

E T W E E N:

CHRISTIAN HACKING

Appellant

-and-

**WALTHAM FOREST BOROUGH
COUNCIL**

Respondent

**SKELETON ARGUMENT IN SUPPORT OF THE
APPEAL OF CHRISTIAN HACKING**

Introduction:

1. Christian Hacking is an employee of the Centre for Bio-Ethical Reform UK and as such is a pro-life campaigner. The history and purposes of the Centre are set out in detail in the statements of Ruth Rawlings and Andrew Stephenson. In short, CBR UK is dedicated to challenging public opinion on abortion in the UK, as on average 200,000 unborn children are terminated in England and Wales per annum. CBR UK seeks to educate the general public and churches through various campaigns, talks, media appearances, and public street displays.

Brief Facts:

2. CBR engaged in a 3 week campaign based in Walthamstow, concerning Stella Creasey MP from Saturday 28th September to Saturday 19th October 2019. This consisted of a media campaign and visual displays (which included but was not limited to large displays of aborted and non-aborted foetuses) in Walthamstow town centre on Saturday 28th September 2019; Thursday 3rd October; Saturday 5th October; Friday 11th October, Saturday 12th October ; Wednesday 16th October and Saturday 19th October.
3. Stella Creasey is a Labour MP who is a pro-abortion supporter and had recently campaigned to change the law in Northern Ireland on abortion.
4. There were a number of people that objected to the displays and organised a counter protest. The Borough Council Environmental Officers on 3rd October, issued Mr Hacking with a

Community Protection Notice and took the banners down from their attached frames and confiscated these. These banners were latterly returned.

5. The police were present on a number of occasions, however they did not arrest any person in connection with the displays nor the counter-protests.
6. The Respondent avers that the large images of an aborted/unborn foetus(es) caused a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and that the conduct was unreasonable. The principle detriment would appear to be the offence and upset caused by the viewing of the images because they were disgusting:
 - a. Irem Boran: *“I respect and accept freedom of speech and any kind of protest but having to display posters like that I find disturbing and I feel there is **no need to upset members of the public.**”*
 - b. Philip Connor: *“during our conversation a number of local residents came up to vocally express their concern at the images, saying variously that they were **disgusting, offensive and horrible.**”*
 - c. Lesley Finlayson: *“I saw the image before and after being painted over, and it was **horrific and disgusting.**”*
 - d. Nial Finlayson: *“my wife, Lesley, came home in a distressed state after seen a billboard on the side of a building in Wood Street beside the Dukes Head Public House. She was really **upset** at what she had seen.”*
 - e. James King: *“From the things I witnessed and from what was said to me that residents were upset or **offended** that a large poster showing an aborted child was allowed to be displayed in a busy town square.”*

Legal Framework

Common law Free Speech Principles:

7. The following guidance can be derived from Lord Reid in the House of Lords decision in *Brutus v Cozens*: [1973] AC 854:

*“I cannot agree with that. Parliament had to solve the difficult question how far freedom of speech or behaviour must be limited in the general public interest. It would have been going much too far to prohibit all speech or conduct likely to occasion a breach of the peace because determined opponents may not shrink from organising or at least threatening a breach of the peace in order to silence a speaker whose views they detest. Therefore vigorous and it may be distasteful or unmannerly speech or behaviour is permitted so long as it does not go beyond any one of three limits. **It must not be threatening. It must not be abusive. It must not be insulting.** I see no reason why any of these should be construed as having a specially wide or a specially narrow meaning. They are all limits easily recognisable by the ordinary man. Free speech is not impaired by ruling them out. But before a man can be convicted it must be clearly shown that one or more of them has been disregarded.”*

8. The above guidance was mirrored in the passing of the Public Order Act 1986:
 A person is guilty of an offence if he—
- (a) uses threatening or abusive words or behaviour, or disorderly behaviour, or
 - (b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.
9. Following a campaign by the Reform section 5 group, the word insulting was removed from s 5.
10. In the High Court matter (decided in 1999) of *Redmond Bate v DPP*¹, Sedley J famously remarked:
- “Free speech includes not only the inoffensive, but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having.”*
11. *Redmond Bate* remains good case law and was quoted with approval by Lord Neuberger (with whom Lord Wilson agreed) in *James Rhodes v OPO (by his litigation friend BHM) and another* [2015] UKSC 32, 2015 WL 2369925 paragraph 96.
12. There is no right *not* to be offended, or subject to views that one does agree with.
13. In *Percy v DPP* (2001) JP 166 93 the Divisional Court gave primacy to freedom of expression in relation to the *purposive insulting act* of burning a United States flag in front of serving US military personal. The presumption in favour of freedom of expression meant that the fact that a message could be delivered in a less insulting way was not conclusive and the conviction breached Article 10.

European Convention of Human Rights and the Cases of the European Court:

14. Contracting States to the European Convention on Human Rights must interpret their domestic law in line with the Convention. Section 3(1) of the Human Rights Act 1998 (HRA):
- “So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.”*
15. The starting point for Convention rights is Section 6(1) of the HRA, which imposes a duty on every public authority (including the court) to act in a way which is compatible with the Convention rights.
16. Article 10 of the ECHR states that:
- 1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public*

¹ (1999) 7 BHRC 375, 163 JP 789

authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

17. Controversial opinions expressed in strong language are protected under Article 10.² Moreover, the Court must have regard to “*the special degree of protection*” afforded to expressions of opinions which are made “*in the course of a debate on matters of public interest.*”³

18. Free Speech principles were outlined in the European Convention of Human Rights case of *Handyside v. United Kingdom* (7 December 1976) (Application no. 5493/72):

*“Freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that **offend, shock or disturb** the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.*⁴

19. In *Kokkinakis v Greece*⁵ (1993) the right to engage in voluntary conversations with persons (within or without the work environment) was protected by Article 9. In particular, the concurring judgments of Judge Pettiti and De Meyer and dissenting Judgement of Judge Valticos. There is no counter-veiling right not to be exposed to ideas that one finds offensive or dislikes⁶.

20. For a restriction on a peaceful protest to be justified under paragraph 2 of Articles 10 or 11 and therefore lawful, the interference in question must be: (1) prescribed by law; (2) in pursuit of a legitimate aim; (3) and necessary in a democratic society. The three conditions must be met concurrently for the interference to be justified.

21. Only “*convincing and compelling reasons*” can justify a restriction on freedom of expression or assembly.⁷ Moreover, there is very little scope under the Convention for restrictions on the debate

² Such protections do not extend to statements that incite violence against an individual or a sector of the population. See ECHR, *Surek v. Turkey* (No. 3), [G.C] Application no. 24735/94, judgment of 8 July 1999.

³ ECHR, *Hoffer and Annen v. Germany*, Application nos. 397/07 and 2322/07, judgment of 13 January 2011, § 44.

⁴ § 49. Emphasis added. See ECHR, *Lingens v. Austria*, Application no. 9815/82, 8 July 1986, ECHR, *Sener v. Turkey*, Application no. 26680/95, judgment of 18 July 2000; ECHR, *Thoma v. Luxembourg*, Application no. 38432/97, judgment of 29 June 2001.

⁵ 17 EHRR 397: in particular paragraphs [31] and [48]

⁶ *Appel-Irrgang v Germany* 45216/07 of 6th October 2009

⁷*Id.*, § 40.

of questions of public interest⁸ and Contracting States “*have only a limited margin of appreciation*”⁹ in restricting freedom of expression and assembly.

22. The State must still demonstrate that the interference was “necessary” that is, meeting a “pressing social need” and proportionate to the legitimate aim pursued. In considering proportionality, several factors need to be taken into consideration.
23. In *Giniewski v France*¹⁰ a Jewish journalist attacked the Catholic Church for replacement theology that he argued led to the Holocaust. This article deeply insulted Catholics. The article was offensive but did not incite hatred nor assert incorrect historical principles (such as denial of the Holocaust).
24. In *Klein v Slovakia*¹¹ (2007) the crucifix was defamed by use in an advertisement for a pornographic film called ‘*The People v Larry Flint*¹²’. When the head of the Catholic Church objected to this use of the crucifix in an advertisement, he was subjected to vitriol from Mr Klein in an article: which accused him of sleeping with his mother, possible homosexual or bi-sexual tendencies and of being a spy for the former Communist regime. The European Court held his conviction for defamation of belief¹³ was in breach of Article 10 simply did not interfere with a Catholic believer’s ability to practice their faith.

ECHR jurisprudence on Using Law to censor speech:

25. Many Convention States have a formal compliance with their national laws and the requirements of the Convention. However, the national laws are applied formally, and not in accordance with the ‘principles’ of the Convention. The domestic Courts (in countries such as Russia) are too weakened to protect individuals (due to political pressures as the subject matter has domestic hostility).
26. In *Moscow Branch of the Salvation Army v Russia* (2007) 44 EHRR 912, the Russian government prevented registration of the religious body under national law on a variety of grounds including the fact that it was like a ‘para military’ organisation (on account of the wearing of uniforms and using military style ranking) and of foreign origin. The European Court refused to accept the reasoning (and fact finding) of the national Russian Courts.
27. In *Jehovah Witnesses of Moscow v Russia* (2010) 53 EHRR 141, the Russian Government used a number of emotive pretexts under national law (destroying families, damaging health, coercion of membership) to deny formal registration of this religious organisation. The European Court rejected the accusations and held (requiring a substantial application of the Convention):

⁸ ECHR, *Vajnai v. Hungary*, Application no. 33629/06, judgment of 8 October 2008, § 47.

⁹ ECHR, *United Communist Party of Turkey and Others v. Turkey*, [G.C.], Application no. 133/1996/752/951, judgment of 30 January 1998, § 46.

¹⁰ (2007) 45 EHRR 23 at paragraph [52]

¹¹ Appl. No. 7220801.

¹² Found of Hustler Magazine for Men.

¹³ Section 198 of the Slovakian Criminal Code.

108. The Court reiterates that the exceptions to the rights of freedom of religion and association are to be construed strictly and that only **convincing and compelling reasons can justify restrictions on these rights**. When the Court carries out its scrutiny; its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “proportionate to the legitimate aim pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the **principles embodied in the Convention** and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 47, Reports 1998-I)

Litigation concerning CBR UK (previously Abort67)

28. The very images that the Respondent makes complaint concerning were adjudicated on by District Judge Stephen Nicholls on 18th September 2012 who found: “*I am not satisfied so that I am sure that these images are ‘Threatening, abusive or insulting’ I find the defendant not guilty of these two offences. In the light of that finding I am not dealing with the abuse arguments or with the Article 10 and Human Rights Act submissions.*”

29. There followed litigation in the High Court against the Chief Constable of Sussex Police. By agreement on 11th January 2016 it was found:

1. *that the Claimants were unlawfully arrested under the Public Order Act on the 27 July 2010, 8 August 2010 and 22 June 2011 on suspicion of offences under S 5 and S4A of the Public Order Act 1986 and for obstructing an officer in the lawful execution of his duty, for displaying and declining to take down and in the case of obstruction, to hand over banners containing the images annexed hereto [Schedule 1 - enumerated 1-4];*
2. *that the Defendant has committed a trespass to the Claimants' property on 15 June 2011, when he [the Defendant] unlawfully seized one or more of the said banners referred to in Paragraph 1 above;*
3. *that the Defendant in arresting the Claimants, seizing their banners and other property and imposing bail conditions, interfered with the Claimants' Human Rights Act 1998 rights under:*
 - a. *Article 10 which provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers and;*

b. Article 11 which provides that everyone has the right to freedom of peaceful assembly.

Submissions

30. It is submitted that the court should not find that Christian Hacking nor any other member of CBR UK by way of their actions, caused any detrimental effect of a persistent or continuing nature on the quality of life of those in Walthamstow and their actions were reasonable for the following reasons:

- a. They did not engage in any threatening or abusive behaviour.
- b. They did not engage in any *ad hominem* attacks.
- c. The images have been previously subject to recent litigation. The criminal prosecution resulted in an acquittal. There have been no further public prosecutions against CBR UK nor any other group that have displayed similar images. The civil action against the police resulted in a finding before the High Court that the predecessors to CBR UK had been unlawfully treated by Sussex Police.
- d. Public offence and/or upset to the message *per se* is irrelevant (there is no right to be ‘left alone’ and the State is not responsible for what we hear). Potential breaches of the peace are not a relevant consideration (*‘Heckler’s Veto’*).
- e. The justification from the Respondent, would appear from the statements produced that the images were ‘horrible’, ‘disgusting’ and caused distress. However it is clear from the jurisprudence that [*Handyside*] “*Freedom of expression constitutes one of the essential foundations of a [democratic] society... it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb*”
- f. Even should the court find the images caused a detrimental effect, the court must then consider the question of reasonableness. This concept must be considered in light of the domestic and European free speech jurisprudence.
- g. An essential pillar of democracy is freedom of speech and the free exchange of ideas. Inherent within these concepts is the freedom to impart criticism of other ideas and religions (see *Redmond Bate*).
- h. Any state restriction on these essential democratic freedoms must be *narrowly constructed*. In light of comparable cases, it is clear that far more challenging and offensive comments have been afforded protection.

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