

The Borgarting Court of Appeal
PO Box 2107 Vika
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14 January 2025

Re: *Jehovah's Witnesses v. State of Norway*, Nos. TOSL-2022-186588
and TOSL-2023-23178 (Oslo Tingrett 4 March 2024)

To The Borgarting Court of Appeal:

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 the Oslo District Court's recent decision in *Jehovah's Witnesses v. State of Norway*, Nos. TOSL-2022-186588 and TOSL-2023-23178 (Oslo Tingrett 4 March 2024), now on appeal at the Court of Appeal as *Jehovas Vitner - Staten v/Barne- og familiedepartementet*, 24-081251ASD-BORG/02.

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 rigor to historically rooted discussions of religious freedom. The Religious Freedom Clinic at Harvard Law School represents clients of all faiths who seek to freely exercise their religious beliefs, bringing to bear broad-based scholarly expertise and practical experience to aid courts in their consideration of religious liberty cases.

Both academic institutions have taken note of the Oslo District Court's decision and believe the case warrants careful review by the Court of Appeal, especially in the light of European Court of Human Rights jurisprudence concerning religious freedom, as well as comparative perspective of other national courts in Europe. We respectfully submit this letter both (1) to support the legal opinion delivered by Professor Pinto de Albuquerque and (2) to notify the Court that if it would like additional briefing on the topic of international religious freedom law, the Centres are willing to assist the Court.

For over a century the Jehovah's Witness community has taught its distinctive brand of Christianity in Norway and endeavoured to live according to those teachings. Members who disagree can voluntarily disassociate from the Jehovah's Witnesses or may be disfellowshipped by them. Either way, once someone has rejected Jehovah's Witness religious beliefs, they can no longer participate in the Jehovah's Witness community, and members are instructed by religious leaders not to associate with them. The rules for children are similar but more lenient. These practices thus preserve the religiosity and character of the Jehovah's Witness community.

The State disapproved of the Witnesses' beliefs. For its part, the District Court of Oslo sided with the State, stripping the Jehovah's Witnesses of their registration as a religious group under the Religious Communities Act and denying them the funding Norway typically provides to religious organizations. According to the District Court the Witnesses violated the religious freedom and freedom of speech of its members by engaging in their religiously motivated practice of disfellowshipping.

The freedom to form a community defined by religious faith is a foundational religious liberty protection. Central to that freedom is the community's ability to teach its own religious precepts, practice its teachings, and govern itself freely. The European Court of Human Rights recently reiterated in a case concerning Jehovah's Witnesses that the freedom of religion also "encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention." *Taganrog LRO and*



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Others v. Russia, No. 32401/10 and 19 others (ECtHR 7 June 2022) § 241. The decision of the District Court of Oslo also implicates religious freedom on an individual level. Article 2 of Protocol No. 1 taken together with Article 9 of the European Convention on Human Rights makes that clear: “It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions.” *Folgerø and Others v. Norway*, No. 15472/02 (ECtHR Grand Chamber, 29 June 2007) § 84.

The European Court of Human Rights has repeatedly ruled that the Convention protects Jehovah’s Witnesses, guaranteeing them non-discriminatory treatment and the freedom to decide for themselves both their membership and their religious practices. See, e.g. *Case of Christian Religious Organization of Jehovah’s Witnesses in the NKR v. Armenia*, No. 41817/10 (ECtHR 22 March 2022) § 76. Article 16 of the Norwegian Constitution likewise protects religious freedom and guarantees equal state support for religious communities based on the principle of non-discrimination. See, e.g. Supreme Court Justice, dr. juris Arnfinn Bårdsen, *Religion in the public sphere – Norway*, Rencontre des juges européens, Bristol 24 November 2017, p. 7. Indeed, in a case concerning the decision of Jehovah’s Witnesses to disfellowship a member, the Norwegian Supreme Court has highlighted that “[i]t is clear that a religious community’s handling of religious issues cannot be reviewed by the courts”, and “[t]he courts’ power to review internal affairs in a religious community is limited.” *Jehovah’s Witnesses – Ski Congregation v. A.*, HR-2022-883-A, case no. 21-142136SIV-HRET (Supreme Court of Norway, 3 May 2022), sec. 58, 106. When balancing essential religious autonomy against other public interests, the European Court of Human Rights allows states only a narrow margin of appreciation and requires compelling evidence to justify any restriction of religious autonomy or deviation from neutral treatment.

In several cases brought by Jehovah’s Witnesses against Russia, the European Court of Human Rights reiterated that “[t]he State’s power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly,” *Mariya Alekhina and Others v. Russia* (No. 2), No. 10299/15 (ECtHR 28 February 2024) § 37, and that “the exceptions to the rights of freedom of religion and association are to be construed strictly and that only convincing and compelling reasons can justify restrictions on these rights,” *Jehovah’s Witnesses of Moscow and Others v. Russia*, No. 302/02 (ECtHR 22 November 2010), § 100. Depriving Jehovah’s Witnesses of registration and public funds on the basis of internal religious governance practices is an interference with religion that warrants careful scrutiny, and can be allowed only as an exception that is necessary in a democratic state, where “‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable’” *Gorzelik and Others v. Poland*, No. 44158/98 (ECtHR Grand Chamber 17 February 2004), § 95.

The Oslo District Court’s decision to intrude into the religious freedom and freedom of association due to the religious practice of disfellowshipping does not meet the test envisaged by either the European Court of Human Rights or the Norwegian Supreme Court. Among other things, the District Court failed to strike an appropriate balance between the rights of the religious community and those of third parties potentially affected by the practices in question. Moreover, the decision to deregister the Jehovah’s Witnesses without the possibility of reregistering again unless they change the internal policies of their congregation would have broader implications for other religious communities that practice disfellowshipping and may invite further intrusions into core beliefs or practices of other religions. Doing so would undermine the cornerstone of Europe’s pluralistic societies. As the European Court of Human Rights has expressed it: “the autonomous existence of religious communities is indispensable for pluralism in a democratic society.” *Jehovah’s Witnesses of Moscow*, § 99.

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Norway should not have singled out the Jehovah's Witnesses for disfavoured treatment based on the organization's religious practices. Doing so violates Norway's own constitutional equality guarantee as well as its Article 9 duties of neutrality and impartiality. Other European governments have targeted the Jehovah's Witnesses in the past, and courts many times have vindicated their rights. Recently, in 2023, the Belgian Court of Cassation stated that the Jehovah's Witnesses' disfellowshipping policy does not unlawfully interfere with the rights of those disfellowshipped and cannot be considered a discrimination or harassment. See, *Interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme (UNIA) tegen Christelijke Gemeente van Jehovah's Getuigen* Cass., 19/12/2023, P.22.0971.N (the Belgian Court of Cassation, 19 December 2023) §§ 15, 24. Similarly, Swedish courts have repeatedly ruled that the government cannot deny Jehovah's Witnesses access to religious-organization funding merely because the Swedish government disagrees with Jehovah's Witness doctrines. E.g. *Trossamfundet Jehovas vittnen* case no. 2310-16 (Supreme Administrative Court of Sweden, 20 February 2017) at 12. In other suits, courts in Germany, Poland, Italy, and the United Kingdom have vindicated the right of Jehovah's Witnesses to set their own practices for excluding nonbelievers. For example, a Polish court explained that the principle of religious autonomy does not allow interference in decisions as to membership in a particular religious community. See, case no. VI ACa 81/03 (Warsaw Court of Appeal, 13 August 2003) *Wokanda* 2005, no 1, pp. 33–35. Likewise, the Court of Justice of the European Union has held that public authorities may not assess whether the norms of a church or religious organization are legitimate. E.g. *Egenberger*, C-414/16, EU:C:2018:257, no. 61 (CJEU, 17 April 2018).

The District Court's decision stands in tension with the fundamental rights enshrined in Norwegian and European law as well as decisions of both national and international courts. The case involves a serious issue of general importance, and the District Court's decision allows the perpetuation of antireligious and historically disfavoured policies. For these reasons, we believe this case warrants careful consideration by the Court of Appeal, and our Centres stand ready to provide the Court with detailed briefing should it be helpful.

Very truly yours,



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