

**LAUTSI V ITALY**  
**Application no. 30814/06**

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**WRITTEN SUBMISSIONS OF THE INTERNATIONAL COMMISSION OF  
JURISTS, INTERIGHTS AND HUMAN RIGHTS WATCH**

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## **I. Introduction**

### ***1. Purpose of this intervention***

These written comments are submitted on behalf of the International Commission of Jurists (ICJ), Interights and Human Rights Watch, pursuant to leave granted by the President of the Grand Chamber in accordance with Rule 44 § 2 of the Rules of Court. Brief details of each of the interveners, and their experience relevant to this matter, are annexed to this brief.

This intervention analyses the jurisprudence of national courts and international tribunals, regarding state endorsement or promotion of religion in education, in light of rights to education and freedom of religion or belief protected by Article 2 of Protocol 1 and Article 9 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR). It considers how the principles derived from this case law may be applied to the official display of religious symbols in the classroom, an issue which has not previously arisen before the Court, but which is the subject of significant jurisprudence of national courts. Part II sets out certain governing principles emerging from international and comparative sources relevant to the role of the state *vis-à-vis* religion and belief in compulsory state education. Part III looks specifically at the comparative national court approaches to the display of religious symbols in the classroom.

The jurisprudence and standards set out in this brief suggest that effective protection of the rights to freedom of religion or belief and to education in a multi-religious, pluralist society requires state neutrality between beliefs in state-provided education.<sup>1</sup> This neutrality requires an educational environment which fosters pluralism, and that the state does not endorse or favour any particular religious belief.<sup>2</sup> The jurisprudence analysed indicates that the officially-sanctioned and uncritical display of religious symbols in places of compulsory education offends the principle of state neutrality in violation of the duty to respect the rights to religious freedom and education enshrined in Article 9 and Article 2 of Protocol No.1 ECHR.<sup>3</sup>

The question of state endorsement or promotion of religion in education, including through the sanctioning or mandating of displays of religious symbols, is distinct from the question of the rights of individuals within the education system, whether pupils or teachers, to express their religious beliefs through dress or other religious symbols.<sup>4</sup> Whilst individuals within the education system retain rights to hold and express their religious beliefs, the state's duty of neutrality and objectivity is, by contrast, incompatible with the State endorsing or assessing the legitimacy of religious beliefs.<sup>5</sup>

### ***2. Rights of Parents and Children in Education***

Article 2 of Protocol 1 has two aspects, both of which are relevant to the display of religious symbols in the classroom: the right of the child to education, and the right of parents to have their children educated in a manner which does not conflict with their religious or philosophical convictions. The second is an adjunct to the first, the central aspect of Article 2 Protocol 1 being the right of the child to education.<sup>6</sup> The right of parents under the second sentence of Article 2

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<sup>1</sup> See *infra* sections II.a and b.

<sup>2</sup> *infra* Section II.1.

<sup>3</sup> *infra* Section II.2 and 3.

<sup>4</sup> See, German Constitutional Court, BVerfG, 2 BvR 1436/02 of 09/24/2003, paragraphs No. (1 - 138), § 54, available in English at [http://www.bverfg.de/entscheidungen/rs20030924\\_2bvr143602en.html](http://www.bverfg.de/entscheidungen/rs20030924_2bvr143602en.html) (official translation).

<sup>5</sup> *Case of Refah Partisi (the Welfare Party) and others v Turkey*, Grand Chamber, Judgment of 13 February 2003, Applications nos. 41340/98, 41342/98, 41342/98 and 41344/98, paragraph 91; *Case of Manoussakis and others v Greece*, Judgment of 29 August 1996, Case no. 59/1995/565/651, paragraph 47.

<sup>6</sup> *Case of Campbell and Cosans v UK*, Judgment of 25 February 1982, Applications no. 7511/76; 7743/76, paragraph 40: "Article 2 (P1-2) constitutes a whole that is dominated by its first sentence, the right set out in the second sentence

Protocol 1 to "respect" for their philosophical and religious convictions in their children's education imposes a positive as well as a negative duty on states, requiring them to do more than "acknowledge" or "take into account" the beliefs of parents, but also to take positive steps to respect parents' convictions.<sup>7</sup> Rights under Article 2 Protocol 1 are also closely linked to the rights of both children and parents under other articles of the Convention, most notably Articles 9, 8 and 10 ECHR<sup>8</sup> and, where differences in treatment are in issue, Article 14 ECHR.

## **II. Principles constraining state endorsement of religion in education: international and comparative standards**

This section sets out certain general principles based on the jurisprudence of this Court, international standards more broadly and the jurisprudence of national courts. These principles govern the role of religion in the educational environment, including the display of religious symbols.

### ***a. Education should be designed to foster pluralism and tolerance of diversity***

The case law of this Court establishes the broad principle that education should foster the pluralism that is an inherent feature of a democratic society<sup>9</sup> and which can "enable pupils to develop a critical mind with regard to religious matters in the context of freedom of thought, conscience and religion."<sup>10</sup> This recognition of the right of the child - as well as the right of the parents on the child's behalf - to receive education that is objective and pluralistic is reflected in other international standards. The *Universal Declaration on Human Rights* (UDHR) provides in Article 26(2) that: "Education shall [...] promote understanding, tolerance and friendship among all nations, racial or religious groups [...]". Article 13(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) states: "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups [...]" The UN Committee on Economic Social and Cultural Rights, in its General Comment 13, stated that Article 13(3) ICESCR<sup>11</sup> "permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, *respectful of the freedoms of opinion, conscience and expression.*" (emphasis added).<sup>12</sup> The *Convention on the Rights of the Child* (CRC) recognises rights to education respectful of different religions or beliefs, in the framework of children's rights (Articles 28 and 29, CRC).<sup>13</sup> Similar

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being an adjunct of the fundamental right to education". See also *Case of Kjeldsen, Busk Madsen and Pedersen v Denmark*, Judgment of 7 December 1976, Applications no. 5095/71' 5920/72; 5926/72, paragraph 52; *Case of Hasan and Eylem Zengin v Turkey*, Judgment of 9 October 2007, Application no. 1448/04, paragraph 49.

<sup>7</sup> *Case of Campbell and Cosans v UK*, op cit, paragraph 37.

<sup>8</sup> *Case of Kjeldsen Busk Madsen and Pedersen v Denmark*, op cit, paragraph 52; *Case of Folgero and others v Norway*, Grand Chamber, Judgment of 29 June 2007, Application no. 15472/02, paragraph 84 ; *Lena and Anna-Nina Angeleli v Sweden*, Decision of 3 December 1986, Application no. 10491/83, paragraph 3.

<sup>9</sup> *Case of Manoussakis and others v Greece*, op cit, paragraph 44; *Case of Kokkinakis v Greece*, Judgment 25 May 1993, Application no. 14307/88, paragraph 31.

<sup>10</sup> *Case of Hasan and Eylem Zengin v Turkey*, op cit, paragraph 69.

<sup>11</sup> Article 13(3) ICESCR: States Parties "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."

<sup>12</sup> Committee on Economic Social and Cultural Rights, *General Comment no. 13: The Right to Education*, 12 August 1999, UN Doc. E/C.12/1999/10, paragraph 28.

<sup>13</sup> See further, *OSCE Toledo Guiding Principles on Teaching About Religion in Public Schools*, available at [http://www.osce.org/publications/od/hr/2007/11/28314\\_993\\_en.pdf](http://www.osce.org/publications/od/hr/2007/11/28314_993_en.pdf), page 36: "The state has the same obligation to maintain a posture of neutrality and cultivation of toleration and respect in relation to children that it has in relation to adults, and should not be implicated in efforts to coerce the conscience of anyone. In practice, one can expect that the rights enjoyed by the parents regarding the education of their children in accordance with their religious or

principles are found in the *UNESCO Convention Against Discrimination in Education* of 1960,<sup>14</sup> and the *UNESCO Declaration on Principles of Tolerance*.<sup>15</sup>

At the national level, the same general principle has been identified. The Supreme Court of Canada, for example, has described a school as “a communication centre for a whole range of values and aspirations of a society [...]. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate.”<sup>16</sup> The UK House of Lords has referred to the task of schools as “to promote the ability of people of diverse races, religions and cultures to live together in harmony.”<sup>17</sup>

***b. There is a duty of neutrality between beliefs in the provision of public services, including education***

The jurisprudence of this Court supports a duty of impartiality and neutrality towards various religions, faiths and beliefs.<sup>18</sup> It has found this duty incompatible with an assessment by the state of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.<sup>19</sup>

The jurisprudence in this respect reflects a well-accepted legal and constitutional principle that the state should retain its neutrality as between religious beliefs, in order to guarantee freedom of religion and belief in a pluralist society. This applies in the provision of public services generally, as well as in the specific context of education. The principle of impartiality of the state has been accepted by the Italian Constitutional Court, which ruled that: “It flows from the fundamental principles of equality of all citizens without distinction of religion (Art. 3 Constitution) and of equal freedom before the law of all religious denominations (Art. 8 Constitution) that the attitude of the State cannot be other than one of equal distance and impartiality towards [religious beliefs], without giving value to the quantitative aspect of the more or less diffuse adhesion to this or that religious belief”.<sup>20</sup>

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philosophical convictions will transfer to the children themselves in a fashion commensurate with their evolving capacities.”

<sup>14</sup> *UNESCO Convention against Discrimination in Education*, 14 December 1960, Article 5(1)(a).

<sup>15</sup> *UNESCO Declaration on Principles of Tolerance*, 16 November 1995, Article 4(3), available at [http://portal.unesco.org/en/ev.php-URL\\_ID=13175&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13175&URL_DO=DO_TOPIC&URL_SECTION=201.html). See also *UNESCO Recommendation Concerning Education For International Understanding, Co-Operation And Peace And Education Relating To Human Rights And Fundamental Freedoms*, 1974; *Oslo Coalition on Freedom of Religion or Belief Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination*, available at [http://www.oslocoalition.org/html/project\\_school\\_education/final\\_document\\_madrid.html](http://www.oslocoalition.org/html/project_school_education/final_document_madrid.html); Council of Europe Parliamentary Assembly Recommendation 1720 (4/10/05), paragraph 7: “School is a major component of education, of forming a critical spirit in future citizens and therefore of intercultural dialogue. It lays the foundations for tolerant behaviour, founded on respect for the dignity of each human being. By teaching children the history and philosophy of the main religions with restraint and objectivity and with respect for the values of the European Convention on Human Rights, it will effectively combat fanaticism.”

<sup>16</sup> Supreme Court of Canada, *Ross v. New Brunswick School District No. 15* [1996] 1 S.C.R. 825, Judgment of 3 April 1996, paragraph 42

<sup>17</sup> *R (on the application of Begum (by her litigation friend, Rahman)) v Headteacher and Governors of Denbigh High School*, UK House of Lords, [2006] UKHL 15, 22 March 2006, Opinion of Baroness Hale of Richmond, paragraph 97.

<sup>18</sup> See, *Case of Hasan and Eylem Zengin v Turkey*, op cit, paragraph 54; *Case of Manoussakis and others v Greece*, op cit, paragraph 47; *Case of Refah Partisi (the Welfare Party) and others v Turkey*, op cit, paragraph 91.

<sup>19</sup> See, *Case of Manoussakis and others v Greece*, op cit, paragraph 47; *Case of Refah Partisi (the Welfare Party) and others v Turkey*, op cit, paragraph 91; *Case of Hasan and Eylem Zengin v Turkey*, op cit, paragraph 54.

<sup>20</sup> Italian Constitutional Court, *Sentenza no. 508/2000*, 13-20 November 2000, In Diritto, paragraph 3 (unofficial translation).

The general principle of state neutrality as among religious beliefs has likewise been affirmed by the Spanish Constitutional Court,<sup>21</sup> the French Conseil d'Etat,<sup>22</sup> the Swiss Federal Tribunal,<sup>23</sup> and the German Constitutional Court.<sup>24</sup> The German Constitutional Court has held that "the state, in which adherents of different or even opposing religious and philosophical convictions live together, can guarantee peaceful coexistence only if it itself maintains neutrality in questions of belief. It may thus not itself endanger religious peace in a society."<sup>25</sup> As recognised by the Swiss Federal Tribunal, "[state religious neutrality] is the corollary of the freedom of belief and conscience [and] has the purpose to guarantee the respect of the sensibilities of individuals with different convictions, while avoiding that these same people might feel alienated."<sup>26</sup>

Outside the Council of Europe, the Colombian Constitutional Court held that freedom of religion cannot be limited "by the prevailing conceptions of the majority"<sup>27</sup> and that "strict neutrality of the State in religious matters is the only way in which public powers can assure pluralism and the equal coexistence and autonomy of the different religious confessions."<sup>28</sup> In the United States, the obligation of government neutrality towards religion is enshrined in the First Amendment of the Constitution, and extensive jurisprudence of the US Supreme Court establishes that this imposes strict requirements of state neutrality between religions, including in the education context.<sup>29</sup>

### ***c. Factors Heightening the Duty of Neutrality: the Susceptibility of Children in a Compulsory Education Environment***

Jurisprudence from a number of jurisdictions has recognised that the vulnerability of children to influence or indoctrination, combined with the compulsory nature of education, calls for particular vigilance in protecting rights to freedom of belief in the classroom. The German Constitutional Court, addressing the display of the cross in classrooms, has stressed the potential impact it may have on pupils, in particular in compulsory education where there is "no possibility of escape".<sup>30</sup> It observed, in this context of state-sanctioned symbols, that schoolchildren "because of their youth are not yet fixed in their views, still have to learn critical capacity and the formation of viewpoints of one's own, and are on that account particularly easily susceptible to mental influence".<sup>31</sup> As explained below, the Court drew a distinction between symbols such as these and those representing the manifestation of individual religious belief. The particular vulnerability of children in compulsory education has also been recognised by the courts of

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<sup>21</sup> Spanish Constitutional Court, *Sentencia 38/2007*, 15 February 2007, Fundamentos Jurídicos, paragraph 10. The a-confessionality of the State is enshrined in Article 16(3) of the Spanish Constitution.

<sup>22</sup> Conseil d'Etat, *Etude relative aux possibilités juridiques d'interdiction du port du voile intégral*, report adopted by the plenary of the *Conseil d'Etat* issued on 25 March 2010, page 18.

<sup>23</sup> Swiss Federal Tribunal, *Comune di Cadro c. Guido Bernasconi e Tribunale amministrativo del Cantone Ticino*, recourse of public law, 1<sup>st</sup> Court of public law, Judgment of 26 September 1990, 116 Ia 252 S. 260, paragraph 5.

<sup>24</sup> German Constitutional Court, BVerfGE 93, 1 1 BvR 1087/91 Kruzifix-decision "Crucifix Case (Classroom Crucifix Case)", Judgment of 16 May 1995, paragraph C(II)(1) (unofficial translation, Institute of Transnational Law, University of Texas).

<sup>25</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(1).

<sup>26</sup> Swiss Federal Tribunal, *Comune di Cadro c. Guido Bernasconi e Tribunale amministrativo del Cantone Ticino*, op cit, paragraph 6 (unofficial translation). See also, in the same terms, Spanish Constitutional Court, *Sentencia 38/2007*, op cit, paragraph 10.

<sup>27</sup> Colombian Constitutional Court, *Sentencia No. C-350/94*, *Sentencia inhibitoria*, paragraph VI(7) (unofficial translation).

<sup>28</sup> Colombian Constitutional Court, *Sentencia No. C-350/94*, op cit, paragraph VI(6).

<sup>29</sup> See, *DiCenso v. Robinson*, 316 F. Supp. 112 (D.C.R.I. 1970); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (prayer and meditation statute); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of Ten Commandments); *Sch. Dist. Of Abington Township v. Schempp*, 374 U.S. 203 (1963) (daily readings from the Bible); *Engel v. Vitale*, 370 U.S. 421 (1962) (prayer).

<sup>30</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(2)(a). Reasoning upheld in BVerfG, 2 BvR 1436/02, op cit, paragraph 46.

<sup>31</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(2)(c).

Spain<sup>32</sup> and Switzerland, where the Swiss Federal Tribunal has held that “the [religious] neutrality to which the State is bound assumes a particular importance in the case of public school, because education is mandatory for all, without distinctions as to [religious beliefs].”<sup>33</sup>

The US Supreme Court for its part has recognised that “students in [schools] are impressionable and their attendance is involuntary.”<sup>34</sup> The Supreme Court has noted the “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.”<sup>35</sup> It has held that “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. This comment has special force in the public-school context where attendance is mandatory.”<sup>36</sup>

The Canadian Supreme Court has similarly recognised that “Young children are especially vulnerable [...]. The importance of ensuring an equal and discrimination free educational environment, and the perception of fairness and tolerance in the classroom are paramount in the education of young children.”<sup>37</sup>

#### ***d. Neutrality as to both Information about Religion and the Educational Environment.***

The Court’s jurisprudence establishes that, although state schools may provide information on religious beliefs, such information must be conveyed in a way that is neutral, objective and critical, not oppressive or aimed at indoctrination.<sup>38</sup> Where it is not, children must at a minimum be given an opportunity not to participate.<sup>39</sup>

These principles are supported by the UN Human Rights Committee, which held in *Hartikainen v. Finland*<sup>40</sup> that instruction in the study of the history of religions and ethics was not in itself incompatible with article 18(4) of the *International Covenant on Civil and Political Rights* (ICCPR), if it was given in a neutral and objective way and respected the convictions of parents and guardians who do not believe in any religion. It was also significant that legislation permitted any parents or guardians who do not wish their children to be given such to obtain exemptions from it.<sup>41</sup> This approach was affirmed in the Committee’s General Comment 22 on the right to freedom of thought, conscience or religion<sup>42</sup> and by the Committee on Economic, Social and

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<sup>32</sup> See, *Junta de Castilla y León, Asociación E-Cristianos c. Ministerio Fiscal, Asociación Cultural Escuela Laica de Valladolid*, Tribunal Superior de Justicia de Castilla y León, Sala de lo Contencioso-Administrativo, Sección Tercera, Valladolid, Recurso de Apelación no. 0257/2009, Sentencia no. 3250, 14 December 2009, Fundamentos de Derecho, Séptimo, p. 12; *Asociación Cultural Escuela Laica de Valladolid c. Junta de Castilla y León*, Juzgado de lo Contencioso Administrativo no. 2, Valladolid, Sentencia no. 288/2008, 14 November 2008, Fundamentos de Derecho, Cuarto, p. 11.

<sup>33</sup> Swiss Federal Tribunal, *Comune di Cadro c. Guido Bernasconi e Tribunale amministrativo del Cantone Ticino*, op cit, paragraph 6.

<sup>34</sup> US Supreme Court – *Edwards v. Aguillard*, 482 U.S. 578, 19 June 1987.

<sup>35</sup> *Lee v. Weisman*, 505 U.S. 577, 592 (1992) (holding that non-sectarian prayer at school graduation ceremony was forbidden by the First Amendment).

<sup>36</sup> *Wallace v. Jaffree*, 472 U.S. 38, 61 at n. 51. See also, *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (distinguishing between adults not susceptible to “religious indoctrination” and children subject to “peer pressure”); *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (policy permitting students to vote to open sporting events with a “pre-game prayer has the improper effect of coercing those present to participate in an act of religious worship”).

<sup>37</sup> Supreme Court of Canada, *Ross v. New Brunswick School District No. 15*, op cit, paragraph 82.

<sup>38</sup> *Case of Kjeldsen, Busk Madsen and Pedersen v Denmark*, op cit, paragraph 53.

<sup>39</sup> *Case of Folgero and others v Norway*, op cit, paragraph 103.

<sup>40</sup> *Erkki Hartikainen v Finland*, Views of the Human Rights Committee, Communication no. 40/1978, 9 April 1981, UN Doc. CCPR/C/12/D/40/1978.

<sup>41</sup> *Erkki Hartikainen v Finland*, op cit, paragraph 10.4.

<sup>42</sup> Human Rights Committee, *General Comment no. 22: The Right to Freedom of Thought, Consciousness and Religion (Article 18)*, 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, paragraph 6: “[t]he Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a

Cultural Rights' General Comment 13 in relation to rights under Article 13 (3) ICESCR.<sup>43</sup> The German Constitutional Court has similarly held that, “[i]n so far as the school, in harmony with the Constitution, allows room for [activating religious convictions], as with religious instruction, school prayers and other religious manifestations, these must be marked by the principle of being voluntary and allow the other-minded acceptable, non discriminatory possibilities of avoiding them”<sup>44</sup>

Although these principles have been developed primarily in relation to the curriculum, the Court has recognised that the Article 2 Protocol 1 obligation to respect religious or philosophical convictions of parents – and by analogy obligations under Article 9 ECHR to respect the beliefs of children - apply to “any functions”<sup>45</sup> which the state assumes in relation to education and teaching. The Court has determined its application to the “entire education system”, not only to the content of education.<sup>46</sup> This reflects the comparative approach of other courts and in other international standards set out in section III below.

### **III. Religious symbols and the right to education: comparative approaches**

#### ***1. The duty of religious neutrality applies to all aspects of education, including the educational environment***

The Court’s approach to the right to education as covering not only the content of education but the educational environment is reflected and developed across comparative practice. General Comment 1 of the Committee on the Rights of the Child on the Aims of Education, for example, considers that the right to education relates to “not only the content of the curriculum but also the educational processes, the pedagogical methods and *the environment within which education takes place*, whether it be the home, school, or elsewhere”<sup>47</sup> (emphasis added). It added that “*the school environment itself* must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d).”<sup>48</sup> (emphasis added)

As the Supreme Court of Canada has noted, the environment in which education is delivered is an integral element of ensuring a discrimination free education.<sup>49</sup> In 2000, the Constitutional Court of Macedonia ruled unconstitutional a regulation which required schools to invite parish priests to bless the commencement of the new school year. The Court relied on the state's neutrality as a crucial factor in the realisation of the freedom of religion, concluding that the state cannot impose

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neutral and objective way. 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.”

<sup>43</sup> Committee on Economic Social and Cultural Rights, *General Comment no. 13*, op cit, paragraph 28.

<sup>44</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(3)(b).

<sup>45</sup> Article 2 Protocol 1 ECHR.

<sup>46</sup> *Case of Folgero and others v Norway*, op cit, paragraph 84(c): the duty to respect convictions “is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the state”. See also, *Case of Kjeldsen, Busk Madsen and Pedersen v Denmark*, op cit, paragraph 51: “Article 2, Protocol 1 [...] enjoins the state to respect parent’s convictions, be they religious or philosophical, throughout the entire state education programme.”

<sup>47</sup> Committee on the Rights of the Child, *General Comment 1 on the Aims of Education*, 4 April 2001, UN Doc, CRC/GC/2001/1, paragraph 8.

<sup>48</sup> Committee on the Rights of the Child, *General Comment 1*, op cit, paragraph 19.

<sup>49</sup> Supreme Court of Canada, *Ross v. New Brunswick School District No. 15*, op cit, paragraph 100: “In order to ensure a discrimination-free educational environment, the school environment must be one where all are treated equally and all are encouraged to fully participate.”

religious activities or ceremonies as socially desirable activities.<sup>50</sup> This approach has been adopted in relation to religious symbols specifically, as set out below.

## ***2. The impact of religious symbols on the rights to education and freedom of belief***

Case law from a range of jurisdictions has recognised the potential of religious symbols to violate state duties of neutrality, and to impact on freedom of religion or belief and the right to education. It recognises the particular impact of state sanctioning or mandating of religious symbols in the classroom, which is distinct, in both its nature and impact, from personal religious symbols worn on the initiative of an individual teacher or pupil as an expression of their personal religion or belief.<sup>51</sup>

The German Constitutional Court has addressed the issue of display of religious symbols as one of freedom of religion. In the case referred to above concerning the display of the cross in school classrooms, the Court held that “freedom of religion guarantees participation in acts of worship a faith prescribes or is expressed in. This implies, conversely, the freedom to stay away from acts of worship of a faith not shared. This freedom relates similarly to the symbols in which a faith or religion presents itself.”<sup>52</sup> The Court drew an important distinction between exposure to religious symbols that manifest the faith of individuals, and exposure to state-sanctioned symbols public buildings or services: “Certainly, in a society that allows room for differing religious convictions, the individual has no right to be spared from others manifestations of faith, acts of worship or religious symbols. This is however to be distinguished from a situation created by the state where the individual is exposed without possibility of escape to the influence of a particular faith, to the acts through which it is manifested and to the symbols in which it is presented.”<sup>53</sup> The Court recognised the particular susceptibility of children to influence by exposure to the crucifix in the classroom – in the context of an education environment designed to develop and influence children’s personalities and their social conduct, where children are compelled to learn “under the cross.” In this context, the crucifix “has appellative character and identifies the contents of belief it symbolizes as exemplary and worthy of being followed.”<sup>54</sup> The German Constitutional Court has found unconstitutional the display of the cross in both courtrooms<sup>55</sup> and classrooms, but noted that, in the latter case, the cross had greater duration and intensity.<sup>56</sup>

In Spain, the Tribunal Superior de Justicia de Castilla y León has recently held that, “the presence of any religious (and also ideological or political) symbols can make the students (who are especially vulnerable as they are being formed) feel that they are educated in a school environment characterised by a particular religion, thereby implying that the State is nearer to one religion than another one [...] this circumstance can be emotionally disruptive for the free

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<sup>50</sup> Constitutional Court of the former Yugoslav Republic of Macedonia, Judgment no. U.br.195/99, *Sluzben vesnik na Republika Makedonija* (Official Gazette), 36/2000, 19 April 2000.

<sup>51</sup> German Constitutional Court, BVerfG, 2 BvR 1436/02, op cit, paragraph 54: “With regard to the effect of religious means of expression, it is necessary to distinguish whether the symbol in question is used at the instigation of the school authority or on the basis of one single teacher's personal decision; such a teacher may rely on the individual right of freedom in Article 4.1 and 4.2 of the Basic Law. If the state tolerates teachers wearing dress at school that they wear by reason of a personal decision and that can be interpreted as religious, this cannot be treated in the same way as a state order to attach religious symbols at school.”

<sup>52</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(1).

<sup>53</sup> *Ibid.* In a decision concerning the wearing of a headscarf by a school teacher, the German Constitutional Court also acknowledged the different nature of personal religious symbols, worn on the initiative of the individual: “With regard to the effect of religious means of expression, it is necessary to distinguish whether the symbol in question is used at the instigation of the school authority or on the basis of one single teacher's personal decision; such a teacher may rely on the individual right of freedom in Article 4.1 and 4.2 of the Basic Law. If the state tolerates teachers wearing dress at school that they wear by reason of a personal decision and that can be interpreted as religious, this cannot be treated in the same way as a state order to attach religious symbols at school”, BVerfG, 2 BvR 1436/02, op cit, paragraph 54.

<sup>54</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(2)(c).

<sup>55</sup> See, German Constitutional Court, BVerfGE 35, 366, 1 BvR 308/69, 17 July 1973.

<sup>56</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(2)(a).



development of [the student's] personality and contrary to the right of the parents that their children receive an education in conformity with their moral and/or religious conviction".<sup>57</sup>

In Switzerland, the Federal Tribunal required the withdrawal of the crucifix from public schools classrooms, relying on the principle of state neutrality between religions: "the state, as guarantor of the religion of the school, cannot avail itself [...] of the faculty to manifest in any circumstances, in the teaching framework, its attachment to one religion. It must avoid identifying itself with a religion, whether of the majority or a minority, thereby prejudging the convictions of citizens of different religions. It is therefore understandable that those who attend public schools sees in the exposure of such symbol the intention to refer to Christian religious conceptions in teachings or to place teaching under the influence of such religion. It is not excluded that some people might feel violated in their religious convictions by the constant presence in the school of a symbol of a religion to which they do not belong. This can have not indifferent consequences, mainly on the spiritual evolution of the students and on their religious convictions – that are those of the parents – and in which they are meanwhile educated at school [...]"<sup>58</sup>

In the United States, applying the First Amendment's prohibition on the endorsement of religion, courts routinely order the removal of crosses from public fora.<sup>59</sup> In *Stone v. Graham*, the US Supreme Court struck down a statute authorising the posting of copies of the Ten Commandments on classroom walls. The Supreme Court found that, although the Ten Commandments could appropriately be integrated into the curriculum for a variety of subjects, "[p]ostings of religious texts on the wall serves no such educational function."<sup>60</sup> It considered that "[i]f the Ten Commandments are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments. However desirable this might be as a matter of private devotion, it is not a permissible state objective."<sup>61</sup>

### **3. The crucifix as a religious symbol**

In a number of jurisdictions, courts have had to address the question of whether the cross or the crucifix are religious symbols and therefore impact on the state's duty of neutrality or the protection of rights to freedom of religion or belief or to education. It has been stated in strong terms by the German Constitutional Court that "[i]t would be a profanation of the cross running counter to the self-perception of Christianity and the Christian churches to regard it, as the decisions challenged do, as a mere expression of Western tradition or cult token without a specific reference to faith."<sup>62</sup> The Swiss Federal Tribunal, in its analogous case, conceded the point that "[t]he fact that the authority decides to hang the crucifix in the schoolrooms may be intended as an attachment to the Christian traditions and bases of Western civilisation and

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<sup>57</sup> *Junta de Castilla y León, Asociación E-Cristianos c. Ministerio Fiscal, Asociación Cultural Escuela Laica de Valladolid*, op cit, p. 12 (unofficial translation).

<sup>58</sup> Swiss Federal Tribunal, *Comune di Cadro c. Guido Bernasconi e Tribunale amministrativo del Cantone Ticino*, op cit, paragraph 7(b) (unofficial translation).

<sup>59</sup> See, e.g., *Gonzales v. North Township of Lake County*, 4 F.3d 1412 (7<sup>th</sup> Cir. 1993) (crucifix in public park as part of war memorial prohibited by First Amendment); *Ellis v. City of La Mesa*, 990 F.2d 1518 (9<sup>th</sup> Cir. 1993) (finding that crosses displayed in public parks and as part of official insignia of city violated "no preference" clause of California state constitution); *ACLU of Illinois v. City of St. Charles*, 794 F.2d 265 (7<sup>th</sup> Cir. 1986) (upholding preliminary injunction against display of cross on roof of fire station during Christmas season); *Friedman v. Bd. Of County Commissioners of Bernalillo County*, 781 F.2d 777(10<sup>th</sup> Cir. 1985) (county seal with words "Con Esta Vencemos" over golden Latin cross violated the First Amendment); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098 (11<sup>th</sup> Cir. 1983) (finding that illuminated Latin cross in state parks violated the First Amendment); *Summers v. Adams*, 669 F.Supp.2d 637 (D.S.C. 2009) (statute authorizing vehicle license plate with words "I Believe" and a cross superimposed over stained glass window was unconstitutional because of its Christian imagery); *Greater Houston Chapter of ACLU v. Eckels*, 589 F. Supp. 222 (S.D. Texas 1984) (use of 3 Latin crosses and Star of David as war memorial violated First Amendment).

<sup>60</sup> 449 U.S. at 42.

<sup>61</sup> *Id.*

<sup>62</sup> German Constitutional Court, "Crucifix Case (Classroom Crucifix Case)", op cit, paragraph C(II)(2)(b).

culture.”<sup>63</sup> Nevertheless, it unconditionally concluded that “those who attend the public school see in the exposure of such symbol the intention to refer to Christian religious conceptions in teaching or to place teaching under the influence of such religion. It is not excluded that some people might feel violated in their religious convictions by the constant presence in the school of a symbol of a religion to which they do not belong.”<sup>64</sup>

In the United States, courts have found crosses and crucifixes to be uniquely Christian symbols. United States courts have found apparent justifications for the display of religious symbols based on their secular historic associations to be unpersuasive. “[H]istorical acceptance without more does not provide a rational basis for ignoring the command [of the First Amendment] that a state pursue a course of neutrality toward religion.”<sup>65</sup> The US courts have also considered the argument that a crucifix that had stood in a public park since 1955 had achieved historic and thus secular status, rejecting the proposition that “the longer the violation, the less violative it becomes.”<sup>66</sup> The courts have dismissed arguments that the crosses had neutral or secular purposes, finding instead that “the Latin cross is universally regarded as a symbol of Christianity”<sup>67</sup> and that “when prominently displayed on a public building [...] the cross dramatically conveys a message of governmental support for Christianity [...]. Such a display is not only religious but sectarian.”<sup>68</sup> The crucifix has been considered even more patently religious in nature than the cross, having been described by one court as “the quintessential Christian symbol.”<sup>69</sup>

#### **IV. Conclusion**

Effective protection against violations of the rights of parents and children under Article 2 Protocol 1 and Article 9 ECHR requires State neutrality between religious beliefs in all aspects of education, including both in the curriculum and in the educational environment. Children in compulsory education are required to be present in the classroom and are therefore especially vulnerable to influence or indoctrination. In these circumstances, particular vigilance by the State is required to protect neutrality. International standards presented above support the conclusion that official display of symbols of one particular religion, such as the crucifix, in the classroom, displayed uncritically as objects meriting worship or loyalty, violates this duty of neutrality and the rights of parents and children in respect of education and religious freedom.

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<sup>63</sup> Swiss Federal Tribunal, *Comune di Cadro c. Guido Bernasconi e Tribunale amministrativo del Cantone Ticino*, op cit, paragraph 7(b) (unofficial translation).

<sup>64</sup> *Id.*

<sup>65</sup> *Rabun County Chamber of Commerce*, 698 F.2d at 1111.

<sup>66</sup> United States Court of Appeals, Seventh Circuit, *North Township of Lake County* 4 F.3d at 1422.

<sup>67</sup> *Rabun County Chamber of Commerce*, 698 F.2d at 1111

<sup>68</sup> *City of St. Charles*, 794 F.2d at 271.

<sup>69</sup> *North Township of Lake County*, 4 F.3d at 1418.