



Associazione "Giuseppe Dossetti: i Valori"

**IN THE EUROPEAN COURT OF HUMAN RIGHTS
FOURTH SECTION**

Applications Nos. 48420/10 and 59842/10

Nadia EWEIDA and Shirley CHAPLIN

- Applicants -

v.

UNITED KINGDOM

- Respondent Government -

**WRITTEN COMMENTS ON BEHALF OF
THE ASSOCIAZIONE "GIUSEPPE DOSSETTI: I VALORI"
PURSUANT TO RULE 44 § 3 OF THE RULES OF THE EUROPEAN
COURT OF HUMAN RIGHTS**

These Written Comments are made on behalf of the Associazione "Giuseppe Dossetti: i Valori" represented by Dr. Mattia F. Ferrero, *avvocato* admitted to the Milan Bar and resident in Italy, of Studio Capellini-Carulli. He consents to service by post at the following mail address: Corso Monforte, 2, 20122 Milano, Italy
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1. By letter dated 5 August 2011, the Registrar of the Fourth Section informed that the Vice-President of the Section had granted leave, under Rule 44 § 3 of the Rules of the Court, the Associazione “Giuseppe Dossetti: i Valori” to make written submission. By direction of the Court this submission does not include any comments on the facts or merits of the case but addresses only the general principles involved.

The Associazione “Giuseppe Dossetti: i Valori”

2. The Associazione “Giuseppe Dossetti: i Valori”, an Italian non-governmental organization having its registered office at Via Giulio Salvadori, 14/16, 00135 Rome, Italy, was established as a “associazione non riconosciuta” under the law of Italy.
3. The Associazione “Giuseppe Dossetti: i Valori” is named after Giuseppe Dossetti, a prominent professor, politician and Catholic who spent his entire life in the Academia, in the Italian Constituent Assembly and in the Catholic Church to promote religious freedom, being aware that the religious freedom is the cornerstone of all human rights
4. The Associazione “Giuseppe Dossetti: i Valori” (and namely its Observatory for Religious Tolerance and Freedom) actively participates at international meetings pertaining the freedom of religion or belief. The President of the Associazione “Giuseppe Dossetti: i Valori”, Prof. Ombretta Fumagalli Carulli, has repeatedly addressed issues related to religious freedom in several contexts. She has been a full professor of Ecclesiastical Law for more than 30 years and she was member of the Italian Parliament and Government as well as of the *Consiglio Superiore della Magistratura* (Superior Council of Magistrates). The Chairman-in-Office of the OSCE appointed her as moderator of the Session 5 (devoted to intolerance and discriminations against Christians and members of other religions) of the OSCE Conference on Anti-Semitism and on Other Forms of Intolerance. The Director of the OSCE-ODIHR also asked her to deliver the keynote speech at the 2009 OSCE Supplementary Human Dimension Meeting on Freedom of Religion or Belief.
5. For the reasons set at above, the Associazione “Giuseppe Dossetti: i Valori” has particular expertise on the protection of the freedom of religion or belief.

The Wearing of Religious Symbols and Article 9 of the ECHR

6. Article 9 of the ECHR – as well as Article 18 of the International Covenant on Civil and Political Rights and many others international relevant instruments – lists four particular forms of religion's manifestation that are protected because encompassed in the freedom of religion or belief: worship, teaching, practice and observance. The display of religious symbols is generally considered as a manifestation of religion or belief although it is not clear whether such display falls under the category of "worship" or "practice" or "observance".
7. For example, according to the General Comment No. 22 on the above mentioned Article 18 of the ICCPR issued by the UN Human Rights Committee

the concept of worship extends to ... the display of symbols and ... the observance and practice of religion or belief may include ... the wearing of distinctive clothing or headcoverings.
8. One difficult task is to decide whether a form of action is to be understood as a manifestation of a religion or belief at all. If the applicant asserts that something he/she has done was a result of his/her religion or belief, is it open to the Court simply to deny that is so on the basis of its scrutiny of the facts or is it bound to accept the applicant's characterisation of his/her action? It could be argued that by wearing a religious symbol a person is not only acting in a fashion which he/she considers to be consonant with his/her belief system, but such very act itself demonstrates his/her adherence to that religion or belief.
9. Moreover it may be not easy to determine what is to be taken as a religious clothing or symbol, but accordingly to the principle of neutrality and impartiality the States or the Court certainly could not decide what is or is not a religious symbol. It is for the individual to determine whether something is, for him/herself, a religious symbol: it is difficult to see on what basis the State or the Court could deny the symbolic significance of something which has been identified as being of such significance to them by the person concerned.
10. The Court has also repeatedly said that the freedom of religion excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate¹. In *Leyla Şahin v. Turkey* the

¹ See, *ex plurimis*, *Jehovah's Witnesses of Moscow and Others v. Russia*, Application No. 302/02, 10 June 2010, § 141.

Grand Chamber endorsed the view of the Chamber that

the applicant said that, by wearing the headscarf, she was obeying a religious precept and thereby manifesting her desire to comply strictly with the duties imposed by the Islamic faith. Accordingly, her decision to wear the headscarf may be regarded as motivated or inspired by a religion or belief and, without deciding whether such decisions are in every case taken to fulfil a religious duty, the Court proceeds on the assumption that the regulations in issue, which placed restrictions of place and manner on the right to wear the Islamic headscarf in universities, constituted an interference with the applicant's right to manifest her religion².

11. That being stated, we can say that freedom of religion or belief implies that everybody has the right to identify him/herself through the wearing of religious symbols. Consequently, preventing a person from wearing religious clothing or symbols in public as well as in private constitutes a violation of the religious freedom³: accordingly, both public and private employers – with the exception of religious or religiously inspired employers⁴ – as a rule⁵ should permit their employees to enjoy their freedom of religion or belief.
12. On the other hand it should be also considered the right of the employer to maintain a professional image and to strength recognition of the company's brand, which would allow the employer could adopt a uniform policy.
13. These two rights are not colliding if it is clear the distinction between the uniform provided by the employer and the religious attire or symbols worn by the employee. Otherwise the employer may ask the employee to remove attire or symbols which may match the employer with one religion.
14. Moreover, these rights are not colliding also if the attire or the symbols worn by the employee comply with the regulation on safety or health at work applicable to the position for which he/she was hired. Otherwise the parties should find a friendly and reasonable settlement (for example the worker may change his/her position). The firing of the employee should be the last resort only if he/she

² *Leyla Şahin v. Turkey* [GC], Application No. 44774/98, 10 November 2005, § 78.

³ At this regard see UN Human Rights Committee, Communication No. 931/2000, *Hudoyberganova v. Uzbekistan*, § 6.2.

⁴ Which likely seek exemptions from non-discriminatory laws so that they may hire and retain people whose sympathies correspond to their interests and that may choose to impose (or forbid) the wearing of religious symbols or clothing if they consider this appropriate.

⁵ It is intended that this duty/right could be subjected to the limitation clause provided by Article 9 (2) of the ECHR.

cannot fulfil any useful working performance in favour of the employer.

The State's Positive Obligation to Protect the Religious Freedom

15. Article 1 of the ECHR states that the High Contracting Parties should secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. This Court clearly stated that it follows from Article 1 of the ECHR that

the States Parties are answerable for any violation of the protected rights and freedoms of anyone within their "jurisdiction" – or competence – at the time of the violation⁶.
16. In order to guarantee not rights that are theoretical or illusory but rights that are practical and effective⁷ the States not only are required not to commit violations themselves but they should also protect the owners of rights against acts committed by third parties and to punish the perpetrators.
17. The aforementioned judgement of this Court emphasises that

the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected⁸.
18. Therefore the State becomes responsible for violations committed between individuals because there has been a failure in the legal order, amounting sometimes to an absence of legal intervention pure and simple, sometimes to inadequate intervention, and sometimes to a lack of measures designed to change a legal situation contrary to the Convention.
19. In the view of the ECHR as interpreted by this Court, the prime characteristic of positive obligations is that States have a positive duty to take reasonable and suitable measures to protect the rights of the individual⁹. Such measures may be judicial (States are expected to lay down appropriate sanctions for individuals

⁶ *Assanidze v. Georgia* [GC], Application No. 71503/01, 8 April 2004, § 137.

⁷ See, for example, lastly *Jelovas v. Lithuania*, Application No. 16913/04, 19 July 2011, § 125.

⁸ *Assanidze v. Georgia* [GC], cit., § 146.

⁹ *Leon and Agnieszka Kania v. Poland*, Application No. 12605/03, 21 July 2009, § 99.

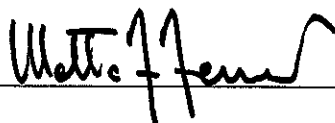
infringing the Convention) or may also consist of practical measures.

Discrimination

20. It is evident that if the employer treats differently his employees with relation to the faculty of wearing religious attire or symbols at work this constitutes a discrimination. But we should consider that also a restriction on wearing at work any religious symbols would be discriminatory. In fact, unless the employer would forbid any kind of symbols (religious, philosophical, political, trade unionist and so on) at work – but this would constitute an unacceptable restriction to the employees' freedom of expression – this would amount to a discrimination not between members of different religions, but between religious individuals that consider a duty to display a symbol of their faith and non-religious individuals (or individuals that do not have a – or do not consider as a duty – the display of religious symbols).
21. Moreover, this would also create a discrimination between employees depending on the different employers' attitude. The freedom of religion or belief of any worker would in fact depend on the discretion of the employers regarding the possibility to wear or not to wear religious attire or symbols at work.

Respectfully submitted,

For the Associazione "Giuseppe Dossetti: i Valori"



Dr. Mattia F. Ferrero

Milan, 15th September 2011