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Citation

Roberts, Caroline K. (2022). De Wilde v The Netherlands: Pastafarianism at the ECtHR. PILARS Case Comment 2022 (3); The Open University Law School.

URL

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De Wilde v The Netherlands: Pastafarianism at the ECtHR

Dr Caroline K Roberts¹

In terms of the types of convictions falling within its protection, the right to freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights (ECHR) is a broad right. The European Court of Human Rights (ECtHR) has offered protection to the ‘major’ or ‘traditional’ world religions—such as Buddhism, Christianity, Hinduism, Islam, Judaism and Sikhism—and relatively new religious movements, such as Falun Dafa², the Unification Church,³ and the ‘Santo Daime’ religion.⁴ It has also protected non-religious beliefs such as atheism,⁵ and positions of thought and conscience, including pacifism,⁶ veganism⁷ and views on alternative medicine.⁸ In *De Wilde v The Netherlands* the ECtHR was presented with the opportunity of examining ‘Pastafarianism’ for the first time.⁹

1. Pastafarianism

Pastafarianism emerged relatively recently. In protest against the introduction of the theory of intelligent design into the school curriculum in Kansas in 2005, Mr Bobby Henderson published an open letter online which suggested that the universe was created by a Flying Spaghetti Monster and demanded that this doctrine should be taught in addition to theories of evolution and intelligent design. Subsequently, a ‘Church of the Flying Spaghetti Monster’ came into being which is currently a ‘fluid network without formal organisation of membership’.¹⁰ The Church’s scriptures include *The Gospel of the Flying Spaghetti Monster*, and *The Loose Canon*. Members of the Church may gather wearing pirate-style clothing, and some wear a kitchen colander on their heads.

2. Background to the case

The applicant in *De Wilde v The Netherlands*, Miss Herminia Geertruida de Wilde, who identifies as a Pastafarian and follower of the Church of the Flying Spaghetti Monster, claimed that her religion requires her to wear a colander on her head at all times, except when she is at home.¹¹ The case emerged as a result of the domestic authorities’ refusal to accept a photograph submitted by the applicant for a new driving licence and identity card in which she was wearing a colander on her head. She claimed that, as a committed Pastafarian, she was entitled to make use of the exception to the requirement that the head be uncovered on identity photographs.

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² *AO Falun Dafa and Others v The Republic of Moldova* App. no 29458/15 (ECtHR, 29 June 2021).

³ *Nolan and K v Russia* App. no 2512/04 (ECtHR, 12 February 2009).

⁴ *Fränklin-Beentjes and CEFLU-Luz da Floresta v Netherlands* App. no 28167/07 (ECtHR, 6 May 2014).

⁵ *Angeleni v Sweden* (1986) 51 DR 41.

⁶ *Arrowsmith v United Kingdom* (1978) 19 DR 5.

⁷ *W v The United Kingdom* App. no 18187/91 (Commission Decision, 10 February 1993).

⁸ *Nyyssönen v Finland* App. no 30406/96 (Commission Decision 15 January 1998).

⁹ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021).

¹⁰ *Ibid.*, para 21.

¹¹ *Ibid.*, paras. 3, 6.

In a written response to the applicant, the domestic authorities explained that the Church of the Flying Spaghetti Monster ‘is not a church or philosophical conviction’, and the documents of the Church in question do not reveal that it is necessary for members to wear a colander on their heads at all times.¹² Additionally, the domestic authorities observed the organisation’s criticism of religion expressed through caricature, and its aim to ‘seek recognition of this caricature so that it can enjoy the constitutional protection attending freedom of thought or religious conviction’, and suggested that the expression of ‘social opinions or criticism’ would more appropriately be characterised as freedom of expression rather than freedom of religion.¹³

The Mayor echoed this, stating that the Church of the Flying Spaghetti Monster was a ‘parody’ which aimed to question the position of religion in society and was not a ‘religion’ in accordance with the definition in *Eweida and Others v United Kingdom*.¹⁴ Further, the Mayor noted that it did not appear that the wearing of a colander was a requirement but was rather a choice on the part of the applicant.

The applicant appealed the Mayor’s decision arguing firstly, that her religion was worthy of respect as such and was not a parody. Secondly, she argued that the wearing of a colander was not prescribed by scripture, but it was her conviction which led her to interpret the scriptures in such a way. She attempted to draw similarities with other faiths, claiming that ‘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’.¹⁵ Lastly, she argued that preventing her from wearing a colander on her identity document was not necessary under Article 9.2.

In its decision, the Overijssel Regional Court focused not on whether the Church of the Flying Spaghetti Monster could be considered a religion or philosophical school of thought, but rather on the question of whether it required her to cover her head. The court found that such a requirement had not been demonstrated by the applicant and the wearing of a colander at all times, except at home, was the applicant’s personal choice. The applicant appealed further, arguing that the Regional Court should have examined whether Pastafarianism was a religion and her reasons for wearing a colander. Again, she referred to the Islamic headscarf and Sikh turban in her argument that the Regional Court should not have limited its examination to the question of whether there was a scriptural basis for the wearing of the colander but rather her interpretation of it.

Unlike the Regional Court, the Administrative Jurisdiction Division did examine the question of whether Pastafarianism could be considered a religion or belief under Article 6 of the Constitution and ECHR Article 9. Referring to *Campbell and Cosans v The United Kingdom* and *Eweida and Others v The United Kingdom*,¹⁶ the Administrative Jurisdiction Division found that Pastafarianism did not meet the criteria to be considered a religion or belief within the meaning of Article 9 because it is not sufficiently serious or cohesive. The court observed that Pastafarianism is satirical in character, and referred to the Church’s holy books, specifically ‘The Prayer Book’ which contains ‘the most important prayer of the Pastafarians’.¹⁷ The Administrative Court noted that this prayer is ‘unmistakably derived

¹² *Ibid.*, para. 5.

¹³ *Ibid.*

¹⁴ See *Eweida and Others v United Kingdom* ECHR 2013-I 215 (extracts).

¹⁵ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 12.

¹⁶ *Campbell and Cosans v The United Kingdom* (1982) Series A no 48; *Eweida and Others v United Kingdom* ECHR 2013-I 215 (extracts), para. 81.

¹⁷ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 19.

from the ‘Our Father’ from the Christian tradition, and is intended as a persiflage on it’.¹⁸ The court also noted that the “‘I’d Really Rather You Didn’t’s” by the Spaghetti Monster are ‘a jocular variation on the Ten Commandments from the Jewish-Christian tradition’.¹⁹ Whilst the court recognised the importance of being able to freely express satirical criticism of religion, it observed that the criticism itself cannot be considered a religion. Furthermore, the court also observed that there was not a ‘denomination or individual version within Pastafarianism’ adhered to by the applicant which did meet the criteria of seriousness and cohesion.²⁰

3. Complaints before the ECtHR

Before the ECtHR, the applicant put forward two complaints. Relying on Article 9 read alone and in conjunction with Article 14, the applicant’s primary complaint concerned a recommendation issued to municipalities which, in the applicant’s view, amounted to a requirement for official recognition of a religion or philosophical view in order for adherents to benefit from legal exceptions. She claimed that the requirement was only imposed on Pastafarians.

In examining this complaint, the ECtHR observed that, regardless of whether the mayor followed the recommendation in question, the Regional Court and the Administrative Jurisdiction Division relied on its own reasoning rather than that of the Mayor. As such, this complaint was deemed manifestly ill-founded and rejected.

The applicant’s alternative complaint, relying on Article 9 alone and read in conjunction with Article 14, was that the Administrative Jurisdiction Division had not correctly applied the ECtHR case law, and in dismissing her request to be exempted from the requirement that her head be uncovered in identity photographs, had taken no account of her *forum internum*.²¹ Additionally she claimed that Pastafarianism had ‘been disqualified as a religion on grounds not applied to other religions in similar situations’.²²

The ECtHR examined whether the applicant’s doctrine could be considered to be protected by Article 9. It noted that ‘religion or belief’ should be interpreted broadly under Article 9 and reiterated that it is ‘mindful’ that the right to freedom of thought, conscience and religion ‘would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of a religious denomination so restrictively as to deprive a non-traditional minority form of a religion of legal protection’.²³ However, drawing upon *Pretty v The United Kingdom*, it emphasised that this ‘does not mean that all opinions or convictions are to be regarded’ as a religion or belief;²⁴ only views which attain a certain level of cogency, seriousness, cohesion and importance are protected under Article 9.²⁵

In considering the Administrative Jurisdiction Division’s approach to the question of whether Pastafarianism could be regarded as a religion or belief under Article 9, the ECtHR observed that the court had applied the ECtHR criteria in the proper manner and, in doing so, had found that

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid., para. 47.

²² Ibid.

²³ Ibid., para. 50.

²⁴ Ibid., para. 51. In the succinct Article 9 analysis in *Pretty*, the ECtHR explained that whilst it did not doubt that the applicant held a firm view regarding assisted suicide, the view in question did not fall within Article 9, see *Pretty v The United Kingdom* Reports of Judgment and Decisions 2002-III, para. 82.

²⁵ Ibid.

Pastafarianism did not meet the necessary seriousness and cohesion required. Further, the ECtHR observed that whilst the Administrative Jurisdiction Division had accepted that the applicant consistently wore her colander when outdoors, it considered that the applicant had ‘not demonstrated that she belonged to a Pastafarian denomination’ that did meet the necessary criteria.²⁶

The ECtHR held that the conclusions reached by the Administrative Jurisdiction Division were ‘carefully measured’ and did not seem to be ‘arbitrary or illogical’.²⁷ As such, it saw no reason to deviate from them. Notably, the ECtHR pointed to an irony in Pastafarianism. It observed that on the one hand, the movement inspired by Mr Henderson is ‘critical of the influence and privileged position afforded to established religions (Christian denominations in particular) in some contemporary societies and seeks to express this criticism by parodying aspects of those religions’, yet, on the other hand, it ‘seeks the same privileges for itself with a view to propagating its message’.²⁸ The ECtHR found this to be evident not only in the form and content of Pastafarian teaching, but also in *The Loose Canon*, which explains that the Church of the Flying Spaghetti Monster is a satire of intelligent design, and “‘is meant to be as ridiculous as possible’” to show the flaw in the logic of the intelligent design argument.²⁹ Taking this into account, the ECtHR considered that Pastafarianism was not a religion or belief within the meaning of Article 9 and, as such, the wearing of a colander by its followers could not be considered a manifestation of religion or belief, ‘even if the person concerned submits that he or she chooses to do so out of a conviction that is genuine and sincerely held’.³⁰

The ECtHR emphasised that Article 9 does not apply to the ‘Church of the Flying Spaghetti Monster’ nor to those individuals ‘who claim to profess its doctrines’,³¹ and thus the complaint was deemed incompatible *ratione materiae* with the ECHR. In terms of the complaint under Article 14 taken together with Article 9, given the ECtHR had already found that the complaint did not fall under Article 9, no question could arise under Article 14, therefore the application was declared inadmissible.

4. Comment

The term ‘religion’ is not defined in Article 9 of the ECHR or in the case law of the ECtHR. This is unsurprising given the difficulty of settling on a definition that would adequately cover the variety of religions around the globe. To merit protection under Article 9, the ECtHR has set out that the criteria that views must attain a certain level of cogency, seriousness, cohesion and importance,³² and in applying this to *De Wilde*, the domestic court found that neither Pastafarianism, nor a ‘denomination or individual version’ within it, met the criteria for seriousness and cohesion;³³ this conclusion was followed by the ECtHR.

In his discussion on sincerity and Article 9, published before the judgment in *De Wilde*, Wolff claims that ‘it is highly unlikely that anyone truly believes the Flying Spaghetti Monster exists’ and suggests that claimants who argue that they do really believe in Pastafarianism’s tenants ‘are most likely

²⁶ *Ibid.*, para. 52.

²⁷ *Ibid.*, para. 53.

²⁸ *Ibid.*

²⁹ *Ibid.*, paras. 30, 53.

³⁰ *Ibid.*, para. 54.

³¹ *Ibid.*, para. 55.

³² *Campbell and Cosans v The United Kingdom* (1982) Series-A 48, para. 36.

³³ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 19.

dishonest’ because it is ‘uncontroversially a parody’.³⁴ However, he does concede that they are likely sincere about the message behind Pastafarianism which is, as he sees it, that ‘it is morally outrageous’ that some people are entitled to legal benefits on the grounds of religion that others are not entitled to,³⁵ and suggests that Pastafarians who engage in litigation presumably do so to raise its profile.³⁶

In *De Wilde* the applicant argued, during the domestic proceedings, that her religion was worthy of recognition as such and ‘was not a parody’,³⁷ contending that the Church of the Flying Spaghetti Monster’s teachings on peace and tolerance were ‘serious’ and that humour and satire were employed to spread the message.³⁸ The applicant’s alternative complaint under Article 9 before the ECtHR—that the Administrative Jurisdiction Division had misapplied the ECtHR standards and had taken no account of her *forum internum*—is interesting in this respect.³⁹

a. The forum internum complaint

The *forum internum* refers to the realm of individual conscience, or the sphere of inner belief or conviction. In terms of Article 9 jurisprudence, this case is particularly noteworthy because it is one of the very few cases concerning freedom of thought, conscience or religion in which an applicant has referred specifically to their *forum internum* in the Article 9 complaint.⁴⁰

Nevertheless, despite the explicit reference to the *forum internum* by the applicant, the ECtHR made no reference to the *forum internum* or realm of individual conscience when setting out the general principles under Article 9. In complaints concerning the right to freedom of thought, conscience and religion, the ECtHR often begins its assessment by setting out the general principle that:

Article 9 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 recognised form,⁴¹ or, in its alternative format,

while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one’s religion.⁴²

In *De Wilde* this general principle is somewhat conspicuous by its absence. One explanation is that the ECtHR avoided emphasising the importance of the *forum internum*, and the interconnection between the *forum internum* and the *forum externum* in the general principles, because it knew the outcome that it was going to reach (namely, that it was going to follow the conclusion of the Administrative Jurisdiction Division and find that Pastafarianism is not a religion or belief within the meaning of Article 9) and, as such, any emphasis on the *forum internum* at that point may have weakened the subsequent reasoning.

³⁴ Tim Wolff, ‘True Believers? – Sincerity and Article 9 of the European Convention on Human Rights’ (2021) 17:4 European Constitutional Law Review, 259, 262.

³⁵ *Ibid.*

³⁶ Wolff, ‘True Believers?’, 275

³⁷ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 11.

³⁸ *Ibid.*,

³⁹ *Ibid.*, para. 43.

⁴⁰ *Nolan and K v Russia* App. no 2512/04 (ECtHR, 12 February 2009), para. 59.

⁴¹ *Schilder v The Netherlands* App. no 2158/12 (ECtHR, 16 October 2012), para. 18.

⁴² *Christian Religious Organization of the Jehovah’s Witnesses in the NKR v Armenia* App. no 41817/10 (ECtHR, 22 March 2022), para. 73.

This is because it is likely that any reference to the *forum internum* through this general principle may have required the ECtHR to have engaged with the applicant's alternative complaint in more detail in the assessment. In addressing the applicant's alternative complaint under Article 9, the ECtHR focused largely on the first part of that complaint (namely that the Administrative Jurisdiction Division misapplied the ECtHR standards) and paid scant attention to the second part of that complaint, that the Administrative Jurisdiction Division had taken no account of her *forum internum*. By focusing its attention on the question of whether Pastafarianism could be considered a religion or belief for the purposes of Article 9, the ECtHR avoided a more complex consideration of *forum internum* relevance in this case. Interestingly, the ECtHR did consider the relevance of manifestation (which was not directly raised by the applicant), however, it swiftly rejected this, noting that the wearing of a colander could not be considered a manifestation of religion or belief, even if the individual claimed that they chose to wear such headgear due to a genuine and sincerely held conviction.

b. Pastafarianism as a 'parody'

It is also interesting to reflect on the description of Pastafarianism as a 'parody' in this case. In the domestic proceedings in *De Wilde*, the Dutch Mayor observed that the Church of the Flying Spaghetti Monster 'was a parody intended to call into question the position of religion in contemporary society',⁴³ and the Administrative Jurisdiction Division referred to it as a 'satire and parody'.⁴⁴ The ECtHR referenced the Council of Europe's memorandum to Resolution 1580 on 'The dangers of creationism in education' in which Pastafarian is described as 'a parody on religion',⁴⁵ and in its assessment under Article 9, the ECtHR explained that Pastafarianism expresses criticism of established religions by 'parodying aspects of those religions'.⁴⁶

Whether a 'parody' is, however, an appropriate descriptor for Pastafarianism is debatable. A parody is defined as 'writing, music, art, speech, etc. that intentionally copies the style of someone famous or copies a particular situation, making the features or qualities of the original more noticeable in a way that is humorous'.⁴⁷ Taking into account the content of some of the Church of the Flying Spaghetti Monster's scriptures it seems that it perhaps goes further than this. For example, the prayer described in the proceedings is, as the Administrative Jurisdiction Division noted, 'unmistakably' derived from the 'Our Father'.⁴⁸ That court suggested that it was 'intended as a persiflage on it',⁴⁹ but describing that prayer as a 'persiflage'⁵⁰ may be deemed, by some, to fall considerably short. It is not difficult to see how this may, for instance, be described as offensive, particularly to Christians. Given the specific complaints in *De Wilde*, such a consideration was not relevant, but it would be interesting to reflect on this further in the context of Pastafarianism in general.

Given the nature of Pastafarianism, the ECtHR's conclusion in *De Wilde v The Netherlands* that it is not sufficiently serious or cohesive to merit protection under Article 9 does not come as a surprise. When the facts are considered, the ECtHR's fairly succinct Article 9 assessment, in which it

⁴³ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 7

⁴⁴ *Ibid.*, para. 19.

⁴⁵ *Ibid.*, para. 41.

⁴⁶ *Ibid.*, para. 53.

⁴⁷ Cambridge Dictionary (Cambridge: Cambridge University Press, 2022), available at: <https://dictionary.cambridge.org/dictionary/english/parody>

⁴⁸ *De Wilde v The Netherlands* App. no 9476/19 (ECtHR, 9 November 2021), para. 19.

⁴⁹ *Ibid.*

⁵⁰ The term 'persiflage' refers to a 'conversation that is funny and not serious', see Cambridge Dictionary (Cambridge: Cambridge University Press, 2022), available at: <https://dictionary.cambridge.org/dictionary/english/persiflage>

focused on the question of whether Pastafarianism could be protected by Article 9 and avoided making any reference to the *forum internum*, seems understandable as it enabled the ECtHR to deal swiftly with the complaint.

28 July 2022

