

международного сотрудничества. Более того вследствие размывания границ суверенности новым субъектом глобального взаимодействия становится сетевое государство, которое, по-видимому, будет способствовать изменениям всех существующих политических и социальных институтов, в том числе института гражданства.

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### **THE SCOPE OF THE MARGIN OF APPRECIATION OF STATES IN EDUCATION AREA**

The right to education belongs to the practical and effective rights category, enjoying a special protection in the ECHR System, and is one of the areas where the margin of appreciation doctrine has had the greatest influence and has played a transcendental role in the direction of the Court's judgments [1, p. 8], being the ECtHR's main tool in finding the fair balance [2, p. 495]. The margin of appreciation doctrine was developed in the case-law of the ECtHR, and will soon receive a conventional status thanks to the Protocol No. 15, which adds a new recital at the end of the preamble to the Convention, providing the responsibility of the states to secure the rights and freedoms defined in the Convention and its Protocols in accordance with the principle of subsidiarity whilst enjoying a margin of appreciation, which is subject to the supervisory jurisdiction of the ECtHR.

Under the aegis of the margin of appreciation doctrine, the Court shall decide on the intensity of its review and do so in a predictable and well-structured fashion [2, p. 515]. One of the most controversial cases of assessing the margin of appreciation of the states in the area of education and religious symbols in schools is the case of *Lautsi and Others v. Italy* [3 and 4].

The two sons of the applicant, aged 11 and 13 at that time, attended a State school in Abano Terme, Italy. In spite of the fact that it was a State school, a crucifix was displayed in each of the classrooms. Mrs Lautsi and her husband asked whether the crucifixes ought to be removed, as this was contrary to the

principle of secularism (provided by Italian Constitution) by which they wished to bring up their children. Following the decisions of the school's governors and the Ministry of Education to keep these religious symbols in classrooms, the applicant brought administrative proceedings (including a question of the constitutionality) but without success.

By the judgment of the Chamber of 2009 [3], the Court decided that there had been a violation of Article 2 of Protocol No. 1 in conjunction to Article 9 of the Convention. The presence of crucifixes in classrooms were in breach of both the right to freedom of thought of pupils and the right of parents to educate and teach their children in conformity with their own religious and philosophical convictions. It noted that the State is bound to refrain from imposing beliefs, even indirectly, especially in the sensitive schooling of children area, [3, §48] and to uphold confessional neutrality in public education [3, §56].

However, in 2011 [4], the Grand Chamber made a judgment revival reconsidering the ECtHR's position not necessarily because it was a wrong one, but especially for including it in the cadence of time, in the background of other objective and subjective factors than those from the very beginning [5, p. 8].

The Grand Chamber reiterated that in the area of education and teaching Article 2 of Protocol No. 1 is the *lex specialis* in relation to Article 9 of the Convention to the extent that it concerns the obligation of states to respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions [4, §59]. The states are bound to ensure, neutrally and impartially, the exercise of various religions, faiths and beliefs, as well as to maintain public order, religious harmony and tolerance in a democratic society, particularly between opposing groups [4, §60]. The word "respect" provided by Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account" and in addition to a primarily negative undertaking, it implies some positive obligations on the part of the State but nevertheless, the states enjoy a wide margin of appreciation in determining the steps to be taken for ensuring compliance with the Convention with due regard to the needs and resources of the community and of individuals [4, §61]. In light of Article 2 of the Protocol No. 1, it appears that this provision cannot be interpreted in a manner that parents may require the State to provide a particular form of teaching [4, §61].

The ECtHR held that where the organisation of the school environment is a matter for the public authorities, that task must be seen as a function assumed by the State in relation to education and teaching [4, §64], and that the decision whether crucifixes shall be present in State-school classrooms represents one of the functions assumed by the State in relation to education and teaching and falls within the scope of the second sentence of Article 2 of Protocol No. 1 [4, § 65]. When assessing if the crucifix has another significance than the religious one, the ECtHR considered that the subjective perception of Mrs Lautsi was not

in itself sufficient to amount to a breach of Article 2 of Protocol No. 1 [4, §66]. The decision whether or not to perpetuate a tradition falls within the margin of appreciation of the State (*i.e.* the crucifix as a symbol of the Italian system of values, its identity, historical and cultural significance), but the reference to a tradition cannot relieve a State of its obligations to respect the rights and freedoms enshrined in the Convention and its Protocols [4, §68].

The margin of appreciation of the State shall be extended also in its efforts to reconcile the exercise of the functions it assumes in relation to education and teaching with due respect for the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions, and in the organisation of the school environment and the setting and planning of the *curriculum* [4, §69]. As to the presence of a crucifix on a wall, the Court pointed out that it is an essentially passive symbol that cannot be deemed as having an influence on pupils comparable to that of a didactic speech or participation in religious activities [4, §72].

The Court observed that the presence of crucifixes was not associated with compulsory teaching about Christianity and Italy paid due regard to the openness of school environment in parallel to other religions [4, §74]. Furthermore, the presence of the crucifix in classrooms did not encourage the development of teaching practices with a proselytising tendency, and the two sons of Mrs Lautsi had never experienced a tendentious reference to that presence by a teacher in the exercise of his functions [4, §74]. The applicant had preserved her right as a parent to enlighten and advise her children and to exercise her natural functions as educator of her children, guiding them on a path in line with her own religious and philosophical convictions [4, §75]. Therefore, the domestic authorities had duly weighed the competing interests involved, with appropriate regard to the tender age of the applicant's children, and had not exceeded their margin of appreciation. [4, §§ 73, 77].

In conclusion, although the ECtHR has recognized that states have a discretionary power to regulate the right to education, it is aware that the margin of appreciation must be governed by the criteria set forth in the ECHR System. The margin of appreciation of states has become the central conceptual doctrine in the institutional and jurisprudential architecture of the ECHR [6, p. 21]. Given the pivotal role of the margin of appreciation doctrine as a hermeneutic standard and the fundamentality of the right to education as one of the pillars of ensuring the exercise of other rights and dissemination of democratic values such as human dignity, equality, solidarity, tolerance, humanity, free development of personality, *joie de vivre* etc., the measures taken by the State in the area of education and secularism shall not be assessed *in abstractum* but in light of the cultural and social framework.

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## **УСОВЕРШЕНСТВОВАНИЕ МЕХАНИЗМОВ РЕАЛИЗАЦИИ ПРАВ ЧЕЛОВЕКА В КОНТЕКСТЕ РАЗВИТИЯ ИНФОРМАЦИОННОГО ОБЩЕСТВА**

Гражданское общество являясь совокупностью негосударственных экономических, политических, социальных, культурно-нравственных, религиозно-моральных, семейных, национальных и иных отношений, выступает сферой самозащиты свободных граждан и добровольно формируемых организаций и ассоциаций с ограничением на основе закона прямого вмешательства и самовольного регламентирования органов государственной власти их деятельности. Существование гражданского общества возможно в том случае, если во всех сферах социальных связей, в том числе в экономической, политической, нравственной сферах отношения возникают в условиях активного проявления творческих возможностей личности. Если сформулировать вкратце, в гражданском обществе гражданин не действует для государства, а государство действует для гражданина. Поэтому проведение государством своей информационной политики без учета интересов граждан в конечном итоге приводит к неудаче. В связи с этим уместно было бы отметить разделение на кибероптимистический и киберпессимистический подход, проведенное региональным директором Фонда Фридриха Науманна по Восточной Азии и Северной Африке Рональдом Мейнардусом. Р. Мейнардус считает, что согласно кибероптимистам, развитие ИКТ позитивно влияет на гражданское общество. Доступность информации и знаний в конечном итоге обеспечит равное участие членов гражданского общества во всех