

Supreme Court of Norway P.O. Box 8016 Dep 0030 OSLO

THE GOVERNMENT OF NORWAY,
represented by the Ministry of Children and Families,
Appellant, Counsel: Liv Inger Gjone Gabrielsen,

against

JEHOVAH'S WITNESSES OF NORWAY
(Jehovas vitner i Norge)

Respondents, Counsel: Anders Christian Stray Ryssdal.

Case No: 25-089326SIV-HRET

**AMICUS CURIAE BRIEF SUBMITTED BY THE CENTRE FOR LAW AND
RELIGIOUS FREEDOM AT JAGIELLONIAN UNIVERSITY AND THE
HARVARD LAW SCHOOL RELIGIOUS FREEDOM CLINIC**

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Introduction

On behalf of the Centre for Law and Religious Freedom at Jagiellonian University and the Religious Freedom Clinic at Harvard Law School, we write regarding case 25-089326SIV-HRET, which is now before the Supreme Court between the Government of Norway and Jehovah's Witnesses of Norway.

The Centre for Law and Religious Freedom at Jagiellonian University is an academic centre that draws on the traditions of Western legal orders to bring perspective and methodological rigour to historically rooted discussions of religious freedom. The Religious Freedom Clinic at Harvard Law School monitors significant court cases worldwide where religious freedom issues arise and offers broad-based scholarly expertise and practical experience to aid courts in their consideration of religious liberty cases.

Both academic institutions took note of the Oslo District Court's decision and submitted a letter in support of the Jehovah's Witnesses to the Borgarting Court of Appeal when the case was before that tribunal. The Court of Appeal accepted that letter and incorporated it as part of the basis of its opinion. The Court of Appeal concluded that the State has not substantiated that the Jehovah's Witnesses' practice of disfellowshipping violates children's rights or the right of members to freely withdraw from the religious community. The Court of Appeal thus held that the State's denial of grants under Section 6 of the Religious Communities Act and denial of registration under Section 4, third paragraph, are invalid. The Court of Appeal did not address whether the withholding of grants and registration violated Norway's international human rights obligations. It did, however, conclude that the religious community's rules and sanctions for withdrawal do not constitute undue pressure on those who wish to withdraw and, so, do not infringe the right to free withdrawal under Article 9 of the European Convention on Human Rights (ECHR) or Article 18 of the International Covenant on Civil and Political Rights.

As academic contributors to discussions about human rights and religious freedom, both the Centre for Law and Religious Freedom at Jagiellonian University and the Religious Freedom Clinic at Harvard Law School respectfully submit this brief to assist the Supreme Court specifically in its consideration of the international human rights dimension of this case. Under Section 15-8 of the Dispute Act, written submissions may be provided by "organizations and associations within the purpose and normal scope of the organization" to "highlight matters of public interest." The case before the Supreme Court concerns fundamental human rights that are important to all religions and lie at the core of the purpose and normal scope of organisation of both the Centre for Law and Religious Freedom at Jagiellonian University and the Religious Freedom Clinic at Harvard Law School.

This submission provides an overview of the relevant human rights principles and the corresponding state duties that derive from them, which are of importance beyond this case. In accordance with Section 15-8 of the Dispute Act, we will not comment on the application of the law to the facts of this specific case or assess disputed evidence.

Instead, throughout the submission, we consistently comment on specific aspects of protected religious autonomy that are relevant to the case, the ECHR's demand for compelling evidence of specific and serious harm as a precondition to permissible state intervention, and the extent of an ECHR member state's duty of neutrality and impartiality.

We understand that submissions under Section 15-8 of the Dispute Act are allowed to support a party's position, address legal questions of interpretation, make specific conclusions, and articulate a position on decisive issues, provided that they "shed light on public interests."¹ We therefore believe that our amicus brief is within the scope of this provision.

Summary of Argument

It is a basic principle of European human rights law that religious communities are entitled to organise their internal life, define their own membership, and enforce their own moral codes free from state control. That principle is embedded in Article 16 of the Constitution of the Kingdom of Norway and Articles 9 and 11 of the ECHR. It has been reaffirmed time and again by the European Court of Human Rights (ECtHR), the United Nations Human Rights Committee, and national courts throughout Europe. That guarantee is not incidental to religious freedom. It is at its core.

The ECHR affords robust protections for the internal autonomy of religious communities. To that end, the ECtHR has consistently held that member states must tread lightly when considering a religious community's internal rules, doctrines, or membership practices. Decisions about who belongs in a faith community, under what conditions, and subject to what consequences for serious misconduct are paradigmatic exercises of religious autonomy protected by Articles 9 and 11. When a state disagrees with those internal norms, it may not deploy deregistration, dissolution, or denial of equal grants as leverage to induce changes in religious doctrine. The ECHR permits limitations on religious freedom only when they are "necessary in a democratic society"—that is, when they respond to a pressing social need, rest on sufficient and specific reasons, and are strictly proportionate to a legitimate aim. In short, the ECtHR has consistently demanded proof of specific and serious harm.

Deregistration and defunding may also exceed any permissible margin of appreciation. Stripping a long-registered community of legal status and equal support is among the gravest interferences with Articles 9 and 11. Courts have considered and vindicated religious autonomy guarantees in other member states when state authorities have adopted restrictive or punitive measures based on generalised assessments of longstanding and publicly articulated forms of internal religious discipline. The ECtHR has held that such sanctions demand compelling and specific evidence of serious and unlawful harm and has signalled a need for caution where

¹ See Supreme Court judgment 5 October 2018, HR-2018-1887-U, paras. 17–18.

sanctions are directed at longstanding religious practices that have previously been tolerated under a member state's legal regime.

The Supreme Court has previously recognised and upheld the principle of religious autonomy, and it has analysed the issue by looking to ECtHR case law and considering the “complementary” religious freedom guarantees of the Constitution and the ECHR together.² It should do likewise here.

1. Church membership practices are protected religious activity.

Imposing legal sanctions on a religious group based on the community's membership practices threatens the principle of religious autonomy as protected not only by Article 16 of the Norwegian Constitution but also by Articles 9 and 11 of the ECHR. That autonomy is not a mere accessory to religious freedom. It is the central guarantee that allows a religious community to define its own identity, doctrine, membership rules, and discipline. The Court of Appeal's ruling accords with these principles. Likewise, the ECtHR has consistently recognised that, without compelling justification, states cannot assess or interfere with the internal governance or moral codes of religious communities.³

1.1. The ECHR protects churches' religious decisions and internal operations from state control.

Signatories to the ECHR are bound to protect the rights to freedom of religion and association under Articles 9 and 11.⁴ Under Article 9, member states must protect “the right to freedom of thought, conscience and religion,” including an individual's right “to manifest his religion or belief, in worship, teaching, practice and observance.” Religious organisations are also protected under Article 11's right to “freedom of association with others.” Appreciating the community dimension of religious rights, the ECtHR recognises that these Articles protect the freedom of religion and religious organisations as a prerequisite to a democratic society.⁵

ECtHR case law has consistently held that state interference cannot be justified by assessing the internal doctrines or disciplinary norms of a religious community. Such matters fall within the sphere of a community's autonomous self-understanding and, therefore, are protected from state interference and lie outside the jurisdiction of secular courts. Second-guessing by government authorities of a religious community's doctrine or moral code violates the community's right to organise itself in accordance with its own rules.

² Supreme Court judgment 2 May 2022, HR-2022-883-A, paras. 41–48.

³ *Sindicatul Păstorul cel Bun v. Romania*, No. 2330/09 (ECtHR Grand Chamber 9 July 2013) §§ 136–138, 143, 150.

⁴ Norway ratified the ECHR on January 15, 1952. Treaty Office, Chart of Signatures and Ratifications of Treaty 005: Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures.

⁵ See Paulo Pinto de Albuquerque, *Disfellowshipping and Discrimination of a Religious Minority* 101 (2025).

There is no shortage of cases upholding these principles. In *Hasan and Chaush v. Bulgaria*, for example, the Grand Chamber of the ECtHR explained that “the autonomous existence of religious communities” is “at the very heart of” Article 9’s protection.⁶ Thus, in cases involving a religious group’s internal organisation, Article 9 generally “excludes any discretion on the part of the State” to determine the legitimacy of the community’s beliefs or the appropriateness of how those beliefs are expressed.⁷

The Court applied similar reasoning in *Fernández-Martínez v. Spain*, upholding the Catholic Church’s right to bar a laicised priest from his teaching position despite “serious consequences for his private and family life.”⁸ While the effect of the Church’s sanctions was severe, the Court noted that such consequences did not overcome the Church’s ability to enforce its rules where a priest “had knowingly placed himself in a situation that was incompatible with the Church’s precepts.”⁹

Similar conclusions have been reached by the United Nations Human Rights Committee. In *Alymbek Bekmanov, Azamat Kerimbaev, Urmatbek Kobogonov and Erkinbek Mukambetov v. Kyrgyzstan*, Communication No. 2659/2015 (views adopted 11 March 2022, CCPR/C/132/D/2659/2015), concerning Jehovah’s Witnesses who had been denied registration as a religious organisation, the Human Rights Committee found that Kyrgyzstan’s refusal to register violated the International Covenant on Civil and Political Rights, and underscored that arbitrary denials of registration cannot be reconciled with the fundamental right to manifest one’s religious beliefs.

These rights are widely recognised, and ECtHR jurisprudence has faithfully guarded against state interference with internal religious affairs. It follows from that jurisprudence that member states should not use deregistration and defunding to pressure a religious group to change its internal religious practice. Doing so conflicts with the ECtHR’s settled view that internal religious discipline is not itself a matter for state oversight. Unfortunately, some post-Soviet countries have manipulated the registration process to interfere with religious activity, to exercise control over religious groups and regulate their behaviour, or to create—even with good intentions—*quid pro quo* relationships that may cause religious groups to seek official state recognition by currying favour with the state. Other states should not do likewise.

1.2. Deciding who belongs to a religion and instructing believers on their conduct are both paradigmatically religious matters.

Religious communities cannot preserve their identity without the ability to regulate admission, expulsion, and internal discipline. The ECtHR has consistently treated

⁶ *Hasan and Chaush v. Bulgaria*, No. 30985/96 (ECtHR Grand Chamber 26 October 2000), § 62.

⁷ *Hasan and Chaush*, §§ 62, 78.

⁸ *Fernández-Martínez v. Spain*, No. 56030/07 (ECtHR Grand Chamber 12 June 2014), § 145.

⁹ *Fernández-Martínez*, § 146.

these powers as inherent in Articles 9 and 11, especially in cases concerning Jehovah's Witnesses.

As a result, registration and equal funding cannot turn on a religious community's choices as to the "doctrinal standards of behaviour" by which its followers must abide.¹⁰ Such interference would conflict with precedents affirming religious organisations' discretion to determine "the manner in which new members are admitted and *existing members excluded*."¹¹ Those decisions are protected as the "means by which such organisations are able to express their beliefs and maintain their religious traditions."¹² The ECtHR views these protections as "indispensable for pluralism in a democratic society."¹³ And it is "uncontroversial" that religious organisations may "generally regulate their membership to include only those who share their beliefs and ideals" under their freedom to associate.¹⁴

Likewise, the ECtHR's own annotated digest on religious autonomy explains the principle in categorical terms, stating that Article 9 "forbids" states from "oblig[ing] a religious community to admit new members or to exclude existing members," "determin[ing] the legitimacy of particular religious beliefs and the ways in which such beliefs are expressed," or "interfer[ing] with the internal affairs of a divided religious community."¹⁵

The Supreme Court's jurisprudence recognises the same principle. In HR-2022-883-A, concerning a disfellowshipping dispute in a local congregation, the Supreme Court, after first noting that Articles 9 and 11 of the ECHR are "complementary" to Article 16 of the Constitution, affirmed that those legal safeguards "afford a high level of protection for religious communities from interference by the State."¹⁶ The Supreme Court emphasised that the courts' power to review internal affairs in a religious community is limited and that it is "clear that a religious community's handling of religious issues cannot be reviewed by the courts."¹⁷

2. European human rights law sets a high bar for interfering with a religious group's autonomy.

When a religious organisation's challenged practice arises from express religious doctrine, states generally may not interfere. Yet deregistering and defunding a

¹⁰ *Jehovah's Witnesses of Moscow and Others v. Russia*, No. 302/02 (ECtHR 10 June 2010), § 118.

¹¹ *Svyato-Mykhaylivska Parafiya v. Ukraine*, No. 77703/01 (ECtHR June 14, 2007), § 150 (emphasis added).

¹² *Ibid.*

¹³ *Fernández-Martínez*, § 127; see also *Obst v. Germany*, No. 425/03 (ECtHR 23 September 2010), § 37.

¹⁴ *Associated Society of Locomotive Engineers and Firemen (ASLEF) v. the United Kingdom*, No. 11002/05 (ECtHR 27 February 2007), § 39.

¹⁵ Registry of the European Court of Human Rights, *Key Theme: Article 9: Autonomy of religious organisations*, <https://ks.echr.coe.int/documents/d/echr-ks/autonomy-of-religious-organisations>.

¹⁶ Supreme Court judgment 3 May 2022, HR-2022-883-A, paras. 42, 45.

¹⁷ Supreme Court judgment 3 May 2022, HR-2022-883-A, para. 58.

religious group can do just that: removing equal support because a state disagrees with a community's religious teaching and practice about internal discipline.

Under Article 9, a state's interference with religious practice can be deemed "necessary in a democratic society" only if the state shows that a pressing social need, supported by sufficient reasons, requires the intrusion on religion—and even then, only if those intrusive measures are proportionate to the aim being pursued.¹⁸ When states justify intrusive measures by speculating that internal discipline practices might result in psychological pressure, ECtHR precedents demand "proof of actual harm."¹⁹

2.1. Religious beliefs regarding disfellowshipping do not constitute legal coercion.

The ECtHR has long distinguished between legal coercion attributable to the state and moral or social consequences arising from strongly held religious beliefs. As long as individuals remain legally free to join, leave, criticise, and associate with whomever they choose, the mere fact that family or fellow believers may disapprove, distance themselves, or follow strict religious guidance does not amount to unlawful coercion.

Other European courts have reached similar conclusions. For example, the Warsaw Court of Appeal dismissed a defendant's claim seeking compensation for the violation of his personality rights caused by the decision to exclude him from a Jehovah's Witness congregation. The claim was dismissed on the grounds that "[a]nyone who decides to join a particular religious association should accept the moral principles that apply within it." The court further explained that "it is not for a court of law to assess either these rules or whether a member of a given religious association or its statutory bodies comply with them."²⁰

The Belgian Court of Cassation reached a similar conclusion in 2023 when it confirmed that the Witnesses' teaching on social distancing merely consists of "guidelines relating to ordinary social intercourse," does not violate the freedom of religion or belief of those excluded, and does not amount to discrimination or harassment.²¹

The longstanding European judicial consensus is clear. As long as a religious group's members remain free to resign from the community and to maintain relationships with ex-members if both parties wish, the community's act of providing religious instruction to its members and regulating participation in religious activities lacks

¹⁸ *Kokkinakis v. Greece*, No. 14307/88, (ECtHR 25 May 1993); see also *Manoussakis & Others v. Greece*, No. 18748/91 (ECtHR 26 September 1996).

¹⁹ *Jehovah's Witnesses of Moscow and Others*, § 144.

²⁰ No. VI ACa 81/03 (Warsaw Court of Appeal 13 August 2003) Wokanda 2005, no 1, pp. 33–35.

²¹ *Interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme (UNIA) v. Christelijke Gemeente van Jehovah's Getuigen*, No. P.22.097.N/1 (Belgium Court of Cassation 19 December 2023).

the force of law to compel avoidance and thus falls squarely within the community's religious autonomy protection under Articles 9 and 11 of the ECHR.

2.2. State interference with religious practice must be justified by concrete, specific evidence.

Interference with religious practices cannot be justified by speculative dangers or generalised disapproval of religious doctrine. Instead, an ECHR member state can interfere with religious practices only if the member state can substantiate by evidence that such practices have caused harm and that the interference is based on a sufficient assessment of the relevant facts.²² As the ECtHR has explained, the association of religious communities promotes free individual expression and “serve[s] pluralism in society.”²³ Concrete evidence proving that religious practices are truly harmful is essential to avoid undercutting that interest. To allow otherwise would permit state actions grounded in prejudice rather than demonstrable harm.

In light of these principles, member states may not justify deregistration with reference to generalised reports, assumptions about negative impacts, or anonymous testimony. ECtHR jurisprudence establishes that assertions of potential harm must meet a rigorous evidentiary standard. The ECtHR requires a showing of verifiable instances of unlawful acts, harm, or threatened harm to a person's physical or emotional wellbeing, or coercive conduct with legal consequences. In the absence of any showing of concrete harm, reframing a religious disciplinary practice as a public threat cannot satisfy the necessity requirement under Article 9(2).²⁴

Indeed, the ECtHR routinely rejects attempts to tread on the freedoms guaranteed to religious associations based on speculative allegations of psychological pressure. There are many examples. In 2022, the ECtHR determined that Armenia violated Article 9 by deregistering the Jehovah's Witnesses.²⁵ When Armenia alleged that the community kept “totalitarian control” over congregants, the Court reprimanded the state for relying on an expert opinion that did not mention any names of people “allegedly fallen victim to the techniques of psychological manipulation indicated.”²⁶

In another case involving Jehovah's Witnesses, *Taganrog LRO and Others v. Russia*, the ECtHR held that the forced dissolution of Russian Jehovah's Witness

²² *Jehovah's Witnesses of Moscow and Others*, §§ 107–108, 127, 148.

²³ *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, Nos. 70945/11 and 8 others (ECtHR 8 April 2014), § 93. This principle is so strong that the ECtHR has repeatedly held that it is not necessary in a democratic society for states to punish Jehovah's Witnesses conscientiously objecting to serve in militaries, even though states have a legitimate interest in ensuring national security. See, e.g., *Teliatnikov v. Lithuania*, No. 51914/19 (ECtHR 7 June 2022) § 110.

²⁴ *Jehovah's Witnesses of Moscow and Others*, §§ 109–14, 144, 160.

²⁵ *Christian Religious Organisation of Jehovah's Witnesses in the NKR v. Armenia*, No. 41817/10 (ECtHR 22 March 2022), § 81. The Court found that though the interference was prescribed by law and had a legitimate aim of protecting the public's safety and rights (§§ 63, 65), it was not necessary in a democratic society (§§ 68, 67).

²⁶ *Christian Religious Organisation of Jehovah's Witnesses in the NKR*, §§ 72–74.

organisations categorically violated this freedom.²⁷ The Court rejected Russia's "policy of intolerance," reasoning that Russia's generalised citation to "extremism" was an insufficient justification for its interference.²⁸

States have also tried and failed to get away with not producing real, specific evidence to back allegations of harm to minors by Jehovah's Witnesses. In a 1993 case from Austria, an applicant wife became a Jehovah's Witness and the couple got divorced.²⁹ In the divorce proceedings, the husband claimed their children would be harmed if raised by a Jehovah's Witness, alleging "social isolation" and endangerment of health in Jehovah's Witness communities.³⁰ The Austrian Supreme Court gave the husband parental rights, worrying that otherwise the children would be rendered "social outcasts."³¹ On review, the ECtHR found a violation of the ECHR, reasoning that although caring for the health and wellbeing of children is important, there was not sufficient evidence to back up the allegations to warrant a difference in treatment between the parents.³²

In a similar case from France, a couple divorced, and the husband sought to remove their children from their mother's care, alleging that Jehovah's Witnesses' "child-rearing [practices] . . . are open to criticism mainly on account of their strictness and intolerance and the obligation on children to proselytise."³³ Here too, the ECtHR found that the state violated the ECHR because the French courts had treated the applicant differently in divorce proceedings based on stereotypes about her religion.³⁴ The Court credited the applicant's argument that French courts "had done no more than apply a general and abstract ground and had failed to investigate whether, in reality, the children's upbringing was disrupted."³⁵

The ECtHR's critique of states using generalisations and stereotypes against Jehovah's Witnesses is even more pronounced in *Jehovah's Witnesses of Moscow and Others v. Russia*.³⁶ In evaluating Russia's dissolution of the Jehovah's Witnesses

²⁷ *Taganrog LRO and Others v. Russia*, Nos. 32301/10 and 19 others (ECtHR 7 June 2022), § 254.

²⁸ *Ibid.*

²⁹ *Hoffman v. Austria*, No. 12875/87 (ECtHR 23 June 1993), §§ 6–9; *Christian Religious Organisation of Jehovah's Witnesses in the NKR*, § 81.

³⁰ *Hoffman*, § 10. For example, "[h]e claimed that the educational principles . . . were hostile . . . in that they discouraged all intercourse with non-members, all expressions of patriotism . . . and religious tolerance." *Ibid.*

³¹ *Hoffman*, § 15.

³² *Hoffman*, § 36.

³³ *Palau-Martinez v. France*, No. 64927/01 (ECtHR 16 December 2003), § 13.

³⁴ *Palau-Martinez*, §§ 38–40.

³⁵ *Palau-Martinez*, § 14; see also *Palau-Martinez*, § 42 ("[T]he Court of Appeal . . . asserted only generalities concerning Jehovah's Witnesses. It notes the absence of any direct, concrete evidence demonstrating the influence of the applicant's religion on her two children's upbringing and daily life.").

³⁶ *Jehovah's Witnesses of Moscow and Others*, § 182 (also finding the state's refusal to re-register Jehovah's Witnesses to be an Article 9 and 11 violation).

community, the Court rejected a myriad of allegations made by Russia.³⁷ For example, the Court pointed to a lack of specific examples of the allegations that Jehovah's Witnesses caused families "to break up" by causing familial relationships to break down.³⁸ It rejected an allegation that Jehovah's Witnesses' practices "encroach[ed] on the child's freedom of conscience and on [a non-Jehovah's Witness] parent's right to" educate their child,³⁹ finding that Russia lacked actual evidence.⁴⁰ It also rejected allegations that Jehovah's Witnesses restrain their children's thinking and that the children become social outcasts, pointing to an "absence of any first-hand evidence."⁴¹ In regard to the allegation that the community burdened others with "psychological pressure, 'mind control' techniques and totalitarian discipline,"⁴² the Court found it "remarkable that the [Russian] courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated by means of those techniques."⁴³

The ECtHR has also addressed generalisations made about Witnesses' treatment of minors in other contexts. In another Article 9 case, *Kuznetsov and Others v. Russia*, the ECtHR found that state interference with a lease held by Jehovah's Witnesses was unlawful.⁴⁴ Again, the Court noted a lack of specific evidence to back Russia's allegation that the Jehovah's Witnesses "'lured' young children into their 'sect.'"⁴⁵ The Court also rejected Russia's other explanations.⁴⁶ Regarding Russia's claim that police needed to investigate allegations that minors were unlawfully present at religious activities, the Court criticised Russia for presenting no evidence: "Had there been a genuine attempt to investigate" those allegations, the Court noted, "the

³⁷ *Jehovah's Witnesses of Moscow and Others*, §§ 95–96. The Court found that Russia's interference was prescribed by law and had a legitimate aim, including preventing Jehovah's Witnesses from breaching the rights of others and "damaging [the] health and . . . well-being of [their] children." *Jehovah's Witnesses of Moscow and Others*, §§ 105–106. But it concluded that interference was not necessary in a democratic society. *Jehovah's Witnesses of Moscow and Others*, § 160. While Russia's aims were proper, the ECtHR reiterated that "it must look at the [state] 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.'" *Jehovah's Witnesses of Moscow and Others*, § 108.

³⁸ *Jehovah's Witnesses of Moscow and Others*, §§ 109–110 (noting that Russia "did not give examples of any forceful or threatening action on the part of the applicant community calculated to break the families . . . apart" and was "unable to identify any victims of the alleged psychological pressure").

³⁹ *Jehovah's Witnesses of Moscow and Others*, § 123.

⁴⁰ *Jehovah's Witnesses of Moscow and Others*, § 124; see also *Jehovah's Witnesses of Moscow and Others*, § 125 ("Article 2 of Protocol No. 1 requires the State to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions . . .").

⁴¹ *Jehovah's Witnesses of Moscow and Others*, § 127.

⁴² *Jehovah's Witnesses of Moscow and Others*, § 128.

⁴³ *Jehovah's Witnesses of Moscow and Others*, § 129. Thus, "findings of the Russian courts . . . were based on conjecture uncorroborated by fact." *Jehovah's Witnesses of Moscow and Others*, § 130.

⁴⁴ *Kuznetsov and Others v. Russia*, No. 184/02 (ECtHR 11 January 2007), § 75.

⁴⁵ *Kuznetsov and Others*, §§ 10, 74.

⁴⁶ *Kuznetsov and Others*, §§ 70–73.

identities of the participants . . . should have been established and the presence of children without their parents ascertained.”⁴⁷

Thus, rather than rely on vague, generic, and unverified allegations about a religious group’s effects on children, member states must point to concrete evidence—such as specific court cases, police reports on specific cases, or reports from social services that the wellbeing of particular children was found to be at risk. Requiring concrete evidentiary support when evaluating allegations against religious communities ensures both that member states comply with the ECHR and that they respect the fundamental principle of religious autonomy.

3. Deregistration and removal of financial support are often disproportionate and arbitrary measures.

Deregistration, withdrawal of state benefits, and removal of financial support, particularly when such measures represent a sudden reversal of longstanding state policy, are not an appropriate response to a religious practice that a state disfavors. Even if membership decisions were not at the heart of the ECHR’s protections of religious freedom, and even if a state could produce evidence that a religious group’s practices were harmful in some way, proportionality and reliance interests must be maintained.

3.1. The ECHR allows only a narrow margin of appreciation in matters of religious autonomy.

The margin of appreciation afforded by the ECHR does not justify deregistering and defunding a disfavoured religious group. First, the ECHR requires that when states interfere with religious freedom those invasions must be as narrow as possible to achieve the state’s goals.⁴⁸ When a member state interferes with a religious community’s internal organisation, the margin of appreciation is at its narrowest.

The ECtHR has repeatedly held that deregistration, dissolution, and withdrawal of state benefits or legal personality are among the gravest interferences with Article 9 and 11 rights and must be reserved for situations involving compelling evidence of serious harm.⁴⁹ Indeed, in *Svyato-Mykhaylivska Parafiya v. Ukraine*, the Court held that a state’s mere delay in granting legal status to a religious organisation and associated house of worship violated Article 9.⁵⁰ The Court emphasised that any restriction on the exercise of Article 9 rights must rest on grounds that are narrowly

⁴⁷ *Kuznetsov and Others*, § 73.

⁴⁸ See ECHR art. 9(2) (“Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society.”); *Svyato-Mykhaylivska Parafiya*, § 114 (noting that member states “have only a limited margin of appreciation in these matters”).

⁴⁹ *Gorzelik and Others v. Poland*, No. 44158/98 (ECtHR Grand Chamber 17 February 2004), §§ 94–95 (holding that there must be compelling evidence to warrant interference with these rights).

⁵⁰ *Svyato-Mykhaylivska Parafiya*, § 121.

construed—because the permitted exceptions are “strictly exhaustive” and “necessarily restrictive.”⁵¹

Thus, where there is no evidence of criminal conduct, no prohibition on leaving, and no state-imposed sanctions on dissenters, a single aspect of a community’s internal religious rules and its moral expectations of its members cannot serve as a basis of deregistration and denial of state support. Such extreme measures would be incompatible with the strict proportionality and neutrality that the ECtHR requires.

In short, deregistering a religious minority, limiting its ability to carry out religious functions such as solemnising marriages, and excluding it from broadly available financial support in response to longstanding internal practices such as disfellowshipping would not be a proportionate or lawful action but a direct assault on religious autonomy itself.

3.2. The rule of law requires legal certainty and the protection of legitimate expectations.

The deregistration of a religious group and the denial of government grants also undermines legal certainty and the protection of legitimate expectations that form part of the rule-of-law guarantees of European human rights law.

Witnesses have long operated as registered religious communities across multiple European countries and have, in many jurisdictions, received public support and authority to carry out internal religious functions. Their practice of disfellowshipping and limited social contact with former members has existed for many years and was never concealed. Yet, in recent years, some ECHR member states have taken issue with these longstanding practices and treated them as grounds for legal sanctions.

In some jurisdictions, the Jehovah’s Witness community has thus seen decades of government recognition abruptly reversed, not because its conduct changed, but because of a shift in member states’ policy preferences. Such a sudden reversal in a setting of long-term, transparent reliance violates the principle of legitimate expectations.

The ECHR requires that any interference with fundamental rights be not only based on a legal provision but also consistent with the “quality of law” requirement. That is, norms must be accessible, foreseeable, and applied in a non-arbitrary and non-discriminatory manner.⁵² This standard is well established in the ECtHR’s jurisprudence and is a key element of the notion of legality under Article 9.

European public law scholarship expressly treats legitimate expectations as a core expression of legal certainty and the rule of law, and public authorities must respect the expectations they themselves have created.⁵³ The ECtHR upholds the same

⁵¹ *Svyato-Mykhaylivska Parafiya*, § 132.

⁵² *Hasan and Chaush*, § 84.

⁵³ Catherine Barnard & Steve Peers, *European Union Law* (Oxford University Press, 3d ed. 2020) pp. 220–222.

standard. In *Béláné Nagy v. Hungary*, the Grand Chamber of the ECtHR examined how long-term enjoyment of a benefit under a stable legal regime can generate a legitimate expectation protected by Article 1 of Protocol No. 1.⁵⁴

Those who act in good faith based on existing law and consistent state practice are entitled not to have their state recognition and access to widely available benefits abruptly withdrawn based on unforeseeable and arbitrary reinterpretations. And this is particularly the case when a state acts based on a religious community's membership practices that have openly existed for many years and when the benefits the state withdraws include registration, state subsidies, and the ability to perform marriages.

3.3. ECHR member states must not discriminate when granting privileges to religious communities.

Targeting a particular religious group for deregistration or defunding also raises discrimination concerns. International standards like the OSCE Guidelines on the Legal Personality of Religious or Belief Communities make clear that while it is within the power of states to decide whether to grant privileges like financial subsidies to religious communities, any conditions placed on those privileges must be “proportionate” and “implemented in a non-discriminatory manner.”⁵⁵

A member state violates these principles when it seeks to deregister and defund a religious group simply because of how the group chooses to enforce membership rules, absent any verifiable instances of actual injury. Disciplinary or separation mechanisms are found in many, if not most, religious traditions. Singling out a religious community for a practice that is neither unprecedented nor unique thus risks producing an inconsistent and discriminatory application of a state's registration framework, contrary to every member state's duty to ensure equal treatment under Articles 9 and 14 of the ECHR.

A selective application of a state benefits system would worsen the breach of legitimate expectations and reinforces the impression that a rejected religious group has been singled out because of a state's disapproval of their religion.

Conclusion

It is the ECHR's clear command that “the right to freedom of thought, conscience and religion” be protected as an essential safeguard of “pluralism in society.”⁵⁶

In keeping with that command, states must be neutral in dealing with different religious groups, especially when operating registration or state subsidy systems.⁵⁷

⁵⁴ *Béláné Nagy v. Hungary*, No. 53080/13 (ECtHR Grand Chamber 13 December 2016), §§ 72–89.

⁵⁵ OSCE Office for Democratic Institutions and Human Rights, *Guidelines on the Legal Personality of Religious or Belief Communities* (2014), paras. 38–39, <https://www.osce.org/sites/default/files/documents/9/9/139046.pdf>.

⁵⁶ *Magyar Keresztény Mennonita Egyház*, §§ 26–28, 93.

⁵⁷ *Magyar Keresztény Mennonita Egyház*, § 76.

This requirement “excludes any discretion” to decide if religious beliefs held, or “means used to express” those beliefs, are “legitimate.”⁵⁸ In the deregistration context, especially, the ECtHR is sensitive to the stigma that emerges when a government grants status to one community and not another: The ECtHR is aware that those distinctions can “amplify prejudices,” especially against minorities with less common practices.⁵⁹ Thus, when reviewing decisions to deregister religious communities, the ECtHR is rightly critical of state interference with religious freedom.⁶⁰ Those protections demand that ECHR member states including Norway not deregister or deny equal funding to religious communities based on novel policy preferences or negative stereotypes.

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⁵⁸ *Ibid.*

⁵⁹ *Magyar Keresztény Mennonita Egyház*, § 92 (also cautioning states to be careful about how they present a religion in the court of “public opinion”).

⁶⁰ *Magyar Keresztény Mennonita Egyház*, § 89.