

CHAPTER I

THE LEGAL REGULATION OF RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE IN CROATIA



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1. Introduction

It has been thirty years since the dissolution of the former Yugoslavia, when Croatia gained its independence. This political event did not simply create new state entities; it also dismantled an era in which the religious and spiritual side of life was hidden and banned in public. For decades, religious life was suppressed in Croatia. It would not be an overstatement to say that, before 1990, there were two Europe: one in which religion could be practiced freely and another in which religion was suppressed and even banned from public life. Paradoxically, these two Europe still live two separate lives. In the former communist-bloc countries, hard times and the experience of *living in the catacombs* created a steady, tough, and sinewy religiosity, which was perceived, not just as a form of spiritual life and belief, but also as a way to resist the communist regime, which persecuted religion by every means possible. Religion became a symbol of the struggle and a way to retain freedom. The paradox is that areas where religious life flourished (e.g. Western Europe) experienced a serious decline in church attendance. Especially in the Protestant world, churches became more like museums than places of worship. During the past 50–70 years, two new Europe have emerged: one that has religious freedom but no active religious life and another in which the suppression of religion has had the opposite effect: religion is flourishing, at least in comparison to Western European countries.

Vanja-Ivan Savić (2021) The Legal Regulation of Religious Symbols in the Public Sphere in Croatia. In: Paweł Sobczyk (ed.) *Religious Symbols in the Public Sphere*, pp. 11–38. Budapest–Miskolc, Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing.

https://doi.org/10.54237/profnet.2021.psrs_1

Church attendance in many Central and Eastern European countries is still quite high. At the same time, in the West, many churches and monasteries are being turned into hotels, restaurants, and bars. In addition, Europe (especially the Western part) is entering a new era of ‘deeper secularisation’, in which religious worldviews are reserved for the private sphere. The antagonisms shaping the European continent are less between different religions than between believers and non-believers, as J. H. H. Weiler pointed out in the final oral argument in front of the Grand Chamber of the European Court of Human Rights in the *Lautsi v. Italy* case¹.

We live in a world of antagonisms. Secularity, a product of the Catholic Church, developed to shield the Church from the influence of feudal landlords and emperors, was basically an invention designed to protect the religious life, in its purest possible form, from an invasion by the profane world. However, that development of thought converted secularity into deep secularisation, transforming its principles into aggressive anti-religious views, in which only the absence of religion was considered acceptable or neutral, which it is not. Contemporary life produces more agnostics and atheists than religious people. While that fact must be noted and acknowledged, religious freedom—the freedom to believe, change beliefs, not believe, or become a believer again—lies at the core of human rights and the very essence of a human being: a spiritual creature. The term ‘secular state’ is often explained as the complete absence of religion in public spaces, as if being secular or an atheist were neutral positions, and that such positions were more relevant to the world we live in today. However, they are not neutral positions. As Weiler notes, it is not neutral to be a non-believer or agnostic; these too are worldviews. The present study focuses on religious symbols in the public sphere. The core of this discussion is the well-known case of *Lautsi v. Italy*, which will be examined as a landmark case on religious freedom and national identity, related to the personal and institutional dimensions of visible religion.

When discussing the presence of religious symbols in the public sphere, we must draw on methodology that incorporates two basic forms of analysis. The first reflects the *lege lata* concept, which covers historical, cultural, and ethical matters. The second relates to *lege ferenda*, analysing needs and principles that must be protected in the future. We must therefore approach the law as a reflection and summary of the beliefs and moral values of the majority of citizens, who, by the power of their original and genuine rights, transfer the capacity of making law to their national representatives. This is known as the democratic principle. Of course, in every decent democracy, the majority has to find a way to respect minority needs, creeds, and attitudes to the utmost extent, in order to preserve the core values of society. This is known as the human-rights principle. A just society, in my view, is one that tries to achieve the right balance between the two.²

1 See: <https://bit.ly/3EY2gRh>; J. H. H. Weiler’s final argument, delivered in front of the European Court of Human Rights in *Lautsi v. Italy*, is available at: <https://www.youtube.com/watch?v=ioyIyxM-gnM>.

2 See Savić, 2016c.

This paper is not simply about religious symbols in the public sphere, but also about the broader framework in which those symbols appear. It obviously includes the larger issue of religion in the public sphere and the constitutional framework and space awarded to religious organisations and the religious life. All of these issues must be examined within the context of Central European law and culture, since Croatia was part of the former Yugoslavia, a communist state with an anti-religious ideology. Religion experienced hard times in Croatia and public religious traditions were disrupted. At the same time, Europe and the whole Western world are facing an unprecedented period of secularisation currently, which is not just about the separation of church and state. This separation began as a Catholic political initiative to prevent feudal influences on the Church but grew into an aggressive effort to remove religious life from streets and squares, not just to make space for secular life, but also to promote the view that atheistic and agnostic views were more 'neutral' than religion and therefore more acceptable in public life.³ This approach has labelled hundreds and thousands of religious citizens as inferior people with more primitive and atavistic needs. As a consequence, whole communities are treated as unwanted, particularly when they have had to be silenced. Simultaneously, left-wing groups and parties have proclaimed themselves the sole keepers and rightful holders of the concept of human rights. This leads to a situation in which only left and liberal parties or doctrines are entitled to call themselves progressive or just. In Eastern Europe, the paradox is that most left-wing parties grew out of former socialist and communist regimes, which had no sympathy for the human rights they claim to defend so strongly today. In addition, these groups, who say that they accept differences, are not ready to accept different views and opinions; in fact, they have become more doctrinal than those whom they oppose. Fundamentally, their position is as follows: 'I will accept all differences as long as they do not differ from my own views'. As a humanist, I still believe that there is a middle path, where communication, argumentation, and listening are possible. As a realist, however, I am aware that this is hard to find. Too much of the time, the key word 'respect' is missing.

The obvious consequence of a half-century of socialist/communist rule is that the Continent was divided in the most unusual way. In countries that enjoyed freedom and freedom of religion as an integral (and important) feature of life, religion, with some exceptions, has lost its place in the public sphere, even though many people have become aware of religious roots and traditions that have shaped the normative world and system of values that all Europe lives by wholeheartedly. Freedom of choice, freedom to believe and change religion, freedom to not believe, the presumption of innocence, respect for the law of the land, taxes, and the sanctity of life are just a few values derived from religious norms, primarily those of Canon Law and Christian ethics. By contrast, Central and Eastern Europe, where religion was

³ See Savić, 2020.

suppressed, have preserved their Christian roots, both in spiritual terms and as a form of political resistance.⁴

Growing numbers of social scientists oppose the language of political correctness, which kills honest science and honest discourse. Of course there is a clear difference between hostile and evil language and hatred, which should never be tolerated (politeness and respect are needed on both sides), and honest scientific and thoughtful opinion, which does not have to please everyone. Science is not about being pleasant and non-critical; it is about being honest and truthful. However, the terms and substance of those critiques are used discredit religious arguments without being really dishonest, mean, or disrespectful.⁵ The combination of these two factors, secularisation and the disruption caused by the communist regime, makes it seem harder to defend the presence of religion. However, the opposite is actually true.

This research builds on these two premises to prove that religious symbols are accepted in public spaces in Croatia. Although the freedom to not believe falls within the Christian concept of freedom, non-believers do not offer a reciprocal freedom to believers, even though they represent the majority in Central and Eastern Europe.⁶

4 Savić, Abstract from the Conference 'Religion and The Legacy of The Soviet State, A Twenty-Five-Year Retrospective', BYU International Center for Law and Religion Studies and Free University of Georgia in Tbilisi: 'After the times of communism and socialist rule in the former Eastern Europe and after opening towards the rule of law and democracy, observers of the religious life faced the strong paradox of having two Europes—one in the 'West' which has been open and free for decades, but where religious life, although free to exercise, became less practiced; and one in the 'East', where religious life flourishes, although it has been penalized and suppressed. In the West, religion became less popular for two reasons: conformity and evident secularization. By contrast, in the East, religion was and still is perceived as being free, if only in a folkloristic (rather than spiritual) sense. All major religions in fragmented Eastern Europe retained specific roles in society because, during the communist regime, only religious practices provided a sense of freedom and belonging to the free world—even in the catacombs. In countries in which the religious life was strongly suppressed, people maintained a stronger sense of belonging to particular religious groups. Those repressive regimes appear to have kept religion alive and even stronger. As a consequence, Western Europe developed more freely, but drifted away from spirituality. Eastern Europe remained more traditional and spiritual. Despite differences, the Eastern European countries share one unique identity—a post-communist trend to become both religious and traditional'.

5 See 'University of Chicago Strikes Back Against Campus Political Correctness'. Available at: <https://nyti.ms/3o0Rwez>.

6 As was the case with the national constitutional referendum on marriage. Most citizens and almost all major religious groups supported the referendum and the definition of marriage as the union of one man and one woman. Obviously, this does not mean that same-sex partners should be separated or excluded from society. A secular state (in which religions and religious organizations can still contribute) should provide a mechanism that fits people's needs and desires without harming or influencing them or promoting immoral behaviour. The law on same-sex unions exists for this reason: it respects the freedom of choice (which is also God's gift in Natural Law Theory; conservatives should remember that), while preserving the moral order of the land (state). See Savić, 2016a: 'It seems that we are living in a world which tends to change its traditional concept of family and relationships between sexes. But that is not the case for everyone. It might look as if traditional concepts of family are losing the battle against post-modern concepts, which tend to dismantle nuclear concepts of family life. However, there are pockets of traditionalist revival: in those places, a more conservative approach seems to win, as being more modern and wanted. The Croatian referendum,

It is unfair for a minority group to suppress the majority by convincing them that they will only be 'progressive' and 'right' if they limit their religious activities to the private sphere of their houses and apartments. This is wrong, legally, politically, and morally. The majority should not have to feel like strangers in their own home. In the same way, minority groups must be respected and assisted. Everyone is in the minority somewhere, so these problems are global and universal. They cannot be resolved by telling the majority to stop behaving like a majority and exercising its rights.⁷

This paper makes the argument that, for cultural and historical reasons, religious symbols do belong in the public sphere in Central and Eastern Europe, including Croatia, for at least three valid conceptual reasons: a) Countries of the former Austro-Hungarian Empire (later the Kingdom of the Serbs, Croats and Slovenes) traditionally displayed religious symbols in public. b) Religious symbols are part of the national identity of Croatia, where most citizens identify as Catholic/Christian; this was particularly true after the dissolution of former Yugoslavia, when around 90% of Croatian citizens declared themselves Christian (Catholic, Orthodox, and Protestant). c) An analogy can be drawn between the Lautsi case and the modern Croatian reality; crucifixes and various Christian insignia are part of the nation's collective identity. There are also some additional arguments, as follows: d) religious symbols can be found in numerous seals and coats of arms, while religious terms can be found in the names of streets, villages, and towns; e) Religious freedom is one of the most important constitutional values in the republic. Most citizens who do not belong to the majority religion are regulated in accordance with the same principles; f) Religious belief cannot be and never is a prerequisite for public office; and g) Religious symbols as such do not offend people and often have symbolic value.

Bearing all this in mind, the present hypothesis is that the presence of religious symbols in the public sphere is a tradition in Croatia. This will be shown through relevant historical data and legal sources. Croatia, as a country with deep Christian

the most unusual socio-legal and political event in modern European legal history, shows exactly that: citizens of Croatia have changed their nation's fundamental document by inserting text that defines marriage as a union between a man and woman. The three monotheistic religions, Judaism, Christianity, and Islam, generally do not accept homosexual relationships and marriages, not just for moral reasons, but because they do not fit into the Creator's plans for preserving mankind through procreation. The major doctrinal issue is that such rules cannot be changed, regardless of what one wants. As those rules come from God himself, they are unchangeable. This article explains the reasons for claiming that only a man and a woman can marry by looking at Old Testament and Torah sources. Related texts in Leviticus 18 and Genesis 22 will be compared with the views of the American philosopher Brian Leiter and the Australian feminist Emily McAvan to prove that marriage has a religious and moral dimension, even in secular and post-secular societies. By connecting Abraham's faith and obedience to the procreation of all nations, we can see Isaac as a symbol of God's request for faith and loyalty. He becomes the archetypal image of all fathers and mothers who are stars and beams of dust in God's plan for humankind. This will become a cultural concept for the millions who will follow in the centuries to come. That concept will be a cornerstone of society, even in the secular or post-secular times that we are living in today'.

⁷ Savić, 2016a, pp. 725–726.

traditions, has sufficient legal space to accommodate religious symbols within the framework of public appearance, with one important feature—a respect for all who belong to different religions or no religion. This paper will show that Croatia can be a real leader in respecting religious freedoms, even worldwide.⁸

2. The historical, social, cultural, and political context of religious symbols in public spaces

There is a deep interconnection between Catholic faith and Croatian identity. To large extent, those two identities overlap. Of course, Croatia is influenced by modern trends linked to secularities and contemporary living. However, even those citizens who are not practicing Catholics describe themselves as such for cultural and social reasons. Catholic culture is part of everyday life in Croatia. For a long time, being Croatian automatically meant being Catholic; today more than 80% of the population identifies as Catholic and more than 90% as Christian. Croatia also has Islamic and Jewish populations, which are very well integrated. As noted, Croatia has developed a well-organised system of church and religious community channels, both with the state and between the religious communities and organisations themselves. Both horizontal and vertical cooperation are working well.⁹ There is a long tradition of religion in the public sphere, except during the former Yugoslav regime, which was communist and anti-religious. However, even then, religion managed to maintain a presence in public life through private celebrations that were so huge and popular they could not be avoided. The Christmas trees were called New Year's Trees and St. Nicholas presents were sold in the markets and streets of Croatian towns and villages. Village names from which the 'saints' had been erased returned to their original versions after 1990, when the first democratic government was formed. One typical example was the small town of Sveti Ivan Zelina (Saint John of Zelina), which was called Ivan Zelina, although everyone knew it was named for the parish saint John the Baptist. The Dalmatian village of Saint Phillip and Jacob also recovered its name after the dissolution of the former Yugoslavia.

It would be impossible to detail here the whole history of religion on Croatian soil, from the first Croatian settlements until today. However, Croatian history is intertwined with Christianity, specifically Catholicism. For this reason, Croatian identity has always been linked to Christian spirituality, tradition, folklore, and

⁸ Savić, 2021.

⁹ Savić, 2019, Conference presentation, 'The Croatian Model of Church-State Relations as a role model for the Region?' *Social Changes in the Global World*, Goce Delčev University, Štip, Sjeverna Makedonija. 'By signing agreements with more than a dozen religious groups, Croatia become a role model in this field; a country where religious communities work together horizontally and vertically in relation to the state as an important partner'.

symbolism. This article aims to show that religious symbols in public spaces have a long and established tradition. Although this was interrupted by the former Yugoslavia, religious belief paradoxically accelerated in the parallel reality of private life, rather than being eliminated.¹⁰

Christianity was present in Croatia from the 7th century onwards. Given its geographical position, Croatia was always on the crossroads of cultures, mixing Mediterranean, Slavic, and Austro-Hungarian influences. As the 'last' south Slavic Catholic nation west of the Danube, it shared its border with the Ottoman Empire. The western and eastern Roman Empire split along the Croatian border, which ran through the Balkan Peninsula along the Danube River. This geography shaped Croatia's history and its special bond with the Holy See over many centuries. For a long time, Croatia was known as '*antemurale christianitatis*'.

For the purposes of this research, it is important to review the history of Croatia, as part of the Austro-Hungarian monarchy, during the State of Serbs, Croats and Slovenes, Socialist (Communist) Yugoslavia, and modern day Croatia. During the Austro-Hungarian period, the Catholic Church had a status that modern political scientists would describe as a 'state church'. The most prominent figure responsible for regulating religious communities was Joseph II, who signed the Law on Tolerance in 1781, when Catholicism was proclaimed the official religion and other religions were accepted and tolerated.¹¹ As Staničić explains, in his overview of the legal status of religious communities in Croatian law, the Church was protected by criminal and civil codes and apostasy was punishable as a criminal offence.¹² When the Concordat with the Holy See was signed in 1855, Catholicism became the official Church of the country.¹³ In 1859, the Protestant and Catholic faiths were given equal rights.¹⁴ When the dual monarchy was proclaimed, Croatian lands were divided into Croatia and Slavonia. 'Croatia' became the province of Croatia, as it is today. While Croatia consisted of central Croatia, Slavonia became part of Hungary and Dalmatia became part of Austria.¹⁵ Since Croatia and Slavonia had religious autonomy, the Croatian parliament recognised the Catholic, Orthodox, and Evangelical churches and the Jewish and Islamic communities as officially registered and organised religions with legal status.¹⁶ Croatia thus became only the second country in Europe to recognise Islam as a registered and organised religion in Europe, just four years after Austria. It is important to emphasise that Croatia had a Catholic tradition and lived within the scope of Christian values, showing respect for other religions and world-views, especially during the rule of Croatian Vice-Roy Ivan Mažuranić. These values persist to this day and can be described as follows: a Christian (Catholic) tradition

10 Savić, 2018, pp. 239–240.

11 Savić, 2018, p. 241.

12 Staničić, 2014, p. 227.

13 Staničić, 2014.

14 Staničić, 2014, pp. 227–228.

15 Staničić, 2014.

16 Staničić, 2014, p. 229.

that welcomes everyone but requests respect for and accommodation of traditional Christian values in both the private and public spheres.¹⁷ From those times on, religious symbols like the crucifix and cross have always belonged in the Croatian public domain. At the same time, those symbols are signs of respect for others.

The second period, which is important for understanding religious life in the lands that make up the Republic of Croatia, began in the years after 1919 (the end of the Austro-Hungarian period). This period is characterised by a union in which Croats were unable to express their full political and cultural potential. However, Catholicism remained publicly present, as an aspect of the Croatian national character.¹⁸ The Serbian Orthodox Church had special status and a direct connection with the orthodox Serbian king. At the beginning of that period, King Alexander of Yugoslavia bestowed equality on all religions. The state religion was abolished and the State Ministry for Religions was established. As discussed, the Serbian (and Montenegrin) Orthodox churches had privileged status, which was especially visible in financial matters.¹⁹ During the reign of the same king, the practices of all recognised religions were regulated. The status of the Catholic Church, despite being technically agreed in the new Concordat, was never signed or ratified, due to pressure from the Serbian Orthodox Church.²⁰ Most Serbian researchers agree that the Serbian government wanted to sign agreements with the Holy See, but was prevented by the Serbian Orthodox Church. It was a huge failure on the part of the state, given that almost 40% of the total population belonged to the Catholic Church (both Roman and Byzantine).²¹

Even though the Concordat with the Catholic Church was not signed, the existing legal framework and political environment provided more than enough space for the continuous presence of religious symbols, after the dissolution of the Austro-Hungarian monarchy. As various sources and archives show, there was clear continuity in religious practice and the presence of religious symbols in public schools in Croatia and Croatian lands. This reflected the close links between Croatian culture and Christianity, particularly Catholicism. This continuity ended abruptly with the emergence of socialist Yugoslavia and its regime, which took a hostile view of all

17 Mažuranić and Savić, 2015, pp. 41–62.

18 See Savić, 2018, footnote 11 and p. 242; Staničić, 2014, footnote 13.

19 Savić, 2018, p. 242.

20 Savić, 2018, p. 243; Staničić, 2014, pp. 234–236.

21 Rastoder, 2012, pp. 939–965. Vjerske zajednice i Jugoslavija: 'Nezavisno od toga, ostaje činjenica da niti jedna Jugoslavija, nije uspjela definisati položaj Katoličke crkve potpisivanjem konkordata sa Vatikanom. Ta činjenica uvjerljivo govori da se model rješavanja ovoga pitanja nije uspio pronaći u državi koja je morala imati interes i uredene odnose sa drugom po veličini vjerskom zajednicom'. Available at: YU historija, https://yuhistorija.com/serbian/kultura_religija_txt00.html, isto tako Novaković, Dragan, Versko zakonodavstvo kraljevine Jugoslavije, Zbornik Pravnog fakulteta u Rijeci, No. 2, pp. 939–965, 2012: 'Budući da odgovarajući zakon nije donet o Katoličkoj crkvi i da se zbog brojnosti i uticaja katoličke zajednice neposredno posle formiranja nove države pristupilo donošenju Konkordata, potrebno je predstaviti proces njegovog donošenja i konkordatsku krizu, koja je na manifestan način pokazala teškoće, pa i nesposobnost, države da rešava važna pitanja', p. 955.

religion, but especially the Catholic faith. As previously noted, this faith was intertwined with Croatian culture and folklore, which were perceived as anti-Yugoslav and anti-state. An examination of photographs available in museums and online proves that the crucifix (or cross) was present in classrooms, alongside a painting or a photograph of the monarch.²² School certificates from this period show that religion was perceived as an aspect of national and personal identity. Religious education was clearly the most important subject, listed in first place on school certificates and diplomas. The actual subject, Science of the Faith (*'nauka o vjeri'*), first appeared on diplomas issued during the Austro-Hungarian period. A second subject, Singing (both profane and sacred) was also linked to religious activities.²³ Certificates issued during the later Yugoslav period (1923 and 1934) included a similar subject, Science on Faith with Moral Instructions (*'nauka o vjeri s moralnim podukama'*).²⁴

Generally speaking, religious symbols were present in the heraldry of both the Austro-Hungarian Empire and the Kingdom of the Serbs, Croats, and Slovenes (and subsequently the Kingdom of Yugoslavia). Religious clothing and symbols were used by military chaplains, a tradition that was restored after the dissolution of Yugoslavia. Military chaplains, including Roman Catholic, Greek Catholic, and Orthodox priests had a long history and tradition during the Austro-Hungarian Empire. After the annexation of Bosnia and Herzegovina, Islamic spiritual support was established in 1882 through military imams.²⁵ Between 1918 and 1941, the status of military chaplains was chaotic but real. Although the Military Chaplaincy (*Vojni vikarijat*) was abolished in 1932, it was planned for and partly reestablished in 1939.²⁶ During the Second World War, the 'Independent State of Croatia' (*Nezavisna Država Hrvatska*) again created a military chaplaincy. The archbishop of Zagreb was named *vicarius castrensis sine titulo* by the Holy See in 1942 and a special office for military priests and religious assistance was established in the special administrative unit in Zagreb.²⁷ The fact that the Blessed Aloysius Stepinac was a vicar during that period was one of the key accusations levelled against the beloved Croatian cardinal, who saved many Serbs, Jews and others. That did not matter to the communist regime of the former Yugoslavia. Cardinal Stepinac resisted the Nazi puppet regime of Ante Pavelić and put his own life in danger, especially by openly criticising the demolition of Zagreb Synagogue at the Zagreb Cathedral. As a prominent American religious historian has pointed out, no one in the European Catholic Clergy spoke so clearly against Nazi crimes as the Croatian Archbishop Aloysius (Alojzije) Stepinac

22 See the Croatian School Museum, Hrvatski školski muzej, <https://bit.ly/2W6rdYS> (Accessed: 25 March 2021). It is also possible to examine relevant photos at various websites.

23 Example: Svjedodžba polaznica—Bai Marija, pupil of IV. A form is available from the State School for Girls in the City of Karlovac: <https://bit.ly/3EJAMi9> (Sjećanja na 20. Stoljeće).

24 An example of a school certificate from Mandino selo in today's Bosnia and Herzegovina (inhabited by Croats): <https://bit.ly/3o4Wwif>. Osnovna škola J.J. Štrossmayera, <https://bit.ly/3CHu9Lo>.

25 Roščić, 2001, p. 455.

26 Roščić, 2001, pp. 459–462.

27 Savić, 2016b, p. 71.

and the Dutch Catholic Cardinal Johannes de Jong.²⁸ Cardinal Stepinac was beatified at the Croatian Marija Bistrica shrine in 1998 by Pope St. John Paul II. The truth is that Cardinal Stepinac and the Catholic Church managed to retain their presence in Croatian public life, preserving all areas and periods in which Croats lived in past centuries and the nation's religious and national identity. Cardinal Stepinac managed to resist the Pavelić administration, staying faithful to the Catholic Church and Holy See and to the spiritual needs of the Croatian people.²⁹

The final point is that religion was publicly present in all aspects of life, regardless of the regime controlling Croatia. Although many of these regimes were unaccommodating toward Catholicism at best and hostile at worst, religious symbols were present in all aspects of public life, including schools, the military, the legal system, and state heraldry, except after the end of the World War II, when the communist regime proclaimed that religion was the opium of the masses. It is a paradox that freedom brought new restrictions and inequalities via the somewhat aggressive secularist movements of contemporary Europe; however, these were erased in the early 1990s by democratic movements in Central and Eastern Europe. To clarify this point: religious symbols have traditionally been used in public spaces in countries such as Italy. They were removed between 1945 and 1990, causing an unnatural and artificial gap in history.

3. Axiological and constitutional foundations

It is impossible to discuss the axiological foundations of Croatian law without a deep and committed exploration of the nature and sources of Croatian law and legal culture, viewing the nation as a group of individuals who live in a particular space, in accordance with specific principles. In legal theory, the law can be perceived as a mirror or reflection of values that are shared by the majority. Most citizens in Croatia are Catholics and the nation has one of the highest church-attendance rates in Europe. However, even those who do not practice their religion identify as Catholics and Christians and follow the faith in a symbolic and folkloristic way.³⁰ It is a democratic principle to adopt the moral values of the majority; in accordance with Judeo-Christian values, this approach must be combined with the principle of human rights, which respects all members of the society and ensures that minority groups also feel at home. Members of minority groups must similarly respect the

28 See Phayer, 2010. The Jewish author Esther Gitman wrote excellent book on Aloysius Stepinac; see Gitman, Esther, *Kad hrabrost prevlada: Spašavanje i preživljavanje Židova u Nezavisnoj Državi Hrvatskoj 1941–1945.*, Kršćanska sadašnjost., Zagreb, 2019.

29 Savić, 2008, p. 243.

30 Savić, 2008, p. 237.

beliefs of the majority and respect the home (state) in which they live. The needs of different groups must balance. A study of secularism in Europe and the presence of God in the public sphere proposes five steps, which provide a good approach to achieving this balance:

1. *Acknowledging that religion is an important part of the cultural life of citizens (Awareness);*
2. *Acknowledging that religion has shaped the culture (Foundations);*
3. *Securing a minimum of the prevailing set of norms of the majority by law (Democratic Principle);*
4. *Giving the maximum possible rights to the majority by law (Human Rights Principle); and*
5. *Balancing minority and majority rights (Cohabitation)*³¹

It is important to return to the legal and cultural roots of the living nation. Undoubtedly, things change but even new solutions and the necessary changes that arise follow the logic of the law, which is always present to provide security. Transformations are only necessary if groups try to change society by force to implement their own worldview narratives. Each transformation must respect the nation's roots and take the needs of all people into account; the aim is not to change and conquer, but to make life better for everyone. Viewing human rights as a tool to protect minority groups only can lead to oxymoronic situations in which the majority feel like a minority and a new round of problems begins.³²

Historically speaking, religious symbols were always present in the public sphere. They appeared on the coats of arms of Croatian nobility; many towns and locations were named after saints, with religious characteristics and prefixes. Churches and chapels are an essential part of the Croatian landscape. Without them, Croatia would not be Croatia. Crosses and crucifixes hung on the walls of Croatian schools, courthouses, military barracks, and penitentiaries. Masses were held for the faithful in schools, military institutions, and religious life. Religion was always part of the

³¹ Savić, 2016c, p. 726.

³² 'Aggressive secularism has no meaning in a territory that is deeply rooted in history and shaped by those traditions, which constitute the system itself. The recent judgments of the ECtHR and the socio-legal infrastructure of Europe and its nations are based on balancing two standards: democracy (the majority principle) and human-rights protection (the minority principle). These must be balanced, bearing in mind the following tenets:

1. Europe is not secular in its essence. When this seems to be the case, it is due to political decisions that do not reflect the democratic needs of citizens (the majority principle).
2. Europe, like every other political and legal space, is shaped by its own legal culture and history. The legal culture underpins public morality.
3. Before allowing the majority or minority to determine any position and before investigating the prevailing moral and legal rules, states should recognize religion as an exclusive phenomenon: for many people, it determines what life really should be and touches upon questions of ultimate reality that a vast number of people need.

Croatian national essence. From Corpus Christi processions to Croatian stamps with religious motifs, religion continues to be an integral part of Croatian everyday life.

4. Model of relations between the State and the Church

In his most famous book, Norman Doe, a leading expert on law and religion in Europe, proposed three models for regulating church-state relations. This framework is widely accepted.³³ The three models are: a) state church, b) separation, and c) cooperation.³⁴ Although these general categories are well established, alterations are possible. For example, it is a serious question whether the complete separation of church and state is really possible, at least in the European context. The standard model of a secular state is the French Republic with its principle of *laïcité*, which declares that religion is a private affair, reserved for private life—and that it should end at one's own doorstep. However, this is not the case, even in France. If people, inhabitants, or citizens are the most important aspect of the state and its existence, then their values cannot be ignored. Religious norms and morals are part of human creeds; as an integral aspect of values, they are embedded into individual notions of integrity. For this reason, if most people (or even just a few) live in accordance with specific values and consequently vote for a particular *inter alia* system of norms

4. Contemporary Europe is founded on the idea of human rights (the minority principle) and dedicated to the promotion of and respect for differences. At the same time, real legal frameworks are needed to ensure that the majority does not feel as if it lives in its 'own foreign country'.

5. It is necessary to balance the rights of the minority and majority; although this is difficult, this is an essential task for lawyers and politicians alike.

6. Making secularism the state religion imposes the rules of that 'religion' on all members of society. People are placed in a passive position by the state, which overrules all who cherish different cultures. That approach can lead to requests that oppose the legal or public order or public morals.

7. Understanding the traditions and foundations upon which a particular community is founded (e.g., Judeo-Christian, Islamic, Hindu) can produce real solutions, alongside requests to protect the public order as well as human rights. Solutions arise when the minimum requirements of mutual understanding are met and tolerance becomes acceptance.

These principles seek to protect both human rights and religious freedoms, although the latter contain the pure essence of human rights. Denying formative elements that contribute to the system of human rights can lead to serious and even tectonic disruptions of the legal system, which is built upon those elements. Amalgamating human rights with the public order and public morals can lead to a solution that protects higher values alongside necessary values. Necessary values are interconnected with the legal system; without them, the legal system would lose a distinctive aspect of its existence. If religion has a distinctive place in society, or, at a minimum, if religious beliefs have influenced the legal system in which it is rooted, all subjects should respect it and find a way to manoeuvre within it, even when they sometimes feel distant and as if it is not their own.' (Savić, 2016c, footnote 3, pp. 721–723).

³³ Doe, 2011, pp. 30–39.

³⁴ Doe, 2011.

(which are often just formalised values), then religion becomes important. One does not have to be religious to understand the social importance and the impact of religion on society.

According to Lasia Bloss, the French republic is not completely consistent about the secular principle that it proclaims.³⁵ As the 1958 French Constitution clearly states, 'France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs'.³⁶

The key problem lies in the interpretation of the word 'secular'. Many years of research have convinced me that the secular state does not really exist, at least not in the sense that most people imagine. Even France is not secular in the way that the word 'laïcité' is generally translated, as a complete absence of religion in the public sphere. In its territorial applications, secularism is not applied equally: departments in Alsace and Moselle, as well as overseas French territories, have special relationships with the Catholic Church. For example, local authorities participate in electing local church officials, who are paid by the state.³⁷ There are specific tax provisions for religious entities on the one hand; on the other, organisations like the Jehovah's Witnesses, which do not meet the requirements for religious association, are taxed up to 60% on all funds they receive.³⁸ The point is that French Secularism and attitudes toward it, even without specific exceptions,³⁹ is steeped in Judeo-Christian legal thought and socio-legal and cultural traditions. The word secularism derives from secularity, a concept 'invented' by the Catholic Church to protect the church from interference from profane and political sources and the king's (feudal) business.⁴⁰ The modern, aggressive form of secularism is connected to the historical fight with the Catholic Church, through the French Revolution⁴¹ and beyond. Paradoxically, however, France remains a Catholic country with more Christian bonds than one might imagine. This was clear after *SAS v France*,⁴² which was held in front of the

35 See Bloss, 2003.

36 1958 Constitution of the French Republic, pmbl. art. 1; see *ibid.*, 21.

37 Savić, 2016c, p. 702; also Bloss, 2003, p. 24.

38 Bloss, p. 23.

39 Bloss, 'As the history of these French territories developed differently, the current legal situation in this region differs significantly from the rest of France. The local law still in force dates back to the law Germinal year X (8 April 1802), which merged with a concordat signed on 15 July 1801 and organic articles of the Catholic and Protestant religions. The Israelite religion was established a couple of years later via a decree from 17 March 1808. Thus, four congregations were officially recognized by the state: the Catholic Church, the Lutheran Church (Confession d'Augsbourg, d'Alsace et de Lorraine), the Reformed Church Alsace-Lorraine, and the Israelite religion. Historically, the law of the recognized denominations was characterized by the principle of non-separation, which now exists only in theory. In fact, the public authorities intervene *inter alia* in the creation and modification of dioceses, parishes, and consistories, as well as in the nomination procedures of most of the ministers paid by the state.'

40 Savić, 2020, acc. to Jos Casanova, 2009.

41 Savić, 2016c, p. 701.

42 *SAS v France*, App. No. 43835/11, 2014 Eur. Ct. H.R.

European Court of Human Rights, in which the Court approved the French argument that wearing a veil (an Islamic headscarf) did not violate the European Convention on Human Rights and granted a wide Margin of Appreciation right to France.⁴³

[T]he Council of Europe prefers States to have a secular posture, with neutrality and separation between State and religion, but at the same time promoting dialogue with religion. However, the European Union formally respects the national church-state postures of its Member States.⁴⁴

It is more than obvious that the French Republic had no objection to Christian crosses or Jewish kippahs, but only decided that religious clothing was a 'problem' when the number of Muslims in the public sphere increased.⁴⁵ Although this stance could be described as hypocritical, it reveals the cultural fibre and identity of the French nation, which disappears under the surface, erupting only when Notre Dame de Paris, a national symbol, is in flames. In this case, the church is a symbol of the nation.⁴⁶

It is important to understand that the initial aim of secularism was to protect the church and religious life from interference from political sources that wanted to shape it to suit their own needs. In the 11th century, long before the European Convention of Human Rights, the Gregorian Reforms set out to protect religious freedom and independence of religion. As discussed in my previous research on secularism in Europe and Croatia, the historical line begins with 'the secular moment' of Pope Gregory VII and develops in various directions—from the church-state model, through the concept of cooperation, to the final complete detachment of religious and spiritual life from the public sphere (at least in theory; this is not really possible when the national sense of cultural and moral (ethical) belonging is hazy and approximate.)

It begins with the historical moment of separation between the Pope and feudal lords, and then moves towards a more secular and secularised society where, even in the countries where there is an established state-church, the church role is more symbolic; then to the cooperation model, and further all the way to complete separation, as in the French model. There are also tendencies of aggressive secularization to move the line even further to a point where there is a danger of entirely eschewing the concept of recognition and of leading to intolerance of religion and everything

43 Savić, 2016c, p. 701.

44 DOE, see note 34, at 29, 29-30 nn. 168-172 (citations omitted).

45 'France's actions are, to some extent, inconsistent. Even though France is a secular state, it is still historically bound to its Judeo-Christian traditions. French society did not have a problem with the display of crosses and kippahs (yarmulkes), which reflect the nation's Judeo-Christian roots. However, it did have a problem with the expressions of Muslim worshippers. As a result, France decided that displaying religious symbols in French public schools would undermine the secular foundations of the French state. Manifestations of religion matter; they are a key reason why France decided to ban *burqas* and *hijabs*, a decision upheld by the European Court under its margin of appreciation principle.' See Savić, 2016c, p. 703.

46 See Savić, 2016c, p. 702.

that is labelled religious. The church and religion in that scenario would be ‘outlawed’ by the same method of constitutional shaping as in previous historical periods.⁴⁷

The state-church model exists in some jurisdictions, such as Denmark and the United Kingdom, where royal families are involved in religious life at the church-administration level and the head of state is also the head of the church. In such countries, the national church has a constitutional position, which makes its place unique and somewhat different from those of other religions and religious groups. In Denmark, the constitution states that ‘The Evangelical Lutheran Church shall be the Folk Church of Denmark, and as such shall be supported by the State’.⁴⁸

The third group of countries, which follows the cooperation model, includes Poland, Italy, Spain, Portugal, Cyprus, Germany and Croatia, to name just a few. This group is by far the largest. Although these states have various ways of cooperating with religious groups, there are two main, overlapping subgroups: a) countries like Italy and Croatia, which have established relationships with a particular church (most commonly the Catholic Church, which is represented by the Holy See, an international entity); and b) countries like Poland, Lithuania, and Croatia again, which separate church from state but cite the cooperation model in their constitutions.⁴⁹ The next chapter will focus on the Croatian solution.

5. Constitutional guarantees of freedom of conscience and religion

As discussed in the previous section, Croatia’s model of state-church cooperation connects it to the largest and most present and influential religious community and organisation in Europe: the Catholic Church. The special position of the Catholic Church in Croatia derives from contracts signed between the Holy See and the Republic of Croatia. Those contracts (agreements and treaties, which were previously called ‘concordats’) are less binding than the constitution but more influential than laws, placing the Catholic Church in a special position. However, the treaties agreed between the Holy See and the Republic of Croatia have opened the way for all major religious groups to have equivalent or similar contracts signed and performed. The Catholic Church thus became a leader in shaping the public sphere to accommodate the religious activities and beliefs of all citizens. The religious lives of ‘others’ were protected and developed under the auspices of the Catholic Church, which thus became a forerunner in securing religious rights for all citizens, not just Catholics or

47 See Savić, 2020, p. 275, explanation of Figure (2).

48 Constitution of the Kingdom of Denmark, art. 4; also see Doe, 2011, p. 30.

49 See Doe, 2011, pp. 35–39.

Christians. The Croatian constitution guarantees freedom of religion. Perhaps even more significantly, it offers a model of cooperation between church and state that benefits both sides.

It is important to emphasise that religious freedom can be observed through two lenses: a) individual freedom, and b) collective or organisational freedom. Individual freedom includes the right to believe, express religious views, and proselytise. Individual freedom is not complete unless organisational freedom also exists, since religion, by definition, belongs to specific groups with structured canons of beliefs and values, allowing followers to recognise themselves and others. The Croatian constitution protects individual religious freedoms in several sections of the text.

All persons in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other status⁵⁰;

Freedom of thought and expression shall be guaranteed. Freedom of expression shall particularly encompass freedom of the press and other media, freedom of speech and public opinion, and free establishment of all institutions of public communication. Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information. The right of access to information held by any public authority shall be guaranteed. Restrictions on the right of access to information must be proportionate to the nature of the need for such restriction in each individual case and necessary in a free and democratic society, as stipulated by law⁵¹;

Freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed.⁵²

Church-state relations in Croatia are primarily governed by the constitution and Article 41, which guarantees equality to all religions in the country. Although it declares that the character of the state is secular, the wording shows that the Croatian state accepts the cooperative model of church-state relations. This formula places Croatia within the group of countries that have developed 'separation-with-cooperation',⁵³ which can also be found in Poland, for example. According to Miloš in the Rijeka Faculty of Law, the Croatian secular state is guaranteed by three major components: the equality of all religious organisations (communities); the separation of church and state; and state assistance and protection.⁵⁴

All religious communities shall be equal before the law and separate from the state. Religious communities shall be free, in compliance with the law, to publicly conduct

50 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), 22 December 1990, art. 41. Available at: <https://bit.ly/3ufCCST>.

51 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 37.

52 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 40.

53 See Doe, 2011.

54 Miloš, 2014, pp. 651–677.

religious services, open schools, colleges or other institutions, and welfare and charitable organizations and to manage them, and they shall enjoy the protection and assistance of the state in their activities.⁵⁵

6. Guarantees in other sources of universally binding law

Although the constitution is the most important guarantor of specific religious rights, it is hard to imagine any country in which other sub-constitutional sources do not exist. Croatia is no exception in that respect. As previously discussed, the Croatian legislature decided to accept the cooperation model. Although it is not explicitly stated in the constitution, the text does not forbid it and also leaves space for mutual assistance and support. Yes, that is correct—the support is genuinely mutual, as every country counts on religious groups and services. States rely on the extensive services provided by religious organisations and groups. This has been particularly true during the Covid-19 pandemic, when people of faith have provided consolation, psychological support, and humanitarian aid. Medical services tend to be supported by Catholic nuns and friars, who also distribute food and care for elderly and homeless people.⁵⁶

Various constitutional documents show that the cooperation model has been followed and developed. The key document that covers this is the Law on Religious Communities,⁵⁷ alongside international treaties signed between the Republic of Croatia and the Holy See. Similar contracts were subsequently signed between the republic and various religious communities. Together, they form the framework of religious activity in Croatia. The most important documents are obviously the four treaties with the Holy See: a) the agreement on legal issues, signed on 18 December 1996⁵⁸; b) the agreement on cooperation in the fields of education and culture, signed on 18 December 1996⁵⁹; c) the agreement on religious assistance in military

55 Constitution of the Republic of Croatia, art. 14.

56 Torfs calls this behaviour ‘positive neutrality’; see Robbers, 2005, p. 26; Savić, 2018, p. 247.

57 *Zakon o pravnom položaju vjerskih zajednica* (Law on Religious Communities), Narodne Novine (NN), National Gazette of the Republic of Croatia, No. 83/2002, 73/2013. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2002_07_83_1359.html; see also Savić, 2020, pp. 276–277; Staničić, 2014, pp. 244–246; Savić, 2018, p. 244.

58 *Ugovor o pravnim pitanjima od 18. 12. 1996.* This agreement was the basis for registering legal entities of the Catholic Church into the register in the Ministry of Administration. Available at: <https://hbk.hr/ugovor-o-pravnim-pitanjima/>.

59 *Ugovor između Svete Stolice i Republike Hrvatske o suradnji na području odgoja i kulture od 18.12. 1996.* This agreement was the basis for another agreement on religious education, signed on 29 January 1999 between the state and the Catholic Church in Croatia. Available at: <https://hbk.hr/ugovor-o-suradnji-na-podrucju-odgoja-i-kulture/>.

and police units, signed on 18 December 1996⁶⁰ and d) the agreement on economic issues, signed on 9 October 1998.⁶¹

The following agreements also influence the presence of religious symbols in the public sphere: the 2002 contract between the Catholic Bishops' Conference and Croatian Radio Television on mutual relationships; the 2002 agreement on religious assistance in prisons and detention and rehabilitation centres; and two agreements signed in 2005, the first on religious assistance in hospitals and social-care institutions and the second on the return of church books and registers stolen after 1945.⁶²

Croatia has developed relationships with numerous religious organisations, formalising most in accordance with the treaties signed with the Catholic Church. As discussed, the Catholic Church was the forerunner in Croatia, where most citizens identify as religious (Catholic and Christian) and there is demand for the institutional presence of religious institutions in the public sphere. Members of the public do not want religious symbols alone; they value the work that religious organisations perform in society. From a humanitarian and social perspective, this view makes sense. According to Staničić, five categories of organisations have signed agreements with the Croatian state:

1. the Catholic Church whose position is regulated by international treaties and which has a special, *sui generis*, status within the Croatian legal system, and which the LLSRC (Law on Legal Status of Religious Communities) does not apply; 2. RC that have signed special agreements with the state; 3. Registered RCs; 4. unregistered RCs that have the form of religious associations, the *in statu nascendi* religious communities; and 5. unregistered RCs that do not even have the form of religious associations.⁶³

The fact that all major religious communities have signed agreements with the state means that the vast majority of citizens (believers) are 'covered' by those contracts.⁶⁴ In practical terms, this means that members of various religious communities can practice their religions *inter alia* in the public sphere. For instance, most religious (Catholic) holidays are also state holidays. Orthodox Christians (mainly Serbs) have the right to abstain from work at Christmas and Easter, Muslims at Ramadan and Eid al-Adha, Jews at Rosh Hashanah and Yom Kippur, and Adventists on Saturday.⁶⁵ According to the Islamic Community of Croatia, the Croatian regulation of religious freedoms and religious life and the integration of Muslims

60 *Ugovor o dušobrižništvu katoličkih vjernika pripadnika oružanih snaga i redarstvenih službi Republike Hrvatske od 18. 12. 1998*. Available at: <https://bit.ly/3u7OoyA>.

61 See Lončarević, 2018; Bajs and Savić, 1998, pp. 79–95.

62 Lončarević, 2018, p. 4.; also Savić, 2018, p. 249.

63 Staničić, 2014, p. 244.

64 See Savić, 2018., p. 250.

65 Savić, 2020, p. 278.

constitute a leading example internationally.⁶⁶ All in all, religion is broadly present in the lives of contemporary Croatian citizens. Although Croatia is a relatively small European Country, it occupies the crossroads of multiple faiths and cultures, setting a great example for how to accommodate the religious rights of various groups. Unusually, the Roman Catholic Church was the initial negotiator, securing rights and everyday support for all. Although Croatia is somewhat unique in this respect, it is no less vulnerable to criticism from the leftist spectrum and especially those who see agnosticism and atheism as more neutral and ‘friendly’ to all citizens. Perhaps paradoxically, prominent members of groups that claim to own and protect human rights continue to launch aggressive attacks on the church, forgetting that the right to believe is also key human right. All people have the right to believe and to live in a country where faiths are respected and treated with dignity.

7. Limits of religious expression through religious symbols

This chapter examines the current legal and political situation surrounding the presence of religious symbols in the public sphere. This topic may be examined through two important channels: relevant legal sources and public sources, which may not be binding in a legal or even moral way. The latter include written and oral statements made by public officers and commentaries published by journalists in written papers and online media. They also include public debates and initiatives.

Generally speaking, the presence of religious symbols is not regulated by any specific law, legal precedent, or quasi-juridical document. The present article has therefore moved from historical and axiological issues to constitutional issues and current debates. Despite the lack of relevant sources on religious symbols, this paper investigates the topic through the lens of legal theory, using existing juridical and quasi-juridical sources. The Republic of Croatia is a member state of the Council of Europe⁶⁷; as such, it follows and accepts the European Convention on Human Rights⁶⁸ which must be observed not only via its original text and direct applications, but also through its relevance to casuistic production: case law.⁶⁹ In this area, case law from the European Court of Human Rights offers the only applicable precedent, specifically, the *Lautsi v. Italy* case. A historical and teleological interpretation of this case can be applied to all similar situations, meaning not only that public classrooms ‘will be able’ to ‘contain’ crosses, but also that this ruling will apply to other public

66 Ombudsman’s Office (Croatia). Available at: <https://bit.ly/3zOhAw1>.

67 Croatia became a full member of the Council of Europe on 6 November 1996. See: Ministry of Foreign Affairs of the Republic of Croatia. Available at: <https://bit.ly/3AGPkMR>.

68 European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/convention_eng.pdf.

69 Rodin, 1999, pp. 93–108.

places (*mutatis mutandis*), which can make the case for displaying religious objects. Such places include schools, hospitals, penitentiaries, courtrooms, and military and police premises, but not necessarily post offices, state companies, gas stations, or state-owned companies.

Why this is so? It is entirely clear that modern Croatian legal history is intertwined with Christian iconography, heraldry, and the presence of religious symbols in public. Such symbols have been displayed in Croatian schools, courtrooms, and military premises through the entirety of the modern Croatian state's stages of development. Croatia is located on the border between various cultures and religions. The historical border between the Eastern and Western halves of the Roman Empire left its legacy on subsequent centuries. Croatia held the border against the Ottoman invasion; it was the last Roman Catholic country before the Balkans adopted Orthodoxy as a major religion. As discussed, Croatia was, for centuries, a real '*ante-murale christianitatis*'. It belongs to both Mitteleuropa and the Mediterranean regions, sharing its historical, cultural, and socio-religious identity with Italy, Austria, and Hungary. From a legal perspective, the only real argument is that Croatian legal tradition always included religious symbols in the public sphere. They were part of the juridical process and an important way of understanding justice.⁷⁰ This long-standing tradition was interrupted only once by the Yugoslav communist regime.

Similar situations in comparable states reveal the problem of discontinuity, a Croatian reality for 45 years, which other countries in the same legal and cultural circle did not experience. In all of the spaces and premises mentioned above, the cross (crucifix) was hung on the wall as a symbol of mercy, justice, and spiritual strength for those who sought strength or were vulnerable. Christ's cross is clearly a universal symbol of suffering, but also of strength and final victory. In a nation with a tradition of public religious symbolism, in which 90% of the population identifies as Christian (mainly Catholic), there cannot be any good reason to ban the display of the cross in contemporary classrooms, particularly given the *Lautsi v. Italy* case and the decision of the Grand Chamber of the European Court of Human Rights.

The second demonstrable reality is the fact that Croatia has regulated the presence of religious manifestations in public through various services and/or activities that necessarily include religious symbols. An example is the work of military chaplains and medical personnel (mostly nuns) within the health system. However, religious symbols are most powerfully displayed through the media, especially national radio and television stations. Specialist TV shows regular cover religious life and the activities of religious groups and organisations, while many radio shows present religious content. Prominent TV and radio shows include '*Susret u dijalogu*' (Meeting in

70 See Savić, 2015, pp. 3 and 341–347 on the US Supreme Court and the importance of symbols in the public sphere: 'Out of all architectural beauties in the United States Supreme Court, those friezes on the South and North Walls are the most striking and powerful. Those sculptures of culture are the most important part of the court because culture shows where the roots of the system are and where branches of laws are heading to. Being religious or not, we have to acknowledge that Jesus has its place there although we do not see him on the walls'.

the Dialogue), *‘Riječ i život’* (Word and Life), *‘Duhovna misao’* (Spiritual Thoughts), *‘Religijski forum’* (Religious Forum), and *‘Mir i dobro’* (Peace and Good). The latter focuses exclusively on the Catholic Church. Croatian Television regularly broadcasts the Holy (Catholic) Mass live on Sundays. During the Covid-19 crisis, Catholic masses were broadcast every evening. In all of these ways, religious symbols are visually and acoustically present in public spaces.

The third element involves a ‘popular vote’ on the presence of religious symbols in particular public institutions, namely schools, where school principals have the power to hang crosses on the wall. Although this has been the case in many schools, it has generated some problems and criticism. There was a well known case in a gymnasium in Zagreb where the school principal, who was later appointed as a Minister of Education of the HDZ (Croatian Democratic Union, centre-right party; today the EPP group in the EU parliament) justified her actions as follows: ‘putting the cross on the wall is not forbidden; nor there is any recommendation—this means that what is not forbidden it is allowed. Also, this school was attended by the two sons of the Croatian Mufti, and they didn’t have any complaints—if it didn’t hurt them, there isn’t any reason for others to feel hurt’.⁷¹ The former Minister of Administration Lovro Kušćević, also from the HDZ party, defended the use of crucifixes in public spaces by saying that he hung them in his own office. Although he acknowledged that such a display might be inappropriate for some people in some situations, he argued that a crucifix did not have ability to hurt anyone.⁷²

At the same time, left-wing politicians and public workers are advocating against the display of religious symbols in the public sphere. This may become a new ideological battlefield for people of different and/or opposing worldviews. For that reason, former Croatian Ombudsman Lora Vidović has said that, in her opinion, the use of religious symbols should be restricted.⁷³ The major problem with non-regulation is that religious symbols associated with Christianity will appear in particular public spaces, simply due to an arbitrary decision made by the head of an institution; this is not an adequate justification. Of course, plenty of private schools in Croatia are part of the public school system and follow the state curriculum. These include Orthodox, Jewish, Muslim, and non-denominational schools, which are all entitled to use religious or private symbols. Only schools

71 Vokić, 2007: ‘Budući da nema ni zabrane ni preporuke, tko je htio staviti raspelo, mogao je to učiniti—kaže ravnateljica Vokić, dodajući kako nikada nije dobila pritužbu da je ikoga u njezinoj školi zasmetalo raspelo na zidu. Budući da su našu školu pohađala i dvojica sinova muftije Ševka Omerbašića, kada njemu ono nije smetalo, nema razloga da ikome smeta’.(Croatian, translated by the author). Available at: <https://www.jutarnji.hr/naslovnica/je-li-kriz-u-hrvatskim-skolama-zabranjen-3851772>.

72 Minister Lovro Kušćević: I have a crucifix in my office (U uredu imam raspelo—translated by the author). Available at: <https://bit.ly/3u8o878>.

73 Ombudsman Lora Vidović: Restrict Religious Symbols in the Public Institutions in Croatia (Pučka pravobraniteljica Lora Vidović: Ograničiti vjerske simbole u javnim ustanovama u Hrvatskoj—translated by the author). Available at: <https://bit.ly/3ua2u2k> and <https://bit.ly/2XMBLBS>.

that use the state seal of the Republic of Croatia are legally obliged to restrict the use of religious symbols.

Table 1. Religious symbols in the public sphere, categorised by activity and legal source

TV and Radio Broadcast	Regulated	Contract between Croatian Radio Television and the Croatian Bishops Conference, based on the International Treaty with the Holy See
Military Chaplaincies	Regulated	International Treaty/Holy See
Police Chaplaincies	Regulated	International Treaty/Holy See
Public Schools	Non-regulated, but...	International Treaty/Holy See: religious education is regulated, but religious symbols are not.
Hospitals	Non-regulated, but...	Religious medical personnel can work in public hospitals. Some hospitals have chaplains. A major hospital in Zagreb restored its original name: 'University Hospital Sisters of Charity'.
Other Public Spaces	Non-regulated	N/a

8. The system of legal protection

There is little jurisprudence related to the presence of religious symbols in public spaces. As previously discussed, the display of religious items on public walls, entrances, or shelves has never been banned. In fact, their presence has a high level of presumed allowance. For historical, axiological, and constitutional reasons, organisations that carry out public duties in the military, police, health services, and education sector are entitled to use them. Based on the sources available at the time of writing, only minor complaints have ever been filed against the use of religious symbols in public schools. None of these have required court intervention.

The only case which is indirectly connected with the use of religious symbols in public spaces is *Savez Crkava Riječ Života and Others v. Croatia*,⁷⁴ which was filed with the European Court of Human Rights. This case cited agreements with the Republic

⁷⁴ European Court of Human Rights Appl. No. 7798/08. See: <https://bit.ly/3i2i7nZ>.

of Croatia made by other religious communities. The State explained that the religious groups in question didn't have more than six thousand adherents or belong to a 'traditional' religious community. The ECHR found that a similar agreement had been made with the Bulgarian Orthodox Church in Croatia, which also lacked more than six thousand members and did not belong to a 'traditional' religious community. The Court found that the action of the state violated Articles 9 and 14 of the Convention.⁷⁵ The issue was that, unlike other communities/organisations, the applicants could not provide religious education in public schools and nurseries or obtain recognition for religious marriage through an official document that the local authorities would accept.⁷⁶

9. Summary

Croatia, a country on the crossroads, belongs to the Central European and Mediterranean cultural and socio-legal circle, which is steeped in Judeo-Christian traditions. For centuries, the lives of its citizens have been infused with religiosity. In present-day Croatia, 90% of citizens identify as Catholic or Christian.⁷⁷ Religious symbols are a fundamental way of manifesting faith and adherence to specific religious groups. Such religious symbols have both internal and external characteristics. The internal aspect of a religious object is its ability to connect members of the same group through mutual recognition and religious practices. The external aspect is the message that a particular place has, maintains, and retains specific value. This is the most important part of the message that religious symbols address to spectators. A third aspect of the message, connected with the identity of the nation, signals

⁷⁵ See: <https://bit.ly/3i0ZMaA>.

⁷⁶ 'In responding to the merits of a claimed violation of Article 14, in conjunction with Article 9, the Court noted that, given that the difference in treatment between the applicants and other religious communities was not in dispute, the court only needed to consider whether such a difference had an objective and reasonable justification, whether it pursued a legitimate aim, and whether it was proportionate to the aim pursued. Referring to the decision in *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), the Court reiterated that there were delicate questions to consider when a religious community with a legal personality was required to satisfy criteria in order to obtain special privileges: '[a]s the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs'. As the Government of Croatia was unable to fully explain why some religious communities satisfied the criteria for belonging to 'the European cultural circle', while others, including the applicants, did not, the Court found that such distinctions were without 'objective and reasonable justification'; as such, a violation of Article 14 (taken in conjunction with Article 9) was found'. Source: Equal Rights Trust (summary of the case in articles of the convention and protocols). Available at: <https://bit.ly/3kJ6y6Z>.

⁷⁷ Državni zavod za statistiku Republike Hrvatske (State Bureau for Statistics of the Republic of Croatia). Available at: <https://bit.ly/3uqByg>.

that the country in question belongs to a specific historical and cultural circle. This aspect can be cultural, rather than religious; it is equally important.

In Croatia, religious symbols of Christianity and Catholicism are part of a long-standing tradition, abruptly broken by war and the acts of the Yugoslav socialist regime, which was anti-religious and anti-Catholic. After the dissolution of the former Yugoslavia, conditions were right to resume the use of religious symbols in the public sphere. This has been particularly true in places where it is clearly beneficial to show that the Croatian state and its citizens are connected to specific values (e.g., Christianity), while at the same time keeping the country secular by separating church and state (religion and the state). A country can be secular without banning all religiosity from public spaces. Secularism means that religious groups do not have the right to interfere in politics except through legitimate public pressure, like other members of a democratic society. Religious affiliation cannot be a prerequisite for public office; no one can be forced to participate in a religious ceremony or penalised for not doing so.⁷⁸ Conversely, the government may not attempt to govern religious groups, as long as they follow the constitutional and legal order of the country.

Even non-religious people feel a connection to the culture they were raised in. Although religion is primarily spiritual, it has important cultural and cohesive elements, which are linked to the nation's origins and history. For example, many people who celebrate Easter are not believers; they simply enjoy being part of a tradition that they also belong to—in this case the culture of Christianity. European landscapes are filled with churches and chapels; those towers with crosses are related to national identity—at least in a historical sense. The flags of Finland, Denmark, Iceland, Sweden, Norway, the United Kingdom, and Greece all bear crosses, even though many of their citizens are non-believers or agnostics. Certainly, no one is suggesting that those flags should be changed because many citizens of those countries are not Christian. Who can imagine *St. Paul de Vence* in France or *Sveti Filip i Jakov* in Croatia without the prefixes of sainthood. In fact, no reasonable human should ever think about erasing words simply because they are etymologically religious.

In its judgement in the *Lautsi* case, The European Court of Human Rights basically said that the crucifix was a passive symbol that couldn't harm anyone.⁷⁹ Although I agree with this judgment, I disagree that the cross is merely a passive symbol. It is also an active symbol, which represents the values associated with it. These values are an important, if not essential, characteristic of the nation, revealing how it tends to behave in the world.

⁷⁸ See J. Weiler's final argument in front of the Court in Strasbourg in *Lautsi v. Italy* (footnote 2). Unfortunately, although Weiler was a leading scholar, an expert in law and religion, a distinguished professor of NYU, and a valuable member of the International Legal Community, in my view, he engaged in unnecessary criticism of the politics of some Central European countries, without explaining his final arguments, which appeared to express dislike (Weiler, 2020, p. 99). I would like to thank to my dear colleague Fr. Franciszek Longchamps de Berier for pointing out this article.

⁷⁹ Ibid.; Zucca, 2013, pp. 218–229.

In Croatia, religious symbols are and have always been present in various aspects of public life. Religion has never been reserved for the space before the doorstep. For this reason, religious symbols are present in public schools, medical facilities, and hospitals, as well as in military sites, police stations, and the media. To ensure an equal approach and avoid potential conflicts and complaints, it would be advisable to amend the current law on the legal status of religious communities⁸⁰ by adding a few normative lines of text to clarify which public premises (e.g. schools) should have crosses, where they should be placed, and how large they should be. Alternatively, parents and staff could be authorised to decide whether they want religious symbols on the wall or in other designated places. The simple majority principle should suffice here. As things stand, the law on religious symbols has evolved into a rather soft law, which does not cause much trouble. However, there will be many future challenges to Croatian legal culture, which is based on Judeo-Christianity, not due to the presence or absence of religious symbols, but rather to the constant and aggressive de-spiritualisation of public spaces in favour of other forms of symbolism: conformity and materialism. Either way, Christian symbols persist, signalling the path and values of the nation. Those who can read them, let them read.

80 Ustav Republike Hrvatske (Constitution of the Republic of Croatia), art. 14.

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