

Powers of City Mayor and display of the crucifix: does the Council of State converge with the United Sections of the Court of Cassation?

Judgment no. 2567 of 2024 by the Council of State's 2nd Section represents a new milestone in the case law about the issue of the institutional display of the crucifix that may be decisive in realigning the orientations of the administrative judge.

The decision focuses on a rather long-standing affair that had been adjudicated by the Regional Administrative Tribunal (TAR) of Sardinia, 2nd section, in 2017: in November 2009 the mayor of the Municipality of Mandas issued an order – pursuant to Articles 50 and 54 of Legislative Decree No. 267/2000 – imposing the immediate display of the crucifix in all public offices in the municipal territory. The order even foresaw a penalty of 500 euros in case of non-compliance. There was an immediate judicial reaction by the Union of Atheists and Rationalist Agnostics (UAAR) which led the mayor to revoke the order in January 2010.

The appeal by the association was based on both formal and substantive grounds: from a formal point of view, it challenged the mayor's total lack of power; from a substantive point of view, it challenged the violation of the principle of secularism and religious neutrality of the State.

In 2017 the TAR declared the appeal partly inadmissible – because of the revocation of the order *medio tempore* – and partly unfounded by making application – although in a rather distorted way – the 2011 ECHR Grande Chambre ruling on the *Lautsi* Case.

Differently, the judgment of the Council of State upholds all the grounds of appeal of the UAAR. From a formal point of view, it states that, despite the revocation, the interest in the declaration of illegitimacy of the ordinance stays, because of the possibility of claiming for damages. Moreover, it points out that the power of the mayor to issue contingent and urgent orders cannot in any way be used to «preserve current traditions or maintain in public buildings [including] the presence of the crucifix as a fundamental symbol of the civil and cultural values of our country», as this motivation does not fall even indirectly within any of the prerequisites for the exercise of his powers.

The most interesting part of the decision, however, is the one that disposes on the merits, because the administrative judge was settled on reconstructing the significance of the crucifix as a cultural symbol. The Council of State decides by mentioning and relying on the arguments provided by the United Sections of the Court of Cassation in their ruling No. 24414/2021. Following this reasoning, the mayor's order is furtherly illegitimate because «it does not appear that the mayor, before issuing the measure, carried out any reasonable balancing of the interests at stake involved in the administrative decision».

However, the administrative judge was careful in not mentioning the premises of the decision by the Court of Cassation: the crucifix is a religious symbol and its authoritative display by public authorities is incompatible with the principle of secularism and religious neutrality of the State. And also from mentioning that the duty of reasonable accommodation the other Court ordered only with regard to specific classrooms of a school when there is a request for the display of the crucifix by that school community.

It is hard to see how this rationale can be applied to the mayor's power to issue orders, which always gives rise, of course, to authoritative imposition. The recomposition of the jurisprudential rift on the point, due to the separation between civil and administrative jurisdictions, thus seems as yet unaccomplished.

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