

Disfellowshipping and Discrimination of a Religious Minority

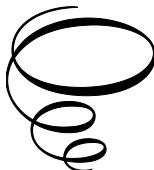
Disfellowshipping and Discrimination of a Religious Minority:

On Articles 9, 11 and 14 of the ECHR

By

Paulo Pinto de Albuquerque

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I. CONSULTATION

The Proceedings are in connection with two lawsuits filed by *Jehovas vitner* against the Government of Norway challenging (1) the Government's decisions of 27 January 2022 and 30 September 2022 denying *Jehovas vitner* state funding for 2021 and (2) the Government's decision of 22 December 2022 removing *Jehovas vitner*'s registration and denying re-registration.

The two lawsuits have been joined and will be examined simultaneously by the domestic courts in the Proceedings since the Government based its 22 December 2022 decision on its earlier 27 January 2022 and 30 September 2022 decisions.

Your role will be to provide a written Expert Opinion on articles 9, 11 and 14 of the European Convention on Human Rights, for use in the domestic Proceedings and before the European Court of Human Rights.

Your Expert Opinion does not encompass a complaint against the Government's 27 January 2022 and 30 September 2022 decisions denying *Jehovas vitner* state funding based on article 1 of Additional Protocol No. 1 to the European Convention on Human Rights.

EXPERT OPINION

II. INTRODUCTION

1. The present case turns around a crucial question for religious communities: how they deal with wrongdoers when they have committed a serious sin and do not want to repent and whether and, if yes, to what extent should the state oversee the religious punishment of the wrongdoer and its effects. To be more precise, the question is about the grounds, procedure and effects of the religious punishment of unrepented, serious, sinful conduct in the light of the beliefs and practices of a specific religious community, the Jehovah’s Witnesses, and its founding principles set out in, among other sources, the Bible passages of 1 Corinthians 5:11-13 and 2 John 1:9-11 and *Organized to Do Jehovah’s Will* (in its November 2021 version), which provides for a procedure of expulsion or “disfellowshipping” of members (§§ 25-28), a procedure of voluntary withdrawal or “disassociation” of members (§§ 30-33), a procedure of reinstatement of disfellowshipped or disassociated members (§§ 34-36), and two special procedures, one regarding baptized minors (§ 37) and one regarding unbaptized publishers (§ 38).

2. This succinct factual description alone already gives a clear picture of the worrying features and the worldwide importance of this case. Although the setting of this case is Norway and the triggering factors are administrative and judicial decisions taken by Norwegian authorities, much of what is written in this Opinion can be extrapolated to other domestic jurisdictions all over the world. I would go even further and affirm that, by logical implication, much of the reasoning and concluding remarks of this Opinion are applicable to all other established religious communities.

3. But there is more to this case. There are some disturbing facts of this case that should draw the attention of not only the general population in Norway, but all believers and non-believers who are concerned with human

rights. This is an unusual case. Normally, when confronted with serious violations of state law, administrative authorities would de-register a legal entity and, as a result, the entity would no longer be entitled to benefit from state funding and other advantages or to exercise some publicly recognized powers. In the present case, the Norwegian administrative authorities first decided to remove state funding to *Jehovas vitner* based on an investigation into its religious beliefs and practices and then, relying on essentially the same factual and legal basis, decided to de-register it and deny new registration as well. It took them more than a year to reach this conclusion. The case is also singular insofar that non-removal of registration and new registration were conditioned to the religious community changing one of its core religious beliefs, a feature inherent to its own religiosity. Moreover, the status of *Jehovas vitner* as a registered religious community was removed a week before it would cease automatically. One cannot but gain a strong impression that this is a case of a strange “desire for orderliness” on the part of the Norwegian Government officials, to use the words of the Oslo District Court in its decision of 26 April 2023.

4. This desire led the administrative authorities to punish drastically a religious community for its unconventional, out-of-the box beliefs. In a figurative sense, the “box” is a metaphor for the conventional religious assumptions of the intervening Government officials. Like a literal box, the inflexible representation of these Government officials in this case was restrictive and confining. Such kind of punishment is not a rarity on European soil, as the case-law of the European Court of Human Rights (hereinafter, the “Strasbourg Court” or the “ECtHR”) patently shows.

5. This Opinion aims at assessing the Government’s 27 January 2022 and 30 September 2022 decisions denying *Jehovas vitner* state grants and the Government’s 22 December 2022 decision removing *Jehovas vitner*’s registration and denying re-registration through the lens of the European Convention on Human Rights (hereinafter, the “Convention” or the “ECHR”).

6. Its methodology is based on the Strasbourg Court’s own approach to similar leading cases, describing in the first part of the Opinion the factual circumstances of the case and the relevant legal framework and practice,

including domestic, international, comparative law and case-law and other domestic and international soft law instruments. The international and comparative law and case-law analysis is designed to spotlight the most important court cases on disfellowshipping and disassociation reported in the world, which have tested the limits of interference with freedom of religion against the background of domestic constitutional law and international human rights law.

7. The second part of the Opinion focuses on articles 9 and 11 of the ECHR, read alone or in conjunction with its article 14. Regarding each individual article, the general principles of the pertinent case-law will be presented and subsequently applied to the present case. Concluding remarks will close the Opinion in the light of the overarching principles of autonomy of religious communities and state neutrality in religious matters.

III. THE FACTS

A. THE CIRCUMSTANCES OF THE CASE

8. *Jehovas vitner* (or Jehovah's Witnesses) has been active since the early 1890s in Norway. The first congregation was established in 1900. The first branch office was opened in 1904 in Christiania (now Oslo).

9. *Jehovas vitner* was registered with the County Governor of Oslo and Viken (hereinafter, the County Governor) on 15 October 1985. This registration was valid until 31 December 2022, according to the transitional rules in section 23, second paragraph of the new Religious and Philosophical Communities Act (hereinafter, the "new Religious Communities Act" or the "new Act").

10. Since October 1985 *Jehovas vitner* has received state subsidies continuously. In 2020, the religious community received state subsidy for 12,648 members. The latest annual public funding under the previous Religious Communities Act amounted to NOK 15.6 million or about 16% of their total annual income of NOK 98.3 million.

11. On 2 June 1986, *Jehovas vitner* obtained the legal right to officiate at weddings.

12. *Jehovas vitner* has never been found to have broken the law.

13. The County Governor never carried out a similarly extensive investigation of the religious beliefs and practices of the more than 700 registered religious and philosophical communities which are recipients of state subsidies in Norway. No religious community was ever de-registered or even denied state funding for grounds linked to its religious beliefs and practices.

14. Only once, in 1996, was a community called *Norske Åsatrusamfunn* denied registration due to its belief in black magic, sacrificial rites, and pagan custom as a guideline for lifestyle. The County

Governor in Nordland refused the application for registration on 3 December 1996, citing that the Ministry of Justice had denied the applicant exclusive right to the name in a decision of 15 November 1996. The Ministry of Justice considered it “doubtful” that the referred community could be designated as a religious community, but in any event denied the community the exclusive right to use a name with the following justification:

“The Ministry of Justice is of the opinion that the teachings and work of the Åsatru community conflict with law and morality, cf. Sections 1 and 13 of the Religious Communities Act.

We first find reason to note that the pre-Christian faith of the Viking Age has long since been abandoned in our civilized world. The social and cultural context of which Nordic paganism was an expression is today extinct.

A central point in the Åsatru community’s creed is magic. Magic is a general term for words and actions of a ritual nature that aim at an immediate (supernatural) influence on natural phenomena, animals or people, their possessions, or the basis of life. Black magic happens in secret and with destructive intent. In the ministry’s opinion, it is against law and morality to have black magic as part of one’s belief system.[...].”

15. The Ministry of Justice’s evaluation did not change even after the articles of association of the community were reviewed in several points.

16. The *Ombudsman*, in his annual report of 1998, criticized the administrative decisions taken in this case because:

“Clear evidence must therefore be required to refuse a religious community registration on the grounds that its teachings or work are contrary to “law and morality”. On the basis of the principle of freedom of belief and religion, the state here must have a heavy burden of proof. Assumptions about a religious community’s teachings and work based on more or less unclear wording in the registration application (the confession of faith, the statutes, etc.) cannot be sufficient. The same applies to the fear that a religious community can be exploited and attract unwanted elements in society. This is also a fear - and to a certain extent also a reality - which is linked to many religious communities, including well-established and

worldwide ones. Purely academic and research objections obviously cannot be sufficient either.

After this, I cannot see that the Norske Ásatrusamfunn's application has received a satisfactory assessment and must request that KUF looks at the matter in the light of my objections. I also mention that there seems to be reason to assess whether the regulations that apply today are appropriate, cf. my comments related to the proceedings."

17. On 12 November 1999, the County Governor decided that

"[...] [a]ccording to the applicable law, Jehovah's Witnesses' expulsion practices are not illegal. On the other hand, some may find this practice contrary to their moral concepts. The County Governor is of the opinion that the moral content of a religious community should not be assessed as a basis for state subsidies. Consideration of freedom of religion should be given substantial weight as long as the religious community acts in accordance with applicable law.

The County Governor considers the matter closed."

18. After a complaint against the County Governor's decision, the then Ministry of Church Education and Research came on 31 August 2000 to the following conclusion:

"In this letter and in previous inquiries from you, it appears that you believe that the authorities can intervene and prohibit this practice on the basis of section 10 or section 13 of the Act on Religious Communities. As we see it - and which is also the County Governor's position - this is not the case. [...]

It is not alleged in the case that anyone has used "improper arguments, promises or threats" or proceeded "by other questionable means" to get members to resign from the religious community. [...]

We do not see that the practice of disfellowshipping violates the conditions for registration, nor can it be characterized as a gross error or negligence. As should be apparent from the above explanation, and which is also the County Governor's conclusion, the practice of disfellowshipping by Jehovah's Witnesses is not affected by provisions in the Religious Communities Act. Consequently, the County Governor has no authority to withhold the financial support, as you suggest in your letter.

When it comes to the formal side of the case, it is the County Governor who must decide whether the conditions for a warning or removal are present. In this case, the County Governor has investigated the matter, and has given feedback that there is no basis for reacting to the religious community's practice."

19. On 19 June 2012, the County Governor reviewed the case, but did not change her views on the subject. She wrote in a straightforward and concise manner the following:

"The County Governor dealt with the question about the practice of Jehovah's Witnesses in a letter dated 12.11.99. In your letter of 02.08.2000 to the then Ministry of Church Education and Research you complained about the handling of the matter by the County Governor. Upon review of the case, the County Governor concluded that the expulsion practice was not in violation of applicable law. The Ministry of Church Education and Research concluded that the practice was not in breach of the registration rules or that it could be characterised as a gross foul or omission under the Religious Communities Act.

The County Governor has reviewed the case again but cannot see that there are changes in the law which could lead to a different conclusion."

20. On 21 August 2019, the Ministry of Children and Families wrote to the County Governor and asked her to assess the basis for the state subsidy to *Jehovas vitner*. The background for this request was media reports that people of faith risk being excluded from their family and circle of friends if they vote in political elections.

21. On 11 September 2019, the County Governor wrote to *Jehovas vitner* and asked for comments on the Ministry's letter.

22. On 18 October 2019, *Jehovas vitner* sent their comments to the County Governor.

23. On 18 November 2019, the County Council decided that *Jehovas vitner* should continue to be eligible for state grants, concluding that "to renounce this right [to vote] seems to be a part of the *Jehovas vitner*'s belief system that is known - and presumably accepted - by those who nevertheless choose to be members of the denomination".

24. On 16 December 2020, the County Governor rejected, for the fourth time, a claim by a former member to deny state grants to *Jehovas vitner*, this time based on allegations about the child protection policy of the congregation. In rejecting that claim, the County Governor concluded that the child protection policy of *Jehovas vitner*, namely on how sexual assault on minors are dealt with, “makes a big impression” and fully complied with all relevant legal requirements. She referred explicitly to such examples as “grievous bodily harm, rape, incest and all sexual acts with children under the age of 16, as well as violence or abuse in close relationships”. The County Governor added that “some types of acts such as violence, coercion or threats” will never be justified on the grounds of freedom of religion and she assumed that “if there were punishable actions committed by *Jehovas vitner*, they would be dealt with by police and prosecution authorities.” (*Fylkesmannen legger til grunn at dersom det begås straffbare handlinger av medlemmer i Jehovahs vitner, så er dette en sak for politi- og påtalemyndighet*)

25. On 26 February 2021, *Jehovas vitner* claimed a state grant for 12,727 members. When the claim was made, the annual report and accounts for 2020 were also submitted.

26. On 15 April 2021, the Ministry of Children and Families wrote again to the County Governor and asked her to assess the religious expulsion practices of *Jehovas vitner* for the purposes of verifying the legal requirements for registration and state funding.

27. On 27 May 2021, the County Governor asked *Jehovas vitner* to comment on the Ministry’s letter and the attached complaint.

28. On 22 June 2021, *Jehovas vitner* sent their comments to the County Governor.

29. On 15 September 2021, the County Governor informed *Jehovas vitner* that she had opened an investigation into their religious practices in connection with section 6 of the new Religious Communities Act. Attached to the letter were three emails, comprising more than fifteen pages, from: (1) “NN”, an anonymous sender, (2) Jan Frode Nilsen, formerly one of *Jehovas vitner*, and (3) Rolf Furuli, also formerly one of *Jehovas vitner*. The

emails criticized several religious beliefs and practices of *Jehovas vitner*, referring almost entirely to excerpts from religious publications of *Jehovas vitner*. Neither Mr Nilsen nor Mr Furuli complained about their personal circumstances, including what led to them no longer being *Jehovas vitner*. The authors of the complaints provided no facts about actual incidents.

30. On 4 October 2021, *Jehovas vitner* asked the County Governor to clarify which claim(s) in the e-items were under investigation, in order to provide a meaningful response.

31. On 25 October 2021, the County Governor replied that it had “assessed that there is a need to investigate the religious community and whether information we have become aware of may have an impact on the religious community's registration and claims for grants.” No further information was provided on the legal or factual basis for the investigation.

32. On 19 November 2021, *Jehovas vitner* nevertheless commented on the various questions raised by the dissatisfied former *Jehovas vitner*. In that response, *Jehovas vitner* relied on articles 9 and 11 of the ECHR and the case-law of the ECtHR.

33. On 27 January 2022, the County Governor denied *Jehovas vitner* state grants for 2021. The County Governor concluded that *Jehovas vitner* acted in violation of the conditions for grants under section 2, second paragraph, and section 6, first paragraph of the Religious Communities Act. There are three reasons for such decision.

34. The first reason is formulated in general terms and reads as follows:

“The consequence[s] of leaving the congregation is that the person in question is no longer allowed to have contact with family and friends in the congregation. The religious community is clear that members should not have contact with disfellowshipped members. As we see in the paragraph above, this also applies to members who have disassociated themselves. This practice can make members feel pressured to remain in the religious community.”

35. The second reason for the County Governor's decision regards specifically the treatment of children and reads as follows:

“Children in the congregation must follow a set of rules, and the consequence of not practicing these is to be expelled by the congregation, including isolation from family and friends who are told not to associate with disfellowshipped persons.

It appears from your statements of 19 November 2021, in paragraph 19, that the blood ties remain upon disfellowshipping, as long as they live in the same household. However, we understand that the child cannot have contact with other close family (including grandparents, aunts, uncles and cousins) or friends. This comes as a reaction to the child violation of the religious community's own rules. We believe that this can be experienced as pressure or coercion to make children behave in a certain way. We therefore consider the consequence of violating the rules to be a form of punishment.”

36. The third reason for the County Governor's decision pertains also to the treatment of children and reads as follows:

“Children not yet being baptized but who are members of the congregation may be given the status as an “unbaptized publisher”. If an unbaptized publisher commits a serious sin, these children may also be “excluded” from fellowship in the congregation. The child is not disfellowshipped, but the congregation is told that they should be cautio[us] with regard to association with this child. [...]

The County Governor considers that this practice can also be regarded as negative social control. We consider social isolation as a form of punishment against the child.”

37. Considering that the above-mentioned practice was systematically followed by the religious community, and was communicated to members through several channels, the County Governor found that “the offences appear to be intentional”, and therefore the state grant for 2021 should be denied and not reduced.

38. Finally, and for the first time, the County Governor referred to sections 18 and 19 of the Public Administration Act on the regulations to consult case documents.

39. On 7 February 2022, *Jehovas vitner* sent a request for access to the case documents to the County Governor.

40. On 9 February 2022, the County Governor gave access to the case documents, with the exception of one document, in which a partial refusal of a request for access was granted. In the County Governor's response to the request for access, several new documents were attached that had not previously been presented to the religious community with the right to comment on. This included letters from Rolf J. Furuli dated 5 December 2021 and from «NN» dated 10 December 2021 and e-mails from Jan Frode Nilsen dated 7 January 2022.

41. On 15 February 2022, the County Governor made the following statement to *Vårt Land*, a daily newspaper with a nationwide target audience, referring to the *Jehovas vitner* case: "We have not been made aware of any specific circumstances that need to be reported to the police, child welfare or others. We have only assessed the case under the Religious Communities Act."

42. On 17 February 2022, *Jehovas vitner* addressed a letter to the Ministry of Children and Families appealing the County Governor's decision of 27 January 2022. The appeal alleged a violation of articles 6, 9 and 11 of the ECHR, article 1 of its Additional Protocol No. 1, and article 14 of the referred Convention in conjunction with its articles 9 and 11 and with article 1 of Additional Protocol No 1.

43. On 18 March 2022 an article is published in *Vårt land* mentioning that "[t]he authorities have received almost 2,000 letters of support for Jehovah's Witnesses".

44. On 30 March 2022, in the transmittal letter of the appeal to the Ministry, the County Governor reaffirmed her position and presented new arguments, such as:

"[The County Governor] also refers to chapter 12 of the book "Shepherd the flock of God", which deals with the typical cases that may lead to the body of elders forming a judicial committee. Paragraph 17 deals with "brazen conduct" and indicates that unnecessary association with disfellowshipped persons or such persons who have disassociated themselves may be grounds for forming a judicial committee. If the body of elders decides not to set up a judicial committee, it may still have consequences for whether the member

is qualified to receive privileges in the congregation. The religious community shows here that defying the call to avoid those who have resigned can have consequences for the members. The statements that it is only the members themselves who decide who they want to have contact with are therefore in conflict with the religious community's own rules. The religious community in reality has a ban on contact with resigned members. [...] We therefore maintain that the practice entails a breach of section 2 of the Religious Community Act."

45. This transmittal letter was notified to *Jehovas vitner* but it did not have the possibility to comment on the new arguments before the letter was sent to the Ministry.

46. On 29 April 2022, a meeting took place between the Ministry of Children and Families, through a political advisor, and *Jehovas vitner*.

47. On 24 May 2022, *Jehovas vitner* provided the Ministry of Children and Families with additional submissions in support of its appeal, particularly under article 6 of the ECHR.

48. On 16 August 2022, *Jehovas vitner* addressed a letter to the Ministry of Children and Families, informing that the ECtHR and the Court of Appeal of Gent had recently delivered relevant judgments.

49. On 31 August 2022, the Ministry of Children and Families sent out an invitation to apply for registration as soon as possible to religious and philosophical communities covered by the transitional arrangement in section 23, second paragraph, of the new Religious Communities Act.

50. On 30 September 2022, the Ministry of Children and Families dismissed the appeal filed by *Jehovas vitner* and upheld the appealed decision of the County Governor. Under the heading "Legal starting points", the Ministry described the domestic law framework and mentioned articles 9, 11 and 14 of the ECHR and the cases *Ásatríarfélagid v Iceland* (§ 31) and *Carson and Others v. United Kingdom* (§ 61) concluding that the ECtHR "has taken as a basis that the State generally has a wide margin of discretion when it comes to striking a fair balance between competing rights in the Convention." The Ministry further added that

“[s]hould the denial of subsidies to religious communities that commit, encourage or support violations of children's rights constitute an interference with freedom of religion and/or freedom of assembly, the interference will, in the Ministry's view, be proportionate. It is pointed out that the best interests of the child must be a primary consideration in all actions affecting children, cf. the Convention on the Rights of the Child, Article 3, first paragraph. Any intervention will thus be prescribed by law, justified by a legitimate aim and necessary in a democratic society.”

51. The Ministry of Children and Families also added under the heading “Department assessment” and the sub-heading “Infringement of the rights of children, cf. Religious Community Act section 6 first paragraph”, that

“[...] The information indicates that exclusion implies a form of severe, systematic and targeted social exclusion, which the Ministry finds to be consistent with the above descriptions of negative social control and psychological violence. The consequences of exclusion are aimed both to keep the excluded person away from other members, and as a form of punishment to make the excluded person reflect on his or her actions. [...]”

The above-mentioned references are a few examples which, in the view of the Ministry, show a systematic and intrusive exclusion and isolation from social networks in the faith community, family members, circle of friends, etc., and it is particularly serious that the practice also applies to baptized children.[...] Jehovah's Witnesses have problematised that the County Governor has not given concrete examples of cases of exclusion of children. The Ministry does not see that the use of the first paragraph of Section 6 of the Religious Communities Act presupposes that violations must be demonstrated in order for the provision to be applied. The premise of the provision is that “a situation can be linked in a qualified manner to a community of faith or belief in order for the community in question to be denied a subsidy. A situation falling within the scope of the denial criterion may be linked to the community as such for example by being expressed in established practices of the community or by appearing in acts or other documents governing or drawn up by the community. [...] However, the relationship must be linked to the activities of the religious or philosophical community”. The Ministry bases its assessment on the sufficiency of the community's practices or documents to support the offending conduct. The long-standing exclusion practices of Jehovah's Witnesses, which also apply

to baptized children, are well documented in the case file and publications of Jehovah's Witnesses. In the opinion of the Ministry, it seems unreasonable to require the County Governor to wait until more violations have occurred before assessing the first paragraph of section 6 of the Religious Communities Act, when the practices and documents of the community clearly suggest such violations. In any case, Jehovah's Witnesses have themselves admitted to one case where a child was excluded. The Ministry therefore does not agree that the issue in the complaint is of a hypothetical nature. Furthermore, the rules on the denial of subsidies cover religious and philosophical communities which commit, encourage or support violations of children's rights."

52. Under the subheading "Refusal of subsidy, cf. Religious Communities Regulation section 11", the Ministry of Children and Families further stated that

"[t]he Ministry has concluded that Jehovah's Witnesses' exclusionary practices involving baptized children, and corresponding consequences for baptized children who resign, violate children's rights. The practice is an integral part of the teachings of Jehovah's Witnesses and is defended in all letters from the denomination. The practice is thus systematic, persistent and intentional. The Ministry therefore finds that the grant should be denied in its entirety."

53. Under the subheading "Prohibition of discrimination, cf. ECHR Article 14", the Ministry of Children and Families finally concluded that

"[i]n the opinion of the Ministry, the protection of children's rights must be given decisive weight in a rights assessment. To the extent that the denial of a grant under the Religious Communities Act would constitute differential treatment, it would, in the Ministry's view, be a factual, objective and reasonable limitation on the right to receive a grant."

54. In its decision, the Ministry of Children and Families considered new religious literature, new expert reports and a new testimony of an unknown person who "had been a JV [Jehovah's Witness] for 36 years but was for a period of seven months (...) excluded". More specifically, the Ministry relied on new expert reports on social control and psychological violence from the Directorate of Health ("Prevention and health care in cases of negative social control and forced marriage", last updated on 27

January 2017), the Directorate of Integration and Diversity (“Negative social control and forced marriage”, last updated on 15 December 2021), and the Directorate for Children, Family and Youth (“Mental violence”, updated on 6 April 2018). The Ministry also considered an article on Jehovah’s Witnesses website (“Why Disfellowshipping Is a Loving Provision”), an article in the “Watchtower—Announcing Jehovah’s Kingdom”, 1981, p. 15-21, “Enjoy Life Forever! – An Interactive Bible Course”, including a passage of the Bible (1 Corinthians 5:13: “Remove the wicked person from among yourselves”), and new video sources (a video on Jehovah’s Witnesses website, “Loyally Uphold Jehovah’s Judgments - Shun Unrepentant Wrongdoers”, and NRK’s documentary “Brennpunkt: God’s Chosen”).

55. Finally, the Ministry of Children and Families declined to decide on the first issue raised in the appealed decision:

“The Ministry finds it unnecessary to assess whether the practice of Jehovah’s Witnesses is also in violation of section 2, second paragraph of the Religious Communities Act, as we have come to the conclusion that the religious community’s exclusion practice that applies to baptized children, and corresponding consequences for baptized children who withdraw from the religious community, under any circumstances violate children’s rights under section 6, first paragraph and provides a basis for denying subsidies in their entirety under section 11 of the Religious Communities Regulation.”

56. On 11 October 2022, *Jehovas vitner* applied for registration, in accordance with the transitional provision of article 23, second paragraph, of the new Religious Communities Act.

57. On 25 October 2022, the County Governor notified *Jehovas vitner* that she was considering removing its registration as a religious community and therefore the community would lose the right to claim state grants and the right to officiate at weddings would be suspended. She also invited it to “correct the conditions that led to the denial of grants”.

58. On 9 November 2022, *Jehovas vitner* requested the County Governor to grant a four-week extension to respond to the intended removal of registration as a religious community.

59. On 14 November 2022, the County Governor granted the requested four-week extension.

60. On 2 December 2022, *Jehovas vitner* addressed a letter to the County Governor, informing that it will appeal the denial of state grants to the District Court and asking that the registration does not lapse before the County Governor makes a final decision on its request for registration and, in the event the County Governor decided to de-register, that implementation of the decision should be deferred until the case had been fully processed by the courts pursuant to section 42 of the Public Administration Act.

61. On 12 December 2022, the County Governor rejected the request to defer implementation if she decided to remove the registration of *Jehovas vitner* as a religious community and informed that “*Jehovas vitner* have the opportunity to respond to the notice during the next two days, we will try to make a decision on the matter before the end of the transition period.”

62. On 13 December 2022, *Jehovas vitner* responded to the notification of the County Governor of 25 October 2022, clarifying that it would not change its religious beliefs and practices in Norway to suit the County Governor’s wishes. These were the words used: “We want to make it absolutely clear that *Jehovas vitner* will not change their religious beliefs and practices in Norway in response to the County Governor’s decree dated 27 January 2022.”

63. On 21 December 2022, *Jehovas vitner* filed a subpoena in the District Court of Oslo against the Ministry of Children and Families’ decision on the refusal of state subsidies for the religious community Jehovah’s Witnesses for 2021. The plaintiff claimed that the Ministry’s decision of 30 September 2022 was invalid, *Jehovas vitner*’s claims for state subsidies for 2021 should be paid in arrears along with interest, and that there was no basis for denying Jehovah’s Witnesses state support in accordance with section 11 letter d of the Religious Communities Regulations, read in conjunction with section 2 of the Religious Communities Act.

64. On 22 December 2022, the County Governor decided to remove the status of *Jehovas vitner* as a registered religious community, reiterating the three factual grounds of her previous decision on the denial of state grants, in accordance with section 4, third paragraph, of the new Religious Communities Act, read in conjunction with its section section 6, and section 4, first paragraph, of the Religious Communities Regulation. She further added that she found those facts to be particularly serious and permanent. She also decided to reject the new application for registration, on that same factual basis.

65. The only new factual element taken into consideration by the County Governor in her decision was the following:

“After our decision on 27.01.2022, we have received several letters from members and former members of Jehovah's Witnesses. Among these are letters from members who support Jehovah's Witness practices and who disagree with the decision, and from members who state that they want to leave the religious community, but choose to remain because they do not want to break with family and friends. The latter group of members write that their choice to leave the congregation will mean that friends and family cannot have contact with them, even if they leave the congregation voluntarily, and not because of exclusion. They state that this is what makes them stay in the congregation. They also say that Jehovah's Witnesses encourage members to “keep tabs” on each other and inform “the elders” (the leadership) if they know that someone in the community is in contact with the resigned or excluded.”

66. Finally, the County Governor denied *Jehovas vitner*'s request for a stay of execution of her decision until the matter had been fully dealt with by the administration or a final judgment had been rendered by the courts, arguing that they had been registered on transitional arrangement under section 23 of the previous Religious Community Act and that this transitional arrangement lasted until 1 January 2023. There was no legal possibility for an extended transitional period, nor did the County Governor have the competence to extend this regime.

67. On 22 December 2022, *Jehovas vitner* requested the Ministry of Children and Families that the County Governor's decision be given

deferred implementation according to section 42 of the Public Administration Act. That request was ignored.

68. On 28 December 2022, *Jehovas vitner* lodged a petition for a temporary injunction before the Oslo District Court, claiming that it was entitled to be registered as a religious community until it was finally decided whether the County Governor's decision of 22 December 2022 was invalid.

69. On 30 December 2022, the Oslo District Court granted *Jehovas vitner* a temporary injunction, suspending the effects of the mentioned County Governor's decision. The motivation was the following:

“The court can hardly see that weighty administrative considerations should prevent the de-registration decision from being temporarily suspended, and neither can a suspension of the decision in any concrete way can it be seen to expose society to any form of concrete nuisance (apart from a continued right to officiate at weddings). The court is also of the opinion that the considerations and interests that Jehovah's Witnesses have brought to the fore in the case here appear to be relatively weighty. There is a clear preponderance of considerations that require temporary use of the exception rule, and the court determines that the decision of 22 December 2022 will not be implemented until further notice, cf. section 34-2 second paragraph of the Norwegian Disputes Act.”

70. On 5 January 2023, the Attorney for the Government addressed to the Oslo District Court a letter claiming that the injunction proceedings should have been dismissed because the plaintiff had no legal interest in the main claim and requesting an oral hearing to challenge the legality of the decision.

71. On 11 January 2023, *Jehovas vitner* raised several objections to the Attorney for the Government's claim that the temporary injunction should be rejected.

72. On 24 January 2023, the Attorney for the Government addressed a letter to the Oslo District Court adding new arguments to her previous letter and responding to the latest objections of *Jehovas vitner*.

73. On 1 February 2023, *Jehovas vitner* addressed a letter to the Oslo District Court, replying to the Attorney for the Government's letter of 24 January 2023.

74. On 10 February 2023, *Jehovas vitner* filed a subpoena in the Oslo District Court against the County Governor's decision to remove their registration as a religious community. The subpoena alleged a violation of articles 9 and 11 of the ECHR, read alone or in conjunction with its article 14, reiterating the arguments previously presented in the subpoena against the decision to reject State funding.

75. On 13 February 2023, the Attorney for the Government addressed a letter to the Oslo District Court, presenting the state's views on the validity of the Ministry's decision of 30 September 2022.

76. On 28 February 2023, the Oslo District Court decided to hold an oral hearing with regard to the injunction, which took place on 29 and 30 March 2023.

77. On 27 March 2023, *Jehovas vitner* and the Attorney for the Government presented their respective closing arguments.

78. On 26 April 2023, the Oslo District Court revoked *Jehovas vitner*'s temporary injunction that they had been granted on 30 December 2022. Two main arguments were put forward to deny the risk of substantial damage being caused to the plaintiff in case of revocation of the interim measure:

“[...] In such a context, Jehovah's Witnesses in Norway will have to resort to (civil) marriage. This is the situation for members of the religion in Germany and France, among others, where Jehovah's Witnesses do not have the right to marry. In this context, through the witness testimonies, it has also been explained that Jehovah's Witnesses will still be able to offer the customary blessing and prayer after a civil marriage.

[...] A more vital argument relates to the perception that Jehovah's Witnesses are stigmatized by the outside world by no longer being an acknowledged, registered religious community. This addresses both the members' spiritual experience of being left out, but also the risk of being subjected to mockery and abuse. The District Court has not been presented

with convincing arguments to substantiate that the cohesion of Jehovah's Witnesses within the religious community is particularly impaired as a result of the decision.

[...] The harassment, mockery and harm that may already have been caused will not be reversed by this legal proceeding. And evidence of such previously committed misdeeds does not provide either a basis for relaxing the interpretation of the law's rather strict requirements of substantial loss or inconvenience. From a legal point of view, it must be based on a present-day perspective, where the District Court will have to assess the foreseeable risk of future attacks against the members or the religious community's property - and then, strictly speaking, only insofar as the potential for damage can be considered an adequate consequential risk of the County Governor's decision of 22 December 2022 to refuse registration.

[...] no evidence has been presented to show that members of Jehovah's Witnesses, or the organization itself, have recently been subjected to considerable extensive mockery. However, it is clear that the religious community has been under critical spotlight for quite a number of years, and has been systematically subjected to less flattering publicity. There are, however, are no convincing present signs that this is a growing problem, and even less reason to believe that this would be related to the County Governor's decision to deny registration. There is also no evidence that property has been vandalized in the wake of the County Governor's decision of 22 December 2022.

[...] Taken in isolation, the District Court considers that the foreseeable risk of future bodily injury, serious insult or damage is quite small when this would only relate to the County Governor's decision to refuse registration."

79. On the 5 May 2023, in a planning meeting between the attorneys and the Oslo District Court judge, the judge decided that cases no. 22-186588TVI-TOSL/03 (the state grant case) and no. 23-023178TVI-TOSL/05 (the registration case), would be joined, in accordance with section 15-6 of the Disputes Act. This means that there are still two cases, but in practice all pleadings will henceforth refer to the case number for the state grant case, which is the one that was first registered by the District Court.

B. RELEVANT LEGAL FRAMEWORK AND PRACTICE**1. DOMESTIC LAW AND CASE-LAW****a) *The Constitution of the Kingdom of Norway***

80. Section 2 of the Constitution of the Kingdom of Norway of 17 May 1814 (hereinafter, the Constitution) determines that

“[o]ur values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, a state based on the rule of law and human rights.”

81. Section 16 of the Constitution guarantees religious freedom and sets out special provisions on the Norwegian Church. Furthermore, it determines that all religious and philosophical communities must be supported equally.

82. The principle of equality and non-discrimination is specifically included in the Constitution. Section 98 of the Constitution states that

“[a]ll people are equal under the law. No human being must be subject to unfair or disproportionate differential treatment.”

83. Section 101 of the Constitution guarantees to everyone the right to form, join and withdraw from associations, including trade unions and political parties.

84. Section 104, third paragraph, of the Constitution provides that

“[c]hildren have the right to protection of their personal integrity. The authorities of the state shall create conditions that facilitate the child’s development, including ensuring that the child is provided with the necessary economic, social and health security, preferably within their own family.”

b) *The Equality and Anti-Discrimination Act*

85. The Equality and Anti-Discrimination Act aims at promoting equality and preventing discrimination on the basis of ethnicity, religion and belief.

86. For the purposes of this Act, discrimination includes both “direct or indirect differential treatment”, according to its section 6, fourth paragraph. Direct discrimination means that a person is treated worse than others in a similar situation, due to conditions related to gender, pregnancy, leave at birth or adoption, caring duties, ethnicity, religion, outlook on life, disability, sexual orientation, gender identity, gender expression, age and other significant conditions of a person (section 7). By indirect discrimination is meant any apparently neutral provision, condition, practice, action or omission that will put people at a disadvantage compared to others, due to the same conditions (section 8).

87. According to the “Norwegian Government’s Action Plan against Racism and Discrimination on the Grounds of Ethnicity and Religion 2020–2023 - Extracted Version”, issued by the Ministry of Culture in August 2020,

“[T]he Act provides protection against discrimination for both the majority and minority population but aims in particular to improve the position of women and minorities. The Act also prohibits harassment. This action plan is centred on the grounds of ethnicity and religion, as described in the Equality and Anti-Discrimination Act. [...] Religion and beliefs are independent and equal grounds of discrimination. Beliefs include both religious and secular beliefs. The Equality and Anti-Discrimination Act also contains an independent prohibition on multiple discrimination, e.g. where discrimination occurs because of a combination of several grounds of discrimination that affect each other mutually. People need to be aware that in many cases discrimination is not only linked to ethnicity or religion, but also, e.g., to gender or sexual orientation. This can reinforce the discrimination some people experience. Provisions on discrimination also exist in the Norwegian Penal Code. Section 185 of the Penal Code covers discriminatory and hate speech that occur because of someone’s skin colour or national or ethnic origin, religion or beliefs, homosexual orientation or disability. Section 186 of the Penal Code covers the refusal of goods or services to someone due to the person’s skin colour or national or ethnic origin, religion and beliefs, homosexual orientation or disability.”

c) ***The Religious Communities Act***

88. According to section 19 of the Religious Communities Act of 13 June 1969 (hereinafter, “the previous Religious Communities Act”), registered religious communities could require annual financial support from the state. It was a requirement that the activities were run in accordance with section 1 of the previous Religious Communities Act on “justice and decency” and its section 13 on “justice and public moral”. According to section 1, everyone had a right to conduct religious activities as long as “justice and decency is not violated”. Furthermore, section 13 stated that “religious communities may be registered when neither its doctrines nor its work is in conflict with justice and moral.”

89. In its special remarks on the “justice and decency”-limitation clause in section 1 of the Religious Communities Act, the Dissenter Act Committee of 1957 pointed out the following (p. 155):

“[t]he boundaries that apply to religious freedom correspond with the freedom of action in general. The reference to justice and decency sets a standard whose content must be determined by the general opinion of the people of what is decent.”

90. The committee noted the following about the “justice and moral”-requirement for registration and financial support (p. 168):

“[o]ne might say that no religious community should exist if its doctrines conflict with justice and public moral. But you have to expect that for the non-registered religious communities, the completely private ones, there will be a very wide freedom. Even if their doctrine is contrary to good morals, it will not be interfered with if this does not result in action contrary to applicable criminal law. Obviously, if a religious community is to be registered and receive public financial support and public functions, the requirements must be significantly stricter. The condition must then be that the doctrines do not run counter to justice and morality. The premise is that the religious community represents a positive value, which the state can benefit from showing trust and support, both on the basis of interest in public moral and in the part of the culture that religious life represents. When assessing the doctrine of a religious community, the consisting view of morality in the country will be used. Obviously, not a narrow Christian or state-church scale is to be used. But the assessment will still be based on