

UNITED KINGDOM: Is Holocaust denial a crime in England and Wales? No – but see R v Chabloz

By Frank Cranmer

Law and Religion (15.02.2019) – <https://bit.ly/2T50KFQ> – Alison Chabloz is a self-confessed Holocaust denier. She was convicted in 2018 at Westminster Magistrates' Court of three offences contrary to section 127(1) of the Communications Act 2003, which provides that:

“A person is guilty of an offence if he–

(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) causes any such message or matter to be so sent.”

Two of the offences related to a video of her singing two songs, (((Survivors))) and Nemo's Anti-Semitic Universe, to an audience in a central London hotel in September 2016. A video of her performance was subsequently uploaded to YouTube and, though she had not uploaded it herself, she embedded a hyperlink to the YouTube video in her blog. The third related to a video of her singing a song entitled I like the story as it is – SATIRE which she uploaded herself to YouTube in

September 2017. The argument on appeal was whether or not the three songs were “grossly offensive” [2].

On appeal, in R v Alison Chabloz [2019] Southwark Crown Court 13 February, the prosecution argued that the lyrics of each song were no more than a collection of anti-Semitic tropes or motifs, with a particular emphasis on Holocaust denial. Furthermore, two of the songs were in whole or part set to the tunes of well-known Hebrew songs – which, the prosecution alleged, was a deliberate attempt to make them even more insulting. In those circumstances, each song was “grossly offensive” [8]. Ms Chabloz accepted that all three songs were offensive but denied that any of them was “grossly offensive”, describing them as “silly songs”, “parody” and “satire”. She also asserted that the proceedings were an affront to her freedom of speech. On her own admission, she was an adherent of what she described as a revisionist view of history in relation to the Holocaust [9].

The Court (HHJ Hehir and Ms M Rego) said that, whether or not material was “grossly offensive” for the purposes of section 127(1) was an objective question of fact: DPP v Collins [2006] UKHL 40. In short, would reasonable persons find the material grossly offensive? [10]. There was also a mental element: “the appellant is not guilty unless we are also sure either that she intended it to be grossly offensive to Jews, or at the very least was aware that it might be perceived as being grossly offensive to them” [11]. On the matter of free speech, the right under Article 10 ECHR was not unqualified: preventing the use of a public electronic communications network for attacking the reputation and rights of others was legitimate objective [12] and the ECtHR was is clear that Article 17 ECHR removed from the protection of Article 10 “speech or other expression which is contrary to the

fundamental Convention values of tolerance, social peace and non-discrimination: see M'Bala M'Bala v France [No.25239/13] and Norwood v UK(2004) 40 EHRR SE 11" [13].

Though there was "no crime of Holocaust denial in this jurisdiction" [14],

"no tribunal of fact is required to proceed on the basis of absurdity or fiction. The Holocaust ... happened. World War II is surely the best documented and most extensively studied period of modern history, and the Holocaust is one of the best-documented aspects of that conflict, if not the best. A mass of evidence, of various kinds, attests to it. Moreover the Holocaust has been the subject of extensive judicial enquiry, from the Nuremberg Trials onwards, in a number of jurisdictions" [15].

The judgment at first instance of Gray J in David Irving's libel action against Penguin Books Ltd – quoted by the Court of Appeal in Irving v Penguin Books Ltd & Anor [2001] EWCA Civ 1197 at [33] – was particularly pertinent: Gray J had concluded that "no objective, fair-minded historian would have serious cause to doubt that there were gas chambers at Auschwitz and that they were operated on a substantial scale to kill hundreds of thousands of Jews" [16]. That conclusion, together with the enactment by the Westminster Parliament of the War Crimes Act 1997, was sufficient to allow the Court to take judicial notice of the fact that the Holocaust had indeed occurred [17 & 18].

As to the findings of fact, the Court held that all three

songs were “grossly offensive” [24, 25 & 26]. As to the issue of mens rea, the Court was sure that Ms Chabloz positively intended each of the songs to be grossly offensive to Jews [27]. Furthermore:

“... although part of her intended audience on YouTube was persons sharing her own warped outlook, she embedded the hyperlink [Charges 1 and 2] and uploaded the video [Charge 3] in the hope that those who saw and heard the songs would include Jewish people who would be grossly offended by them” [27].

Appeal dismissed [28].

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UNITED KINGDOM: Anjem Choudary, radical preacher released from prison

BBC (19.10.2018) – <https://bbc.in/2Jan8If> – Radical preacher Anjem Choudary, jailed for inviting support for the Islamic State group, has been released.

The cleric was sentenced in 2016 to five and a half years in prison.

He led an extremist network linked to violent jihadists, including one of the killers of soldier Lee Rigby in 2013.

Choudary, 51, has served less than half of his sentence and will complete the rest under strict supervision. Up to 25 measures to control him have been prepared, the BBC understands.

His release from prison comes approximately four months early because of time spent bailed on an electronic tag before his conviction.

Who is Anjem Choudary?

Choudary, from Ilford in east London, once headed up the al-Muhajiroun network – a leading extremist group which was banned under terrorism laws.

The father-of-five did not organise terror attacks, but is considered one of the UK's most prominent radicalisers.

He has been described as a "hardened dangerous terrorist" and someone who has had a "huge influence on Islamist extremism in this country" by former Met Police terror chief Richard Walton.

What happened while he was in prison?

The BBC has learnt from counter-extremism sources that Anjem Choudary refused to take part in deradicalisation courses or exercises while serving the custodial part of his sentence.

He spent most of his time at HMP Frankland, County Durham, where he became the first inmate to be held in a separation unit, designed for the most high-risk terrorism offenders who are capable of radicalising others.

On a number of occasions, Choudary was offered opportunities to speak to mainstream religious leaders and other experts who have successfully turned around the mindset of other extremists.

But on each of those occasions, Choudary refused.

Nevertheless, the prison authorities were not able to delay his release.

Why is he being released now?

His departure from Belmarsh prison came automatically under legislation that allows prisoners to serve the second part of their sentence "on licence" in the community.

This means he will not be free but must comply with a list of conditions. If he breaches them, he risks being recalled to prison.

How will he be monitored?

Police will be closely monitoring Choudary – through probation officers and a requirement that he report to officials.

Choudary is staying at a bail hostel in north London.

He will be in a probation hostel for six months, the BBC understands. The conditions he must obey include:

- A ban from preaching at or attending certain mosques
- He will only be allowed to associate with people who have been approved by the authorities
- He will be allowed one phone and is banned from using an internet-enabled device without permission
- Use of the internet will be supervised
- He cannot travel outside Greater London's M25
- He will not be able to leave the UK without permission.

Earlier this week, it was announced Choudary had his assets frozen and was listed on a global record of known terrorists overseen by the United Nations Security Council.

The asset-freezing order means he will be under extremely strict financial controls which typically mean the authorities will be alerted if he tries to open a bank account or move money.

Prime Minister Theresa May said on Thursday that authorities including the police, prison and probation service had “significant experience in dealing with such offenders”.

But John Woodcock, a member of the Home Affairs Select Committee, tweeted that his release was “wrong”, “crazy” and “puts the public in danger”.

Calling on Home Secretary Sajid Javid to take a tougher counter-terror approach, using Australian law as an example, Mr Woodcock added: “He needs to act fast to protect the public from terrorists being released back onto British streets.”

Sir Mark Rowley, the former UK head of counter-terror policing, said it is important “not to overstate his [Choudary’s] significance”.

“At the end of the day he’s a pathetic groomer of others, that’s what he has done in the past,” said Mr Rowley. “He’s not some sort of evil genius we all need to be afraid of.”

Analysis: What impact has Choudary’s sentencing had?

By BBC home affairs correspondent, Dominic Casciani

When Choudary was charged in 2015 with inviting support for IS, it was a moment of great success for counter-terrorism chiefs – and they were already trying to build cases against other associates.

Some, including close confidantes, were jailed. At least four others, who cannot be named for legal reasons, were subject to a Terrorism Prevention and Investigation Measure (TPim), a form of control that places two years of restrictions on the movements and activities of terrorism suspects who have not been charged with a crime.

Detectives also looked for evidence of standard crimes – such as fraud – as a means to further “disrupt” the network.

The insider view is that this work has been generally successful because it made the targets aware they could no longer act with impunity.

In theory, it created space for the security service MI5 and their police detective colleagues to focus on more urgent threats.

HRWF Comments

Anjem Choudary was born in London on 18 January 1967. He is the son of a Welling market trader and of Pakistani descent.

He is an Islamist social and political activist. He was convicted of inviting support for a proscribed organisation, namely the Islamic State, under the Terrorism Act 2000. He was previously a solicitor and served, until it was proscribed, as the spokesman for *Islam4UK*.

With Omar Bakri Muhammad, Choudary helped form an Islamist organisation, *al-Muhajiroun*. The group organised several anti-Western demonstrations. The UK government banned Al-Muhajiroun and Choudary was present at the launch of its intended successor, *Ahlus Sunnah wal Jamaah*. He later helped form *Al Ghurabaa*, which was also banned. Choudary then became the spokesman for Islam4UK.

Clearly, banning controversial movements is not an effective solution to the threats posed by homegrown Islamist propagandists as their inspirers can repeatedly create new ones with other names and some cosmetic changes in their bylaws.

Choudary has been denounced by mainstream Muslim groups, and has been largely criticised in the country's media.

A critic of the UK's involvement in the wars in Iraq (2003–2011) and Afghanistan (2001–2016), Choudary praised those responsible for the 11 September 2001 in New York attack and the 7 July 2005 attack in London (52 were killed, and more than 700 were injured). He supports the implementation of Sharia law throughout the UK. He marched in protest at the *Jyllands-Posten* cartoons controversy, following which he was prosecuted for organising an unlawful demonstration. During a protest outside Westminster Cathedral in 2006, Choudary told demonstrators that the Pope should be executed for insulting Islam.

On 6 September 2016, Choudary was jailed for five years and six months following conviction for inviting others to support the proscribed organisation ISIS.

This case raises a lot of questions. Some say the sentence was too mild, his release was premature and British justice is naïve.

Anjem Choudary has refused in prison to be 'de-radicalized'. At the time of his final release – very soon – the very strict restrictions to his freedom of movement and communication will expire, he will gain back his full freedom and will go on representing a danger for society. He will certainly try by all means, in due time and in the legal framework, to continue his fight against democracy, any non-Islamic rule of law and 'secular' human rights. He will be an 'example' for his followers and his four children that he will go on educating in his Islamist ideology.

The United Kingdom is not the only country in Europe where jihadists, hate preachers and recruiters have in their own way contributed to the implementation of ISIS political agenda, have been imprisoned for their activities and have been released or will be in a foreseeable future. France, Belgium and other countries are experiencing the same situation with that type of Islamist political prisoners. The question about "What to do with them?" remains open as our democracies have never faced such a challenge and cannot rely on any precedents.

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