

BORGARTING COURT OF APPEAL

JUDGEMENT

Issued: 14.03.2025

Case no.: 24-081251ASD-BORG/02

Judges:	Court of Appeal judge	Jørgen Monn
	Court of Appeal judge	Anne Kristin Vike
	extraordinary Court of Appeal judge	Rolf Ytrehus

Appellant
Jehovah's Witnesses
Lawyer Anders Christian Stray Ryssdal

Respondent
The State, represented by the Ministry of Children and Families
Lawyer Liv Inger Gjone Gabrielsen

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The case concerns the validity of a decision under the Religious Communities Act to deny registration and state grants to Jehovah's Witnesses.

Background to the case

The background to the case is reproduced from the District Court's judgment, point 1:

1.1 The dispute in a nutshell

Two lawsuits from the religious community Jehovah's Witnesses against the State, represented by the Ministry of Children and Families, are consolidated for joint processing, cf. section 15-6 of the Dispute Act.

One of the lawsuits concerns 1) The Ministry of Children and Families' decision in an appeal case on 30 September 2022 regarding the denial of state grants for 2021, cf. Act of 24 April 2020 no. 31 on Religious and Life Stance Communities (the Religious Communities Act), 2) The County Governor of Oslo and Viken's decision of 7 November 2023 to deny state grants for 2022 and 3) The County Governor's decision of 7 November 2023 to reject claims for state grants for 2023. The second lawsuit concerns the County Governor's decision of 22 December 2022 to reject an application for registration under the same Act.

State grants and registration have been denied on the basis that Jehovah's Witnesses seriously violate the rights and freedoms of others, cf. section 6 of the Religious Communities Act, cf. sections 2 and 4. The State claims that Jehovah's Witnesses prevent the right to free withdrawal, and expose baptized children to psychological violence and negative social control. This is claimed to be the effects of a religiously motivated practice whereby no one

in the congregations should have contact with former members who have been disfellowshipped (expelled) or who have withdrawn. In the State's view, children's rights are also violated by another practice that applies to unbaptized minors who have the status of publishers. If they commit a serious sin, they cannot be expelled as unbaptized, but they risk exclusion and social isolation from the community in the congregation – because the arrangement is to be cautious about socializing with the child.

Jehovah's Witnesses claim that the State has an incorrect understanding of the religious practice, and that the conditions for denying state grants and registration are not met in any case. Jehovah's Witnesses have claimed that the decisions are invalid, and that they are entitled to be registered as a religious community, as well as compensation or back payment for the years the government grants have been withheld.

The State requests acquittal.

1.2 Briefly about Jehovah's Witnesses

Jehovah's Witnesses is an international religious community that was established in the USA in the 1870s. They state that they have around 12,000 members in 162 congregations in Norway, and that there are over 8.8 million Jehovah's Witnesses in 118,177 congregations worldwide.

The religious doctrine and organization of congregations are similar all over the world.

It is only by baptism that one becomes a Jehovah's Witness and gains the status of a member. An average congregation has 75 members. In each congregation there is a body of elders who oversees the congregation. Around 20 congregations make up a circuit. The congregations [Page 3] are periodically visited by traveling elders, known as circuit overseers. They appoint elders, who in Norway make up around 1,300 men.

Jehovah's Witnesses have open congregation meetings twice a week, where virtually everyone in the congregation is present. Regular circuit assemblies and regional conventions are organized. Baptisms often take place in connection with these events. The members spend a lot of time preaching, from house to house and in places where people travel and gather.

The branch office in Holbæk in Denmark supervises Denmark, Iceland, Norway and Sweden.

A governing body of nine men, based at the headquarters in Warwick, in New York State, provides biblical guidance and teaching. Publications are managed by the council.

Jehovah's Witnesses were registered as a religious community in Norway under the previous Religious Communities Act in 1985 and have had the right to perform marriage ceremonies in 1986. The number of members is stable. In 2020, Jehovah's Witnesses received state grants for 12,648 members, and in 2022 there were 12,639 counting members.

1.3 Decisions on denial of state grants and registration

On 26 February 2021 Jehovah's Witnesses submitted a claim for state grants for 12,727 members. Shortly thereafter, the Ministry of Children and Families received a letter from Rolf Johan Furuli, who is a former member of Jehovah's Witnesses. He commented that a

letter from Jehovah's Witnesses on 4 March 2021 misrepresents two aspects of the religious community; the practice of shunning disfellowshipped individuals and the baptism of children. About the first, he wrote:

It is absolutely right that the Witnesses learn that the family ties within a marriage do not cease if one of the spouses is disfellowshipped. But what is not said is that all family ties outside the marriage cease. For example, if a young person is disfellowshipped, he must be shunned by his entire family, except those living in the same household. If a grandfather continues to visit his disfellowshipped grandchild, the grandfather himself will be disfellowshipped. It is so strict that if the disfellowshipped calls his grandfather, and the grandfather sees his number on the screen, he is not allowed to answer the phone.

Regarding baptism of children, he emphasized that very few are mentally mature enough to fully understand what they are doing. Because of their immaturity, they can commit serious sins and be disfellowshipped. As they grow up, they may also want to leave the congregation. He also noted that a withdrawal would mean being treated in the same way as someone who is disfellowshipped. You will be shunned by all Witnesses, except those who live in the same household.

The Ministry forwarded the inquiry to the County Governor of Oslo and Viken, who initiated an investigation. It ended with the County Governor deciding on 27 January 2022 to deny Jehovah's Witnesses state grants for 2021, cf. sections 6 and 2 of the Religious Communities Act, cf. section 11, first paragraph, letters a) and d) of the Religious Communities Regulations.

The County Governor referred to the fact that Jehovah's Witnesses clearly stated that members should not have contact with those who are disfellowshipped and have withdrawn from the religious community. The County Governor added that the practice can lead to members feeling pressured to remain in **[Page 4]** the religious community. It was thus considered to be an obstacle to the members' right to free withdrawal and in violation of the Religious Communities Act section 2, second paragraph.

It was also found that the disfellowshipping of baptized minor members was to be considered negative social control and a violation of children's rights under section 6, first paragraph, of the Religious Communities Act. Furthermore, it was emphasized that children who have not yet been baptized can be given the status of "unbaptized publisher", and that children with this status risk exclusion from the fellowship of the congregation if they commit a serious sin. The child is not disfellowshipped, but the congregation is told to be careful about socializing with the child. The County Governor considered that this practice should also be regarded as negative social control, and that the social isolation is a form of punishment against the child. The County Governor considered the circumstances to be serious and intentional. The grant was therefore denied in its entirety.

Following a complaint from Jehovah's Witnesses, the Ministry of Children and Families upheld the decision on 30 September 2022 to deny state grants for 2021. The Ministry concluded that children's rights are violated by the practice of disfellowshipping baptized children, and that this alone is enough to deny a grant under section 6, first paragraph, of the Religious Communities Act. Therefore, it was not necessary to consider whether it also violates section 2, second paragraph regarding free withdrawal. The disfellowshipping practice was considered to be systematic, persistent and intentional, and an integral part of the

teachings of Jehovah's Witnesses. Grants were therefore denied in full, cf. section 11, fourth paragraph, of the Religious Communities Regulations.

On 22 December 2022 the County Governor decided to withdraw the registration of Jehovah's Witnesses, cf. section 4, third paragraph, of the Religious Communities Act, cf. section 6, cf. section 6, first paragraph, of the Religious Communities Regulations. The application from Jehovah's Witnesses for registration according to the new Religious Communities Act was simultaneously rejected, cf. section 4, third paragraph, of the Religious Communities Act, cf. section 4, fourth paragraph, of the Religious Communities Regulations. State grants for 2022 were denied in decision by the County Governor on 7 November 2023. Like the decision of 27 January 2022, the decisions are based on violations of the right to free withdrawal and children's rights. Claims for grants for 2023 were rejected in another decision by the County Governor on 7 November 2023. Reference is made to the fact that only registered religious and life stance communities can claim grants from the State, cf. section 5 of the Religious Communities Act. These decisions are not appealed to the Ministry of Children and Families.

1.4 The legal process

Jehovah's Witnesses filed a lawsuit for state grants on 21 December 2022 and registration 10 February 2023.

[...]

Oslo District Court issued a judgment on 03.03.2024 with this verdict:

1. The State, represented by the Ministry of Children and Families, is acquitted.
2. Jehovah's Witnesses is ordered to pay the State, represented by the Ministry of Children and Families in the amount of 1,140,505 – one million one hundred and forty thousand five hundred and five – NOK.

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For further details regarding the case, see the District Court's judgment and the Court of Appeal's remarks below.

Jehovah's Witnesses have appealed the verdict to Borgarting Court of Appeal. During the preparation of the case the Court of Appeal allowed Jehovah's Witnesses' claim for invalidity of the County Governor of Oslo and Viken's decision of 18 June 2024 to reject claims for state grants for 2024 was brought into the case, which the State also consented to, cf. section 29-4, second paragraph, of the Dispute Act.

The European Association of Jehovah's Witnesses declared third-party intervention in favour of Jehovah's Witnesses in pleadings on 3 December 2024. The third-party intervention was not contested by any of the parties and was admitted by the court's letter of 17 December 2024.

Prior to the appeal hearing, the Court of Appeal received a letter on 14 January 2025, written on behalf of the "Centre for Law and Religious Freedom at Jagiellonian University" and "the

Religious Freedom Clinic at Harvard Law School”, and a letter dated 17 January 2025 from the Norwegian Helsinki Committee. Both letters expressed views in support of the Jehovah’s Witnesses’ view. On 27 January 2025, the Court of Appeal decided that both letters form part of the basis for the decision in the case, cf. section 15-8 of the Dispute Act.

The appeal hearing was held 3–14 February 2025 in Borgarting Court of Appeal. The parties appeared together with their counsel and gave evidence. 28 witnesses were questioned. Reference is made to the court book for other evidence.

The appellant, **Jehovah’s Witnesses**, has essentially argued:

The decisions constitute an encroachment on the freedom of religion and assembly. According to the Religious Communities Act, Jehovah’s Witnesses are in principle entitled to grants and registration. The denial decisions affect Jehovah’s Witnesses’ practice of their religion, and are also stigmatizing. In order for the interference to be accepted, the basis for the decisions must, among other things, result from clear internal legislation that must be sufficiently predictable. Section 6 of the Religious Communities Act does not satisfy this legal requirement.

If the legal basis is sufficiently clear, the conditions in section 6 are not fulfilled in any case so that the decisions lack legal authority and are therefore invalid. A heightened standard of proof applies when assessing whether the conditions in section 6 are met, as the facts relied upon by the State are particularly burdensome. Evidence regarding Jehovah’s Witnesses’ disfellowshipping practices from the period before the implementation of the Religious Communities Act cannot be used to the detriment of Jehovah’s Witnesses, cf. section 97 of the Constitution.

Firstly, Jehovah’s Witnesses do not violate the right to free withdrawal. Withdrawal can be made in writing without obstacles in line with the requirement in section 2, second paragraph, of the Religious Communities Act. Any loss of social relations as a result of the rules on social distancing does not constitute an obstacle [Page 6] to withdrawal. The reasons for difficulties in leaving a religious community are complex. Family ties continue regardless after withdrawal. There are also variations in how Jehovah’s Witnesses relate to withdrawn and disfellowshipped members. Withdrawn members do not experience social isolation. Withdrawn members will also have normal contact with family members who are not baptized Jehovah’s Witnesses, and other networks outside Jehovah’s Witnesses.

Secondly, Jehovah’s Witnesses do not violate “children’s rights”, cf. section 6 of the Religious Communities Act, either in relation to baptized minors or unbaptized publishers. “Children’s rights” refers to specific rights children have under Norwegian law. Jehovah’s Witnesses are not a party to nor a subject of the Convention on the Rights of the Child. Psychological violence and negative social control are not a legal concept in Norwegian law. The disfellowshipping practice itself or the existence of the disfellowshipping practice does not constitute psychological violence. The State’s reference to article 19 of the Convention on the Rights and Bufdir’s¹ definition, means that there must be a factual basis for the claim that Jehovah’s Witness minors experience rejection, ignoring, threats of being abandoned and/or extreme social control as a result of Jehovah’s Witness practices. Such factual basis does not exist. The baptism and disfellowshipping practice itself (the fear of its consequences) and the

¹ Translators note: The Norwegian Directorate for Children, Youth and Family Affairs.

treatment of previously unbaptized publishers do not constitute abuse or neglect. There are no changes in family ties or family life in the household as a result of disfellowshipping or withdrawal. In the very rare cases where a minor is disfellowshipped, the child will still be cared for by the parents, and the child's emotional and physical needs will still be taken care of. Nor does the disfellowshipping practice or its existence constitute negative social control directed against children. There is no factual basis for claiming that minors experience pressure to remain in Jehovah's Witnesses out of fear of losing relationships with family and friends in the religious community. There is no evidence in Jehovah's Witnesses' publications that it is a religious practice that children raised in families associated with Jehovah's Witnesses should become Jehovah's Witnesses. Time spent on religious practice does not constitute negative social control. Many children who grow up in Jehovah's Witness families also spend time on activities other than religious ones. Jehovah's Witnesses do not practice social distancing towards former unbaptized publishers. It is not correct, as the State claims, that an unbaptized publisher who has lost his status as an unbaptized publisher will be shunned by his congregation or family.

The decisions are also invalid as a result of procedural errors. The administration has not fulfilled its duty to investigate, cf. section 17 of the Public Administration Act. The administration is based on anecdotal information, circumstances far back in time, and its own interpretation of religious texts for which the State has neither legal nor professional competence. The State has not carried out any investigations of its own that are capable of demonstrating specific violations or harmful effects after the Act came into force, including obtaining information from the police and child welfare services. The errors in the case processing mean that the decisions are invalid, cf. section 41 of the Public Administration Act. There is a real possibility that the errors have affected the decisions. The evidence in the case is not suitable for determining facts that may provide basis for rejecting, so the court should declare the decisions invalid even though the court has full right of review.

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The decisions on the loss of grants and registration are also invalid as they violate a number of human rights provisions, including article 9 of the ECHR and section 16 of the Constitution (freedom of religion), article 11 of the ECHR and article 101 of the Constitution (freedom of assembly), article 8 of the ECHR and section 102 of the Constitution (the right to respect for private and family life), ECHR P1-1 (protection of property; applies to the decision on state grants). The decisions lack a sufficient legal basis, are not necessary in a democratic society, and are not suitable for achieving the purposes highlighted in the justification. The decisions also constitute inappropriate and disproportionate discrimination of Jehovah's Witnesses in relation to other religious communities, cf. article 14 of the ECHR and section 98 of the Constitution. The decisions are also contrary to section 16, fourth sentence, of the Constitution, which imposes the State a duty to support all religious communities. The decisions also fail to take sufficient account of children's rights under the Constitution and the ECHR, including children's respect for their human dignity under section 104 of the Constitution, article 2 of the ECHR (not to be discriminated on the basis of their own and their parents' religion), and article 14 of the ECHR (child's freedom of religion).

Such a claim has been made:

1. The State's decision, represented by the Ministry of Children and Families, dated 30 September 2022, to deny state grants for 2021 is invalid.
2. The County Governor of Oslo and Viken's decision of 7 November 2023 to deny state grants for 2022 is invalid.
3. The County Governor of Oslo and Viken's decision of 7 November 2023 to reject claims for state grants for 2023 is invalid.
4. The County Governor of Oslo and Viken's decision of 18 June 2024 to reject claims for state grants for 2024 is invalid.
5. The County Governor of Oslo and Viken's decision of 22 December 2022 regarding loss of registration is invalid.
6. Jehovah's Witnesses is awarded the costs of the case before the District Court and the Court of Appeal.

The respondent, **the State, represented by the Ministry of Children and Families**, has essentially argued:

The decisions are based on the Religious Communities Act. There are two circumstances that, according to section 6, first paragraph, of the Religious Communities Act, provide independent and sufficient basis for denying grants and registration.

Firstly, Jehovah's Witnesses' practice of breaking off contact with members who wish to leave the religious community means that the denomination prevents free withdrawal. This violates the individual member's right to freely change faith or belief under article 9 of the ECHR, section 16 of the Constitution and article 18 of ICCPR. The practice involves remaining members avoiding contact with people who withdraw, which means that the loss of family and networks is a **[Page 8]** consequence of withdrawal. This constitutes a sufficiently serious violation of the rights and freedoms of the person wishing to withdraw to be covered by section 6, first paragraph, fifth alternative, of the Religious Communities Act. It also provides a legal basis for denying grants under section 6, third paragraph, cf. section 2, second paragraph, of the Religious Communities Act.

Secondly, Jehovah's Witnesses' practice of disfellowshipping baptized minors constitutes a violation of children's rights, cf. section 6, first paragraph, third alternative, of the Religious Communities Act, in the form of psychological violence and negative social control directed at children. Disfellowshipping is generally very psychologically stressful, and for children the stress will be particularly severe. If disfellowshipping is carried out, it entails severe violations of integrity, isolation and great psychological strain, which constitutes psychological violence. The actual process leading up to any decision to disfellowship, with meetings in a judicial committee, etc. also constitutes a burden. The practice of disfellowshipping also constitutes negative social control directed at children. The practice of social distancing constitutes a strong potential sanction for norm violations. Minors who are baptized face a threat of disfellowshipping and social distancing in the same way as adults in the event of a norm violation. The existence of the sanction implies a pressure that limits life expression and development, and thus constitutes negative social control. The practice of social distancing of minor "unbaptized publishers" in the event of norm violations also

constitutes a violation of children's rights. The treatment of children and unbaptised publishers in connection with violations of moral rules and disfellowshipping also constitutes an infringement of their right to privacy, cf. article 8 of the ECHR, but the assessment here largely overlaps with the assessments of whether the practice constitutes psychological violence and negative social control.

The decisions do not constitute interference with freedom of religion under article 9 of the ECHR, or section 16 of the Constitution. In principle, article 9 of the ECHR does not impose a positive obligation on the State to provide religious or life stance communities with state grants or the right to perform marriage ceremonies. Nevertheless, the interference is permitted under article 9 of the ECHR, second paragraph. Firstly, the decisions have a legal basis in the Religious Communities Act, which meets the requirements for clarity and predictability that follow from the ECtHR's case law. The decisions pursue a legitimate purpose in the form of protection of "public order" and "the rights and freedoms of others". The decisions also meet the requirement of being "necessary in a democratic society", by being based on a reasonable balancing of the various interests involved in the case. The decisions do not violate the State's obligation under article 9 of the ECHR to act neutrally and impartially in relation to different religions and beliefs. Article 9 of the ECHR does not oblige the State to refrain from mentioning the practices of a religious community. The fact that the decisions are based on a description of the practices of Jehovah's Witnesses and a subsumption under the terms of the Religious Communities Act does not entail any infringement of the religious freedom of Jehovah's Witnesses.

Nor do the decisions entail any violation of the freedom of association, cf. article 11 of the ECHR and section 101 of the Constitution. Jehovah's Witnesses are still an independent legal entity with the freedom to govern itself, even though the religious community is not registered. In the State's view, there is no interference. In any case, the State holds that the interference is prescribed by law, justified by a legitimate **[Page 9]** purpose and necessary in a democratic society, and that the interference thus does not constitute infringement, cf. article 11, second paragraph, of the ECHR.

The decisions do not violate the right to private and family life under article 8 of the ECHR/ section 102 of the Constitution. Nor do the decisions infringe the right to property under ECHR P1-1. Jehovah's Witnesses have no legitimate expectation of receiving grants, and there is therefore no infringement of property rights. The interference is permitted in any case.

Nor do the decisions involve discrimination contrary to article 14 of the ECHR, in conjunction with articles 9 and/or 11 of the ECHR. The assessment of whether to deny grants and registration is based on objective criteria that apply to all religious communities and are within the State's margin of discretion to determine. The criteria in the Religious Communities Act are objectively formulated and provide for equal treatment of religious communities in comparable situations. Any community that commits, encourages or supports matters mentioned in section 6, first paragraph, of the Religious Communities Act may be denied state grants. These communities may also be deprived of a previously granted registration, or be denied a new registration under section 4, third paragraph, of the Religious Communities Act. As the Religious Communities Act is relatively new, the scope of practice under the new provision is limited at present, but can be expected to be established over time. The State cannot see that the decisions involve discrimination that is in violation of article 14 of the ECHR. In any case, the State holds that the decisions are objective and proportionate.

The decisions in the case are not inadequately investigated, cf. section 17 of the Public Administration Act, nor are they based on incorrect facts. The decisions are based on a broad assessment of information provided by Jehovah's Witnesses in contact with the Ministry and the County Governor, descriptions of practices in Jehovah's Witnesses' publications and descriptions of practices provided by private individuals. Jehovah's Witnesses have on several occasions during the administration's processing of the case been given the opportunity to counter the factual information on which the decisions are based. No circumstances came to light during the proceedings that indicated that the perception of the practice on which the decisions are based is incorrect. It is not a procedural error that the County Governor and the Ministry of Children and Families did not obtain information from child welfare services or the police. Any procedural errors or incorrect facts in the decisions will in any case not affect the validity of the decisions. The court has full competence to examine whether the conditions in section 6, cf. section 4, of the Religious Communities Act have been met. If, after assessing the evidence, the court concludes that the conditions have been met, any errors have no bearing on the validity of the decisions.

Such a claim has been made:

1. The appeal is rejected.
2. In all other respects, the State, represented by the Ministry of Children and Families, is acquitted.
3. The State, represented by the Ministry of Children and Families, is awarded the legal costs.

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The intervener, **The European Association of Jehovah's Witnesses (EAJW)**, has briefly claimed:

EAJW supports the view of Jehovah's Witnesses. EAJW asserts that the decisions to deny grants and registration are in violation of fundamental human rights and the practice of the ECtHR and national courts. The State's allegations, including pressure and psychological violence/negative social control, are degrading and offensive to each individual Jehovah's Witness. The decisions have a stigmatizing effect and do not give sufficient weight to the fact that Jehovah's Witnesses have been and are victims of persecution and discrimination. EWJV [sic] has not submitted its own claim.

The Court of Appeal's assessment

1 Introduction

The case concerns the validity of decisions for the years 2021–2024 in which the State has denied Jehovah's Witnesses state grants on the basis of Act of 24 April 2021 [sic] no. 31 on Religious and Life Stance Communities (the Religious Communities Act), as well as the validity of decisions to deny registration under the same Act.

The Court of Appeal has concluded that the decisions are invalid as the requirements under the Religious Communities Act for denying state grants and registration have not been satisfied.

2 The issue and legal starting points of the case

2.1 The factual and legal basis for the decisions

It is undisputed that Jehovah's Witnesses is a religious community that, in principle, meets the general conditions for entitlement to state grants and registration under sections 5 and 4 of the Religious Communities Act. The question in the case is whether the decisions to deny grants and registration, made on the basis of section 6 of the Religious Communities Act, are valid.

The relevant conditions for refusing grants in this case (and which are also the conditions for refusing registration or withdrawing registration, cf. section 4, third paragraph) are section 6, first and third paragraphs, which reads:

If a religious or life stance community, or individuals acting on behalf of the community, engage in violence or coercion, issue threats, violate children's rights, breach statutory prohibitions against discrimination, or otherwise seriously violate the rights and freedoms of others, the community may be denied grants or have its grants reduced. Grants may also be denied or reduced if the community encourages or supports the violations mentioned in this paragraph.

[...]

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Grants may also be denied if the religious or life stance community does not meet the requirements of the law.

The State's factual basis for refusing grants and registration relates to Jehovah's Witnesses' practice of restricting contact with baptized members who withdraw from, or are disfellowshipped from, the religious community, and with unbaptized publishers who commit norm violations. The State submits that this practice of avoiding/limiting contact (hereinafter referred to as "social distancing") provides basis for refusal of grants and registration under the first and fourth alternatives in section 6:

- Firstly, the State submits that the practice of social distancing is contrary to the members' right to free withdrawal ("seriously violates the rights and freedoms of others") and/or is contrary to section 2, second paragraph, of the Religious Communities Act. According to the Court of Appeal's interpretation, this basis applies to both adult and minor baptized members.
- Secondly, the State claims that the practice of social distancing towards minor unbaptized publishers and minor baptized members "violates children's rights" by exposing children to psychological violence and/or negative social control.

Initially, it is noted that a prerequisite for the denial of grants and registration under section 6, first paragraph, cf. section 4, is that it is the religious community as such, or individuals acting “on behalf of” the religious community, who must commit the violations described in the provision. The same applies if the religious community “encourages or supports” such violations, cf. section 6, first paragraph, last sentence. The decisive factor will be whether the circumstances can be linked to the religious community in a “qualified manner”, cf. Prop. 130 L (2018–2019) p. 257, including whether the circumstances “covered by the basis for denial can be linked to the community as such, for example, by being expressed in established practices within the community or by being evident in statutes or other documents applicable to or prepared by the community”. As stated below, the relevant practice in the case is extensively described in several key documents prepared by Jehovah’s Witnesses. It is therefore not in doubt, nor is it disputed, that the practice of social distancing can be linked to Jehovah’s Witnesses as a religious community.

2.2 The court’s right of review

It is undisputed that the court, in assessing the validity of the decisions, can fully review the administration’s evaluation of evidence and application of law. The court can also examine whether the decisions are in conflict with the Constitution and the human rights that Norway is committed to following, cf. section 2 of the Human Rights Act. The Court of Appeal can also review the administration’s procedural handling. If the conditions for denial of state grants and denial of registration [Page 12] are met, it is at the discretion of the County Governor whether grants are wholly or partially denied and/or whether registration is denied, cf. the fact that the legal provisions state that grants and registration in such a case “may” be denied. This exercise of discretion can only be reviewed by the courts in accordance with the doctrine of misuse of powers of administrative law. Jehovah’s Witnesses have not claimed that there have been errors in the exercise of discretion itself.

Although the Court of Appeal – as stated in section 3 below – when assessing the specific content of Jehovah’s Witnesses’ practice of social distancing will largely be based on what appears in Jehovah’s Witnesses’ writings, it should be noted that the Court of Appeal is not testing or assessing the religious teachings of Jehovah’s Witnesses. The Court of Appeal does not consider whether Jehovah’s Witnesses’ practice of social distancing has a basis in the texts of the Bible, cf. HR-2022-883-A paragraph 58, which states that “It is clear that a religious community’s assessment of religious issues cannot be reviewed by the courts”. However, what the courts can review, and this is also not disputed, is whether Jehovah’s Witnesses’ practice meets the conditions for denial of state grants and registration under section 6 of the Religious Communities Act. In assessing the content and consequences of this practice, the court must be able to consider the written material from the religious community.

3 Jehovah’s Witnesses’ practice of social distancing

3.1 Introduction

In this section 3, the Court of Appeal will outline the facts that the Court of Appeal has found proven regarding the central issue in the case, which is Jehovah’s Witnesses’ practice of social distancing towards baptized members who withdraw or are disfellowshipped, and towards unbaptized publishers who commit norm violations.

Initially, the Court of Appeal outlines the principles for the assessment of evidence.

3.2 General about the evidence assessment

3.2.1 The requirement for preponderance of evidence and burden of proof

In judicial review of administrative decisions, the general requirement of preponderance of evidence applies as a starting point, cf. for example Rt-1999-14. It is the state that has the burden of proof that the actual basis for denying a religious community a grant (and thus also denying registration) pursuant to section 6 of the Religious Communities Act is present, cf. Prop. 130 L (2018–2019) page 258. Jehovah's Witnesses have argued that a stricter standard of proof must be applied in this case, and have referred to HR-2016-2579-A paragraph 42. In the opinion of the Court of Appeal, there is no reason to deviate from the general principle of preponderance of evidence in this matter. The fact to be assessed in relation to the question of [Page 13] whether there are (serious) violations of the right to free withdrawal or infringement of "children's rights" is Jehovah's Witnesses' practice related to social distancing. This practice is not in itself of such a reprehensible nature that it would warrant deviating from the general principle. Whether this practice constitutes a serious violation of the right to withdraw, or should be regarded as "psychological violence" or "negative social control directed at children", is part of the application of the law and not the assessment of evidence.

3.2.2 The basis for the factual assessments

Jehovah's Witnesses base their beliefs, teachings, and practices on the Bible and on a number of writings, handbooks, magazines, brochures, etc. prepared by the Governing Body of Jehovah's Witnesses in the USA and translated into a number of languages, including Norwegian. All the books and writings are based on the Jehovah's Witnesses' interpretation of the Bible and have extensive references to the Bible's texts. These include the book *Organized to Do Jehovah's Will*, which is a handbook for the members (hereinafter referred to as the "*Organized book*"), and the book "*Shepherd the Flock of God*", which is a book for those who serve as the "elders" in the congregation (hereinafter referred to as the "*Shepherd book*"). Furthermore, Jehovah's Witnesses publish the magazines *The Watchtower* and *Awake!*, and have a lot of informational material on their website.

In order to identify the relevant facts in the case – which concerns Jehovah's Witnesses' practice of social distancing – the Court of Appeal heard extensive evidence, including documentation from Jehovah's Witnesses' written material. Furthermore, 28 witnesses have been brought before the Court of Appeal, most of whom are current and former baptized members of Jehovah's Witnesses.

In the Court of Appeal's view, the witness statements confirm that Jehovah's Witnesses' practice of social distancing is essentially in line with what is described in Jehovah's Witnesses' written material. Furthermore, the testimonies confirm that the members essentially follow the rules on social distancing, with some variations. Jehovah's Witnesses' party representative, board member Kåre Sæterhaug, also said in his testimony that his impression was that the biblical principles of social distancing of unbaptized members who are disfellowshipped or withdraw are followed by the members. However, Sæterhaug also said that Jehovah's Witnesses' rules, including social distancing, must be regarded as

guidelines, and that it is up to the individual member's conscience how this is practiced. The Court of Appeal will return to the right to deviate from the rules on social distancing in section 3.3.6. However, as mentioned in section 2.1, when assessing whether the conditions in section 6 of the Religious Communities Act are fulfilled, it is crucial which practices the *religious community* engages in or "encourages". How the individual current and former members practice the rules on social distancing and/or experience that others practice the rules, including whether individual members have variations in one direction or another, has less relevance in the assessment of what can be assumed as proven regarding Jehovah's Witnesses' practice of social distancing. The Court of Appeal has therefore mainly based its assessment of [Page 14] what is Jehovah's Witnesses' practice of social distancing on what can be deduced from Jehovah's Witnesses' writings, and has not found it necessary to provide a detailed account of the individual witness statements.

3.2.3 Timing of the factual assessment

Whether the decisions are valid is decided based on the facts at the time of the decision. The first decision in the case is the Ministry of Children and Families' decision of 30 September 2022 to deny grants, and the last decision in the case is the County Governor's decision of 18 June 2024 to deny the grant claim for 2024. Evidence both prior to and subsequent to the dates of the decisions may be considered if they are likely to shed light on the circumstances at the time of the decision. The Court of Appeal cannot see any basis for Jehovah's Witnesses' argument that it would be contrary to section 97 of the Constitution to rely on facts and explanations from the time before the new Religious Communities Act came into force. In this case, where the Court of Appeal essentially assumes that Jehovah's Witnesses' practice is as set out in Jehovah's Witnesses' own writings, the issue of which facts can be used as a basis has not presented any particular problems.

3.3 The practice that is considered proven

3.3.1 Overview of baptized members and unbaptized publishers

It is only when you are baptized that you are considered a Jehovah's Witness. Jehovah's Witnesses are not baptized as infants, as in most other Christian denominations. It follows, among other things, from the *Organized* book from 2019, page 210, that it is the elders who decide whether you are sufficiently mature to be baptized, after having undergone training. The age at which one is baptized, if one chooses, varies. The main impression from the evidence is that most people who grow up in families where the parents are Jehovah's Witnesses are baptized around the age of 15–18. Some are baptized earlier and some later. Among other things, the State referred to a newspaper article from *Saltenposten* from 6 October 2015, which mentioned the baptism of two children aged 11 and 13 at a circuit assembly. One of the State's witnesses also testified that she was baptized as an 11-year-old in the 1990s.

For a period of time before you are baptized, you will normally participate in preaching work as a so-called unbaptized publisher. Two elders decide whether the child can be recognized as an unbaptized publisher, cf. page 77 of the *Organized* book from 2019. Based on the testimonies, the Court of Appeal found that for children who grow up with parents who are Jehovah's Witnesses, it is not unusual to become an unbaptized publisher at the age of 11–15. Some become unbaptized publishers later and some earlier. One witness explained that she became an unbaptized publisher as early as 6 years old, but this is a long time ago.

Some children who grow up in families where the parents are Jehovah's Witnesses choose not to become unbaptized publishers and/or not to be baptized. Based on the evidence, and this does not appear to be [Page 15] disputed, such a choice will not prevent continued normal contact with their family and other members of Jehovah's Witnesses. The same applies to baptized members who eventually become "inactive", i.e. who no longer engage in preaching or participate in meetings in the Kingdom Hall, but who do not withdraw from Jehovah's Witnesses.

3.3.2 Disfellowshipping of baptized members

It follows from Jehovah's Witnesses' written material, including the *Organized* book from 2019, page 148, that if a baptized member commits a serious sin, "such as sexual immorality, adultery, homosexuality, blasphemy, apostasy, idolatry", and it becomes known to the elders of the congregation – either by the member himself telling about this or others informing the elders about it – there will first be conversations with two elders in the congregation to identify what has happened. If there is evidence that the member has committed a serious sin, a judicial committee consisting of three elders in the congregation will be formed. If the member does not repent, the member will be "excommunicated from the congregation, thus denying him fellowship with Jehovah's clean people", cf. the *Organized* book from 2019 on page 150.

Until around 2000, such excommunication was referred to as "expelling", and then as "disfellowshipping". From 2024, the excommunication is referred to as the member being "removed" from the congregation. In the following, the Court of Appeal uses the term disfellowshipping, which was the terminology at the time of the decisions.

Minors who commit a serious sin may also undergo a process that can lead to disfellowshipping in a judicial committee, cf. the *Organized* book from 2019, paragraph 37 on page 154, under the heading "Cases involving minor baptized children". It states that in such cases, it is best for the minor's parents to be present during meetings with the elders. If the minor does not repent, he may – in the same way as adults – be disfellowshipped. In 2024, a minor adjustment was made regarding the disfellowshipping process for minors, which among other things meant that if "the minor has a good attitude and the parents are reaching him, the two elders might decide that it is not necessary to take the matter any further", cf. from *The Watchtower* from August 2024 page 25. However, it is stated here that if the baptized minor "continues with the wrongdoing without repenting", the process will continue.

If a baptized member (both adults and minors) is disfellowshipped, the congregation is informed that the member "is no longer one of Jehovah's Witnesses" cf. the *Organized* book page 152. It further states that "This will alert faithful brothers and sisters in the congregation to stop associating with that person. – 1 Cor. 5:11".

3.3.3 Baptized Jehovah's Witnesses who withdraw

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If a baptized member *withdraws* from Jehovah's Witnesses, the congregation is informed – in the same way as for disfellowshipped members – that the member "is no longer one of

Jehovah's Witnesses", and the member is treated in the same way as a disfellowshipped member, cf. *Organized* book page 153.

3.3.4 Social distancing of previously baptized members

After being disfellowshipped or having withdrawn, it follows from the regulations that remaining members of Jehovah's Witnesses will, as a general rule, avoid or at least severely limit contact with the disfellowshipped or withdrawn individual. Jehovah's Witnesses justify this practice of social distancing in the texts of the Bible, cf. for example from *How to Remain in God's Love* from 2018, handbook for Jehovah's Witnesses, pages 39–40:

A person may choose to keep doing things that displease Jehovah and harm the congregation. He rejects help and shows by his actions that he no longer wants to be part of the congregation. He may choose to leave the congregation himself, or he may have to be disfellowshipped. If this happens, the Bible clearly says that we should "stop keeping company" with him. (Read 1 Corinthians 5:11–13; 2 John 9–11) This can be very difficult if he is a friend of ours or a member of our family. But in a situation like this, our loyalty to Jehovah must be stronger than our loyalty to anyone else.

The information leaflet on the Jehovah's Witnesses website, entitled "Why Disfellowshipping is a loving provision", mentions three positive results of a disfellowshipping decision, namely that the disfellowshipping "honors Jehovah's name", "protects the clean, Christian congregation" and "bring him [the wrongdoer] to his senses". This information from Jehovah's Witnesses' website is also referred to in HR-2022-883-A, which concerned a lawsuit about the validity of a disfellowshipping decision, in paragraphs 49 and 50:

(49) A statement from Jehovah's Witnesses entitled "Why Disfellowshipping is a loving provision" has been submitted to the Supreme Court. Here it is stated, among other things:

"Family members can show love for the congregation and the erring one by respecting the disfellowshipping decision. [...]

All in the congregation can show principled love by avoiding contact and conversation with the disfellowshipped person. [...] They thus reinforce the discipline that Jehovah has given him through the elders. Furthermore, they can give extra love and support to the family of the disfellowshipped one. The family suffer considerably and should not be made to feel that they too are excluded from association with fellow believers."

(50) In other words, it describes a form of "love" whereby family members, including those closest to the person, such as children and parents, should avoid contact with a person who is disfellowshipped.

3.3.5 Especially about social distancing of previously baptized family members

The rules on avoiding/limiting contact apply as the clear main rule also to family members who are disfellowshipped or withdraw, including minors, cf. for example Jehovah's Witnesses' book "*Keep Yourselves in God's Love*" from 2008.

What if a relative is disfellowshipped? In such a case, the close bond between family members can pose a real test of loyalty. How should we treat a disfellowshipped relative? We cannot here cover every situation that may arise, but let us focus on two basic situations.

In some cases, the disfellowshipped individual still lives with their immediate family. Since his being disfellowshipped does not sever the family ties, normal day-to-day family activities and dealings may continue. Yet, by his course, the individual has chosen to break the spiritual bond between him and his believing family. So loyal family members can no longer have spiritual fellowship with him. For example, if the disfellowshipped one is present when the family studies the Bible together, he cannot participate. However, if the disfellowshipped one is a minor child, the parents are still responsible to instruct and discipline him. Hence, loving parents may arrange to conduct a Bible study with him. – Proverbs 6:20–22; 29:17.

In other cases, the disfellowshipped relative lives elsewhere than their immediate family. Although there might be a need for limited contact on some rare occasion to care for a necessary family matter, any such contact should be kept to a minimum. Loyal Christian family members do not look for excuses to have dealings with a disfellowshipped relative not living at home. Rather, loyalty to Jehovah and his organization moves them to uphold the Scriptural arrangement of disfellowshipping. Their loyal conduct is in the best interest of the wrongdoer and can help him benefit from the discipline he has received. – Hebrews 12:11.

As can be seen from this text, it is stated that "family ties" are not broken by withdrawal or disfellowshipping. This is reflected in two exceptions in particular to the general rule of avoiding contact. Firstly, baptized members will still be able to have normal day-to-day contact with withdrawn or disfellowshipped members who live in the *same household* as the member, even though the spiritual fellowship will cease. Secondly, baptized members will be able to have contact with disfellowshipped or withdrawn family members with whom they do not live in connection with what is referred to in the above-mentioned book as "necessary family matters". What is "necessary" is exemplified in the information brochure from Jehovah's Witnesses on "Jehovah's Witnesses and disfellowshipping", under the heading "Family ties are not broken", as cases of one's disfellowshipped or withdrawn parents or children becoming ill or not feeling well:

If a disfellowshipped parent becomes ill or is no longer able to care for himself financially or physically, children who are Jehovah's Witnesses will have the biblical and moral duty to help him. Likewise, if a disfellowshipped child is not well physically or emotionally, parents who are Jehovah's Witnesses will care for him.

3.3.6 Consequences of members not complying with the rules on social distancing

Based on the review above, there is no doubt that the main rule is that Jehovah's Witnesses should avoid contact with disfellowshipped and withdrawn members, with the exception of family members in the same household and for contact with other family members in "necessary family matters".

It follows from the *Shepherd* book from 2019 (chapter 12, section 17) that "unnecessary association" with disfellowshipped or withdrawn persons can be considered so-called "brazen conduct". The consequences of having such "unnecessary association" will depend on whether the person you have contact with is a family member or not. If, despite repeated admonitions, you continue to have such contact with someone you are not related to, a judicial committee may be formed. In the case of "unnecessary association" with family members, on the other hand, the elders will first guide the person in question. It also states that if the member does not comply with such guidance, they may be considered ineligible for privileges in the congregation, "because it requires one to be exemplary". It also states that, in the case of such unnecessary contact with family members, a judicial committee will only be formed if there "is persistent spiritual association or he persists in openly criticizing the disfellowshipping decision".

However, Jehovah's Witnesses have argued that it is a personal decision for each individual Jehovah's Witness, based on one's own conscience, how strictly one practices the rules on avoiding/limiting contact with disfellowshipped or withdrawn members. In this regard, Jehovah's Witnesses have, among other things, referred to an article from the newspaper *Vårt Land* from 27 April 2024, in which a spokesperson for Jehovah's Witnesses states that the degree of "unnecessary association" with disfellowshipped family members is a personal decision based on the individual's conscience.

However, the Court of Appeal cannot see that this possibility for more association with disfellowshipped or withdrawn members based on one's own conscience is reflected in the written texts of Jehovah's Witnesses that were reviewed during the appeal proceedings.

Jehovah's Witnesses have also pointed out that no specific cases have been demonstrated where anyone has been disfellowshipped due to association with disfellowshipped/withdrawn persons beyond what the rules on social distancing indicate. Sæterhaug explained that he is not aware of any such cases.

It is somewhat unclear to the Court of Appeal whether Jehovah's Witnesses mean by this that the rules on the consequences of contact with those who have withdrawn or been disfellowshipped beyond what is "permitted" should not be taken entirely at their word.

The fact that Jehovah's Witnesses may not practise sanctions in the event of contact with disfellowshipped or withdrawn members, and that there are also variations between members regarding the practice of the rules on social distancing, is in any case not decisive for the Court of Appeal's assessment. The decisive factor, as previously mentioned, is what practice the religious community as such is considered to encourage; and that is to avoid contact with disfellowshipped and withdrawn members beyond contact with family members in the same household and for necessary family matters.

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3.3.7 Especially about social distancing of unbaptized publishers

Before being baptized, it is common to participate in preaching work as a so-called unbaptized publisher. Becoming an unbaptized publisher requires that you meet certain requirements, i.e. that you “know what the Bible teaches about sexual immorality, including adultery, polygamy, and homosexuality, and live in harmony with those teachings”, cf. page 74 of the *Organized* book from 2019.

If an unbaptized publisher commits a “serious sin”, they cannot be disfellowshipped, as they have not been baptized. However, according to the *Organized* book from 2019 on pages 154–155, you may have to go through a process with a meeting with two elders in the congregation that can lead to lose your status as an unbaptized publisher if you do not repent. It is further stated in the *Organized* book that in that case, the congregation will be informed that the person “is no longer recognized as an unbaptized publisher”. It also follows from the *Organized* book that the congregation will then “view the wrongdoer as a person of the world” and that “although the offender is not disfellowshipped, Christians exercise caution with regard to any association with him”. In the *Shepherd* book from 2019, chapter 12, point 52, it is further stated that “Because of his unrepentant wrongdoing, it would be best for a time not to call on him if he raises his hand to comment at meetings”.

However, Jehovah’s Witnesses have argued that they do not practice social distancing towards former unbaptized publishers, which must mean that Jehovah’s Witnesses believe that the practice outlined in the *Organized* book mentioned above is not being followed. There have been relatively little evidence Jehovah’s Witnesses’ actual practices related to unbaptized publishers who commit serious sins. Several of the witnesses from Jehovah’s Witnesses have expressed the view that being deprived of the status of unbaptized publisher is of little consequence and that in such a case one is not avoided, while some of the State’s witnesses express the view that being deprived of the status has social consequences.

In any case, the Court of Appeal also finds that it can rely on the written material from Jehovah’s Witnesses, which must presumably be assumed to be an expression of what Jehovah’s Witnesses generally encourage in such a situation, cf. section 3.2.2 above.

4 Is Jehovah’s Witnesses’ practice of social distancing towards baptized members who withdraw in violation of the right to free withdrawal?

As stated in section 3, a withdrawn person will be treated in the same way as someone who has been disfellowshipped, and thus basically be avoided by the other members, including family members.

The State claims that this practice is in violation of the right to free withdrawal, and thus provides a basis for denying grants and registration under section 6, first paragraph and/or section 6, third paragraph, cf. section 2, second paragraph, of the Religious Communities Act.

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There is no doubt, nor is it disputed, that a withdrawal could have very serious consequences for the person withdrawing with regard to the possibility of contact with those who are still Jehovah’s Witnesses. This also applies to close family members. This may be experienced as very burdensome by many, both those who have withdrawn and the remaining Jehovah’s Witnesses. This is confirmed by the witnesses in the case who had withdrawn or been

disfellowshipped, and also by the academic literature presented. In Ransom, Heather J. et. al (2020), *Grieving the Living: The Social Death of Former Jehovah's Witnesses*, it states, for example, that “those who exit the JW faith often face the prospect of severing significant relationships with family and friends (Miller 1988), which can be associated with feelings of loneliness and abandonment (Testoni et al. 2019) and pose challenges to health and well-being (Friedson 2015).”

It is clear that members of Jehovah's Witnesses can indeed withdraw, and one of the ways this can be done is by sending a letter to their congregation. Several witnesses in the case explained that they had withdrawn from Jehovah's Witnesses in that way. The withdrawal was respected by Jehovah's Witnesses in the sense that the congregations did not engage in extensive outreach efforts to persuade the member to rejoin.

The State's argument that the practice of Jehovah's Witnesses prevents withdrawal is not based on the fact that there are formal obstacles to withdrawal, but that withdrawal has such major social consequences that many fails to withdraw for that reason. During the appeal hearing, reference was made to letters to the editor and newspaper articles, as well as inquiries to the County Governor, which stated that some Jehovah's Witnesses failed to withdraw from Jehovah's Witnesses in order not to lose contact with family members.

The question is whether the social consequences of losing, or at least having greatly reduced contact with, members of Jehovah's Witnesses – including family members – if one withdraws, are in conflict with the right to free withdrawal.

The State has argued that the practice of Jehovah's Witnesses is in violation of the requirement for free withdrawal in section 2, second paragraph, second sentence, which stipulates that “It must always be possible to withdraw in writing”.

The special notes to section 2 provide more information about the right to withdraw, cf. Prop. 130 L (2018–2019) p. 254:

Freedom of religion presupposes that withdrawal must be unconditional and free from obstacles from the religious or life stance community. Therefore, the law stipulates that withdrawal must always be possible by sending a written request to the community.

In the Court of Appeal's view, Jehovah's Witnesses' withdrawal practice is clearly in line with the requirement in section 2, second paragraph, second sentence of the Religious Communities Act. The only requirement according to the wording of the Act is that withdrawal must be possible in writing. The preparatory works must be understood to mean that the requirement for **[Page 21]** written form is the way in which the legislator intended to ensure that withdrawal can be done “unconditionally and free from obstacles”; cf. the wording in the explanatory memorandum: “Therefore, the law stipulates that withdrawal must always be possible by sending a written request to the community.” If the religious community had refused to accept such a written withdrawal, or had set additional conditions for the withdrawal, the right to free withdrawal under section 2, second paragraph of the Religious Communities Act could have been violated. However, this is not the situation in our case.

In NOU 2013:1 (the Stålsett Committee), which formed the basis for the bill proposal by the Cabinet, it was discussed whether social distancing upon withdrawal could provide basis for

denying grants. However, the committee concluded that this was too demanding to regulate by law, cf. from page 257:

The Committee is of the opinion that it can be justified to deny grants to a religious community that establishes rules for the treatment of people who break away from the community, leading these individuals to experience complete social ostracism and/or serious financial consequences. However, the problems of defining this condition would be so demanding that the committee will not recommend such a criterion as a prerequisite for grants.

The Court of Appeal cannot see that the Ministry addressed this issue in Prop. 130 L (2018–2019), which may indicate that the Ministry did not find it appropriate to regulate that such isolation of those who have withdrawn may provide basis for denying grants. On the contrary, it appears to have been a deliberate choice by the legislator that the only requirement is that it must be possible to withdraw in writing, cf. section 2, second paragraph.

In the Court of Appeal's view, Jehovah's Witnesses' practice is therefore not in violation of section 2, second paragraph, second sentence of the Religious Communities Act.

The State has also argued that Jehovah's Witnesses' withdrawal practice "seriously violates the rights and freedoms of others", cf. the fourth alternative in section 6, first paragraph.

According to the preparatory works, "The phrase 'the rights and freedoms of others' is taken from article 9(2) of the ECHR on restrictions on freedom of religion", cf. Prop. 130 L (2018–2019) page 258. Furthermore, it is stated in the same place that the condition "primarily affects violations against individuals who are not members of the community in question, as members will normally be able to react by withdrawing". However, it also states that "the term may apply to communities that prevent withdrawal, cf. also section 2, second paragraph".

The right to freely join and leave religious communities is a central part of religious freedom under Article 9(1) of the ECHR, which stipulates that religious freedom includes "freedom to change his religion or belief". That the individual's religious freedom is exercised through the freedom to leave the religious community is established in *Mirolubovs and others v. Latvia* (2009) paragraph 80 and *Sindicatul "Păstorul Cel Bun" v. Romania* (2013) paragraph 137. A similar principle must be assumed to follow from article 18 of the International Covenant on Civil and Political Rights (ICCPR), cf. General Comment no. 22 point 5, Article 14 of the Convention on the Rights of the Child and section 16 of the Constitution.

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As far as the Court of Appeal is aware, there is no ECtHR case law that directly concerns the scope of the right to free withdrawal – i.e. the situation where one is directly or indirectly prevented from withdrawal from a religious community. There is, however, case law that may indicate there is protection against undue pressure from others to *change* religion, cf. for example *Kokkinakis v. Greece* (1993) paragraph 48 ("improper proselytism") and *Larissis and others v. Greece* (1998) paragraph 45 ("improper pressure") and paragraph 51 ("undue pressure in abuse of power"). Practice from the ECtHR may indicate that the ECtHR refers to this threshold when it generally concerns what kind of pressure a religious community can legitimately put on its own members, cf. *Jehovah's Witnesses of Moscow v. Russia* (2010)

paragraph 139, where reference is made to the fact that a religious community may not use “improper pressure or undue influence” on its members. The State has argued that this threshold with protection against undue pressure can provide guidelines for what is acceptable in terms of what difficulties and obstacles it may have to withdraw from a religious community.

The Court of Appeal assumes that there may be cases where a religious community has rules and sanctions for withdrawal that can be considered to constitute undue pressure on the person who wants to withdraw, and that this may in that case entail a violation of the right to free withdrawal under article 9 of the ECHR and article 18 of the ICCPR, etc. However, the Court of Appeal is of the opinion that such a threshold has not been violated in our case.

As stated above, it is easy to withdraw from Jehovah’s Witnesses in practical terms. It is sufficient to send a letter to the congregation about the withdrawal. There is no evidence that a withdrawal is not respected or that the congregation tries to persuade the member to rejoin. The potential obstacles to withdrawal are therefore related to the *consequences* of withdrawal, which include reduced social contact with remaining members, including family members.

Such reduced contact with former members of Jehovah’s Witnesses, and especially close family members such as parents and children you no longer live with, but also for example grandparents and grandchildren, will for most people be very difficult and burdensome.

The Court of Appeal assumes, based on the evidence presented, that such consequences of withdrawal are so negative for some that certain members choose not to withdraw for this reason.

However, the Court of Appeal holds that these consequences do not constitute sufficient undue pressure to amount to a violation of the member’s right to free withdrawal under article 9(1) of the ECHR, other human rights obligations, or the Constitution. The Court of Appeal emphasizes, among other things, that the social consequences of withdrawing – which undoubtedly can be very difficult for many – are outlined in the rules of Jehovah’s Witnesses and are known to the members; both those who withdraw and the remaining members. It is thus not a new and unknown “sanction” that is implemented [**Page 23**] when you withdraw. Furthermore, as discussed in section 3.3, the practice does not mean that family ties are broken. As far as family members in the same household are concerned, daily contact is maintained. Furthermore, it will be possible to have “necessary” contact with other family members. Those who have withdrawn will also be able to have normal contact with family members who are not baptized Jehovah’s Witnesses (including siblings who have chosen not to be baptized), and other networks outside Jehovah’s Witnesses. There is therefore no question of “complete social ostracism and/or serious financial consequences” in the event of withdrawal, which was the situation the Stålsett Committee considered regulating that could provide basis for refusing grants. As mentioned, the committee concluded that it was not appropriate to regulate this by law, cf. NOU 2013:1 page 257 cited above.

The conclusion is that the rules and practices of Jehovah’s Witnesses regarding social distancing of members who withdraw from the religious community are not in violation of section 6, first paragraph, or section 6, third paragraph, cf. § 2 second paragraph of the Religious Communities Act.

The Court of Appeal notes that it has not perceived that the State has claimed that the question of whether Jehovah's Witnesses' practice of social distancing of those who have withdrawn is contrary to the right to free withdrawal differs for adult and minor members. For the sake of clarity, the Court of Appeal notes that it cannot see that the assessment differs for baptized Jehovah's Witnesses who are minors compared to adult baptized members. Even baptized minor children actually have the opportunity to withdraw; there were also examples of this among those who testified in the case. Another question is whether the social distancing resulting from withdrawal may constitute a violation of children's rights. This is included in the assessment in section 5 below.

5 Does Jehovah's Witnesses' practice of social distancing towards baptized minors constitute a violation of "children's rights"?

5.1 Introduction

The practice of social distancing towards baptized members who are disfellowshipped or are withdrawn is described in section 3. As mentioned there, the rules are essentially the same for minor baptized witnesses as for adults.

The State has specified that Jehovah's Witnesses' practice of breaking off contact with adult members on basis other than withdrawal, such as disfellowshipping as result of norm violations, is not part of the State's justification for the decisions.

What the State has claimed, and which is assessed in this section 5, is whether the practice of social distancing of minor baptized members violates "children's rights", cf. the first alternative in section 6, first paragraph, of the Religious Communities Act, and more specifically whether the practice constitutes psychological violence or negative social control directed at children. Whether Jehovah's Witnesses have [Page 24] practices towards *unbaptized publishers* that constitute a violation of children's rights is discussed in section 6.

Section 6 of the Religious Communities Act does not specify what the phrase "violates children's rights" refers to. A natural linguistic understanding of the wording is that the matter in question must constitute an infringement/violation of rights granted to children in other Norwegian legislation. In the notes to section 6 in Prop. 130 L (2018–2019), p. 258, it states about this alternative:

The second alternative concerns violations of children's rights. This includes rights that the State is obligated to protect under the Convention on the Rights of the Child (CRC), cf. sections 2(4) and 3 of the Human Rights Act. However, the provision must be balanced against the freedom of religion and belief of children and parents, and does not in principle preclude differing views on upbringing or worldview. Examples of violations that may justify denying grants include negative social control directed at children, psychological violence, forced marriage, female genital mutilation, or honor-based violence.

According to the preparatory works, "violates children's rights" refers primarily to the violation of children's rights under the Convention on the Rights of the Child ("includes such").

Jehovah's Witnesses have argued that they are not a party to or a subject of the Convention on the Rights of the Child and therefore cannot violate children's rights under that Convention, including the provisions article 19. As it is clearly stated in the preparatory works that "children's rights" refers to children's rights under the Convention on the Rights of the Child, this legislative technique means that a religious community's practice in violation of children's rights under the Convention on the Rights of the Child will be covered by section 6 of the Religious Communities Act.

The Convention on the Rights of the Child sets out a number of rights for children, including the right to life, identity, the right to education and leisure, etc., as well as the right to be protected from physical and psychological violence, cf. article 19 of the Convention on the Rights of the Child. The State has argued that the practice of social distancing from baptized minor witnesses constitutes psychological violence against children and/or negative social control directed at children. The Court of Appeal first considers whether the practice constitutes psychological violence.

5.2 Psychological violence against children?

5.2.1 Introduction

According to the Court of Appeal's understanding of the State's submissions, the allegations of psychological violence against minor baptized members relate both to the *process* in the event of a violation of norms in the form of meetings with the elders and possibly in the judicial committee, and the consequences of any *decision* by the judicial committee on disfellowshipping, which is social distancing. For the sake of clarity, it should be noted that the Court of Appeal has understood that the allegations of psychological violence do not appear to be directed at [Page 25] minor baptized members who wish or choose to *withdraw*, but nevertheless makes some comments on this situation at the end of section 5.2.3.

5.2.2 General about psychological violence

Children's right to protection against, among other things, psychological violence is set out in article 19(1) of the Convention on the Rights of the Child ("all forms of [...] mental violence"), and is also expressly stated in the preparatory works as examples of cases covered by section 6, paragraph 1, of the Religious Communities Act. The prohibition in section 30, third paragraph, third sentence of the Children Act against the use of "frightening or annoying behaviour or other inconsiderate conduct towards the child", can be considered to express a general prohibition in Norwegian law against psychological violence against children, cf. NOU 2024:13 (Law and Freedom) page 281.

There is therefore no doubt that if a religious community has a practice that involves children being subjected to psychological violence, this will be a violation of children's rights under both the Convention on the Rights of the Child and the Children Act, and thus may provide basis for denial and registration [sic] under section 6, first paragraph, cf. section 4 of the Religious Communities Act.

When interpreting what is considered "mental violence" in article 19 of the Convention on the Rights of the Child, the starting point must normally be the wording, cf. article 31(1) of the Vienna Convention. In 2011, the UN Committee on the Rights of the Child published General Comment No. 13 on the interpretation of article 19 of the Convention on the Rights

of the Child. Such general comments on the Convention on the Rights of the Child that express a “clear interpretation of the Convention” carry considerable weight, cf. HR-2018-2096-A paragraph 16 and also Rt-2009-1261 paragraphs 43 et seq. Paragraph 17 of General Comment No. 13 states (in an unofficial Norwegian translation, which is linked to in the English public version on Lovdata) that “all forms of violence against children, however light, are unacceptable” and that “frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence”. In other words, there is no requirement for any psychological violence to be intentional in order to be covered, cf. Tobin, *The UN Convention on the Rights of the Child* (2019) page 695. The decisive factor is the effects on the child.

Paragraph 21 of General Comment No. 13 provides a definition of “mental violence”. In the introduction, reference is made to the fact that the term is often described as “psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect”. Letters a-g then give examples of “such abuse”. Examples that may be relevant in our case are “all forms of persistent harmful interactions with the child, for example, conveying to children that they are worthless, unloved, unwanted” (letter a), “isolating, ignoring” (letter b), “humiliation, belittling, ridiculing and hurting a child’s feelings” (letter d) and “placement in solitary confinement, isolation” (letter f).

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In the notes to section 30, third paragraph of the Children Act, cf. Ot.prp. no. 104 (2008–2009) page 72, the Ministry elaborates on the prohibition against “frightening or annoying behaviour or other inconsiderate conduct towards the child” as follows:

Frightening or annoying behaviour or other inconsiderate conduct includes any means of harming, frightening, humiliating, or otherwise violating the child without the use of physical force, which is likely to cause the child a feeling of fear, powerlessness, guilt, shame, inferiority, or despair, or a fundamental sense of being unwanted or unloved. This may include, for example, locking the child in a room, using threats of punishment or threats that the child will be abandoned or harmed, threats to harm one of the child’s caregivers, siblings, or pets, humiliation, scolding, including calling the child derogatory names, emotional manipulation, ridicule, especially in front of others, belittling, verbal harassment, and emotional rejection. The examples are not intended to be exhaustive. In the case of repetitive patterns, less is required for the behaviour to be covered. In the case of more extreme actions, a single incident will be sufficient for it to be covered.

The proposed wording “frightening or annoying behaviour or other inconsiderate conduct” provides congruence with section 390a of the Penal Code of 1902. [section 266 of the current Penal Code]

In the Court of Appeal’s view, the committee’s report NOU 2024:13 (Law and Freedom) on page 30 provides an adequate summary of what is considered “psychological violence”:

The Committee uses the term psychological violence to refer to ways of harming, intimidating or offending another person that are not of a physical nature. Normally, psychological violence will be a pattern of abusive acts or behaviour that is repeated or persists over time, [...]

5.2.3 Specific assessment

The question is then whether (i) the *process* of violating norms and/or (ii) the *consequences* of any decision to disfellowship, which is social distancing, constitute psychological violence against minors.

(i) *The process of breaking the norms*, which can end in disfellowshipping, will be demanding for everyone, and especially for children. If a baptized child commits a violation of the norms, it follows from the rules that this may become known to the elders by either the child itself, or other members, reporting it. This kind of “informing” activity is in itself stressful, as is reporting one’s own sins. Furthermore, the fact that the minor will have to explain the relationship to the elders in the congregation – and together with their parents when they are minors – could be very unpleasant and humiliating. Although the Jehovah’s Witnesses’ rules state that the elders’ investigations should be “kindly” and not “dig into details that they do not need to know about” (the study edition of *The Watchtower*, August 2024, page 22), it is inevitable that one must go into some detail to some extent; for example, if the sin committed is that one has had sexual intercourse. For minor children in particular, it must be assumed to be very uncomfortable to have to explain such matters to others, especially to the elders, who are always adult men. The Court of Appeal assumes that the elders normally do not have sufficient expertise in child welfare [Page 27] to fully safeguard the child’s interests during such a conversation. Furthermore, even if the parents are normally present when a minor has conversations with the elders, the parents will not (only) have the child’s interests in mind, cf. that it says in the *Organized* book from 2019 page 154 that the parents “want to cooperate with the judicial committee, not attempting to shield the erring child from necessary disciplinary action”. Furthermore, as part of the process, the minor will have to express whether he regrets it, which can also be a burden, especially if you do not really regret it, but feel you have to say it to avoid disfellowshipping with the consequences of disfellowshipping. Having to go through a process where the child has to explain himself or herself about sometimes very personal matters could also be contrary to the child’s right to privacy under article 16 of the Convention on the Rights of the Child and article 8 of the ECHR, cf. NOU 2024:13 (Law and Freedom) page 473.

Although the process can be very unpleasant, and to some extent also humiliating, the Court of Appeal nevertheless holds – subject to doubt – that the process as such cannot be regarded as psychological violence. The process will normally take place over a relatively short period of time leading up to possible disfellowshipping. The process can therefore not be said to constitute a “pattern of abusive acts or behaviour that is repeated or persists over time”, cf. that this is something that will normally be the case for something to be considered psychological violence, cf. the committee’s understanding in NOU 2024:13 cited above. In the Court of Appeal’s view, the fact that the process takes place over a short period of time means that it does not have the character of psychological “maltreatment”, cf. the introduction to the definition of mental violence in General Comment 13 to article 19 of the Convention on the Rights of the Child, or can be considered a sufficient “extreme” single event that constitutes a violation of section 30, third paragraph, of the Children Act, cf. the notes to the provision in Ot.prp. no. 104 (2008–2009) page 72, cited above. Furthermore, the child has his or her parents with him or her in the conversation with the elders, which will usually make the conversation less stressful, at least to some extent. Furthermore, the Court of Appeal assumes that the conversation with the elders will be as gentle and less detailed as possible, as the rules require. Any transgressions here by the elders conducting the conversations will not be something for which Jehovah’s Witnesses are responsible. Finally,

the Court of Appeal places some emphasis on the fact that the child – through baptism and through meetings in the congregation – is familiar with the fact that the consequences of violating the norms are that one may have to go through such a process, so that neither the disfellowshipping process nor the consequences of a possible disfellowshipping are something that one is completely unprepared for. The Court of Appeal also notes that it has not been proven that the process in the event of a violation of the norms violates the child's right to privacy, cf. article 16 of the Convention on the Rights of the Child, and article 8 of the ECHR. The fact that the process may involve a violation of the child's right to privacy has not been cited by the State as an independent basis for refusing state funding or registration, either in the decisions or before the court, but has been cited as a supporting argument for the allegation of psychological violence and negative social control. As the State's counsel also emphasized in the proceedings, the assessment of whether there is a violation of the child's right to privacy will largely overlap with the assessment of whether the practice constitutes psychological violence and/or negative social control.

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(ii) If the process ends with the minor baptized member being disfellowshipped, there is no doubt that it will normally be very burdening and difficult for everyone involved that the social contact with other baptized members of Jehovah's Witnesses is broken or greatly reduced. For family members who are Jehovah's Witnesses with whom one does not live, contact will be reduced to contact in "necessary" family matters. This must be assumed to be particularly demanding for children who will then, for example, have significantly reduced contact with grandparents and aunts and uncles who are Jehovah's Witnesses, as well as with siblings who are Jehovah's Witnesses and who have moved away from home. Furthermore, the child will lose contact with other members of the congregation, such as friends in the congregation. For children who are Jehovah's Witnesses, it must be assumed that much of their social circle will be other children and young people in the congregation, which makes it extra difficult to lose contact with them.

However, the Court of Appeal considers – also here with doubt – that the social distancing a minor child may experience due to disfellowshipping cannot be regarded as psychological violence.

As previously mentioned, it follows from the rules of Jehovah's Witnesses that family ties are not broken by disfellowshipping. For children who live at home, as the vast majority of minors do, this means that the family's everyday activities continue. The minor's emotional and physical needs will therefore continue to be met by the parents, and the child will be able to socialize with the other family members in the household. That this is the practice of Jehovah's Witnesses is confirmed in Jehovah's Witnesses' letter of 24 October 2024 to the Ministry of Children and Families:

We would like to remind you that in the very rare case where a baptized minor is removed from the congregation, family life and togetherness in the household will continue. Because parents have a biblical and moral obligation to care for their minor children, they will still be responsible for meeting his/her physical and emotional needs.

If a minor child does not live at home, parents will have a duty to take care of a disfellowshipped child who is not well physically or emotionally, cf. section 3.3.5 above.

The fact that some parents may act more harshly towards a child who is disfellowshipped or withdrawn than the Jehovah's Witness rules allow, for example by freezing the child out socially at home or requiring the child to move out, is not something that Jehovah's Witnesses as a religious community encourage; on the contrary. Furthermore, the child will have "necessary association" with other family members who are Jehovah's Witnesses. The child's relatives who are not Jehovah's Witnesses, as well as other friends at school etc. who are not Jehovah's Witnesses, will also continue to have normal contact with the child. The social distancing can therefore not be regarded as "isolating" or "ignoring" to a degree that constitutes psychological violence. A further factor that argues against considering the relationship to be psychological violence is that the child – through baptism and through meetings in the congregation where this will be a topic – has become familiar with the consequences of norm violations. Neither the disfellowshipping process nor the consequences of possible [Page 29] disfellowshipping are therefore something that the minor is completely unprepared for, even though it must be assumed that minors, such as a 15-year-old, and to an even lesser extent an 11-year-old, do not fully understand and consider the consequences of wanting to withdraw or committing serious sins.

After this, the Court of Appeal holds that although both the disfellowshipping process and the social distancing of possible disfellowshipping will be very burdensome for most children, it is, as mentioned – under doubt – unlikely that the practice constitutes psychological violence against children.

Finally, the Court of Appeal notes, for the sake of good order, that social distancing as a result of a minor choosing to withdraw from the religious community cannot be considered psychological violence. In this regard, the Court of Appeal refers to the discussion above in subsection (ii).

5.3 Negative social control directed at children?

5.3.1 Introduction

What is at issue in this section 5.3 is whether Jehovah's Witnesses' practice of social distancing towards minor baptized Jehovah's Witnesses who commit norm violations constitutes negative social control directed at children. The Court of Appeal also understands, although this was not entirely clear on the part of the State, that the State also claims that the corresponding social distancing of baptized minors who withdraw from Jehovah's Witnesses constitutes negative social control.

5.3.2 General information about negative social control directed at children

As mentioned in section 5.1, a natural linguistic understanding of the phrase "violates children's rights" in section 6, first paragraph, of the Religious Communities Act is that the matter in question must constitute a violation/breach of rights granted to children in other Norwegian legislation. As mentioned above, the preparatory works, cf. Prop. 130 L (2018–2019) p. 258, state that the wording refers primarily to the violation of children's rights under the Convention on the Rights of the Child. The preparatory work explicitly mentions "negative social control directed at children" as an example of what "may provide basis for refusing grants" under the alternative violation of children's rights.

The preparatory works therefore seem to presuppose that a child's right not to be subjected to negative social control may be a right that follows from the Convention on the Rights of the Child, or alternatively from Norwegian law in general, cf. the phrase "children's rights" in the legislative text. However, as far as the Court of Appeal is aware, there is no general provision in Norway prohibiting negative social control, either in the Convention on the Rights of the Child or in Norwegian law in general. Another point is that negative social [sic] in certain cases may be covered by other rules, e.g. that negative social control – often also in combination with other violations against the child – may be considered criminal abuse in close relationships. However, this is not claimed to be relevant in our case.

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The fact that there is no general provision in Norway prohibiting negative social control either in the Convention on the Rights of the Child or in Norwegian law in general creates a challenge in determining whether and to what extent negative social control directed at children can be considered a violation of children's "rights" at all.

A further challenge in defining the content of the phrase "negative social control directed at children" is that the concept of negative social control does not have a clearly defined content in Norwegian law either. The term is described as follows in the preparatory work for the Faith Communities Act, cf. Prop. 130 L (2018–2019) p. 80:

Negative social control consists of various forms of supervision, pressure, threats and coercion exercised to ensure that individuals live in line with family or group norms. The control is characterized by being systematic and may violate the individual's rights under the Convention on the Rights of the Child and Norwegian law.

Nor does this definition provide much guidance, as it states that control is characterized, among other things, by the fact that it "may violate the individual's rights under the Convention on the Rights of the Child and Norwegian law", which may imply that negative social control is only affected if it is covered by other provisions in the Convention on the Rights of the Child or Norwegian law.

The fact that the concept of negative social control is difficult to define precisely is supported by the fact that NOU 2024:13 (Law and Freedom) did not propose a general ban on negative social control. The committee stated on page 41 that the term "is not well suited to legal regulation", and that it is "not possible to draw clear boundaries for when a parent's social control of a child falls within or outside what parents can do by virtue of their parental responsibility".

Furthermore, as mentioned in the preparatory work (Prop. 130 L (2018–2019) p. 258) that negative social control directed at children is an example of a circumstance that "may" provide basis for refusing grants. The preparatory works therefore also seem to presuppose that negative social control is not necessarily always sufficient to deny a grant.

However, despite the above, there is no doubt that the legislator intended the provision in section 6 of the Religious Communities Act to also include negative social control directed at children, as this is clearly stated in Prop. 130 L (2018–2019) p. 258 that it can be affected, [sic] and is also expressly mentioned during the Storting's consideration of the bill, cf. Innst. 208 L (2019–2020) p. 26.

The other examples in the preparatory works (“psychological violence, forced marriage, female genital mutilation, or honor-based violence”) concern serious matters. This may indicate that negative social control directed at children must be relatively qualified for it to be covered by the provision, cf. the principle in HR-2024-211-A paragraphs 44 and 45 that words and expressions in a text can be interpreted **[Page 31]** restrictively on the basis of the linguistic context and that the examples given in the text could form a natural starting point for the assessment.

Furthermore, the Court of Appeal also refers to the fact that in the recommendation from the Committee on Family and Cultural Affairs in the Storting in connection with the consideration of the proposition, it was emphasized, with reference to the fact that freedom of religion and belief is a fundamental right that is strong in our liberal, democratic society, that the threshold for decisions to deny or reduce grants should still be “high”, see Innst. 208 L (2019–2020) p. 26.

The Court of Appeal is therefore of the opinion that negative social control directed at children can be considered a violation of children’s rights. However, it follows from the review above that it takes relatively much for the matter to constitute a violation covered by section 6 of the Religious Communities Act, unless the matter is also covered by other provisions of the Convention on the Rights of the Child or Norwegian law in general.

5.3.3 Specific assessment

Social control will exist in all families and environments, including religious communities. Such social control will often feel burdensome for the person who breaks the rules of the family or environment or who wants to withdraw.

The question in our case is whether Jehovah’s Witnesses’ practice of social distancing of baptized minors through disfellowshipping or withdrawal constitutes negative social control directed at children, which means that children’s rights are violated. The Court of Appeal understands that the State’s view is that the rules on social distancing mean that minor Jehovah’s Witnesses are subjected to pressure not to commit norm violations and not to withdraw in a way that constitutes negative social control directed at children.

As stated in section 5.3.2, it takes relatively much for a religious community’s practices to constitute negative social control directed at children, as long as they are not covered by other provisions in, for example, the Convention on the Rights of the Child or other Norwegian legislation.

The fact that minor baptized members – many of whom are children and young people in and around the age of puberty – may violate the rules of the norm and/or wish to withdraw or change religion is unavoidable. Furthermore, it is hardly in doubt that knowing that you risk having to go through a process with your elders and possibly a judicial committee in the event of a violation of norms, and possibly being disfellowshipped and subjected to social distancing, could have a strong disciplinary effect on living in line with moral norms. Similarly, the consequences of social distancing could mean that people do not withdraw even if they lose or change their religious beliefs. Even if baptized minors are aware of the disfellowshipping arrangement and the consequences of being disfellowshipped or withdraw, and are considered by elders to be sufficiently mature to be baptized, it must be assumed that,

for example, a 15-year-old, [Page 32] and to an even lesser extent an 11-year-old, are unlikely to fully understand and consider the consequences of the practice of social distancing when they choose to be baptized. At the time of baptism, when the child normally has strong religious convictions, it will probably seem completely unlikely to the child that it will later commit norm violations or want to withdraw. Much can therefore argue that the practice of social distancing can be considered as “pressure” to commit norm violations or withdraw, which can be regarded as negative social control.

On the other hand, the above are general assumptions. The State has not specifically substantiated whether and to what extent minor baptized members of Jehovah’s Witnesses actually experience pressure not to commit norm violations or not to withdraw, for fear of undergoing a disfellowshipping process (in the event of norm violations) and losing relationships with family and friends in the religious community. In this connection, the Court of Appeal notes that the testimonies of the State’s witnesses Langvann from Hjelpeskilden and Santana Vega from the Competence Team on Negative Social Control and Honour-Related Violence could hardly concretely substantiate this claim by the State concerning minor baptized members of Jehovah’s Witnesses. It must also be assumed that being subject to negative social control for a prolonged period of time can cause psychological strain for many. However, it has not been substantiated that baptized minors growing up in Jehovah’s Witnesses generally have greater psychological challenges than others in the population.

Particularly central to the Court of Appeal’s assessment is that it is expressly stated in the preparatory works to section 6, cf. Prop. 130 L (2018–2019) p. 258, that the provision “violations of children’s rights” must be “balanced against the freedom of religion and belief of children and parents”.

Children’s freedom of religion is protected by article 14 of the Convention on the Rights of the Child, as well as article 9 of the ECHR, article 18 of the ICCPR and section 16 of the Constitution. The legislator has decided that persons who have reached the age of 15 are mature enough to join or withdraw from a religious community, cf. section 2, first paragraph, of the Religious Communities Act. This must imply that children who have reached the age of 15 must be presumed to be mature enough to accept the consequences of joining a religious community, which the minor is aware of when joining. Children under the age of 15, who are capable of forming their own opinions, also have “the right to participate in all matters concerning the child’s exercise of religion or belief”, cf. section 3 of the Religious Communities Act. This is expressed in the preparatory works as meaning that the “opinions of children under the age of 15 shall be given weight in accordance with the child’s age and maturity”, and that “the child, as soon as they are capable, should be allowed to decide for themselves regarding membership and withdrawal from religious and belief communities, as well as participation in services, activities organized by the community, etc.” cf. Prop. 130 L (2018–2019) p. 254.

Based on the evidence, the Court of Appeal finds that it is not entirely unusual for children growing up in families of Jehovah’s Witnesses to choose not to be baptized; or that they are not baptized until they are adults. Although the proportion who get baptized is assumed to be significantly higher among children growing up in families belonging to Jehovah’s Witnesses than in the rest of the population, it has not been [Page 33] substantiated, nor claimed, that the socialization involved in growing up within the religious community constitutes pressure to be baptized as a minor. On the contrary, it must be assumed that children who choose to be

baptized normally have a strong personal conviction that they want to be baptized and that the child is mature enough for such a decision. While it cannot be excluded that some children may experience pressure or expectations from their parents to get baptized, even if the child does not genuinely wish to do so, such as to please their parents or surroundings, this cannot be considered as something the religious community encourages.

Children's religious freedom therefore requires that children who are mature enough to be baptized as Jehovah's Witnesses, knowing the consequences of violating the norms and withdrawing, must have the freedom to choose this with the consequences this entails.

The Court of Appeal has concluded that it has not been substantiated that the practices of Jehovah's Witnesses involve sufficiently severe negative social control directed at children to be considered as "violating children's rights". In this assessment, the Court of Appeal has particularly emphasized the religious freedom of the child and the parents, and that the State has not demonstrated that baptized minors – as a consequence of the practice of social distancing – experience strong pressure not to commit norm violations or not to withdraw, in a manner that constitutes negative social control directed at children.

5.4 Conclusion

Following this, the Court of Appeal has concluded that the practice of social distancing towards minor baptized members does not "violate children's rights", as it has not been substantiated that this practice exposes children to psychological violence and/or negative social control directed at children.

6 Minor unbaptized publishers who commit norm violations

The issue in this section 6 is whether Jehovah's Witnesses have a practice of social distancing towards minor unbaptized publishers that constitutes psychological violence and/or negative social control directed at children, and thereby violates "children's rights" under section 6 of the Religious Communities Act, as defined in sections 5.2.2 and 5.3.2.

As described in section 3.3.7, the Court of Appeal assumes that the practice to be assessed is the practice described in the written material from Jehovah's Witnesses, which must presumably be assumed to be an expression of what Jehovah's Witnesses generally encourage in such a situation.

It must be assumed to be very uncomfortable for the minor unbaptized publisher to go through the process described in the *Organized* book and the *Shepherd* book in the case of a serious sin as referred to in section 3.3.7, both by first going through a meeting with two elders and including [Page 34] having to express their regret, and that the congregation – if they do not repent and the violation of the norm results in their status as an unbaptized publisher being withdrawn – will be informed of this and will then be "cautious" about associating with the child. This could lead to others in the congregation keeping distance from the child, including other young people who keep their distance of their own will or because they are encouraged to do so by their parents. Furthermore, it must be perceived as a form of ignoring that you may not be allowed to speak at congregation meetings for a while, even if you raise your hand to answer, cf. the quote from the *Shepherd* book as cited in section 3.3.7.

However, the Court of Appeal is of the opinion that it has not been substantiated that such practice towards unbaptized publishers constitutes psychological violence, or negative social control directed at children in a way that constitutes a violation of children's rights. The Court of Appeal can largely refer to the discussions in section 5 regarding the practice of social distancing in relation to minor baptized persons who commit norm violations, and where the Court of Appeal concluded that this practice did not constitute psychological violence or negative social control directed at children. Although many minor unbaptized publishers, on the one hand, will often be younger than baptized minors, and thus often more vulnerable, on the other hand, an unbaptized publisher will not be disfellowshipped and thus not be avoided by other Jehovah's Witnesses in the same way as minor baptized Jehovah's Witnesses who are disfellowshipped.

7 Conclusion

Following this, the Court of Appeal has concluded that the State has not substantiated that Jehovah's Witnesses' practice of social distancing towards minor baptized Jehovah's Witnesses or unbaptized publishers is in violation of the members' right to freely withdraw from the religious community or violates children's rights. The conditions for denying grants under section 6 of the Religious Communities Act, and thereby for denying registration under section 4, third paragraph, are not met. The decisions are therefore invalid.

It is therefore not necessary for the Court of Appeal to address the other issues in the case, including whether the decisions are invalid due to procedural errors or whether the decisions violate the Constitution and constitute a violation of human rights obligations to which Norway is bound. Nor does the Court of Appeal need to address whether the conditions in section 6 of the Religious Communities Act are sufficiently clear to meet the legal requirement in, for example, article 9(2).

8 Legal costs

Jehovah's Witnesses have been fully vindicated in that the decisions to deny grants and registration are invalid. In principle, Jehovah's Witnesses are thus entitled to full compensation for their legal costs before the Court of Appeal, cf. section 20-2, second paragraph, cf. first paragraph, of the Dispute Act. Jehovah's Witnesses are also, in principle, entitled to full compensation for their legal costs before the District Court, cf. section 20-9, second paragraph, of the Dispute Act.

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In the Court of Appeal's view, there are no weighty reasons that make it reasonable for the State to be exempted in whole or in part from liability for damages under the exception rule in section 20-2, third paragraph, of the Dispute Act, either for the District Court or the Court of Appeal, even though the Court of Appeal had doubts about whether Jehovah's Witnesses' practice of social distancing violates children's rights. Here, the Court of Appeal emphasized that the case concerned the exercise of authority by the State in an area related to freedom of religion and that Jehovah's Witnesses is a relatively small religious community.

Jehovah's Witnesses are thus entitled to full compensation for their legal costs, both for the District Court and the Court of Appeal.

In the *District Court*, Jehovah's Witnesses have claimed compensation of NOK 4,334,850 (excluding VAT) in fees for the counsel and legal assistants from the law firm Glittertind. In the statement of costs, VAT (which is 25%) is stated to be added. The Court of Appeal thus finds that for Jehovah's Witnesses, VAT is a final expense and can be claimed as part of the legal costs. For Jehovah's Witnesses, the cost of this assistance is therefore NOK 5,418,563 including VAT. The statement of legal costs shows (by adding up the number of hours in the statement of legal costs) that the law firm Glittertind spent a total of 1,045.5 hours on the case before the District Court, which gives an average price (excluding VAT) of approximately NOK 4,150. Counsel Anders Ryssdal used an hourly rate (excluding VAT) of NOK 6,100/5,000 for the District Court, while the legal assistants had lower hourly rates. In addition, fees of NOK 275,259 incl. VAT (NOK 220,207 excl. VAT) were paid to legal assistant lawyer Stub-Christensen for 141 hours of work at an hourly rate of NOK 1,500 (excl. VAT). In addition, there are also NOK 289,357 in disbursements and the court fee for the District Court of NOK 41,019. The total claim for legal costs for the District Court (fees including VAT, disbursements and court fees) is thus NOK 6,024,198.

Before the *Court of Appeal*, Jehovah's Witnesses have claimed compensation of NOK 3,351,925 (excluding VAT) in fees to the counsel. In addition, there is VAT (at 25%), which means that Jehovah's Witnesses' cost for the assistance is NOK 4,189,906 including VAT. The statement of legal costs shows that a total of 760.75 hours was spent on the case before the Court of Appeal, which gives an average price (excluding VAT) of approximately NOK 4,400. Counsel Anders Ryssdal has used an hourly rate (excluding VAT) of NOK 6,300/6,700, while the legal assistants from the law firm Glittertind have had lower hourly rates. In addition, there are NOK 144,826 in disbursements and appeal fees of NOK 66,404. The total claim for legal costs for the Court of Appeal (fees including VAT, disbursements and court fees) is thus NOK 4,401,136.

The total claim for legal costs for the District Court and the Court of Appeal (fees including VAT, disbursements and court fees) is therefore NOK 10,425,334 (NOK 6,024,198 plus NOK 4,401,136).

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Section 20-5, first paragraph, first sentence of the Dispute Act states that full compensation means that the "necessary costs" of the case should be covered. Pursuant to the second sentence of the first paragraph, in this assessment, emphasis shall be placed on whether it "was reasonable to incur these in view of the importance of the case". For a more detailed assessment of what constitutes necessary costs, see HR-2023-299 paragraph 152:

[...] the total costs must be measured against a proportionality limit, that the assessment of the legal fees must include both the lawyer's hourly rate and the number of hours spent, and that the additional cost of particularly expensive assistance cannot, as a general rule, be claimed from the opposing party. In the Committee's opinion, what constitutes particularly expensive assistance "must be based on a discretionary assessment of the circumstances of the case in question, as well as what it must be assumed that an ordinarily skilled lawyer would have demanded as a fee in such a case". Among the other factors that are highlighted, I mention in particular the economic value of the disputed subject matter and that work in one instance must to a significant extent be expected to be reused in the next instance by the same counsel.

The Court of Appeal applies these principles to the assessment of what constitutes necessary legal costs for the District Court and the Court of Appeal. The Court of Appeal also refers to the fact that the preparatory works of the Dispute Act give “clear signals” that the level of costs in civil cases should be reduced, cf. HR-2023-1128-A paragraph 99 with further references.

The State has objected to Jehovah’s Witnesses’ statement of legal costs, both in terms of the number of hours and the hourly rates.

The appeal hearing lasted nine court days. The case also lasted nine court days in the District Court. Both the District Court and the Court of Appeal exchanged a considerable amount of pleadings during the preparation of the case. It has also been necessary to issue several decisions during the preparation of the case, some of which have gone against Jehovah’s Witnesses.

A total claim for legal costs for the District Court and Court of Appeal of NOK 10,425,334 is very high. At the same time, the case is very important to Jehovah’s Witnesses, both for financial and moral reasons. Jehovah’s Witnesses have stated that the grants amount to NOK 16–18 million for each of the years covered by the decisions in the case. The case also concerns the loss of registration, which is a non-profit interest that the Court of Appeal assumes is important to Jehovah’s Witnesses, both in order to be able to perform weddings in the Kingdom Hall and for reputational reasons.

The hourly rate used by lawyer Ryssdal is high, but the average price for assistance from the law firm Glittertind is within what is normally acceptable.

However, the Court of Appeal is of the opinion that the total number of hours used by Jehovah’s Witnesses’ counsel and legal assistants goes beyond what has been necessary for a **[Page 37]** proper handling of the case, both during the preparation of the case and during the oral proceedings before both the District Court and the Court of Appeal.

The Court of Appeal firstly considers that the number of hours has become too high due to the case having grown too extensive. The core of the case involves the assessment of evidence and the application of the law concerning the rules in the Religious Communities Act on the denial of grants and registration, particularly the basis cited in section 6, first paragraph. Although the relationship to human rights in the ECHR, the ICCPR, the Convention on the Rights of the Child and the Constitution is central to both the interpretation of the Religious Communities Act and the assessment of whether the refusal decisions constitute a violation of such human rights, the Court of Appeal is of the opinion that these topics have been given too much space in the case. This is illustrated, among other things, by the fact that the legal excerpts for the Court of Appeal totalled more than 10,000 pages, of which ECtHR judgments and other judgments from foreign courts account for more than 5,000 pages. Only a few of these judgments were touched upon during the proceedings. The scope of the evidence was also excessive. The actual extract for the Court of Appeal was over 6,000 pages. Furthermore, both the Court of Appeal and the District Court heard a considerable number of witnesses, both current and former members of Jehovah’s Witnesses, who gave evidence over four court days. The Court of Appeal is of the opinion that fewer witnesses would have been sufficient. The fact that the case was organized too broadly is also illustrated by the fact that Jehovah’s Witnesses’ outline for the opening statement for the Court of Appeal was 70 pages and for the proceedings 91 pages.

The issues before the Court of Appeal were also the same as those before the District Court, with the exception that invalidity as a result of deficiencies in the administration's investigation was also asserted before the Court of Appeal, cf. section 17 of the Public Administration Act. Jehovah's Witnesses' counsel before the Court of Appeal was the same as before the District Court. For this reason, the Court of Appeal cannot see that there was a need for Jehovah's Witnesses' counsel and legal assistants to spend 487 hours preparing the appeal and preparing the case for the appeal hearing. Neither can the Court of Appeal see that 810 hours of time spent in the District Court (892 hours including the hours of legal assistant lawyer Stub-Christiansen) for the preparation of the summons and case preparation was necessary.

In addition to the counsel, Jehovah's Witnesses appeared with three legal assistants during the oral proceedings before both the District Court and the Court of Appeal. The Court of Appeal cannot see that as many as three legal assistants were necessary in this case. The fact that the statement of costs for the Court of Appeal does not include the costs of the legal assistant from Jehovah's Witnesses has no bearing on this assessment. The point is that there was no need for two additional legal assistants.

In comparison, the State's counsel and legal assistant in the statement of case costs for the District Court and the Court of Appeal have stated a significantly lower number of hours for case preparation (including preparation of defence/response to appeal); 467 hours for the District Court and 329 hours for the Court of Appeal, respectively.

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Since, in the Court of Appeal's view, the time spent by Jehovah's Witnesses' counsel and legal assistants has been higher than necessary, the total claim for legal costs of NOK 10,425,334 (fees including VAT, disbursements and court fees) therefore exceeds what has been necessary for the proper handling of the case.

In the Court of Appeal's view, the claim for legal costs must be reduced at the court's discretion by approximately NOK 1 million per instance, so that the necessary legal costs that can be claimed are set at NOK 5 million for the District Court and NOK 3.5 million for the Court of Appeal.

Accordingly, Jehovah's Witnesses are awarded legal costs (fees including VAT, disbursements and court fees) for the District Court and the Court of Appeal totalling NOK 8.5 million.

The verdict is unanimous.

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Judgement

1. The State's decision, represented by the Ministry of Children and Families, dated 30 September 2022, to deny state grants for 2021 is invalid.

Unofficial translation from Norwegian

2. The County Governor of Oslo and Viken's decision of 7 November 2023 to deny state grants for 2022 is invalid.
3. The County Governor of Oslo and Viken's decision of 7 November 2023 to reject claims for state grants for 2023 is invalid.
4. The County Governor of Oslo and Viken's decision of 18 June 2024 to reject claims for state grants for 2024 is invalid.
5. The County Governor of Oslo and Viken's decision of 22 December 2022 regarding loss of registration is invalid.
6. The State, represented by the Ministry of Children and Families, is ordered to pay Jehovah's Witnesses' legal costs of NOK 8,500,000 – eight million five hundred thousand – for the District Court and the Court of Appeal.

Jørgen Monn

Anne Kristin

Vike Rolf Ytrehus

The document is in accordance with the signed original.
Signed electronically, Kristian Lorentzen