



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 9476/19
Hermina Geertruida DE WILDE
against the Netherlands

The European Court of Human Rights (Fourth Section), sitting on 9 November 2021 as a Chamber composed of:

Yonko Grozev, *President*,
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to the above application lodged on 14 February 2019,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Hermina Geertruida de Wilde, is a Netherlands national, who was born in 1985 and lives in Nijmegen. At the time of the events complained of, she was a student. She was represented before the Court by Mr D. Venema, a legal scholar residing in Wijchen.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is a so-called “Pastafarian”, a follower of the “Church of the Flying Spaghetti Monster” (see paragraphs 20-33 below). It is her position that the precepts of her religion require her to wear a colander, a perforated bowl of a type more generally used as a kitchen utensil, on her head at all times and everywhere except at home.

1. *Domestic proceedings*

(a) **Administrative proceedings**

i. *Applications for an identity card and for a driving licence*

4. On 7 October 2016 the applicant applied to the Mayor (*burgemeester*) of the municipality of Nijmegen for a new driving licence and a new identity card. She submitted an identity photograph that showed her wearing a colander on her head, stating that she was a committed Pastafarian and arguing that she was accordingly entitled on religious grounds to avail herself of the exception to the requirement that the head be uncovered on identity photographs (see paragraphs 34-39 below).

5. Her applications were not examined as she had failed to comply with Rule 28(1 and 2) of the Passport Implementation Regulations (*Paspoortuitvoeringsregeling*; see paragraph 35 below). A written explanation of this refusal as relevant to the request for a new identity card, sent to the applicant on 7 October 2016, included the following:

“The ‘Church of the Flying Spaghetti Monster’ is not a church or philosophical conviction. There is no appearance of activities of this organisation that can be considered either the exercise or manifestation of a coherent philosophy or conviction of life (*levensbeschouwing of -overtuiging*) that permeates [a person’s] entire outlook on life, is connected to [that person’s] moral conscience (*geweten*) and according to which [that person] organises his or her life, nor as directed towards any religious experience.

It appears from documents of the [‘Church of the Flying Spaghetti Monster’] that it is not considered generally necessary for members of the church constantly to wear a colander. Several well-known members of this organisation do not wear a colander on their heads in civil life (*maatschappelijk verkeer*).

This organisation manifestly intends to be critical of religion in contemporary society. It seeks to express this criticism by making a caricature of religion. In particular, it has made it its aim to seek recognition of this caricature, so that it can enjoy the constitutional protection attending freedom of thought or religious conviction. The expression of social opinions or criticism should however be categorised as freedom of expression (Article 7 of the Constitution) rather than freedom of religion (Article 6 of the Constitution). For that reason, your argument based on Rule 28(3) of the Passport Implementation Regulations fails.”

ii. *Objection proceedings*

6. On 18 November 2016 the applicant submitted to the Mayor an objection against the refusal to examine her applications for a new driving licence and a new identity card. She argued at length that although under no constraint, being a strict Pastafarian believer she genuinely saw the wearing of a colander as a religious requirement and she was prepared to suffer inconvenience, censure and ridicule to comply with it. She submitted

evidence such as photographs to prove that unlike other, less strict, Pastafarians she did wear a colander at all times.

7. On 10 February 2017 the Mayor gave a decision dismissing the applicant's objection. The Mayor found that the "Church of the Flying Spaghetti Monster" was a parody intended to call into question the position of religion in contemporary society; it was not properly a "religion" as the Court had defined that expression in *Eweida and Others v. the United Kingdom* (nos. 48420/10 and 3 others, ECHR 2013 (extracts)). Moreover, it did not appear that the wearing of a colander at all times was actually a prescribed practice, since on the applicant's own admission she retained complete freedom of choice in the matter and indeed other members of the church did not do so. The acceptance of religious headgear being an exception to a rule, and therefore to be applied restrictively, the applicant's autonomous choice to wear a colander could not prevail.

(b) Judicial proceedings

i. Provisional measure proceedings

8. On 7 December 2016, while the administrative proceedings were still pending, the applicant lodged a request for a provisional measure with the Gelderland Regional Court (*rechtbank*), seeking an order for an interim driving licence to be issued to her, with an identity photograph showing her wearing her colander, and valid for the duration of the judicial proceedings on the merits of her appeal. She submitted that since the day on which her existing driving licence had expired, namely 30 November 2016, she had suffered considerable inconvenience as a result of her corresponding loss of mobility.

9. On 17 January 2017 the Provisional Measures Judge (*voorzieningenrechter*) of the Regional Court gave a decision dismissing the request, finding, firstly, that the applicant was not prevented from meeting her mobility needs by the use of public transport; secondly, that the law did not provide for the possibility to issue a provisional driving licence with temporary validity as requested by the applicant, which meant that acceding to her request would require a driving licence to be issued for the normal period of validity but with an identity photograph showing the applicant wearing a colander and would therefore prejudice the merits; and thirdly, that the applicant had not demonstrated that the precepts of her religion actually forbade her to allow herself to be depicted on identity photographs without a colander.

ii. Proceedings on the merits

(α) Proceedings in the Regional Court

10. On 19 March 2017 the applicant lodged an appeal (*beroep*) against the Mayor's decision (see paragraph 7 above) with the Gelderland Regional Court. As relevant to the case before the Court, her arguments were as follows.

11. Firstly, the applicant's religion was worthy of recognition as such. It was not a parody. Her church's teachings of peace and tolerance were serious: humour and satire were the means by which the message was propagated, and they were more effective than dry and boring sermons. The same applied to its invention: Mr Bobby Henderson had genuinely been called to prophesy by the Flying Spaghetti Monster, whom the applicant referred to as the Almighty, and whose ways – including his choice of what might appear as parody as the vehicle of his message – were inscrutable. It was not impossible that other religions, including Christianity itself, had initially been viewed as parodies through the eyes of followers of the established religions of the day. Moreover, it was typical of all religions to be critical of other religions; her religion was not unique in this respect.

12. Secondly, while the wearing of a colander was not prescribed by scripture, neither was the wearing of the headscarf by Muslim women a binding precept prescribed in the Koran, nor was the wearing of the turban by Sikh men ordained in the Sri Guru Granth Sahib. It was the applicant's conviction – which secular authority had not to question – that induced her to interpret her scriptures in such a way.

13. Thirdly, it was not “necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”, within the meaning of Article 9 § 2 of the Convention, to prevent the likeness of the applicant wearing a colander from appearing on an identity document.

14. The Gelderland Regional Court transferred the case to the Overijssel Regional Court, which gave a decision dismissing the applicant's appeal on 25 July 2017. As relevant to the case before the Court, its reasoning included the following:

“Irrespective of whether the Church of the Flying Spaghetti Monster can be considered a religion or philosophical school of thought, the Regional Court takes the view that the applicant has not demonstrated that Pastafarianism requires her to cover her head. It may well be that the colander is considered a holy object by Pastafarians that is worn to honour the Flying Spaghetti Monster, but there is no such obligation. Pastafarianism after all does not teach any obligations or restrictions, but only eight ‘I'd-really-rather-you-didn'ts’. Leaving the head uncovered is not mentioned in those. The circumstance that [the applicant] wears the colander every day and everywhere except in her home because she considers it a duty is a personal choice, for which the exception of Rule 28(3) of the Passport Implementation Regulations for the Netherlands is not intended.”

(β) Proceedings in the Administrative Jurisdiction Division of the Council of State

15. On 2 September 2017 the applicant lodged a further appeal (*hoger beroep*) with the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*) of the Council of State (*Raad van State*). As relevant to the case before the Court, her arguments may be summarised as follows.

16. Firstly, the Regional Court ought to have gone into the question whether Pastafarianism was a religion and ought to have answered that question in the affirmative. Pastafarianism was not merely a satirical critique of other religions, but a coherent and serious religious system that propagated an attitude of friendliness, non-violence, tolerance, sobriety, modesty and relativism. At the very least, the applicant's own convictions ought to have been accepted as legitimately religious.

17. Secondly, the Regional Court ought to have gone into the applicant's reasons for wearing the colander, which were derived from her own interpretation of her religion. The sacrifices which the applicant made in her daily life proved that her views were genuinely held.

18. Thirdly, the Regional Court ought not to have limited its examination of the case to the question whether the wearing of the colander was based on scriptural precept. The wearing of a colander had no more objective basis in holy writ than did the wearing of the Islamic headscarf or the Sikh turban. Rather, the Regional Court ought to have accepted the fact that the applicant felt herself to be under such a religious obligation; the fact that other Pastafarians did not was of no relevance, since the existence of stricter and less strict currents within a particular religion was not a feature of Pastafarianism alone.

19. The Administrative Jurisdiction Division gave its ruling dismissing the applicant's further appeal on 15 August 2018. Its reasoning included the following:

"8. ... The notions religion and belief as set out in Rule 28(3) of the Passport Implementation Regulations, as well as the ratio behind this provision, should be interpreted in the light of higher law, in particular in the light of the fundamental rights guaranteed by Article 6 of the Constitution and Article 9 of the Convention. In the case-law of the European Court of Human Right (ECHR), the applicability of Article 9 of the Convention is not conditional on the act at issue being compulsory by virtue of a specific precept of the religion or belief of the person concerned. It suffices that a sufficiently close and direct nexus exists between that act and the religion or belief in question. There is no requirement on the person concerned to establish that he or she is acting in fulfilment of a duty mandated by that religion or belief. See *Eweida and Others v. the United Kingdom* [nos. 48420/10 and 3 others, § 82, ECHR 2013 (extracts)] and *S.A.S. v. France* [[GC], no. 43835/11, § 55, ECHR 2014 (extracts)] ... Viewed in the light of this case-law the question arises whether the approach applied previously by the Administrative Jurisdiction Division and in the present case by the Regional Court can be maintained in full.

The issue of the existence of a sufficiently close and direct nexus between the relevant religion or belief and the act intended to express it, as well as to what extent it

is also decisive whether or not it can be said that a recognised duty mandated by that religion or belief is being fulfilled, is preceded by the question whether a religion or belief is at stake. Having regard to the function which the Administrative Jurisdiction Division, with a view to ensuring legal uniformity, exercises as highest general administrative court and in line with the desire of the parties, it will – unlike the Regional Court – focus its assessment in this case on the preliminary question whether in the current situation Pastafarianism can be considered a religion or belief within the meaning of Article 6 of the Constitution and Article 9 of the Convention. In that context the Administrative Jurisdiction Division notes, with reference to the submissions advanced by the Mayor, that it is inherent in the constitutional and conventional recognition of the freedom of religion and belief that a court may or will have to determine whether a religion or belief is at stake – no matter how complex this may occasionally be –, since such is necessary in order to assess if those freedoms are applicable.

9. *Inter alia* in its admissibility decision of 13 November 2008 [*Mann Singh v. France* (dec.), no. 24479/07] the ECHR has accepted that not only the wearing of religious head coverings may be considered as a religious act, but also that this qualification may in addition apply in the specific situation where the person concerned is not willing temporarily to take off that head covering in order to have pictures taken for diplomas, identity cards, driving licenses and the like. It is nevertheless required that that refusal be based on a religion or belief. The question is, therefore, whether Pastafarianism can be considered as such.

According to the established case-law of the ECHR, for a construct of views to be considered a religion or a belief within the meaning of Article 9 of the Convention, those views must have obtained a certain level of cogency, seriousness, cohesion and importance ..., see, *inter alia*, *Campbell and Cosans v. the United Kingdom* [25 February 1982, § 36, Series A no. 48] and the aforementioned judgments of 15 January 2013 [*Eweida and Others*, § 81] and 1 July 2014 [*S.A.S. v. France*, § 55]. The Administrative Jurisdiction Division finds that Pastafarianism does not meet these criteria. To this end it considers as follows.

9.1 The founder of the Church of the Flying Spaghetti Monster, Bobby Henderson, has for the first time described the manifestation of this divine monster in his protest against the intention to include in the American school curriculum, along with the scientific theory of evolution, also the theory of ‘intelligent design’ inspired by the Bible teaching of creation. Against that intention Henderson wrote a satirical open letter, which is reproduced in the annex to this judgment. In the open letter he posited that, where it was important that children be taught multiple viewpoints, Pastafarianism should not be left out.

9.2 The satirical character of Pastafarianism is reflected in the manner in which the teachings of the Church of the Flying Spaghetti Monster parodies established religions. The Church has holy books, amongst which ‘The Gospel of the Flying Spaghetti Monster’ and ‘The Loose Canon’, which includes *inter alia* ‘The Old Pastament’, ‘The New Pastament’ and ‘The Official Pastafarian Prayer Book’. The Prayer Book contains the most important prayer of the Pastafarians, which provides as follows: ‘Our Pasta, who “Arghh” in heaven, Swallowed by the shame. Thy Midgit come. Thy Sauce be yum, On top some grated Parmesan. Give us this day our garlic bread. And give us our cutlasses, As we swashbuckle, splice the main-brace and cuss. And lead us into temptation, But deliver us some Pizza. For thine are Meatballs, and the beer, and the strippers, for ever and ever. RAmen.’ This prayer is unmistakably derived from the ‘Our Father’ from the Christian tradition, and is intended as a persiflage on it.

9.3 'The Gospel of the Flying Spaghetti Monster' recounts how this deity gave advise, on a mountain, to Mosey, the first pirate, in the form of ten stone tablets. On the way down Mosey dropped two of the stone tablets, so that only eight are left. Based on Henderson's letter, Mosey lived before the year 1800. The tablets nevertheless already mention TV and broadband cable.

The tablets contain exhortations – 'I'd Really Rather You Didn't's' – by the Spaghetti Monster. ...

It is obvious that these 'I'd Really Rather You Didn't's' are a jocular variation on the Ten Commandments from the Jewish-Christian tradition.

9.4. In view of the above, in the current situation Pastafarianism cannot be considered as a religion within the meaning of Article 9 of the Convention and Article 6 of the Constitution. The Administrative Jurisdiction Division recognises the considerable significance of being able freely to express satirical criticism of religious dogmas, institutions and religions. Such criticism itself, however, cannot, even if it relates to religion, be considered as a religion covered by the fundamental rights mentioned above. As the Oost-Brabant Regional Court also held in its ruling of 15 February 2017, ECLI:NL:RBOR:2017:762, the Administrative Jurisdiction Division considers that the satirical element in Pastafarianism – not only its form but also the content of the vision being propagated – constitutes not just an additional aspect, but is so dominant that the preconditions formulated in the case-law of the ECHR for qualifying as a religion or belief have not been met. In particular, the required seriousness and cohesion are lacking. The above-mentioned parodying scriptures are distinctive features in this connection. The lack of cohesion is illustrated by, for example, the relationship set out in Henderson's letter between the decline in the number of pirates since 1800 and global warming. The freedom of religion and belief does not apply to this kind of satire and parody, which was also the opinion of the Oberlandesgericht Brandenburg in its ruling of 2 August 2017, ECLI:DE:OLGB:2017:0802:4U84.16.00. In this respect, the freedom of speech would be more relevant.

For the same reasons, Pastafarianism can also not be considered as a belief within the meaning of Article 9 of the Convention, as, according to the case-law of the ECHR, the same conditions of cogency, seriousness, cohesion and significance need to be met as those that apply to 'religion', and these conditions have not been met. This also applies to the freedom of belief that is guaranteed in Article 6 of the Constitution, which must also meet the criteria applying to 'religion': see in this connection the explanatory notes to Article 6 of the Constitution, Parliamentary Documents II 1975/76, 13 872, no. 3, page 29 and Parliamentary Documents II 1976/77, 13 872, no. 7, pages 24-25.

10. [The applicant] argued in the alternative that to the extent that Pastafarianism is not already a religion or belief *in abstracto*, her denomination and the way in which she herself gives practical application to her beliefs in any case qualifies as a religion and is entitled to protection as a fundamental right.

10.1. In view of what has been stated above in paragraphs 9-9.4, the version of Pastafarianism adhered to by [the applicant] can also not be considered as a religion at the present time. The submissions put forward by [the applicant] in writing and at the hearing do not give cause for any other finding than that, in the current situation, there is little evidence of a cohesive and serious vision which meets the criteria to qualify as a religion or belief. Even though [the applicant] has indeed argued convincingly that she consistently wears a colander on her head outdoors, in spite of the inconvenience she experiences in society at large, her written and oral explanations are of a general

and abstract character and are not of such a nature as to render credible that there is a denomination or individual version within Pastafarianism adhered to by her which does meet criteria such as seriousness and cohesion on the basis of which it should be concluded that it constitutes a religion or belief within the meaning of Article 9 of the Convention and Article 6 of the Constitution and which would lead to the applicability of the exception clause of Rule 28(3) of the Passport Implementation Regulations.

11. Now that neither Pastafarianism as such, nor a denomination or individual version within it, can be considered as a religion or a belief, the wearing of a colander does not constitute a religious or ideological expression for which, in view of Rule 28(3) of the Passport Implementation Regulations, an exception has to be made to the requirement laid down in the Photo Specification Guidelines for an uncovered head.”

2. *The “Church of the Flying Spaghetti Monster”*

(a) **Origins and teaching**

20. In 2005 the Kansas State Board of Education made known its intention to add the theory of intelligent design to the school curriculum, to be taught as alternative to the theory of evolution. The theory of intelligent design posits that the existence and appearance of the universe and of living beings can be most readily explained as the expression of a supernatural intelligence rather than as the outcome of random processes governed by the laws of physics and natural selection.

21. The Kansas State Board of Education’s announcement moved a physics graduate, Mr Bobby Henderson, to write an open letter suggesting that the creator of the universe was in fact a Flying Spaghetti Monster and demanding that corresponding doctrine should be taught alongside the theories of evolution and intelligent design. The letter, which Mr Henderson published on the internet, received much attention especially in university and scientific circles critical of the theory of intelligent design. A “Church of the Flying Spaghetti Monster” emerged as a result.

22. In its current incarnation, the “Church of the Flying Spaghetti Monster” is a fluid network without formal organisation or membership. Its followers call themselves “Pastafarians” – a portmanteau word based on the words “pasta” and “Rastafarian” (the latter denoting a follower of Rastafarianism, a religious movement entirely unrelated to the “Church of the Flying Spaghetti Monster”).

23. Pastafarian cosmology is that the universe was created by the Flying Spaghetti Monster, who planted scientific evidence (such as dinosaur fossils) capable of casting doubt on intelligent design solely in order to confound believers and test their faith. Modern humans are stated to be descended from “pirates” (and their “wenches”) rather than “primates”. Heaven, promised to the righteous in the afterlife, is said to hold delights including a “Beer Volcano” and a “Stripper Factory”; sinners are to be

punished in hell with menial work in the service of the righteous, stale beer and sexually unattractive strippers.

24. Pastafarians may congregate wearing “pirate regalia”, or fancy dress based on dress styles current in the Caribbean region in the seventeenth and eighteenth centuries, with accessories such as eye patches and cutlasses; some don a colander, a kitchen utensil used *inter alia* to drain the water off pasta after boiling, as headgear.

(b) Scriptures

25. The scriptures of the “Church of the Flying Spaghetti Monster” are *The Gospel of the Flying Spaghetti Monster* and *The Loose Canon*.

i. The Gospel of the Flying Spaghetti Monster

26. *The Gospel of the Flying Spaghetti Monster* is a book published commercially by Mr Henderson in 2006. It elaborates on the “religious beliefs” and the criticism of the theory of intelligent design originally set out in Mr Henderson’s open letter.

27. Among other things, the Flying Spaghetti Monster is stated to have given ten exhortations graven on stone tablets to a prophet by the name of Pirate Captain Mosey atop a holy mountain; however, the prophet dropped and broke two of the tablets on the way back down and the corresponding exhortations were lost. The remaining eight, known as the eight “I’d Really Rather You Didn’ts”, are said to be central to “Church of the Flying Spaghetti Monster” teaching. They read as follows (*The Gospel of the Flying Spaghetti Monster* (New York, Villard, 2006), pages 77-79):

“The eight ‘I’d Really Rather You Didn’ts’

1. I’d Really Rather You Didn’t Act Like A Sanctimonious, Holier-Than-Thou Ass When Describing My Noodly Goodness. If Some People Don’t Believe In Me, That’s Okay. Really, I’m Not That Vain. Besides, This Isn’t About Them So Don’t Change The Subject.

2. I’d Really Rather You Didn’t Use My Existence As A Means To Oppress, Subjugate, Punish, Eviscerate, And/Or, You Know, Be Mean To Others. I Don’t Require Sacrifices And Purity Is For Drinking Water, Not People.

3. I’d Really Rather You Didn’t Judge People For The Way They Look, Or How They Dress, Or The Way They Talk, Or, Well, Just Play Nice, Okay? Oh, And Get This In Your Thick Heads: Woman = Person. Man = Person. Samey-Samey. One Is Not Better Than The Other, Unless We’re Talking About Fashion And I’m Sorry, But I Gave That To Women And Some Guys Who Know The Difference Between Teal And Fuchsia.

4. I’d Really Rather You Didn’t Indulge In Conduct That Offends Yourself, Or Your Willing, Consenting Partner Of Legal Age AND Mental Maturity. As For Anyone Who Might Object, I Think The Expression Is Go F*** Yourself, Unless They Find That Offensive In Which Case They Can Turn Off The TV For Once And Go For A Walk For A Change.

5. I'd Really Rather You Didn't Challenge The Bigoted, Misogynist, Hateful Ideas Of Others On An Empty Stomach. Eat, Then Go After The B*****.

6. I'd Really Rather You Didn't Build Multimillion-Dollar Churches/Temples/Mosques/Shrines To My Noodly Goodness When The Money Could Be Better Spent (Take Your Pick):

A. Ending Poverty

B. Curing Diseases

C. Living In Peace, Loving With Passion, And Lowering The Cost Of Cable

I Might Be A Complex-Carbohydrate Omniscient Being, But I Enjoy The Simple Things In Life. I Ought To Know. I AM The Creator.

7. I'd Really Rather You Didn't Go Around Telling People I Talk To You. You're Not That Interesting. Get Over Yourself. And I Told You To Love Your Fellow Man, Can't You Take A Hint?

8. I'd Really Rather You Didn't Do Unto Others As You Would Have Them Do Unto You If You Are Into, Um, Stuff That Uses A Lot Of Leather/Lubricant/Las Vegas. If The Other Person Is Into It, However (Pursuant To #4), Then Have At It, Take Pictures, And For The Love Of Mike, Wear A CONDOM! Honestly, It's A Piece Of Rubber. If I Didn't Want It To Feel Good When You Did IT I Would Have Added Spikes, Or Something.

RAmen.”

ii. The Loose Canon

28. *The Loose Canon* (sub-title: *A Really Important Collection of Words*) is a collection of writings apparently by various authors published in or after 2010. It is accessible on the “Church of the Flying Spaghetti Monster’s” website (<http://www.loose-canon.info/Loose-Canon-1st-Ed.pdf>, accessed on 5 October 2021). Its title page carries a dedication to “St John the Blasphemist, Saint of Freakin’ Awesome Holy Texts”. Its title is a play on “canon”, meaning an authoritative collection of holy texts, and “loose cannon”, an expression in English meaning a person who is dangerously out of control. The book includes an “Old Pastament” and a “New Pastament”, each sub-divided into “Books” with titles including “A Reading From the Book of Fusilli”, “The Book of Linguini”, “The Torahellini Part 2” (there is no Part 1), “Pastalms” and “The Acts of the Apastals”.

29. One such “Book”, the “Book of Penelope”, contains the only scriptural reference to the use of a colander as headgear (page 17):

“1 Now as the Pastafarians were saved and hunger pains at bay there came a great lethargy upon the People. 2 ‘We must sleep!’ they cried, ‘for our bellies are full and T.V. hasn’t been invented yet’. 3 So they all did fall down into a deep slumber all except Penelope. 4 She’d had too many after-dinner espressos with her tiramisu.

5 As she idly walked along she heard a voice: ‘Gird up you loins and follow’. 6 ‘Grid [*sic*] up my loins?’ she thought, ‘sounds vaguely naughty’. 7 But as T.V. hadn’t been invented yet Penelope put the Holy Colander on her head and grabbed a handy pair of salad tongs 8 (not the crappy plastic ones but the good solid metal

ones). 9 Penelope strode (yep you guessed nobody walked anywhere then, they all strode) through the wilderness. 10 The voice led her through hill and dale 11 (Hill, Dale & Rill attorneys at law in the ancient world).”

30. Elsewhere in *The Loose Canon* the following explanation appears (page 153-54):

“10 Christianity and Intelligent Design are separate ideas. 11 The Church of the FSM [i.e. Flying Spaghetti Monster] is a satire of the ID [i.e. Intelligent Design] movement, namely that [*sic*] their argument that one cannot disprove that an omnipotent designer created the universe and life and therefore it is a plausible idea. 12 We counter and say you cannot disprove a Flying Spaghetti Monster created the universe and life and therefore by the ID proponents’ logic, it’s a plausible idea as well. 13 It’s meant to be as ridiculous as possible to demonstrate the flaw in this logic, plus a little humor goes a long way in any argument.”

(c) Other information

31. The home page of the “Church of the Flying Spaghetti Monster’s” website, <https://www.spaghettimonster.org/> (accessed on 5 October 2021), includes a link to an edition of *The Gospel of the Flying Spaghetti Monster* offered for sale on Amazon.com, immediately below which there is to be found a quotation from a review stated to have been published in *Scientific American* magazine. This quotation reads as follows:

“An elaborate spoof on Intelligent Design, *The Gospel of the Flying Spaghetti Monster* is neither too elaborate nor too spoofy to succeed in nailing the fallacies of ID. It’s even wackier than Jonathan Swift’s suggestion that the Irish eat their children as a way to keep them from being a burden, and it may offend just as many people, but Henderson puts satire to the same serious use that Swift did. Oh, yes, it is very funny.”

32. Elsewhere (<https://www.spaghettimonster.org/about/>, accessed on 5 October 2021) the site provides a brief biography of the founder and “prophet” of the “Church of the Flying Spaghetti Monster”, Mr Bobby Henderson, accompanied by a photograph of a person whom the Court supposes to be Mr Bobby Henderson himself, appearing bareheaded.

33. The following statement, published on 18 October 2018, is to be found on the website of the “Church of the Flying Spaghetti Monster” (<https://www.spaghettimonster.org/wp-content/uploads/2018/10/headgear-statement.pdf>, accessed on 5 October 2021):

“Statement regarding Traditional Pastafarian Headgear:

Allow me to confirm that the wearing of a Colander is a tradition in the Pastafarian faith. Not all followers dress so formally, but it is a common practice for us to do so while making official identification documents.

As you know, religion plays a serious part in many people’s lives, including the wearing of specific clothing. Believers over the years have sometimes unfortunately experienced resistance, mockery, or even discrimination for simply following the guidelines of their religion.

Thankfully case law has repeatedly affirmed that believers have a constitutionally-protected right to wear such clothing in nearly all public situations including: work, school, while taking identification photos, even in the courtroom – provided that the clothing does not cause undo [*sic*] harm. That is to say, that religious clothing is with very few exceptions a protected right.

We, the Church of the Flying Spaghetti Monster, are not a litigious group but of course we, along with the ACLU [i.e. the American Civil Liberties Union] and others, have an interest in defending the individual rights and liberties guaranteed by the Constitution and the laws of the United States.

Thank you for your cooperation and May You Be Touched by His Noodly Appendage.

Sincerely,

Bobby Henderson, Church of the Flying Spaghetti Monster”

B. Relevant domestic law and practice

34. As relevant to the case before the Court, the Passport Act (*Paspoortwet*) provides as follows:

Section 3

“ ...

2. A travel document [i.e. a passport or an identity card] shall bear the facial likeness ... of the holder according to rules to be specified in a regulation by the Minister [of the Interior and Kingdom Affairs]. ...”

35. As relevant to the present case, the Passport Implementation Regulations for the Netherlands 2001 (“Passport Implementation Regulations”) provide as follows:

Rule 28

“1. An application for a travel document shall be accompanied by an identity photograph that presents a good likeness of the applicant.

2. The identity photograph submitted shall comply with the acceptance criteria of the photo specification guidelines contained in annex L to these Regulations.

3. In derogation from the second paragraph an identity photograph can be accepted if the applicant has demonstrated that religious or philosophical reasons oppose not covering the head (*godsdienstige of levensbeschouwelijke redenen zich verzetten tegen het niet bedekken van het hoofd*). ...”

36. The guidelines mentioned in the second paragraph of Rule 28 that were in force at the relevant time – the Photo Specification Guidelines 2007 (*Fotomatrix Model 2007*) – required the head to be uncovered. Head covering was permitted only for religious, philosophical or medical reasons (paragraph 4). Under the heading “Religious or philosophical reasons” (paragraph 7) it was stated that if the applicant could demonstrate religious or philosophical reasons for covering the head, all the acceptance criteria

remained applicable save for the requirement that the head be uncovered. Photographs were shown, as examples, of a woman wearing an Islamic headscarf and a man wearing a Sikh turban.

37. The Photo Specification Guidelines of 2020, which replace the guidelines of 2007, retain this criterion.

38. Rule 33(1)(d) of the Driving Licence Regulations (*Reglement rijbewijzen*) requires an application for a driving licence to be accompanied by an identity photograph of the applicant that meets the requirements set out in rules to be issued by the competent minister.

39. Rule 1 of the Identity Photograph (Requirements) Rules (*Regeling eisen pasfoto's*) provides that the identity photograph required to be submitted when applying for a driving licence shall comply with all the acceptance criteria laid down in the photo specification guidelines annexed to the Passport Implementation Regulations.

40. In its newsletter (no. 5, 25 July 2016) the National Office for Identity Data (*Rijksdienst voor Identiteitsgegevens*) of the Ministry for the Interior and Kingdom Relations (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*) strongly advised subordinate authorities not to accept identity photographs showing applicants for identity documents wearing colanders on their head, since the “Church of the Flying Spaghetti Monster” did not constitute a religion or philosophical conviction to which the exception contained in Rule 28(3) of the Passport Implementation Regulations (see paragraph 35 above) applied. Moreover, when asked by such authorities how to respond in that situation, the National Office for Identity Data proposed a standard rejection text, part of which was used in the explanation provided to the applicant as cited in paragraph 5 above.

C. Council of Europe material

41. In the explanatory memorandum (contained in Parliamentary Assembly document 11375, 17 September 2007) to Resolution 1580 (2007) on “The dangers of creationism in education”, which was adopted by the Parliamentary Assembly of the Council of Europe on 4 October 2007, the following reference is made to Pastafarianism:

“52. In this connection, in accordance with the principle of an open attitude to the alternative theories advocated by the scientific creationists, and in order to show the illogicality of teaching intelligent design alongside the theory of evolution, a movement has, ironically, developed in the United States. The so-called *Pastafarian* movement supports the theory of the *Flying Spaghetti Monster*. Pastafarianism is a parody on religion created in response to the decision of the Kansas State Board of Education to permit the teaching of intelligent design in science courses on an equal footing with the theory of evolution. According to Pastafarianism, an invisible and omniscient being called the Flying Spaghetti Monster created the universe in one day. The supporters of Pastafarianism are demanding the same place in the school curricula as intelligent design. Full of irony, this pseudo-religion is setting a trend and the cult is spreading.”

COMPLAINTS

42. The applicant complained under Article 9 of the Convention that the requirement of official recognition of a religion or philosophical conviction had no legal basis in domestic law. She also complained under Article 14 of the Convention taken together with Article 9 that such a requirement was imposed only on Pastafarians, as compared to followers of other religions.

43. In the alternative, the applicant complained under Article 9 that the Administrative Jurisdiction Division had misapplied the standards developed by the Court and that no account had been taken of her *forum internum*. She also complained under Article 14 taken together with Article 9 that Pastafarianism had been disqualified as a religion on grounds not applied to other religions in similar situations.

THE LAW

A. The applicant's primary complaint

44. The applicant complained about the recommendation issued to municipalities by the Minister for the Interior and Kingdom Relations (see paragraph 40 above), which in her submission amounted to a requirement of official recognition of a religion for an adherent to benefit from legal exceptions without such a requirement having any basis in Netherlands law. Moreover, such a requirement was imposed only on Pastafarians, as compared to followers of other religions.

The applicant relied on Article 9 of the Convention both taken alone and read in conjunction with Article 14.

Those provisions read as follows:

Article 9

“1. Everyone has 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.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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 for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

45. The Court reiterates that it cannot examine legislation and policy in the abstract, its task rather being to examine the application of specific measures or policies to the facts of each individual case (see, among other authorities, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 77, ECHR 2001-I). The Court further notes that whether or not the Mayor followed the recommendation in question in the applicant's case (see paragraph 7 above), the Regional Court (see paragraph 14 above) and the Administrative Jurisdiction Division (see paragraph 19 above), when reviewing the Mayor's decision, substituted their own reasoning for that of the Mayor.

46. It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The applicant's alternative complaint

47. The applicant, restating the arguments she had raised in the domestic proceedings (see paragraphs 6, 11-13 and 16-18 above), complained that the national authorities, in particular the Administrative Jurisdiction Division, had misapplied the standards developed by the Court and that in dismissing her request to be exempted from the requirement that the head be uncovered on identity photographs, no account had been taken of her *forum internum*. She also alleged that Pastafarianism had been disqualified as a religion on grounds not applied to other religions in similar situations.

48. She relied on Article 9 of the Convention taken alone and read in conjunction with Article 14.

1. Alleged violation of Article 9 of the Convention

49. Since it is the applicant's case that the domestic authorities were wrong to conclude that Pastafarianism cannot be considered a religion or belief with the meaning of Article 9 of the Convention, the Court is required first to address the issue whether the applicant's doctrine can properly be considered to be protected by Article 9 of the Convention.

50. The Court is mindful that the right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 114, 26 April 2016).

51. Although the concept of “religion or belief” in the sense of being protected by Article 9 must be interpreted broadly, that does not mean that all opinions or convictions are to be regarded as such (see *Pretty v. the United Kingdom*, no. 2346/02, § 82, ECHR 2002-III). The Court has held that the right to freedom of thought, conscience and religion denotes only those views that attain a certain level of cogency, seriousness, cohesion and importance. However, provided this condition is satisfied – and when it has thus been established that Article 9 applies –, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *S.A.S. v. France* [GC], no. 43835/11, § 55, ECHR 2014, and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 81, ECHR 2013, with further references).

52. Turning to the facts of the present case, the Court observes that in its assessment of the question whether Pastafarianism can be regarded as a “religion” or “belief” within the meaning of Article 9 of the Convention, the Administrative Jurisdiction Division duly applied the above-mentioned standards and noted in particular a lack of the required seriousness and cohesion (see paragraph 19 above). In addition, and while accepting that the applicant was consistent in wearing her colander out of doors, the Administrative Jurisdiction Division held that she had not demonstrated that she belonged to a Pastafarian denomination that did meet the above-mentioned preconditions (*ibid.*).

53. The Court, for its part, sees no reason to deviate from the conclusion reached by the Administrative Jurisdiction Division, whose decision appears carefully measured and does not seem in any way arbitrary or illogical. It notes in this context that, while the original purpose of Mr Henderson’s letter (see paragraph 21 above) was to protest against the introduction into the school curriculum of the state of Kansas of the doctrine of “intelligent design” alongside the theory of evolution, it has inspired a movement critical of the influence and privileged position afforded to established religions (Christian denominations in particular) in some contemporary societies, and it seeks to express this criticism by parodying aspects of those religions. Further, this movement seeks the same privileges for itself with a view to propagating its message. The Court considers this understanding to be supported not only by the form and content of Pastafarian teaching, which in and of themselves leave little room for doubt, but also by the appearance in one of its “canonical” texts of the outright statement to that effect (quoted in paragraph 30 above).

54. In these circumstances, and in particular in view of the very aims for which the Pastafarian movement was founded, the Court does not consider Pastafarianism to be a “religion” or “belief” within the meaning of Article 9 of the Convention. Consequently, the wearing of a colander by followers of Pastafarianism cannot be considered a manifestation of a “religion” or

“belief” within the meaning of Article 9, even if the person concerned submits that he or she chooses to do so out of a conviction that is genuine and sincerely held.

55. It follows that Article 9 can apply neither to the “Church of the Flying Spaghetti Monster” nor to those who claim to profess its doctrines.

56. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Alleged violation of Article 14 taken together with Article 9 of the Convention

57. The applicant complained that Pastafarianism had been disqualified as a religion on grounds not applied to other religions in similar cases. The Court understands this to be a reference to Islam, Judaism and Sikhism, followers of which are allowed under the applicable domestic legislation on certain conditions to submit identity photographs showing likenesses of themselves wearing headgear according with their religious beliefs (see paragraph 36 above).

58. As the Court has held many times, Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols thereto. Article 14 has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, as a recent authority, *Molla Sali v. Greece* [GC], no. 20452/14, § 123, 19 December 2018).

59. The Court has already found that the applicant’s complaint does not fall within the scope of Article 9 of the Convention; it follows that no question can arise under Article 14 taken together with that provision. Accordingly, this complaint too is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

DE WILDE v. THE NETHERLANDS DECISION

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 December 2021.

{signature_p_2}

Andrea Tamietti
Registrar

Yonko Grozev
President