

The cross in the Bavarian public space: historical courses and recourses (Stefano Testa Bappenheim)

In April 2018, the Bavarian State President, Markus Söder, a Protestant, had announced his intention to have a cross prominently installed in every public office in Bavaria, considering it to be the fundamental sign of Bavarian cultural identity and a symbol of human dignity, charity and tolerance.

He had therefore ordered by decree the amendment of the General Administrative Regulation of the Public Administration of Bavaria, with the insertion of § 28, which states: 'A cross must be placed at the entrance to every public building, in a clearly visible position, as an expression of the historical and cultural character of Bavaria'.

The decree was challenged before the Administrative Court of Bavaria, the BayVGH, which on 1 June 2022 ruled it to be perfectly lawful, hence the subsequent appeal before the Federal Administrative Court, which, in a ruling of 19 December 2023, also found it to be perfectly lawful.

The Leipzig Administrative Court held that there was no violation of the fundamental rights guaranteed in §§ 3 and 4 GG: for an observer, crosses may represent a central symbol of the Christian faith, but they do not violate the guarantee of religious freedom ex § 4 paragraphs 1 and 2 of the GG, since no right to be spared at all times from the sight of an unwelcome symbol, here a cross, derives from this article; neither, the Leipzig judges continue, does the posting of crosses on public buildings constitute discrimination on religious grounds, ex § 3 paragraph 1 of the GG: This provision, in fact, prohibits the State from favouring certain religious communities to the detriment of others, which it does not do here, since § 28 AGO itself - which ordered the display of crosses - qualifies them *expressis verbis* as historical-cultural symbols, and, on the other hand, neither § 28 AGO nor any other provisions give rise to discrimination of any kind.

The constitutional principle of Neutralität is different from the French *laïcité*, and does not oblige the State to completely renounce all religious references in the name of strict secularism, but instead obliges it to be open to the diversity of religious convictions and worldviews, and prohibits it from identifying with a particular faith or worldview: § 28 AGO does not make Bavaria identify with a particular religious denomination or worldview, so that the contested decree is fully lawful.