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The Supreme Court of Norway - Judgment - HR-2024-2346-A

Authority	The Supreme Court of Norway – Judgment
Date	2024-12-19
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Keywords	Immigration law.
Summary	An Iranian national applied for asylum in Norway in 2011. The original asylum application was based on his fear of being persecuted by Iranian authorities after participating in a demonstration in Tehran. The application was rejected. Shortly after, he converted to Christianity. In the following years, he repeatedly requested the reversal of the rejection because he feared persecution in Iran due to his faith. The requests for reversal were not granted, and the case was brought to court. The majority of the Court of Appeal assumed that the asylum seeker would practice his Christian faith discreetly upon a potential return to Iran, and therefore, he did not risk persecution. The question in the Supreme Court was whether, in cases where it is assumed that a convert will practice his religion discreetly upon return to his home country, the reason for this discretion matters. The asylum seeker argued that if the reason was fear of persecution, he had the right to asylum, but accepted that there was no right to asylum if the reason was social pressure. Such an approach, referred to as the "causal method", was adopted by the Supreme Court in a 2012 ruling concerning protection due to sexual orientation. The method has not been used for other grounds for asylum. The Supreme Court found, as a starting point, that the same method could be used for all protection grounds, but that neither the Immigration Act nor the Refugee Convention suggests an extended use of the method. The 2012 ruling was based on different premises than those present today, both in terms of administrative practice in Norway and developments in practice in other countries. The Supreme Court noted that applying the causal method to additional protection grounds would effectively broaden the right to asylum under Norwegian law. Whether such an expansion should occur is a decision for the legislature to make. The case provides guidance on the interpretation of section 28 of the Immigration Act and Article 1 A of the Refugee Convention. (English translation: full text version)
Proceedings	The Supreme Court HR-2024-2346-A, (case no. 24-073896SIV-HRET), civil case, appeal against Borgarting Court of Appeal's judgment 4 March 2024.
Parties	A, Norwegian Organisation for Asylum Seekers (NOAS) (intervener) (Counsel Odin Breidvik) v. The State represented by the Immigration Appeals Board (The Office of the Attorney General represented David Magnus Myr).
Author	Justices Bergljot Webster, Cecilie Østensen Berglund, Erik Thyness, Knut Erik Sæther and Eyvin Sivertsen.
Last update	2025-02-18

(1) Justice **Østensen Berglund:**

Issues and background

(2) The case concerns the validity of the decision by the Immigration Appeals Board (UNE) to deny an Iranian convert refugee status (asylum) under section 28 of the Immigration Act. It particularly raises the question of whether the reason a convert would adapt the practice of his Christian faith upon a potential return to his home country should be considered.

(3) A is a 45-year-old Iranian national who arrived in Norway in June 2011, and applied for asylum on the basis of fear of persecution by Iranian authorities after participating in a demonstration in Tehran. His asylum application was rejected in September 2011. The Directorate of Immigration (UDI) concluded that A did not hold a prominent position during the demonstration and found his claim of being targeted by the authorities not to be credible. The rejection was appealed but upheld by UNE in 2012.

(4) Between the UDI's decision and UNE's appeal decision, A was baptised. He attended an introductory course to the Christian faith (Alpha course) and regularly attended church services. Since his conversion to Christianity had not been considered in the appeal decision, UNE reconsidered the case. However, this did not change the outcome. A petitioned for a reversal of the decision and attached what turned out to be a forged Iranian court summons. In 2014, UNE upheld the rejection of the asylum application.

(5) A brought the case before the courts, but the action was unsuccessful. In the Oslo District Court's judgment of 26 February 2015, it was assumed that A did not risk persecution for his participation in the demonstration or for having converted to Christianity. The District Court based its decision on the fact that since A

> «...is not engaging in active preaching towards others in this country, and does not have a leading role in the Christian community, there is no basis to conclude that he is likely to engage in Christian preaching towards Muslims, or obtain a leading role in a Christian community, if he returns to Iran.»

(6) The judgment was not appealed.

(7) In 2017, the Norwegian Organisation for Asylum Seekers (NOAS) became involved in A's asylum case, and a new application was submitted for reversal of the asylum decision. In the application, it was stated that A was an actively practising, leading and missionary Christian. UNE did not find it at all likely that A was responsible for a missionary activity as described. The decision was therefore not reversed.

(8) A submitted another application in 2019. At that time, several circumstances were disclosed that would justify that he was a practising Christian. This request for reversal was also unsuccessful. A further request for reversal was filed in 2020. This was justified by the fact that he was actively preaching on social media. The application was denied.

(9) In December 2021, a new application for reversal was submitted. New information was provided about conditions in Iran, which should substantiate that A would be very vulnerable if he returned to the country. In UNE's decision on 22 June 2022, the rejection of asylum was upheld with dissent. The majority was of the opinion that A would not exercise his faith in such a way that he would risk

persecution in Iran, nor were there any other circumstances indicating a need for protection. The minority found that A would engage in outreach and missionary activities upon his return to Iran, and that he would therefore be in danger of being persecuted by the authorities.

(10) A then brought an action claiming that the decision was invalid.

(11) On 24 March 2023, Oslo District Court delivered its judgment with the following conclusion:

«1. The District Court rules in favour of the State represented by the Immigration Appeals Board.

2. A is ordered to pay the costs of the State represented by Immigration Appeals Board in the amount of NOK 112,800. The amount is due for payment 14 days of the date of this judgment.»

(12) The District Court found that upon his return to Iran, A would practise his Christian faith as an ordinary member of a so-called home church, so that there was no well-founded fear of persecution. Nor were there any other indications of such a danger.

(13) A appealed to the Borgarting Court of Appeal, which on 4 March 2024 ruled as follows:

«1. The appeal is dismissed.

2. In costs in the Court of Appeal, A is ordered to pay NOK 120,000 to the State represented by the Immigration Appeals Board within two weeks of the service of the judgment.»

(14) The judgment was handed down with dissent. The majority of the Court of Appeal found that there was no well-founded fear of persecution based on how A would practice his Christian faith after returning to Iran. Nor did the majority find that other circumstances entailed a risk of persecution upon return to Iran. The minority believed that there was a real risk of persecution. This was because A could be perceived as having a prominent role, as he had explained that he wanted to practice the faith in Iran.

(15) A has appealed to the Supreme Court. The appeal concerns the Court of Appeal's application of the law and relates to his conversion.

(16) NOAS acts as intervener in support of A, see section 15-7 subsection 1 (b) of the Dispute Act.

(17) The Bishops' Conference of the Church of Norway has submitted a written submission to shed light on the public interest, see section 15-8 of the Dispute Act.

The parties' contentions

(18) The appellant – A – contends:

(19) A has a right to asylum because he has a well-founded fear of persecution after converting to Christianity, see section 28 subsection 1 (a) of the Immigration Act, interpreted in the light of Article 1 A of the Refugee Convention.

(20) The Court of Appeal has committed an error of law in not considering the reason why A will exercise his faith discreetly upon return to his home country. In the event of a risk of persecution on the basis of sexual orientation, such a causal assessment must be conducted, see Supreme Court ruling Rt-2012-494. The unfair differential treatment that has arisen in Norwegian administrative and legal practice

with regard to persecution on the basis of religion and cases of persecution on the basis of sexual orientation should not be continued.

(21) The wording, purpose and context of the Refugee Convention mean – together with other state practice and case law from the European Court of Justice – that emphasis must be placed on the reason why the relevant person wants to hide his faith, i.e. that a so-called causal method must be used.

(22) The case law of the European Court of Human Rights (ECHR) also suggests a different approach than the one currently practised by the immigration authorities, and that regard must be had to why an asylum seeker will act discreetly.

(23) If the causal method is not used, the assessment must be made in line with the approach of the European Court of Justice. According to this approach, the asylum seeker's opportunity for discretion should not be taken into account in the future-oriented assessment.

(24) In the alternative, it is argued that the Court of Appeal has imposed a duty of discretion on A, which is not possible. Again, in the alternative, it is argued that there is a lack of correspondence between the premises of the judgment and the conclusion, which provides grounds for setting aside the judgment.

(25) A asks the Supreme Court to rule as follows:

«1. The Immigration Appeals Board's decision of 22 June 2022 is declared invalid.

2. In the alternative: The Court of Appeal's judgment of 4 March 2024 is set aside.

3. In both cases: A is awarded legal costs before the District Court, the Court of Appeal and the Supreme Court.»

(26) The intervener – the Norwegian Organisation for Asylum Seekers (NOAS) – has essentially agreed with the submissions made by A. NOAS asks the Supreme Court to rule as follows:

«The Norwegian Organisation for Asylum Seekers is awarded legal costs before the Supreme Court.»

(27) The respondent – the State represented by the Immigration Appeals Board – contends:

(28) The Court of Appeal's judgment is correct. Upon returning to the home country, only the presence of a genuine risk of persecution shall be assessed.

(29) There is no basis for applying the approach in Rt-2012-494 in this case. Neither the Immigration Act, the preparatory works nor international law obligations indicate this. In the State's view, the approach in the 2012 decision is hardly correct, and it was therefore shortly thereafter instructed that the causal method should only be used in cases concerning sexual orientation. Another solution would potentially significantly expand the right to asylum.

(30) There is no uniform practice from other states or decisions from the European Court of Justice that can lead to a different result.

(31) The state agrees that an asylum seeker cannot be imposed a duty of discretion. However, the Court of Appeal has not imposed such a duty on A, but descriptively described how he will exercise his faith upon return to Iran. There are no inconsistencies in the grounds of the judgment that provide a basis for setting aside the judgment.

(32) The State represented by the Immigration Appeals Board asks the Supreme Court to rule as follows:

«The appeal is dismissed.»

My opinion

Introduction

(33) The case concerns the interpretation of section 28 subsection 1 (a) of the Immigration Act in the light of Article 1 A of the Refugee Convention. It is stated by A that if the reason is fear of persecution, he is entitled to asylum.

(34) Such a distinction – which I will refer to in the future as the causal method – was used as a basis in Supreme Court ruling Rt-2012-494, paragraph 57, which concerned protection on the basis of sexual orientation. So far, the method has not been used for other grounds for protection, and it was not an issue during the hearing of this case in the Court of Appeal.

The situation for Christian converts in Iran

(35) Before I go into more detail about the legal issues, I will briefly present the facts related to the practice of Christianity in Iran.

(36) It appears from the Court of Appeal's judgment that the number of Christian converts in Iran is uncertain, and that estimates vary from 300,000 to 1,000,000. There is severe punishment for converting from Islam to Christianity, but Christian converts are rarely persecuted for the conversion itself. However, the authorities are concerned with suppressing the active spread of Christianity, as it may contribute to undermining the Iranian system of government. Evangelists, leaders and organisers of so-called home churches may therefore be subjected to persecution. The number of arrests and convictions is underreported, but the official figures indicate that proselytising or being an openly active Christian in Iran involves a significant risk. Non-leading members run a lower risk and will normally be released after a short time in the event of arrest. They may nonetheless face strong social reactions and be forced to sign declarations that they refrain from further Christian activity.

(37) It appears from the Court of Appeal's report that there is professional disagreement as to whether a sharp distinction can be drawn between leaders and organisers on the one hand, and ordinary members on the other. This is also discussed in the submission to the Supreme Court from the Bishops' Conference of the Church of Norway. Since the appeal is limited to the application of the law and both parties agree that the case should be decided based on the facts found by the Court of Appeal, it is unnecessary for me to elaborate further on this.

(38) I also note that the Bishops' Conference of the Church of Norway has pointed out that such meetings that the lower instances and the parties refer to as «home churches» are often called «house congregations», while it would be more appropriate to refer to them as «illegal congregations». I agree. The term «discreet», as used by the Court of Appeal and the parties, is also not entirely appropriate in this case, as it actually involves hiding one's faith. However, in the judgment, I will use the same terms as those used by the parties.

A's situation in particular

(39) The Court of Appeal found that A on several occasions has given false statements, and also presented a forged document to obtain protection in Norway. He has also altered and elaborated his statement as his applications and requests for reversal have been rejected. As a result, the majority of the Court of Appeal, in line with case law, found that this weakened his credibility. His statement regarding how he would act in Iran – in accordance with the strict standard of proof associated with such statements – was not taken as «fairly likely». The majority, therefore, made an overall forward-looking assessment to determine what was sufficiently substantiated, and stated:

> «Based on the extent of A's Christian activity in Norway and the nature thereof, the majority assumes that A will have a personal need for a Christian community where he can share and discuss his faith with others. This may typically take place in a home church environment, as is the conditions for Christian religious practice in the country. It is therefore likely that he will try to contact a home church or initiate one. However, whether he will succeed is uncertain, but sufficiently likely to be assumed.
>
> Discussing his religious faith with others is also important to him. On the other hand, there is no evidence that A was engaged in open proselytising in Iran with the risk it would expose him to. ...»

(40) The majority emphasised that A was a cautious person who avoided being named in the press, and who until recently had not had a public profile on social media. His current public profile does not display his real name. The majority further assumed that «he would seek to exercise his faith in a way that does not challenge the authorities, and that he knows well how this can be done», so that he would «strive not to challenge the conditions for practicing his faith to which he constantly feels subjected».

(41) Overall, this meant that the Court of Appeal did not find that there was objectively a well-founded fear of persecution upon return to Iran.

(42) I will now turn to the legal issues raised in the case.

The law

(43) As a starting point, the State has considerable freedom to regulate immigration policy, but it is bound by the international conventions to which Norway has acceded, such as the Refugee Convention. The Refugee Convention «in itself does not entitle individuals to refugee status, but section 28 subsection 1 (a) of the Immigration Act provides the right to recognition as a refugee if the relevant individual meets the requirements of the Convention», see HR-2022-925-A, paragraph 50 with further references. The provision incorporates Article 1 A of the Refugee Convention and «shall be applied in accordance with international rules by which Norway is bound when these are intended to strengthen the position of the individual», see section 3 of the Immigration Act. In interpreting the Convention, the principles of the Vienna Convention shall be applied as customary international law, see for instance HR-2023-491-P paragraph 100. I refer to the thorough account of the principles of the Vienna Convention given by the Supreme Court in this ruling.

(44) As opposed to what follows from Article 9 of the European Convention on Human Rights (ECHR), neither the Refugee Convention nor section 28 of the Immigration Act aim to provide universal protection of the individual's freedom of thought, conscience or religion. I will content myself with referencing the statement in Proposition to the Odelsting no. 75 (2006-2007) page 84, that a violation of religious freedom in the form of restrictions on the right to engage in proselytising in the country of origin does not automatically confer a right to asylum.

Sections 28 and 29 of the Immigration Act

(45) Section 28 subsection 1 (a) of the Immigration Act reads:

> «A foreign national who is in the realm or at the Norwegian border shall, upon application, be recognised as a refugee if the foreign national
>
> a. has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin; see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or
>
> b. without falling within the scope of (a) nevertheless faces a real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment upon return to the country of origin.
>
> A foreign national who is recognised as a refugee under the first paragraph is entitled to a residence permit (asylum).»

(46) According to subsection 4 of the provision, asylum may be granted where the need for protection has arisen after the applicant left the country of origin and is a result of the applicant's own acts, as is true in the case at hand.

(47) According to section 28 subsection 1 (a), a person who has «a well-founded fear of being persecuted for reasons of ... religion», is recognised as a refugee, with the right to asylum. The assessment raises issues related to both evidence and risk, see Supreme Court ruling HR-2022-925-A, paragraph 53 et seq. First, it must be determined whether there is a realistic fear, i.e. whether the relevant individual has good reason to feel fear. This necessitates an assessment of the facts regarding the situation in the home country and how the applicant will act. In this forward-looking assessment, previous behaviour may be significant. The next question is the extent of the risk of persecution when the findings are applied, see HR-2022-925-A, paragraph 54. Regarding the risk assessment, the same paragraph states that it is key

> «whether based on an *objective* assessment there is a sufficient risk that the stated risk will in fact materialise in abuse upon return'. A remote possibility of persecution is not sufficient. The right to protection must be reserved for applicants with genuine reason to fear persecution, see Norwegian Official Report 2004: 20 on page 118.»

(48) What constitutes persecution is discussed in more detail in section 29 of the Immigration Act. It is clear from subsection 1 (a) that persecution are acts involving a violation of fundamental human rights, in particular rights that cannot be derogated from under Article 15 (2) of the ECHR, i.e. Article 2 on the right to life, Article 3 on the prohibition of torture, Article 4 with regard to the prohibition of slavery and Article 7 on the requirement of a legal basis in criminal cases. Furthermore, persecution under subsection 1 (b) includes complex violations that, collectively, are so serious that they affect an individual in a manner comparable to the situation described in subsection 1 (a).

(49) Religious practice in itself is not discussed, but if the practice leads to such serious violations as are covered by section 29, it may give grounds for asylum. There is no doubt that there are Christian converts in Iran who have been subjected to acts constituting persecution. Since the disagreement in the case at hand is not based on the definition of persecution, I will not elaborate further on this.

(50) Overall, the wording of the Act and the preparatory works indicate that a broad assessment must be made of whether there is a well-founded fear of persecution. However, the wording of the Act does not mandate the use of a causal method in cases where it is likely that a person will not practice religion in a manner that poses a real risk of persecution. The issue is not addressed in the preparatory

works. Nor can I see that such a requirement necessarily has to follow from the purpose of the provision – to ensure protection for individuals who are at real risk of persecution.

(51) Any causal method must therefore be based on other sources of law, such as case law or convention obligations.

Case law

(52) There are a number of rulings from the Supreme Court and other bodies that deal with the interpretation of the Immigration Act and associated convention obligations. None of these addresses any causal method, except for Rt-2012-494, which has been central in the parties' submissions.

(53) The case concerned asylum for a homosexual Iraqi national and the significance of the possibility for homosexuals to avoid abuse by conforming to the prevailing religious and cultural norms in the country of return.

(54) In paragraph 57, the Supreme Court stated that to determine whether asylum should be granted, regard must be had to whether the grounds for protection are credible, whether the applicant's sexual orientation will expose him to persecution if he openly lives out his identity, and how the applicant will behave after any return to his or her home country. If the applicant wishes to live openly as a homosexual, there is a well-founded fear of persecution. If the applicant wishes to hide his sexual orientation, and thus avoid persecution, the *cause* for this must be identified. If the cause is fear of persecution, it will be sufficient for the asylum conditions to be met. If the cause is various forms of social pressure, the asylum application must be rejected, unless it involves social sanctions of such a nature that they in themselves constitute persecution.

(55) The Supreme Court thus believed that if an applicant wishes to hide his sexual orientation upon a return to his home country, and *the fear of persecution is the cause* of the applicant's choice to hide his sexual identity, the requirement for well-founded fear of persecution is met. The method thus focuses on the reason why the asylum seeker will keep his sexual orientation hidden from the authorities upon return to his home country, and not on what he or she will in fact be exposed to.

(56) Three months after the Supreme Court handed down its judgment, the Ministry of Justice and Public Security issued an instruction, GI-2012-7, on the interpretation of section 28 subsection 1 (a) of the Immigration Act when it comes to «persecution on the basis of sexual orientation and gender identity». Here it is stated that the method described in Rt-2012-494 paragraph 57, «represents a distinctive approach in Norwegian asylum law, and that the topic is being developed in international law. It is therefore unclear what impact the introduction of this method may have on the right to asylum as a whole». The Ministry expressed that the method should not be applied beyond its legal basis. The approach was therefore to be limited to asylum seekers then referred to as «LGBTI applicants».

(57) A contends that such a distinction between various asylum seekers is unfounded, at least when it comes to religion as a basis for protection, since religious conviction is so fundamental for a human being. The State, in turn, contends that there is no basis for applying the causal method to other grounds for protection.

(58) In my view, Rt-2012-494 does not clarify whether the causal method should be used where the basis for protection is other than sexual orientation. In its reasoning, the Supreme Court took as its starting point the wording, context and purpose of the Refugee Convention, before proceeding to assess how the UK Supreme Court had interpreted the Convention, see paragraph 43. It follows from this section that if the UK judgment, which was based on a causal method, were to be given weight, it presupposed

broad acceptance in other Contracting States or support in other sources, and that the solution was otherwise well founded. The Supreme Court found that this was the case.

(59) At the same time, the Court made a certain reservation in paragraph 56, stating that the sources of law «overall» support addressing the issue in a manner consistent with the UK judgment. In my view, the reservation calls for a new review of the sources when assessing whether the causal method should also be used for other grounds for protection.

The Refugee Convention

(60) Before I elaborate on the sources of law forming the basis for the solution in Rt-2012-494, I note that the facts in that case were somewhat different from those in our case. The risk of persecution for homosexuals in Iraq was greater than the risk for Christian converts in Iran. There was no room for living out homosexual orientation in Iraq without risking persecution, while there is some room for living out the Christian faith in Iran without risking persecution, see the Court of Appeal's judgment. By comparison, it was stated from the bar that Christian converts from Afghanistan are granted protection because they risk persecution regardless of the extent to which they practice their religion.

(61) With regard to *the wording of Article 1 A of the Refugee Convention*, it follows from HR-2022-925-A paragraph 51 that it does not extend beyond section 28 subsection 1 (a) of the Immigration Act. The expression «well-founded fear of being persecuted» indicates that the fear of being persecuted must be based on reality and on an objective assessment, and it must be assessed whether there is a real risk that the foreign national will be persecuted upon return to his or her home country. The formulation excludes fear of something that will not happen, or that is hypothetical. In the context of the persecution condition, the wording also excludes fear of anything other than persecution.

(62) The purpose and context suggest the same. Rt-2012-494, paragraph 36, describes a situation where someone is at real risk of persecution due to circumstances about his person that are so fundamental that he cannot be expected to abandon them. He is therefore entitled to protection. A person cannot be denied protection on the grounds that such basic circumstances can be abandoned, see paragraph 37 of the judgment. The State also agrees with this.

(63) In cases where a person chooses to be discreet in his religious practice upon returning to his home country, the condition in Article 1 A does not appear to be met. It is also difficult to deduce from the wording that a causal assessment must be conducted. At the same time, nothing in the wording suggests that the interpretation of this should be different based on the grounds for protection, which may point in the direction of one causal method for other grounds for protection as well.

(64) However, as I see it, the causal method means that no decision is made as to whether the fear of persecution is *substantively* well-founded in the individual case. Instead, legal effects are derived from the *cause* of the asylum seeker's choice to behave in a certain way. Then, the risk of persecution is no longer the central issue to consider, but the reason why the foreign national wants to restrain his behaviour upon return.

(65) In my view, such an interpretation is not entirely compatible with what the wording, context and purpose of the Refugee Convention express.

The case law of international courts and the practice of other states

(66) The practice of other states generally has limited weight against the wording, context and purpose of the Refugee Convention, see HR-2021-203-A paragraph 55, but may be of some interest, particularly if the practice is uniform.

(67) The UK Supreme Court judgment, largely forming the basis for the Supreme Court in Rt-2012-494, has subsequently been criticised. Additionally, national and international developments of the law have diverged from the path relied on in 2012, see paragraph 51 of the judgment. In 2012, the National Directorate of Immigration (UDI) had proposed a change in practice, in line with the judgment from the UK Supreme Court, see paragraphs 52 and 53. The Supreme Court also found that the method was followed by UNE, which meant that it had some support in administrative practice. This does not apply to other grounds for protection, where there is long-standing practice, based on circulars and instructions in the area, not to use this method. The framework of the case is therefore different.

(68) Extensive information has been presented on updated state practice. In short, as this shows that there is no consensus in this area, there is no reason to address the practice in different countries around the world.

(69) The EU has developed a common asylum policy based on the Refugee Convention, see the Preamble to Council Directive 2004/83/EC. It is therefore of interest whether there is relevant case law from the Court of Justice of the European Union (CJEU), which the Member States are obliged to follow.

(70) The CJEU's judgment of 5 September 2012 in Joined Cases C-71/11 and C-99/11 *Germany v. Y and Z* concerned the issue of asylum for two persons belonging to a religious minority in Pakistan who had practised their religion openly in their home country, at risk of punishment and attacks by extremist groups. One of the questions was whether it is reasonable to require a person seeking asylum to avoid the risk of persecution in their home country. In paragraph 79, the CJEU held that «where it is established» that the applicant upon return «will follow a religious practice» that exposes the applicant to the risk of persecution, he shall be granted refugee status regardless of whether he «could avoid that risk by abstaining from certain religious practices».

(71) The CJEU's judgment of 7 November 2013 in Joined Cases C-199/12 to C-201/12 *X and others* related to sexual orientation as a ground for protection. A question was whether it could be required that an asylum seeker upon return to his home country «should continue to avoid the risk of persecution by concealing his homosexuality», see paragraph 64. The CJEU stated in paragraph 75 that «where it is established» that a person's sexual orientation «would expose him to a genuine risk of persecution», it should not be taken into account that the asylum seeker «could avoid the risk by exercising greater restraint».

(72) As I understand the rulings, they imply that the authorities, based on an objective and individual assessment of the applicant's previous pattern of conduct, must assess the likelihood that the applicant risks persecution upon return. If it is «established», i.e. sufficiently substantiated, that the applicant will act openly and thus risk persecution in his home country, he cannot be imposed a duty of discretion to avoid this. However, the rulings do not imply that asylum must be granted in cases where the applicant will act in a way that does not expose him to a risk of persecution.

(73) In my view, this means that the rulings do not shed light on the issue in the case at hand. The interpretation I rely on also explains why the EU countries still have different approaches to whether the cause for discretion is important.

(74) A contends that the new Regulation (EU) 2024/1347 of the European Parliament and of the Council, which applies from 1 July 2026, may prescribe a causal method, see in particular Article 10 (3). As I understand the Regulation, it is intended on this point as a codification of current law, including the above-mentioned rulings from the CJEU, see for instance *Germany v Y and Z* paragraphs 79 and 80.

(75) Also, case law from the European Court of Human Rights (ECtHR) does not indicate that the reasons for an asylum seeker's discretion are relevant, see the ECHR's judgment of 19 December 2017 *A v. Switzerland* paragraphs 43 and 44. The case concerned an Iranian convert and supports the interpretation of the CJEU's ruling in *Germany v Y and Z* that I have presented earlier.

UNHCR Handbook and Recommendations

(76) According to case law, both the handbook, which has been prepared by the United Nations High Commissioner for Refugees (UNHCR) to assist in the interpretation of the Refugee Convention, and guidelines from the UNHCR must weigh heavily in the interpretation of the Refugee Convention. The recommendations are not binding on the Norwegian authorities, and it therefore occurs that Norwegian practice is not fully consistent with UNHCR's recommendations on protection. One of the reasons for this is that «the Norwegian immigration authorities make both an individual assessment of the concrete asylum case and a general assessment of the conditions in the asylum seeker's home country, while the UNHCR normally only makes a general statement about the conditions in the individual countries», see Proposition to the Odelsting no. 75 (2006-2007) page 73.

(77) In this case, this is not significant. The causal method is not discussed in the handbook, and as I understand the relevant recommendations, the question is not expressly commented on there either. However, it is clear on a general basis that no one should be forced to hide their faith, which is consistent with Norwegian practice in this area.

(78) If the causal method is to be applied to several, or possibly all, grounds for protection, this will entail an extension of the right to asylum under Norwegian law. As the State contends, this will result in applicants who have not previously faced a risk of persecution, but who can sufficiently demonstrate that their natural fear of serious reactions is an important reason for avoiding such risk, being entitled to protection. Whether such an extension should be applied to religious practice, or possibly also to other grounds for protection, must be for the legislature to decide.

(79) I add that the circumstances of a particular case may imply that the cumulative effect of prohibitions and the fear of «bringing shame upon family, breaking friendship or family ties ... social pressure, condemnation, etc.» has such an effect on the applicant that, in aggregate, it can be characterised as persecution, see the above-mentioned instructions from the Ministry of Justice and Public Security, GI-2012-7. The same follows from the UNHCR Handbook, paragraph 53. This means that persons who are not directly at risk of persecution in the traditional sense can be granted protection following an individual assessment of the how situation in their home country affects them. As this case stands, it is not a relevant issue.

Summary

(80) In summary, I believe it would be reasonable to use the same approach when assessing the various grounds for protection. However, I cannot see any basis in the sources of law for extending the causal method that, until now, has only been applied in cases where the basis for protection is sexual orientation to also include other grounds for protection.

(81) This means that when applying for protection on grounds other than sexual orientation, an individual and concrete assessment must be conducted of how the foreign national will behave upon return. If the applicant, regardless of the reason, is not going to live in such a way that it triggers a risk of persecution, he is not entitled to protection under the current rules. In cases where the applicant will suppress a fundamental part of his or her identity or way of life in a manner that is sufficiently serious to be characterised as persecution, protection must be granted.

(82) In the case at hand, this means that the Court of Appeal's application of the law is correct.

The question of whether A is unlawfully subjected to a duty of discretion

(83) The parties agree that A cannot be imposed a duty of discretion. I share this view and refer to what I have previously said in this regard.

(84) A contends that the Court of Appeal has, in reality, imposed a duty on him to act discreetly. I cannot see this being the case. Although it is not entirely uncommon for people in despair to give a false statement in the hope of obtaining protection, A's general credibility, as mentioned, was weakened after numerous changes and adaptations to his statement. Therefore, his statement regarding how he would act did not seem plausible at all, leading the Court of Appeal to conduct an overall forward-looking assessment of this. Such a prognosis of his actual behaviour cannot be equated with the imposition of a duty of discretion.

Lack of correspondence between the premises and conclusion

(85) A further contends that there is no correspondence between the premises and the conclusion of the Court of Appeal, so that the judgment must be set aside under section 30-3 subsection 1 the Dispute Act, see section 29-21 subsection 2 see section 29-23 subsection 4.

(86) I agree that there are formulations in the judgment's reasoning that may create uncertainty as to what the Court of Appeal meant, such as when mentioning A's possibility of initiating a home church, while assuming that he will not take on any leading role.

(87) However, when reading the Court of Appeal's reasoning in context, there is in my opinion no doubt that the Court of Appeal has not found it sufficiently substantiated that A will appear in a leading or organisational role, and that he will therefore not be exposed to persecution.

Costs and conclusion

(88) The State has not asked to be awarded costs in the Supreme Court, and it will therefore not be awarded. I find no basis for changing the statements of costs in the District Court and the Court of Appeal, see section 20-9 of the Dispute Act see section 20-2.

(89) The appeal must therefore be dismissed.

(90) I vote for this

JUDGMENT:

The appeal is dismissed.