



Research Article

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National Identity between the Principle of the Secular State and Freedom of Religion

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Abstract

The religious symbols exposed in public buildings, such as schools, courtrooms, etc., in recent years animated the debate not only public but also jurisprudential. It turns out that, after centuries of attempts to "purify" states of religious influences, after years of attempts to "purify" public spaces of religious symbols, it seems that the modern state has failed to do so. In this century of globalization, we see a return of the sacred, a clash between different cultures, a "duel" between the different absolute truths that everyone believes they possess. In particular, there is a symbol, representative of all, under which all citizens are subject, regardless of their religious or philosophical conviction, and it is precisely the flag. It turns out that, one in three flags, that is, one third of the flags in the world contain religious symbols, predominantly Christian symbols, followed by Muslim ones and the rest Hindu, Buddhist, Jewish symbols and traditional religions and cults (Theodoru, 2014). The cross and the crescent moon are the most common where the majority of nations recognize themselves. The cross and the crescent are the most common where the majority of nations recognize themselves. The intent of this work is to be able to give a *stricto jure* answer to a complicated diatribe, analyzing whether the exhibition of religious symbols contained in flags can constitute a justified reason to believe that the principle of neutrality and secularity of the State, the principle of equality and non-discrimination, is violated. Through these principles the freedom of religion of each individual is also guaranteed, also taking into account the negative dimension of the latter. This problem affects many democracies, including European ones, yet the European Union itself aims to build a European identity, an identity in which everyone identifies and recognizes.

Keywords: Principle of secularism and neutrality of the state, religious symbols in public buildings, national symbols, principle of equality and non-discrimination, freedom of religion

1. Introduction

The purpose of the present work is to examine the most representative symbol of a state, its flag, from a legal point of view. In particular, this symbol will be observed in a hypothetical perspective, if it is compatible with the principle of secularism and neutrality of the state.

It is found that one out of three flags in the world contains religious symbols, to be exact 64 out of 196 countries shows in their flag a religious symbol where the highest percentage of 48% is predominated by Christian symbols, followed by 33% of Muslim symbols, the remainder Hindu, Buddhist, Hebrew symbols, and so on. (Theodoru, 2014).

Other countries likewise, even if they do not flaunt religious symbols in their flags, the demeanor in the national coat of arms. One third of the flags in the world contain religious symbols with a clear prevalence of the Christian and Muslim religions, as they are the most distinctive in the historical path of man.

In particular, in the European flags the cross seems more present, it also represents the most important metaphor of Christianity, an ambivalent symbol of death and rebirth. Instead in other parts of the world we see the half moon, a symbol of light, which illuminates the soul and mind.

The flag appears to be a "complex" symbol, as it contains other symbols "internally". This amplifies its propaganda force, enhances its absolute truth even more because the symbol in the symbol enhances the semantic value.

The flag is an incisive symbol of an emotional nature for a people, for the individual, because if the nation can be considered an invisible concept, the flag makes it visible.

Hitler himself, when addressing the young Germans in the square full of flags, mended them to keep the flag strong until the last breath. Often in a flag the human being finds his salvation, his escape, his refuge from the uselessness of his own existence. More the people are lost, more they find shelter in the flag, it becomes a strong symbol to cling to as it "falls into the abyss" of a life, not worth living. Consequently, it is also easier for the leader to manipulate the masses.

All this reveals to us that the flag is not a "mute" or "indifferent" symbol, but rather a symbol that conveys a strong sense of belonging through its message, the latter can be transmitted through other symbols contained internally. Even a flag without symbols, such as a white flag, succeeds and transmits the message of truce and unconditional surrender to the enemy.

In truth, the European public and jurisprudential debate of recent years has focused on religious symbols displayed, exhibited, shown in public places, such as the crucifix in courtrooms or school classrooms, the Islamic veil worn by teachers, the veil integral, etc. Instead, the religious symbol contained in the flag of the state, of the local authorities of the universities, does not seem to arouse much controversy.

As mentioned, the debate has focused more on the single symbol externalized in public places, where the most discussed in Europe, particularly in Italy and the symbol par excellence of Christianity, the crucifix. Instead, as regards the Muslim religion, the most talked about symbol was the Islamic veil.

Undoubtedly the Italian case of Mrs Lautsi, who asked to remove the crucifix from the classroom of the children's school, was relevant, and very important also for our analysis, since, in the second instance, the Strasbourg judge formulated the principle of the marginality of appreciation of the states concerned religious. (See Tokrri, 2021; Mancini, 2009; Weiler, 2009; Casavola, 2009, Rodotà, 2009; Zannotti, 1990; Tokrri, 2014; Cavana 2012; Celotto, 2004; Colaianni, 2010; Witte, 2011)

The crucifix, even before becoming a legal conflict, was a cultural conflict. As well as the crucifix, also the crib, the scarf, the burqa, etc. A part of these symbols are considered by doctrine and jurisprudence as symbols not only religious, but also above all cultural and national, compared to the flag. But the flag must, in a certain sense, be a symbol not only of the nation or state, but also of the citizens. The citizen is such only because he lives in the State, without the State, he would be without identity outside the State. (Hegel, 2022)

2. Literature Review

Every organized political society has its flag which represents the most important symbol, it is a simple fabric in the shape of a rectangle but in it, in the symbols and colors, an entire people is recognized, as like any other symbol, the flag is also an instrument. of identification between people. The European Union also has its own flag, unanimously chosen in 1955 by the Parliamentary Assembly of the Council of Europe.

For this reason, its form is foreseen in the corresponding constitutions. Codified, it crystallizes national identity and the state, the latter is none other than "*the spirit in the world*". (Hegel, 2000)

The literature proposed for the analysis carried out is mainly juridical with the intention of examining the principle of secularism and neutrality of the state, the principle of equality and non-discrimination, the freedom of religion, present in most liberal states and in their constitutions.

Also, national and supranational jurisprudential rulings will be at the centre of the study. In particular, the Lautsi judgment against Italy, as it turns out to be one of the most important rulings to understand what could be the position of the Strasbourg Court, in the event of a conceivable dispute concerning the exhibition of religious symbols in national symbols by contracting States.

Furthermore, to develop the argument and to reason in depth, the use of the philosophy of law was important, the only one capable of analysing the idea of justice oscillating between religious sentiment and national identity.

3. Research Method

The method followed to answer our hypothetical questions - but which in an increasingly globalized world, in a world where migratory flows have changed the political, social and legal landscape can become reality - if the National symbols that also represent a religious value , can it be considered harmful to the principle of secularism and neutrality of the State, to the principle of non-discrimination for religious reasons? Can a national symbol harm the freedom to believe or disbelieve in a particular religion, or the freedom to freely express one's thoughts?

Such questions will be at the center of the analysis. Instead, the answers will be provided using the philosophical and legal method, consequently the scientific method will also be based on philosophical observation and legal investigation.

4. State and Secularism

Secularism does not mean that the state must behave *etsi deus non daretur*, as for example in Albania during the communist period (Tokrri, Tafani, Shkembali, 2021), but secularism means that the state must be able to recognize the religious sentiment of its subjects and to remain neutral, in such a way as to guarantee the principle of non-discrimination. (Cf. Tokrri, 2021).

Migration flows to Europe have influenced the social tissue, transforming these countries not only into multicultural, but also multi-religious. All this has opened access to debates related to the externalization of religious symbolism in public places.

On the one hand we see the inherent problem, the Islamic veil, considered by the European Court of Human Rights as a strong symbol. (ECHR, section II, Dahlab V. Switzerland. (no. 42393/98), decision on admissibility, February 15, 2001). On the other hand, the crucifix, always considered by the European Court of Human Rights, in the second instance as a cultural symbol.

In particular, in the Lautsi sentence against Italy, which had as its object, the removal of the crucifix from the wall of the school walls where Ms. Lautsi brought her children. On that occasion, in the first instance, the ECHR is expressed in favor of the principle of secularism.

The European Court of Human Rights in 2011 declared the violation of Article 1 and Article 9 of the Convention and, stating that, among all the meanings that the crucifix can have, its religious value prevails. (ECHR, Grande Chambre, 2011, Lautsi and others v Italy)

Instead, in the second instance, the Grande Chambre considered that: "*The choice of the State to reserve greater visibility for the most widespread religion in the country through the simple display of a religious symbol (such as a cross) in school environments is legitimate, as long as this choice does not lead to real indoctrination*".

For the ECHR, the simple affixing of the crucifix in schools does not affect the right of parents to educate their children according to their philosophy of life. This can only happen if the school also teaches religion courses. (ECHR, Grande Chambre, 2011, Lautsi and others v Italy)

The Grande Chambre is based on three arguments, the first is precisely the passive nature of the crucifix, the second is the pluralistic nature of the public school and finally the principle of marginalization of States in religious matters. That is, each Contracting State is free to decide whether or not to give visibility to a particular religion. (Cf. Cavana, 2012)

Thus for the Court, the principle of the margin of appreciation implies freedom for States to highlight a particular religion. (ECHR, Grande Chambre, 2011, Lautsi and others v Italy)

The reference to this decision is important for the purposes of our analysis, as the Lautsi case represents one of the most relevant judgments in the context of the exhibition of religious symbolism by the States.

In fact, in this judgment, the Court establishes that the relative decision to show or not the crucifix in public places falls within the jurisdiction of the Contracting State due to the cultural and religious reality that characterizes it.

That is, the States are free to orient themselves in full autonomy in religious matters, thus also strengthening national legal systems. In this way, the Court is persuaded to balance the In this way the Court is persuaded to balance the principle of secularism with that of *vivre ensemble*.

5. European Union and The Principle of Secularism

Furthermore, it should be noted that, in terms of the display of religious symbols in public places, we recognize that both the CJEU and the ECHR seem to have equal orientation, almost like "communicating vessels".

In the context of the European Union, there is no real principle of secularism of the member states. We see the principles of correspondence treatment and non-discrimination guaranteed, through the Directive of the European Community of 2000, no.78. The aforementioned directive provides equal treatment in matters of employment. That is, this directive aims to ensure that people with a certain religion or belief are not discriminated against in the workplace.

This directive is interpreted in a balanced way, both under the principle of equal treatment and the principle of national identity. (Cf. Cardia, 2013)

As for the guarantee deriving from the European rules on freedom of religion, the European Charter of Fundamental Rights can be considered, which in Article 10 guarantees this freedom to every individual. However, the secular principles of the state are not taken into consideration and are not mentioned, so that states are left free of discretion according to their own cultural tradition.

Furthermore, the Treaty of Amsterdam, modified in 1997 (which entered into force in 1999) contains a reservation, according to which each Member State is competent in religious matters.

Within this Treaty we see the "*Declaration on the Status of Churches and Non-Confessional Organizations*". That is, a *staus quo* is envisaged for churches.

In this declaration, which is not legally obligatory but with a certain political value, it reveals the possibility for states to be legally free to provide or not the principle of secularism in their respective constitutions, indeed it gives the possibility of highlighting a particular religion.

It is clear that the European Union recognizes the church and "legitimizes" the various European countries to interpret the principle of secular state in a relative way. It seems that national identity and the red line must not be crossed. (Tokri, 2014)

Furthermore, we note that we have no jurisprudential ruling at European level that takes into consideration the religious symbolism displayed in public places.

Consequently, the ECHR ruling on the so-called The Lautsi case may help to understand what may be the interpretative inclination of the ECHR in a hypothetical case of dispute over the religious symbols contained in national symbols, such as the flag.

We must not overlook the fact that, in the Lautsi case, the ECHR held in the first instance that the display of the crucifix in the classroom constitutes a violation of the European Convention on Human Rights. Only in the second instance, does it extract another interpretation from the same convention, namely the principle of the free marginality of States in religious matters.

This happens because secularism is an amorphous principle, without a predefined form, a liquid principle, that is, one that takes multiple forms, but at the same time it has evident features. It is a value, it is an undisputed super principle of modern constitutions.

It is true that secularism is a principle that takes different forms in different countries, but this does not imply that it does not have a "core" where its strength as a super principle is based, if it does not risk becoming a useless concept.

Secularism implies neutrality, equidistance, impartiality, and in order to be able to respect these notions that make up and form secularism, the State must be purged of any religious symbolism, even in its most representative symbols.

Because it is true that democracy implies majority, but when it comes to political choice. Instead the state is above the choice of a party, it is representative of all its citizens. In this perspective, for the state as an apparatus, democracy implies guarantee.

6. Flag as a Complex Symbol

As accented in the previous pages, the flag represents the country or nation and is the only one to stand as a symbol in the public sphere. (See Morelli, Porciello, 2018; Bin, 2004)

In all states, the flag, its shape, colors and symbols are guaranteed by the constitution. This is because, this symbol does not fall prey to political changes. Furthermore, the outrage to the flag is not only an offense to the symbol but is considered an offense to all citizens, because its identity is offended. Many countries provide for very severe sanctions, sanctioned by criminal codes, and not only penalty with a fine but also with imprisonment.

Well, if a State recognizes such an important significance to this symbol, to the point of considering its insult a collective offense to the values, culture and origins of a united community, all the more reason we must take into account the religious minority or atheists who do not identify themselves.

It is noted that only in the United States flag insulting the flag is not considered a crime, as in the two historical judgments of 1989 and 1990 the Supreme Court held that, expressing negatively on the flag is part of the freedom to freely express one's thoughts, this the latter protected and guaranteed by the first amendment of the Constitution of the United States of America. We emphasize that at the entrance to the American Supreme Court there is the inscription "*In God We Trust*".

In most of the members in the European Union it is expected that the national flag is accompanied by the flag of the European Union, the latter must have the same size and the same height as the national flags.

The fact that flags are codified in constitutions implies that they are a symbol of the constitution itself. The Constitution also provides for respect for the fundamental principles and freedoms contained therein.

Even if the principle of secular state is not foreseen in a specific Constitution, it can be derived from a joint interpretation of the freedom to freely express one's thoughts and the freedom of religion. As well as, in the Italian case, when in 1989 the Constitutional Court when the principle of the secular state was considered the supreme principle of the Italian legal system, although it was not explicitly provided for in the constitution. (Colaianni, 2020; Rolla, 2009; Sicardi, 2006; Croce, 2006)

State and nation are "metaphysical" concepts, invisible in themselves for this reason nations

need symbols to become perceptible, visible and tangible. Thus, the flag, as a symbol is one of the most important, it is a complex symbol, because it needs "sub symbols" to recall and to include as many citizens as possible.

7. Final Considerations

It is noted that the national symbols, in particular the flag, constitute an official national symbol, in which everyone identifies, which is why as a symbol it also has a certain value also in the psychology of the masses. (Le Bon, 1905)

In an economically globalized world, culture is also globalizing, remaining attached to one's religious roots is not the duty of the state, but is the freedom of every citizen. This is why the principle of secularism and state neutrality must be explicitly recognized and guaranteed in every democratic state. Only the principle of secular state can strengthen the principle of equality and the freedoms connected to them.

The official symbols of a State must not be symbols of exclusion but inclusion, and this is achieved through neutrality, in such a way as to include, not only naturalized citizens, but above all their own citizens who have no religious sentiment, or have different religious feeling. The religion today is no longer considered the evident reality of a citizen existence of living together. That is why, the purification of public places from religious symbols, means that everyone can recognize themselves in the State, makes it possible to keep everyone together.

The state in compliance with the principle of non-discrimination and equality must be able to respect the freedom to believe or not in a particular religion, must be able to guarantee the freedom to freely express one's thoughts. The "healthy secularism" is that capable of uniting and not dividing, and it "resides" where the National symbols are symbols of union and not of division.

As for Europe, it is noted that the European Union on the one hand recognizes a particular status to the church, in a certain sense recognizing it as valid in European culture.

It also gives states the possibility to determine by themselves the level of secularism they intend to adopt, leaving the European citizen stripped of a certain supranational European guarantee of having his freedom of religion recognized and the principle of equality and non-discrimination.

It seems that all the tension that European states have had in the process of secularization has been expressed through attachment to religious symbols displayed in public places, developing a "paradoxical process" of secularization. Cultural historical elements are only exploited to keep religion alive, which is undoubtedly located in the roots of these countries and in individuals, but not in all.

To guarantee the minority, the constitutional state, it must "purify itself" of any religious ideology and symbolism, to give a message of inclusion and not exclusion, in compliance with the principle of pluralism, non-discrimination and equality and in respect of religious freedom.

Also, as regards the guarantee of the ECHR, the principle of secularism must not be interpreted by the judges on the basis of an interpretation of the religious symbol strong or weak, active or passive, but according to its religious affiliation or not, only in this way we can have a true application of the principle of equality and non-discrimination. This does not mean eradicating religion from the soul of a country, but it does mean not limiting society to new meanings. Because, public space has a plural and multidimensional, multicultural and multi-religious nature. It is a space that includes views of different lives.

Secularism does not mean interpreting the religious symbol case by case, but not identifying with any religious symbol.

Democracy is a delicate system, certainly based on the majority, but intended as a political system, instead democracy as an instrument of guarantee of rights and religious freedom implies guarantee of the fundamental pillars that also support the weight of all fundamental rights and freedoms. That is, recognition and respect for the principle of the dignity of each individual, of equality and non-discrimination.

It turns out, if in a democratic system, too many religious symbols are exhibited there is a risk that democracy itself will crumble.

References

- Ainis M. (2009). Nessuna legge lo prevede, (No law provides for this) in *La Stampa* 4-11-2009.
- Bin R. (2004). Inammissibile, ma inevitabile, (Unacceptable, but inevitable) in *Laicità Crocifissa*, edited by R. Bin, G. Brunelli, A. Puggioto, P. Veronesi, Giapichelli, Turin, pp. 37-40.
- Busnelli F. (2009). Riflessioni sul problema del crocifisso nelle scuole (Reflections on the problem of the crucifix in schools), in *La nuova giuris, civ. Comm.*
- Cardia C. (2013). Introduzione storico giuridica alla Carta, (Historical legal introduction to the Charter) edited by P. GIANNITI, in *I diritti fondamentali nell'Unione Europea. La Carta di Nizza dopo il Trattato di Lisbona*, in G. DE NOVA edited by Commentario del Codice Civile e codici collegati Scialoja-Branca-Galgano, Zanichelli, Bologna-Rome, p. 259 et seq.
- Casavola F. (2009). Una sentenza inutile, (A useless sentence), in *Liberal* 5-11-2009.
- Cavana P. (2012). I simboli religiosi nello spazio pubblico nella recente esperienza europea, (Religious symbols in the public space in the recent European experience), in *Telematics magazine, Stato, Chiesa e pluralismo confessionale* (www.statoechiese.it), no. 28/2012 1°, October 2012.
- Celotto A. (2004). Il simbolo sacro inserito tra gli arredi scolastici può mettere in discussione la laicità dello Stato (The sacred symbol inserted among the school furnishings can question the secularism of the state), in *Guida al diritto*, no.8.
- Colaiani N. (2020). Trent'anni di laicità (Rileggendo la sentenza n.203 del 1989 e la successive giurisprudenza costituzionale), in *Telematics magazine, Stato, Chiesa e pluralismo confessionale*, no. 21.
- Collaianni N. (2010). Il crocifisso tra Roma e Strasburgo, in *Stato, Chiesa e pluralismo confessionale* (The crucifix between Rome and Strasbourg), in *Telematic magazine, Stato, Chiesa e pluralismo confessionale*, www.statoechiese.it.
- Croce M. (2006). La libertà religiosa nella giurisprudenza costituzionale; dalla giustificazione delle discriminazioni in nome del criterio maggioritario alla "scoperta" del principio di laicità dello Stato, Verso la piena realizzazione dell'eguaglianza "senza distinzione di religion"? (Religious freedom in constitutional jurisprudence; from the justification of discrimination in the name of the majority criterion to the "discovery" of the principle of secular statehood, Towards the full realization of equality "without distinction of religion"?), in *Diritto Pubblico*.
- Hegel G.G.F. (2000). *Fenomenologia dello spirito*, (Phenomenology of the spirit), edited by V. Cicero, Bompiani.
- Hegel G.G.F. (2022). *Lineamenti di filosofia del diritto*, (Outlines of philosophy of law), edited by G. Marini, Laterza.
- Le Bon G. (1905). *Psychologie des foules*, (Crowd psychology), Edition Felix Alcan, 9 edition.
- Mancini S. (2009). La supervisione europea presa sul serio: la controversia sul crocifisso tra margine di apprezzamento e ruolo contro-maggioritario delle Corti, (European supervision taken seriously: the controversy over the crucifix between the margin of appreciation and the counter-majority role of the Courts), in *Forum dei Quad. Cost.*
- Morelli A. Porciello A. (2018). Verità, potere e simboli religiosi, (Truth, power and religious symbols), in *Forumcostituzionale*.
- Rodotà S. (2009). La battaglia su un simbolo, (The battle on a symbol), in *La Repubblica* 4-11-2009.
- Rolla G. (2009). Libertà religiosa e laicità. Profili di diritto costituzionale, (Religious freedom and secularism. Constitutional law profiles), Naples, Jovene.
- Sicardi S. (2006). Il principio di laicità nella giurisprudenza della Corte costituzionale, (e rispetto alle posizioni dei giudici comuni), (The principle of secularism in the jurisprudence of the Constitutional Court, (and with respect to the positions of common judges), Proceedings of the Conference "Costituzione e ordinamento giuridico" held in Foggia on 24 e 25 november.
- Theodoru E. A. (2014). Religion & Public Life Project, Pew Research Center, <https://www.pewresearch.org/fact-tank/2014/11/25/64-countries-have-religious-symbols-on-their-national-flags/>
- Tokri R. (2014). Giurisprudenza kontradiktore e GJEDNJ, (The contradictory jurisprudence of the ECHR), in *Globale Challenge*, no. 10, ISSN 2227-8540 ISSN 2312-5748 (Online), Tirana, pp. 99-107.

- Tokrri R. (2021). Religious symbols in public buildings in Albania, between secularism and freedom of religion, Proceedings: 15th International Interdisciplinary Conference: "Comparative Studies in Modern Society; Balkans in European and Global Context", University of Prizren "Ukshin Hoti", Kosovo, 19-20 March 2021, ISBN 978-9951-510-21-9.
- Tokrri R. (2021). The Crucifix in State Schools in Italy, Victim of Globalization, between Freedom of Religion and Freedom of Education, in *Journal of Educational and Social Research*, Vol. 11, No. 3, March 2021, E-ISSN 2240-0524, ISSN 2239-978X, Richtmann Publishing.
- Tokrri R. Tafani I. Shkemi A. (2021). The Impact of the Communist Regime in Albania on Freedom of Religion for Albanians, in *Mediterranean Journal of Social Sciences*, Vol. 12, No. 1, January.
- Weiler J.H.H. (2010). Il crocifisso a Strasburgo: una decisione «imbarazzante», (The crucifix in Strasbourg: an "embarrassing" decision), in *Quaderni costituzionali*, no.1/2010 148/152.
- Witte J. (2011). Lift High the Cross? Il caso Lautsi nella prospettiva americana, (Lift High the Cross? The Lautsi case from the American perspective), edited by M. CARTABIA, *Dieci casi sui diritti in Europa*, il Mulino, Bologna, p. 107.
- Zannotti L. (1990). Il crocifisso nelle aule scolastiche (The crucifix in the classroom), in *Il Diritto Ecclesiastico*, vol. 2.