

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 59842/10 and 48420/10

Shirley CHAPLIN

-v-

UNITED KINGDOM

WRITTEN SUBMISSION ON BEHALF OF

BISHOP MICHAEL NAZIR ALI (INTERVENER)

Introduction:

1. These cases raise issues of public importance as to the meaning and place of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms [1950] ('the Convention') in Europe. This simple proposition raises further questions.
2. In the background are a number of social factors: increasingly aggressive secularism, the drive to remove Judaeo Christian values from the public square and the emergence of a multi faith Europe. Thus, there is a paradox; as the institutions of the West

become more secular, the place of religion is becoming more important in Europe as 'minority' faiths have to be accommodated. A sensible solution is needed.

3. I make this submission as a leader in the Christian Church, who adheres unashamedly to the Christian faith.

The Interest of the Intervener:

4. I was Bishop of the Diocese of Rochester in the Church of England from 1994 - 2009. I hold a number of academic positions and I am an honorary Fellow at Fitzwilliam College, University of Cambridge and St Edmund Hall, University of Oxford. From 1986 - 1989, I was Assistant to the Archbishop of Canterbury and the Co-ordinator of Studies and Education for the Lambeth Conference (of the international Anglican Communion.)
5. I was General Secretary of the *Church Missionary Society* from 1989-1994. From 1997-2003, I was chairman of the *Ethics and Law Committee* of the *Human Fertilisation and Embryology Authority*. I was ordained an Anglican Priest in 1976 and was Bishop of Raiwind in Pakistan. I came to the UK in 1986 from Pakistan in 1986 when my life was endangered; I have an understanding of the position of minority faiths and knowledge of other faiths. I was President of the *Network for Interfaith Concerns of the Anglican Communion*.
6. I sought to intervene as an Expert Witness in the *Chaplin v Royal Devon and Exeter National Health Trust* before the Exeter Employment Tribunal and I hoped to give evidence on the religious significance of the Cross because I was concerned that our national courts do not acknowledge the Cross as an important religious symbol. I was refused permission.

7. I was one of seven senior clerics who wrote to a national newspaper to express our concern at the continuing discriminatory measures against Christians¹ in the United Kingdom. The other signatories of the letter were Rt. Hon. and Rt. Rev. Lord Carey, former Archbishop of Canterbury, Rt. Rev. Michael Scott-Joynt, Bishop of Winchester, Rt. Rev. Peter Foster, Bishop of Chester, Rt. Rev. Anthony Priddis, Bishop of Hereford and Rt. Rev. Nicolas Reade, Bishop of Blackburn².

The Cross:

8. The Cross is ubiquitous in Christian devotion from the earliest times. The sign of the Cross is made by Christians not only during worship but before and after meals, at times of danger and also to give thanks. The Cross is the most easily recognisable Christian symbol in architecture, church furnishing and the dress of the clergy. It is to be found on the walls of classrooms, chapels and Christian homes.
9. Lay people are encouraged to wear a cross or a crucifix to affirm their desire to follow in the way of Christ, as he taught us to do. They wear it also to declare their faith and to witness to others. For many, this is a lifetime commitment and they would feel very bereft if, for some reason, they were not allowed to wear it. In some Christian traditions, wearing a cross or a medallion is especially significant.
10. I am aware that many Christians wear the Cross and would be distressed to be required to remove it. Further, to hide the Cross, in circumstances where the Cross is an expression of faith, would be extremely distressing to the adherent as it would amount to asserting that the Cross and by implication the Lord Jesus Christ is something to be ashamed of and faith in him something to be hidden.
11. The right to manifest the Christian faith is central to belief; it is little succour to the believer to be free to believe, but not be free to live his beliefs. If the internal convictions are respected; so must be the external convictions: *Kokkinakis v Greece*. It

¹<http://www.telegraph.co.uk/news/religion/7531293/Senior-bishops-call-for-end-to-persecution-of-Christians-in-Britain.html>

²<http://www.telegraph.co.uk/comment/letters/7528487/The-religious-rights-of-Christians-are-treated-with-disrespect.html>

is very understandable that Christians should want to be visible and the wearing of a cross around the neck is a time-honoured way to do this; this is a manifestation of faith as understood in Article 9 of the Convention.

Mandatory Tests of Faith:

12. The wearing of the Cross is a religious manifestation of the Christian faith; it is inappropriate to describe aspects of devotion in terms of whether a practice is 'mandatory' or otherwise. This 'test' is inappropriate for religious faith and no religion can be deconstructed to this simplistic level.
13. Some Christians will not work on the Sabbath (except for mercies), others may work only in an emergency; some Christians will be pacifist, others will adhere to the *Just War theory* and some Christians will want to wear a Cross.
14. The Cross symbolises the sacrifice of Jesus Christ as atonement for our sins. The Cross is the symbol of Christ's victory over death. The wearing of the Cross is a manifestation of the Christian faith; this fact is so self-evident, there is something seriously amiss because it has to be said in contexts where the Judaeo Christian tradition has been formative of culture and customs.

The Cross as a Necklace:

15. The Cross is religious apparel that manifests Christian faith. Any policy that regards the Cross as just an item of jewellery is deeply disturbing and it is distressing that this view can even be taken. It is disrespectful and insulting to practising Christians.
16. Clearly the prohibition on the wearing of the Cross by an employer and its classification of the Cross as a '*necklace*' or '*jewellery*' will send a clear message to Christians that their faith is not respected (especially if other faiths are). Christians will not apply for employment with such an employer because they will perceive disrespect and a *chilling*

effect to their faith. Christians in the employment will sustain detriment because of the *chilling effect* to their faith.

Article 9 of the Convention:

17. The *effectiveness* of Article 9 of the Convention is expressed in its simplicity. Article 9(1) creates a right to manifest one's religious faith in both practice and observance; one would have thought that this includes the right to wear a Cross for religious reasons. This right can be restricted within Article 9(2) where such restrictions can be convincingly established.
18. Religious faith is both collective and individualistic in nature. The requirement that Article 9 can only be effective if a 'group' of like-minded individuals is ascertained enables national courts to dismember Article 9. There is no reason why Article 9 should not be 'individual'; nor should the Court go beyond a '*sincerity test*' of the adherent's desire to wear a Cross. It is not the public Court's function to rule on religious truth or the correct manifestation of religious truth.
19. Furthermore, an approach based on discrimination (as in the United Kingdom) fails to adequately protect Article 9 Rights. The analysis that there is no violation of Article 9 because all persons who wear jewellery would equally be dismissed is absurd; the approach being that there is no discrimination on grounds of religion, but on grounds of wearing jewellery. Thus, if no employees are given Sundays off, there is no discrimination against Christians if they are denied Sundays off under United Kingdom law. So, if all persons are treated equally badly, there is no discrimination. It is begging the question whether the wearing of a cross, for religious reasons, has anything to do at all with the wearing of ornamental jewellery.
20. I submit that this approach of discrimination law to matters of religious faith is fallacious. It was established by the Court in *Thlimmenos v Greece* (2000) that States can be under an obligation to treat persons differently when religious motivation is the reason for the conduct.

21. An individual (not a group) has a right to manifest his religious belief unless limited by Article 9(2).
22. Thus, there should be no need for an expert witness to establish whether Christians wear Crosses; whether Christians need to wear the Cross around the neck, or whether the Christian faith requires the Cross to be worn visibly³.
23. Or to analyse the meaning of 'group': is this two or more, of the same faith, in the same employment with the same degree of determination to wear the Cross? Does the 'group' include all employees, all employees of religious faith, or employees of the same faith?
24. Or whether an expert witness should be a sociologist, or a Bishop who may be partial. All of these approaches appear to be no more than attempts by reluctant national courts to limit Article 9.
25. This whole approach in the United Kingdom limits the effectiveness of Article 9.

The Place of Religion in the Employment Context:

26. Employers should permit the manifestation of the Cross within the principle of 'reasonable accommodation'.
27. There may be cases where an employer is unable to permit manifestations of religious faith. This may be because of genuine health and safety reasons, a strict uniform policy, public image and expectation of customers, cultural traditions, or the need to consider a new policy, practice or development. There may be cases where an employee has worn a Cross for many years without incident; another case where an employee has only recently decided to wear a Cross. The circumstances are too numerous to categorise.

³I use the phrase Expert Witness; when I sought to intervene at the Employment Tribunal there was argument that a Bishop cannot be an Expert Witness as such a person is not 'neutral' and that a Professor of Sociology or Anthropology would be more appropriate. In my view, it is common knowledge that Christians wear Crosses.

28. However, if an employer in a hospital situation or other employment permits their employees to manifest their religious faith by means of a headscarf, long shirt sleeves, a bangle, a turban or by other means I cannot see on what basis an employer can refuse to permit the wearing of a Cross.
29. For the Courts in the United Kingdom to uphold such decisions by employers because of the need to find a group, or because the Cross is permitted to be categorised as jewellery is discrimination (in the European and not British meaning of the word).
30. If the employer has a policy of exemption, the Courts need to regulate its exercise to prevent absurd applications of the policy where, for example, an employer describes the Cross as jewellery, or the headscarf as mandatory for all Muslims. An employer cannot be permitted to act as an authority on religious manifestation for its employees.
31. This use of 'group' requirements, health and safety requirements or bizarre uniform policies must be seen for what they are; a veil to deny the right to wear a Cross. Either there is a valid 'across the board' denial of religious clothing, or there is rational reason for the denial (that is not an artifice).
32. The evidential threshold to establish the fact that Christians wear the Cross is now set so high (and is so complex), it is unlikely that a Court in the United Kingdom will be satisfied of this fact.

The Courts of the United Kingdom and decisions on the Christian faith:

33. The Christian faith and our Judeo Christian values are the cornerstone of our freedoms, prosperity and liberty in Europe. As such, the Cross is part of our culture and reflects Christian values of love, sacrifice and service so central to European culture.
34. The abuse of human rights by secular Governments in Central and Eastern Europe is all too recent; the new Human Rights agenda must respect Judaeo Christian values if it is not to become another inhuman ideology imposing restrictions on individuals. There is a deep fear in the United Kingdom that the Human Rights agenda is becoming

set against human rights; and seeking to remove Judaeo Christian values from the public square.

35. In *Lautsi v Italy*, the importance of the Cross as an historical, cultural and religious symbol was recognised. The importance of the Cross and our Christian traditions was recognised by the Grand Chamber. Some of the submissions encouraged the Court to protect the cultural identity and values of Europe. This is why I limit this submission to the Cross; it cannot be correct that the Cross is proscribed by employers but other faiths are granted favour.

36. In cases after case in the United Kingdom, the rights of Christians have been vanquished. We have reached the stage where Christians in the United Kingdom risk their employment if they wear a Cross.

37. However, the United Kingdom Courts have permitted the wearing of a Sikh bangle⁴, the Islamic headscarf⁵ and even a cornrow haircut⁶. They have recognized the validity of beliefs in global warming⁷ and of a belief in public service broadcasting by the BBC⁸; but not the wearing of the Cross.

Conclusion:

38. There is no reason why the Christian faith and values should be excluded from the public square; nor should religion per se be placed at a disadvantage to secularism.

39. The Court should give Article 9 its full and intended effect and reject the approach of the United Kingdom Courts premised on discrimination law and group disadvantage. The correct approach is one of *reasonable accommodation* subject to various limitations dependent on each case.

⁴R (Sarika Watkins) v The Governing Body of Aberdare Girls High School [2008] EHWc 1865 (Admin)

⁵Noah v The Wedge Hairdresser ET 2201867/2007

⁶SG v Governors of St. Gregory Catholic Science College [2011] EHHc 1452 (Admin)

⁷Nicolson v Grainger plc (2008)

⁸Maistry v BBC ET 1313142/2010 of 14th February 2011,

40. The exact balance of *reasonable accommodation* depends on multifarious circumstances such as: the size of the undertaking, whether the employee has worn a Cross for many years without incident, the ability to introduce shifts, the disruption to the employer or the process of the employer in determining a religious rights claim.
41. Further, Article 9 should be given its pre-eminent place in European society. It is not a hobby, but a fundamental right as precious as privacy or even free speech rights. Article 9 should be applied broadly with any limitations justified. I qualify this by reference to the fact that Christianity is part of European culture and values as recognized by the Court⁹.
42. I humbly submit that Christian workers should be free to wear a Cross around the neck in a visible manner and in the normal traditional way throughout Europe.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Nazir Ali". The signature is written in a cursive style with a small cross at the end of the name.

Bishop Michael Nazir Ali.

19th July 2011.

⁹Ahmed v United Kingdom (1981) 4 EHRR 126 at paragraph 28; C145/88 Torfean BC v B&Q plc on Sunday trading and socio cultural variations.