

## Main paragraphs of the judgment on Pastafarianism and the Church of the Flying Spaghettimonster.

These paragraphs are an excerpt from the ruling of the Administrative Jurisdiction Division of the Dutch Council of State of 15 August 2018 in case number 201707148/1.

### *Introduction*

1. Appellant is a member of the Church of the Flying Spaghetti Monster and professes Pastafarianism. The colander that she always wears on her head in public is a holy object for Pastafarians and is worn to honour the Flying Spaghetti Monster. Appellant applied for an identity card and a driving licence and submitted passport photos in which she appears with a colander on her head. The mayor rejected the application because the passport photos did not meet the acceptance criteria in accordance with the Passport Implementation Regulations of The Netherlands 2001. The [district] court [of Overijssel] did not give an opinion as to whether the vision held by the Church of the Flying Spaghetti Monster could be considered as a religious or ideological movement and held that appellant had not demonstrated that Pastafarianism required her to cover her head, meaning that she could not rely on the exceptional provision in the Passport Implementation Regulations.

[...]

9.4. [In view of the above], in the current situation Pastafarianism cannot be regarded as a religion within the meaning of Article 9 ECHR and Article 6 of the Constitution. The Administrative Jurisdiction division recognises the considerable significance of being able to freely express satirical criticism of religious dogmas, institutions and religions. Such criticism itself however, even if it also relates to religion, cannot yet be considered as a religion itself, which is covered by the fundamental rights as mentioned above. In accordance with the ruling of the district court of Oost-Brabant of 15 February 2017, ECLI:NL:RBOR:2017:762, the Administrative Jurisdiction Division considers that the satirical element in Pastafarianism - not only the form but also the content of the vision being communicated – not only constitutes an additional aspect, but is so dominant that the preconditions formulated in the case law of the ECHR are not met, meaning that it cannot be considered as a religion or belief. In particular, there is a lack of the required seriousness and cohesion. The above-mentioned written parodies are distinctive features in this connection. For example, the lack of cohesion is illustrated by 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 ECHR, 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 explanations of Article 6 of the Constitution, Parliamentary Papers II 1975/76, 13872, No. 3, page 29 and Parliamentary Papers II 1976/77, 13872, No. 7, pages 24-25.

10. Alternatively, appellant argued that whether or not Pastafarianism in the abstract is a religion or belief, her movement and the way in which she interprets her beliefs does in any case qualify as a religion and is entitled to constitutional protection.

10.1. In view of what has been stated above in paragraphs 8.-8.4, the version of Pastafarianism advocated by appellant can also not now be considered as a religion. The explanation given by appellant in writing and at the hearing does not provide a rationale for another opinion other than that there is little evidence of a cohesive and serious vision in the current situation which meets the criteria to qualify as a religion or belief. Appellant 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, but her written and oral explanations are of a general and abstract character and are not of such a nature that they make it credible that there is a movement or individual version within Pastafarianism advocated by her that would meet the criteria of seriousness and cohesion, thus making it a religion or belief within the meaning of Article 9 ECHR and Article 6 of the Constitution, on the basis of which the exception clause of Article 28, third paragraph, of the Passport Implementation Regulations would be applicable.

11. Now that Pastafarianism as such, or a movement or individual version within it, cannot 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 Article 28, third paragraph, of the Passport Implementation Regulations, an exception has to be made to the requirement laid down in the Photo Matrix for an uncovered head.

[...]