

HANNAH AND YGRITTE OLARIA v. ARGOLAND

Facts

1. Ms Hannah Olaria is a citizen of Argoland who was born in 1980 and lives in Leti, the capital of Argoland. She belongs to the Argoland Reformist Church, a relatively new minority Christian denomination in Argoland. On 20 July 2015 Ms Olaria gave birth to a baby girl, Ygritte. On 30 July 2015 Ygritte was officially admitted to the Argoland Reformist Church after following the prescribed initiation rites.
2. Under the national law of Argoland new-born babies are subject to a series of seven compulsory vaccines, including polio, diphtheria, tetanus, measles, mumps, rubella, and hepatitis B. Ms Olaria refused to vaccinate her child on the ground of her personal and religious beliefs.
3. After the birth of the child and during regular visits to the neonatologist and paediatrician, the medical practitioners repeatedly informed Ms Olaria that vaccination was a statutory obligation in the interest of the child and that the only possible exemption was on medical grounds. The aim of such an obligation was also to protect the overall health of society against infectious diseases. The practitioners also warned Ms Olaria that misdemeanour proceedings might be initiated against her should she refuse to vaccinate her child in line with the vaccination schedule. Ms Olaria refused to vaccinate her child against any of the seven diseases and insisted that her opinion should be respected, as she was the child's sole carer. Due to the fact that no compulsory vaccine was administered during the first five months of Ygritte's life, misdemeanour proceedings were initiated against Ms Olaria on 20 December 2015.
4. In the course of the misdemeanour proceedings the first applicant, who was represented by a lawyer, argued that vaccines were not necessary and could represent a risk. She relied on a number of documents suggesting connections between vaccines and certain medical conditions, such as autism. Secondly, Ms Olaria also objected the immunisation on the basis of her religious convictions. Ms Olaria pointed out that some vaccines, including that for rubella, had been developed using cells originating from tissue of legally aborted human foetuses. She explained that the Argoland Reformist Church is not only strictly against abortions, but it also rejects all types of vaccines. According to its belief, vaccines interfere with the believers' relationship with God, as they make people less dependent on God and his will. Any sentence against her would thus amount to an unjustified interference with her parental rights and her freedom of conscience and religious belief.
5. On 4 April 2016 the Court of First Instance convicted the applicant of having refused the compulsory vaccination of her new-born child under Article 120 of the Law on Misdemeanours and imposed an unconditional fine of 800 euros (EUR) on her. The Court of First Instance held that the relevant national legislation was clear, accessible and foreseeable and that it was designed to protect against the spreading of infectious diseases. Moreover, vaccination was in the best interest of the child.

6. The applicant complained to the Court of Appeal, arguing that the lower court did not sufficiently examine the facts of the case, did not perform a proportionality analysis and automatically applied the law. She insisted that upholding her conviction would amount to a violation of her rights guaranteed under the European Convention on Human Rights.
7. Before one of the hearings before the Court of Appeal, the representative of the Public Administration Agency, who initiated the proceedings, whispered to his assistant that this case “should be fun” as it was brought by “one of those bio-mothers”. He did not notice that his microphone was on and the statement was heard in the hearing room. The judge laughed at the remark, however, he asked the representative to apologise to the applicant for his inappropriate comment. In line with the national legislation, the applicant complained about the judge’s impartiality to the chamber of judges of the Court of Appeal. Her complaint was rejected on the same day as unfounded. No reasons justifying the conclusion that the judge was biased were established. No further appeal against this decision was possible.
8. On 16 November 2016 the Court of Appeal upheld the first-instance judgment, endorsing the reasoning of the Court of First Instance. It added that Ms Olaria’s parental rights had to be balanced against the right of the child to the enjoyment of the highest attainable standard of health and that the State was obliged to take appropriate measures to combat infectious diseases. As for an exemption from vaccination on the basis of her religious beliefs, the Court of Appeal noted that no such exemption was allowed under the national legislation. In addition, there did not exist any scientific evidence that would support the applicant’s concerns.
9. On 12 April 2017 the Supreme Court upheld the findings of the Court of Appeal.
10. On 20 April 2017, the applicant herself, on her own behalf and the child’s, lodged a civil claim under Article 1 of the Anti-Discrimination Act, alleging discrimination on the grounds of the applicants’ religious beliefs. Both applicants were represented by a lawyer. They argued that even though the only exception to the compulsory vaccination under the Law on Misdemeanours related to medical reasons, the religious objections should have been taken into account on the basis of Constitution and the Anti-Discrimination legislation. The latter included a general prohibition of discrimination, in line with Protocol No. 12 of the European Convention on Human Rights, thus providing a broader protection of the applicants’ rights. They argued that by disregarding the applicants’ religious beliefs, by sentencing Ms Olaria to a fine of 800 EUR, and by subjecting Ygritte to a legal coercion to undergo vaccination, the applicants were discriminated against on the basis of their religion. The applicants also pointed at the legislation and case-law of some other countries which admit the possibility to raise religious objections against compulsory vaccination. They further argued that the comments made before one of the hearings of the Court of Appeal and the reaction of one of the judges, were a clear indication that prejudice and negative stereotypes played a role in the misdemeanour proceedings.
11. The applicants’ claim was upheld by the Court of First Instance on 28 June 2017. The Court of First Instance concluded that the automatic application of the legal provisions relevant

to infectious diseases without sufficient analysis of the applicants' religious beliefs amounted to a prohibited discrimination under Article 1 of the Anti-Discrimination Act. It further stated that the fact that the law did not allow for exemption on religious grounds was equally problematic, undermining the neutrality of the law and practice. The court also noted that the Argoland legislation did not provide any responsibility of the State in case of any negative side-effects or possible long-term health impact on the child as a consequence of the compulsory vaccination. On the contrary, the State transferred to parents the obligation to bear any potential moral or financial harm incurred by the child as a consequence of vaccinations.

12. The court referred to a comparative law where such exemptions could be granted on religious grounds. It also concluded that the aim of the law, that is the protection of the society against infectious diseases, could be achieved, among others, by a legal provision that children without certain vaccines could be let off school during outbreaks of the disease in question.
13. On 2 September 2017 the Court of Appeal overturned the lower court's judgment. It held that the medical practitioners and the courts acted in accordance with domestic law. It was of an utmost importance to protect society against the spreading of infectious diseases. Moreover, the rights of the child and the principle of the best interest of the child were of a higher importance than the mother's rights under Article 8 and Article 9 of the European Convention on Human Rights. The court further opined that the obligation to undergo compulsory immunisation did not amount to discrimination on any protected ground. All citizens were equally obliged to allow immunisation of their children and subject to misdemeanour proceedings in case of non-compliance. The misdemeanour proceedings against the first applicant had been conducted in accordance with the law. The comments and reactions before one of the hearings did not affect in any way the adjudication of the case.
14. On 10 September 2017 the applicants lodged an application with the European Court of Human Rights, alleging violation of their rights under the European Convention on Human Rights.

Law

15. Argoland is a member state of the Council of Europe. It has ratified the European Convention on Human Rights, all its Protocols as well as the Council of Europe European Social Charter (Revised), the European Convention on the Exercise of Children's Rights, and the Convention on Human Rights and Biomedicine. It has also ratified all major United Nations human rights treaties. Argoland has signed an association agreement with the European Union.
16. The Argoland Reformist Church is a branch of a Christian Reformist Church movement. In 2016 it had been recognised as an official church in eight Council of Europe member States. It was founded in Europe at the beginning of the 1980s and spread to Argoland in 2001 when it sought recognition of legal personality but was refused, as it did not satisfy

the minimum requirement of 20 years' existence on Argoland territory. It has its own distinctive doctrine and its members are required to follow specified religious rituals in private and publicly. One of the main stances that distinguish the Argoland Reformist Church from the other movements is a certain scepticism towards the scientific advances, proclaiming these to work against the will of God. Some pastors of this church have been vocal in newspapers and other media, preaching against abortions and vaccinations of children.

17. The Argoland judicial system consists of three levels of courts which have jurisdiction to consider civil, criminal, and administrative matters - the courts of first instance, the courts of appeal and the Supreme Court. After the adoption of a final judgment by the Supreme Court, no further appeal is possible. The Supreme Court has no competence *ratione materiae* over civil actions prescribed under special legislation such as the Anti-Discrimination Act.

18. Argoland Constitution:

Article 11: Everyone shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics. All persons shall be equal before the law.

Article 20: Freedoms and rights may only be restricted by law in order to protect the freedoms and rights of others, the legal order, and public morals and health.

Any restriction of freedoms or rights shall be proportionate to the nature of the need to do so in each individual case.

19. The Act on Protection from Infectious Diseases prescribes seven vaccines that are compulsory for children, i.e. polio, diphtheria, tetanus, measles, mumps, rubella, and hepatitis B. It also includes a specified vaccine schedule spread out for the first 18 months of the life of the child to be observed by parents and other carers. Immunisation may be postponed or not administered to a child on medical grounds. In this case, the child's state of health will be examined by a special committee which may adopt a recommendation not to vaccinate the child. The Public Administration Agency initiates misdemeanour proceedings if compulsory vaccination is refused and not administered in accordance with the vaccine schedule.

20. Article 120 of the Law on Misdemeanours sanctions the child's parents or carers for non-compliance with the compulsory vaccination with a fine of 800 EUR.

21. Article 1 of the Anti-Discrimination Act prohibits discrimination in the enjoyment of any right provided by law 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.

