

Press release issued by the Registrar

Chamber judgment¹

Lombardi Vallauri v. Italy (application no. [39128/05](#))

**CATHOLIC UNIVERSITY OF MILAN
SHOULD HAVE GIVEN REASONS FOR REFUSING TO EMPLOY A LECTURER
WHO HAD NOT BEEN APPROVED BY THE ECCLESIASTICAL AUTHORITIES**

***Violation of Articles 6 § 1 (right to a fair hearing) and 10 (freedom of expression)
of the European Convention on Human Rights***

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in French.)

Principal facts

The applicant, Mr Luigi Lombardi Vallauri, is an Italian national who was born in 1936. In 1976 he began teaching legal philosophy at the Faculty of Law of the Università Cattolica del Sacro Cuore (Catholic University of the Sacred Heart) in Milan, on the basis of contracts renewed on an annual basis.

When a competition for the post was advertised for the 1998/99 academic year, Mr Lombardi Vallauri applied.

By a letter of 26 October 1998 the Congregation for Catholic Education, an institution of the Holy See, informed the President of the University that some of the applicant's views were "in clear opposition to Catholic doctrine" and that "in the interests of truth and of the well-being of students and the University" the applicant should no longer teach there.

On 28 October 1998 the University President wrote to the Dean of the Faculty of Law, informing him of the Congregation's position. On 4 November 1998 the Faculty Board took note of the Holy See's position and decided not to examine the applicant's application, since one of the conditions for admission to the competition, namely the approval of the Congregation for Catholic Education, had not been met.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

One of the applicant's colleagues, Professor D.M., proposed that the Faculty should request the President of the University to ask the Congregation to give reasons for the measure taken in respect of the applicant. In Professor D.M.'s opinion, this was justified in view of the interest of the Faculty's teaching staff in being informed as to which aspects of the applicant's studies and teaching had been deemed incompatible with the Faculty's Catholic outlook. The proposal was rejected following a vote.

On 25 January 1999 the applicant applied to the Lombardy Regional Administrative Court to have the decisions of the Faculty Board and the ecclesiastical authority set aside. The applicant argued that the decisions in question were unconstitutional because they breached his right to equality, freedom of instruction and freedom of religion.

In a judgment of 26 October 2001 the Regional Administrative Court rejected the application on the grounds, *inter alia*, that adequate reasons had been given for the Faculty Board's refusal to consider the applicant's candidacy, and that the revised Concordat between the Holy See and the Italian Republic did not lay down any requirement to state the religious grounds for refusing approval. The court further held that neither the Faculty Board nor the court itself had jurisdiction to examine the legitimacy of the Holy See's decision, which had emanated from a foreign State. The court also pointed out that teaching staff were free to choose whether or not to adhere to the principles of the Catholic faith.

On 9 December 2002 the applicant appealed to the *Consiglio di Stato* reiterating the lack of reasons given for the Faculty Board's decision and contesting the lack of jurisdiction of the administrative court.

In a judgment of 18 June 2005 the *Consiglio di Stato* dismissed the appeal. It stated that the Italian administrative and judicial authorities could not depart from Constitutional Court judgment no. 195 of 14 December 1972, according to which the fact that teaching appointments at the Catholic University were subject to the approval of the Holy See was compatible with Articles 33 and 19 of the Constitution, which guaranteed freedom of instruction and freedom of religion respectively. The *Consiglio di Stato* further observed that "no authority in the Republic may rule on the findings of the ecclesiastical authority".

Complaints, procedure and composition of the Court

Relying on Article 10 of the Convention, Mr Lombardi Vallauri complained that the decision of the Università Cattolica del Sacro Cuore, for which no reasons had been given and which had been taken without any genuine adversarial debate, had breached his right to freedom of expression.

Relying also on Article 6 § 1 of the Convention with regard to the fairness of the proceedings and his right of access to a court, the applicant complained of the domestic courts' failure to rule on the lack of reasons for the Faculty Board's decision, thereby restricting his ability to appeal against that decision and to instigate an adversarial debate. Mr Lombardi Vallauri also complained of the fact that the Faculty Board had confined itself to taking note of the Congregation's decision, which had also been taken without any adversarial debate.

The applicant further relied on Articles 9, 13 and 14.

The application was lodged with the European Court of Human Rights on 17 October 2005. The Università Cattolica del Sacro Cuore was given leave to submit written observations as a third-party intervener.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), **President**,
Ireneu **Cabral Barreto** (Portugal),
Vladimiro **Zagrebelsky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey), **judges**,

and also Sally **Dollé**, **Section Registrar**.

Decision of the Court

Article 10

In cases concerning Article 10 of the Convention, the Court first had to consider whether the measures in question amounted to interference with the applicant's right to freedom of expression. It then had to ascertain whether that interference was prescribed by law, pursued a legitimate aim and was "necessary in a democratic society".

In the instant case the Court observed that, while Mr Lombardo Vallauri had been habitually employed on the basis of temporary contracts, the fact that they had been renewed for over 20 years and that his academic qualities were recognised by his colleagues testified to the stability of his professional situation. The decision of the Faculty Board not to consider his application had therefore amounted to interference with his right to freedom of expression.

The Court noted that the interference had been prescribed by Italian law and could be said to have had the legitimate aim of protecting the "rights of others", manifested in the University's interest in basing its teaching on Catholic doctrine.

However, the Court considered that, in omitting to explain how the applicant's views which supposedly ran counter to Catholic doctrine were liable to affect the University's interests, the Faculty Board had not given adequate reasons for its decision.

The Court went on to observe that, although it was not for the domestic authorities to examine the substance of the Congregation's doctrinal stance, the administrative courts, in the interests of the principle of adversarial debate, should have addressed the lack of reasons for the Faculty Board decision.

In conclusion, the Court considered that the University's interest in dispensing teaching based on Catholic doctrine could not extend to impairing the very substance of the procedural guarantees afforded to the applicant by Article 10 of the Convention. Accordingly, in the particular circumstances of the case, the interference with Mr Lombardi Vallauri's freedom of expression had not been "necessary in a democratic society". The Court therefore held, by six votes to one, that there had been a violation of Article 10 of the Convention in its procedural aspect.

For the same reasons the Court held that the applicant had not had effective access to a court, and found a violation of Article 6 § 1 by six votes to one.

The Court considered that there was no need to examine separately the applicant's complaints under Articles 9, 13 and 14.

Judge Cabral Barreto issued a dissenting opinion, which is annexed to the judgment.

This press release is a document produced by the Registry; the summary it contains does not bind the Court. The judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.