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EUROPEAN HUMAN RIGHTS MOOT COURT COMPETITION

Case Name

Hannah and Ygritte Olaria

VS

Argoland

SUBMISSION OF THE RESPONDENT

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I. LIST OF ABBREVIATIONS

Art.	Article
Convention	European Convention on Human Rights
Court	European Court of Human Rights
DR	Reports and Decisions of the Commission
GC	Grand Chamber
WHO	World Health Organization

II. LIST OF REFERENCES

1. Conventions / Treaties / Recommendations

- Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe (4 Nov. 1950).
- Convention on Human Rights and Biomedicine, Council of Europe (Oviedo, 1997).
- Convention on the Rights of the Child, United Nations General Assembly (2 Sept. 1990).
- European Social Charter (Revised), Council of Europe (Strasbourg, 1996).
- Global Vaccine Action Plan 2011-2020, World Health Assembly (May 2012).
- International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child (16 Dec. 1996).
- Parliamentary Assembly Recommendation 1317 (1997): Vaccination in Europe.

2. Case-Law of the European Court of Human Rights

- *Acmanne and Others v. Belgium* [Commission], case no. 10435/83 (10/12/1984).
- *Aktas v. France*, case no. 43563/08 (30/06/2009).
- *B.N. and S.N. v. Sweden*, case no.17678/91 (30/06/1993).
- *Biblical Center of the Chuvash Republic v. Russia*, case no. 33203/08 (12/06/2014).
- *Boffa and Others v. San Marino* [Commission], case no. 26536/95 (15/01/1998).
- *Burden and Burden v. the United Kingdom*, case no. 13378/05 (29/04/2008).

- *Campbell and Cosans v. the United Kingdom*, cases nos. 7511/76 and 7743/76 (25/02/1982).
- *Church of Scientology Moscow v. Russia*, case no. 18147/02 (05/04/2007).
- *Crompton v. the United Kingdom*, case no. 42509/05 (27/08/2009).
- *De Cubber v. Belgium*, case no. 9186/80 (26/10/1984).
- *De Haan v. the Netherlands*, case no. 22839/93 (26/08/1997).
- *Dubská and Krejzová v. the Czech Republic* [GC], cases nos. 28859/11 and 28473/12 (15/11/2016).
- *Eweida and Others v. The United Kingdom*, cases nos. 48420/10, 59842/10, 51671/10 and 36516/10 (15/01/2013).
- *Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands*, case no. 28167/07 (06/05/2014).
- *Halford v. The United Kingdom*, case no. 20605/92 (25/06/1997).
- *Handyside v. The United Kingdom*, case no 5493/72 (07/12/1976).
- *Hoffmann v. Austria*, case no. 12875/87 (23/06/1993).
- *Jakóbski v. Poland*, case no. 18429/06 (07/12/2010).
- *Jehovah's Witnesses of Moscow and Others v. Russia*, case no. 302/02 (10/06/2010).
- *Kimlya and Others v. Russia*, cases nos. 76836/01 and 32782/03 (01/10/2009).
- *Kiyutin v. Russia*, case no. 2700/10 (10/03/2011).
- *Kokkinakis v. Greece*, case no. 14307/88 (25/05/1993).
- *Leuffen v. Germany* [Commission], case no. 19844/92 (09/07/1992).
- *Leyla şahin v. Turkey*, [GC], case no. 44774/98 (10/11/2005).
- *Martins Casimiro and Cerveira Ferreira v. Luxembourg*, case no. 44888/98 (27/04/1999).
- *Memlika v. Greece*, case no. 37991/12 (06/10/2015).

- *Micallef v. Malta* [GC], case no. 17056/06 (15/10/2009).
- *Olsson v. Sweden (No. 2)*, case no. 13441/87 (27/11/1992).
- *Osmanoğlu and Kocabaş v. Switzerland*, case no. 29086/12 (10/01/2017).
- *Passannante v. Italy*, case no. 32647/96 (01/07/1998).
- *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, case no. 40825/98, (31/07/2008).
- *S.A.S. v. France* [GC], case no. 43835/11 (01/07/2014).
- *Severe v. Austria*, case no. 53661/15 (21/09/2017).
- *Soering v. The United Kingdom*, case no. 14038/88 (07/07/1989).
- *Solomakhin v. Ukraine*, case no. 24429/03 (15/03/2012).
- *The Church of Jesus Christ of Latter-Day Saints v. The United Kingdom*, case no. 7552/09 (04/03/2014).
- *Thlimmenos v. Greece* [GC], case no.34369/97 (04/12/1998).
- *V v. Netherlands*, case no. 10678/83 (05/07/1984).
- *Vallianatos and Others v. Greece* [GC], cases nos. 29381/09 and 32684/09 (07/11/2013).
- *X v. The United Kingdom*, case no. 7992/77 (12/07/1978).

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III. SUMMARY OF THE FACTS

- In accordance with the national law of the respondent State, infants should be subjected to mandatory vaccination against contagious diseases, with an exemption being granted solely on medical grounds. In case of failure to abide by this legislation, the Public Administration Agency is competent to initiate misdemeanour proceedings and a fine is imposed on the legal carer of the child.
- The first applicant, an Argoland national, following the birth of her child, did not comply with the national legislation, as she refused to vaccinate her child despite being repeatedly informed of her statutory obligation by medical practitioners. Consequently, misdemeanour proceedings were initiated on 20 December 2015 and she convicted to pay a fine of 800 Euros.
- Regarding the misdemeanour proceedings, the Court of First Instance convicted the applicant, whilst she attempted to justify her refusal to vaccinate her child. Subsequently, the applicant lodged an appeal against the decision of the Court of First Instance. Following the reasoning of the First Instance Court, the Court of Appeal added that the applicant’s parental rights had to be balanced against the right of the child for the highest attainable standard of health as well as the protection of civilians against the outbreak of infectious diseases. Finally, the judgment of the Court of First Instance was upheld by the Court of Appeal and the latter’s findings were affirmed by the Supreme Court. The government refutes that Art. 8 and 9 have been violated since the imposed fine was necessary in order for public health to be preserved.
- In the meantime, a separate civil claim was initiated under the Anti-Discrimination Act on 20 April 2017. The civil claim, lodged by the first applicant on behalf of herself and her child, which invoked discriminatory treatment against their religious beliefs, reached the Court of Appeal which is the final court to opine on the alleged discrimination. The Court of Appeal overturned the decision of the Court of First Instance and eventually concluded that since the

legislation applies to everyone equally, the obligation to conform to the law could not be considered as discriminatory. Evidently, Art.14 of the Convention has not been encroached.

- As regards the alleged violation of Art. 6, the Government pledges that no breach can be established since their case was judged by a higher Court, after the applicants questioned the impartiality of the tribunal.

IV. ADMISSIBILITY

1. Complaint under Art. 9

1. Art. 9 of the Convention primarily protects the sphere of personal and religious beliefs, in the area which is called the *forum internum*. However, as the Commission acknowledged in the Boffa and 13 others v. San Marino case, in protecting this personal sphere, Art. 9 of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief. The government would like to draw the Courts attention to the fact that the term "practice" does not cover each and every act which is motivated or influenced by a religion or belief¹.

2. In the present case, the respondent argues that the applicants cannot claim a violation of their rights to freedom to manifest their religion, since the objection to medical interventions does not constitute a conviction or belief of sufficient cogency, seriousness, cohesion and importance, in order to attract the guarantees of Art. 9. Hence, the denial of the first applicant's request does not impair the essence of her right to manifest her religion and does not affect the substance of her right to freedom of religion and belief; compliance with the vaccination law is required for the purposes of public health and the general interest.

3. The same approach was also adopted in V. v. Netherlands case, where the applicant's refusal to comply with an obligation applicable to all on a purely neutral basis, even if it was motivated by his religion, could not be considered as an actual expression of his belief². These criteria apply in the given case, as according to the domestic legislation the obligation to be

¹ Boffa and 13 Others v. San Marino, DR 92, page 33.

² V. v. Netherlands §9.

vaccinated is to be applied by everyone without exemption whatever their religious or personal creed.

4. Moreover, considering, on the one hand, the absence of any European consensus on the religious nature of this new Christian denomination, as only eight out of forty seven members of the Council of Europe have officially recognized the Argoland Reformist Church, and, on the other hand, the Court's subsidiary role on the matter, the Respondent claims that it is its competence to determine the applicability of Art. 9 of the Convention³.

5. Consequently, in absence of an interference with the freedom protected by Art 9 §1 of the Convention, the claim of the applicants should be regarded as unsubstantial and subsequently, be rejected by the Court as manifestly ill-founded within the meaning of Art. 35 §3 of the Convention.

2. Complaint under Art. 14 in conjunction with Art. 9

6. Art.14 does not contain a general provision prohibiting all discriminations. It refers only to discrimination in respect of the enjoyment of the rights and freedoms set forth in the Convention⁴. As The Court has affirmed, Art. 14 complements the other substantive provisions of the Convention and the Protocols and it has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions⁵.

7. Having said that the subject-matter of the applicants' complaint does not come within the ambit of Art. 9 of the Convention, it follows that Art. 14 does not apply. The refusal to grant an exemption on religious grounds, as well as the fact that the contested legislation does apply neutrally to all society groups, does not prevent the adherents of the Argoland Reformist Church from manifesting their religion. Therefore, the Government argues that Art. 14 of the Convention is inapplicable because the facts of the case do not fall under the scope of Art. 9.

³ Kimlya and Others v. Russia §79, Church of Scientology Moscow v. Russia, § 64.

⁴ The European Convention on Human Rights, Frede Castberg page 159.

⁵ The Church of Jesus Christ of Latter-Day Saints v. The UK §25.

3. Complaint under Art. 8

8. Concerning the first applicant the Government does not raise any objections as to the admissibility of this complaint.

9. As regards the second applicant, the Respondent contends that she cannot fall within the scope of “victim” in the meaning of Art. 34 of the Convention. It has to be pointed out that the second applicant was not affected, directly or indirectly, since the vaccination at issue did not ultimately take place. As a result, the rights of the applicant to private life remained intact.

10. Accordingly, the complaint should be declared inadmissible and be rejected as void, under art. 35 §1 and §4.

4. Complaint under Art.6

11. Regarding the first applicant, the Respondent argues that her claim is unavailing since the questioned decision of the Court of Appeal was subjected to further control by the Supreme Court, which is a higher judicial body that has “full jurisdiction” and did provide the guarantees of Art. 6⁶.

12. As for the second applicant, she was not a part of the civil proceedings and therefore cannot establish the “victim status” of Art.34 as regards the right to a fair trial of Art. 6.

13. In conclusion, the pleading is manifestly ill-founded within the meaning of Art. 35 §3 and thus, it should be considered inadmissible under Art.35 §4.

14. Provided that the Court does not accept these preliminary objections and considers the application admissible or partly admissible, the government submits the following observations regarding the merits of the application.

⁶ De Haan v. the Netherlands, §52; Crompton v. the United Kingdom, § 79.

V. MERITS

1. Alleged Violation of Art. 9 - The lawfulness of the interference

15. Art. 9 § 1 of the Convention refers to everyone's right to freedom of thought, conscience and religion. No restrictions shall be placed on the exercise of the rights and protective provisions contained in the Convention other than such 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*" as stated in § 2 of Art. 9 of the Convention, as well as in Art. 26 of the European Convention on Human Rights and Biomedicine, which stipulates that restrictions may be placed "*in the interest of public safety, for the protection of crime, for the protection of public health*".

1.1. The interference was in accordance with law

16. According to the Court's settled case-law the expression "*prescribed by law*", in Art. 9 § 2, requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct⁷,

17. Keeping in line with the aforementioned findings, the mandatory vaccination is provided by Argoland's national legislation and the first applicant had been repeatedly informed by medical practitioners that the vaccination was a statutory obligation in the interest of the child. Furthermore, the applicant had been warned that misdemeanour proceedings might be initiated against her should she refuse to vaccinate her daughter. Therefore, not only the interference was prescribed by law, but also the relevant legislation was clear and accessible to the applicant, and the latter was able to foresee the impending misdemeanour proceedings⁸.

⁷ Leyla Şahin v. Turkey §84.

⁸ Osmanoğlu and Kocabaş v. Switzerland §103.

1.2. The interference pursued a legitimate aim

18. As far as the alleged interference is concerned, in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected⁹.

19. As regards preventive measures for the protection of public health, as reported by the World Health Organisation (WHO), "*overwhelming evidence demonstrates the benefits of immunization as one of the most successful and cost-effective health interventions known. Over the past several decades, immunization has achieved many things, including the eradication of smallpox, an accomplishment that has been called one of humanity's greatest triumphs. Vaccines have saved countless lives, lowered the global incidence of polio by 99 percent and reduced illness, disability and death from diphtheria, tetanus, whooping cough, measles, Haemophilus influenzae type b disease, and epidemic meningococcal A meningitis*¹⁰". In the same vein, the European Social Charter (Art. 11), secures the right of protection of health and provides that the Parties should take appropriate measures designed inter alia: "*to prevent as far as possible epidemic, endemic and other diseases, as well as accidents*¹¹".

20. At this point the Respondent would like to emphasize that, by its very nature vaccination is perceived as a preventive measure. Confining the authorities' entitlement to act only in cases where the disease has already infected the child will reduce the effectiveness of the protection which the child requires. Therefore, in the present case the first applicant's refusal to consent to the challenged vaccination would amount to a deprivation of the highest level of health for the second applicant and, as indeed the Court has acknowledged, the parent's decision to refuse treatment of a child may be reversed by means of judicial intervention¹².

⁹ Kokkinakis v. Greece §33.

¹⁰ Global Vaccine Action Plan 2011-2020, page 4.

¹¹ See Memlika v. Greece § 55, Kiyutin v. Russia.

¹² Jehovah's Witnesses of Moscow and Others v. Russia §136.

21. In view of the above, it has long been recognized by the Convention bodies that restrictions on religious practices may be justified for the protection of health; thus, for example, the Commission accepted that the compulsory use of a crash helmet by a motorcyclist, in the interest of road safety, might be held to override the religious duty of a male Sikh believer to wear his turban¹³. More recently, the Court accepted that a hospital nurse could be required, in the interest of her own health and safety as well as her patients', not to wear a Christian cross on a chain around her neck while on duty¹⁴. Consequently, the domestic Court's decision to circumvent the first applicant's opposition towards the medical treatment was vindicated.

22. Therefore, the obligation for the mandatory vaccination is justified by the legitimate aim of the preservation of public health and the overall protection of the society.

1.3. The interference was necessary in a democratic society

23. According to the Court's case law, in order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned¹⁵.

24. The applicants claim that the measure of the compulsory vaccination is disproportionate as the protection of public health could be achieved by less intrusive means that would be more respectful to the freedom of religion. They further claim that alternatives could be implemented, such as a legal provision that would allow children to be excused from their school responsibilities during times in which the disease in question is in an outburst, which are already in place in other European Countries.

25. The notion of necessity for the pertinent measures implies that a fair balance has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be

¹³ X v. The United Kingdom.

¹⁴ Eweida and Others v. The United Kingdom; Franklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands §46, 47.

¹⁵ Biblical Centre of the Chuvash Republic v. Russia §58.

taken to ensure compliance with the Convention¹⁶. As the Court has previously observed “*a spirit of compromise on the part of individuals is necessary in order to maintain the values of a democratic society*”¹⁷. The respondent further recalls that the measure which is opted to be implemented also belongs to the margin of appreciation of the State and as the Commission has pointed out, in several occasions, the fact that other European countries do not consider similar measures necessary does not mean that the respondent is not entitled to do so¹⁸.

26. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was “*proportionate to the legitimate aim pursued*” and whether the reasons adduced by the national authorities to justify it are “*relevant and sufficient*”¹⁹.

27. First and foremost, the respondent adopted the contested legislation in order to make it possible for the state to respond adequately to the obligations set by the European Social Charter (revised), which dictates a preventive policy in the field of public health (Art. 11, stated above). The measure is also in total conformity with the Recommendation 1317 of the Committee of Ministers which invites member states to “*devise or reactivate comprehensive public vaccination programmes as the most effective and economical means of preventing infectious diseases, and to arrange for efficient epidemiological surveillance*”²⁰.

28. In addition, the fact that the competent authorities allow for children to be exempted from compulsory vaccination or for the vaccination to be postponed on medical grounds indicates that their approach is not excessively rigid. Furthermore, the fact that there has been a proportionality

¹⁶ Jakóbski v. Poland §47.

¹⁷ Aktas v. France §14.

¹⁸ Acmanne and others v. Belgium.

¹⁹ Jehovah's Witnesses of Moscow and Others v. Russia § 108.

²⁰ Recommendation 1317 (1997): Vaccination in Europe.

analysis in the Parliament of Argoland when passing the Act on Protection from Infectious Diseases as well as the existence of a special committee which may adopt a recommendation not to vaccinate an unsuitable for vaccination child ascertains that any medical intervention would not upset the balance of interests between the personal integrity of the individual and the public interest of protection health of the population.

29. As far as the applicants' claim that unvaccinated children could be let off school during an epidemic, the respondent recalls the Court's well established case law according to which the children's fundamental right to education, deriving from Art. 2 of Protocol No. 1 of the Convention, ought to be prioritized and has to take precedence over his parents' religious beliefs²¹. Moreover, the Court has explicitly stated that parents may not refuse a child's right to education on the basis of their convictions²². Therefore, respect is only due to convictions on the part of the parents which do not conflict with the child's right to education²³.

30. Responding to the allegation that the mandatory vaccination legislation does not respond to a pressing social need, the Government would like to remind that Argoland's vaccination coverage ranges from 80% to 90%, whereas the goal set out by WHO requires that "*by 2020, coverage of target populations should reach at least 90% national vaccination coverage*"²⁴. Thus, the vaccination law of Argoland based on a compulsory system is justified. In this connection, the Respondent argues that under similar circumstances, and in the light of the current drop of vaccination rates, the Italian Constitutional Court on November 22th of 2017 established that compulsory vaccination for children attending schools is justified²⁵.

31. Lastly, as regard the initiation of the misdemeanour proceedings and the subsequent fine imposed upon the first applicant, the respondent argues that they were proportionate in view of the legitimate aim of the protection of the overall health of society. It must also be taken into

²¹ See *Martins Casimiro and Cerveira Ferreira v. Luxembourg*.

²² *B.N. and S.N. v. Sweden*.

²³ *Campbell and Cosans v. the United Kingdom and S.N. v. Sweden, and Leuffen v. Germany*.

²⁴ *Global Vaccine Action Plan 2011-2020*, page 27.

²⁵ https://www.cortecostituzionale.it/documenti/comunicatistampa/CC_CS_20171122143132.pdf

consideration the fact that the fine of 800 EUR is reasonable and that the first applicant was duly informed in advance of the misdemeanour proceedings, while the penalty was associated with the non-compliance. Therefore all the relevant criteria for a penalty to be proportionate, as set by the Court in the *Osmanoğlu* case, are satisfied²⁶.

32. In light of the above the Respondent argues that there is no violation of Art. 9 of the Convention.

2. Alleged Violation of Art. 14 in conjunction with Art. 9

33. Art. 14 of the Convention provides that the rights guaranteed by the Convention, including the right to freedom of thought, conscience and religion, shall be secured without discrimination.

34. Generally, in order for an issue to arise under Art. 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations²⁷. However, this is not the only facet of the prohibition of discrimination in Art. 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different²⁸. Such a difference of treatment between persons in relevantly similar positions - or a failure to treat differently persons in relevantly different situations - is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment²⁹.

²⁶ *Osmanoğlu and Kocabaş v. Switzerland*, §103.

²⁷ *Vallianatos and Others v. Greece* §76; *Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands* §53.

²⁸ *The Church of Jesus Christ of Latter-Day Saints v. The UK* §27; see also *Thlimmenos v. Greece* § 44; *Eweida and Others v. The United Kingdom* §87.

²⁹ *Burden and Burden v. The United Kingdom* § 55; *Eweida and Others v. The United Kingdom*, § 88.

2.1. The obligation to conform to the vaccination law cannot be considered as discriminatory

35. The contested legislation is in accordance with the wholly legitimate purpose of securing public health. Having regard to the necessity of maintaining the effectiveness of the legislation about compulsory vaccination, the respondent's decision not to introduce a differentiation on religious grounds must be considered reasonable.

36. In the present case, the applicant, an Argoland citizen, was obliged under the domestic legislation to comply with the compulsory vaccination regardless of her religious convictions and the fulfillment of such an obligation could not be considered an interference with her rights given that the law in question applies in the same way to, and produces the same result in relation to all citizens regardless their religious beliefs³⁰. Clearly, the rule is of general application and concerns only a preventive measure to secure public health; it does not discriminate on the basis of religious belief, as it does not obstruct the applicants from manifesting their religion.

37. Moreover, to establish differential treatment, the applicants relied on the argument that, because of the nature of their denomination, which rejects all kinds of medical intervention, they should have received different approaches from the Respondent. However, the Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society³¹. Based on the facts of the case, the Government advocates that the applicants are not in a significantly different position from all the others because of their religious convictions, so as to call for differential treatment involving exemption from the contested vaccination. The reason for imposing a mandatory vaccination is inherently of a greater magnitude than the exercise of the freedom of religion³².

38. In the instant case, the law did not include such grounds for exemption from vaccination as being a Reformist. A different approach would inevitably result in very serious consequences

³⁰ See *The Church of Jesus Christ of Latter-Day Saints v. The UK* §31.

³¹ *S.A.S. v. France* §127.

³² *Eweida and Others v. The United Kingdom* §99.

for public order and the protection of public health, if the authorities were to allow the applicant to interpret and comply with the law in force at the material time as her respective religious beliefs provided. Accordingly, an exemption from compulsory vaccination on a basis not prescribed by law would have been in breach of the principle of equality and non-discrimination as entrenched on Art. 11 of the respondent's Constitution.

2.2. Legitimacy of non-Differential Treatment

39. In any case, if, contrary to the foregoing, the Court concludes that the Respondent should have adopted positive measures allowing exemption from vaccination on religious grounds, and thus adopts a differential treatment for people in different situation, the Government advocates that the uniform treatment to population provided by the legislation on vaccination, regardless the existence of religious objections, is objectively justified by the aim pursued, namely the protection of the health and rights of the children³³.

40. It must be borne in mind that while the policy may have some negative effects on members of the religion who is against vaccination, it is submitted that this uniform policy is dictated by very weighty reasons, as it is the protection of public health. This is because of the undisputable fact that most childhood deaths can be attributed to a few major causes—acute respiratory infections, diarrhea, measles, malaria and malnutrition—or a combination of these. In this regard, both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child recognize the obligation on States to reduce infant and child mortality, and to combat disease and malnutrition³⁴. Therefore, decisions have been taken in order to tackle diseases, prevent transmission to new-borns, diminish illness-related death among children and generally, prevent possibly hazardous epidemics.

41. Finally one has to come to the conclusion that no positive or negative obligations failed to comply with and that Art 14 in conjunction with Art. 9 were at no time violated.

³³ Hoffman v. Austria §34

³⁴ <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf> , page 14.

3. Alleged Violation of Art. 8 - Derogation from Art.8

42. Art. 8 § 1 of the Convention refers to the respect towards “*everyone’s private and family life, home and correspondence*”. Derogation from Art. 8 of the Convention is permissible, as stated in §2 of the same article, if that is deemed necessary according to the law in a democratic society, “*in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*”.

3.1. The interference was in accordance with law

43. The Court has repeatedly affirmed that “any interference by a public authority with an individual’s right to respect for private life and correspondence must be ‘in accordance with the law. This expression does not only necessitate compliance with domestic law, but also relates to the quality of that law, requiring it to be compatible with the rule of law³⁵”. The relevant legislation must be adequately accessible and be formulated with sufficient precision to enable the citizen to regulate his or her conduct, he or she being able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail³⁶.

44. There can be no dispute that in the instant case the interference had a legal basis, given that the first applicant had been able to foresee that an exception from vaccination on religious grounds was not permitted by “The Act on Protection from Infectious Diseases”. Moreover, the first applicant had been repeatedly informed by medical practitioners about the misdemeanour proceedings following the non-compliance with the specified vaccine schedule.

3.2. The interference pursued a legitimate aim

45. With regard to the legitimate aim of the measure, the Court held that in order for it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim

³⁵ Halford v. The United Kingdom, §49.

³⁶Dubská and Krejzová v. The Czech Republic §167.

that can be linked to one of those listed in this provision³⁷. It is evident that, in the case at hand, the interference serves a legitimate aim, namely the protection of public health and of the rights of others within the meaning of Art. 8³⁸.

46. There are no grounds for doubting, that the law in question is, also, designed to protect the health of the infant. According to Art.6 §1, 2 and Art. 24 §1 of the Convention on the Rights of the Child “States Parties recognise that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child” and “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services”. As a result, Argoland adopted the contested legislation in order to meet the positive obligations set out in the convention cited above.

3.3. The interference was necessary in a democratic society

47. Furthermore, as the Court has repeatedly ruled that, an interference will be considered “necessary in a democratic society” for the achievement of a legitimate aim if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are “relevant and sufficient”.

3.3.1. Margin of Appreciation

48. In this connection, the Court has reiterated the fundamentally subsidiary role of the Convention system and has recognised that the national authorities have direct democratic legitimation in so far as the protection of human rights is concerned. Moreover, by reason of their direct and continuous contact with the vital forces of their countries, they are in principle better placed than an international court to evaluate local needs and conditions. It is therefore primarily the responsibility of the national authorities to make the initial assessment as to where the fair balance lies in assessing the need for interference in the public interest with individuals’

³⁷ S.A.S. v. France §113.

³⁸ Dubska and Krejzova v. The Czech Republic §173.

rights under Art. 8 of the Convention³⁹. Additionally, the measure had been upheld on appeals and it is noteworthy that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law⁴⁰. The respondent recalls that a certain margin of appreciation is, in principle, afforded to domestic authorities as regards that assessment; its breadth depends on a number of factors dictated by the particular case⁴¹.

49. In the instant case, there is no European consensus on whether or not vaccination must be mandatory. Considering also the expert and scientific data concerning the relative risks of refusing vaccination and the need for strong State involvement, because of newborn children's vulnerability, the State has a wide margin of appreciation in regulating this question.

50. More precisely, as the Commission ruled *ad hoc* in the case of Boffa and 13 Others v. San Marino “*a vaccination campaign such as exists in most countries, which obliges the individual to defer to the general interest and not to endanger the health of others where his own life is not in danger, does not go beyond the margin of appreciation left to the State*⁴²”.

51. Consequently, in adopting and applying a policy relating to compulsory vaccination, the Argoland authorities had not exceeded the margin of appreciation afforded to them or upset the requisite fair balance between the competing interests.

3.3.2. Principle of proportionality

52. As the Court has frequently reminded, inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights⁴³. The Argoland Government, when balancing the interests at stake, had focused primarily on the aim of protecting the best interests of the child. Furthermore, Art. 8 cannot be interpreted as conferring a right to abstain from a civil obligation aimed at the preservation of public health.

³⁹ Dubská and Krejzová v. The Czech Republic §174-175.

⁴⁰ Olsson v. Sweden (No. 2) §79.

⁴¹ Dubská and Krejzová v. The Czech Republic §178.

⁴² Boffa and 13 Others v. San Marino, DR 92, page 35.

⁴³ Soering v. The United Kingdom §89.

53. In spite of the first applicant's allegations that vaccination without her consent violates the second applicant's right to physical integrity under Art.8, the Court has reiterated on the issue that depending on their nature and seriousness, the child's interests could override those of the parent, who is not entitled under Art. 8 of the Convention to take measures that would harm the child's health and development⁴⁴. Accordingly the Court ruled that, "*the decisive issue is whether the domestic courts, in their choice and implementation of enforcement measures struck a fair balance between the competing interests at stake – those of the child, the parents and the public order – taking into account, however, that the best interests of the child must be of primary consideration*"⁴⁵".

54. In this regard, the Commission has noted that the applicant must demonstrate a probability that, in the particular case of her child, the relevant vaccine would cause serious problems⁴⁶. Nonetheless, the documents adduced by the applicant to establish her reservations towards the vaccination are of ambiguous credibility with no evidentiary effect and there is no scientific proof to endorse her claims. Therefore, the applicant failed to demonstrate a solid probability that would seriously question Argoland's legislation. In addition to that, according to World Health Organisation (WHO), *immunization prevents illness, disability and death from vaccine-preventable diseases including cervical cancer, diphtheria, hepatitis B, measles, mumps, pertussis (whooping cough), pneumonia, polio, rotavirus diarrhoea, rubella and tetanus*"⁴⁷. All the vaccines provided by Argoland's legislation as compulsory are included among the vaccines enumerated by WHO. As a result Argoland's legislation does not impose excessive obligations.

55. Additionally, the existence of a special committee which may adopt a recommendation not to vaccinate the child on medical grounds suggests that necessary precautions had been taken to ensure that the medical intervention would not be to the second applicant's detriment to the extent that would upset the balance of interests between the applicant's personal integrity and the

⁴⁴ Dubská and Krejzová v. The Czech Republic §74.

⁴⁵ Severe v. Austria §101.

⁴⁶ Boffa and 13 Others v. San Marino, DR 92, page 35.

⁴⁷ <http://www.who.int/mediacentre/factsheets/fs378/en/>

public interest of the protection of health of the population. Therefore, the interference was not disproportionate.

3.3.3. The imposed fine did not violate the applicant's rights

56. That being said, it is also noteworthy that the second applicant was not forced to undergo vaccination. In light of this, the core of the applicant's complaints do not concern in essence the legitimacy of the mandatory vaccination but the legitimacy of the sanction imposed on the applicant due to her opposition to comply. Accordingly, the Court has held "*that sanctions must not be ruled out in the event of manifestly unlawful behaviour by the parent with whom the children live. Even if the domestic legal order does not allow for effective sanctions, the Court considers that each Contracting State must equip itself with an adequate and sufficient legal arsenal to ensure compliance with the positive obligations imposed on it by Art. 8 of the Convention and the other international agreements it has chosen to ratify*⁴⁸".

57. In the case at hand, the respondent's objective is to adopt a legislation that would be implemented effectively in order to ensure both the interests of the child as well as the protection of public health. The provision of a pecuniary sanction safeguards the intended objective. Notably, the sanctions provided by the law are limited to the initiation of the misdemeanor proceedings which result to the reasonable fine of 800 EUR, which is among the lightest penalties that could be envisaged by Argoland's criminal legislation⁴⁹. In the present case, it is also undeniable that the first applicant was repeatedly warned about the misdemeanor proceedings and the prescribed fines⁵⁰. In addition to that, the fact that the vaccination's sole purpose is to ensure the safety of the child and of the society, justifies the State's decision to apply the particular sanction unconditionally.

58. Consequently, the national legislation satisfies all the necessary prerequisites to fall under the scope of Art. 8 § 2. The interference with the applicants' rights was justified to protect both public and the second applicant's health and thus, led to no breach of Art. 8.

⁴⁸ Severe v. Austria §98.

⁴⁹ S.A.S. v. France §152.

⁵⁰ Osmanoglu and Kocabaş v. Switzerland §103.

4. Alleged violation of Art. 6

59. Art.6 §1 of the Convention embodies the fundamental principle for a just and transparent procedure, before a final judgment is reached upon the addressed criminal accusations. As clearly expressed in this provision, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

4.1. No sufficient evidence to prove the prejudice of the national court

60. According to the Court's constant case-law, the existence of impartiality for the purposes of Art. 6 § 1 must be determined according to a subjective test where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. As to the subjective test, the principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court⁵¹.

61. In the case at hand, the government would like to mention that, while applying the subjective as well as the objective test, one has to admit that no reasons to question the judge's impartiality exist. As the Court has held the personal impartiality of a judge must be presumed until there is proof to the contrary. As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons⁵². The applicant, in order to prove the judge's partiality relied on an unofficial comment which was made by the representative of the Public Administration Agency, not by the judge himself. On the contrary, the judge asked the representative who made the comment to apologise to the applicant for his misconduct. It is apparent, that there is no sufficient evidence to rebut the presumption of the judge's subjective impartiality.

⁵¹ Micallef v. Malta §93-§94.

⁵² De Cubber v. Belgium § 25.

4.2. Domestic measures ensuring impartiality

62. As the Court has reiterated in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public⁵³. The respondent respectfully highlights the fact that the applicant complained about the judge's impartiality to the chamber of judges of the Court of Appeal and her complaint was rejected as unfounded. Hence, the respondent provides a procedure in order for the judge's impartiality to be tested. However, in the present case, there were no reasons to support the first applicant's allegations that the judge was indeed biased. The Court of Appeal convicted the applicant based on anything other than proper judicial considerations and its decision was completely justified.

63. Your Court must also take into consideration that, as a matter of principle, a violation of Art.6 § 1 cannot be grounded on the lack of independence or impartiality of a decision-making tribunal or the breach of an essential procedural guarantee by that tribunal, if the decision taken was subject to subsequent control by a judicial body that has "full jurisdiction" and ensures respect for the relevant guarantees by curing the failing in question⁵⁴.

64. In the present case, the Court of Appeal upheld the first instance judgement and the Supreme Court upheld the findings of the Court of Appeal. Hence, the applicant's case was examined by three levels of courts, which have jurisdiction to consider civil, criminal and administrative matters, with different compositions of judges and all the tribunals convicted the applicant.

⁵³ Micallef v. Malta §99.

⁵⁴ De Haan v. the Netherlands, §52; Crompton v. the United Kingdom, §79.

65. The respondent maintains that none of the factors invoked by the applicant are sufficient to rebut the strong presumption consistently applied by the Court, that professional judges are free from personal bias⁵⁵.

4.3. Overall Fairness of the procedure

66. The judicial procedure, which took place in the national courts of the respondent and focused on the applicant's refusal to vaccinate her child, abides by all preconditions for a fair trial. More specifically, her conviction was delivered by a panel of three judges and solely depended on her refusal to comply with the national law, although she was fully aware of its existence. Furthermore, the verdicts of the national courts were all communicated within a short period of time and both applicants were represented by a lawyer.

67. In conclusion, the applicant's conviction, complied with the national legislative framework as well as with the standards set for a fair trial within the meaning of the Convention. Given the entire argumentation developed above, no pleading for a violation of Art.6 of the Convention could possibly be grounded.

VI. CONCLUSION

68. For all these reasons the Government respectfully requests the Court to adjudge and declare that the applicants' complaints are inadmissible or ill-founded and that Argoland has not violated the applicants' rights under Art. 9 (solely taken or in conjunction with Art. 14), 8 and 6 of the Convention.

69. Provided that the Court accepts any of the applicants' claims, the amount of compensation requested is far beyond the provision of Art.41 of the Convention regarding just satisfaction.

⁵⁵ *ibid.*

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Team: 049

**EUROPEAN HUMAN RIGHTS MOOT COURT
COMPETITION**

Hannah and Ygritte Olaria v. Argoland

Hannah and Ygritte Olaria

VS

Argoland

SUBMISSION OF THE RESPONDENT

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LIST OF ABBREVIATIONS

- ECHR European Convention on Human Rights

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SUMMARY

- The Government did not violate Ms. Hannah Olaria's and Ygritte Olaria's rights under Article 2 of the Convention¹ as the complaint is manifestly ill-founded. The aim of the compulsory vaccination plan is indeed to protect public health against infectious diseases.
- The Government did not violate Ms. Hannah Olaria's and Ygritte Olaria's rights under Article 8 as even if compulsory vaccination could affect private and family life, the interference was justified under the provisions of Article 8 § 2 of the Convention.

¹All articles mentioned afterwards pertain to the ECHR, unless otherwise specified.

- The Government did not violate Ms. Hannah Olaria's and Ygritte Olaria's rights under Article 9 as the compulsory vaccination plan did not affect the Applicants' right to hold or to manifest their personal and religious beliefs. Furthermore, if a violation of Article 9 was to be found, the interference is justified under the second paragraph of the Article.
- The Government did not violate Ms. Hannah Olaria's and Ygritte Olaria's rights under Article 14 taken in conjunction with Article 9 and Article 1 of Protocol No. 12 as the Applicants were not discriminated against on religious grounds. The Applicants were not subjected to discriminatory treatment but if the Court was to rule otherwise, the compulsory vaccination plan would be justified pursuing a legitimate aim with proportionality.
- The Government did not violate Ms. Hannah Olaria's rights under Article 6 of the Convention as neither the judge for the proceedings before the Court of Appeal nor the judges for the proceedings before the chamber of judges ruled in a partially manner.
- The Government did not violate Ms. Hannah Olaria's rights under Article 13 of the Convention with regard to Article 6 and to Article 14 and Article 1 of Protocol No. 12 since the Applicant's was offered an effective remedy to the allegations of impartiality of the judges.

LEGAL PLEADINGS

I – ABOUT THE ADMISSIBILITY OF THE APPLICATION UNDER ARTICLE 34 OF THE CONVENTION

1. Following the refusal of Ms. Olaria to vaccinate her daughter, misdemeanour proceedings have been initiated against her. After being convicted before the three levels of Argoland's criminal judicial system, Ms. Olaria and her daughter Ygritte brought an action before the civil jurisdictions. Finally, they lodged an application before the Court.

A) About the admissibility of the application with respect to the alleged violations before the criminal jurisdictions

2. Article 34 provides the possibility for any person claiming to be aggrieved by a State Party to the Convention to form an individual application. To make this application admissible, two conditions must be met². Firstly, the person must get into one of the categories of applicants referred to this provision³. Secondly, the applicant must claim to be a victim of a violation of a right provided in the Convention⁴. Moreover, the quality of victim must be able to be justified at all stages of the procedure⁵. As a physical person, it has been recognized to a biological mother, with or without parental authority, the possibility for her to appeal to the Court in her own interest and in the interest of her child⁶. However, for such an application to be admissible, the applicant must be considered as a direct, an indirect or a potential victim. The notion of “direct victim” must be defined as a person who can prove that she has been “*directly affected*” by the State⁷ and has suffered from a harm because of the State measure. On the other hand, the notion of “indirect victim” can be defined as a person who has been prejudiced due to the violation of a right or freedom of a third party. Similarly, any person “*to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end*” can be considered as an indirect victim⁸. To be admissible, the application of the indirect victim should fulfil two conditions. Firstly, there must exist a direct victim of a violation of a provision of the Convention and secondly, the direct and indirect victim must have a close relationship⁹. Finally, a person can be considered as a potential victim when he/she brings the proof that he/she can be affected by the State measure, even if

² *Vallianatos and Others v. Greece* [GC], 07 November 2013, app. nos. 09/29381 and 09/32684, §47.

³ Article 34.

⁴ *Vallianatos and Others v. Greece* [GC], 07 November 2013, app. nos. 09/29381 and 09/32684, §47.

⁵ *Scordino v. Italy* (No.1) [GC], 29 March 2006, app. no. 97/36813, §179.

⁶ *Scozzariand Giunta v. Italy* [GC], 13 July 2000, app. nos. 98/39221 and 98/419663, §138.

⁷ *Tănase v. Moldova* [GC], 27 April 2010, app. no. 7/08, §104.

⁸ *Vallianatos and Others v. Greece* [GC], 07 November 2013, app. nos. 09/29381 and 09/32684, §47.

⁹ *Ouardiri v. Switzerland* (dec.), 28 June 2011, app. no. 65840/09.

he/she is not¹⁰. The Court held that an individual can contend that “*a law violates his rights by itself, in absence of an individual measure of implementation, if he runs the risk of being directly affected by it.*”¹¹

3. In this case, when it comes to compulsory vaccination, in accordance with the conditions of admissibility set by Article 34, Ms. Hannah Olaria and her daughter could be considered direct victims when it comes to the alleged violations of Article 8 and 9 but only Ms. Olaria when it comes to the alleged violations of Articles 6 and 13. When it comes to the alleged violation of Article 2, Ygritte could be considered a direct and potential victim when her mother could be considered an indirect victim. However, Ms. Olaria is the only applicant to have been concerned by the criminal proceedings and condemned to pay the fine¹².

4. Therefore, on these grounds, as far as the application before the criminal jurisdictions is concerned, if Ms Hannah Olaria’s application is admissible, the application on behalf of Ygritte is inadmissible before the Court, because she did not take part in the criminal proceedings. In consequence, the application on behalf of Ygritte is inadmissible for failure to exhaust domestic remedies.

B) About the admissibility of the application towards the alleged violations before the civil jurisdictions

5. Following the sentences pronounced by the criminal courts Ms. Hannah Olaria appealed on her behalf and on her daughter’s behalf before the civil jurisdictions, in order to denounce the discrimination against religious beliefs¹³, due to the compulsory vaccination plan. In this sense, all the legal bases used to assess the admissibility of the complaint before the criminal jurisdictions will be used in this part.

6. In the present case, when it comes to the alleged violation of Article 14 taken in conjunction with Article 9 and Article 1 of Protocol no. 12, Ms. Hannah Olaria has the quality of a direct victim. However, in these proceedings, Ygritte is also an Applicant. Being directly concerned by the measure, her quality of victim is therefore admissible and because she is part of the public targeted by the compulsory vaccination, she could suffer from discrimination.

7. On these grounds, if the Court were to recognise the quality of Applicant to Ms. Hannah Olaria under Articles 6 and 13 and the quality of Applicants to Ms. Hannah Olaria and her

¹⁰ *Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherland, Portugal, Spain, Sweden and United Kingdom* [GC], (dec.), 10 March 2014, app. no. 00/56672.

¹¹ *Johnston and others v. Ireland*, 18 December 1986, app. no. 82/9697, § 42.

¹² Case, § 3.

¹³ Case, §10.

daughter under Articles 2, 8, 9, 14 and under Article 1 of Protocol No. 12, the Government of Argoland contends that there were no violations of these provisions.

II - THE ALLEGED VIOLATION OF ARTICLE 2 REGARDING THE RIGHT TO LIFE OF THE CHILD

A) Admissibility

8. The Government contends that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a).

9. Indeed, a preliminary examination of the substance of this complaint does not disclose any appearance of a violation of Article 2: the legislative obligation to vaccinate does not amount to any arbitrary deprivation of one's right to life or to any interference with the obligation to protect the right to life by law, as it is precisely aimed at protecting persons' lives and health.

10. Therefore, the complaint must be considered inadmissible under Article 35.

B) Merits

11. The Government considers that there has been no interference with Article 2. Article 2 obliges the State to take all the necessary measures for the life of persons under its jurisdiction. This is a positive obligation that implies that States have to take measures to prevent dangerous situations¹⁴. Indeed, the State has to protect its people not only from public service officers¹⁵, but also from other private persons¹⁵ in application of the “*horizontal effect*”¹⁶. It supposes for instance that the Government takes measures to protect a member of a family from a parent¹⁷ when that parent could put him or her in danger. Moreover, States have to adopt an appropriate legislation to protect children's health and in this respect, must assure the respect of that legislation and prevent parents from putting their children in danger. The Declaration of Alma-Ata of 1978 proclaims that the “*Governments have a responsibility for the health of their people*”, primary healthcare including “*immunization against the major infectious diseases*”¹⁸. Finally, the Convention on the Rights of the Child states that “*the States have to protect the best interests of the child, with regards to the parents' duties [...] they shall take appropriate legislative measures*”¹⁹. Those measures shall guarantee free access to primary health care²⁰, notwithstanding traditions or parent's will. Although the Court is not bound by these instruments, it has always taken international law into account in

¹⁴ *Osman v. U.K.*, [GC], 28 October 1998, app. no. 23452/94, § 115.

¹⁵ *Gerasimenko and others v. Russia*, 01 December 2016, app. nos. 5821/10, 65523/12.

¹⁶ *Kontrovà v. Slovakia*, 31 May 2007, app. no. 7510/04.

¹⁷ *Velcea and Mazăre v. Romania*, 01 December 2009, app. no. 64301/01.

¹⁸ International Conference on Primary Health Care WHO, Alma-Ata Declaration, § V and § VII.

¹⁹ UN New York Convention on the Rights of the Child, 1991, Article 3 § 2.

²⁰ *Ibid*, Article 24.

interpreting the Convention, even in cases when the State had not ratified the conventions in question²¹.

12. In the instant case, the aim of the legislation providing for the obligation to vaccinate is to protect the overall health of the society against infectious diseases. The Act on Protection from Infectious Diseases²² provides that the Public Administration Agency initiates misdemeanour proceedings²³ if compulsory vaccination is refused and not administered in accordance with the vaccine schedule, to make sure that the legislation is respected and thus prevent parents from putting their children in danger. The legislation in question therefore firstly guarantees the child's free access to primary health care, and secondly, is aimed at fighting infectious diseases and protecting the whole population. It is in the child's best interest since it provides protection from infectious diseases irrespective of her mother's will, in line with the positive obligations of the State regarding the horizontal effect of Article 2. Moreover, no scientific evidence supports Ms. Hannah Olaria's concerns about the existence of any health risk due to vaccination²⁴, and in any event, the legislation provides for sufficient safeguard in respect of potential risks, since immunisation may be postponed or not administered on medical grounds²⁵.

13. In conclusion, the State of Argoland has not violated the child's right to life and has on the contrary taken all measures to satisfy its positive obligations under Article 2 to protect her health by making vaccination compulsory regardless of the parents' wishes and by providing for an exemption on medical grounds.

III—THE ALLEGED VIOLATION OF ARTICLE 8 REGARDING THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

A) Admissibility

14. The Government does not raise any objection as to the admissibility of this complaint.

B) Merits

1. The non-violation of the Government's obligation under Article 8 of the Convention

15. Article 8 enshrines the right to respect for private and family life. The relationship between the parents and their child is a matter of family life²⁶. The Court has recognized that the sphere of private life within the meaning of Article 8 "*covers the physical and moral*

²¹ *Demir and Baykara v. Turkey* [GC], 12 November 2008, app. no. 34503/97, §§ 147-154.

²² Case, § 19.

²³ Case, § 20.

²⁴ Case, § 8.

²⁵ Case, § 19.

²⁶ *V.S. v. Germany* (dec.), 22 May 2007 app. no. 4261/02.

integrity of a person" meaning that the Court considers that the scope of Article 8 includes questions related to individuals' physical and psychological integrity²⁷. However, in the case *Baytüre v. Turkey*, the Court explained on the ground of Article 8 that when it comes to medical measures, if, in the context of a vaccination campaign aiming only at protecting public health by the elimination of infectious diseases, there is a small number of serious accidents, the State cannot be blamed for not having taken the appropriate measures to protect the individuals' physical integrity²⁸.

16. In this case, the Government took measures through the Act on Protection from Infectious Diseases²⁹ to prevent outbreaks of infectious diseases. The compulsory vaccination plan being in the interest of the child and in the interest of public health, the State of Argoland cannot be blamed under Article 8 of the Convention for not having taken appropriate measures.

17. Therefore, the State of Argoland with its compulsory vaccination programme did not violate the right to respect for private and family life of the Applicants, protected by Article 8. However, if the Court were to find a violation, the interference would be justified.

2. Justification of the interference

18. For an interference to be considered as justified, it must comply with Article 8 § 2. It is important to note that in implementing its obligation under Article 8, the State enjoys a margin of appreciation as it is the best placed to evaluate the needs of the society on its territory. This margin will be wider when there is no consensus among State Parties to the Convention³⁰ and when the State is required to strike a balance between competing private and public interests³¹.

a) Accordance of the interference with the law

19. For this condition to be satisfied, the measure must be prescribed by law and must further be compatible with the rule of law and accessible to the person concerned, who must be able to foresee its legal consequences³².

20. In the instant case, the interference is domestically legal, clear and accessible³³. The legal consequences are foreseeable, as the medical practitioners repeatedly informed Ms. Hannah Olaria, of her statutory obligation, of the exemption and of the possible sanctions³⁴.

²⁷ *Baytüre v. Turkey* (dec.), 12 March 2013, app. no. 3270/09, § 27.

²⁸ *Baytüre v. Turkey*, *op. cit.*, § 28.

²⁹ Case, § 19.

³⁰ *X, Y and Z v. the United Kingdom*, 22 April 1997, app. no. 21830/93, § 44.

³¹ *Evans v. the United Kingdom*, 10 April 2007, app. no. 6339/05, § 77.

³² *Sunday Times v. the United Kingdom*, 26 April 1979, app. no. 6538/74, §§ 46-49.

³³ Case, § 19.

21. The interference is therefore in accordance with the law.

b) Existence of a legitimate aim

22. Article 8 § 2 expressly provides that an interference may be justified “for the protection of health” and “for the protection of the rights and freedoms of others”.

23. The Government contends that the aim pursued by the legislative obligation to vaccinate is to protect the overall health of society against infectious diseases³⁵.

24. The interference therefore pursues a legitimate aim.

c) Necessity of the interference

25. The interference must correspond to a pressing social need and must be proportionate to the aim pursued³⁶. Even though medical intervention without consent may fall within the scope of Article 8³⁷, the Convention does not in principle prohibit the resort to a forcible medical intervention, for example when it is required for medical necessity³⁸. However, if the Court does not automatically blame the State for failure to take measures to protect the individuals’ physical integrity on the ground of Article 8³⁹, the State is bound to take measures to prevent the spreading of infectious diseases⁴⁰. Additionally, the Convention on the Rights of the Child provides that “State parties shall strive to ensure that no child is deprived of his or her right of access to health care services”⁴¹, emphasising that all actions are to be taken in the best interest of the child⁴².

26. Regarding the instant case, it should be mentioned that vaccination has an impact not only on the person to whom it is administered, but also on the population as a whole. In particular, refusing vaccination endangers vulnerable children who cannot be vaccinated due to genuine medical reasons, because the lower the immunisation coverage in the country, the more likely they may be infected. Compulsory vaccination is thus necessary to protect the health of the whole population and in particular vulnerable persons, and considering that the said compulsory vaccines concern potential deadly diseases, the interference clearly corresponds to a pressing and social need. Moreover, it is also necessary to protect the health of the child regardless of the mother’s personal choices and beliefs. The mother’s rights under Article 8 to make personal decisions for her own child cannot prevail over the child’s interests of

³⁴ Case, § 3.

³⁵ *Ibid.*

³⁶ *Handyside v. the United Kingdom*, 07 December 1976, app. no. 5493/72, § 48.

³⁷ *Storckv. Germany*, 16 June 2005, app. no. 61603/00, § 143.

³⁸ *Bogumil v. Portugal*, 07 October 2008, app. no. 35228/03, § 77.

³⁹ *Baytüre v. Turkey, op.cit.*, § 28.

⁴⁰ *Ghavitadze v. Georgia*, 03 mars 2009, app. no. 23204/07, § 105.

⁴¹ UN Convention on the Rights of the Child, *op.cit.*, Article 24 § 1.

⁴² *Ibid.*, Article 3 § 1.

enjoying the highest attainable standard of health under Article 24 of the Convention on the Rights of the Child. Besides, two arguments have to be pointed out, proving the margin of appreciation afforded to the State in this case should be widened. First, there is no consensus on compulsory vaccination among European States (only 15 States imposes compulsory vaccines⁴³), then the State is actually required to strike a balance between competing interests. This is the reason why the Parliament of Argoland carried out a proportionality analysis when passing the Act on Protection from Infectious Disease to strike such a balance⁴⁴.

27. Therefore, the interference must be considered as being necessary in a democratic society in light of the margin of appreciation left to the State. It complies with the requirements under Article 8 § 2 and thus does not amount to a violation of the right to respect for private and family life of the Applicants.

IV – THE ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

28. The Government considers there was no violation of Ms. Hannah Olaria’s and Ygritte Olaria’s rights, in their quality of Applicants, under Article 9 which enshrines the freedom of thought, conscience and religion.

A) Admissibility

29. The Government does not raise any objections as to the admissibility of this complaint.

B) Merits

1. *The absence of violation of the negative obligation inherent in Article 9*

30. The scope of Article 9 § 1 in its negative strand is double. On one hand it includes the freedom to have or not to have a personal or religious belief and on the other hand, it includes the freedom to manifest or not to manifest this belief⁴⁵.

a) The absence of violation of the Applicants’ right to have personal or religious convictions

31. Contracting States cannot interfere in the rights prescribed by Article 9 § 1 when it comes to holding a personal or a religious conviction⁴⁶. Indeed, this particular aspect of the freedom

⁴³ C.f. Germany, Austria, Cyprus, Denmark, Spain, Estonia, Finland, Ireland, Latvia, Luxembourg, Norway, the Netherlands, Portugal, the United Kingdom, Sweden; results of the VENICE 2010 survey on the ways of implementing national vaccination programmes. Euro Surveill. 2012

⁴⁴ Answers to the Clarification Questions no. 11.

⁴⁵ *Kokkinakis v. Greece*, 25 May 1993, app. no. 14307/88, § 31.

⁴⁶ *Buscarini and others v. San Marino* [GC], 18 February 1999, app. no. 26645/94.

of religion is linked to the *forum internum* of a person and the “*State cannot dictate what a person believes or take coercive steps to make him change his beliefs*”⁴⁷.

32. In this case, the Government never interfered in Ms. Hannah Olaria’s and Ygritte Olaria’s freedom of religion as neither were they asked nor forced to abandon or change their religious beliefs.

33. Therefore, the Government considers that they did not prevent the Applicants from developing or keeping any religious convictions.

b) *The absence of violation of the Applicants’ right to manifest personal or religious convictions*

34. The second strand of Article 9 § 1 allows a person holding religious beliefs to manifest them in public and in private, alone and in a group. However, to this extent this right is not absolute as it could affect others⁴⁸. Moreover, the Court considers that Article 9 “*does not protect every act motivated or inspired by a religion or belief*”⁴⁹ but also that “*it does not confer a right to refuse, on the basis of religious convictions, to abide by legislation the operation of which is provided for by the Convention and which applies neutrally and generally*”⁵⁰. In this sense the Court recognized that compulsory military service could “*entail a serious and insurmountable conflict between the obligation to perform it and an individual’s conscience or genuinely and deeply held beliefs*”⁵¹ leading to a violation of Article 9 of the Convention. Here a distinction is to be made between the activities directly linked with the expression of the religion and the activities driven or encouraged by the religion, for instance the Court recognized that the absence from work motivated by the Applicant’s intention to take part in a religious festival was not a manifestation protected by Article 9 of the Convention⁵².

35. In this case, the fact that Ms. Hannah Olaria refused to have her daughter undergo vaccination on religious grounds is a choice with consequences for her daughter and the rest of Argoland’s citizens. The Government never intended to prevent the mother from manifesting her religious beliefs as she was fined on the basis of a piece of legislation that applies to every citizen of Argoland. Also, complying with a compulsory vaccination plan is not similar to complying with a compulsory military service as it involves the protection of

⁴⁷ *Ivanova v. Bulgaria*, 12 April 2007, app. no. 52435/99, § 79.

⁴⁸ *Eweida and others v. The United Kingdom*, 15 January 2013, app. nos. 48420/10; 36516/10; 51671/10 and 59842/10, § 80.

⁴⁹ *Kalaç v. Turkey*, 01 July 1997, app. no. 20704/92, §27.

⁵⁰ *Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands*, 06 May 2014, app. no. 28167/07, § 46.

⁵¹ *Papavasiliakis v. Greece*, 15 September 2016, app. no. 66899/14, § 52.

⁵² *Kosteski v. The Former Yugoslav Republic of Macedonia*, 13 April 2006, app. no. 55170/00, § 38.

public health and not only the protection of the right to manifest a religious belief. Ms. Hannah Olaria did not prove that the refusal to have her daughter undergo vaccination was directly linked to the manifestation of her religion, this practice is indeed only encouraged by the Argoland Reformist Church especially “*Some pastors of this Church have been vocal in newspapers and other media, preaching against abortion and vaccination of children*”⁵³.

36. Therefore, the State of Argoland did not violate the Applicants’ right to manifest their religious convictions under Article 9 § 1 of the Convention.

2. The absence of violation of the positive obligation inherent in Article 9

37. The positive obligation inherent in Article 9 means that Contracting States could find themselves obligated to introduce measures to make sure the freedoms enshrined by Article 9 are actually effective⁵⁴. However, the scope of the margin of appreciation afforded to Contracting States is wider when there is no consensus on the matter among the member States of the Council of Europe⁵⁵; moreover, the margin is wider when the State has to strike a balance between competing private and public interests or Convention rights⁵⁶. In this sense the bodies of the Convention concluded there was no violation of Article 9 even if parents against vaccination for religious reasons were obliged under domestic law to have their children vaccinated when the legislation applied to everyone⁵⁷. Furthermore, the Contracting States could in certain circumstances condemn behaviors dictated by religious beliefs in accordance with domestic law, for instance the Court already recognized that “*the Applicants’ conviction for refusal to sell [contraceptive pills] did not interfere with the exercise of the rights guaranteed by Article 9 of the Convention*”⁵⁸.

38. In this case, Ms. Hannah Olaria claims that the Government did not take into account their religious beliefs when she received the 800-euro fine and when the State demanded that Ygritte undergo vaccination, and that the State should have created a religious exemption from compulsory vaccination. However, it is to be noted that there is no consensus among the member States of the Council of Europe about compulsory vaccination plans and religious exemptions to it, all the more so as the Government points out that secularism is a key component of Argoland’s society⁵⁹, being the reason why no exemptions on religious grounds were established. Thus, the Government has a wide margin of appreciation.

⁵³ Case, § 16.

⁵⁴ *Siebenhaar v. Germany*, 03 February 2011, app. no. 18136/02, § 38.

⁵⁵ *Evans v. The United Kingdom* [GC], 10 April 2007, app. no. 6339/05, § 77.

⁵⁶ *Siebenhaar v. Germany*, 03 February 2011, app. no. 18136/02, § 39.

⁵⁷ *Boffa and 13 others v. San Marino*, 15 January 1998, app. no. 26536/95.

⁵⁸ *Pichon and Sajous v. France*, 02 October 2001, app. no. 49853/99.

⁵⁹ Answers to the Clarification Questions no. 35.

39. Therefore, the Government considers there was no violation of its obligations under Article 9. However, if the Court were to find a violation, the interference would be justified.

3. The justification of the interference in Article 9 of the Convention

40. The freedom of thought, conscience and religion is a conditional right when it comes to the manifestation of the personal or religious beliefs. Limitations could then be introduced in compliance with the second paragraph of Article 9. Indeed, “*any limitation placed on a person’s freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein*”⁶⁰.

a) A limitation prescribed by law

41. The measure called into question must have a legal basis in domestic law. Moreover, the Court verifies the quality of the legal basis “*requiring that it should be accessible to the person concerned and foreseeable as to its effects*”⁶¹. Also, the law must be sufficiently precise so that the citizen could understand it, regulate his conduct and “*foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail*”⁶².

42. In this case, the relevant national legislation is clear, accessible and foreseeable. Ms. Olaria was clearly aware of the provisions of the Act on Protection from Infectious Diseases since “*medical practitioners repeatedly informed [the Applicant] that vaccination was a statutory obligation*”⁶³ and she was aware of the consequences under Article 120 of the Law on Misdemeanors⁶⁴. Moreover, Article 20 of the Argoland Constitution allows restriction in freedom and rights when others are at stake among which the protection of public health⁶⁵.

43. Therefore, the State of Argoland has a legal basis to interfere in Article 9.

b) A limitation pursuing a legitimate aim

44. To be considered as justified, a limitation must pursue one of the legitimate aims listed in paragraph two of the right or freedom protected by the Convention⁶⁶. In Article 9 § 2, the protection of health and of the rights and freedoms of others are listed as legitimate aims.

45. In this case, the State of Argoland established by law a compulsory vaccination plan to prevent the spreading of seven infectious diseases⁶⁷. This obligation is necessary to the

⁶⁰ *Eweida and others v. The United Kingdom*, 15 January 2013, app. nos. 48420/10; 36516/10; 51671/10 and 59842/10, § 80.

⁶¹ *Slivenko v. Latvia* [GC], 09 October 2003, app. no. 48321/99, § 100.

⁶² *Sunday Times v. The United Kingdom* [Plen.], 26 April 1979, app. no. 6538/74, § 49.

⁶³ Case, § 3.

⁶⁴ Case, § 3.

⁶⁵ Case, § 18.

⁶⁶ *Sviato-Mykhaylivska Parafiya v. Ukraine*, 16 June 2007, app. no. 77703/01, § 132.

⁶⁷ Case, § 2.

protection of public health, while being in the best interest of Ygritte Olaria⁶⁸. These diseases are dangerous for new-born babies as they could cause death, the State was thus obliged to take appropriate measures to combat such diseases⁶⁹ among which establishing sanctions for the child's parents or carers if they do not respect the compulsory vaccination.

46. Therefore, the obligation for Ygritte Olaria to undergo vaccination, for her mother to have her child vaccinated and the sanction for her refusal to do so were pursuing a legitimate aim.

a) *A necessary measure in a democratic society*

47. Article 9 § 2 prescribes that a limitation to the freedoms listed in the first paragraph must be “*necessary in a democratic society*”. It means the limitation is to respond to a “*pressing social need*” and “*the notion “necessary” does not have the flexibility of such expressions as “useful” or “desirable”*”⁷⁰. In this sense, the margin of appreciation of the State is limited⁷¹. Since the national authorities are in a direct and continuous contact with the “*pressing social need*” they are more likely to have the ability to assess its nature and the necessary measures to implement⁷². The Court in this sense is to assess the proportionality of such measures⁷³, verifying if no other measures could have been taken instead to achieve the same end and “*interfering less seriously with the fundamental right concerned*”⁷⁴. However, the protection of certain rights and freedoms guaranteed by the Convention could prevail over others⁷⁵. That is the reason why the Court recognized for instance that safety measures for motor cyclists were a justified interference in Article 9 to ensure the protection of health⁷⁶ or that the children's interest in a full education could prevail over “*the parents' wish to have their daughters exempted from mixed swimming lessons*”⁷⁷.

48. In this case, the obligation of vaccination established by law is responding to the pressing social need of preventing the spreading of infectious diseases that are deadly, the protection of public health being paramount in a democratic society. Indeed, large outbreaks of measles have been experienced by Italy and Romania in 2017, causing 32 deaths in Romania in 2016⁷⁸. An outbreak of rubella in Europe was last detected in March 2017, representing a

⁶⁸ Case, § 5.

⁶⁹ Case, § 8.

⁷⁰ *Sviato-Mykhaylivska Parafiya v. Ukraine*, 16 June 2007, app. no. 77703/01, § 116.

⁷¹ *Sviato-Mykhaylivska Parafiya v. Ukraine*, 16 June 2007, app. no. 77703/01, § 137.

⁷² *Ireland v. The United Kingdom*, 18 January 1978, app. no. 5310/71, § 207.

⁷³ *Leyla Şahin v. Turkey* [GC], 10 November 2005, app. no. 44774/98, § 110.

⁷⁴ *Biblical Centre of the Chuvash Republic v. Russia*, 12 June 2014, app. no. 33203/08, § 58.

⁷⁵ *Leyla Şahin v. Turkey* [GC], 10 November 2005, app. no. 44774/98, § 108.

⁷⁶ *X. v. The United Kingdom*, 12 July 1978, app. no. 7992/77.

⁷⁷ *Osmanoglu and Kocabas v. Switzerland*, 10 January 2017, app. no.29086/12.

⁷⁸ Communicable Disease Threats Report, CDTR, Week 34, 20-26 August 2017, European Center for Disease Prevention and Control.

high risk of congenital malformations during pregnancy⁷⁹. The compulsory vaccination is a proportionate measure since vaccination is the most effective method on the long run for the elimination of such diseases in the country. Ms. Hannah Olaria's parental rights have indeed to be balanced so that her child could enjoy the highest attainable standard of health⁸⁰. Furthermore, the right to life of both Ygritte Olaria and Argoland's population, prescribed by Article 2 of the Convention, should prevail over the right to freedom of thought, conscience and religion of her mother.

49. The Government considers that the measures taken were prescribed by law, pursuing a legitimate aim in a democratic society. Therefore, no violation of Article 9 should be found.

V –THE ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 9 AND ARTICLE 1 OF PROTOCOL NO. 12

50. The Applicants, Ms. Hannah Olaria and her daughter, claim that the State of Argoland allegedly violated her right not to be discriminated against on the ground of religious beliefs, guaranteed under Article 14 of the Convention taken in conjunction with Article 9 and under Article 1 of Protocol No. 12.

A) Admissibility

51. The Government does not raise any objections as to the admissibility of this complaint.

B) Merits

52. Article 14 prohibits discrimination in the enjoyment of the freedoms and rights guaranteed by the substantive provisions of the Convention⁸¹. Therefore, it is not an autonomous right. In contrast, Article 1 of Protocol No. 12 enshrines a “*general prohibition of discrimination*”⁸². Therefore, it is an autonomous right which covers the prohibition of discrimination against every right set forth by a national law⁸³. Even if the scope of the two provisions is different, the Court considers that its interpretation of the term “discrimination” is identical for both of them⁸⁴. Thus, the right to freedom of religion falls into the ambit of both articles. As a result, Article 14 of the Convention and Article 1 of Protocol No. 12 are both applicable and they are to be treated together in the present case. According to the Court's established case law, the State will be sanctioned on the discrimination ground if two conditions are met: firstly, if the existence of a discriminatory situation can be asserted; and

⁷⁹ *Ibid.*

⁸⁰ Case, § 8.

⁸¹ Article 14 – “Prohibition of discrimination”.

⁸² *Savez Crkava "Rijec Zivota" And Others v. Croatia*, 09 December 2010, app. no. 7798/08, § 53.

⁸³ Council of Europe, *Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 04 November 2000, ETS 177, Article 1 – “General prohibition of discrimination”.

⁸⁴ *Sejdic and Finci v. Bosnia Herzegovina* [GC], 22 December 2009, app. nos. 27996/06; 34836/06, § 55.

secondly, if there is no “*objective and reasonable justification*” to the discriminatory treatment in question⁸⁵.

1. The absence of discriminatory treatment regarding the vaccination policy

53. On one hand, in light of the jurisprudence of the Court, direct discrimination is established when persons in similar situations are treated differently⁸⁶. On the other hand, the Court has recently developed jurisprudence on indirect discrimination, which may be recognised when persons in different situations are treated equally by a neutral rule whose effects are disproportionately prejudicial against a particular group⁸⁷. In order to examine the existence of an indirect discrimination against religious groups, the Court took into consideration, in several cases, the status of “*specific type of disadvantaged and vulnerable minority*” of the applicants, who required therefore special protection⁸⁸. The Court doesn’t give any definition of a national “minority”⁸⁹, because the recognition of a minority is “*left largely to the State concerned*”⁹⁰. However, in these cases, the Court has been able to resort to Recommendation 1203 (1993) of the Parliamentary Assembly on Gypsies in Europe, which clearly states that Gypsies “*need special protection*”⁹¹.

54. In the present case, direct discrimination is not established. Indeed, the Applicants are not in a different situation than the other citizens of Argoland, who are all subject to the same compulsory vaccination policy: the treatment is the same for everyone - except on medical grounds⁹². As far as indirect discrimination is concerned, the Government argues that this measure is not significantly more negative in its effects on a particular group, as it considers that the Argoland Reformist Church is not to be identified as a particular disproportionately discriminated group. Indeed, in all likelihood, the contestation of compulsory vaccination is not proper to this group neither limited to its members. Moreover, health is a common concern which equally affects everybody, as all the people who are not vaccinated are subject to diseases and are able to propagate them. Finally, the Government asserts that the members of the Reformist Church of Argoland are not recognised by the State of Argoland as a minority even if they represent 5.8% of the population⁹³, and that the movement was born in

⁸⁵ *Case Relating To Certain Aspects Of The Laws On The Use Of Languages In Education In Belgium v. Belgium* [GC], 23 July 1968, app. nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, § 10.

⁸⁶ *Savez Crkava "Rijec Zivota" And Others v. Croatia*, 09 December 2010, app. no. 7798/08, § 85.

⁸⁷ *Thlimennos v. Greece* [GC], 06 April 2000, app. no. 34369/97, § 44.

⁸⁸ *DH and Others v. Czech Republic* [GC], 13 November 2007, app. no. 57325/00, § 182.

⁸⁹ *Gorzelik and Others v. Poland* [GC], 14 February 2004, app. no. 44158/98, § 67.

⁹⁰ *Ibid.*

⁹¹ *Chapman v. The United Kingdom* [GC], 18 January 2001, app. no. 27238/95, § 58.

⁹² Case, § 3.

⁹³ Answers to the Clarification Questions no. 40.

the country only a few years ago. As a result, the members of the Reformist Church of Argoland are not in a position to be considered as a “*specific type of disadvantaged and vulnerable minority*” requiring special protection⁹⁴.

55. Therefore, in light of the jurisprudence of the Court on the matter, the Government contends the absence of a distinct disproportionately discriminated group.

2. *The objective and reasonable justification of the general vaccination policy as regards the existence of a pressing social need*

56. If the Court were to consider that a discriminatory treatment is established, nevertheless, the general vaccination policy would be justified. Indeed, the Court considers that Article 14 is violated if there is no “*objective and reasonable justification*” to the treatment of the claiming party; that is to say, if there is an absence of “*legitimate aim*” and “*reasonable relationship of proportionality between the means employed and the aim sought to be realised*”⁹⁵. Public health is a legitimate aim which is consecrated by the Court in its well-established jurisprudence⁹⁶, and it is mentioned among the legitimate aims allowed to limit freedom of religion listed in Article 9 § 2⁹⁷. Moreover, the Oviedo Convention also consecrates the legitimate aim of public health in its Article 26⁹⁸. This Convention - which is binding for the States which ratified it, such as Argoland - has become a reference text to which the Court doesn’t hesitate to resort more and more frequently in cases related to health issues⁹⁹. Besides, the Court has already accepted to make the protection of health prevail over the Applicant’s freedom of religion¹⁰⁰. Finally, the Member States have a margin of appreciation¹⁰¹, to balance the interests of the community and the interests of the individuals¹⁰². The margin of appreciation is large when there is no consensus on the question¹⁰³ and its extent will “*vary according to the circumstances, the subject-matter and its background*”¹⁰⁴.

⁹⁴ *DH and Others v. Czech Republic* [GC], 13 November 2007, app. no. 57325/00, § 182.

⁹⁵ *Case Relating To Certain Aspects Of The Laws On The Use Of Languages In Education In Belgium v. Belgium* [GC], 23 July 1968, app. nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, §10.

⁹⁶ *Kuyutin v. Russia*, 10 March 2011, app. no. 2700/10, § 66.

⁹⁷ Article 9 – “Freedom of thought, conscience and religion”.

⁹⁸ Convention on Human Rights and Biomedicine (Oviedo Convention), Article 26.

⁹⁹ *VO v. France* [GC], 08 July 2004, app. no.53924/00, § 84.

¹⁰⁰ *Eweida and Others v. The United Kingdom*, 15 January 2013, app. nos. 48420/10; 59842/10; 51671/10; 36516/10, §§ 99-101.

¹⁰¹ *Eweida and Others v. The United Kingdom*, 15 January 2013, app. nos. 48420/10; 59842/10; 51671/10; 36516/10, §84.

¹⁰² *Palomo Sanchez and Others v. Spain* [GC], 12 September 2011, app. nos. 28955/06; 28957/06; 28959/06; 28964/06, §62.

¹⁰³ *VO v. France* [GC], 08 July 2004, app. no. 53924/00, §82.

¹⁰⁴ *Rasmussen v. Denmark*, 28 November 1984, app. no. 8777/79, § 40.

57. In the present case, by imposing the vaccination of its population for seven serious and very contagious diseases, the Government of Argoland pursues the legitimate aim of public health, as the objective of the measure is to protect the overall health of society against seven infectious diseases¹⁰⁵. So that this legitimate aim is achieved, high vaccination coverage is necessary in order to efficiently protect the whole population, adults and children. As far as proportionality is concerned, since there is an absence of consensus on vaccination in Europe, the latter benefit from a large margin of appreciation. Moreover, the Government adds that the principle of proportionality is met because compulsory vaccination in Argoland is not an absolute rule which doesn't consider any exception. Indeed, the State acted with proportionality by allowing an exception for medical reasons¹⁰⁶, and by limiting compulsory vaccination to serious and very contagious diseases¹⁰⁷. Even if some of these diseases have gradually declined in Europe, they didn't completely disappear; therefore, maintaining high vaccination coverage is still necessary not to see them resurge. Especially, the vaccination coverage in Argoland is traditionally kept between 80% and 90%¹⁰⁸, which means that almost one person out of five is not vaccinated. This is a concern for such infectious diseases. Indeed, as far as tetanus is concerned, for instance, the European Centre for Disease Prevention and Control points out that this disease is still associated with high mortality and represents a risk for unvaccinated people in Europe¹⁰⁹. As a result, vaccination corresponds to a "*pressing social need*"¹¹⁰, and it is a particularly efficient way to ensure public health. Moreover, the Government stresses that the Applicants did not prove that keeping the child at home, during epidemic outbreaks¹¹¹, would prevent Ygritte more efficiently than vaccination from being contaminated or from propagating the disease. On the contrary, this measure would be against the child's best interest because it could prevent her from going to school during long periods of time.

58. Therefore, if the Court were to acknowledge a discriminatory behaviour of the Government, the general policy at stake would be justified, because it pursues a legitimate aim with proportionality. As a result, the Government asks the Court to declare the absence of violation of Article 14 of the Convention and Article 1 of Protocol No. 12.

¹⁰⁵ Case, § 3.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Answers to the Clarification Questions no. 10.

¹⁰⁹ European Centre for Disease Prevention and Control, Annual Epidemiological Report 2016 – Tetanus.

¹¹⁰ *Sviato-Mykhailivska Parafiya v. Ukraine*, 14 June 2007, app. no. 77703/01, § 116.

¹¹¹ Case, § 12.

VI - THE ALLEGED VIOLATION OF ARTICLE 6

59. The Government contends that there was no violation of Ms. Hannah Olaria’s rights, in her quality of Applicant, under Article 6 § 1 regarding an alleged partiality of the judge for the proceedings before the Court of Appeal, as well as regarding an alleged partiality of the judges for the proceedings before the chamber of judges.

A) Admissibility

60. The Government raises objections as to the admissibility of the complaint. The Court has judged in its jurisprudence that no violation of Article 6 § 1 “*could be found if the decision of the Appeals Tribunal was subject to subsequent control by a judicial body that had full jurisdiction and did provide the guarantees of Article 6*”¹¹².

61. In the present case, the Government contends that the Applicant has already been offered a subsequent control by a judicial body that had full jurisdiction, namely the Court of Appeal on 2 September 2017 during the misdemeanour proceedings, as to the allegations of impartiality. The chamber of judges of the Court of Appeal, which assessed such allegations was indeed composed of three impartial judges of this court excluding the judge who laughed in the first instance¹¹³.

62. Therefore, the application is inadmissible under Article 35 § 3 as it is manifestly ill-founded.

B) Merits

The alleged partiality of the judge of the Court of Appeal

a) Criteria for assessing impartiality

63. Article 6 § 1 of the Convention requires that a tribunal is to be “impartial”. Impartiality denotes the absence of prejudice or bias and its existence can be tested in various ways¹¹⁴. The Court has distinguished between: a subjective approach to assess impartiality which aims at ascertaining the personal conviction or interest of a given judge in a particular case; and an objective approach, aiming at determining whether he or she offers sufficient guarantees to exclude any legitimate doubt in this respect¹¹⁵. However, there is no watertight division between the two notions. Therefore, whether a case is to be dealt with one test or the other, or both, will depend on the particular facts of the contested conduct¹¹⁶.

¹¹² *Haan v. The Netherlands*, 26 August 1997, app. no. 22839/93, § 52.

¹¹³ Answers to the Clarification Questions no. 54.

¹¹⁴ *Kyprianou v. Cyprus* [GC], 15 December 2005, app. no. 73797/01, § 118; *Micallef v. Malta* [GC], 15 October 2009, app. no. 17056/06, § 93.

¹¹⁵ *Kyprianou v. Cyprus* [GC], *op. cit.*, § 118; *Piersack v. Belgium*, 01 October 1982, app. no. 8692/79, § 30; *Grievs v. the United Kingdom* [GC], 16 December 2003, app. no. 57067/00, § 69.

¹¹⁶ *Kyprianou v. Cyprus* [GC], *op. cit.*, §§ 119 and 121.

i. Subjective test

64. In applying the subjective test, the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof of the contrary¹¹⁷. Regarding the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will¹¹⁸. The Court has thus considered that a judge who publicly used expressions which implied that he had already formed an unfavourable view of the applicant's case before presiding over the court, his statements were such as to justify objectively the fears of the accused as to his impartiality¹¹⁹.

65. In the present case, the Government reiterates that the comments were not made by the judge himself but by the representative of the Public Administration Agency¹²⁰, and that this fact alone cannot affect the presumed impartiality of the judge. Furthermore, the laugh of the judge alone cannot be deduced as a bias of the judge. The laugh is more likely to be linked to the general situation, as the spreading of the comments was the result of a careless mistake. In this case the laugh cannot be construed as a displayed hostility or ill will.

ii. Objective test

66. The objective test mostly concerns hierarchical or other links between the judge and other persons involved in the proceedings which objectively justify misgivings as to the impartiality of the tribunal, and thus fail to meet the Convention standard under the objective test¹²¹.

67. In the present court proceedings, there is no hierarchical or other links between the judge and other persons involved, especially when it comes to assess the relation between the judge and the representative of the Public Administration Agency. Also, the Government underlines the fact that the judge asked for an apology from the representative of the Public Administration Agency excluding any hypothesis of impartiality.

68. Therefore, the Government contends the absence of partiality of the judge.

b) A redress of the alleged partial situation

69. The Court in its jurisprudence considers the steps taken by a judge to redress allegations of impartiality¹²², and more precisely the sufficiency of these steps to dispel any objectively held fears or misgivings under Article 6¹²³.

¹¹⁷ *Kyprianou v. Cyprus* [GC], *op. cit.*, § 119; *Hauschildt v. Denmark*, 24 May 1989, app. no. 10486/83, § 47.

¹¹⁸ *De Cubber v. Belgium*, 26 October 1984, app. no. 9186/80, § 25.

¹¹⁹ *Buscemi v. Italy*, 16 September 1999, app. no. 29569/95, § 68; *Lavents v. Latvia*, 28 November 2002, app. no. 58442/00, § 119.

¹²⁰ Case, § 7.

¹²¹ *Micallef v. Malta* [GC], *op. cit.*, §§ 97 and 102.

¹²² *Gregory v The United Kingdom*, 25 February 1997, app. no. 22299/93, § 46.

70. In the present case, even if the judge laughed at the remark, he showed willingness to make the presumption of partiality fall as his following step was to ask the representative to apologize for these “inappropriate comments”¹²⁴. This acknowledgement aimed indeed at restoring an adequate, trustful and impartial atmosphere in the court room.

71. Therefore, the Government contends the redress of the alleged partial situation.

VII – THE ALLEGED VIOLATION OF ARTICLE 13 WITH REGARD TO ARTICLE 6 AND WITH REGARD TO ARTICLE 1 OF PROTOCOL No. 12

72. The Government contends there was no violation of Ms. Hannah Olaria’s rights, in her quality of Applicant, under Article 13 regarding Article 6 and under Article 14 and Article 1 of Protocol No. 12.

A) Admissibility

73. The Government raises objection as to the admissibility of Article 13 regarding Article 6 and with regard to Article 14 and Article 1 of Protocol No. 12. Article 13 guarantees a right to an effective remedy before a national authority¹²⁵ only to an individual whose rights and freedoms as set forth in this Convention have been violated, as reasserted by the Court¹²⁶.

74. In the present case, the Government contends there was no violation of neither Article 6 nor Article 14 and Article 1 of Protocol No. 12, Article 13 being non-admissible.

B) Merits

1. With regard to the alleged absence of an effective remedy to complain about the alleged violation of Article 6

75. Under Article 13 of the Convention, “*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority*”¹²⁷. However, the Convention does not prescribe a specific form of remedy. The Contracting States are afforded some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision¹²⁸. This remedy before a national authority must be effective in the sense that it provides adequate redress for any violation that had already occurred¹²⁹, thanks to an appropriate and sufficient remedy that the Court has generally considered to be dependent on all the circumstances of

¹²³ *Gregory v. The United Kingdom, op. cit.*, § 48.

¹²⁴ Case, § 7.

¹²⁵ Article 13 of the Convention.

¹²⁶ *Swedish engine driver's union v. Sweden*, 06 February 1976, app. no. 5614/72, § 50.

¹²⁷ Article 13 of the Convention.

¹²⁸ *Kudla v. Poland*, 26 November 2000 [GC], app. no. 30210/96, §§ 154-157.

¹²⁹ *Kudla v. Poland, op. cit.*, § 152.

the case¹³⁰. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant¹³¹, and the fact alone that his claim was rejected cannot establish that the remedy was ineffective¹³². Especially, Article 13 speaks of an effective remedy before a “national authority” which may not be a 'tribunal' or 'court' within the meaning of Article 6 § 1¹³³. According to the jurisprudence of the Court, even if a single remedy does not by itself entirely satisfies the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so¹³⁴.

76. In the present case, the judiciary system of Argoland offered the Applicant a remedy of which she had availed herself, namely the chamber of judges of the Court of Appeal. Indeed, the Applicant's complaint was made in line with the national legislation¹³⁵. The national legislation offered thus a real possibility of remedy to the Applicant. The Government contends that this remedy was effective regarding the circumstances of the case since this remedy could have led to a redress of the situation. The fact that the chamber of judges of the Court of Appeal rejected the complaint of the Applicant¹³⁶ does not mean that the remedy was ineffective. The Government also contends that the chamber of judges meets the criteria of a “national authority”, even if the chamber of judges is not named as being one of the three levels of “courts” in the judicial system of Argoland¹³⁷ it is a chamber of the Court of Appeal. The Government adds that in the present case, the Applicant was offered another effective remedy, of which, again, she had availed herself, namely the Court of Appeal during civil proceedings. Therefore, the remedies provided for under the national legislation of Argoland entirely satisfied the requirements of Article 13 at the date of the deposit of the complaint.

77. The Government therefore contends there was no violation of Article 13.

2. *With regard to the alleged absence of an effective remedy to complain about the alleged violation of Article 14 and Article 1 of Protocol No. 12*

a) The possibility of an effective remedy before the Court of First Instance and before the Court of Appeal

78. The Court does not prescribe a specific form of remedy to redress a violation of a right guaranteed by the Convention¹³⁸. However, this remedy must be effective¹³⁹.

¹³⁰ *Gäfgen v. Germany*, 01 June 2010, [GC], app. no. 22978/05, § 116.

¹³¹ *Kudła v. Pologne*, *op. cit.*, § 157.

¹³² *Swedish engine driver's union v. Sweden*, *op. cit.*, § 50.

¹³³ *Golder v. United Kingdom*, 21 February 1975, app. no. 4451/70, § 33.

¹³⁴ *Kudła v. Poland*, *op. cit.*, § 157.

¹³⁵ Case § 7.

¹³⁶ Case § 7.

¹³⁷ Case § 17.

¹³⁸ *Kudła v. Poland*, *op. cit.*, §§ 154-157.

79. The Government contends that the Applicant effectively had the opportunity to avail herself of two remedies to complain about an alleged violation of her rights under Article 14 and Article 1 of Protocol No. 12.

80. Therefore, the Government contends the non-violation of Article 13.

b) The non-necessity to offer an effective remedy before the Supreme Court

81. The Court already considered that a remedy before a Constitutional Court could be an effective remedy within the scope of Article 13 when the rights protected by the Constitution of a Member State correspond in facts to rights recognised by the Convention¹⁴⁰. However, according to the Court, an individual constitutional complaint can only be lodged against a legal provision where an individual considers that the provision in question infringes his or her fundamental rights as enshrined in the Constitution. Thus, the procedure of an individual constitutional complaint cannot serve as an effective remedy if the alleged violation resulted only from an erroneous application or interpretation of a legal provision which, in its content, is not unconstitutional¹⁴¹.

82. In the present case, the Government agrees that the right covered by Article 1 of the Anti-Discrimination Act has a constitutional value according to Article 11 of the Constitution of Argoland. It also corresponds to a right protected by the Convention under Article 14 and Article 1 of Protocol No. 12. Therefore, a complaint before the Supreme Court could represent an effective remedy for the Court. However, in this case it would not have been recognised as an effective one by the Court, since what would have been challenged by the Applicant would not have been the constitutionality of Article 1 of the Anti-Discrimination Act but its erroneous application or interpretation, the Anti-Discrimination Act not being unconstitutional as such. Therefore, by not offering the Applicant the possibility of a remedy before the Supreme Court did not represent a violation of Article 13. Moreover, the Government recalls that an effective remedy had been offered before the Courts of Argoland.

83. Therefore, the Government contends the non-violation of Article 13.

CONCLUSION

84. For all these reasons, the Respondent respectfully requests the Court to adjudge and declare that:

1. The complaint of the Applicants is inadmissible or manifestly ill-founded under Article 2,

¹³⁹ *Kudla v. Poland*, *op. cit.*, § 152.

¹⁴⁰ *Apostol v. Georgia*, 28 November 2006, app. no. 40765/02, § 38.

¹⁴¹ *Savics v. Latvia*, 27 November 2012, app. no. 17892/03, § 113.

6 and under Article 13 with regard to Article 6, Article 14 and Article 1 of Protocol No. 12;

2. The State of Argoland has not violated the rights of Ms. Hannah Olaria under Articles 6 and 13, nor did the Government violated Ms. Hannah Olaria and her daughter's rights under Article 2, 8, 9, 14 and under Article 1 of Protocol No. 12.

2018

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**EUROPEAN HUMAN RIGHTS MOOT COURT
COMPETITION**

**CASE OF HANNAH AND YGRITTE
OLARIA V. ARGOLAND**

Ms. Hannah Olaria and Ygritte Olaria
(Applicants)

VS

The State of Argoland
(Respondent)

SUBMISSION OF THE RESPONDENT

SUMMARY OF THE ARGUMENTS

- The Government of Argoland further referred to as “**the Government**” replies to the application lodged by Ms. Olaria on her behalf and on behalf of her daughter Ygritte in September 2017.
- Generally, the Government submits that compulsory vaccination policy accords with the margin of appreciation afforded. No facts indicate that the Government overstepped it.
- In particular, the complaints concerning the violation of the right to respect for private and family life under Article 8 are inadmissible in line with the previous practice of the Court. In the alternative, the Government submits that there was no interference with Ygritte’s physical integrity, since no vaccines were administered. If the Court decides otherwise, the Government stipulates that interference was based on the clear, accessible, and foreseeable law with the effective safeguards, which pursued the aim to provide the child with highest attainable standard of health as well as protect the public health. The vaccination *per se* is recognized as the best cost-effective remedy to combat infectious diseases and is carried out in the best interests of Ygritte.
- The complaints under Article 9 shall be declared inadmissible. First, the present application manifestly does not fall within the ambit of Article 9. Second, the *forum externum* may be limited in a democratic society, in particular when mother’s convictions jeopardize the well-being of a child. Furthermore, the Government did not subject the Applicants to indirect discrimination, since the absence of different treatment towards the ARC believers is reasonably and objectively justified under the public and Ygritte’s health reasons. The fine in the amount of EUR 800 is a proportionate restriction, since the health and life of a newborn are at stake. Nevertheless, the alleged interferences with rights under Articles 8, 9, and 1 of the 1st Protocol and 1 of the 12th Protocol are proportionate, since these foresee the minimum limitation of parental rights of Ms. Olaria and properly safeguarded rights of Ygritte and the society.
- The Government proceeds with submitting that Ms. Olaria’s right to a fair trial under Article 6 was not violated in the light of impartial hearing she had at the national level. Due to the existence of effective remedies to challenge all the alleged interferences, there was no violation of Article 13 taken in conjunction with Articles 8, 9, and 1 of the 1st Protocol to the Convention. The Government provided the Applicants with practical possibility to challenge any alleged abuses to the special committee or to the national courts and be granted an appropriate relief.

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I. LIST OF ABBREVIATIONS

- CFR – European Union Charter of Fundamental Rights
- CoE – Council of Europe
- Convention – Convention for the Protection of Human Rights and Fundamental Freedoms
- Court – European Court of Human Rights
- CRC – Convention on the Rights of the Child
- ECDC – European Centre for Disease Prevention and Control
- EEA – European Economic Area
- ESC – European Social Charter
- EU – European Union
- HRC – United Nations Human Rights Committee
- Oviedo Convention – Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.
- PACE – Parliamentary Assembly of the Council of Europe
- Rec – Recommendation
- UNICEF – United Nations Children’s Fund
- WHO – The World Health Organization

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III. LEGAL PLEADINGS

A. Alleged violations of Article 8

1. Admissibility objections

1. The Government requests the Court to find application under Article 8 inadmissible due to the following compelling reasons.

(a) Non-exhaustion of domestic remedies

2. First, Ms. Olaria did not apply to a special committee for medical exemption in line with the APID. The special committee, which may adopt a recommendation not to vaccinate a child on medical grounds, is the additional safeguard intended to protect the individual from arbitrary interference. As Ms. Olaria claimed that the vaccination could represent the risk to the child's health, she failed to exhaust all domestic remedies of protection by not applying to this committee established to examine such allegations.

3. Second, Ms. Olaria did not dispute the violation of Ygritte's rights under Article 8 during the domestic proceedings. The mother pursued the aim of fine reimbursement instead of the protection of Ygritte's physical integrity¹. Consequently, without protecting both physical integrity and the alleged family ties of the Applicants at the national level, there is no reason to consider the application through both limbs of Article 8.

(b) Ygritte Olaria lacks *locus standi*

4. The Government submits that Ygritte Olaria lacks *locus standi* under Article 8 as regards her physical integrity, since she was not affected by the vaccination measures. Accordingly, absence of medical intervention towards Ygritte excludes the complaints concerning vaccines' side-effects. An attempt to challenge a non-administered vaccination as such amounts to *actio popularis* claim. Conclusively, Ygritte is not a victim under Article 8.

(c) The application under Article 8 is manifestly ill-founded

5. In the alternative, the Government submits that the complaints under Article 8 shall be declared manifestly ill-founded. The Court for numerous times acknowledged that compulsory vaccines, even if administered, are consistent with the requirements under the Convention in terms of parental rights² and physical integrity protection³. As a result, means employed were proportionate to the legitimate aims pursued; hence, the application is manifestly ill-founded.

¹ Case, § 6

² Boffa and 13 Others v. San Marino (dec.); Korneykova and Korneykov v. Ukraine § 157

³ Solomakhin v. Ukraine, § 33; Salvetti v. Italy (dec.); Kellner v. Hungary § 24

6. Furthermore, the Applicants are asking the Court to assess the evidence presented in domestic courts, re-establish the facts of the case, re-interpret of the domestic law⁴. These complaints have already been duly and exhaustively addressed by the national tribunals. As a rule, these findings and conclusions are not questioned by the Court⁵ in order not to act against the limits imposed on it by the Convention⁶. Conclusively, such claims constitute the fourth-instance complaints. Hence, they shall be rejected based on the Article 35 (3) (a).

(d) The right to respect for family life of the Applicants is not applicable

7. The Government does not deny that the relationships between the Applicants constitute the family life. However, the obligation to undergo vaccination does not fall within the scope of family life, as enshrined in the Court's practice. Although in the relevant case law the petitioners complained that the medical procedures without parental consent encroached upon the family life⁷, the Court examined issues solely from the standpoint of a child's right to respect for physical integrity. Accordingly, the restriction of parental rights to consent to vaccination does not trigger the family life aspect under Article 8. If the Court dismisses these preliminary objections, the Government submits the following arguments on substance.

2. Merits

8. The Government submits that the alleged interference is justified under Article 8 (2), since vaccination was in the best interests of Ygritte requiring the limitation of Ms. Olaria's parental rights. The Government recalls that the Applicants did not dispute the existence of a legitimate aim of public health protection. At the same time, the Government considers it relevant to demonstrate that the Argoland's compulsory vaccination policy was both based on the law and necessary in a democratic society.

2.1. The domestic legislation was consistent with the rule of law

9. The APID taken in conjunction with the Law on Misdemeanours provided the Ygritte with the necessary protection of her physical integrity.

10. First, the law clearly and foreseeably defined the circumstances under which parents may face financial sanctions. As soon as a fact of non-vaccination is discovered, the PAA promptly imposes sanctions⁸. During consultations with the medical practitioners, Ms. Olaria was in advance numerously warned of the consequences for a refusal⁹. Nevertheless, Ms. Olaria

⁴ Case, § 4, 6

⁵ Admissibility Guide, § 383

⁶ Garcia Ruiz v. Spain [GC], § 28; Perlala v. Greece, § 25

⁷ M.A.K. and R.K. v. the United Kingdom, § 75; Glass v. the United Kingdom, § 72

⁸ Answers to Clarification Questions, §§ 58-59

⁹ Case, § 3

refused to vaccinate understanding that the medical practitioners would inform the PAA of a misdemeanour. Consequently, Hannah Olaria could foresee the outcomes of breaching the statutory obligation.

11. Second, under the APID, Ms. Olaria was duly provided with the information regarding vaccines, their suitability and necessity, as was required in *Solomakhin* case on compulsory vaccination¹⁰. Numerous medical practitioners repeatedly informed Ms. Olaria about the necessity of vaccination in order to protect not only child's health, but also the public health from the infectious diseases¹¹.

12. Third, the APID did not automatically lead to medical intervention. The law defines the possibility to apply for the medical exemption, refuse, in practice, to undergo vaccination at all and, further, appeal to the national courts. In *X. v. Finland* case concerning the forced administration of medication, the Court found the lack of safeguards due to the fact that individual's refusal could not prevent the intervention with the physical integrity and was deprived of judicial scrutiny¹². In contrast to that case, Government provided the Applicants with the judicial scrutiny over the measures in question. In particular, in the initiated discrimination proceeding, Ms. Olaria could succeed in abolishing a fine and preventing further misdemeanour proceedings against her. Nevertheless, her complaint was rejected, whereas, the domestic tribunals examined the facts in a thorough and comprehensive way¹³. Therefore, the Government calls upon the Court to find that the alleged interference was based on the clear, foreseeable and accessible law with the sufficient safeguards and judicial scrutiny guaranteed.

2.2. Argoland's compulsory vaccination policy was justified

(a) The Respondent enjoyed a wide margin of appreciation in line with its international commitments

13. The vaccination policy was adopted in response to the pressing social need¹⁴ to protect the public health as well as to reach highest attainable standard of children's health. In line with the arguments submitted below, the Government struck a fair balance between the competing interests to face the pressing social needs¹⁵.

14. Compulsory vaccination schemes are compatible with the Convention, insofar as they fall within the margin of appreciation enjoyed by the Government in looking after the nation's

¹⁰ *Solomakhin v. Ukraine*, § 36

¹¹ Case, § 3

¹² *X. v. Finland*, § 220

¹³ *Herrera-Ulloa v. Costa Rica*, § 167

¹⁴ *Sindicatul 'Păstorul cel Bun' v. Romania* [GC], § 132; *Koretsky and Others v. Ukraine*, § 55

¹⁵ *Tammer v. Estonia*, § 60; *Pedersen and Baadsgaard v. Denmark* [GC], § 68

health¹⁶. In *Solomakhin* case, the Court accepted the fact that compulsory vaccination was justified to control the spreading of infectious diseases in the region¹⁷. In Europe, the vaccination policy serves to respond to frequent outbreaks of measles¹⁸ and other polioviruses¹⁹. WHO in numerous reports insists on maintaining a high vaccination coverage in all populations groups for keeping Europe free from infectious diseases²⁰ and achieve polio-free status in the WHO European Region²¹. Accordingly, such social issues constitute a reasonable foundation²² to adopt strict measures to protect public health.

15. Moreover, the Government had to fulfil its positive obligations under Article 2. Pursuant to that, the Government had to safeguard the lives of those within its jurisdiction, particularly through legislative and administrative framework to provide effective deterrence against threats to the right to life²³. The preventive measures in the healthcare area are also covered by that duty²⁴. Balancing the competing interests and understanding that vaccination *per se* is one of the most cost-effective public health interventions²⁵, the Government has adopted the APID to prevent the dissemination of infectious diseases. Through such measures, 2-3 million lives are saved worldwide, and more deaths can be avoided if global vaccination coverage improves²⁶.

16. Secondly, Argoland is a member State of the CoE, a signatory of the ESC and the Association Agreement with the EU²⁷. Pursuant to that, the Government is bound by additional obligations. Accordingly, the Government has the positive obligation to devise comprehensive public vaccination programs²⁸. Most European states have statutory powers enabling a range of compulsory interventions, including compulsory vaccination²⁹ and, moreover, the EU Council supports vaccines as an effective tool in public health³⁰. In addition, the Government is bound by the obligation to prevent as far as possible epidemic, endemic and other diseases³¹. Compulsory vaccination policies have already been approved as proportionate by the

¹⁶ Kilkelley (2017), p. 152

¹⁷ *Solomakhin v. Ukraine*, § 36

¹⁸ WHO Report (2011), n.p.; Antona et al (2013), p. 357

¹⁹ ECDC Report (2016), n.p.

²⁰ See WHO Report (2011)

²¹ Council of the EU (2011), § 12

²² *Stec and Others v. the United Kingdom* [GC], § 52; *Shelley v. the United Kingdom* (dec.)

²³ *Oneryildiz v Turkey* [GC], § 89; *LCB v United Kingdom*, § 36

²⁴ *Cyprus v Turkey*, § 219

²⁵ WHO on Immunization (2017), n.p.

²⁶ WHO (2017)

²⁷ Case, § 15

²⁸ CoE Rec. 1317 (1997), § 6.1.

²⁹ Martin et al (2005), p. 532

³⁰ See Council of the EU (2014)

³¹ ESC, Article 11

Constitutional Courts of CoE members states, including the France, the Czech Republic, Croatia, Slovak Republic, Republic of Slovenia, Former Yugoslav Macedonian Republic etc³².

17. For the reasons stated above, Argoland's vaccination policy stipulates the protection of every person concerned and creates collective immunity among the population. The sufficient reasons mentioned shall also resolve infectious issues existing within the European region that are also a part of the Government's responsibility. Conclusively, state's policy was invoked by the pressing social need to prevent dissemination of infectious diseases.

(b) The Argoland's vaccination policy is proportionate to the legitimate aims

18. The Government entailed a reasonable relation of proportionality between the means employed and the aim sought. In this scope, the compulsory vaccination balanced the interests at stake – those of the child, of the parent, and of public health³³. The Government submits that the compulsory vaccination is in line with the best interests of a child to enjoy the highest attainable standard of health. Hence, parental rights of Ms. Olaria were proportionately limited.

(i) Ygritte's inclusion into the vaccination schedule is in the child's best interests

19. The Government shall improve the vaccination coverage of children against vaccine-preventable diseases and achieve a high immunisation level among the population³⁴. The Government emphasizes that the increasing refusal of vaccination in European states already led to under-vaccination, resulting in public health problems and costly outbreaks³⁵. That also caused a failure to fight against measles and rubella due to the lower-than-required vaccination coverage³⁶.

20. In a recent *Gard case*³⁷, the Court stressed that the best interests of the child must be of primary consideration. Whereas child's interests contradict those of a parent, the former shall prevail. The best interests of child cover the possibility to enjoy the highest attainable standard of health³⁸, including vaccination as the most effective tool to prevent the disease³⁹. In accordance with Article 24 of the CRC, children should not be deprived of their right of access to the highest attainable health care services.

³² See the Constitutional Courts of the Republic of Slovenia, the Slovak Republic, Former Yugoslav Republic of Macedonia, France, and Czech Republic

³³ See *Gard and Others v. the United Kingdom*

³⁴ PACE, Rec. 1317 (1997)

³⁵ Council of the EU (2014), § 16

³⁶ Council of the EU (2011), § 12

³⁷ *Gard and Others v. the United Kingdom*, § 107-108

³⁸ See UN, General Comment No.14 (2013); UN Comment No. 14 (2000); Geneva Declaration on the Rights of the Child; Declaration on Social and Legal Principles relating to the Protection and Welfare of the Children with Special Reference to Foster Placement and Adoption Nationally and Internationally

³⁹ See WHO Report (2017), n.p.

21. The compulsory policy on vaccination was introduced in order to protect the health of every new-born child, including Ygritte. As vaccines make child immune from the serious diseases as well as prevent the further health deterioration, the Court in numerous cases confirmed that parents' claims concerning the administration of vaccines are manifestly ill-founded⁴⁰.

22. The pressing social need to combat the infectious diseases requires achieving the highest vaccination coverage among population⁴¹. To develop this point, the Government points to the herd immunity concept, under which a group can avoid exposure to a disease by ensuring that enough people are immune so that no sustained chains of transmission can be established⁴². Eventually, the herd immunity concept works out only in cases that not vaccinated individuals are distributed equally among the population. However, the once granted exemption from vaccination to the Applicants invoke the row of the same cases on behalf of other representatives of the ARC. As a result, these unvaccinated children will communicate within the church community and the risk of dissemination of the infectious diseases growth. Therefore, Ygritte cannot be the subject of conscious or religious vaccination exemption under the herd immunity concept in the absence of medical grounds, as otherwise her health will be put at risk.

(ii) Ms. Olaria's parental rights were legitimately limited

23. First the Government stipulates that her health risks concerned were unsubstantiated. The application of Ms. Olaria to domestic courts proved that her primary concern had nothing with the health of the child. The only argument, raised by mother on the refusal of vaccination on health, concerned the risk of autism. The myth about link between the vaccines and autism causation was numerously refuted⁴³. Accordingly, these concerns were unsubstantiated and could not prevent the state to intervene with the parental rights of Ms. Olaria.

24. Second, a parent cannot be entitled under Article 8 to take measures harmful for the child's health and development⁴⁴. In addition, parental responsibilities need to be exercised with the best interests of the child as their primary concern and in a manner consistent with the evolving capacities of the child⁴⁵. In its Report on Consent, the IBC noted that in some case parents do not make decisions in the best interests of their children that could be very damaging to the

⁴⁰ Boffa and 13 Others v. San Marino (dec.); Korneykova and Korneykov v. Ukraine, § 157

⁴¹ Ernhoff, Fugate and Eyal (2016), p. 598; CoE Report (2010), § 41.6.1; Council of the EU (2014)

⁴² Salathe (2015), n.p.

⁴³ Thompson et al (1995), p. 1071; Plotkin et al (2009), p.456; Marshall et al (2015), p. 1534

⁴⁴ Elsholz v. Germany, § 50; T.P. K.M. v. the United Kingdom, § 71 Ignaccolo-Zenide v. Romania, § 94, Nuutinen v. Finland, § 128

⁴⁵ CRC, Articles 5, 14

health of the child⁴⁶. By refusing to have Ygritte vaccinated, Ms. Olaria endangered both the health of Ygritte and the health of the rest of population, including those unvaccinated due to the medical reasons. Consequently, the Government had to prevent the sufficient risk to interfere with the right to a healthy life of the others.

25. The Government points to the “Weight Formula” previously used by the judicial bodies to resolve proportionality issues⁴⁷. Pursuant to that, on the one hand, the Government reduced the level of infectious diseases spread, whereas, on the other hand, Ygritte was protected from the parental decision contrary to her best interests. Thus, the principle of protection of public health must be preferred to the principle of protection of the right to respect of parental rights.

26. Lastly, the Government submits that the fine imposed was also proportionate. At first, the Government notes that it took more lenient precautionary measures. Particularly, Ms. Olaria was well-informed of the vaccines’ effect and the consequences of non-compliance⁴⁸. As the ineffectiveness of lenient measures, particularly negotiations, was revealed, the Government imposed a fine on Ms. Olaria. At the same, under similar circumstances, certain states deprive parents from their parental rights. Moreover, the sum of EUR 800 cannot be deemed as the excessive burden, while a new-born baby’s health is at stake. The row of European countries introduced stricter financial sanctions, including, for instance, Germany imposing a fine up to EUR 2500. Furthermore, these measures served as a deterrent against Ms. Olaria’s abuses endangering Ygritte’s health.

27. Conclusively, the Government asks the Court to find that there was no breach of Article 8. The contemporary vaccination policy is in line with the requirements imposed by the Convention. The public and Ygritte’s interest in health overrides the parental right of Ms. Olaria to decide on medical treatment of her child. As a result, interference with parental rights was justified, *inter alia*, for a reason that the right to health of the child is stronger than the parents’ right to consent to medical intervention.

B. Article 9

1. Admissibility objections

28. The Government raises an issue that Ygritte does not possess *locus standi* in the present case about Article 9 limb. The Government also stipulates that Hannah Olaria’s convictions did not attain to the necessary degree to fall within the scope of Article 9

1.1. Ygritte does not have *locus standi* under Article 9

⁴⁶ IBC (2008), § 83

⁴⁷ See Constitutional Court of the Slovak Republic (2015)

⁴⁸ Case, § 3

29. The Government submits that Ygritte is not a victim under Article 9, the first-tier protection of which is applicable to the *forum internum*, and the second-tier protection - to the *forum externum*⁴⁹. Owing to her age, Ygritte cannot have the inner core of religious conscience. Also, she may not manifest her religion in any of the four forms protected by the Convention. Pursuant to this approach, the Court has not considered the child dimension under Article 9 in similar cases⁵⁰. The refusal to vaccination is driven solely by the mother's motives and does not correspond to the child's level of development. The Government further submits that the alleged religious convictions jeopardize the well-being of Ygritte. For these purposes, the Government asks the Court to proceed with the analysis of the alleged violation of Ms. Olaria's rights under Article 9.

1.2. Application in part of Ms. Olaria's convictions shall be declared inadmissible

(a) The Court shall re-establish its case law

30. In *Boffa* case, the Commission established a rule that "the obligation to be vaccinated, as laid down in the legislation at issue, applies to everyone, whatever their religion or personal creed"⁵¹. To date, the Court has not ruled against that finding. Furthermore, there were no social changes requiring the Court to abstain from the established case law regarding vaccines. Previously, the Court also agreed with the proportionality of vaccination⁵².

(b) Ms. Olaria's convictions cannot fall within the scope of Article 9

31. The Government admits that it interfered with the parental rights of Ms. Olaria. However, the Government submits that the present complaint does not fall within the scope of Article 9.

(i) Court's requirements

32. The Court acknowledged that there must be an intimate link to the religion⁵³. In *Cha'are Shalom Ve Tsedek* case⁵⁴, the Grand Chamber noted that there must be a sufficiently close and direct nexus between the act and underlying belief that is determined on the facts of each case. Pursuant to *Kalac* case⁵⁵, Article 9 does not protect all acts that are motivated or inspired by religion or belief. Furthermore, Article 9 clearly differentiates opinions and ideas from the beliefs, as the beliefs shall attain a certain level of cogency, seriousness, cohesion or importance⁵⁶.

⁴⁹ Scharffs (2004), p. 1241

⁵⁰ Langlaude (2007), p.219

⁵¹ *Boffa v. San Marino* (dec.)

⁵² *Solomakhin v. Ukraine*, § 36

⁵³ *Eweida and Others v. the United Kingdom*, § 82

⁵⁴ *Cha'are Shalom Ve Tsedek v. France* [GC], §§ 73-74; *Leyla Sahin v. Turkey* [GC], §§ 78, 105; *Bayatyan v. Armenia* [GC], § 111

⁵⁵ *Kalac v. Turkey*, § 27

⁵⁶ *Campbell and Cosans v. the United Kingdom*, § 36

(ii) Hannah Olaria’s convictions did not attain to the threshold of Article 9

33. Ms. Olaria was not primarily motivated by the beliefs, but by personal fears that were found unsubstantiated. The mother put in the first place the parental rights argument. Only afterwards, Ms. Olaria referred to her convictions, allegedly inconsistent with the vaccination. By so doing, Hannah Olaria did not demonstrate that she was primarily inspired by religion. In contrast, reference to convictions in this context may be considered as an attempt to avoid a statutory obligation. That alone is insufficient to fall within the ambit of Article 9.

34. In the alternative, the Government submits that there is no clear link between ARC’s doctrine and the convictions of Ms. Olaria. The Government submits that the mother’s refusal to vaccination is not an act of devotion in a generally recognized form⁵⁷. The manifestation of ARC’s doctrine does not require the believers to refuse vaccination and abortion. In contrast, those were only some pastors preaching against abortions and vaccination of children, whereas the official Christian Reformist movement’s doctrine does not foresee the same dogmas. Article 9 shall not be applied concerning questionable interpretation of religious practices that are opposed to vaccination and that do not reflect the religion as such⁵⁸. Accordingly, the questionable interpretation on which Ms. Olaria relied on did not attain to the necessary level of cogency, seriousness cohesion and importance⁵⁹, as its emphasis is put on a dangerous dogma exposing scepticism towards the scientific advances. Accepting these “convictions” as serious, the Government would have put at risk the well-being of children whose parents rely on such approaches towards vaccines.

35. Even presuming that Ms. Olaria’s actions partially reflected the ARC’s doctrine, the latter was not in a serious and insurmountable conflict with the duty⁶⁰ to vaccinate a child. As was submitted, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9⁶¹. Recently, the Grand Chamber in *Aydemir* case rejected the complaint under Article 9. Therein, an applicant was not motivated by religious beliefs which were in serious and insurmountable conflict with his obligation to perform military service⁶². Furthermore, it is in line with the

⁵⁷ *Eweida and Others v. the United Kingdom*, § 82

⁵⁸ *Pelčić et al* (2016), p. 519

⁵⁹ See *Bayatyan v. Armenia* [GC], § 111

⁶⁰ See *Aydemir v. Turkey* [GC]

⁶¹ *Eweida and Others v. the United Kingdom*, § 82

⁶² See *Aydemir v. Turkey* [GC]

well-established case law of the Court that it cannot be said that every act which is in some way inspired, motivated or influenced by religion constitutes a “manifestation” of the belief⁶³. 36. Conclusively, Article 9 may not be invoked. First, the convictions that allegedly against scientific advances, particularly vaccination, did not attain to the necessary level of seriousness. Second, these convictions were only remotely connected to a precept of the ARC. In this respect, the Government asks the Court to declare the complaint in this part inadmissible.

2. Merits

2.1. Wide margin of appreciation to limit Ms. Olaria’s freedom of religion to safeguard Ygritte’s rights

37. The Government does not dispute the importance of freedom of religion in a democratic society. At the same time, the Government submits that the present interference was based on the law, pursued the legitimate aim of protection public health and well-being of Ygritte, and was necessary in a democratic society. The Government may lawfully take steps to limit parental rights of Hannah Olaria to safeguard the best interests of Ygritte, as freedom to manifest one’s religion may be limited to reconcile those interests⁶⁴. Domestic context and the wide margin of appreciation shall be also taken into consideration⁶⁵.

(i) The case concerns competing interests

38. The present case concerns the competing interests, i.e. those of a mother, of a child, and of the society. In *Van der Heijden* case⁶⁶, the Grand Chamber confirmed that in adopting legislation intended to strike a balance between competing interests, states must in principle be allowed to determine the means which they consider to be best suited to achieving the aim of reconciling those interests. The Government shall make the initial assessment as to where the fair balance lies in assessing the need for an interference in the public interest with individuals’ rights under Article 9⁶⁷ to strike a balance between competing private and public interests or Convention rights⁶⁸. The fact that there is no consensus within member states of CoE as regards the best means to take under such circumstances⁶⁹ makes the margin of appreciation wider⁷⁰.

(ii) The case concerns the relationship with the religious community

⁶³ *Eweida and Others v. the United Kingdom*, § 82; *Skugar and Others v. Russia (dec.)*; *Zaoui v. Switzerland (dec.)*

⁶⁴ *Kokkinakis v. Greece*, § 33.

⁶⁵ *Kokkinakis v. Greece*, § 33.

⁶⁶ *Van Der Heijden v. the Netherlands [GC]*, § 56

⁶⁷ *Dubska and Krejzova v. the Czech Republic [GC]*, § 176

⁶⁸ *Fretté v. France*, § 42

⁶⁹ *Van der Heijden v. the Netherlands*, §§ 55-56; *Parrillo v. Italy [GC]*, § 169

⁷⁰ *Van der Heijden v. the Netherlands*, §§ 55-56; *Parrillo v. Italy [GC]*, § 169

39. The present case affords the Government a wide margin of appreciation, as it concerns the cooperation between the state and the religious community⁷¹ as well as it raises sensitive issues related to ethics⁷². *Mutatis mutandis*, the Government had to introduce objective and non-discriminatory criteria concerning the religious community. Satisfying this obligation, the Government introduced a neutral generally binding duty to undergo vaccination. The question whether to grant a religious exemption is left upon the Government's discretion pursuant to, *inter alia*, the provisions of the CFR⁷³. State's refusal to afford religious exceptions is usually accepted by the Court⁷⁴ being in line with the margin of appreciation afforded. Furthermore, the following arguments substantiate the need to disregard religious exemptions.

(iii) Religious exemptions entail a serious risk to health

40. There is a link between the number of religious exemptions and disease outbreaks⁷⁵. The outbreaks of diseases occur inside of religious groups in connection with the refusal of the vaccination of all its members. Particularly, these were outbreaks of pertussis in religious communities as well as epidemics of poliomyelitis, measles, rubella and mumps⁷⁶. Concerning epidemics in the Netherlands, almost all patients in these epidemics belonged to the orthodox protestant minority and were unvaccinated because of religious objections⁷⁷. In the UK, there was the increased incidence of measles with the loss of the herd immunity due to the rejection of vaccination against this disease by certain religious groups in the UK between 1976 and 1982⁷⁸.

41. Concerning the potential effects exposed by the ARC's community in Argoland, the Government prevented the religious exemption from vaccination. Following the rationale of US Supreme Court in *Jacobson v. Massachusetts case*, limiting the spread of serious communicable diseases by vaccination is a compelling state's interest⁷⁹. For these reasons, the Argoland's compulsory vaccination policy that results in Ygritte's inclusion into the vaccination schedule was invoked by pressing social need. Under these reasons, the Government enjoyed a wide margin of appreciation to place restrictions on parental rights of Ms. Olaria to safeguard her child's health.

⁷¹ Izzettin Dogan and Others v. Turkey [GC], § 83, 132; the Church of Jesus Christ of Latter-Day Saints v. the United Kingdom, § 39

⁷² Evans v. the UK [GC], § 76; X, Y and Z v. the United Kingdom, § 44

⁷³ CFR, Article 10

⁷⁴ Eweida and Others v. the United Kingdom, § 78

⁷⁵ Pelčić *et al* (2016), p. 519

⁷⁶ Ruijs *et al* (2011), p.102

⁷⁷ Ruijs *et al* (2011), p.102

⁷⁸ Constitutional Court of the Czech Republic (2015), § 22

⁷⁹ US Supreme Court (1905), *Jacobson v. Massachusetts*, § 36

2.2. The Government's interference with Ms. Olaria's freedom of religion was justified

a) The Government enacted the law with the effective safeguards

42. The Government adhered to the Court's requirements towards positive obligations under Article 9 to establish an effective and accessible procedure to protect the rights guaranteed by this provision⁸⁰. In addition to the arguments under paragraphs 9-12, the Government submits the following

43. Ms. Olaria required an exemption falling outside the exhaustive list of the APID, although Member States are not bound to guarantee a remedy allowing to challenge a primary legislation before national authority⁸¹. Still, the Government enacted the ADA granting the possibility to initiate the discrimination proceedings that may result in a factual exemption from the statutory obligation. In this part, the Government notes that the mere fact of unsuccessful challenge of discrimination does not entail the absence of effective safeguards within the meaning of the Convention.

b) Ms. Olaria will jeopardize the Ygritte's well-being without compulsory vaccines

44. The parental rights, particularly for a religious upbringing of a child, are not absolute and are qualified by a duty to ensure their health, safety, and well-being⁸². The refusal to vaccination imposes a risk on Ygritte's healthy development and requires the Government's interference.

(i) Ms. Olaria's convictions are contrary to the best interests of Ygritte

45. The parents may object to state interference entirely on an assertion of the child's rights⁸³. Consequently, parental interests, which are non-fundamental and are not connected with the welfare interests of children, may invoke the state to exercise *parens patriae* powers to prevent possible long-term harm to the child⁸⁴ by removing the decision-making role from parents⁸⁵. As a result, the Government had to intervene in the role of *parens patriae*, as Ygritte was not capable of defending her own future interests against present infringements of Ms. Olaria⁸⁶.

46. Ms. Olaria was abusing her freedom of religion putting Ygritte's welfare at risk. If exempted, Ygritte would not be sufficiently protected against infectious diseases. While Hannah Olaria did not sufficiently assess such a risk, she as a mother did not act in the best interests of a child. Conclusively, the right to free exercise of religion and parental rights had

⁸⁰ Osmanoglu and Kocabas v. Switzerland, § 87

⁸¹ A and Others v. the United Kingdom [GC], § 135

⁸² Wooley (2005), p. 715

⁸³ Dwyer (2004), p.1446

⁸⁴ Dwyer (2004), p.1446

⁸⁵ IBC (2008), § 82

⁸⁶ Bielefeldt, Ghanea, Wiener (2016), p.215

to be subordinated to society's interest in protecting against the spread of disease⁸⁷ and protecting child's health. Not changing the responsible hands, the Government took the necessary steps to prevent the outcome that jeopardizes the future welfare of the child.

47. Furthermore, it is generally accepted that parents' freedom of religion is subordinated by the child's rights and interests. First, parents have neither life and death authority over their children nor an absolute *right* to refuse medical treatment for their children based on their religious beliefs⁸⁸. Second, in a profound case of the US Supreme Court, it was accepted that the right to practice religion does not include the liberty to jeopardize the wellbeing of minors⁸⁹ as well as to expose the community or the child to communicable disease or the latter to ill health or death⁹⁰. It is not in dispute that health is one of the component of the well-being and vaccination could provide immunity from the diseases. The Government must have ensured that child's interests are of paramount importance and they in conjunction with the state's interests outweigh parental rights, even supported by certain convictions, to refuse medical treatment⁹¹.

(ii) Vaccination stipulates the interests of any child irrespective of religion

48. The Government refers to a recent case *Osmanoglu and Kocabas* case, in which the Court stood on the child's interests to limit the religious freedom of their parents⁹². *Mutatis mutandis*, the Government notes that the vaccination that has many benefits behind is important for the development and health of any children irrespective of parent's religious convictions. Importance of vaccination is shared by the citizens of Argoland that is substantiated by a high vaccination rate within the state.

49. Furthermore, it is primarily for parents to ensure the education of children⁹³. However, without Government's requirement to undergo vaccination, this may become impossible. Any severe measures would lead to the limitation of social contacts of Ygritte, whereas it is in the best interests of a child to be socially integrated⁹⁴. Pursuant to Court's argumentation in *Lautsi* case⁹⁵, the Government highlight that Ms. Olaria's refusal to vaccination was potentially incompatible with the child's right to education requiring the state's protection against any

⁸⁷ El Amin et al (2012), p. 12

⁸⁸ Wooley (2005), p. 716

⁸⁹ US Supreme Court (1944), *Prince v. Massachusetts*, § 166

⁹⁰ US Supreme Court (1944), *Prince v. Massachusetts*, § 166

⁹¹ Wooley (2005), p. 716

⁹² *Osmanoglu and Kocabas v. Switzerland*, § 106

⁹³ *Osmanoglu and Kocabas v. Switzerland*, § 95

⁹⁴ *Osmanoglu and Kocabas v. Switzerland*, § 106

⁹⁵ *Lautsi and Others v. Italy* [GC], § 58

parental abuses⁹⁶. The Government, in addition, protected the personal and moral autonomy of Ygritte that shall be deemed to be a fundamental value, while upbringing the children⁹⁷. In this part, the Government stands on the neutrality and pluralism position, meaning that no set of religious beliefs can be shown to be objectively true⁹⁸. Accordingly, the harmful dogmas of some pastors shared by Ms. Olaria shall not lead to the jeopardizing of the physical and social well-being of Ygritte.

(iii) Less restrictive measures are insufficient

50. The Government is unlikely to achieve public health policy and prevent parental abuses without the present compulsory vaccination policy. Applying the present measures, the Government deems to strike a fair balance between the competing interests. Whereas the Government sufficiently ensures the increasing level of vaccination, deters the parental abuses that harm the best interests of children, there is a minimum interference with the freedom of religion. Even vaccinating Ygritte, Ms. Olaria may fully enjoy the freedom of religion. The only limitations imposed shall safeguard Ygritte's welfare. Previously, the Court disregarded similar complaints, as applicants were capable of fulfilling their religious duty, despite statutory obligation⁹⁹.

51. Other means, substituting the vaccination, are insufficient to safeguard Ygritte's health. For instance, the quarantine at school is the remedy that may protect public health by reducing the speed of disease dissemination. However, it would not in any way protect the health of Ygritte. Moreover, if Ygritte remains unvaccinated, she may be limited in exercising her right to education, as such children are often prevented from attending public nurseries, kindergartens or schools¹⁰⁰. Accordingly, the compulsory vaccination is the most suitable remedy to fulfil the best interests of Ygritte in the highest attainable standard of health.

52. In addition to the arguments under paragraph 26, the Government notes that the present measures were not unjustifiably restrictive. Within the CoE Member States, there is a tendency to apply more severe measures. Under the law of the UK, parents who fail to obtain medical treatment for their children, are subject to criminal liability even if their refusal is religiously based¹⁰¹. Under the mandatory vaccination policy of France and Sweden, parents may be sentenced up to 2 years of imprisonment¹⁰².

⁹⁶ *Lautsi and Others v. Italy* [GC], § 58

⁹⁷ *Astley and Francis* (1994), p. 171

⁹⁸ *Astley and Francis* (1994), p. 171

⁹⁹ *Kalac v. Turkey*, § 29

¹⁰⁰ See *Haverkate et al* (2012)

¹⁰¹ *Wooley* (2005), p. 716

¹⁰² *Reiss* (2014), n.p.

53. For these reasons, the Government asks the Court to find the application under Article 9 inadmissible. Alternatively, the Government asks the Court to find that there was no violation of Article 9.

C. Alleged discrimination of the Applicants

1. Admissibility objections

54. The Applicants cannot invoke Article 1 of the 12th Protocol due to the following reasons. First, the repeated examination of discrimination complaints amounts to a fourth-instance complaint and as such shall be declared inadmissible. Second, under the APID, the exemption was granted solely on medical grounds. The authorities applied the Court's approach in vaccination cases¹⁰³. Under such the approach, there may be no discrimination when everybody is equally subject to vaccination and, if refuse, to misdemeanours proceedings. Third, the Applicants may not refer to the provisions of the international law, particularly Oviedo Convention, to entail the protection under the 12th Protocol. Such actions would require the Court to examine compliance with the international treaties other than the Convention¹⁰⁴. As a result, the Court will exceed its conventional jurisdiction. Consequently, the Applicants failed to show that there was any right set forth in the domestic law that might be invoked in this case. If the Court rules otherwise, the Government submits that there was no sufficient basis for difference in treatment owing to objective and reasonable justification of the present measures and the legitimate aim pursued¹⁰⁵.

2. Equal application of the APID to all the citizens of Argoland is justified

(a) The Government stands on the principle of religious neutrality *vis-a-vis* ARC both in theory and in practice

55. The Government submits that it acted in accordance with the principles of pluralism, tolerance, and neutrality, while introducing the vaccination policy.

56. First, the Government points to the Court's position that freedom of religion does not require the Contracting States to create a particular legal framework in order to grant religious communities a special status entailing specific privileges¹⁰⁶. Furthermore, the Court does not impose on the Respondent a particular form of cooperation with the various religious communities¹⁰⁷. Enjoying the wide margin of appreciation, the Government has established the

¹⁰³ See *Boffa and Others v. San Marino (dec.)*; *Solomakhin v. Ukraine*

¹⁰⁴ Report on the Protocol 12 (2000), § 29

¹⁰⁵ *the Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, § 28

¹⁰⁶ *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 92; *the Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, § 34

¹⁰⁷ *Izzettin Dogan v. Turkey [GC]*, § 183

neutral and impartial obligation to undergo vaccination irrespective of one's religious convictions.

57. Second, with regard to the established 20-year requirement of presence in Argoland for the religious community, the Government refers to the Court's conclusion in *Relionsgemeinschaft der Zeugen Jehovas* case. Therein, the Court explicitly recognized that certain period for recognition might be necessary in the case of newly established and unknown religious group¹⁰⁸. The ARC is comparatively new religion in Argoland. Furthermore, it has some pastors who propagandize dangerous ideas appealing to refuse vaccines as inconsistent with the God's will. Similarly, these pastors may preach to refuse any medical advances that can result in long-term harm to believers' health and well-being. In this regard, the Court has never rejected that the states may protect its institutions and citizens from associations that might jeopardize them, when there are compelling reasons to do so¹⁰⁹. The pressing social need to combat infectious diseases and safeguard the best interests of children require the Government to prevent the controversial ARC leaders from affecting the public health policy of Argoland. This is achieved, in particular, through the neutral general duty that does not foresee religious exemptions.

58. Furthermore, the Government deems it relevant to demonstrate that is satisfied the neutrality test established by the US Supreme Court¹¹⁰. In a nutshell, the introduction of vaccination pursues exceptionally a secular legislative purpose to protect the public health. Secondly, its effect did not in any way advance and inhibit religion. Thirdly, there was no excessive government entanglement with religion as a result of the adopted policy. The Government notes that only the generally established statutory obligation may be in line with these neutrality principles. Otherwise, the secularism principles may be in question. In the light of the foregoing, the Government highlights that it complied with state's role of neutral and impartial organizer of the exercise of various religions, in particular *vis-à-vis* the Applicants' religious community.

(b) There was no sufficient basis to treat the Applicants differently

59. The Applicants' situation does not require a different treatment, since they were at exactly the same position as any other Argoland citizen.

(i) There were no significant reasons to exclude Ygritte from vaccination schedule

¹⁰⁸ *Relionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 98

¹⁰⁹ *Church of Scientology Moscow v. Russia*, § 75

¹¹⁰ See US Supreme Court (1971), *Lemon v. Kurtzman*

60. The Government reiterates its arguments under paragraphs 19-22, 47-48, highlighting that the compulsory vaccination was in the best interests of Ygritte overriding the parental right to give a consent. No equally beneficial measures were possible. Accordingly, from the standpoint of Ygritte's welfare, her different treatment was not required.

(ii) There were no significant reasons to exclude Ms. Olaria from a statutory obligation

61. The compulsory vaccination policy and, particularly, a sanction for non-compliance, applied to all parents of Argoland equally. Ms. Olaria did not substantiate her allegations to be treated differently.

62. First, Ms. Olaria did not introduce the objective reasons for a vaccination exemption to be granted. From the Government's position, solely medical reasons are substantiated as an exception from a medical intervention, hence, the domestic authorities exclude such petitioners from the statutory obligation. The rationale for such exemption consists in a possibility of physical harm certain new-born children may suffer. Instead, Ms. Olaria tried to unduly expand the list of exemptions adding controversial ideological reasons. In the light of the fact that Ms. Olaria's convictions did not attain to threshold of Article 9 (paragraphs 31-35) being dangerous and absolutely inconsistent with scientific advances, the mother's claim for religious exemption under the ADA was rejected. Furthermore, the submitted petition was based on the radical interpretation of the ARC's doctrine and did not enshrine the religious practice in a generally recognized form. The Government's approach is substantiated by the Court's finding that a state shall treat differently only those categories of petitioners who rest upon largely undisputed fact¹¹¹. The arguments submitted by Ms. Olaria do not differ her significantly from other categories of petitioners¹¹², except for the fact that she exposes a risk for Ygritte.

63. Second, Ms. Olaria's allegations about individual and excessive burden of the impossibility to refuse from vaccination on religious grounds are unsubstantiated. Particularly, she substituted the notions of "misdemeanour" and "religious observance". Since ARC does not directly require its followers to put a new-born child at risk, refusing vaccination, Hannah's refusal constituted not a form of religious duty, but the breach of the law. The latter triggers equal legal consequences for anyone, irrespective of personal beliefs.

(iii) The Government assessed the negative consequences of additional exemption

64. Any additional exemption would potentially create a loophole for other social groups to advocate controversial convictions to avoid a statutory duty. By so doing, the idea of

¹¹¹ Kjeldsen, Madsen and Pedersen v. Denmark, § 173

¹¹² Thlimmenos v. Greece [GC], § 44

compulsory vaccination may be undermined at all. Conclusively, when public and child's health is under threat, the creation of unsubstantiated loophole cannot be justified.

65. The Government was not bound to create particular legal framework in order to grant a radical part of religious community specific privileges¹¹³. In any event, Government submits that it would not be able to justify such the privileges under the Convention, as it would prevent the other religious groups, including even the ARC's non-radical supporters, to apply for the same exemption status¹¹⁴. Introducing exemptions, the Government would have to assess the legitimacy of religious beliefs, namely whether they qualify for the exemption from vaccination. As such, the aforementioned procedure is inconsistent with the state's duty of impartiality and neutrality¹¹⁵.

66. From the wording of Ms. Olaria's arguments, it is clearly seen that the emphasis is put only on the preaching of some pastors, who represent a radical interpretation of ARC's doctrine. The proposed partial-exemption policy may be compared with the education policy discussed in *Folgero* case. *Mutatis mutandis*, the partial-exemption policy would generally impose a heavy burden of undue exposure of believers' private life and religious convictions to satisfy the religious exemption while making such requests¹¹⁶. Religious communities with different perceptions and convictions will not be allowed the same privilege. Neither will the ARC believers who do not share the views of their denomination's radical wing. Furthermore, in the light of absence of ARC's place occupied in the Argoland's history and tradition, such the treatment towards one separately taken branch may not fall within the margin of appreciation afforded. For these purposes, the Government disregarded partial exemption of the Applicants from vaccination.

(c) The Government applied reasonable and objectively justifiable measures

67. If the Court proceeds with its analysis under Article 1 of the 12th Protocol, the Government lodges further objections to substantiate its fair balance argument.

(i) The Government pursued the legitimate aim

68. It is not in dispute that the Government's measures pursued the legitimate aim in this case. Moreover, even if Ms. Olaria was recognized to be in a significantly different situation comparing to the others covered by the law, the absence of difference in treatment of them has

¹¹³ *Izzettin Dogan v. Turkey* [GC], § 164

¹¹⁴ *Izzettin Dogan v. Turkey* [GC], § 164; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 92; the *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, § 34

¹¹⁵ *Izzettin Dogan v. Turkey* [GC], § 133; *Novak* (2005), p. 1106

¹¹⁶ *Folgero and Others v. Norway*, § 100

objective and reasonable justification¹¹⁷. The law is oriented on the protection of public and child`s health and shall result in high vaccination coverages. The latter corresponds with the objective and reasonable justification in strict terms of the Convention¹¹⁸.

(ii) The Government achieved the reasonable relationship of proportionality

69. In *Eweida* case, the Court did not find the violation of Article 9 in conjunction with Article 14 irrespective of profound religious beliefs and sanction for their manifestation¹¹⁹. *Mutatis mutandis*, Government`s equally imposed obligation and sanction for non-compliance is clearly within the margin of appreciation afforded to the state as well as consequent refusal by domestic courts to uphold the Applicants` complaints.

70. The Government limited Ms. Olaria`s right to give a free and informed consent. However, the Government took into account other provisions of the Oviedo Convention, particularly that the authority may give consent when a minor does not have the capacity to consent to the intervention¹²⁰. The substitution in decision-making was aimed at the prevention of parental abuse of a right to consent that was driven by the dangerous convictions. At the same time, the Government did not assess whether the alleged convictions were legitimate or not¹²¹. Furthermore, the limitation of parental decision-making was not caused by the mother`s convictions *per se*, but by the potential consequences of Ms. Olaria`s behaviour. In contrast, the prevention of parental decision-making was made on the non-discriminatory and neutral criterion. Taking into consideration such compelling reasons, as social integrity, health and well-being of Ygritte as well as public health protection, the Government may not make the statutory exemption enabling Ms. Olaria to expose risk to the aforementioned values. Furthermore, the Government chose the most lenient among possible method to affect the abusive behaviour of the mother. Accordingly, in line with all the objections submitted above, the Government calls upon the Court to conclude that the present measures were proportionate, hence there was no violation of Article 1 of the 12th Protocol.

D. Alleged violations of Article 1 of the 1st Protocol

71. The Government submits that there was no violation of Hannah Olaria`s right to enjoy her possessions freely. The Government, first, refers to Article 1 of the 1st Protocol that allows the Contracting Parties to secure the payment of penalties that include pecuniary fines¹²². Second,

¹¹⁷ *Stec and Others v. the United Kingdom*, §51

¹¹⁸ *Oršuš and Others v. Croatia* [GC], §§ 156-157; *Larkos v. Cyprus* [GC], § 29

¹¹⁹ *Eweida and Others v. the United Kingdom*, § 106

¹²⁰ Oviedo Convention, Article 6.2.

¹²¹ *Chaush v. Bulgaria* [GC], § 78

¹²² See *Phillips v. the United Kingdom*, § 51

the Government recalls that the APID and the Law on Misdemeanours were designed to combat a serious social issue, i.e. spread of infectious diseases. Furthermore, it serves as a deterrent to those parents abusing their rights *vis-à-vis* their children. The statutory assumption that the sanctions for the vaccination refusal are proportionate has been justified in practice. To date, the compulsory vaccination resulted in relatively high vaccination coverage, namely 80-90 % of the total population¹²³. Third, the Government is granted a wide margin of appreciation in such matters. The Government ensured to foresee the duty imposed similarly on all citizens, whereas non-compliance results in the same sanctions for everybody. Fourth, the Government provided the possibility to bring judicial review in respect of the fine. Nothing in the case indicates that the judicial review was unfair or arbitrary. By submitting these arguments, the Government asks the Court to declare the application in part of Article 1 of the 1st Protocol to be manifestly ill-founded.

E. Alleged violations of Article 6 and Article 13 in conjunction with Articles 8, 9, 1 of the 1st Protocol

(a) No violation of Article 6

72. The Government calls upon the Court to find that there was no violation of Art 6 (1) in the present case. Ms. Olaria was provided with the necessary guarantees under Article 6. The Government submits that the Hannah Olaria's impartiality allegations were properly addressed by domestic judicial authorities. Nothing, but the emotional reaction of a judge was provided to substantiate the complaints as regards actual bias. Eventually, the case was considered by the panel of three judges,¹²⁴ thus the emotional reaction of one of them was not decisive neither for the final decision, nor for the impartiality one. Unless the actual is proven, impartiality of a duly appointed judge is presumed¹²⁵. From the Government's side, it is necessary to point to the fact that the judge admitted his unpleasant behaviour. Furthermore, the judge asked the representative of the PAA to apologize for the irrelevant comment. Concerning the objective part of impartiality allegations, the Government reiterates that there is a domestic procedure of withdrawing a judge through the chamber of judges of the Court of Appeal. Their allegations were investigated and found unsubstantiated, since they lacked sufficient evidence. Hence, the Government asks the Court to find submissions under Article 6 manifestly ill-founded.

(b) Existence of effective remedies

¹²³ Answers to Clarification Questions, § 10

¹²⁴ Answers to Clarification Questions, § 52

¹²⁵ Hauschildt v. Denmark, § 47

73. As to the alleged violations of Article 13, the Government reiterates the previous arguments made under the paragraphs 9-12 and 50. The Government states that effective remedies, namely the special committee and the national courts, were provided by the domestic law. Concerning the national courts, the Applicants had the possibility to challenge the fine as well as cancel the vaccination on the discriminatory grounds (if there were any) ¹²⁶. Thus, the Government fulfilled its positive obligation to provide Applicants with the effective remedy before the national authority. Hence, the Government asks the Court to find submissions under both Article 13 and Article 6 manifestly ill-founded.

Conclusions

For the objections submitted above, the Government respectfully asks the Court to declare the present application inadmissible. Otherwise, the Government asks the Court to find that there were no violations of Articles 6, 8, 9, 13, 1 of the 1st Protocol and Article 1 of the 12th Protocol in the light of pressing social need to combat spreading infectious diseases.

¹²⁶ Answers to Clarification Questions, § 6