to Italy’s determination* made within its margin of appreciation pertaining to curriculum matters. Second, the Court in *Lautsi* did not rule on an alleged interference with free exercise of religious *conduct* of the applicant as in *Dahlab*; rather, the Court guessed about the effect on student thought or conscience *could* be. Curriculum matters—the expediency or appropriateness of curriculum—definitively fall within the State’s province to determine, and not the province of the Court. The Grand Chamber explained the parameters of such questions succinctly in *Sahin v. Turkey*.

When analyzing whether Turkey’s regulation of the Islamic headscarf at a public university was “necessary in a democratic society” under Article 9, the Grand Chamber explained the impossibility of discerning a *uniform* conception of religion in society throughout Europe, and, thus, why member states must be given a wide margin of appreciation in these matters:

Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given *special importance*. . . . This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially (as the comparative-law materials illustrate – see paragraphs 55-65 above) in view of the diversity of the approaches taken by national authorities on the issue. *It is not possible to discern throughout Europe a uniform conception of the significance of religion in society . . . and the meaning or impact of the public expression of a religious belief will differ according to time and context*. . . . Rules in this sphere will consequently vary from one country to another according to *national traditions* and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. . . . Accordingly, *the choice of the extent and form* such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the specific domestic context. . . .¹⁹

Moreover, the Grand Chamber explained its “paramount” consideration: “the principle of secularism, *as elucidated by the [state’s] Constitutional Court*”.²⁰ In other words, the Court respects each state’s own definition and application of secularism as a primary concern, rather than uniformly imposing a one-size-fits-all definition of secularism on all member states. The latter is the error made by the Court in *Lautsi*. The Court’s task, where behavior (or a manifestation of religious belief) has been regulated, is “to determine whether the measures taken at the national level were justified in principle and proportionate”.²¹ Even if Italy’s crucifix display could be considered a “regulation”, it is justified and proportionate according to Italy’s

¹⁹ *Sahin v. Turkey*, *supra* note 12, § 109 (internal citation omitted) (emphasis added). The Court also credited the states “a certain margin of appreciation” in the regulation of educational institutions under Article 2 of Protocol No. 1, whereas “the regulation of educational institutions may vary in time and in place, *inter alia*, according to the needs and resources of the community and the distinctive features of different levels of education”. *Id.* § 154. See also *Dogru v. France*, no. 27058/05, § 63, 4 December 2008 (selected for publication) (the role of each state is given special consideration when regulating religious symbols in the form of student attire; the approaches of the member states with regard to regulating the relationship between religion and state are diverse, varying from one country to another “according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order”).

²⁰ *Id.* § 115 (emphasis added).

²¹ *Id.* § 110.

unique history and traditions. Importantly, Italy has not undertaken to regulate anyone's religious conduct, as will be explained in more detail in Section II, *infra*.

Beyond the Grand Chamber's observations as stated in *Sahin*, the Appendix attached hereto, *Confessional v. Non-Confessional Members of the Council of Europe & States Publicly Displaying Crucifixes in the Council of Europe*, demonstrates the sheer lack of consensus among member states regarding relationships between religion and state. For example, sixteen of the forty-seven member states are confessional states or specifically mention a relationship with a specific religion in their constitutions or founding documents.²² Eleven of these member states either currently display crucifixes or crosses in state schools or courthouses; in only two of this group of states, various state courts have ruled against the display in a limited area of the state.²³ Additionally, thirteen of the forty-seven member states have made declarations or reservations regarding Article 2 of Protocol No. 1.²⁴ With regard to religious education, the Court, in *Zengin v. Turkey*,²⁵ observed the varying requirements of the forty-seven states: twenty-five of the (then 46) member states maintained compulsory religious education, but they varied in the scope of the obligation. Some states made attendance an absolute requirement; some states provided partial or full exemptions.²⁶ The remaining twenty-one states had no such obligation, but eighteen of those states generally authorized religious education at each student's option.²⁷ Still another small group of states required students to take either religious education or a substitute class, which could be secular.²⁸ Some form of exemption was the only common thread among the states' religious education requirements.²⁹

Accordingly, Italy must be afforded the proper margin of appreciation where each member state's history and practice widely differ on questions concerning the relationship between state and religion, as the Grand Chamber explained in *Sahin*.

B. Italy's Unique Legal and Educational History and Traditions

Italy has its own conception of secularism and has implemented a religious education program. Comparatively speaking, Italy's concept of secularism is not as strictly defined as it is in France or Turkey. More importantly, the Court cannot impose on Italy the standard of secularism that has grown up in France and Turkey. Italy has its own legal and educational history and traditions. The Court in *Lautsi* did not take such factors into consideration, as evidenced by its failure to discuss the *whole* 1984 Agreement Between the Italian Republic and the Holy See, which amended the 1929 Lateran Covenant between Italy and the Holy See.

²² Andorra (Catholic); Armenia (Armenian Apostolic Church); Bulgaria (Eastern Orthodox Christianity); Cyprus (Greek Orthodox Church); Denmark (Evangelical Lutheran Church); Georgia (Apostle Autocephalous Orthodox Church of Georgia); Greece (Eastern Orthodox Church of Christ); Iceland (Evangelical Lutheran Church); Italy (Catholic Church); Liechtenstein (Roman Catholic Church); Malta (Roman Catholic Apostolic Religion); Norway (Evangelical Lutheran Religion); Poland (Roman Catholic Church); Spain (Catholic Church); Macedonia (Macedonian Orthodox Church); United Kingdom (church of England and Church of Scotland).

²³ Georgia, Germany (recent court ruling), Greece, Ireland, Italy (*see Lautsi v. Italy, supra* note 1), Lithuania, Malta, Poland, Romania, San Marino, and Spain (recent court ruling). *See* Appendix.

²⁴ *Declarations*: Andorra, Azerbaijan, Bulgaria, Germany, Ireland, Malta, Moldova, Netherlands, and Romania. *Reservations*: Georgia, Macedonia, Turkey, and the United Kingdom. *See* Appendix.

²⁵ *Zengin v. Turkey*, no. 1448/04, §§ 30-34, 9 Oct. 2007 (selected for publication).

²⁶ *Id.* §§ 31-32.

²⁷ *Id.* § 33.

²⁸ *Id.*

²⁹ *Id.* § 34.

First, the Court in *Lautsi v. Italy* barely gave lip service to the role of religion in Italian history and tradition, and in sources of law and government,³⁰ thereby ignoring the Grand Chamber's discussion of margin of appreciation due to member states in these sensitive areas. Instead, the Second Section imposed a newly minted "confessional neutrality"³¹ standard that has no place under the law of the Convention, let alone under the particular facts of this case. In *Lautsi v. Italy*, the applicant, Ms Soile Lautsi, brought her complaint against the Italian Republic ("government") on behalf of her two children minor children (ages 11 and 13 in the 2001-2002 school year). She alleged that the display of the cross in the classrooms of public schools interfered with her children's freedom of belief and religion as well as their right to education and teaching consistent with her religious and philosophical convictions under Article 2 of Protocol No. 1 of the Convention, taken in conjunction with Article 9 of the Convention.

Italy's Ministry of Education took the position that the crucifix display was grounded in law; specifically, Article 118 of Royal Decree No. 965 (April 30, 1924) and Article 119 of Royal Decree No. 1297 (April 26, 1928) (provisions pre-dating the Constitution and agreements between Italy and the Holy See).³² The Government maintained in Italy's Constitutional Court that a crucifix display was "natural", as it is both a religious symbol and the "flag of the Catholic Church", noting the Catholic Church was the only Church named in the Constitution (Article 7).³³ After the Constitutional Court returned the case to the Administrative Court for want of jurisdiction,³⁴ the Administrative Court dismissed the case, finding that "the crucifix was both the symbol of Italian history and culture, and therefore Italian identity, and the symbol of the principles of equality, freedom and tolerance and of the State's secular basis".³⁵ The *Consiglio di Stato* also dismissed the applicant's further appeal on 13, February 2006, holding that the cross held secular value under the Italian Constitution and represented the values of civil life.³⁶ These findings of Italy's history, legal tradition, and the composition of the "Italian identity," should have been sufficient for the Court in *Lautsi* to acknowledge the wide margin of appreciation due, just as the Grand Chamber acknowledged in *Sahin v. Turkey*.

Continuing, as the Court noted in *Lautsi*, the crucifix display in school classrooms has been part of Italy's history since 15 September 1860, under Article 140 of the Kingdom of Piedmont-Sardinia's Royal Decree no. 4336.³⁷ When Italy came into being in 1861, the Constitution declared Roman Catholic Apostolicism the state's only religion, but expressed toleration for other religions.³⁸ After the take-over of Rome by the Italian army and the establishment of fascism, the Ministry of Education ordered in 1922 the restoration of the images of Christ and the King to schools, as they were "two sacred symbols of faith *and national consciousness*".³⁹ Thus, as the *Lautsi* Court noted, Article 118 of Royal Decree 965 and Article 119 of Royal Decree 1297 *still apply to the case*⁴⁰.

³⁰ See *Lautsi v. Italy*, *supra* note 1, §§ 51-52.

³¹ *Id.* § 56.

³² *Id.* § 10.

³³ *Id.* § 11.

³⁴ *Id.* § 12.

³⁵ *Id.* § 13.

³⁶ *Id.* § 15.

³⁷ *Id.* § 16.

³⁸ *Id.* § 17.

³⁹ *Id.* § 19 (emphasis added).

⁴⁰ *Id.* § 20.

The Court in *Lautsi* correctly noted that the current Constitution of Italy provides for independence between the State and the Catholic Church⁴¹. The Court also correctly acknowledged the Agreement between Italy and the Holy See; however, the Court failed to consider the *whole* agreement. As the Court observed, on February 18, 1984, Italy and the Vatican signed the Agreement Between the Italian Republic and the Holy See, which revised the 1929 Lateran Covenant⁴²; the revision was codified as Law No. 121, on 25 March 1985.⁴³ Article 1 of the Agreement “reaffirms that the State and the Catholic Church are, each in its own order, independent and sovereign and commit themselves to the full respect of this principle in their mutual relations and to reciprocal collaboration for the promotion of man and the common good of the Country”.⁴⁴ Additionally, following the Agreement are joint declarations made by the parties.⁴⁵ The first declaration, in paragraph 1, provides that, “[t]he principle of the Catholic religion as the sole religion of the Italian State, originally referred to as the Lateran Pacts, shall be considered to be no longer in force”.⁴⁶

However, the *Lautsi* Court failed to consider that Article 9 of that same Agreement guarantees that “[t]he Italian Republic, recognizing the value of the religious culture and considering that the principles of the Catholic Church are part of the historical heritage of the Italian people, shall continue to assure, within the framework of the scope of the schools, the teaching of Catholic religion in the public schools of every order and grade except for Universities”.⁴⁷ In fact, the Court never mentioned Article 9 of the Agreement even once. Also worthy of note, Article 9 fully complies with the case law of the Convention whereas its Section 2 also provides for “the respect for the freedom of conscience and educational responsibility of the parents,” by granting to “everyone . . . the right to choose whether or not to receive religious instruction”.⁴⁸

⁴¹ *Id.* §22. Article 7:

- (1) The State and the Catholic Church shall be, each within its own order, independent and sovereign.
- (2) Their relations shall be regulated by the Lateran Pacts. Such amendments to these Pacts as are accepted by both parties shall not require the procedure for Constitutional amendment.

Republic of Italy, Constitution, 22 Dec. 1947, art. 7, *available at*,
<http://www.unhcr.org/refworld/category,LEGAL,,,ITA,3ae6b59cc,0.html>

⁴² Agreement Between the Italian Republic and the Holy See, art. 13(1), Vatican-Italy, 18 Feb. 1984, 24 I.L.M. 1589 (1985) [hereinafter “Vatican-Italy Agreement, 1984”], *available at*
<http://www.religlaw.org/template.php?id=578>.

⁴³ *Id.*; see also Mauro Giovannelli, *The 1984 covenant between the Republic of Italy and the Vatican: A retrospective analysis after fifteen years*, JOURNAL OF CHURCH AND STATE, Summer 2000, at 529, 529, *available at*,
<http://www.studiogiovannelli.it/public/pubblicazioni/Journal%20of%20church%20and%20state,%20summer%202000.pdf>.

⁴⁴ *Id.*, art. 1.

⁴⁵ *Id.* (see joint declaration of the parties regarding the Agreement Between the Italian Republic and the Holy See which follows the signed date at end of the Agreement [hereinafter “Joint Declaration”]).

⁴⁶ Joint Declaration, *supra* note 45, ¶ 1 (“In relation to Article 1”). Under the same Declaration between the parties, as to Article 9, the parties agreed that, “[t]he teaching of Catholic religion in the schools indicated at Paragraph (2) shall be given — in conformity with the doctrine of the Church and with respect for the freedom of conscience of the pupils — by the teachers who are recognized by the ecclesiastical authority as being qualified thereto and who are appointed, in agreement therewith, by the school authority. In infant and elementary schools, this teaching may be given by the class teacher, if recognized by the ecclesiastical authority as being qualified thereto and if willing to do it”. *Id.* § 5 (“In relation to Article 9”).

⁴⁷ Vatican-Italy Agreement, 1984, *supra* note 43, art. 9(2).

⁴⁸ *Id.*; see *Zengin v. Turkey*, *supra* note 25, § 53; *Folgero and others v. Norway* [GC], no. 15472/02, §§ 84(g)-(h), 86, 89, 96-100 (selected for publication) (acknowledging Norway’s right to declare a state religion and the consequent right to place greater emphasis on the state religion than other religions in religion and philosophy curriculum, but considering whether a “partial” exemption would be sufficient to give practical effect to Article 2 of Protocol No. 1; the manner of partial exemption did not meet the Court’s criteria in this particular case).

C. States Possess A Broad Margin of Appreciation Pertaining to Religious Education Under Article 2 of Protocol No. 1, Taken in Conjunction with Article 9 of the Convention

The fact remains that Italy chose to include vestiges of its religious history and tradition in its state education; it did so in the very same Agreement that grants independence and sovereignty to the Church and the State separately.⁴⁹ Italy's decision to include such vestiges of its religious

Section 2 also provided that, "[w]hen they enroll, the students or their parents shall exercise this right at the request of the school authority and their choice shall not give rise to any form of discrimination". *Id.* The Constitutional Court of Italy has determined on two occasions that Catholic religious instruction in schools is lawful, but only if students who object to the religious instruction are not required to attend substitute or alternative classes. Mauro Giovannelli, *supra* note 43, at 532 (citing Constitutional Court decisions No. 203, 12 April 1989; No. 13, 14 Feb. 1991). As of 2000, 90 percent of Italian students and their families had chosen religious education. *Id.*

Additionally, Article 18 of the International Convention on Civil and Political Rights, together with the U.N. Human Rights Committee's General Comment 22 to Article 18, provide similarly:

ICCPR Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.**

International Covenant on Civil and Political Rights, art. 18, 23 Mar. 1976, 999 U.N.T.S. 171 [hereinafter "ICCPR"].

As General Comment 22, paragraph 6, explains in pertinent part, religious education should include a right of exemption:

The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 *unless* provision is made for *non-discriminatory exemptions* or alternatives that would accommodate the wishes of parents and guardians.

Office of the High Commissioner for Human Rights, Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience, and religion (Art. 18):*..30/07/93.CCPR/C/21/Rev.1/Add.4, *General Comment No. 22*, § 6 (1993) (emphasis added), available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument).

Thus, the difference between offending neutrality and conforming to neutrality does not rest in including the religious education itself. Rather, the **provision of accommodation for religious objectors is the key**. The display of a religious symbol cannot be distinguished from the presence of religious education in schools in the first place. However, the mere display of a religious symbol does not require *any action* by a student, not even the act of requesting exemption, because there is no exercise from which to opt out.

⁴⁹ Regarding the concept of secularism, even the text of Italy's Constitutional provision does not indicate a strict adherence to secularism equaling or comparable to the text of Turkey's or France's constitutional provisions. Article 7 of Italy's Constitution merely requires that the State and Church be "independent and sovereign," and that their continued *relationship* be governed by the Lateran pacts and their amendments. *See* Republic of Italy, Const., art. 7, *supra* note 41. In contrast, both Turkey's and France's constitutional provisions explicitly declare a "secular" society:

Article 2 of the Constitution of the Republic of Turkey specifies a "secular" society:

history and tradition within its public educational system is perfectly permissible under both Article 9 and Article 2 of Protocol No. 1, as the Grand Chamber explained in *Folgero and Others v. Norway*⁵⁰:

Moreover, it should be noted that, as follows from the statement of principle in paragraph 84(g) above, the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education. That being so, the fact that knowledge about *Christianity represented a greater part of the Curriculum for primary and lower secondary schools* than knowledge about other religions and philosophies *cannot*, in the Court's opinion, *of its own* be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination (see, *mutatis mutandis*, *Angelini v. Sweden* (dec.), no 1041/83, 51 DR (1983). *In view of the place occupied by Christianity in the national history and tradition of the respondent State*, this must be regarded as falling *within* the respondent State's *margin of appreciation in planning and setting the curriculum*.⁵¹

That Italy has chosen to remind students of the religious heritage of the state, even giving Catholicism a higher place of prominence than other religions, cannot be considered indoctrination in light of the Grand Chamber's pronouncement in *Folgero*. States may freely emphasize one religion over others due to the place that one religion holds in the state's "national history and tradition". This is the case even in primary and lower secondary school grades, according to the Grand Chamber; this completely contradicts the *Lautsi* Court's particular concern for "young pupils".⁵²

In fact, the Court in *Lautsi* further erred by finding that Italy had 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".⁵³ Here again, the Court crossed over into Italy's margin of appreciation. The Court in *Kjeldsen, Busk Madsen, and Pedersen v. Denmark*⁵⁴ explained the wide margin of appreciation given to member states to set and plan curriculum:

[T]he setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. In particular, the second sentence of Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of

The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.

Constitution of the Republic of Turkey, art. 2, *available at*,
<http://www.unhcr.org/refworld/docid/3ae6b5be0.html> [accessed 30 March 2010]

Article 1 of the Constitution of France also requires a "secular" society:

France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.

France Constitution of 4 Oct. 1958, art. 1, *available at*
<http://www.unhcr.org/refworld/docid/3ae6b594b.html>.

⁵⁰ *Folgero and Others v. Norway*, *supra* note 48.

⁵¹ *Id.* § 89 (emphasis added).

⁵² *Lautsi v. Italy*, *supra* note 1, § 50.

⁵³ *Id.*, § 56.

⁵⁴ *Kjeldsen, Busk Madsen, and Pedersen v. Denmark*, 7 December 1976, no. 5095/71; 5920/72; 5926/72, § 52, Series A no. 23.

a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. *The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature.*

The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, *must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner.* The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. *That is the limit that must not be exceeded.*⁵⁵

The emphasized points above are critical in this case, in that Ms Lautsi *never* alleged that Italy discouraged critical thought with regard to the display of the crucifix, or that any individual, through the religious curriculum that is available, attempted to indoctrinate her children, or that the display of the crucifix was incorporated into any religious or other curriculum. Precisely within Italy's margin of appreciation is the manner of teaching—"questions of expediency" regarding curriculum. "Expediency" has been defined as concerning the "appropriateness to the purpose at hand"⁵⁶. Such questions include, as the Court indicated in *Kjeldsen*, "religious affinities" due to "the existence of religions [which form] a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature". Italy simply considered the display of the crucifix as appropriate to a well-rounded education, considering Italy's legal and educational history, as well as Article 9 of the Agreement Between the Italian Republic and the Holy See⁵⁷, in particular.

Furthermore, there is no evidence that Italy's state schools interfered with Ms Lautsi's "right . . . to enlighten and advise [her] children, to exercise with regard to [her] children natural parental functions as [an] educator[], or to guide [her] children on a path in line with [her] own religious or philosophical convictions".⁵⁸ The issue here simply revolves around a mere inanimate display. Without more evidence as to state actors' conduct,⁵⁹ the *Lautsi* Court's analysis is again flawed where it ruled on a question of expediency of Italy's curriculum rather than on a question of application—one which was either never in issue or explored. The lone display of the crucifix, then, falls outside the Court's province as a matter of expedience or appropriateness in

⁵⁵ *Id.* § 53 (emphasis added).

⁵⁶ *Webster's II New College Dictionary* 394 (2001).

⁵⁷ See *supra* note 42.

⁵⁸ *Kjeldsen, Busk Madsen, and Pedersen v. Denmark*, *supra* note 54, § 54.

⁵⁹ As the Court in *Kjeldsen* noted,

Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism. However, it follows from the Commission's decisions on the admissibility of the applications that the Court is not at present seized of a problem of this kind (paragraph 48 above).

Id. § 54 (the Court examined the legislation only rather than the day to day application, which was not yet ripe for review).

curriculum. Without an application of curriculum to examine, this matter should be deemed inadmissible.

Interestingly, in a case the *Lautsi* Court failed to mention, *Zengin v. Turkey*⁶⁰, the Court recently explored the boundaries of mandatory religion classes. In this case, Turkey was guilty of ignoring a large part of the state's religious history and tradition. However, the decision further solidified the parameters of a state's presentation of particular religious tenets of the state's dominant religion without violating the provisions of the Convention or its Protocol No. 1. The case is all the more relevant considering that Turkey is nearly as secular as France. In *Zengin*, the applicants sought relief under Article 2 of Protocol No. 1 and Article 9 after they were finally denied exemption from a mandatory religious culture and ethics class. The applicants objected to the course, arguing that it was incompatible with the principle of secularism, whereas the classes were "based on the fundamental rules of Hanafite Islam and that no teaching was given on [their] own faith"⁶¹, that being Alevism; the applicants also challenged the compulsory nature of the courses.⁶²

Important to note, Alevism is generally considered as a branch of Islam and "represents one of the most widespread faiths in Turkey after the Hanafite branch of Islam".⁶³ However, the Alevis reject both the sharia ("code of laws in orthodox Islam") and the *sunna* ("forms of behavior and formal rules of orthodox Islam").⁶⁴ The Alevis differ from orthodox Islam on several other points. In short, the Alevis do not pray by the Sunni rite, do not attend mosques, do not make pilgrimage to Mecca, and engage in alternate practices.⁶⁵ The compulsory courses for grades four through eight⁶⁶ included religious instruction "'about the historical development of Judaism, Christianity, Hinduism and Buddhism, their main features and the content of their doctrine, and [were] to be able to assess, using objective criteria, the position of Islam in relation to Judaism and Christianity'"⁶⁷ However, the courses also included materials and objectives that explained the importance of Islam:

The Court observe[d], however, that although the instruction is based on the principles [set forth in the opinion], the teaching programme also aim[ed] to raise awareness among pupils of '[the fact that] acts of worship, as well as being demonstrations of love, respect and gratitude towards Allah, enable the individuals in a group to bond with love and respect, to help each other, to show solidarity' and 'using different examples, to explain that, far from being a myth, Islam is a rational and universal religion'. The syllabus also includes the study of the conduct of the prophet Mohamed and of the Koran. Equally, the syllabus for the 7th grade includes teaching on fundamental aspects of the Islamic religion, such as 'pilgrimage and sacrifice', 'angels and other invisible creatures' and 'belief in the other world'.⁶⁸

The Court also noted that the course materials contained religious instruction "in the major principles of the Muslim faith and provide[d] a general overview of its cultural rites, such as the

⁶⁰ *Zengin v. Turkey*, *supra* note 25.

⁶¹ *Id.* § 10.

⁶² *Id.* §§ 10-12.

⁶³ *Id.* § 9.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* § 20.

⁶⁷ *Id.* § 21 (quoting *The Turkish education system and decision no. 373 of 19 September 2000 on guidelines for classes in religious culture and ethics* [hereinafter "*Turkish Educ. Dec. no. 373*"]).

⁶⁸ *Id.* § 60 (quoting *Turkish Educ. Dec. no. 373*) (fourth alteration in original).

profession of faith, the five daily prayers, Ramadan, pilgrimage, the concepts of angels and invisible creatures, belief in the other world, etc.”.⁶⁹ Moreover, students were required to “learn several suras from the Koran by heart and study, with the support of illustrations, the daily prayers . . . and sit [for] written tests for the purpose of assessment”.⁷⁰

Despite the “greater priority [given] to knowledge of Islam than” was given to other religions and philosophies in Turkey⁷¹ (a state which constitutionally avows the principle of secularism⁷²), the Court did not view this level of imparting religious knowledge “as a departure from the principles of pluralism and objectivity which would amount to indoctrination . . . having regard to the fact that, *notwithstanding the State’s secular nature, Islam is the majority religion practiced in Turkey*”.⁷³ The applicants in *Zengin* won, not because of the inclusion of the in-depth Islamic curriculum, but because of the egregious exclusion of their particular faith (the Alevi faith, which held “deep roots in Turkish society and history”⁷⁴) and the insufficient exemption procedure for opting out of the class.⁷⁵ Notably, the Court found no general right to include any minority religion in states’ educational curriculum⁷⁶.

Zengin v. Turkey is important for its application to *Lautsi v. Italy* because the Court’s approval of the Islamic curriculum drastically counters the “powerful effect” that the *Lautsi* Court attributed to the lone display of a religious symbol—a crucifix. Not only did the Court in *Zengin* approve the curriculum, but it approved a drastically secular state’s emphasis on Islam, giving special consideration to Islam as the majority religion—a point of contention for the Court in *Lautsi* causing it to improperly rule against Italy.⁷⁷ Thus, the Court in *Lautsi* again erred when it gave credence to the “applicant’s apprehension” that the display itself meant that state takes the side of Catholicism.⁷⁸ The holding is completely contrary to the principles espoused by the Grand Chamber in *Zengin v. Turkey* concerning a “secular” society, as well as previously in *Folgero and Others v. Norway* where the Grand Chamber approved curriculum that elevated the knowledge of Christianity over other religions,⁷⁹ as discussed above.

Unlike France or Turkey, Italy’s sources of law and educational foundations have been historically and traditionally intertwined with the Catholic Church. The philosophy of law for Italy is not rooted in the authority of the state or in a civic identity. Fundamental rights stem from natural rights and human dignity. Thus, religious freedom should only vary in its limitations

⁶⁹ *Id.* § 61.

⁷⁰ *Id.* § 62.

⁷¹ *Id.* § 63.

⁷² *Id.* § 59, 63.

⁷³ *Id.* § 63 (emphasis added).

⁷⁴ *Id.* §§66-67.

⁷⁵ *Id.* § 75-76.

⁷⁶ *See, e.g., id.* § 51 (“[T]he setting and planning of the curriculum fall in principle within the competence of the Contracting States. . . . It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable”)., § 63 (“In the Court’s view,” that “[the syllabus for teaching in primary schools and the first cycle of secondary school, and all of the textbooks . . . give greater priority to knowledge of Islam than they do to that of other religions and philosophies] cannot be viewed as a departure from the principles of pluralism and objectivity which would amount to indoctrination (see *Folgerø and Others*, cited above, § 89), having regard to the fact that, notwithstanding the State’s secular nature, Islam is the majority religion practiced in Turkey”).

⁷⁷ *See Lautsi v. Italy*, *supra* note 1, § 50, 56. *See also Folgero*, *supra* note 48, § 89 (“The fact that knowledge about Christianity represented a grater part of the Curriculum for primary and lower secondary schools than knowledge about other religious and philosophies cannot, in the Court’s opinion, of its own be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination”).

⁷⁸ *Lautsi v. Italy*, *supra* note 1, § 53.

⁷⁹ *Folgero and Others v. Norway*, *supra* note 48, § 89.

according to the cultural context, as the Court has previously acknowledged and credited to each state within their margin of appreciation. Europe, both in the European Union and Council of Europe treaties, recognises that the “basic occidental values” are based on the spiritual, moral, and humanist European heritage. For example, the Statute of the Council of Europe includes the following purpose in its preamble:

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy[.]⁸⁰

Thus, the Court in *Lautsi* seriously erred when it failed to give full credit to Italy’s history and legal traditions, which include the Catholic religion as one of those traditions’ primary sources. Italy has the right to convey this basic knowledge, whether in curriculum specifically taught in the classroom or by merely displaying a symbol of national heritage—the crucifix. As the Court explained in *Kjeldsen*, “Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of a *directly or indirectly religious or philosophical kind*”. Italy’s display of the crucifix falls well within this margin, indirectly imparting the knowledge of religious history. In line with the purpose of the Statute of the Council of Europe, Italy’s display of the crucifix merely exemplifies the State’s devotion “to the spiritual and moral values which are the common heritage of [its citizens] and the true source of individual freedom, political liberty and the rule of law”.⁸¹

II. The *Lautsi* Court Erred in Extending “Negative Freedom” to Reach Religious Symbols, Whether Representing General or Specific Beliefs.

The Court, in *Lautsi v. Italy*, overstepped its boundaries in ruling against Italy, as there is no provision in the Convention that mandates a separation of Church and State or prohibits any establishment of religion, such that a member state’s display of a religious symbol—representing a seriously substantial portion of its legal and educational history and tradition—should be excluded from public school. Furthermore, merely displaying a symbol cannot coerce any student as it requires no positive action on the part of students. The display may even inspire an educational goal recognized by the Court—critical thinking.⁸² The display of a crucifix could prompt students to begin to think critically about what they as individuals believe about religious history, but nothing more as Italy required nothing more. Notwithstanding such “influence”, as the Court has recognized time and again, parents always have the option to direct their children’s beliefs at home.⁸³

A. Under the European Convention on Human Rights, Member States Are Free to Establish an Official Religion or Not; Italy, Although Choosing to Become Independent from the Catholic Church, Permissibly Chose to Continue Its Relationship in the Form of Religious Education.

⁸⁰ Statute of the Council of Europe, 5.V.1949, CETS No. 001, *available at* <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=001&CL=ENG>.

⁸¹ *Id.*

⁸² *See, e.g., Zengin v. Turkey, supra* note 25, §69.

⁸³ *Kjeldsen, Busk Madsen, and Pedersen, supra* note 54, § 54 (Parents have a right to “enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents’ own religious or philosophical convictions”).

The Convention, in Article 9, provides for religious freedom. Notably, however, there is no provision in Article 9 that would prohibit the establishment of a government religion⁸⁴:

Section 1

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Section 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 the protection of the rights and freedoms of others.

As is apparent from a review of the Appendix attached hereto, *Confessional v. Non-Confessional Members of the Council of Europe & States Publicly Displaying Crucifixes in the Council of Europe*, each member state approaches the relationship between religion and state somewhat differently. Member states are permitted to declare state religions or to declare themselves secular states. These are the polar extremes, but states such as Italy have settled inside the extremes on this spectrum, as discussed above (Italy continued religious education, as defined by the 1984 Agreement Between the Italian Republic and the Holy See⁸⁵). As explained by the Commission some time ago in *Darby v. Sweden*⁸⁶, state church systems do not violate Article 9:

A State Church system cannot in itself be considered to violate Article 9 (Art. 9) of the Convention. *In fact, such a system exists in several Contracting States and existed there already when the Convention was drafted and when they became parties to it.* However, a State Church system must, in order to satisfy the requirements of Article 9 (Art. 9), include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church.⁸⁷

In other words, an adequate exemption system will suffice as a safeguard to protect religious exercise, as the Court has held on several occasions.⁸⁸ This being so, the *Lautsi* Court incorrectly held that dissenting students could not "extract themselves" sufficiently without making "disproportionate efforts and acts of sacrifice".⁸⁹ This is an illogical conclusion under the circumstances in which the member states became contracting parties. If this were the case, state church systems themselves would violate the Convention because citizens of confessional states

⁸⁴ Compare Article 9 of the Convention with the First Amendment to the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U.S. Const. amend. I. Thus, drawing any meaningful comparison between the legal systems of the Council of Europe member states and other international states for the purpose of analyzing the relationship between religion and state will prove difficult.

⁸⁵ Vatican-Italy Agreement, 1984, *supra* note 42.

⁸⁶ *Darby v. Sweden*, no. 11581/85, Report of the Commission of 9 May 1989 (challenge to special tax to the church of Sweden).

⁸⁷ *Id.* § 45 (emphasis added).

⁸⁸ See *supra* note 48.

⁸⁹ *Lautsi*, *supra* note 1.

would have to move to another non-confessional state to avoid the association—certainly a “disproportionate effort” and an “act of sacrifice”.

Further, with respect to the application of Article 2 of Protocol No. 1 of the Convention, the Grand Chamber of the Court held, in *Folgero v. Norway*⁹⁰, that Article 2 must be read in conjunction with Articles 8, 9, and 10 of the Convention. Thus, if Article 2 of Protocol No. 1 must be construed together with Article 9 (Article 9 containing no prohibition on the establishment of any religion), then the “confessional neutrality” as applied by the Second Section of the Court in *Lautsi*, cannot be a correct interpretation of the Convention. If “confessional neutrality” applied, as the Second Section would have it, then confessional states (for example) could never teach school children that the state constitution declares a state religion. The very “knowledge” of the declaration would be considered an interference with Convention rights. Instead, the *manner* of teaching lies at the crux of the issue when objective, or in this case inanimate material, forms part of the curriculum or the school atmosphere.⁹¹ As such, and as previously discussed, if “confessional neutrality” were the rule, the Court will have “los[t] sight of the subsidiary nature of the international machinery of collective enforcement established by the Convention”⁹², because a pronouncement against determining the expediency or the appropriateness of the curriculum (here the display of the crucifix) itself falls outside the Court’s province.

B. Inanimate Government Displays of Religious Symbols, by Themselves, Are Incapable of Coercing or Controlling Thought, Conscience, or Religion in Violation of Article 9, And As Such, Cannot Violate Article 2 of Protocol No. 1 of the Convention.

Section 2 of Article 9 of the Convention allows states to restricts conduct under certain circumstances (the manifestation of religion or belief), as opposed to thought or conscience. Conversely, where the government does not restrict conduct or physically coerce actual conduct, the student is free to believe whatever he or she desires. Thus, where a state has not acted to restrict conduct or a manifestation of religion or belief, there can be no interference with rights under Article 2 of Protocol No. 1, taken in conjunction with Article 9, as it must be taken. Italy has *not* attempted to regulate conduct, required any student to take any action, required any pledge of allegiance, and has not required any disavowal of allegiance to any religion, faith, or philosophy.⁹³ Akin to teaching students that the state has declared a state religion or established an official relationship with a particular church, Italy has chosen to display a crucifix in state school classrooms to indicate the relationship that remains between Catholicism and state education in the Italian Republic, as defined in Article 9 of the 1984 Agreement Between the

⁹⁰ *Folgero v. Norway*, *supra* note 48, § 84(a) (citing *Kjeldsen, Busk Madsen, and Pedersen v. Denmark*, *supra* note 54, § 52).

⁹¹ *Kjeldsen, Busk Madsen, and Pedersen*, *supra* note 54, § 54 (“Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents’ religious and philosophical convictions are not disregarded at *this level* by carelessness, lack of judgment or misplaced proselytism. However, it follows from the Commission’s decisions on the admissibility of the applications that the Court is not at present seized of a problem of this kind” (emphasis added)).

⁹² *Belgian Linguistic Case*, *supra* note 3, Part I.B., § 10.

⁹³ *Contra Buscarini and Others v. San Marino* [GC], no. 24645/94, § 39, ECHR 1999-I (the Grand Chamber ruled in favor of the elected official applicants, whereas swearing their oath of office (as members of San Marino’s General Grand Council) on the Holy Gospels on pain of forfeiting their parliamentary seats, violated Article 9 of the Convention; “*requiring* the applicants to take the oath on the Gospels was tantamount to requiring two elected representatives of the people to swear allegiance to a particular religion” (emphasis added)).

Italian Republic and the Holy See. If the *Lautsi* Court were correct, students should never see or discuss in class Article 9 of this Agreement because, like the crucifix display, mere knowledge of the existing relationship between the Italian Republic and the Holy See would be too coercive. Obviously this is an incorrect interpretation. The Court has elucidated on repeated occasions that objective presentation of religious materials is well within the states' margin of appreciation to prescribe curriculum.⁹⁴

In *Valsamis v. Greece*⁹⁵, the Court rejected the applicants' claims, brought under both Article 2 of Protocol No. 1 and Article 9 of the Convention, after the student (age 12) had been punished by a one-day suspension for refusing to participate in a school parade that celebrated a national holiday.⁹⁶ As Jehovah's Witnesses, the family could not participate in any conduct or practice that was associated with war and violence, as pacifism was a fundamental tenet of their religion.⁹⁷ As the applicants argued, participation in "National Day" would violate their beliefs because the holiday celebrated "the outbreak of war between Greece and Fascist Italy on 28 October 1940" and was commemorated with school and military parades.⁹⁸ Additionally, the school parade followed an official Mass and was to be held on the same day as a military parade.⁹⁹

The Court held that the neither the parade's purpose nor the arrangements for it could offend the applicants' pacifist convictions "to an extent prohibited by the second sentence of Article 2 of Protocol No. 1".¹⁰⁰ Moreover, the Court found that "the presence of military representatives at some of the parades which take place in Greece on the day in question [did] not in itself alter the nature of the parades".¹⁰¹ In other words, merely presenting a passive symbol (whether the presence of the military in a parade commemorating a national war in history or a crucifix display commemorating the national history and traditions of government) does not rise to the level of violating Article 2 of Protocol No. 1 or Article 9.

Overall, the Court in *Valsamis* found the parade "promoted" pacifism, evaluating the parade as a "commemoration[] of a national event".¹⁰² Likewise, in *Lautsi*, the Court must consider the education program as a whole, and not just one particular facet, such as the display of the cross that requires nothing of students. In comparison, the student applicant in *Valsamis* had to participate in a parade, whereas no participation or even acknowledgment has been required of students in Italy (except the mere presence in attendance in school, if that can be compared).

⁹⁴ *Zengin v. Turkey*, *supra* note 25, § 51 (citing *Valsamis v. Greece*, 18 December 1996, no. 21787/93, § 28 Reports 1996-VI; *Kjeldsen, Busk Madsen, and Pedersen*, *supra* note 54, § 53); Cf. *Universelles Leben e. V. against Germany*, no. 29745/96, Commission decision of 27 November 1996, unreported (inadmissible) (the government was entitled to endorse and publish criticism of a religious sect that warned the public of the religious sect's dangerousness, so long as it did so in "an objective, but critical manner" and did "not pursue aims of agitation or indoctrination endangering the freedom of religion"; whether complainants are members of a religious majority or minority is irrelevant, as they must reasonably expect some criticism, and "must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith"; moreover, "freedom to manifest [the applicants'] religion was not subjected to any discretionary restrictions on the part of the German State"). In *Lautsi*, Italy has not criticized the applicant's faith, nor has it subjected the applicant's faith to any "discretionary restrictions". *Lautsi* should likewise be dismissed as inadmissible.

⁹⁵ *Valsamis v. Greece*, *supra* note 94.

⁹⁶ *Id.* §§ 1-10.

⁹⁷ *Id.* § 6.

⁹⁸ *Id.* § 8.

⁹⁹ *Id.* § 9.

¹⁰⁰ *Id.* § 31 (emphasis added). Likewise, the Court found no violation of Article 9 on the same basis. *Id.* §§ 37-38.

¹⁰¹ *Id.* (emphasis added).

¹⁰² *Id.*

Additionally, as the Court noted in *Valsamis*, parents may likewise educate their child at home as to their own religious convictions:

Furthermore, the obligation on the pupil does not deprive her parents of their right “to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents’ own religious or philosophical convictions”.¹⁰³

Worthy of note, as to the states’ margin of appreciation, the Court also added that “it [was] not for the Court to rule on the expediency of other educational methods which, in the applicants’ view, would be better suited to the aim of perpetuating historical memory among the younger generation”.¹⁰⁴ Likewise, the Court erred in determining that Italy’s manner of education fell afoul of Convention principles. The Court’s approach in *Lautsi* completely contradicted the principles of law as explained in *Valsamis*.¹⁰⁵ How Italy chooses to educate students regarding religious history, again, falls within the states’ margin of appreciation.

What is more, the *Lautsi* Court completely misplaced its reliance on the Lautsis’ supposed “negative freedom”. The case cited by the Court supporting its theory of “negative freedom”¹⁰⁶ to believe or not to believe under Article 2 of Protocol No. 1, and on which the Court based its decision, provides very little (if any) support for the Court’s holding. In fact, the case, *Young, James, and Webster v. The United Kingdom*,¹⁰⁷ supports the Italian government’s position. *Young, James, and Webster* involved a question arising under Article 11 concerning whether that Article provided a guarantee of free association not only to join a union, but whether it guaranteed a “‘negative right’ not to be compelled to join an association or a union.”¹⁰⁸ However, the Court in *Young, James, and Webster* explicitly decided *not* to answer this question.¹⁰⁹ Instead, the Court engaged in a hypothetical discussion as to whether the travaux préparatoires formed a basis for “permitting *every kind* of compulsion in the field of trade union membership [of which the right to join forms a *special aspect* of freedom of association]”.¹¹⁰ Of course, the answer would be “no”, as this would “strike at the very substance of the freedom [Article 11] is designed to guarantee”.¹¹¹ That the Court considered whether Article 11 was intended to cover “every kind” of compulsion indicates that there are certain levels of “compulsion” which will not cross the threshold of violating Convention rights.

In this particular case, the Court limited its analysis to the facts set before it, and found that when the applicants were faced with the choice of either joining a particular trade union or facing the “threat of dismissal involving loss of livelihood”, this threat qualified as “*a most serious form of compulsion*”.¹¹² Speaking hypothetically, the Court explained that even if Article 11 did not

¹⁰³ *Id.* (quoting *Kjeldsen, Busk Madsen, and Pedersen*, *supra* note 54, § 54).

¹⁰⁴ *Id.* § 32.

¹⁰⁵ The Court in *Lautsi* summarily dismissed the Italian Government’s reliance on the “positive moral message” that the crucifix represented, together with “the role of religion in Italian history” and “the deep roots of religion in the country’s tradition”. *Lautsi*, *supra* note 1, §51.

¹⁰⁶ *Lautsi*, *supra* note 1, § 47(e).

¹⁰⁷ *Young, James, and Webster v. The United Kingdom*, 13 August 1981, no. 7601/76; 7806/77, §§ 52-57, Series A no. 44.

¹⁰⁸ *Id.* at § 51.

¹⁰⁹ *Id.* § 52.

¹¹⁰ *Id.* § 52 (emphasis added).

¹¹¹ *Id.*

¹¹² *Id.* § 55 (emphasis added).

contain a “negative aspect” of protection with force equal to its positive aspect, “*compulsion to join a particular trade union may not always be contrary to the Convention*”.¹¹³

Thus, the Court’s analysis in *Young, James and Webster v. United Kingdom* leads to the following conclusions: First, the Court did not hold that any certain “negative” freedom existed with respect to Article 11 (or to any other portion of the Convention by analogy). To the contrary, the Court merely addressed the question of negative protection hypothetically. Second, “compulsion” alone cannot violate the Convention. The Court’s analysis implicitly rests on this principle: A violation of a right under the Convention in this regard depends on the factual basis, and specifically, the level of compulsion involved. Third and finally, the Court decided *narrowly* in the applicants’ favour. As the Court explained, the United Kingdom violated Article 11 in a negative manner only because of the “*most serious form of compulsion*” involved: “*For this reason alone, there has been an interference with that freedom as regards each of the three applicants*”.¹¹⁴ Hence, if “compulsion to join a particular trade union may not always be contrary to the Convention” under Article 11, then every government action in support of religion does not necessarily violate Article 2 of Protocol No. 1, taken in conjunction with Article 9. This conclusion is inescapable when considering the Council of Europe’s religious underpinnings and the margin of appreciation afforded to states on matters of religion in education, especially. Thus, the *Lautsi* Court’s tenuous reliance on *Young, James, and Webster* must be discarded.

Furthermore, the *Lautsi* Court over-reached in comparing government conduct between the two cases. On one hand, *Young, James and Webster v. United Kingdom* involved a regulation demanding that, in order to keep one’s livelihood, one must join a particular trade union. On the other hand, Ms Lautsi’s claims fail to allege any actual government regulation whatsoever. Only an inanimate display of a Christian symbol hangs in Italian schools, with no action required on the part of any student. No participatory behavior, pledge of allegiance, or even renunciation of religious belief has been required. If the regulation questioned in *Young, James and Webster* falls on the farthest end of the violation spectrum, the mere display of a historical religious symbol lies at the farthest point on the opposite end of the spectrum. Granted, there will be occasions when schools may abuse their permissible margin of appreciation with regard to the *manner* of teaching objective materials.¹¹⁵ However, *Lautsi v. Italy* is not that case.

Ms Lautsi’s complaint is based upon mere offense, which is not actionable. As the Commission explained in *Universelles Leben e. V. against Germany*¹¹⁶ (an inadmissible case in which the government permissibly endorsed and published a warning against the dangers of a particular religious sect), regardless whether complainants are members of a religious majority or minority, they must reasonably expect some criticism, and “must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”.¹¹⁷ Furthermore, the Commission found the application inadmissible under Article 9 because of the lack of direct governmental action *regulating the conduct* of the religious sect applicant:

In the present case, the Commission considers that the reference to the applicant association in the intended publication *does not have any direct repercussions* on the religious freedom of the association or its members. Indeed, their freedom to manifest

¹¹³ *Id.* (emphasis added).

¹¹⁴ *Id.* (emphasis added).

¹¹⁵ See, e.g., *Kjeldsen, Busk Madsen, and Pedersen, supra* note 54, § 54.

¹¹⁶ *Universelles Leben e. V. against Germany, supra* note 94.

¹¹⁷ *Id.* (citing *Otto-Preminger-Institut v. Austria*, no. 13470/87, § 47 ECHR A295-A).

their religion *was not subjected to any discretionary restrictions* on the part of the German State.¹¹⁸

Italy's decision to display a cross or a crucifix in public schools represents only the permissible recognition of religious history by government as evidenced by Article 9(2) of the 1984 Agreement Between the Italian Republic and the Holy See. Ms Lautsi has presented no evidence whatsoever that her children were forced or overcome by compulsion to believe in a religion they did not want to believe. Similarly, Ms Lautsi never alleged that her children were forced to take any religious education class in which they were required to incorporate the crucifix into their education in a manner that would cross an indoctrination threshold. In short, Ms Lautsi's children faced no direct repercussions as a result of the crucifix display. Thus, the *Lautsi* Court also drew a faulty analogy¹¹⁹ between Italy's crucifix display (requiring no behavior or conduct of any student or parent) and the oath required in *Buscarini and Others v. San Marino*¹²⁰ of applicant legislators. Peering at a crucifix display occasionally (if one even chooses to do so) cannot be compared to taking an oath involuntarily. The latter requires affirmative action, while the former requires simply nothing.

Finally, simple displays of religious symbols cannot conjure an assessment of a student's faith. As the Court in *Zengin v. Turkey* explained, "the State's duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any *assessment* by the State of the *legitimacy* of religious beliefs or the ways in which those beliefs are expressed."¹²¹ By displaying the crucifix, Italy has not assessed any faith. Precisely because displays by themselves are subject to numerous interpretations, without more, the applicant's claims are patently unreasonable. Especially considering Italy's history and traditions, Ms. Lautsi's claim is all the more unreasonable. A crucifix standing alone, devoid of any teaching, instruction, or command cannot violate Article 9, and by extension, Article 2 of Protocol No. 1. Standing by itself, the crucifix does not even implicitly encourage religious worship. Although some students may choose to worship upon seeing the display because of personal religious beliefs, no such conduct is required. Likewise, other students may choose not to worship, or even personally despise seeing the crucifix on display. These personal responses are the students' free choices, and school officials may not interfere so long as students observe appropriate behavior. Importantly, all Italian citizens, including students, must be credited with sufficient historical knowledge to understand why the Catholic faith provides a foundation for Italian history. To hold otherwise would permit mere offenses of every kind imaginable to stand as valid legal claims.

CONCLUSION

The European Court of Human Rights has concluded that the margin of appreciation due member states should be broad concerning the member states' decisions pertaining to curriculum matters, as explained in *Kjeldsen, Busk Madsen, and Pedersen v. Denmark* and its progeny. That a broad margin of appreciation must be applied in this case should be all the more clear, because there is no consensus among the member states with regard to religious education matters. As in *Sahin v. Turkey*, the Court should give *paramount* respect to Italy's Administrative Courts' decisions regarding the educational nature of the crucifix display: "[T]he crucifix was both the symbol of Italian history and culture, and therefore Italian identity, and the symbol of the

¹¹⁸ *Id.* (citing *Manoussakis and others v. Greece*, no. 18748/91 § 47 ECHR 1996-IV).

¹¹⁹ *Lautsi v. Italy*, *supra* note 1, § 52.

¹²⁰ *Buscarini and Others v. San Marino*, *supra* note 93.

¹²¹ *Zengin v. Turkey*, *supra* note 25, § 54.

principles of equality, freedom and tolerance and of the State's secular basis".¹²² Thus, the Court should afford Italy the same deferential respect according to principles of subsidiarity in *Lautsi v. Italy*.

Mere knowledge of or offense on account of state religion cannot amount to an interference with religious freedom under Article 9, or under Article 2 of Protocol No. 1, taken in conjunction with Article 9 of the Convention. The Convention was not designed to erase the religious roots of member states or to obliterate their memory from public education. Rather, the states contracted as parties with the full understanding that they were free to choose their own form of relationship between state and church, including within their educational systems. Not only does the *Lautsi* Court's analysis conflict with the specific cases cited within the Court's own opinion, but it conflicts also with the basic foundation of membership within the Council of Europe. The Convention in no way prohibits the establishment of religion. Although the Court's interpretation of Convention principles in relevant cases have prohibited indoctrination through the *manner* in which religious curriculum is taught, there has never been a prohibition against a state's display of a religious symbol in isolation. Moreover, member states such as Italy with such strong foundational roots in religion stand on firm ground to include relevant symbols of history and tradition within their educational system.

In various cases, the Court has permitted member states to determine within their margin of appreciation whether the display of religious symbols in particular educational contexts posed a legitimate danger to the rights of other citizens. Italy deserves the same broad application of deference and margin of appreciation to determine what is appropriate within its own curriculum matters. Absent any direct regulation of Ms Lautsi or her children's conduct, the decision by the *Lautsi* Court lacks validity under Article 2 of Protocol No. 1 and Article 9.

¹²² See *Lautsi*, *supra* note 1, § 13 (citing Administrative Court Judgment No. 1110 of 17 March 2005), § 15 (citing *Consiglio di Stato* judgment of 13 Feb. 2006) (appeal dismissed whereas "the cross had become one of the secular values of the Italian Constitution and represented values of civil life").

APPENDIX

Confessional, Non-Confessional Members of the Council of Europe & States Publicly Displaying Crucifixes in the Council of Europe

Albania

- Albania is a secular state.¹²³
- No laws prohibit the wearing of religious clothing, but individual school principals have created dress codes which prevent some students from wearing religious symbols.¹²⁴

Andorra

- Andorra's Constitution recognizes individuals' right to freedom of religion, and **specifically guarantees co-operation with the Roman Catholic Church**, recognizing the role the Church plays in Andorran tradition.¹²⁵
- The Constitution states:

The Constitution guarantees the **Roman Catholic Church free and public exercise of its activities and the preservation of the relations of special co-operation with the State** in accordance with the Andorran tradition.¹²⁶

The Constitution recognises the full legal capacity of the bodies of the Roman Catholic Church which have legal status in accordance with their own rules.¹²⁷
- Andorra allows religious education outside of traditional classroom times or during elective or ethics class periods.¹²⁸
- Andorra made the following declaration regarding Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol 1):

Considering the historical reality of the principality of Andorra, of **Catholic tradition**, with a Coprince being a bishop since the XIIIth century, the actual legislation on education (Article 30, paragraph 3, of the Constitution of the principality of Andorra; Article 10 of the Organic Law on education and Article 19 of the Law on the prioritization of the Andorran instructive system) **allows [sic] to give Catholic religion lessons in all educational centres**, on an **optional** basis, outside the scholastic timetable. **Other religions** can offer their study in the educational centres, **outside the scholastic timetable**, with the approval

¹²³ Republic of Albania 1998 Constitution, art. 10(1), *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,ALB,3ae6b5dd0,0.html> ("In the Republic of Albania there is no official religion.").

¹²⁴ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Albania (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127295.htm>.

¹²⁵ Principality of Andorra, 1993, Constitution, art. 11(3), *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,,AND,3ae6b52110,0.html>.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Andorra (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127296.htm>.

of the Government and the education representatives and **without implicating public expenditures.**¹²⁹

Armenia

- The Constitution of Armenia provides for separation of church from state, and recognizes the “**exclusive historical mission of the Armenian Apostolic Holy Church as a national church**” and the Church’s essential role in national identity and culture.¹³⁰

- The Constitution states:

The church shall be separate from the state in the Republic of Armenia.

The Republic of Armenia recognizes the **exclusive historical mission of the Armenian Apostolic Holy Church as a national church**, in the spiritual life, development of the national culture and preservation of the national identity of the people of Armenia.

Freedom of activities for all religious organizations in accordance with the law shall be guaranteed in the Republic of Armenia.¹³¹

- The Armenian Church, to the **exclusion of other religious denominations**, provides spiritual edification through the state education system.¹³²

- The Law on the Freedom of Conscience and Religious Organizations states:

The State shall not obstruct the following efforts which are the monopoly of the Armenian Church:

To freely preach and proselyte on the whole territory of the Republic of Armenia. The teachings of the Armenian Apostolic Church can be officially covered in mass media outlets or during mass-scale events only with approval of the Armenian Apostolic Church.

To preach and disseminate her faith freely throughout the Republic of Armenia.

To re-create her historical traditions, structures, organization, dioceses, and communities.

To construct new churches, make historical churches belonging to it to function, whether at the request of the faithful or on its own initiative.

To contribute to the spiritual edification of the Armenian people and to carry out the same in the state educational institutes within the law.

¹²⁹ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Declarations and Reservations, 18 May 1954, 213 U.N.T.S. 262, *available at*, <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=009&CM=8&DF=29/01/2010&CL=ENG&VL=1> (Andorra: declaration to Article 2, deposited 6 May 2008) [hereinafter Protocol Declarations].

¹³⁰ Republic of Armenia, 2005, Constitution, art. 8.1, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,ARM,447ee4534,0.html>.

¹³¹ *Id.*

¹³² Armenia, Law on the Freedom of Conscience and Religious Organizations, June 17, 1991, art. 17, *available at*, <http://beta.religlaw.org/document.php?DocumentID=1363>.

To take practical measures which enhance the moral standards of the Armenian people.

To expend benevolent and charitable activities.

To have permanent religious representatives in hospitals, shelters for senior citizens and invalids, military units, detention facilities, including isolators.¹³³

- **“Students may choose not to attend religious education classes.** Religious groups are not allowed to provide religious instruction in schools, although registered groups may do so in private homes to children of their members.”¹³⁴

Austria

- Austrian law does not restrict the wearing of religious clothing or symbols in the public workplace.¹³⁵
- Public school education provides for tolerance and anti-bias education in religion and education classes.¹³⁶
- Under the 1874 Law on Recognition of Churches and the 1998 Law on the Status of Religious Confessional Communities, only recognized religions may teach in the public schools.¹³⁷
- **“Attendance in religious instruction is mandatory** and instruction either takes place in the school or at sites organized by the religious groups. Unless students formally withdraw at the beginning of the academic year, students under the age of 14 need **parental permission to withdraw from instruction.**”¹³⁸

Azerbaijan

- The Constitution of Azerbaijan states that Azerbaijan is a secular state and education must be secular.¹³⁹
- Azerbaijan filed a declaration regarding the second sentence of Art. 2 to Protocol 1 stating: “[t]he Republic of Azerbaijan declares that it interprets the second sentence of Article 2 of the Protocol in the sense that this provision does not impose on the State any obligation to finance religious education.”¹⁴⁰

Belgium

¹³³ *Id.*

¹³⁴ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2006, ARMENIA (2006), *available at*, <http://www.state.gov/g/drl/rls/irf/2006/71366.htm>.

¹³⁵ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, AUSTRIA (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127297.htm>.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2007, AUSTRIA (2007), *available at*, <http://www.state.gov/g/drl/rls/irf/2007/90163.htm>.

¹³⁹ The Republic of Azerbaijan, 27 Nov. 1995, Constitution, art. 18, *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,,AZE,3ae6b4fc0,0.html> (“Religion shall be separated from the State in the Azerbaijan Republic. All religions shall be equal by law. The spread and propaganda of religions which humiliate human dignity and contradict the principles of humanity shall be banned. The State education system shall be of secular character.”).

¹⁴⁰ Protocol Declarations, *supra* note 129 (Azerbaijan: declaration to Article 2, 15 April 2002).

- The Belgian Constitution provides for freedom of worship¹⁴¹ and for moral or **religious instruction in public schools.**¹⁴²
- The Constitution states:

Education is free; any preventive measure is forbidden; the punishment of offences is regulated only by the law or federate law.

The community offers free choice to parents.

The community organises non-denominational education. This implies in particular the respect of the philosophical, ideological or religious beliefs of parents and pupils.

Schools run by the public authorities offer, until the end of compulsory education, **the choice between the teaching of one of the recognised religions and non-denominational ethics teaching.**¹⁴³

- No national law prohibits the display of religious symbols in the public sphere; however, police and judges are prohibited from wearing religious symbols.¹⁴⁴
- The majority of public schools **prohibited the wearing of religious headscarves, but Catholic educational institutions, which are subsidized by the government, allowed students to wear religious symbols.**¹⁴⁵

Bosnia and Herzegovina

- Bosnia and Herzegovina does not have a state religion and recognizes individual freedom of religion.¹⁴⁶
- Religious education classes are offered in public schools. Students can chose not to attend these classes.¹⁴⁷
- At the request of 15 students, a minority religious class to be taught.¹⁴⁸

Bulgaria

- The Bulgarian Constitution provides for **separation of religion and state, and considers Eastern Orthodox Christianity the traditional religion of Bulgaria.**¹⁴⁹
- The Constitution states:

¹⁴¹ Kingdom of Belgium, 22 Dec. 2008, Constitution, art. 19, *available at*, www.legislationline.org/.../b249d2a58a8d0b9a5630012da8a3.pdf (“Freedom of worship, its public practice and freedom to demonstrate one’s opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.”).

¹⁴² *Id.* art. 24(1).

¹⁴³ *Id.*

¹⁴⁴ Laura Barnett, *Freedom of Religion and Religious Symbols in the Public Sphere* 24-25 (Canada Library of Parliament PRB 04-41E Sept. 22, 2008), <http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0441-e.pdf>.

¹⁴⁵ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Belgium (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127301.htm>.

¹⁴⁶ Republic of Bosnia and Herzegovina, Constitution, 1 Dec. 1995, art. 2(3)(g), *available at*, http://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf (“All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include: Freedom of thought, conscience, and religion”).

¹⁴⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, BOSNIA AND HERZEGOVINA (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127302.htm>.

¹⁴⁸ *Id.*

¹⁴⁹ Republic of Bulgaria, Constitution, 31 March 2006, art. 13, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,BGR,44ae29d74,0.html>.

Religious denominations shall be free.

Religious institutions shall be separate from the State.

Eastern Orthodox Christianity is a traditional religion in the Republic of Bulgaria.

Religious communities and institutions, or religious convictions, may not be used for political purposes.¹⁵⁰

- The **Religious Denominations Act of 2002 recognized the Eastern Orthodox Church's historical and political influence on the Republic of Bulgaria.**¹⁵¹

Eastern Orthodox is the traditional denomination in the Republic of Bulgaria. It has played a historic role in Bulgaria's statehood and has current meaning in its political life. Its spokesperson and representative is the autocephalous Bulgarian Orthodox Church, which, under the name Patriarchy, is the successor of Bulgaria's Exarchate and is a member of the United, Holy, Congregational, and Apostolic Church. It is led by the Holy Synod and is represented by the Bulgarian Patriarch who is a Metropolitan of Sofia.¹⁵²

- "Schools offer an optional religious education course that covers Christianity and Islam."¹⁵³
- Bulgaria filed a declaration regarding Article 2 of Protocol 1 stating:
The second provision of Article 2 of the Protocol must not be interpreted as imposing on the State additional financial commitments relating to educational establishments with a specific philosophical or religious orientation other than the commitments of the Bulgarian State provided for in the Constitution and in legislation in force in the country.¹⁵⁴

Croatia

- The Constitution of Croatia states that religion is separate from the state, and provides for the free exercise of religious freedoms.¹⁵⁵
- "The **Government requires that religious training be provided in public schools, although attendance is optional.** The Roman Catholic catechism is the predominant religious teaching offered in public schools."¹⁵⁶
- At least seven students must request instruction in a different religion for a non-Catholic religious class to be taught in public schools.¹⁵⁷
- Approximately 85% of the population is Catholic.¹⁵⁸

¹⁵⁰ *Id.*

¹⁵¹ Bulgaria, Religious Denominations Act of 2002, Dec. 29, 2002, Art. 10 (1), *available at*, <http://www.religlaw.org/template.php?id=1368>.

¹⁵² *Id.*

¹⁵³ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, BULGARIA (2009), *available at*, <http://www.pomak.eu/en/content/us-state-department-2009-report-bulgaria-religious-freedom>.

¹⁵⁴ Protocol Declarations, *supra* note 129 (Bulgaria: declaration to Article 2, 7 Sept. 1992).

¹⁵⁵ Republic of Croatia, Constitution, 15 June 2001, art. 41, *available at*,

http://www.usud.hr/default.aspx?Show=ustav_republike_hrvatske&Lang=en ("All religious communities shall be equal before the law and shall be separated from the State.").

¹⁵⁶ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, CROATIA (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127304.htm>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Cyprus

- The Constitution of Cyprus provides for separation of church and state¹⁵⁹ and recognizes **two communities**, the Greek and Turkish community.¹⁶⁰
- The Constitution states:

[T]he Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or **who are members of the Greek-Orthodox Church**;

[T]he Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Moslems;¹⁶¹
- The Constitution provides for a special relationship with the Greek Orthodox Church.

The **Autocephalous Greek-Orthodox Church of Cyprus** shall continue to have the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its Charter in force for the time being and the Greek Communal Chamber shall not act inconsistently with such right.¹⁶²
- Instruction in public schools includes instruction in the Greek Orthodox Church. Children of parents who are Greek Cypriot cannot be excused from the religious education. **95% of all permanent residents of Cyprus are members of the Autocephalous Greek Orthodox Church of Cyprus.**¹⁶³

Czech Republic

- The Charter of Fundamental Rights and Freedoms, provides for freedom of religion and states that provisions for religious education shall be set by law.¹⁶⁴
- The Czech Republic is one of the most atheistic countries with approximately 52% of the population professing atheism.¹⁶⁵

Denmark

- The **Evangelical Lutheran Church is the state church of Denmark.**¹⁶⁶
- The Constitution states:

The **Evangelical Lutheran Church shall be the Established Church of Denmark**, and as such shall be supported by the State.¹⁶⁷
- Denmark has a statute which specifically provides that both public school teachers and students may wear religious head coverings in the classroom.¹⁶⁸

¹⁵⁹ Republic of Cyprus, Constitution, 16 Aug. 1960, art. 18(1), *available at*, <http://www.kypros.org/Constitution/English/> (“Every person has the right to freedom of thought, conscience and religion.”).

¹⁶⁰ *Id.* art. 2(1),(2).

¹⁶¹ *Id.*

¹⁶² *Id.* art. 110(1).

¹⁶³ United States Department of State, International Religious Freedom Report 2009, Cyprus (Oct. 26, 2009), <http://www.state.gov/drl/rls/irf/2009/127305.htm>.

¹⁶⁴ Czech Republic, Charter of Fundamental Rights and Freedoms, Nr. 2/1993 Coll. *available at*, http://www.servat.unibe.ch/law/icl/ez00000_.html.

¹⁶⁵ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Czech Republic (2009), *available at*, <http://www.state.gov/drl/rls/irf/2004/35450.htm>.

¹⁶⁶ Kingdom of Denmark, Constitution, 5 June 1953, chap. 1 § 4, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,DNK,3ae6b518c,0.html>.

¹⁶⁷ *Id.*

- The Administration of Justice Act bans “religious or political symbols, such as headscarves, turbans, Jewish skull caps, and crucifixes, from judicial attire.”¹⁶⁹
- Evangelical Lutheran doctrine is taught in public schools, but students may opt out of the classes.¹⁷⁰
- **In school assemblies, prayers may be said as long as they are not “preaching.”**¹⁷¹

Estonia

- No state religion is established by the Constitution of Estonia.¹⁷²

Finland

- The Constitution of Finland recognizes freedom of religion¹⁷³
- Both the **Evangelical Lutheran Church (ELC) and the Orthodox Church are recognized as state churches.**¹⁷⁴
- At the close of the spring semester, students traditionally sing the Suvivirsi hymn, and nativity plays are often performed in schools. However, the picture of the president is the only symbol on the walls of Finnish classrooms.¹⁷⁵
- According to Helsingin Sanomat “the message for Finland’s schoolchildren is clear. ‘Sing hymns, build nativity crèches, invite representatives of other religions to come and join your festivities, and respect those with differing views!’”¹⁷⁶
- **“All public schools provide religious and philosophical instruction; students may choose to study either subject.”**¹⁷⁷

France

- On March 17, 2004, France passed a law seeking to ban the wearing of “conspicuous” religious signs or clothing in public schools.¹⁷⁸
- The Minister of Education described the legislation saying **“the prohibited signs and dress are those by which the wearer is immediately recognizable in terms**

¹⁶⁸ Laura Barnett, *supra* note 144, at 19-20.

¹⁶⁹ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Denmark (Oct. 26, 2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127307.htm>.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Republic of Estonia, Constitution, 29 June 1992, art. 40, *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,EST,3ae6b56a4,0.html> (“Everyone has freedom of conscience, religion and thought. Everyone may freely belong to churches and religious societies. There is no state church.”).

¹⁷³ Republic of Finland, Constitution, 17 July 1919, art. 9, *available at*, <http://www.unhcr.org/refworld/publisher,NATLEGBOD,,FIN,3ae6b53418,0.html> (“Everyone shall have the right to freedom of religion and conscience. The right to freedom of religion and conscience shall include the right to profess and practice a religion, the right to express a conviction and the right to belong or not to belong to a religious community. No one shall be required to participate in religious practices to which they are conscientiously opposed.”).

¹⁷⁴ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Finland (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127309.htm>.

¹⁷⁵ Finnish Traditionalists Moved to Action Over Crucifix Ruling, ICE NEWS, 14 Nov. 2009, *available at*, <http://www.icenews.is/index.php/2009/11/14/finnish-traditionalists-moved-to-action-over-crucifix-ruling/>.

¹⁷⁶ *Id.*

¹⁷⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Finland (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127309.htm>.

¹⁷⁸ Law 2004-228, Mar. 15, 2004; World Wide Bulliten, Library of Congress, 4 W.L.B. 2004, <http://www.fas.org/sgp/othergov/wlb/200404.pdf>.

of his or her religion, such as the islamic veil, whatever its name, the kippah or a crucifix of **manifestly exaggerated dimensions**.¹⁷⁹

- On April 3, 2009, the ECHR ruled that the expulsion of an 11year old girl who refused to remove her “headscarf” did not violate Art. 9 or Art. 2, Protocol 1 of the Convention.¹⁸⁰
- The ECHR ruled that requiring a man to remove his turban for the purposes of taking a driver’s identification photograph, did not violate the man’s right of religious freedom.¹⁸¹

Georgia

- The Georgian Constitution provides for freedom of religion and recognizes “the **special role of the Apostle Autocephalous Orthodox Church of Georgia in the history of Georgia**.”¹⁸²
- The Constitution states:
 1. The state shall declare complete freedom of belief and religion, as well as **shall recognise the special role of the Apostle Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the state**.
 2. The relations between the state of Georgia and the Apostle Autocephalous Orthodox Church of Georgia shall be determined by the Constitutional Agreement. The Constitutional Agreement shall correspond completely to universally recognised principles and **norms of international law, in particular, in the field of human rights and fundamental freedoms**. (change is added by the Constitutional Law of Georgia of 30 March 2001)¹⁸³
- The **Church has some control over the textbooks used in the public schools**.¹⁸⁴
- Though the state appears to be moving toward a more secular educational system, public school teachers still **sometimes offer prayers during class**, and also **display crucifixes on classroom walls**.¹⁸⁵
- Religious instruction is offered in after school programs.¹⁸⁶
- Georgia filed a reservation regarding Art. 2 of Protocol 1 stating:

Georgia declares that it interprets Article 2 of the Protocol as not imposing on the State additional financial commitments relating to special educational establishments (with a specific philosophical or religious orientation) other than those provided by the legislation of Georgia.¹⁸⁷

¹⁷⁹ Circulaire No. 2004-084 of May 18, 2004, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], May 22, 2004; see Susanna Mancini, *Symposium: Constitutionalism and Secularism in an Age of Religious Revival: The Challenge of Global and Local Fundamentalism: Religious Symbols in the Public Space: The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence*, 30 Cardozo L. Rev. 2629, n. 1 (2009).

¹⁸⁰ *Dogru v. France*, App. No. 27058/05, (E. Ct. H. R. 4 March 2009), ¶¶ 77, 78.

¹⁸¹ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, France (2009), available at, <http://www.state.gov/g/drl/rls/irf/2009/127310.htm>.

¹⁸² Republic of Georgia, Constitution, art. 9, 24 Aug. 1995, available at, [http://www.venice.coe.int/docs/2004/CDL\(2004\)041-e.pdf](http://www.venice.coe.int/docs/2004/CDL(2004)041-e.pdf).

¹⁸³ *Id.*

¹⁸⁴ U.S.COMM’N ON INT’L FREEDOM, ANNUAL REPORT 2008, GEORGIA, INDIA, AND LAOS, (2008), available at, http://www.uscirf.gov/images/AR2008/georgiaindialaosar2008_full%20color.pdf.

¹⁸⁵ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Georgia (2009), available at, <http://www.state.gov/g/drl/rls/irf/2009/127311.htm>.

¹⁸⁶ *Id.*

¹⁸⁷ Protocol Declarations, *supra* note 129, (Georgia: reservation to Article 2, 7 June 2002).

Germany

- The German Constitution provides for religious freedom,¹⁸⁸ and also provides for **religious education in public schools.**¹⁸⁹
- The Constitution states:

Religious instruction forms part of the ordinary curriculum in state and municipal schools, excepting secular schools. Without prejudice to the state's right of supervision, religious instruction is given in accordance with the tenets of the religious communities. No teacher may be obliged against his will to give religious instruction.¹⁹⁰
- The German highest court has left to each individual state the decision as to whether to allow wearing of religious symbols in public.¹⁹¹
- In 2007, the Bavarian Constitutional Court upheld a state ban prohibiting teachers from wearing headscarves. The law challenged allowed nuns to continue to wear habits, but the Court found that “the application of the law did not violate religious freedom and was not discriminatory.”¹⁹²
- Religious education is offered in German public schools, but is not mandatory.¹⁹³
- Germany filed a declaration regarding Art. 2 of Protocol 1 stating:

The Federal Republic of Germany adopts the opinion according to which the second sentence of Article 2 of the (First) Protocol entails no obligation on the part of the State to finance schools of a religious or philosophical nature, or to assist in financing such schools, since this question, as confirmed by the concurring declaration of the Legal Committee of the Consultative Assembly and the Secretary General of the Council of Europe, lies outside the scope of the Convention for the Protection of Human Rights and Fundamental Freedoms and of its Protocol.¹⁹⁴
- The Constitutional Court of Germany has allowed religious education in state school¹⁹⁵ and permitted teachers to pray in classrooms, even outside of religious classes.¹⁹⁶
- However, more recently, the Constitutional Court of Germany has declared that a Bavarian law requiring the display of crucifixes in public classrooms violated

¹⁸⁸ Republic of Germany, Constitution (Basic Law), 23 May 1949, art. 4(1), *available at*, <http://www.constitution.org/cons/germany.txt> (“Freedom of faith and of conscience, and freedom of creed religious or ideological, are inviolable. The undisturbed practice of religion is guaranteed.”).

¹⁸⁹ Republic of Germany, Constitution (Basic Law), 23 May 1949, art. 7(3), *available at*, <http://www.constitution.org/cons/germany.txt>.

¹⁹⁰ *Id.*

¹⁹¹ Laura Barnett, *supra* note 144, at 22-24.

¹⁹² U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2007, Germany (2007), *available at*, <http://www.state.gov/g/drl/rls/irf/2007/90177.htm>.

¹⁹³ *Id.*

¹⁹⁴ Protocol Declarations, *supra* note 129 (Germany: declaration to Article 2, 13 Feb. 1957).

¹⁹⁵ Koch, Cornelia, *Classroom Crucifixes, Teacher Headscarves, Faith Healers and More - The German Experience of Religious Freedom Under a Bill of Rights*, UNIV. OF ADELAIDE LAW RESEARCH, August 13, 2009, *available at*, <http://ssrn.com/abstract=1521307> (citing BVerfGE 41, 29, at 37, “Affirming Christianity within the context of secular disciplines refers primarily to the recognition of Christianity as a formative cultural and educational factor, which has developed in Western civilization. It does not refer to the truth of the belief. ... A school, which permits an objective discussion of all ideological and religious views, even if based on a particular ideological orientation, does not create an unreasonable conflict of faith and conscience for parents and children under constitutional law.”).

¹⁹⁶ *Id.* (citing BVerfGE 52, 223).

Article 4 of the German Constitution.¹⁹⁷ (Interestingly, Bavaria has over 50,000 classrooms, but only 13 petitions were made to remove crucifixes.)¹⁹⁸

- In another case, the Constitutional Court upheld a state ban on teachers wearing the hijab.¹⁹⁹

Greece

- The Greek Constitution provides for religious freedom but recognizes that the **“prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.”**²⁰⁰

- The Constitution states:

The **prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.** The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and [synodal] canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.

The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.

The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.²⁰¹

- **Currently icons and other religious symbols, such as crucifixes, are on display in both public court houses and in classrooms all across Greece.**²⁰²
- Orthodox religious instruction is mandatory for children of Orthodox parents. Non-orthodox students may be exempted, but no other class is offered to replace the religious instruction.²⁰³

¹⁹⁷ *Id.* (citing BVerfGE 93, 1).

¹⁹⁸ *Id.* at n. 94.

¹⁹⁹ *Id.* (citing BVerfGE 108, 282).

²⁰⁰ Republic of Greece, Constitution, 1975 art. 3(1), available at, <http://www.hri.org/docs/syntagma/>.

²⁰¹ *Id.*

²⁰² Jenna Lyle, *Greek Orthodox Church Opposes EU Crucifix Ban*, CHRISTIAN TODAY, Nov. 14, 2009, available at, <http://www.christiantoday.com/article/greek.orthodox.church.opposes.eu.crucifix.ban/24623.htm>.

²⁰³ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, GREECE (2009), available at, <http://www.state.gov/g/drl/rls/irf/2009/127313.htm>.

Hungary

- Hungary does not have a state religion, but provides for religious freedom in its Constitution.²⁰⁴
- **Registered religious** groups may provide **religious instruction** in public schools, but such education is **not mandatory**.²⁰⁵

Iceland

- The Constitution of Iceland states:
Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the state.²⁰⁶
- Public education in Iceland includes religious instruction and is shaped by “**the Christian heritage of Icelandic culture, equality, responsibility, concern, tolerance, and respect for human value.**”²⁰⁷
- The Preschool Act states:
Preschool practice and methods shall be characterised by tolerance and affection, equality, democratic cooperation, responsibility, concern, forgiveness, **respect for human values and the Christian heritage of Icelandic culture.**²⁰⁸
- The compulsory curriculum for Christianity, ethics, and theology, does, however, suggest a multicultural approach to religious education and an emphasis on teaching a variety of beliefs. **Students may be exempted from Christianity classes.**²⁰⁹

Ireland

- While the Constitution of Ireland does not adopt a state church, it does “**acknowledges that the homage of public worship is due to Almighty God.**”²¹⁰
- **Ireland recognizes denominational schools.** (As of 2007, over 98% of all public primary schools were denominational.²¹¹) Denominational schools can refuse to

²⁰⁴ Republic of Hungary, Constitution, 31 Dec. 1990, art. 60, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,HUN,3ae6b4e714,0.html> (“The church and the State shall operate in separation in the Republic of Hungary.”).

²⁰⁵ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Hungary (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127314.htm>.

²⁰⁶ Republic of Iceland, Constitution, 17 June 1944, art. 62, *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,,ISL,3ae6b5627,0.html>.

²⁰⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Iceland (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127315.htm>.

²⁰⁸ Iceland, The Preschool Act, No. 90, 12 June 2008, chap. 1 art. 2, *available at*, http://eng.menntamalaraduneyti.is/media/MRN-pdf/Preschool_Act.pdf; *see also* Iceland, The Compulsory School Act, No. 91, 12 June 2008, chap. 1 art. 2 *available at*, http://eng.menntamalaraduneyti.is/media/MRN-PDF-Althjodlegt/Compulsory_school_Act.pdf (“Compulsory school practice and methods shall be characterised by tolerance and affection, **Christian heritage of Icelandic culture**, equality, democratic cooperation, responsibility, concern, forgiveness and respect for human values.”).

²⁰⁹ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Iceland (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127315.htm>.

²¹⁰ Republic of Ireland, Constitution, 1 July 1937, art. 44, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,IRL,47a70815d,0.html>.

²¹¹ *Ireland urged to open more non-catholic schools*, REUTERS, May 24, 2007, *available at*, <http://www.reuters.com/article/idUSL2441042620070524>

accept students if refusal is necessary to maintain the school's "ethos."²¹² Currently, the Catholic Church controls over 3,000 of Ireland's 3,200 primary schools.²¹³ **Individual schools can display crucifixes because doing so could help maintain their "ethos."** "Catholic schools in Ireland are denominational schools – which means that they provide education in the Catholic ethos."²¹⁴

- Ireland's Department of Education and Science published the "Leaving Certificate, Religious Education Syllabus" which states:

In Ireland, Christianity is part of our rich cultural heritage and has played a significant role in shaping our vision of ourselves, our world, and our relationships with others.

Religious education, in offering opportunities to develop an informed and critical understanding of the Christian tradition in its historical origins and cultural and social expressions, should be part of a curriculum which seeks to promote the critical and cultural development of the individual in his or her social and personal contexts.²¹⁵

- Ireland's Department of Education and Science published the "Religious Education Guideline For Teachers" which described the aims of religious education in Ireland.

The aims outlined below are the aims for religious education for assessment and certification in the post-primary school.

1 To foster an awareness that the human search for meaning is common to all peoples of all ages and at all times.

2 To explore how this search for meaning has found and continues to find expression in religion.

3 To identify how understandings of God, religious traditions, and in particular the Christian tradition, have contributed to the culture in which we live and continue to have an impact on personal lifestyle, inter-personal relationships and relationships between individuals and their communities and contexts.

4 To appreciate the richness of religious traditions and to acknowledge the non-religious interpretation of life.

5 To contribute to the spiritual and moral development of the student.²¹⁶

- Under the Education Act of 1998, **students are not required** to attend classes regarding "instruction in any subject which is contrary to the conscience of the parent of the student or in the case of a student who has reached the age of 18 years, the student."²¹⁷ **All recognized schools must follow this provision.**²¹⁸ To

²¹² U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Ireland (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127316.htm>; *see* Equal Status Acts 2000 and 2004, § 7(c)(3), *available at*, http://www.inis.gov.ie/en/JELR/EqualStatusActsConsldtd_00_04.pdf/Files/EqualStatusActsConsldtd_00_04.pdf

²¹³ Sean Flynn, Catholic Run Schools May Soon be Handed Over to the State, THE IRISH TIMES, May 15, 2009, *available at*, <http://www.irishtimes.com/newspaper/ireland/2009/0515/1224246568173.html>.

²¹⁴ Paddy Agnew, *Ruling against crucifixes in Italian schools sparks anger*, THE IRISH TIMES, Nov. 4, 2009, *available at*, <http://www.irishtimes.com/newspaper/world/2009/1104/1224258026743.html>

²¹⁵ Ireland Department of Education and Science, The Leaving Certificate Religious Education Syllabus, p. 3, *available at*, http://www.education.ie/servlet/blobervlet/lc_religion_sy.pdf?language=EN.

²¹⁶ Religious Education, Leaving Certificate Ordinary Level and Higher Level Guidelines for Teachers, p. 3, *available at*, http://www.education.ie/servlet/blobervlet/lc_religion_guide.pdf?language=EN.

²¹⁷ Education Act, 1998, § 30(2)(e), *available at*, <http://www.irishstatutebook.ie/1998/en/act/pub/0051/sec0030.html#zza51y1998s30>

²¹⁸ *Id.*, § 10(2)(c), *available at*, <http://www.irishstatutebook.ie/1998/en/act/pub/0051/sec0030.html#zza51y1998s30>

be recognized the school must fulfill the general requirements laid out in the Education Act of 1998.²¹⁹ These requirements include: the number of students who would attend, the diversity of classes to be taught, the compliance with sections 30 and 33 of the Education Act, and the proposed school's compliance with health and safety regulations.²²⁰

- Ireland filed a declaration to Art. 2 of Protocol 1 stating:
At the time of signing the (First) Protocol the Irish Delegate puts on record that, in the view of the Irish Government, Article 2 of the Protocol is not sufficiently explicit in ensuring to parents the right to provide education for their children in their homes or in schools of the parents' own choice, whether or not such schools are private schools or are schools recognised or established by the State.²²¹

Italy

- The Constitution of Italy provides:
State and the Catholic Church shall be, each within its own order, independent and sovereign. Their relations shall be regulated by the Lateran Pacts. Such amendments to these Pacts as are accepted by both parties shall not require the procedure for Constitutional amendment.²²²
- On February 18, 1984, Italy and the Vatican signed the Agreement Between the Italian Republic and the Holy See (Agreement) which became codified as Law No. 121, 25 March 1985.²²³ This Agreement amended the 1929 Lateran Covenant between Italy and the Holy See.²²⁴ Article 1 of the Agreement “reaffirms that the State and the Catholic Church are, each in its own order, independent and sovereign and commit themselves to the full respect of this principle in their mutual relations and to reciprocal collaboration for the promotion of man and the common good of the Country.”²²⁵ Following the Agreement are joint declarations made by the parties.²²⁶ The first declaration, in paragraph 1, provides that, “[t]he principle of the Catholic religion as the sole religion of the Italian State, originally referred to as the Lateran Pacts, shall be considered to be no longer in force.”²²⁷ However, Article 9 of the Agreement guarantees that, “[t]he Italian Republic,

²¹⁹ *Id.*, § 10, available at, <http://www.irishstatutebook.ie/1998/en/act/pub/0051/sec0030.html#zza51y1998s30>

²²⁰ *Id.*, § 10(2).

²²¹ Protocol Declarations, *supra* note 129 (Ireland: declaration to Article 2, 25 Feb. 1953).

²²² Republic of Italy, Constitution, 22 Dec. 1947, art. 7, available at, <http://www.unhcr.org/refworld/category,LEGAL,,,ITA,3ae6b59cc,0.html>

²²³ Agreement Between the Italian Republic and the Holy See, Vatican-Italy, 18 Feb. 1984, 24 I.L.M. 1589 (1985), available at <http://www.religlaw.org/template.php?id=578>. See also Mauro Giovannelli, *The 1984 covenant between the Republic of Italy and the Vatican: A retrospective analysis after fifteen years*, JOURNAL OF CHURCH AND STATE, Summer 2000, at 529, 529, available at, <http://www.studiogiovannelli.it/public/pubblicazioni/Journal%20of%20church%20and%20state,%20summer%202000.pdf>.

²²⁴ Agreement Between the Italian Republic and the Holy See, *supra* note 43, art. 13(1).

²²⁵ *Id.* art. 1.

²²⁶ *Id.* (see joint declaration of the parties regarding the Agreement Between the Italian Republic and the Holy See which follows the signed date at end of the Agreement [hereinafter “Joint Declaration”]).

²²⁷ Joint Declaration, *supra* note 226, ¶ 1 (“In relation to Article 1”). Under the same Declaration between the parties, as to Article 9, the parties agreed that, “[t]he teaching of Catholic religion in the schools indicated at Paragraph (2) shall be given — in conformity with the doctrine of the Church and with respect for the freedom of conscience of the pupils — by the teachers who are recognized by the ecclesiastical authority as being qualified thereto and who are appointed, in agreement therewith, by the school authority. In infant and elementary schools, this teaching may be given by the class teacher, if recognized by the ecclesiastical authority as being qualified thereto and if willing to do it.” *Id.* ¶ 5 (“In relation to Article 9).

recognizing the value of the religious culture and considering that the principles of the Catholic Church are part of the historical heritage of the Italian people, shall continue to assure, within the framework of the scope of the schools, the teaching of Catholic religion in the public schools of every order and grade except for Universities.”²²⁸ However, Section 2 also provides for “the respect for the freedom of conscience and educational responsibility of the parents,” by granting to “everyone . . . the right to choose whether or not to receive religious instruction.”²²⁹ When they enroll, the students or their parents shall exercise this right at the request of the school authority and their choice shall not give rise to any form of discrimination.”²³⁰

- The Constitutional Court of Italy has determined on two occasions that Catholic **religious instruction in schools is lawful**, but only if students who object to the religious instruction are not required to attend substitute or alternative classes.²³¹
- As of 2000, 90 percent of Italian students and their families had chosen religious education.²³²
- Islamic head coverings are permitted in public schools and offices.²³³
- In February 2009, a teacher was suspended for a month because she removed a crucifix from a public school classroom in the state of Perugia.²³⁴

Latvia

- The Constitution of Latvia provides freedom of religion and belief, and requires the state to be separate from religion.²³⁵
- **Only certain Christian Religious denominations may teach religious classes** in the public schools. These classes are **optional**.²³⁶

Liechtenstein

- The **Constitution** of Liechtenstein protects religious freedom, but also states that the “**Roman Catholic Church is the State Church and as such enjoys the full protection of the State.**”²³⁷
- The Constitution also requires the “whole field of education and schooling shall be under the supervision of the State, without prejudice to the inviolability of the doctrine of the Church.”²³⁸ The Constitution also states, “**Religious instruction shall be given by the Church authorities.**”²³⁹

²²⁸ *Id.*, art. 9(2).

²²⁹ *Id.*, art. 9(2).

²³⁰ *Id.*

²³¹ Mauro Giovannelli, *supra* note 43, at 532 (citing Constitutional Court decisions No. 203, 12 April 1989; No. 13, 14 Feb. 1991).

²³² *Id.*

²³³ Laura Barnett, *supra* note 144, at 20.

²³⁴ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Italy (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127317.htm>.

²³⁵ Republic of Latvia, Constitution, 15 Feb. 1992, art. 99, *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,,LVA,3ae6b5a34,0.html> (“Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.”).

²³⁶ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Latvia (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127319.htm>.

²³⁷ Principality of Liechtenstein, Constitution, 5 Oct. 1921, art. 37, *available at*, <http://www.liechtenstein.li/en/pdf-fl-staat-verfassung-sept2003.pdf>

²³⁸ *Id.*, art. 16(4).

²³⁹ *Id.*

- The State provides “**confessional**” religious educational classes as well as “non-confessional,” “Religion and Culture,” classes.²⁴⁰
- Except in a few states, the Catholic Church determines the curriculum for confessional classes.²⁴¹

Lithuania

- The Constitution of Lithuania says the freedom of religion and belief should be protected.²⁴² Also the Constitution states, “State and local government establishments of teaching and education shall be secular. **At the request of parents, they shall offer classes in religious instruction.**”²⁴³
- Lithuania promotes the display of crucifixes in public.²⁴⁴
- On January 13, 2010, the Seimas Committee on Foreign Affairs adopted a statement regarding the *Lautsi v. Italy* decision. That statement:
States that the display of a cross in the public space does not violate freedom of choice and practice of a religion;

Notes that the use of the symbol, a cross, does not force any person to exercise any particular religion, but rather constitutes an integral part of the entire European Christian humanist tradition which by itself does not hurt non-believers or non-Christians and does not restrict children’s and their parents’ freedom of choice of a religion and belief, as well as the practice thereof;²⁴⁵

Luxembourg

- The Constitution of Luxembourg provides for religious freedom and does not establish a state religion.²⁴⁶ However, the Constitution does provide: “the Church's relations with the State shall be made the subject of conventions to be submitted to the Chamber of Deputies for the provisions governing its intervention.”²⁴⁷
- Religious education has traditionally been a part of public education. In 1997, an archbishop of the Catholic Church and the Ministry of National Education signed

²⁴⁰ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Liechtenstein (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127320.htm>.

²⁴¹ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Liechtenstein (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127320.htm>.

²⁴² Constitution, Lithuania, 6 Nov. 1992, art. 26, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,LTU,3ae6b59d8,0.html> (“Freedom of thought, conscience, and religion shall not be restricted.”).

²⁴³ Constitution, Lithuania, 6 Nov. 1992, art. 40, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,LTU,3ae6b59d8,0.html>.

²⁴⁴ Oskars Magone, Lithuania supports Italian crucifix appeal, THE BALTIC TIMES, 18 Jan. 2010, *available at*, <http://www.baltictimes.com/news/articles/24175/>.

²⁴⁵ Press Release, Seimas Committee on Foreign Affairs, Statement On the Judgment by the European Court of Human Rights on the Display of the Crucifix in Italian Classrooms (Jan. 13, 2010), *available at*, http://www3.lrs.lt/pls/inter/w5_show?p_r=4028&p_k=2&p_d=94116.

²⁴⁶ Grand Duchy of Luxembourg, Constitution, 17 Oct. 1868, art. 19, *available at*, http://servat.unibe.ch/law/icl/lu00000_.html (“Freedom of religion and of public worship as well as freedom to express one’s religious opinions are guaranteed, subject to the repression of offenses committed in the exercise of such freedoms.”).

²⁴⁷ *Id.*, art. 22.

a convention which governs education. This convention let the role of religious education be decided individually by the 116 communes in Luxembourg.²⁴⁸

- “Schools grant **exemption from [religious] instruction** on an individual basis.”²⁴⁹
- More than 90% of the population is Catholic.²⁵⁰

Malta

- The Constitution declares:
The **religion of Malta is the Roman Catholic Apostolic Religion**. The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. **Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education.**²⁵¹
- **The Education Act of Malta states:**
It shall be the **duty of the Minister to provide for the education and teaching of the catholic religion in State schools** and to establish the curriculum for the education and teaching of that religion in those schools according to the dispositions in this regard of the Bishops in Ordinary of these Islands.²⁵²
- The Education Act also provides that “[t]he **parents of any minor will have the right to opt that the minor should not receive instruction in the catholic religion.**”²⁵³
- Malta made a reservation to Article 2 to Protocol 1. Specifically, Malta stated:
The Government of Malta, having regard to Article 64 of the Convention, declares that the principle affirmed in the second sentence of Article 2 of the Protocol is accepted by Malta only in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure, having regard to the fact that the population of Malta is overwhelmingly Roman Catholic.²⁵⁴
- **Public schools often have crucifixes in the classroom.**²⁵⁵

Moldova

- The Constitution of Moldova provides for the freedom of conscience and does not establish a state church.²⁵⁶

²⁴⁸ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Luxembourg (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127322.htm>.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Republic of Malta, Constitution, 1964, art. 2, *available at*, <http://www.unhcr.org/refworld/category,LEGAL,,,MLT,3ae6b5550,0.html>.

²⁵² Malta, Education Act, 2007, Chap. 327 § 47(2), *available at*, http://www.education.gov.mt/ministry/doc/pdf/acts/edu_laws/edu_laws_2007/chapt327.pdf.

²⁵³ *Id.* § 47(4); *see also* U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Malta (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127324.htm>.

²⁵⁴ Protocol Declarations, *supra* note 129 (Malta: reservation to Article 2, 26 Jan. 1967).

²⁵⁵ Kevin Dingli, The Crucifix in State Schools, *TIMES OF MALTA*, Dec. 14, 2009, *available at* <http://www.timesofmalta.com/articles/view/20091214/opinion/the-crucifix-in-state-schools>.

²⁵⁶ Republic of Moldova, Constitution, 27 Aug. 1994, art. 31, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,MDA,3de4a8237,0.html> (“The freedom of conscience is guaranteed, and its manifestations should be in a spirit of tolerance and mutual respect.”).

- “Institutions such as state schools and hospitals display Orthodox icons on their walls.”²⁵⁷
- According to law, “moral and spiritual instruction” is mandatory in primary schools and optional for secondary schools.²⁵⁸ Depending in part on the available funding and parental interest, some schools offer religion classes.²⁵⁹
- Moldova made a declaration to Article 2 to Protocol 1 stating:
The Republic of Moldova interprets the provisions set out in the second sentence of Article 2 of the first Additional Protocol as precluding additional financial obligations for the State in respect of philosophically or religiously oriented schools, other than those provided for in domestic legislation.²⁶⁰

Monaco

- The Constitution of Monaco provides for the free practice of religion and separation of church and state.²⁶¹
- Roman Catholicism is the state religion.²⁶²

Montenegro

- The Constitution of Montenegro provides for the separation of church and state.²⁶³
- “Religious studies are not included in primary or secondary school curriculums.”²⁶⁴

Netherlands

- The Constitution of the Netherlands provides for the freedom to practice one’s religion, and does not establish a state church.²⁶⁵
- Public employees and public school students may wear head coverings and other religious attire. However, a court in the Netherlands has found that a student can be prohibited from wearing a burqa because “open student-teacher interaction was more important than the right to wear a full *burqa*.”²⁶⁶

²⁵⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Moldova (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127325.htm>.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ Protocol Declarations, *supra* note 129 (Moldova: declaration to Article 2, 9 Dec. 1997).

²⁶¹ UNITED STATES DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2009, MONACO (Oct. 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127326.htm>.

²⁶² *Id.*

²⁶³ Republic of Montenegro, Constitution, 19 Oct. 2007, art. 14. *available at*, <http://www.unhcr.org/refworld/publisher,NATLEGBOD,,MNE,47e11b0c2,0.html> (“Religious communities shall be separated from the state. Religious communities shall be equal and free in the exercise of religious rites and religious affairs.”).

²⁶⁴ United States Department of State, International Religious Freedom Report 2009, Montenegro (Oct. 26, 2009), <http://www.state.gov/g/drl/rls/irf/2009/127327.htm>.

²⁶⁵ Kingdom of the Netherlands, Constitution, June 2002, art. 6, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,NLD,3ae6b5730,0.html> (“Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.”).

²⁶⁶ Laura Barnett, *supra* note 144, at 21-22.

- An Amsterdam court upheld a ban which prohibited public transit employees from wearing necklaces. The driver challenged the ban because he wanted to wear a cross necklace.²⁶⁷ (The decision has not been appealed to the ECHR.)
- The Netherlands made a declaration to Article 2 to Protocol 1 stating:
In the opinion of the Netherlands Government, the State should not only respect the rights of parents in the matter of education but, if need be, ensure the possibility of exercising those rights by appropriate financial measures.²⁶⁸

Norway

- The **Constitution of Norway** states:
All inhabitants of the Realm shall have the right to free exercise of their religion. The **Evangelical-Lutheran religion shall remain the official religion of the State**. The inhabitants professing it are bound to bring up their children in the same.²⁶⁹
- The Ministry of Justice determined a ban on wearing burqas and nakibs did not violate Norwegian law. However, individual schools could independently decide whether to ban burqas or nakibs.²⁷⁰
- **Religion classes, emphasizing Christianity, are mandatory in public schools. However, students, based upon special grounds, may be exempted from participating in prayer and attending church services.**²⁷¹
- According to Norway's Education Act:
Religion, Philosophies of life and Ethics is an ordinary school subject that shall normally be attended by all pupils. Teaching in the subject shall not involve preaching.²⁷²

The teaching in Religion, Philosophies of life and Ethics shall provide knowledge of Christianity, other world religions and philosophies of life, knowledge of the significance of Christianity as a cultural heritage and of ethical and philosophical topics.²⁷³

Following written notification by parents, pupils shall **be exempted from attending** those parts of the teaching at the individual school that they, on the basis of their own religion or own philosophy of life, perceive as being the practice of another religion or adherence to another philosophy of life, or that they on the same basis find objectionable or offensive. It is not

²⁶⁷ *Amsterdam Court Backs Ban on Tram Driver's Crucifix*, EXPATICA.COM, 14 Dec. 2009, http://www.expatica.com/be/news/community_focus/Amsterdam-court-backs-ban-on-tram-driver_s-crucifix_58808.html.

²⁶⁸ Protocol Declarations, *supra* note 129 (Netherlands: declaration to Article 2, 31 Aug. 1954).

²⁶⁹ Kingdom of Norway, Constitution, 17 May 1814, art. 2., *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,NOR,3ae6b4f94,0.html>.

²⁷⁰ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Norway (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127329.htm>.

²⁷¹ *Id.*

²⁷² Norway, Primary and Secondary Education and Training Act (the Education Act), 17 July 1998 no. 61, § 2-4, *available at*,

[http://www.regjeringen.no/upload/KD/Vedlegg/Grunnskole/The_EducationAct_19_June_2009_\(2\).pdf](http://www.regjeringen.no/upload/KD/Vedlegg/Grunnskole/The_EducationAct_19_June_2009_(2).pdf).

²⁷³ *Id.*

necessary to give grounds for notification of exemption pursuant to the first sentence.²⁷⁴

Poland

- The **Constitution of Poland** states:
The **relations between the Republic of Poland and the Roman Catholic Church** shall be determined by international treaty concluded with the Holy See, and by statute.

The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.²⁷⁵

- **Crucifixes hang in both houses of Parliament, public schools, and other public places.**²⁷⁶
- Generally **Catholic officials teach religion classes in Poland's public schools**; Catholic officials are also active in determining the textbooks to be used in public schools.²⁷⁷
- Children have a choice between religious class or ethics class.²⁷⁸

Portugal

- The Constitution of Portugal provides for religious freedom and separation of church and state.²⁷⁹
- Public school curricula include an optional world religions survey course called "Religion and Morals." At the request of 10 or more students, classes in a specific religion can be offered.²⁸⁰
- Over 80% of the people of Portugal are Roman Catholic.²⁸¹

Romania

- The Constitution of Romania provides for the freedom of religion and does not establish a state religion or church.²⁸² However, the Constitution states:
The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. **In public schools, religious education is organized and guaranteed by law.**²⁸³

²⁷⁴ *Id.* § 2-3a.

²⁷⁵ Republic of Poland, Constitution, 2 April 1997, art. 25, *available at*, <http://www.senat.gov.pl/k5eng/dok/konstytu/2.htm>.

²⁷⁶ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Poland (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127330.htm>.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Republic of Portugal, Constitution, 2 April 1976, art. 41, *available at*, http://www.servat.unibe.ch/icl/po00000_.html ("The churches and religious communities are separate from the State and free to organize and exercise their own ceremonies and worship.").

²⁸⁰ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, PORTUGAL (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127331.htm>.

²⁸¹ *Id.*

²⁸² Republic of Romania, Constitution, 8 Dec. 1991, art. 29, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,ROM,3ae6b53c4,0.html> ("Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.").

- **Public schools display Eastern Orthodox icons**, and some schools even have **chapels**.²⁸⁴
- Religious education classes are permitted in public schools, but not required. Written requests must be submitted to opt out of a religious education class.²⁸⁵
- On June 11, 2008, the High Court of Cassation ruled that religious symbols, including the crucifix, could be displayed in public schools.²⁸⁶
- Romania made a declaration to Article 2 to Protocol 1 stating:
Romania interprets Article 2 of the first Protocol to the Convention as not imposing any supplementary financial burdens connected with private educational institutions other than those established by domestic legislation.²⁸⁷

Russian Federation

- The Constitution of the Russian Federation declares that the Russian Federation is a secular state and that religion is to be separate from the state.²⁸⁸
- Different regions in the Russian Federation offer religious education classes in public schools.²⁸⁹
- The Federal government does not require religious instruction in public schools.²⁹⁰
- In March 2009, the Ministry of Education sent out a survey to students and parents with three possible religious education courses: Foundations of Orthodox Culture, A History of World Religions, or Foundations of Islam and Muslim Culture. The course which received the most votes would become a mandatory subject in public schools.²⁹¹

San Marino

- The Constitution does not establish a state religion.²⁹²
- **Crucifixes are often displayed on the walls of courtrooms or other public buildings**.²⁹³
- Public schools provide optional religious instruction.²⁹⁴

Serbia

²⁸³ Republic of Romania, Constitution, 8 Dec. 1991, art. 32(7), *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,ROM,3ae6b53c4,0.html>.

²⁸⁴ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Romania (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127332.htm>.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Protocol Declarations, *supra* note 129 (Romania: declaration to Article 2, 20 June 1994).

²⁸⁸ Russian Federation, Constitution, 12 Dec. 1993, art. 14, *available at*, <http://www.constitution.ru/en/10003000-02.htm> (“The Russian Federation is a secular state. No religion may be established as a state or obligatory one. Religious associations shall be separated from the State and shall be equal before the law.”).

²⁸⁹ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Russia (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127333.htm>.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, San Marino (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127334.htm>.

²⁹³ *Id.*

²⁹⁴ *Id.*

- The Constitution of Serbia provides for separation of church and state.²⁹⁵
- **Serbia recognizes seven “traditional” religions, but does not have a state religion.** 95% of the population follows a “traditional” religion.²⁹⁶
- **Public schools provide education in only the seven traditional religions.**²⁹⁷
- Students are required to attend classes on one of the seven traditional religions or a civics education class.²⁹⁸
- Typically, religion classes are offered in the Serbian Orthodox religion, but a minimum of five students may request a class in a religion in order for it to be offered.²⁹⁹

Slovak Republic

- The Constitution provides that the Slovak Republic is not tied to any specific religion or ideology.³⁰⁰
- **Public schools offered religious classes or classes in ethics.**³⁰¹

Slovenia

- The Constitution provides that the state and religious communities are separate.³⁰²
- Licensed public schools are not allowed to display religious symbols, however, individual students may wear religious symbols.³⁰³
- Public schools are forbidden from offering classes in a specific religion or from offering prayers.³⁰⁴

Spain

- The Constitution of Spain requires separation of state and religion but also recognizes:
 - (1) Freedom of ideology, religion, and cult of individuals and communities is guaranteed without any limitation in their demonstrations other than that which is necessary for the maintenance of public order protected by law.
 - (2) No one may be obliged to make a declaration on his ideology, religion, or beliefs.
 - (3) **No religion shall have a state character. The public powers shall take into account the religious beliefs of Spanish society and maintain**

²⁹⁵ Republic of Serbia, Constitution, 30 Sept. 2006, art. 11, *available at*, (“The Republic of Serbia is a secular state.

Churches and religious communities shall be separated from the state. No religion may be established as state or mandatory religion.”).

²⁹⁶ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Serbia (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127335.htm>.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ Republic of Slovakia, Constitution, 3 September 1991, art. 1, *available at*,

<http://www.slovensko.com/docs/const/const1.htm> (“The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief.”).

³⁰¹ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Slovak Republic (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127336.htm>.

³⁰² Republic of Slovenia, Constitution, 23 Dec. 1990, art. 7, *available at*, <http://www.dz-rs.si/index.php?id=351&docid=25&showdoc=1> (“The state and religious communities shall be separate. Religious communities shall enjoy equal rights; they shall pursue their activities freely.”).

³⁰³ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Slovenia (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127337.htm>.

³⁰⁴ *Id.*

the appropriate relations of cooperation, with the Catholic Church and other denominations.³⁰⁵

- In 2008, a Court in Spain required Macias Picavea, a public school in Valladolid, take down all crucifixes in the classrooms.³⁰⁶
- Public schools offer optional Catholic religious classes, and the government funds public school classes in other religions if at least 10 students request such classes.³⁰⁷

Sweden

- The Constitution protects the freedom of religion and does not establish a state religion.³⁰⁸
- Religious education, covering all major religions, is compulsory in public schools.³⁰⁹
- The government provides vouchers for parents who send their children to private religious schools if the schools adhere to the minimum core curriculum.³¹⁰

Switzerland

- The Constitution of Switzerland provides:
 - (1) The freedom of faith and conscience is guaranteed.
 - (2) Every person has the right to freely choose his or her religion or non-denominational belief and to profess them alone or in community with others.
 - (3) **Every person has the right to join or belong to a religious community and to receive religious education.**
 - (4) No person may be forced to join a religious community, to conduct a religious act or participate in religious education.³¹¹
- The Constitution also recognizes a level of autonomy regarding the public education of the individual cantons [states within Switzerland].³¹²
- **Most cantons have some form of religious education. Generally such education is optional.**³¹³

The Former Yugoslav Republic of Macedonia

³⁰⁵ Republic of Spain, Constitution, 29 Dec. 1978, art. 16, *available at*, http://www.servat.unibe.ch/icl/sp00000_.html.

³⁰⁶ Cristina Mateo-Yanguas, *In Spain, Some Push to Rid Classrooms of Religious Symbols*, GLOBAL POST, Nov. 4, 2009, *available at*, <http://www.globalpost.com/dispatch/spain/091116/potential-ban-religious-symbols-classrooms>.

³⁰⁷ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, SPAIN (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127338.htm>.

³⁰⁸ Kingdom of Sweden, Constitution, 1 Jan. 1975, Chap. 2 art. 1(6), *available at*, http://www.servat.unibe.ch/icl/sw00000_.html (“All citizens shall be guaranteed the following in their relations with the public administration: freedom of worship: the freedom to practice one's own religion either alone or in company with others.”).

³⁰⁹ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Sweden (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127339.htm>.

³¹⁰ *Id.*

³¹¹ Federation of Switzerland, Constitution, 18 April 1999, art. 15, *available at*, http://www.servat.unibe.ch/icl/sz00000_.html.

³¹² *Id.*, arts. 62, 66, 67.

³¹³ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, Switzerland (Oct. 26, 2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127340.htm>.

- The Constitution of Macedonia does not establish a state church, and specifically mentions the Macedonian Orthodox Church and other religious communities as being separate from the state.³¹⁴
- Citizens may not establish private primary schools.³¹⁵
- Macedonia filed a reservation to Article 2 of Protocol 1 stating:
In accordance with Article 64 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Macedonia makes the following reservation with regard to the right guaranteed by Article 2 of the Protocol to the abovementioned Convention:

Pursuant to Article 45 of the Constitution of the Republic of Macedonia, the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions cannot be realised through primary private education, in the Republic of Macedonia.

Article 45 of the Constitution reads as follows:

“Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.”³¹⁶

- On April 15, 2009, the Constitutional Court of Macedonia held that public school single-faith religious courses violated the separation of church in state as guaranteed by the Macedonian constitution.³¹⁷
- Two public school religion classes were offered in 2009/2010 school year, The History of Religion and The Ethics of Religion. Parents could choose to send their children to either class.³¹⁸

Turkey

- The preamble to the Constitution states that “there shall be no interference whatsoever by sacred religious feelings in state affairs and politics.”³¹⁹ Also the

³¹⁴ Republic of Macedonia, Constitution, 16 Nov. 2001, amend. VII, *available at*, <http://www.courtmodernization.com/pubs/MCMPLaw44.pdf>

1. The **Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelist-Methodist Church, the Jewish community** and all other religious communities and religious groups shall be **separate from the state and equal before the law.**

2. The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelist-Methodist Church, the Jewish community and all other religious communities and religious groups **shall be free to establish religious schools** and social and charitable institutions in a procedure prescribed by law.

³¹⁵ Republic of Macedonia, Constitution, 16 Nov. 2001, art. 45, *available at*, http://www.servat.unibe.ch/icl/mk00000_.html.

³¹⁶ Protocol Declaration, *supra* note 129 (Macedonia: reservation to Article 2, 10 April 1997).

³¹⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, MACEDONIA (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127323.htm>.

³¹⁸ *Id.*

³¹⁹ Republic of Turkey, Constitution (7 Nov. 1982), preamble, *available at*, <http://www.unhcr.org/refworld/country,,LEGISLATION,TUR,4562d8b62,3ae6b5be0,0.html>.

preamble states that “no protection shall be afforded to thoughts or opinions contrary to Turkish National interests.”³²⁰

- According to the Turkish Constitution, **religious instruction is mandatory in public schools, but under strict government control.**³²¹
- The Constitution states:

Education and instruction in religion and ethics shall be conducted under State supervision and control. Instruction in religious culture and moral education shall **be compulsory in the curricula of primary and secondary schools.** Other religious education and instruction shall be subjected to the individual's own desire, and in the case of minors, to the request of their legal representatives.³²²
- The government bans wearing head scarves in public schools and government offices.³²³
- Turkey filed a reservation to Article 2 of Protocol 1 stating:

Having seen and examined the Convention and the Protocol (First), we have approved the same with the reservation set out in respect of Article 2 of the Protocol by reason of the provisions of Law No. 6366 voted by the National Grand Assembly of Turkey dated 10 March 1954.

Article 3 of the said Law No. 6366 reads:

Article 2 of the Protocol shall not affect the provisions of Law No. 430 of 3 March 1924 relating to the unification of education.³²⁴

Ukraine

- The Constitution promotes “the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.”³²⁵ Ukraine recognizes separation between church and state.³²⁶
- By law, religion cannot be part of public school education.³²⁷

United Kingdom

- No official “written” constitution exists in the United Kingdom, however, the **official state churches are the Church of England and the Church of Scotland.**³²⁸
- The House of Lords includes twenty-six bishops from the Church of England, as “Lords Spiritual” to the **exclusion of all other denominations.** The Lords

³²⁰ *Id.*

³²¹ *Id.*, art. 24.

³²² *Id.*

³²³ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Turkey (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/130299.htm>.

³²⁴ Protocol Declarations, *supra* note 129 (Turkey: reservation to Article 2, 18 May 1954).

³²⁵ Republic of Ukraine, Constitution, 28 June 1996, art. 11, *available at*, <http://www.unhcr.org/refworld/type,LEGISLATION,,UKR,3ae6b5700,0.html>.

³²⁶ *Id.* art. 35 (“The Church and religious organisations in Ukraine are separated from the State, and the school - from the Church. No religion shall be recognised by the State as mandatory.”).

³²⁷ U.S. DEP’T OF STATE, INT’L RELIGIOUS FREEDOM REPORT 2009, Ukraine (2009), *available at*, <http://www.state.gov/g/drl/rls/irf/2009/127342.htm>.

³²⁸ Union with England Act. 1707, 1707 Chap. 7, *available at*,

http://www.opsi.gov.uk/RevisedStatutes/Acts/asp/1707/casp_17070007_en_1 (“[T]he Parliament of England may provide for the security of the Church of England as they think expedient to take place within the bounds of the said Kingdom of England and not Derogating from the security above provided for Establishing of the Church of Scotland within the bounds of this Kingdom.”).

Spiritual can take an active role in legislation and offer the prayer to open up each meeting of the House of Lords.³²⁹

- More **than 30 percent of the state schools are religious in nature.**³³⁰
- The Catholic Church and Church of England voluntarily allow up to 25 percent of their schools' enrollment to consist of students who do not practice either Catholicism or Anglicanism respectively.³³¹
- The content of religious education is decided on a local basis.³³²
- **Some public schools in England and Wales daily practice collective Christian prayer.**³³³
- The **Education Act of 1980** states:

Whereas it has been the **custom in the public schools of Scotland for religious observance to be practised and for instruction in religion to be given to pupils whose parents did not object** to such observance or instruction, but with liberty to parents, without forfeiting any of the other advantages of the schools, to elect that their children should not take part in such observance or receive such instruction, be it enacted that education authorities shall be at liberty to continue the said custom, subject to the provisions of **section 9** of this Act.³³⁴

Every public school [and every grant-aided school] shall be open to pupils of all denominations, and **any pupil may be withdrawn by his parents from any instruction in religious subjects and from any religious observance in any such school;** and no pupil shall in any such school be placed at any disadvantage with respect to the secular instruction given therein by reason of the denomination to which such pupil or his parents belong, or by reason of his being withdrawn from any instruction in religious subjects.³³⁵

- Individual schools and school boards have reached differing conclusions about allowing students to wear religious symbols in classrooms.³³⁶
- Though controversial, mandatory collective worship in schools is still practiced.³³⁷
- The United Kingdom filed a reservation to Article 2 of Protocol 1 stating:

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of

³²⁹ Lucinda Maer and Chintan Makwana, *Religious representation in the House of Lords*, Library of the House of Commons, Oct. 26 2009, *available at*, <http://www.parliament.uk/commons/lib/research/briefings/snpc-05172.pdf>.

³³⁰ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, United Kingdom (2009), *available at*, <http://www.state.gov/drl/rls/irf/2009/127343.htm>.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ Education (Scotland) Act 1980, 1980 Chap. 44, § 8(1)(2), *available at*, http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR2AnnexH_en.pdf.

³³⁵ *Id.* § 9.

³³⁶ U.S. DEP'T OF STATE, INT'L RELIGIOUS FREEDOM REPORT 2009, *supra* note 331.

³³⁷ *Id.*

efficient instruction and training, and the avoidance of unreasonable public expenditure.³³⁸

³³⁸ Protocol Declarations, *supra* note 129 (United Kingdom: reservation to Article 2, 20 March 1952).