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### **The wearing of Christian baptismal crosses \*\*\***

**SUMMARY:** 1. On the religious significance of baptismal crosses and grounds for the need for Orthodox Christian believers to wear them – 2. On the illegitimate nature of the ban imposed by the state on the wearing of baptismal symbols of Christian religious affiliation – 3. Absence of any grounds for assessing the religious rite of wearing Christian baptismal crosses as a threat to public safety, public order, health or morals or the rights and freedoms of others – 4. The groundless emasculation, denial and reduction of the religious meaning and importance of Christian baptismal crosses.

#### **1 - On the religious significance of baptismal crosses and grounds for the need for Orthodox Christian believers to wear them**

In Orthodox Christianity, the need to wear around one's neck some symbols of religious affiliation such as Christian crosses (small items symbolizing Christian crucifix) is determined by the religious significance they have had in Orthodox Church since ancient times. It is an integral part of the freedom to confess one's faith in the context of age-old Christian tradition. It is also a rule prescribed to Orthodox Christians by canonical regulation norms (canon law, *lex canonical*). Through the observance of this rule, the significance of the cross as a symbol of Christian self-sacrifice sustains the religious self-identification of believers. In this act of confessing their faith, Orthodox Christians express their spiritual unity with and belonging to Christianity in pursuance of imperatives based on the canonical understanding of the meaning of the Christian cross<sup>1</sup>.

The obligation for Orthodox Christian to wear a baptismal cross basically follows indirectly from Canons 73 and 82 of the Sixth Ecumenical

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\*\*\* The text, accepted by the Director, reproduces the joint Conclusion by the Representation of the Russian Orthodox Church to the Council of Europe (Strasbourg, France) and the Institute for State-Confessional Relations and Law (Moscow, Russia).

<sup>1</sup> Mt. 10:38 and 23:19; Lk. 9: 23; Mk. 8: 34; 1 Cor. 1: 23–24; Ex. 29, 37; 2 Tim. 2: 8; Gal. 6: 14, etc.



Council (of Constantinople) and a number of other provisions of lex canonica.

The tradition of the obligatory wearing of a Christian baptismal cross (in some Christian denominations it is analogous to wearing a special medallion with an image of Jesus Christ, the Virgin Mary or a saint) has for Orthodox Christians an absolute value and has the following moral-religious, religious-communicative and religious-ritual meaning:

– as a free expression and manifestation of one's religious belonging and religious and cultural identity through the constant wearing of the most important Christian symbol as the only means of such expression existing in Orthodox Church. Although the cross represents the central symbol of Christian religion, the wearing of a Christian baptismal cross has never been of imposing nature and has never had as its aim to necessarily show or obtrusively demonstrate it to other people, since it is mostly worn next to the skin or may not be covered by one's clothes to be visible, for instance, in a low neck, but it is always unobtrusive because of the cross's small size;

– as the constant accomplishment of a religious rite which identifies a person as Orthodox Christian including in his or her self-awareness. It is a voluntary commitment of an Orthodox Christian effective since his or her baptism and at the same time realizing his or her religious freedom and religious affiliation with Orthodox Church and with Christianity in general;

– as a voluntary and conscious religious commitment to Christian commandments imposed on a Orthodox Christian by canonical regulation norms.

## **2 - On the illegitimate nature of the ban imposed by the state on the wearing of baptismal symbols of Christian religious affiliation**

The private nature of one's confession of a religion (which does not conflict with collective religious freedoms) implies that all the decisions as to the ways of confessing the faith is a matter of personal choice based on canonical rules. The sphere of relations involved in freedom of faith by virtue of their unique social and individual psychological nature cannot be regulated by law in principle, considering existing cultural peculiarities and national, public and legal traditions.

Article 9, Par. 1 of the European Convention on Human Rights establishes guarantees for



"the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance".

These rights guaranteed by the Convention protect another right based on freedom of conscience and freedom of beliefs, which belongs to everyone from birth and which is derived from these rights, namely, the right to freely wear religious symbols on religious grounds, exercised as an element of the right to freely confess one's religion.

Moreover, the legal regime of the secularity of a state cannot warrant the legality of its ban on actions involved in manifestation, expression and confession by its citizens of their religious faith and beliefs including celebration of religious rites rooted in their religious tradition.

In the two cases under consideration, the respondent state (United Kingdom) has adopted its decisions as to the legal possibility and validity of a ban on the wearing of Christian baptismal crosses in the perfectly obvious situation of a complete absence of any legal or social need to impose such a ban in the interests of public safety, public order, health or morals or protection of the rights and freedoms of others. The absence of such bans in European states for decades and centuries (except for the periods of totalitarian regimes in some countries) is a convincing proof that there is no need whatsoever for imposing such bans.

International conventions on human rights with their norms guaranteeing freedom of conscience and religion have helped to fix in national legislations the sets of legal norms for recognition, respect, assurance and protection given by the state to the internal self-organization of religious bodies and freedom of religion. It is a direct consequence of the secular nature of the state as one of the fundamental constitutional and legal foundations of modern democratic states governed by the rule of law.

The questions concerning the need to wear next-to-skin symbols of one's religious affiliation and the extent to which it is obligatory belong exclusively to the jurisdiction of religious organizations themselves. Therefore, a secular state, because of imperative requirements defined by secularity, has no right to interfere in these processes (to dictate to believers whether they should or should not wear baptismal crosses) or even to make official public statements concerning the obligatory or not obligatory nature of wearing such underclothes symbols of religious affiliation or to assess the nature of such symbols by dividing them into religious and non-religious (as decoration or something else).



Our approach stated here is consistent with the positions taken by the European Court of Human Rights and set forth in a number of its resolutions.

The Court in its resolution on the case of *Manoussakis and others v. Greece*<sup>2</sup> stated that

"the Court has consistently left the Contracting States a certain margin of appreciation in assessing the existence and extent of the necessity of an interference, but this Margin is subject to European supervision, embracing both the legislation and the decisions applying it. The Court's task is to determine whether the measures taken at national level were justified in principle and proportionate" (§ 44).

In this decision the Court recognized as illegitimate any coercion into action and bearing the consequences because of one's religious beliefs, specifically, the turning of "the apparently innocent requirement of action from a mere formality into a lethal weapon against the right to freedom of religion" (§ 41).

As far as the manifestation (demonstration) on one's religious and cultural identity is concerned, the resolution on the case of *Kokkinakis v. Greece*<sup>3</sup> and some other cases, the European Court of Human Rights has been steadfast in advocating its position that "While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions" (§ 31). The wording "bearing witness in words and deeds" quite clearly encompasses the wearing of a Christian baptismal cross.

The European Court has repeatedly pointed out that

"the imposition of administrative or criminal sanctions for manifestation of religious belief or exercise the right to freedom of religion was an interference with the rights guaranteed under Article 9 § 1 of the Convention"<sup>4</sup>.

In its resolution on the case of *Van den Dungen v. Netherland* of February 22, 1995, the ECHR stated that Article 9 of the Convention

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<sup>2</sup> November 26, 1996.

<sup>3</sup> May 25, 1993.

<sup>4</sup> § 61 of the Judgment on the case of *Nolan and K. v. Russia*, February 12, 1994. See also, § 39 of the Court's Judgment on the case of *Serif v. Greece*; § 38 of the Court's Judgment on the case of *Larissis and Others v. Greece*, February 24, 1998; § 36 of the Court's Judgment on the case of *Kokkinakis v. Greece*, May 25, 1993.



"primarily protects the sphere of personal beliefs and religious creeds, i.e. the area which is sometimes called the forum internum. In addition, it protects acts which are intimately linked to these attitudes, such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognized form"<sup>5</sup>.

In its judgment on the case of *Lautsi v. Italy* of March 18, 2011, the Great Chamber of the European Court of Human Rights accepted the arguments of Italian authorities that schoolchildren are not forbidden from wearing Islamic headscarf or other symbols or clothes having religious meaning as a convincing proof that the presence of crucifixes in Italian schools does not violate the rights of others guaranteed by Article 9 of the Convention. By the same resolution the ECHR Great Chamber reiterated the meaning of the cross as a historical, cultural and religious symbol (§ 71-73, etc.).

The complaints filed by Nadia Eweida and Shirley Chaplin against Great Britain concerning the proposal made by administrators of the organization in which they worked to realize their "freedom of choice" by their own option between compliance with the demand to stop wearing a Christian cross and dismissal reflect direct and apparent discrimination on religious grounds, since this option appears not free, accompanied with coercion under a threat of bad consequences (dismissal) and constitutes a rhetorical cover of actual discrimination on the grounds of religious affiliation and convictions.

### **3 - Absence of any grounds for assessing the religious rite of wearing Christian baptismal crosses as a threat to public safety, public order, health or morals or the rights and freedoms of others**

The European Court of Human Rights in its judgment on the case of *Leyla Sahin v. Turkey* of November 10, 2005, Par 121, and its judgment on the case of *Bruno Pichon et Marie-Line Sajous c. France* stated that "Article 9 does not always guarantee the right to behave in a manner governed by a religious belief". It follows from this that the freedom to realize a religious belief has certain limitations. However, these limitations are not formed arbitrarily but determined by certain restrictions with regard to the Convention's guarantees of

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<sup>5</sup> § 1 of the Section "Law".



"freedom of thought, conscience and religion; this right includes freedom..., either alone or in community with others and in public or private, to manifest his religion or belief, in worship..., practice and observance" (Convention, Article 9, § 1)

and represent exceptional cases where such bans and limitations are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others (Convention, Article 9, § 2).

This list of grounds for the limitation of freedom of religion is exhaustive, and the appropriate limitations cannot be supplemented arbitrarily and discretionarily or interpreted freely. Only weighty and convincing reasons falling under the wording of the Convention, Article 9, § 2 can justify a certain limitation of religious freedoms.

On the basis of the European Convention on Human Rights and Fundamental Freedoms, Article 9, § 2, it could be theoretically possible to impose a legally and actually justified ban against the wearing by Christian believers of Christian baptismal crosses only in the case, unobservable in life though, where the wearing of a baptismal cross by a Christian constitutes an evident and direct threat to public safety, public order, health or morals, or the rights and freedoms of others. No such threat has ever been or can be constituted by the wearing of baptismal crosses by Christians. Assumptions to the contrary are devoid of any factual basis.

In the judgment on the case of *Dogru v. France* of December 4, 2008<sup>6</sup>, the European Court underscored that

"the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the consequences that the wearing of a sign might have" (§ 70),

while pointing out as an inadmissible form and measure of manifesting one's religious beliefs in public institutions the case where such manifestation does not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion (§ 71).

The wearing of a Christian baptismal cross does not pursue such an aim, nor does it have the nature of pressure or forceful imposition of this religion on others. Assumptions to the contrary are not grounded on fact.

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<sup>6</sup> The final version dates at March 4, 2009.



In its judgment on the case of the *Moscow Branch of the Salvation Army v. Russia* of October 5, 2006, the ECHR recognized that the wearing of special elements of clothes (even a uniform) quite can be and can be reasonably recognized as "a particular ways of organizing the internal life of a religious community and manifesting religious beliefs" (§ 92).

The bans and punishments known in Europe's history for wearing Christian baptismal crosses happened in the countries and in the periods when the totalitarian states pursued the official policy of struggle against religion or specifically against Christianity to forcibly consolidate their totalitarian ideology which did not allow of the recognition of human rights and free confession of one's religion and beliefs.

Therefore, the wearing by believers of signs of their religious affiliation (belonging) is the realization of the traditional rule of their faith which does not contradict the principle of secularity but is determined by one's need and freedom of one's religious convictions fixed in the Convention. At the same time, this freedom does not allow of manifesting these signs in the way that can lead to oppression, provocation, aggressive proselytism and importunate propaganda or encroaching on the personal dignity, rights and freedoms of others. The wearing of a Christian baptismal cross does not at all involve such encroachment and by no means lead to such.

The religious freedoms recognized by the Convention provide believers with a right to express and manifest their religious faith in educational institutions, at the place of their employment, etc. to an extent which does not violate the rights of others.

The actually conflict-free observance of this Christian tradition in European countries for a very long period of time has convincingly shown that a baptismal cross reflects a certain type of socio-cultural behavior consonant with the rules of public morality and public order without being a sign of religious extremism or a means of religious proselytism. Moreover, the practice of wearing Christian baptismal crosses by Christian believers is an integral element of the free confession of their faith and beliefs practiced in many Christian Churches and denominations.

Hence is the absolute absence of any social or legal need to impose the ban under consideration in the interests of ensuring public safety, public order, health or morality or protection of the rights and freedoms of others.

#### **4 – The groundless emasculation, denial and reduction of the religious meaning and importance of Christian baptismal crosses**



Some facts that the Christian cross by virtue of its being rooted in the European culture is often used as a motive in the design of jewellery and that some people sometimes use it as decoration cannot be recognized as a sufficient ground for the conclusion that the small Christian cross is essentially a decoration devoid of any religious meaning and significance.

To identify the small Christian cross only with a decoration means to groundlessly reduce, up to full denial, its religious value and religious ritual meaning and to make an allegation based solely on a subjective prejudice and intolerant attitude to this Christian symbol entertained by those who see the Christian religion and the tradition under consideration in this light. Essentially, the situation under consideration reveals a negative attitude to believers, a desire to impose on them anti-religious diktat and a certain "secularized" and simplified idea of the Christian cross invented by some representatives of society and state. This attitude represents a distorted, obtrusive and forcible reduction of the meaning and content of the Christian tradition and the internal rule of wearing a small Christian cross observed by believers in their life.

There is a good reason to believe that the demand to ban the wearing of small Christian crosses as dictated by religious tradition is motivated by a negative, hostile and intolerant attitude to religious and cultural values and traditions embodied by this religious symbol (sign) and by the denial of any religious presence and any manifestation of religious beliefs not only in public sphere, as one of the cases in Great Britain has shown, but even the sphere of any public relations whatsoever except for personal ones.

Thereby there are no necessary and sufficient reasons for a public ban on the wearing of Christian small baptismal crosses in a way visible to those around including in case of believers' presence in public places and institutions. Therefore, the imposition of such a ban does not correspond to the European Convention on Human Rights and Fundamental Freedoms and represents a violation of the Convention by a state body, which is detrimental to the basic rights and freedoms of citizens (Convention, Article 9).

Actually, a public ban on the wearing Christian small baptismal crosses as a "discreet" form of manifesting one's religious affiliation which does not encroach on the fundamental rights and freedoms of those around represents an illegitimate ban for Christians to manifest their religion and religious and cultural identity and an act of discrimination against believers aimed at ousting Christians from public space.