



ADF INTERNATIONAL

1. ADF International is a legal organization dedicated to protecting fundamental freedoms including the right to life, marriage and the family, and freedom of religion. In addition to holding ECOSOC consultative status with the United Nations (registered as “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization of American States, the Organization for Security and Co-operation in Europe, and is a participant in the Fundamental Rights Platform of the Fundamental Rights Agency of the European Union.
  2. ADF International works with a legal alliance of more than 3,000 lawyers dedicated to the protection of fundamental human rights through which it has been involved in over 500 cases before national and international tribunals, including the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and the Inter-American Court of Human Rights.
  3. Alliance Defending Freedom has previously filed two briefs in this case on [ ] (reference [ ]) and [ ] (reference [ ]).
  4. This short brief responds to the further arguments raised by Prof. Cameron in Appendix 2 of his letter to this court dated 2 June 2015 (“the Cameron letter”). This brief should be considered supplementary to the two briefs previously filed by Alliance Defending Freedom in this case on [ ] and [ ].
- (a) ***Does the ECHR require that States introduce provisions that directly guarantee a Convention right as it is expressed in the Convention, or is it sufficient that the national law has provisions that, in the specific situation, means that there is protection available for the right in question?***
5. The Cameron letter firstly argues that the case before the court is properly seen as a question of discrimination on religious grounds,

rather than a question of freedom of conscience, although suggests that the arguments in both instances would be formed on the same basis. (The letter mentions Linda Steen’s case – we assume it was intended to refer to the case of Ellinor Grinmark.)

6. However in relation to the first applicant’s complaint in *Eweida*<sup>1</sup>, the European Court of Human Rights (‘ECHR’) found that there was a breach of Article 9 (freedom of thought, conscience and religion) alone, and that there was no need to separately examine the complaint under Article 14 (the prohibition on discrimination) taken in conjunction with Article 9.<sup>2</sup> This was because the Court found that the United Kingdom had failed to comply with its positive obligation under Article 9 of the European Convention on Human Rights (‘Convention’) to sufficiently secure the applicant’s right to freely manifest her religion within the domestic legal order, and strike a fair balance between her rights and those of others.<sup>3</sup>
7. It is therefore evident that States have a positive obligation to *sufficiently secure* the right of their citizens’ manifestation of their religious beliefs in the form of worship, practice and observance, protected by Article 9 of the Convention. This obligation exists regardless of whether the case is seen as a question of discrimination on religious grounds or a question of freedom of conscience.
8. Furthermore, while the Cameron letter draws attention to §67 of *Rotaru v. Romania*<sup>4</sup>, it omits the final point of the paragraph: “The remedy must be “effective” in practice as well as in law”.<sup>5</sup> This

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<sup>1</sup> *Eweida and Others V. The United Kingdom*, App. Nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.

<sup>2</sup> *Ibid.*, §95.

<sup>3</sup> *Ibid.*, §91, §95.

<sup>4</sup> *Rotaru v. Romania*, Application No. 28341/95, 4 May 2000.

<sup>5</sup> *Ibid.*, §67. The paragraph in full reads: “The Court reiterates that it has consistently interpreted Article 13 as requiring a remedy in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, for example, *Çakıcı v. Turkey* [GC], no. [23657/94](#), § 112, ECHR 1999-IV). Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. This Article therefore requires the provision of a domestic remedy allowing the “competent national authority” both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligation under this provision.

paragraph clearly sets out the position of the ECHR which invites the national courts to engage with the substance of the enumerated Convention rights and, where appropriate, provide effective remedies.

9. Therefore it is our submission that national courts are required to do more than fleetingly consider the case law of the European Court of Human Rights without giving substantive effect to the clearly articulated rights and freedoms guaranteed therein. Where national courts fail to remedy clear violations of the Convention, an unnecessary caseload must then be appealed to the ECHR.

**(b) Is it, according to the ECHR, possible to manifest conscience which is not founded in religious belief?**

10. The Cameron letter appears to argue that there is no stand-alone concept of freedom of conscience in absence of a religious connection. However, this cannot be the case in light of the Grand Chamber of the Court's decision in *Bayatyan v. Armenia*.<sup>6</sup> In *Bayatyan*, the Court recognised that a citizen could be exempted from military service on the grounds of his conscientious objection under Article 9.
11. In particular, the Court found that conscientious objection could attract the protection of Article 9 so long as the belief was of sufficient cogency, seriousness, cohesion and importance to motivate the objection and as long as it was motivated by a: "serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious **or other beliefs**."<sup>7</sup> (Emphasis added.)
12. Furthermore, despite the Cameron letter inferring that only limitations of religious manifestations are permissible under the wording of Article 9(2), the Article itself states that: "Freedom to manifest one's religion **or beliefs** shall be subject only to such limitations..." (Emphasis added.)

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The remedy must be "effective" in practice as well as in law (see *Wille v. Liechtenstein* [GC], no. [28396/95](#), § 75, ECHR 1999-VII)"

<sup>6</sup> *Bayatyan v. Armenia*, Application No 23459/03, 7 July 2011.

<sup>7</sup> *Ibid.*, §110.

13. Indeed, the Court has a long history of recognizing Article 9 protections for beliefs that are not connected to 'religion'. In *Arrowsmith v United Kingdom*<sup>8</sup>, pacifism was considered a "philosophy". In *H v United Kingdom*<sup>9</sup>, it was uncontested that veganism was capable of concerning a "belief" within the meaning of Article 9 of the Convention. And in *Campbell and Cosans v United Kingdom*<sup>10</sup>, parents' objection their children receiving corporal punishment amounted to "philosophical convictions".

14. Plainly therefore it is possible to manifest conscience which is not founded in religious belief. Objectively this must be correct, as otherwise those who have (for instance) a deep respect for the sanctity of human life founded on grounds other than religion would not be protected by Article 9 and the guarantee of freedom of conscience.

**(c) Is the right to exercise freedom of conscience dependent upon on how an opposing right is defined by the national law - e.g. a woman's right to abortion?**

15. The Cameron letter points to Sweden's legislation providing an 'on demand' right to abortion until the 18<sup>th</sup> week of pregnancy as determinative of the context of the right, and infers that such a legislative regime would see Sweden prioritize the right of a woman to have an abortion over any rights of a midwife.

16. However, the legalization of abortion does not exempt the State from its responsibility to protect the conscience of its midwives. On the contrary, the State has a concurrent duty to protect those minorities who do not share the view adopted by the majority.

17. Furthermore, the fact that different European states have already been able to protect the conscience of healthcare practitioners in the context of abortion means that the burden must fall on Sweden

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<sup>8</sup> *Arrowsmith v United Kingdom* [1978] 3 EHRR 218, §69.

<sup>9</sup> *H v United Kingdom*, Application 18187/91.

<sup>10</sup> *Campbell and Cosans v United Kingdom* [1982] 4 EHRR 293, §36.

to demonstrate why this would be impossible in the Swedish setting.<sup>11</sup>

18. Sweden is able to limit a citizen's right to freely to manifest their religion or belief only when it is necessary and proportionate.<sup>12</sup> This is an essential aspect of maintaining a healthy democratic society.<sup>13</sup> Refusing to take any steps to accommodate the manifestation of a citizen's religion or belief on the basis that another right is in existence is neither necessary nor proportionate.

**(d) Conclusion**

19. It is clear that in a situation where there are conflicting claims, the ECHR is concerned with whether a fair balance has been struck. Given that the right to freedom of religion and conscience is a fundamental right enumerated within the Convention there will be a particular scrutiny applied to a policy which does not attempt to make any accommodation for the enumerated Convention right. By contrast, it is notable that the Court has on numerous occasions made it clear that there is no right to abortion under the Convention.<sup>14</sup>

20. Furthermore, by reference to many other countries, it is demonstrably possible to introduce a framework which protects the rights of midwives who, in the words of the Grand Chamber in *Bayatan*, have a serious and insurmountable conflict between the obligation to serve in the [medical profession] and a [midwife's] conscience or deeply and genuinely held religious or other beliefs. Failing to take steps to protect the fundamental right of midwives to conscientiously object in such circumstances places Sweden out of step with the vast majority of EU countries, and would likely lead to violations of the Convention.

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<sup>11</sup> The brief submitted by Alliance Defending Freedom in this case dated 3 July 2014 sets out in detail many of these laws at pp. 7-15.

<sup>12</sup> See *Eweida*, cited above, §83.

<sup>13</sup> *Ibid.*, §94.

<sup>14</sup> See *Case of A, B and C v. Ireland*, Application no. 25579/05, 16 December 2010, §213 – §214.

**7 July 2016**

A handwritten signature in black ink, appearing to read "Wilkinson", with a long horizontal stroke extending to the right from the end of the signature.

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Laurence Wilkinson  
Solicitor, Legal Counsel  
ADF International