

## More on crucifixes in schools, bypassing the ‘Lautsi case’ of the Grand Chamber of the ECHR

(10 August 2025)

Certainly, the issue of crucifixes in public buildings in Germany, and particularly in schools, could be used as a concrete example of Nietzsche’s theory of ‘ewige Wiederkunft’, or eternal return: Thirty years have passed since the 1995 ruling of the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) on crucifixes in Bavarian primary schools<sup>1</sup>, yet the issue continues to fascinate, to be controversial and debated<sup>2</sup>.

Unlike France, where laïcité is expressly provided for in Article 1 of the French Constitution of 4 October 1958<sup>3</sup>, which confirms the 13th paragraph of the preamble to the Constitution of 27 October 1946<sup>4</sup>, in Germany it is the religious neutrality of the state that has constitutional status<sup>5</sup>.

Following the ruling of 16 May 1995 of the German Federal Constitutional Court, that of 1 August 1997 of the Bavarian Constitutional Court<sup>6</sup>, that of 21 April 1999 of the Federal Administrative Court<sup>7</sup>, that of the Grand Chamber of the ECHR<sup>8</sup>, that of 1 June 2022 of the Bavarian Administrative Court<sup>9</sup>, that of 19 December 2023 of the Federal Administrative Court<sup>10</sup>, and finally, at least for the moment, the ruling

<sup>1</sup> BVerfG, 16 May 1995, no. 1 BvR 1087/91, in *BVerfGE* 93, 1 ff.

<sup>2</sup> F. FERRARI, *Another Brick in the Wall? Il difficile dialogo costituzionale con l'immagine del Cristo crocifisso*, in *Rivista AIC*, 1/2018.

<sup>3</sup> See M. D'ARIENZO, *La “religione della laicità” nella Costituzione francese*, in P. BECCHI – V. PACILLO, *Sull'invocazione a Dio nella Costituzione federale e nelle Carte fondamentali europee*, Lugano, 2013, pp. 139 ss.; EADEM, *La laicità francese: “aperta”, “positiva” o “im-positiva”?*, in *statoe\_chiese.it*, 2011, [https://www.statoe\\_chiese.it/images/uploads/articoli\\_pdf/maria\\_darlenzo\\_la\\_laicit\\_francese.pdf](https://www.statoe_chiese.it/images/uploads/articoli_pdf/maria_darlenzo_la_laicit_francese.pdf); P. VALDRINI, *Il principio di laicità nel diritto francese. Neutralità dello Stato e libertà dei cittadini*, in *Eph.*, 2015, pp. 39 ss.

<sup>4</sup> See the amendment made by Article 8 of Constitutional Law No. 880 of 4 August 1995, in *JO*, 5 August 1995, No. 181, 11744.

<sup>5</sup> BVerfG, 14 December 1965, in *BVerfGE*, 19, pp. 206 ff. See also BVerfG, 8 November 1960, *ibid.*, 12, pp. 1 ff.; BVerfG, 17 February 1965, *ibid.*, 18, pp. 385 ff.; BVerfG, 28 April 1965, *ibid.*, 19, pp. 1 ff.; BVerfG, 16 October 1968, *ibid.*, 24, pp. 236 ff.; BVerfG, 31 March 1971, *ibid.*, pp. 98 ff.; BVerfG, 21 September 1976, *ibid.*, 42, pp. 312 ff.; BVerfG, 8 February 1977, *ibid.*, 74, pp. 244 ff.; BVerfG, 16 December 1992, *ibid.*, 88, pp. 40 ff.; BVerfG, 19 December 2000, *ibid.*, 102, pp. 370 ff.

<sup>6</sup> In *N/W*, 1997, pp. 3162 ff.

<sup>7</sup> In *N/W*, 1999, pp. 3063 ff.

<sup>8</sup> Judgment of 18 March 2011, no. 30814/06, see P. CONSORTI, *La battaglia per la libertà religiosa nel “dialogo fra Corti” e la funzione dei “margin di apprezzamento”*, in M. D'ARIENZO (ed.), *Il diritto come “scienza di mezzo”. Studi in onore di Mario Tedeschi*, I, Cosenza, 2018, pp. 607 ss.; A. FUCCILLO, *Il crocifisso tra valori civili e laicità dello Stato*, in *D&G*, 2006, pp. 73 ss.

<sup>9</sup> Judgment no. 5 B 22.674.

<sup>10</sup> Judgment no. 10 C 5.22.

of 8 July 2025 of the Bavarian Administrative Court, which expressly bypasses the Lautsi ruling, continuing in line with what was already stated in 1995 by Karlsruhe<sup>11</sup>.

In the case in question, two former students of a state Gymnasium inaugurated in 1998 (therefore after the 1995 ruling) brought proceedings before the Bavarian Administrative Court. where a wooden cross, approximately one and a half metres high and 50 cm wide, with an image of Christ crucified (approximately 30 cm by 25 cm), had been placed at the main entrance in such a position that it was impossible not to see it, both when entering the building and from the upper floor.

Furthermore, during the school year, a religious service is held three times a year: at the beginning and end of the school year and at Christmas. Attendance is optional, but for those who do not wish to take part, compulsory alternative lessons are provided, including, among other things, general topics on ethics.

In September 2015, the parents of the applicants, who were minors at the time, protested against the presence of crucifixes in the classrooms, against the giant crucifix at the entrance to the school and against the compulsory alternative lessons to the three annual religious services. The crucifixes were removed from the classrooms – not from all of them, but only from those where the children of the protesters studied – but the crucifix at the entrance to the school was not removed, nor were the compulsory alternative lessons abolished, on the grounds of equal treatment.

After graduating in 2019, the applicants appealed to the Administrative Court of First Instance in Munich, again requesting the removal of the crucifix at the entrance and a declaration of constitutional illegality regarding the compulsory participation in alternative lessons to religious services.

However, in its ruling of 29 September 2020, the Court rejected the claims: both on the grounds of lack of standing (as the students no longer attended the school) and on the merits: the compulsory alternative lessons did not concern religious issues, so no one's religious freedom had been violated; the presence of a crucifix at the entrance to the school, being in a place of passage, could at most have a very fleeting influence, which fell within the limits of tolerance.

However, the 2025 appeal before the Administrative Court of Appeal had a very different outcome: the BayVwGH held that, since the interests at stake were related to the religious or ideological sphere of the appellants, the case law of the Federal Constitutional Court had to be applied, according to which, even after the completion of a school course, there is still an interest worthy of protection – particularly sensitive from a constitutional point of view – in the judicial review of a possible violation of fundamental rights that occurred during the school year<sup>12</sup>.

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<sup>11</sup> BayVwGH, judgment of 8 July 2025, no. 7 BV 21.336.

<sup>12</sup> BVerfG, judgment of 17 December 1975, No. 1 BvR 63/68, in BVerfGE, 41, pp. 29 ff.; judgment of 16 October 1979,

With regard to the claim concerning the compulsory nature of alternative lessons, the judgment recognises its full constitutional legitimacy: on the basis of the Bavarian School Education Act, all pupils are obliged to attend lessons and other compulsory school events on a regular basis<sup>13</sup>.

On this basis, therefore, religious services are undoubtedly classifiable as ‘other school events’ during school days, as are the alternative activities provided for those who do not wish to attend the services<sup>14</sup>, so that the constitutional rights of the applicants have not been violated by the obligation to participate in the alternative activities provided<sup>15</sup>.

As regards the display of the crucifix in the school hall, the Administrative Court of Appeal, contrary to the opinion of the applicants, considers that the right to have the crucifix removed does not derive from Article 7(4) of the Bavarian School Education Act (BayEUG), but from Article 1004(1)(1) of the German Civil Code (BGB), in conjunction with Article 4(1) of the German Basic Law (Grundgesetz, GG). (Grundgesetz, GG).

Article 7(4)(1) and (2) of the Bavarian Education Act stipulates that, in view of Bavaria’s historical and cultural background, a cross must be displayed in every classroom of compulsory schools to express the desire to achieve the highest educational goals of the Constitution on the basis of Christian and Western values and with respect for freedom of belief. If the display of a cross is contested by parents on serious religious or ideological grounds, the headteacher shall attempt to find a solution satisfactory to all (pursuant to Article 7(4)(3) BayEUG), but if no agreement can be reached, the headteacher, after informing the Schulamt, must find a solution for the individual case that respects the religious freedom of the opponent and ensures a fair balance between the religious and ideological convictions of all those involved in the class; in doing so, the wishes of the majority shall also be taken into account as far as possible (pursuant to Article 7(4)(4) BayEUG)<sup>16</sup>.

However, according to its literal wording, Article 7(4) refers exclusively to crosses displayed in classrooms of primary and secondary schools and support centres, through the relevant provisions of Article 7a(6) and Article 19(4). Therefore, as far as the case in question is concerned, there are no regulations requiring the use of Christian symbols, pursuant to Article 135 of the Bavarian Constitution.

The removal of the crucifix at issue could therefore be based on Article 1004(1)(1) of the German Civil Code (BGB), according to which a person who considers that their rights have been infringed by an act of the

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No. 1 BvR 647/70, No. 36, *ibid.*, 52, pp. 223 ff.; judgment of 16 May 1995, No. 1 BvR 1087/91, cited above.

<sup>13</sup> BayEuG, Art. 56(4)(3).

<sup>14</sup> BayEuG, Art. 30(3)(2).

<sup>15</sup> See P. LO IACONO, *Neutralità della scuola pubblica e divieto di pregare: riflessioni sulla laicità e sul laicismo*, in *Dir. Fam. Pers.*, 2018, pp. 4 ss.

<sup>16</sup> See S. CECCANTI, *E se la Corte andasse in Baviera?*, in AA.VV., *La laicità crocifissa*, Torino, 2004, pp. 21 ss.; F. FEDE – S. TESTA BAPPENHEIM, *Dalla laicità di Parigi alla nominatio Dei di Berlino, passando per Roma*, Milano, 2007.

public administration ( ) may request that the administration annul the direct and continuing consequences of its unlawful act<sup>(17)</sup>.

The Munich Administrative Court of Appeal upheld the appellants' argument.

The Administrative Court of Appeal has no doubt that the crucifix at the main entrance of the school is a religious symbol of the Christian faith; due to its size, its location in the school building and the size of the image of the crucified Christ, it cannot be reduced to a mere symbol of Western culture.

Although Germany has acceded to the ECHR<sup>18</sup>, the Bavarian Administrative Court does not consider the Lautsi judgment<sup>19</sup> applicable and instead takes up almost verbatim the arguments of the 1995 Karlsruhe judgment, reiterating the conclusions of that judgment<sup>20</sup>.

According to the decision of the Federal Constitutional Court of 16 May 1995, the cross belongs to the specific symbols of the Christian faith and is indeed almost its symbol par excellence: it symbolises the redemption of mankind from original sin through the sacrificial death of Christ, but at the same time also Christ's victory over Satan and death and his dominion over the world, suffering and at the same time triumph. According to the 1995 conclusions of the Federal Constitutional Court, therefore, it is an object of veneration in many ways for Christian believers, and the presence of a cross in a home, shop or office must be seen as an expression of the Christian faith of the owner. For non-Christians or atheists, precisely because of the meaning that Christianity has attributed to it and that it has had throughout history, the cross becomes a symbolic expression of certain religious beliefs and their missionary spread. It would be a desecration of the cross contrary to the image of Christianity in itself and of the Christian Churches if it were to be considered as a mere expression of Western tradition or as a sign of worship without specific reference to faith<sup>21</sup>.

On the contrary, say the judges in Munich, and precisely for this reason the forced, recurring and inevitable confrontation with the crucifix placed in the main entrance of the Gymnasium constitutes an interference with the negative freedom of belief of the students guaranteed by Article 4(1) of the Basic Law:

<sup>17</sup> BVerwG, judgment of 19 December 2023, no. 10 C 5.22.

<sup>18</sup> Accession on 13 July 1950, entered into force on 7 August 1952, in BGBl 14, of 22 August 1952, pp. 685 ff., in [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl252s0685.pdf#/text/bgbl252s0685.pdf?\\_ts=1754239635043](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl252s0685.pdf#/text/bgbl252s0685.pdf?_ts=1754239635043)

<sup>19</sup> M. PARISI, *Simboli e comportamenti religiosi all'esame degli organi di Strasburgo*, in *DFP*, 2006, pp. 1415 ss.

<sup>20</sup> On the relationship between the ECHR and national legal systems, see A. FERRARI, *La laicità importuna: laicità costituzionale e libertà religiosa*, in *statoe Chiesa.it*, 2023, <https://riviste.unimi.it/index.php/statoeChiese/article/view/20030/17830>; N. MARCHEI, *La libertà religiosa nella giurisprudenza delle Corti europee*, *ivi*, 2019, <https://riviste.unimi.it/index.php/statoeChiese/article/view/12847/12069>; M. CROCE, *La decisione CEDU Lautsi c. Italia e la sua influenza come precedente nelle decisioni interne successive*, *ivi*, 2019, <https://tinyurl.com/2tj9kmss>; T.E. FROSINI, *Sui rapporti fra la Corte EDU e la Costituzione italiana*, in *Rass. Parl.*, 2010, pp. 351 ss.

<sup>21</sup> V. BVerfG, judgment of 16 May 1995, No. 1 BvR 1087/91; also assuming the religious significance of the cross BayVwGH, judgment of 1 June 2022, No. 5 B 22.674; ECHR, Grand Chamber, judgment of 18 March 2011, no. 30814/06.

this constitutional provision, in fact, leaves it up to the individual to decide which religious symbols to recognise and worship, and which to reject.

<sup>22</sup>In a society that gives space to different religious beliefs, it is obviously not possible to claim a right to be spared from encountering and confronting symbols of religions other than one's own, but the case of a public building, where individuals are exposed without any possibility of escape to the symbols of a particular faith and to the influence that it exerts on them through these symbols, is quite different.

<sup>23</sup>This distinguishes, the Administrative Court of Appeal points out, the presence of crosses in schools from the frequent encounter in everyday life with religious symbols of various religions: this, first of all, does not depend on the State, but is a consequence of the spread of different religious beliefs in society, and, secondly, does not have the same degree of inevitability: if an individual encounters religious symbols on the street or on people, it is usually a fleeting encounter and, even in the case of prolonged exposure, it is not based on coercion which, if necessary, can be imposed by sanctions.

The judges in Munich reiterate that the 1995 conclusions of the Federal Constitutional Court are applicable to the case of the crucifix placed, by decision of the headmaster, at the main entrance of the school, meaning that the applicants were exposed to this crucifix in a compulsory and repeated manner: the crucifix in question is not placed in an inconspicuous corner, but in a position that ensures maximum visibility, namely on the side pillar supporting the main staircase of the school.

Anyone entering the school through the main entrance inevitably finds themselves facing the crucifix, which is also positioned in such a way as to be visible to as many students as possible and from as many angles as possible, including the recreation area and the internal café area.

Furthermore, the Bavarian Administrative Court of Appeal, continuing to refer to the conclusions of the 1995 Karlsruhe ruling, states that there is also an interference with the applicants' freedom of belief protected by Article 4(1) of the Basic Law, because the crucifix at issue cannot be denied a missionary effect, i.e. a preference for the Christian faith, and therefore its placement at the entrance to the school violated the imperative of state neutrality, which finds its basis, inter alia, in Article 4(1) of the Basic Law itself.

The administrative appeal judges continue by stating that they do not agree with the conclusions of the Grand Chamber of the European Court of Human Rights, according to which the cross is indeed a religious symbol, but a silent and passive one, therefore devoid of religious influence and therefore not violating the

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<sup>22</sup> See M. FERRANTE, *Diritto, religione e cultura: verso una laicità inclusiva*, in *Dir. Eccl.*, 2016, pp. 425 ss.

<sup>23</sup> See M. D'ARIENZO, *Le sfide della multiculturalità e la dimensione religiosa*, in AA.VV., *Diritto e pluralismo culturale. I mille volti della convivenza*, Napoli, 2015, pp. 45 ss.

principle of state neutrality.<sup>24</sup> They go on to say that they agree with the 2015 ruling of the Federal Constitutional Court, according to which the presence of a cross in classrooms implies that the state identifies with the Christian faith, which gives the contested crucifix a missionary effect. While this ruling refers to crosses in classrooms, the Bayerischer Verwaltungsgerichtshof believes that these conclusions also apply to the case in question.

The ruling of 8 July 2025 then explains why the ruling of 19 December 2023 of the Federal Administrative Court is not applicable here, where the recent Bavarian regulation requiring the display of a clearly visible cross in every public office was deemed fully legitimate, describing it as merely an expression of Bavaria's historical and cultural heritage, without violating anyone's freedom of belief: first and foremost, therefore, it is no longer generally necessary to go in person to a public office to carry out administrative procedures, as it is possible to do so by telephone, via the internet or by delegating someone else, so those who go to a public office voluntarily choose to expose themselves to the sight of the crucifix recently placed everywhere, while it is necessary to go in person to school, thus being obliged to see the crucifix placed at the entrance; in any case, secondly, even if one were obliged for some reason to go in person to a public office, thereby being forced to view a religious symbol with which one does not agree, this would in any case be a temporary and fleeting exposure, and therefore essentially irrelevant, whereas attendance at school involves permanent, constant and continuous exposure throughout the school year; thirdly, it is generally adults, or at least adults of legal age, who visit public offices, whereas those attending secondary schools with crucifixes at the entrance are still young people, more easily influenced by the continuous and compulsory sight of the crucifix at the entrance, which can therefore serve as a means of indoctrination and proselytism.

Certainly, the judges of the Munich Administrative Court of Appeal finally state that, even if the fundamental right to freedom of belief is in principle guaranteed without reservation by Article 4(1) of the Basic Law, this does not mean that restrictions are not possible, but that they must in turn be based on the Basic Law, so that the conflict between the constitutional rights of different persons must be resolved according to the principle of practical concordance, which requires the utmost respect for the requirement of tolerance: as already stated in the 1995 judgment, in addition to the positive freedom of belief of other students, the educational mission of the State, pursuant to Article 7(1) GG, must also be taken into account as a constitutional right.

Consequently, the necessary balance with negative religious freedom does not require the complete renunciation of religious references in the fulfilment of the educational task referred to in Article 7(1) GG,

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<sup>24</sup> BVerfG, judgment of 27 January 2015, no. 1 BvR 471/10.

since the culturally and historically rooted beliefs and value attitudes on which, among other things, social cohesion, as well as the exceptional historical and social significance of the Christian faith and the Christian churches in Germany<sup>25</sup> and more generally in the West<sup>26</sup>, cannot and must not be indifferent to the State, which must also take into account the religious freedom of those parents and their children who desire a religious education.

In a pluralistic society, however, it is complex to take full account of all educational ideas. In particular, the negative and positive aspects of religious freedom require great attention in order to be implemented in an inclusive manner within the same institution. Since this concerns particularly sensitive areas of fundamental rights and essential issues of school organisation, the fundamental prerequisite for the display of a crucifix in a school is a law that regulates the tension triggered by a practical agreement, with an appropriate balance between the various constitutional rights to be protected, as already stated by the Federal Constitutional Court<sup>27</sup>.

It is therefore not permissible for the presence of crucifixes at the entrance to the school to be ordered by an administrative act such as a regulation issued by the head teacher, nor can the Bavarian School Act, which requires crucifixes to be displayed in classrooms in primary and secondary schools only, be invoked, so that it cannot be applied by analogy to the case in question, which concerns a secondary school, because, as these are provisions that restrict fundamental constitutional rights, a broad interpretation is not permitted.

The Administrative Court of Appeal, therefore, does not exclude in absolute and general terms the possibility in itself of placing a crucifix in secondary schools, specifying, however, that such a provision must have the normative force of a law, and not merely of an administrative act, since only an act promulgated by a Parliament that embodies and represents the sovereignty of the people, by the people, for the people, would have the power to define in a binding manner a point of balance between conflicting fundamental constitutional rights, demonstrating that ‘...it would be very simple to say that politics and religion proceed on different planes, that it is better to keep them separate. This is not the case, because both deal with human life, one immanently, the other transcendentally, responding to two different needs’<sup>28</sup>.

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<sup>25</sup> S. TESTA BAPPENHEIM, *Cenni sulla costituzionalizzazione delle radici cristiane in Germania*, in *IE*, 2006, pp. 755 ss.; ID., *Il “Dio della fede” ed il “Dio dei filosofi” nel codice penale tedesco*, in G. LEZIROLI (ed.), *La Carta e la Corte. La tutela penale del fatto religioso fra normativa costituzionale e diritto vivente*, Cosenza, 2009, pp. 277 ss.; ID., *Veluti si Deus Daretur: Dio nell’ordinamento costituzionale tedesco*, in J.I. ARRIETA (ed.), *Ius divinum*, Venezia, 2010, pp. 253 ss.

<sup>26</sup> See O. FUMAGALLI CARULLI, *Costituzione europea, radici cristiane e Chiese*, in *Ius*, 2003, pp. 129 ss.

<sup>27</sup> BVerfG, judgment of 16 May 1995, cited above, no. 54; BVerfG, judgment of 24 September 2003, cited above, nos. 67-69.

<sup>28</sup> M. TEDESCHI, *Politica, religione e diritto ecclesiastico*, in *Dir. fam. pers.*, 1996, p. 1524.



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