A WHITE PAPER

The New Gnomes of Zurich:

The Jehovah's Witnesses, the Spiess Case, and Its Manipulation by Anti-Cult and Russian Propaganda

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1. The Anti-Cult Ideology and the New Gnomes of Zurich

On July 9, 2020, the anti-cult associations JW Opfer Hilfe (Aid to the Victims of Jehovah's Witnesses) and Fachstelle infoSekta (Center for Information on Cults) issued a press release, announcing that a 2019 decision of the District Court of Zurich had become final, which acquitted Dr. Regina Ruth Spiess, a former employee of infoSekta and current representative of JW Opfer Hilfe, from criminal charges of defamation brought by the Swiss Jehovah's Witnesses, (JW Opfer Hilfe and Fachstelle infoSekta 2020).

On July 17, 2020—the two events are not related but, as we will see, they came to interact with each other—the USCIRF (United States Commission on International Religious Freedom) published a document on the anti-cult ideology (USCIRF 2020). The USCIRF is a bipartisan commission of the U.S. government, whose members are appointed by the President and designated by the congressional leaders of both political parties, Democrat and Republican. The document focuses on anti-cultism in Russia, but goes beyond it, to identify the anti-cult ideology in general as one of the most serious threats to religious freedom internationally. Parenthetically, we would emphasize that the German word "Sekte" should not be translated into English as "sect" (a neutral word, without derogatory implications in the English language) but as "cult." Similarly, "anti-sekten" should be translated as "anti-cult," and vice versa.

On July 23, 2020, the spokeswoman of the Russian Foreign Ministry, Maria Zakharova, answered during her periodic briefing the USCIRF Report, which was highly critical of Russia and, in particular, of the Russian's decision to ban the Jehovah's Witnesses as an "extremist organization." She confused two different documents—the annual yearly report of the USCIRF and the USCIRF document on anti-cultism of July 17—but she intended in fact to answer the latter.

Zakharova stated that, "Regarding the Jehovah's Witnesses—perhaps the United States is simply unaware of this, so I would like to enlighten our partners about a court decision recently enforced in Switzerland, one originally issued in July 2019. The court recognized

some of the methods used by the local group of Jehovah's Witnesses as violating fundamental human rights. Don't you know this? I am referring to the practice where persons who choose to leave the sect or who fail to follow its instructions, are boycotted by their families and friends, children are boycotted, and psychological and social pressure is put on dissidents using various manipulative methods to influence consciousness, punishments, as well as unpunished cases of sexual violence. The sect's members are actually denied the right to freedom of opinion and conscience, and this is what warranted the attention of Swiss justice" (Zakharova 2020).

There are two problems with Zakharova's statement. First, her reconstruction of the Swiss case is inaccurate. Second, the Swiss decision is based on incorrect information about the Jehovah's Witnesses. It is important to keep these two problems separated. Even if one would take the Zurich decision at face value, how Zakharova's (mis)represented it would still be part of propaganda and fake news. We will, thus, discuss separately the Swiss case and its misrepresentation by Russian propaganda. It is, however, necessary to start with a look at the context.

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The USCIRF document discusses the activities of Russian activist Alexander Dvorkin, his relationships with a transnational anti-cult organization known as FECRIS (Fédération Européenne des Centres de Recherche et d'Information sur le Sectarisme, European Federation of Research and Information Centers on Sectarianism), of which Dvorkin was elected as vice-president, and the European anti-cult subculture in general. Dvorkin, the report says, absorbed when he was living in the United States, between 1977 and 1992, the ideas of an "anti-cult movement informed by pseudoscientific concepts like 'brainwashing' and 'mind control.'" The anti-cult movement, according to the USCIRF, "described new religious movements as 'fanatic' or 'bizarre,' and portrayed individual members as helpless victims without their own

free will or ability to save themselves." As the USCIRF notes, while "claiming to be experts in academic fields like religious studies, psychology, and sociology, [the anti-cultists] are rarely qualified in any of them and often rely on discredited theories and methodologies to promote their ideological agenda."

The report concludes by asking the U.S. government to "counter propaganda against new religious movements by the European Federation of Research and Information Centers on Sectarianism (FECRIS) at the annual OSCE Human Dimensions Conference with information about the ongoing involvement of individuals and entities within the anti-cult movement in the suppression of religious freedom."

Another interesting remark in the USCIRF Report is that, after it was internationally criticized for its suppression of the Jehovah's Witnesses in 2017, Russia is now actively spreading "disinformation" in Europe about this religious organization, *inter alia* through FECRIS and the network of European anti-cult movements.

The USCIRF Report confirms what scholars of new religious movements have observed throughout the years. Although supported by a handful of academics, the FECRIS-style European anti-cult movement (which is different from other somewhat more "moderate" American branches of the so-called cult awareness community) is at odds with the mainline academic study of new religious movements, and relies on the discredited theory of brainwashing, which it euphemistically prefers to call "mind control," "mental manipulation," or "psychological abuse."

The original American anti-cult movement did not target the Jehovah's Witnesses, nor did it accuse them of brainwashing. Accusations against the Jehovah's Witnesses in the U.S. came primarily from Christian critics, who accused them of "heresy." It was only when the American anti-cult ideology was exported to Europe, through Dvorkin and others, that the brainwashing model, used in the U.S. against other groups, was extended to the Jehovah's Witnesses (and later re-exported back to the U.S., where some secular anti-cultists included the Witnesses among their targets). Most anti-cult publications rely heavily on press clippings and testimonies by disgruntled ex-members, and rarely if ever are based on academic studies or fieldwork among the religious movements they criticize.

More precisely, academic scholars of new religious movements distinguish between a secular "anti-cult" movement, claiming that "cults" cause psychological and other damage to their members, and a sectarian "counter-cult" movement, promoted by religionists who accuse "cults" of "heresy" and "sheep-stealing." One of the authors of this White Paper first introduced the distinction in 1993—originally, in an article published in a "counter-cult" magazine (Introvigne 1993), later expanded as a chapter in a scholarly book (Introvigne 1995)—and it is now widely adopted. The priorities of counter-cultists and anti-cultists were, and remain, different. Counter-cultists, most of them Christian, want to prevent "heretical" groups from converting members of their churches or religions. While the decline of the mainline Christian churches has multiple causes, they blame it largely on the proselytization efforts by "cults," and believe their growth should be slowed down by creating effective obstacles. Anti-cultists are not interested in protecting the interests of mainline religion, and are rather disturbed by the growth of what they see as irrational, anti-scientific beliefs and behaviors, which run counter to their secular worldview and their idea that religion and spirituality should fatally decline as modernity and science advance.

In many countries, secular anti-cultists and Christian counter-cultists cooperated, but they never merged in one unified movement, for the main reason that Christians realized that anti-cultists were also criticizing groups that were part of their churches and they regarded as legitimate. Catholic bishops and others expressed this position in official documents (see e.g. Casale 1993).

A peculiar situation, however, developed in German-speaking countries—Germany, Austria, and the German-speaking cantons of Switzerland. Here, both the Catholic and the mainline Protestant churches appointed local "cult commissioners" charged with promoting an apologetic discourse critical of "cults," and to make proselytization, by those "cults" that were growing at the expenses of the larger Christian churches, more difficult. Perhaps because of the personal proclivities of Friedrich-Wilhelm Haack (1935–1991), the German Lutheran pastor who became the most famous of the "cult commissioners," most of them came to believe that the only way to put a halt to what they saw as an "invasion" of the "cults" in their countries was to secure the cooperation of the state authorities, which required articulating their discourse in secular terms (Schulte 2012). While not abandoning the traditional category of "heresy," they developed a stricter cooperation with secular anti-cultists than counter-cultists were willing or able to promote in other countries.

Zurich, Switzerland became a center of these activities, largely thanks to the activities there of Hugo Stamm (b. 1949), an anti-cult journalist with the local daily *Tages-Anzeiger*, and the author of books spreading the anti-cult ideology. Zurich also became a model of cooperation between Catholic and Protestant counter-cultists and secular anti-cultists. The origins of infoSekta date back to 1986, although it was incorporated in 1990. Since the beginning, it was a textbook example of cooperation between secular anti-cultists, including Hugo Stamm, and Catholic and Protestant counter-cultists, to promote a classical version of the anti-cult ideology (Sträuli 1994). It is also an example of how (unlike their American counterparts) European anti-cultists try to mobilize the "secular arm" of the state, as infoSekta was financed both by the local authorities in Zurich and the Evangelical Reformed Church and the Central Commission of the Catholic Church of the Canton of Zurich, although the latter's help seems to have had its ups and downs (Sträuli 1994, 2–3).

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Although infoSekta is not listed among the members of FECRIS, its website links to FECRIS', and cooperation appears to be quite regular. While infoSekta's board members have better academic credentials than those of some FECRIS-affiliated movements, and the Swiss group tries to present itself as somewhat less "militant" than FECRIS, its ideology appears to be indistinguishable from the one promoted by the controversial European federation.

In 1964, British politician Lord George Alfred George-Brown (1914–1985) coined the term "gnomes of Zurich," which became internationally famous, to designate certain bankers in

that Swiss city who were speculating against the British pound. The title of our White Paper is a play-on-words on that famous expression. Indeed, another camarilla seems to have been at work in Zurich for decades. These “new gnomes of Zurich” include religionists and secular anti-cultists whose open and confidential activities are aimed at combating the growth of groups they label as “cults” and, for different reasons, try to eradicate. The “new gnomes of Zurich” act as “superspreaders” of the anti-cult ideology whose features and dangers were described in the USCIRF document.

2. Judge Lehner and the Spiess Case: A Biased Decision

The Spiess case started on July 27, 2015, when Hugo Stamm published on the electronic edition of the *Tages-Anzeiger* yet another piece of his decade-old anti-cult crusade, in the shape of an interview with infoSekta's Dr. Regina Spiess. The article was published under the title "'Zeugen Jehovas reißen Familien auseinander'" (Jehovah's Witnesses Tear Apart Families: Stamm 2015). The Jehovah's Witnesses also believe that Spiess was the author of a press release dated July 23, 2015, published by infoSekta and the anti-Jehovah's-Witnesses website jwexit.org under the title "Sektenberatungsstelle infoSekta und Betroffeneninitiative jwexit.org: Aktion zum Gedenktag für die Opfer der Wachtturm-Gesellschaft am Samstag, den 25. Juli" (Cult Counseling Center infoSekta and Victims' Initiative jwexit.org: Action to Commemorate the Victims of the Watchtower Society on Saturday, July 25: infoSekta and jwexit.org 2015). Both articles presented standard anti-cult accusations against the Jehovah's Witnesses, expressed in standard anti-cult jargon, except that the language was even more aggressive than usual.

On October 23, 2015, the Association of the Jehovah's Witnesses in Switzerland, and the religious community of Jehovah's Witnesses in Switzerland filed a criminal complaint against Spiess for defamation. On January 19, 2016, the Zurich Public Prosecutor's Office refused to open an investigation, based on the argument that the religious community was not legally incorporated, and therefore lacked standing to act, while the Association was a legal entity but had not been directly defamed. The Jehovah's Witnesses appealed, and the Third Criminal Chamber of the High Court ruled that, while the religious community lacked standing to act, this was not true for the Association. Consequently, on May 10, 2016, the Prosecutor's Office opened an investigation. On January 12, 2017, the Prosecutor examined Spiess. On July 14, 2017, and September 27, 2018, Spiess' lawyers sent to the Prosecutor several documents aimed at proving that her statements were true or, at least, she had believed them in good faith to be true.

On November 20, 2018, the Prosecutor pressed charges against Spiess, and she was committed to trial. On July 9, 2019, the case was heard before Judge Christoph Lehner of

the Zurich District Court as sole judge. He pronounced Spiess innocent of all charges, and ordered some of her expenses reimbursed by the court, while rejecting her request that the Jehovah's Witnesses should pay, or contribute to, the costs of the case, observing that their Association "had a legitimate interest in contesting the significant accusations. It was entitled to file a complaint; there is no evidence of malicious litigation" (Bezirksgericht Zürich 2019). The Jehovah's Witnesses filed a notice of intention to appeal to obtain a written judgement but did not pursue the appeal, and the decision became final.

In this chapter, we consider certain features of the trial and the decision, raising the suspicion that they were somewhat biased. In the next chapters, we consider the more substantive aspects of the decision.

According to the lawyers for the Jehovah's Witnesses, there were several anomalies in the case. The Prosecutor, having filed charges against Spiess, did not attend the hearing of July 9, 2019. The evidence introduced by Spiess' defense included mostly material produced by anti-cult movements and their so-called experts. According to the lawyers, the judge allowed Spiess' counsel to talk for two-and-a-half hours, in contrast with the Jehovah's Witness attorneys, who spoke for only 45 minutes. Spiess' lawyers also abused the Jehovah's Witnesses without being stopped by the judge. Lastly, according to the complainants' lawyers, Judge Lehner not only announced his decision at the end of the oral hearing, he also summarized his judgement in all aspects. In other words, it was apparent that his mind was made up before the hearing was finished.

The judgment did not fully weigh or evaluate the parties' submissions and evidence. One glaring example is the lack of any reference to the religious literature of Jehovah's Witnesses, which is available on jw.org, including the May 2019 issue of *The Watchtower*. Lawyers for the complainants referred to this article in their oral pleadings, yet the judge failed to consider this evidence. Instead, Judge Lehner simply adopted and accepted the accused's arguments and evidence, while almost completely ignoring the complainants' submissions and evidence. This is further evidence of bias, and is contrary to Article 6 of the European Convention on Human Rights. According to the European Court of Human Rights in *Grădinar v. Moldova*, "the effect of Article 6 § 1 is, *inter alia*, to place a 'tribunal' under a duty to conduct a proper examination of the submissions, arguments and evidence" (European Court of Human Rights 2008). In this case, we believe Judge Lehner

failed to conduct a proper examination of the arguments and evidence submitted by the Jehovah's Witnesses.

Even more suggestive of a bias are parts of the written decision, both for what is and is not included. The statements by anti-cult "experts" filed on behalf of Spiess were accepted at face value, ignoring a large scholarly literature that has criticized the anti-cult approach as a whole. No independent literature on the Jehovah's Witnesses that does not follow the anti-cult paradigm was quoted. The decision paints a rosy picture of infoSekta as "a specialised agency for questions on cults. It is a politically and denominationally independent consumer protection organisation that informs people, provides clarification on problematic cults and organizations, and advises members and persons who leave [such groups.]" The judge added that infoSekta clearly "fulfils public functions and receives financial support from the public sector." And he stated that infoSekta and Spiess are "not seeking to speak badly of Jehovah's Witnesses, but to provide clarification on various organisations and religious associations."

This is at best a paraphrase of infoSekta's self-presentation on its website, and at worst an attempt to whitewash the most disturbing aspects of the anti-cult ideology and the organizations that promote it. Most scholars of new religious movements (and USCIRF) would not agree that groups like infoSekta serve a benevolent purpose, or simply "provide clarification" on the groups they denounce. In fact, they ignore any possible good aspects of the new religious movements they criticize, and simply accuse them of a standard list of wrongdoings. Their very jargon, using terms such as "cult" (Sekte), "manipulation," "victims," and "abuse" confirm that their purpose, just like other anti-cult organizations, is indeed to "speak badly" of the groups they target (Shupe and Bromley 1980; Kilbourne and Richardson 1986; Richardson 1993; Shupe and Darnell 2006; Palmer 2011).

This raises the question of a possible bias by Judge Christoph Lehner. We have no reason to dispute his integrity, and we do respect his distinguished career. However, Judge Lehner also serves as president of the Church Board (Kirchenpflege) of the Roman Catholic church of St Peter and Paul, know as the "mother church" of Catholicism in Zurich (Pfarrei St. Peter und Paul Zürich 2020). We do not know whether this church, directly or through the Central Commission of the Catholic Church of the Canton of Zurich or some other Catholic body, donates money that ultimately supports infoSekta. On the other hand, there is little

doubt that official Catholic institutions in Zurich have supported the anti-cult efforts, and are very much part of the "new gnomes of Zurich" scenario we have described in the previous chapter. Judge Lehner is not just an ordinary Catholic. He has an important function in the most important Catholic church in Zurich. It does not seem disrespectful to suspect that, given the tradition of hostility opposing the Catholics and the Jehovah's Witnesses in Zurich, and the Catholic involvement in the anti-cult activities of infoSekta, a Roman Catholic leader was not the best judge the Jehovah's Witnesses might have hoped to encounter in their confrontation with Spiess.

3. Defamatory Statements: (I) Ostracising Apostates

Judge Lehner identified ten clusters of potentially defamatory statements by Spiess about the Jehovah's Witnesses, and divided them into three groups. The first includes statements that are not defamatory. If a statement is not defamatory, in a criminal case of defamation the court should not determine whether it is true or false. For instance, one of the authors of this White Paper (Introvigne) was identified in an anti-cult book as having been a national leader of the Catholic Action in Italy (Piccinni and Gazzanni 2018, 235). This is false, as Introvigne had not even ever been a member of that association, but is not defamatory, as the Catholic Action is an honourable official Catholic organization that has counted among its members Italian Presidents and Prime Ministers. Had Introvigne sued the authors of the book for defamation, he would have lost, not because the statement is true (it is not) but because it is not defamatory.

In this first category, Judge Lehner included four series of comments by Spiess. The first was, "Time and again, adherents die after traffic accidents or women die after childbirth." The judge admitted that Spiess' intention was to imply that the mortality rate of Jehovah's Witnesses in case of traffic accidents or childbirth problems is higher than the national average because of their religion-based refusal of blood transfusions. Rather than investigating whether this is true or false, however, Lehner ruled the statement not defamatory, based on the rather formalistic argument that, "This statement was not made in an evaluative manner and thus formulated that reader can make up his own mind on the matter. In particular, it cannot be concluded from the phrase 'adherents die after traffic accidents' that the community is 'fanatical' or 'dangerous.'" While Lehner believed that, "The statement that people die after traffic accidents or childbirth does not lead to the conclusion that the community is responsible," we respectfully suggest that, within the context, this is precisely what Spiess wanted to imply, leading readers to the conclusion that the Jehovah's Witnesses' actions are unreasonable and extreme.

Parenthetically, we note that the European Court of Human Rights has established the right of the Jehovah's Witnesses to refuse blood transfusions for reasons of conscience:

"The ability to conduct one's life in a manner of one's own choosing includes the opportunity to pursue activities perceived to be of a physically harmful or dangerous nature for the individual concerned. In the sphere of medical assistance, even where the refusal to accept a particular treatment might lead to a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity and impinge on the rights protected under Article 8 of the [European] Convention [on Human Rights]. [...] The freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, is vital to the principles of self-determination and personal autonomy. A competent adult patient is free to decide, for instance, whether or not to undergo surgery or treatment or, by the same token, to have a blood transfusion. However, for this freedom to be meaningful, patients must have the right to make choices that accord with their own views and values, regardless of how irrational, unwise, or imprudent such choices may appear to others. Many established jurisdictions have examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life [...]. It was emphasized that free choice and self-determination were themselves fundamental constituents of life and that, absent any indication of the need to protect third parties—for example, mandatory vaccination during an epidemic, the State must abstain from interfering with the individual freedom of choice in the sphere of health care, for such interference can only lessen and not enhance the value of life" (European Court of Human Rights 2010).

The second statement the judge regarded as not defamatory is, "Young people in the community of Jehovah's Witnesses can barely develop any life prospects: often they cannot learn the profession best suited to them because higher education is deemed a waste of time ..." Again, rather than investigating the truth of the matter, Lehner argued that such a statement "could also be made about other groupings/classes, for example, 'people from poorer families cannot learn the profession that best suits them.' The fact that higher education may be viewed as a 'waste of time' is not defamatory. Many people share this opinion. In our society, honourable persons of upstanding character are not required to view higher education as the greatest asset and [they might view it] as a waste of time." Surely, there is a possible meaning of Spiess' statement that would make it not defamatory. On the other hand, the context was not a calm or scholarly discussion of Jehovah's Witnesses.

Both Stamm and Spiess are "professional opponents" of the Jehovah's Witnesses and were looking for arguments to attack them.

Lehner adopted a similar reasoning for a third cluster of statements, including "And they only have a limited knowledge of the world because worldly friends are forbidden, and they cannot have many societal experiences— ... camps during the school holidays ..." The judge observed, correctly, that "such a statement could also be made about other religious communities. That worldly friends are forbidden is not defamatory per se, whether it is true or not. Also, whether children can participate in camps during school holidays is not a matter of honour, rather, it is a pure factual assertion without any evaluative elements, which on its own cannot constitute an offence against honour." Apart from the contextual elements mentioned earlier, we can agree with the judge here.

The fourth statement regarded as non-defamatory is Spiess' claim that, "There is barely a Jehovah Witness family without a disfellowshipped family member: parents, siblings, or children with whom no contact can be had." Given the number of Jehovah's Witnesses throughout the world compared with the number of disfellowshipped members, the statement is unlikely to be true, and Spiess did not support it with any statistical data or study. Lehner, however, believes it "is a purely factual assertion without any evaluation, and the fact itself is not defamatory. Whether or not a family has disfellowshipped family members is not a matter of honour. A person is not more honourable when she comes from a family in which no one has been disfellowshipped."

In fact, the last statement is not independent from others, which the judge includes either in his second or third category. The second comprises statements that are clearly defamatory, but are at the same time, in the judge's opinion, true. The third category refers to statements for which there is no conclusive evidence that they are true, but the defendant could have reasonably believed that they are true based on sources she regarded as reliable, and was thus in good faith. The statements in the second and third category refer to two main themes, disfellowshipping and "ostracising" members, and dealing with cases of sexual abuse among the Jehovah's Witnesses. According to Lehner, Spiess' statements about sexual abuse are all part of the third category, while those on disfellowshipping that we examine in this chapter are mostly in the second category, but some are in the third.

The judge believes that these statements about disfellowshipping are true:

(1) "We are drawing attention to the practice of ostracising that violates human rights." "Ostracising is a form of bullying prescribed from on high. It violates human rights and the Constitution." "Every person has the right to freedom of thought, conscience, and religion—a right that Jehovah's Witnesses demand for themselves, but deny their members."

(2) "Saying something sweet, asking how the day was, or hugging the child—this is no longer possible. Children live in perpetual fear."

While for the following additional statements, Spiess may be regarded to having been in good faith:

(3) "infoSekta judges Jehovah's Witnesses to be a highly problematic group that seeks to manipulate its members to the point of existential identification. The regulations of the community violate the physical, mental, and social integrity of its members."

(4) "Moreover, according to Article 18, every person has the right to freedom of thought, conscience, and religion—a right that the Watch Tower Society demands for itself, but denies its members."

Statements 3 and 4 are also deemed to have been presented in good faith because of questions connected with "ostracism."

Together with the comments on sexual abuse, this is the most problematic part of the decision. We believe that there is here a confusion, which is common in the anti-cult literature but more surprising in a court decision, between three different issues: the facts about disfellowshipping and "ostracism," whether or not they are a unique feature of Jehovah's Witnesses (or, of groups labelled as "cults"), whether or not states should interfere with them.

It is factually true that Jehovah's Witnesses have precise and detailed regulations dealing with excluding from their community members guilty of certain offenses, something that they call "disfellowshipping." The detailed norms are aimed at guaranteeing that

nobody is disfellowshipped lightly or arbitrarily. It is also true that Jehovah's Witnesses suggest that current members do not associate with disfellowshipped ex-members. An exception is, however, made for members of the immediate family, as illustrated in numerous texts published by the Jehovah's Witnesses. "What of a man who is disfellowshipped but whose wife and children are still Jehovah's Witnesses? The religious ties he had with his family change, but blood ties remain" (Christian Congregation of Jehovah's Witnesses 2020). "Since [...] 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, he would not participate when the family gets together for family worship" (Christian Congregation of Jehovah's Witnesses 2008, 208). "If in a Christian's household there is a disfellowshipped relative, that one would still be part of the normal, day-to-day household dealings and activities" ("Imitate God's Mercy Today" 1991, 22).

This is not a new development. In 1974, *The Watchtower* explained that, "Since blood and marital relationships are not dissolved by a congregational disfellowshiping [sic] action, the situation within the family circle requires special consideration. A woman whose husband is disfellowshiped is not released from the Scriptural requirement to respect his husbandly headship over her; only death or Scriptural divorce from a husband results in such release. (Rom. 7:1–3; Mark 10:11, 12) A husband likewise is not released from loving his wife as 'one flesh' with him even though she should be disfellowshiped (Matt. 19:5, 6; Eph. 5:28–31)" ("Maintaining a Balanced Viewpoint Toward Disfellowshiped [sic] Ones" 1974, 470). In 1981, *The Watchtower* reiterated that, "if a relative, such as a parent, son or daughter, is disfellowshiped [sic] or has disassociated himself, blood and family ties remain," while "spiritual fellowship" ceases ("If A Relative Is Disfellowshiped [sic]" 1981, 28). In 1988, the magazine stated again that, "A man who is disfellowshipped or who disassociates himself may still live at home with his Christian wife and faithful children. Respect for God's judgments and the congregation's action will move the wife and children to recognize that by his course, he altered the spiritual bond that existed between them. Yet, since his being disfellowshipped does not end their blood ties or marriage relationship, normal family affections and dealings can continue" ("Discipline That Can Yield Peaceable Fruit" 1988, 28).

Spiess' statements about disfellowshipped members are not totally false, but they are expressed in a provocative, offensive language. Judge Lehner believes that "bullying" is a valid description for the practice of shunning the disfellowshipped ex-members, but his argument is self-contradictory. He quotes a definition of "bullying" as a set of "actions taken in a systematic manner against certain persons with the aim of excluding them from the group." But disfellowshipped members have *already been excluded* from the community. The aim of the "ostracism," thus, cannot be excluding them.

Similar comments concern the emotional description of unloved and terrorized children. In part, the judge believes that children are in a state of "fear" because they read descriptions of the consequences of sin or the end of the world. Apart from the fact that the Jehovah's Witnesses' publications intended for children normally present these themes in a delicate way adapted to their age, the implication here is that the simple exposure to the Bible is dangerous for children. As a Roman Catholic, the judge is probably familiar with the motto *Initium sapientiae timor Domini*, "the fear of God is the beginning of wisdom."

The second point is that what is defamatory, here, is to present the disfellowshipping policy of the Jehovah's Witnesses as unique to them, or to "cults" in general. Those who read Spiess' comments are induced to believe that Jehovah's Witnesses are a uniquely "bad" religion, or part of a constellation of "bad" religions identified as "cults," because their practice of disfellowshipping is cruel and unusual. Insisting on it betrays a fundamental ignorance of religious history. Measures against apostates and separation from them exist in most traditional religions.

Social scientists distinguish between "emic" and "etic" (not to be confused with "ethic") explanations of the practices of a religious group. "Emic" refers to the self-understanding of the group, which would normally argue that the practices are based on scripture, theology, or divine revelation. The "etic" point of view of the scholars does not deny the value of the "emic" explanations but, since they cannot be proved or disproved with the tools of social sciences, looks for more mundane or secular causes, which do not exclude the spiritual ones (Harris 1983; Pike 1999).

Disfellowshipping and shunning practices found among the Jehovah's Witnesses, seen from their emic point of view, are based on suggestions coming from the Bible

itself. Seen from the etic point of view of outside observers, who are not members of the Jehovah's Witnesses but scholars of religion, they are part of a model that followed the disestablishment of state churches and religions. The pre-disestablishment model was (and is, since it has not disappeared), if anything, much harsher.

In the Abrahamic religions, the apostate is traditionally seen as inherently evil. That a true believer should not associate with apostates is a matter of course. However, in societies where religion and state are not separated, there is not so much insistence on how *individuals* should "disconnect" from apostates, because the problem *is delegated to the secular arm of the state*. It is the state that should punish the apostates and prevent them from associating with good believers, including their relatives. The quickest and most effective solution is to execute the apostate.

A key text that has influenced all the Abrahamic religions is *Deuteronomy* 13:6–8: "If anyone secretly entices you—even if it is your brother, your father's son or your mother's son, or your own son or daughter, or the wife you embrace, or your most intimate friend—saying, 'Let us go worship other gods,' whom neither you nor your ancestors have known, any of the gods of the peoples that are around you, whether near you or far away from you, from one end of the earth to the other, you must not yield to or heed any such persons. Show them no pity or compassion and do not shield them."

In ancient Israel, the apostate, who had betrayed the religion and the people, and those opposed to the faith had to be exterminated. Later, the Jews lost their political power and became a persecuted minority. The execution of the apostate was replaced by rituals and practices enacting his or her symbolic "death." The community, including the close relatives, regarded the apostate as dead. The apostate was mentioned by using the language usually reserved for the deceased persons, a highly effective kind of "ostracism." Talmudic Judaism had the notions of *niddui*, a less severe form of social isolation, and *herem*, which was more radical. The apostate, as well any other subject to *herem* "had to live in confinement with his family only, no outsider being allowed to come near him, eat and drink with him, greet him [...]. After his death, his coffin would be stoned, if only symbolically by placing a single stone on it" (Cohn 1996, 351).

This was a symbolic and posthumous execution. In post-Talmudic law, the fate of those subjected to *herem* became worse, "the Talmudic provisions being regarded as a minimum" that was often deemed not to be enough. The apostate or banned member of the community was regarded as a non-Jew, which "amounted [...] to civil death; and indeed, it is said that a man on whom a *herem* lies can be regarded as dead." The dissident Jews known as Karaites had a similar saying for the person subjected to *herem*: "In short, we must treat him [sic] as if he were dead" (Cohn 1965, 354). Forms of this practice survive to this very day in some ultra-Orthodox Jewish communities (Cohn 1965, 365).

There is a large literature about apostasy in Islam. Although the relevant texts of the *Quran* may be subject to different interpretations, and today there are liberals insisting that execution is not mandatory (Saeed and Saeed 2017), the opinion that apostates from Islam should be not only shunned, but killed is still widespread. Several Islamic states maintain laws considering apostasy from Islam a crime to be punished by the death penalty. Authoritative theologians consider killing an apostate relative a virtuous deed.

Some liberals, and the dissident Ahmadi Muslims (who are themselves regarded as apostates, and persecuted by mainline Muslims, in Pakistan and elsewhere), try to argue that death penalty for the apostates was never really taught by Islam. As historian David Cook noted, their efforts are politically "laudable" and may even save some lives, but are historically untenable. Cook states that " it is really amazing [...] to note the ease with which they ignore the weight of the entire Muslim legal tradition." "The accepted punishment for apostasy from early stages of Islam was death." It is true that the penalty was not applied with the same regularity in different times and regions. However, "This attitude has been strengthened immensely over the centuries to the point where even when modern Arab or Muslim states abolish the death penalty for apostasy, it is usually enforced by the enraged populace" (Cook 2006, 276–77).

This is not only a position of the past. On June 16, 2016, in a television interview, Sheikh Ahmad al-Tayyeb, the current Grand Imam of al-Azhar in Cairo and former president of al-Azhar University, who is both one of the highest scholarly authorities in Islam and somebody normally described as a "moderate," explained that Islamic and Western "civilizations are different. Our civilization is based on religion and moral values, whereas their civilization is based more on personal liberties and some moral values. [...] If an apostate has left

Islam out of hatred toward it, and with the purpose of acting against it—this is considered high treason, because this is a Muslim society, which has had Islam for 1,400 years and other religions for over 5,000 years. [...] In this case, apostasy is a rebellion against society. It is a rebellion both against religion and what is held sacrosanct by society. [Contemporary] jurisprudents concur—and so does ancient jurisprudence—that apostasy is a crime. You could say that all jurisprudents agree. A very few [dissent], but you could say that everybody agrees. The four schools of law all concur that apostasy is a crime, and that an apostate should be asked to repent, and that if he does not, he should be killed" (al-Tayyeb 2016).

Killing apostates, "infidels," and "heretics" was not something only Muslims did. As Italians, we share the painful memories of two incidents that happened in the 16th century, the second following only seven years after the first. In 1554, Turkish "pirates" beheaded hundreds of Christians in Vieste, in the province of Foggia (Giuliani 1768). In 1561, Catholics killed some 2,000 Waldensian Protestants in Guardia Piemontese, in present-day province of Cosenza (Musca 2003). If Vieste has its "Chianca Amara" (Bitter Rock), Guardia Piemontese has its "Porta del Sangue" (Bloody Door), where these religiously motivated massacres happened.

In fact, when Christianity went from persecuted minority to state religion, it quickly obtained from the Roman Emperors laws mandating the execution of those Christians who would apostatize and return to the pagan rites (*Codex Justinianus* I,11:1 and 7). Those who would induce Christians to apostatize should also be executed (*Codex Justinianus* I,7:5). If arrests and executions would be carried out timely, there should be no risk that Christians would put their faith at danger by associating with apostates. However, to be on the safer side, the *Codex Justinianus* (I,7:3) also mandated that apostates "shall be separated from association with all other persons."

In more recent centuries, apostates from Christianity managed to escape execution, but still they were harassed in several different ways. Apostates who had been priests were particularly singled out. As late as 1929, in its Concordat with Italy, the Catholic Church obtained from the government that "apostate" ex-priests would be prevented from teachings in all kind of state schools or "be hired or maintain any employment or job placing them in direct contact with the public" (Concordat of February 11, 1929, art. 5). This was Fascist Italy, but the provision remained in the democratic Italian Republic, was successfully defended (if through

a technicality) by the Catholic Church against a challenge before the Constitutional Court in 1962 (Corte Costituzionale 1962), and was finally abolished only in 1984 (Dalla Torre 2014, 84).

The Orthodox practice was similar to its Catholic counterpart, which is not surprising, given the common roots in the post-Constantinian legal tradition of Rome and Byzantium. The authoritative Russian *Orthodox Encyclopedia*, discussing the practice of *anathema*, compares it to *herem* in Judaism, and reminds its readers that *anathema* is different from excommunication. While the excommunicated person is excluded from certain rituals but is still regarded as a member of the Church and is not shunned, those anathematized are completely cast off from the Church and should be "avoided" by all believers. It is by no means a practice of the past. The *Orthodox Encyclopedia* mentions the recent cases of dissident priest and human rights activist Gleb Yakunin (1936–2014) and of Patriarch Filaret of Kiev (b. 1929), very much in the news in recent years as the head of an autocephalous Ukrainian Orthodox Church separated from the Patriarchate of Moscow, and of those associating with "cults and sects," including Theosophy and Spiritualism (Maksimovich 2008, 274–79).

Originally, Protestants were reluctant to abandon the model delegating the punishment and isolation of the apostates to the state. One can find in the writings of Martin Luther (1483–1546) principles that would later lead to the foundation of a doctrine of religious liberty. Yet, as the German Peasants' War of 1524–25 progressed, he asked the princes to exterminate peasants who had rejected both civil and religious authority, including his own. Authorities should slay them, Luther said, "just as one must slay a mad dog": "Therefore, whosoever can, should smite, strangle, and stab, secretly or publicly, and should remember that there is nothing more poisonous, pernicious, and devilish than a rebellious man" (Robinson 1906, 107–08).

Some can object that Luther was dealing here with *political* rebels and his advice to the princes was not particularly unusual in these days. However, these particular rebels are singled out for merciless punishment because they are "blasphemers and violators of God's holy name," i.e. apostates.

When he ruled Geneva, John Calvin (1509–1564) burned at stake dissidents like Michael Servetus (1511?–1543) he had accused of apostasy, and ostracized their relatives (Bainton 1953). Other reformers in Switzerland did the same, including in Zurich (Gordon 2002).

Protestant theology, however, included the potential for justifying and even mandating the autonomy of the individual believers and the separation of religion and state. In fact, Protestants offered a unique contribution towards creating the modern theory of religious liberty. This, however, did not imply that Protestants liked apostates. They were aware of the risk that those consorting with apostates would sow the seeds of doubt and disruption in religious communities.

Protestant groups advocating the separation of church and state maintained that apostates *should not be punished by the state*, which had no business in adjudicating religious controversies. They did not leave the apostates alone, however, but *privatized the repression of apostasy*. Since the state was asked to remain out of the picture, containing the danger represented by the apostates became the responsibility of individual believers, first among them the apostate's relatives.

Today, the Amish and other heirs of the so called "Radical Reformation" are criticized for their practice of *Meidung*, or shunning (see e.g. Wiser 2014), which "makes some family gathering awkward. The banned person may attend but will likely be served at a separate table or at the end of a table covered with a separate tablecloth. In one case, an adult male who was shunned was excluded from the plans for his father's funeral. (...) A woman, who persisted in attending a non-Amish Bible study was placed under the ban. Although continuing to live with her Amish husband, she eats at a separate table and abstains from sexual relations. Parents must shun her adult children who are excommunicated. Brothers and sisters are required to shun each other. Members who do not practice shunning will jeopardize their own standing in the church" (Kraybill 1989, 116).

Few realize that *Meidung*, when it was introduced, was regarded as a progress. The Radical Reformation championed the separation of church and state, and groups like the Amish fled to the United States precisely to affirm and enjoy religious liberty. As part of religious freedom, apostates were no longer executed, and physical violence against them was forbidden. They were free to go elsewhere and, if inclined to do so, establish new separate religious communities (Kraybill 1989, 115). The only sanction they were subjected to was shunning, i.e. separation from their friends and relatives, which was perhaps sad but surely better than being burned at stake or drowned in the icy waters of the Limmat river, the penalty for apostates in Protestant Zurich (Gordon 2002, 215).

With exceptions, by the 19th century American Protestantism had embraced separation of church and state as a quintessential part of the American ethos. Appeals to the state for punishment or execution of the apostates were regarded as a thing of the past, or the mark of barbarian religions contrary to the ethos of the United States. That apostates, if left unchecked, may undermine the faith of the believers, or destroy the religious communities, was still acknowledged. But dealing with apostates, and isolating them, was left to individuals and families.

One may argue that, in the late 20th and in the 21st century, some churches and religions are more tolerant of apostates. This argument should be qualified. It is surely true for the more liberal form of Protestantism, but in many other communities, apostates are still shunned, including often by their relatives. Even in its *Code of Canon Law* published after the Second Vatican Council, the Catholic Church still punishes apostasy with excommunication (c. 1364), and excommunication involves several serious sanctions. *Anathema* is still practiced in the Orthodox Church.

The threat represented by apostates and external opponents is more dangerous for minority religions. A relative tolerance toward apostates may emerge when mainline religions feels safe and well established. It is rarely a trait of embattled minorities, whose existence is more precarious and subject to potentially lethal attacks and persecutions. It is not surprising that religions established in the 19th century, such as the Jehovah's Witnesses, and persecuted in several countries, maintain stricter boundaries against apostates than century-old traditions and churches. As sociologist Armand Mauss (1928–2020) noticed by studying the history of "Mormonism," new religions may become persuaded at some stage that they will become more popular if they soften their harsher policies of boundary maintenance, but this in turn creates problems and they will eventually need a "retrenchment" (Mauss 1994).

Jehovah's Witnesses believe that their practice of disfellowshipping and controlling the contacts with apostate ex-members is based on the Bible. They would probably not be interested in scholarly assessments of it. We, as external observers, may however comment that it does not imply any criticism of the post-disestablishment religious liberty tradition. On the contrary, it reaffirms it. The disfellowshipped ex-member enjoys the religious liberty to criticize the congregation, *and* the Jehovah's Witnesses enjoy the religious liberty to

separate themselves from those who have been disfellowshipped. Human beings have the right to communicate *and* the parallel right not to communicate. A husband can divorce and cut any contact with his wife, or ex-wife, because she keeps criticizing the husband himself, or his dear father, or his preferred political party, or football team—or religion. This individual freedom is part of modernity. The Jehovah's Witnesses disconnection policy is not "unique," and does not go as far as similar policies in other religious organizations do. Its application, as it happens with similar policies in other religions, may occasionally be harsh and painful. But most religions have provisions against associating with disfellowshipped ex-members, and minority or persecuted religions can hardly continue to exist without clearly marking their boundaries.

One wonders how it is possible for a judge to make conclusions about violations of human rights without any reference to human rights law

Judge Lehner believes that, based on the (anti-cult) literature she had read, Spiess was in good faith when she concluded that disfellowshipped Jehovah's Witnesses "without a shared faith, they are not, or cannot be, part of the community. Hence, they are implicitly denied freedom of belief and conscience within the community." Accordingly, ostracism "at least to some extent violates human rights." The judge understands that generalizations may go beyond what can reasonably be inferred from the facts, but exonerates Spiess based on her alleged good faith. When good faith is proved, there is no need to pursue the investigation whether a statement is true or false, since good faith is an exonerating factor even in the case of false statements.

However, if it was true, or at least reasonable, that disfellowshipping members from a community violate their human rights, this should be commonly regarded as unlawful. On the contrary, courts of law throughout the world have determined that managing disfellowshipping and similar policies without interference from the state is also a legal right. Obviously, this also apply to non-religious bodies. Let us imagine that a member of the Labour Party in England will campaign for the Conservatives, or that a member of a club of fans of Real Madrid would march in the streets hailing the archrival FC Barcelona. Would the dis-

fellowshipping of such persons from the Labour Party or the Real Madrid fan club violate their freedom of conscience or other human rights? Not at all. Their freedom of conscience is guaranteed by the fact that they can freely change their mind, leave the organizations that they had once joined, and join different organizations advocating for opposite points of view. What they cannot expect is to remain in a group created to advocate certain ideas, promote ideas at the opposite end of the relevant spectrum, and not be disciplined and excluded. This would not assert their freedom of conscience, but violate the freedom of their former organizations and their members to manage and police themselves as they deem fit. Indeed, expulsions are common in political parties and trade unions, and they seem to generate less protests than when they occur in a religious context.

Judge Lehner stated that, "the practice of ostracism proves to be a form of 'bullying,' which at least to some extent violates human rights, since bullying violates the personal integrity of an individual." However, his judgment contains absolutely no analysis of human rights law—whether under the Swiss Constitution or international human rights law. Not only that, his conclusion contradicts international human rights law, including the jurisprudence of the ECHR, which is cited below, and some of which the complainants submitted to the court (including the judgment in the case of the Moscow Jehovah's Witnesses). One wonders how it is possible for a judge to make conclusions about violations of human rights without any reference to human rights law.

Interestingly, a similar opinion was expressed by Professor Heiner Bielefeldt, from University of Erlangen-Nuremberg, who is a former UN Special Rapporteur on Religious Freedom. Commenting on the Spiess decision, he told the *Frankfurter Rundschau* that "he takes a critical view on the passage about religious freedom: this is 'a human rights claim, primarily addressed to the state. The state should be religiously and ideologically neutral. Demanding a religious community to be religiously neutral is nonsense.' A group must be allowed to decide who belongs to it. The Catholic Church can say as well, 'If a person becomes a 'Mormon,' she is no longer part of our community.' This is an integral part of religious freedom'" (Sieler 2020).

Courts of law agree. In the decision *X v. Denmark* of 1976, which declared a complaint by a Danish Lutheran clergyman non-admissible, the European Commission of Human Rights (which, until 1998, decided whether complaints submitted by individuals were admissible)

stated that, "The churches are not obliged to provide religious freedom to their ministers and members" (Les églises ne sont pas tenues d'assurer la liberté de religion de leurs prêtres et de leurs fidèles). Religious freedom is guaranteed when "nobody is compelled to join, nor forced not to quit" a certain religion. Those who join a religion understand that their religious freedom will be limited by the tenets and practices of that religion. As long as they remain inside it, they cannot complain that their religious freedom is violated, as they are always free to quit that religion, or to establish a rival denomination (European Commission of Human Rights 1976).

The Grand Chamber of the European Court of Human Rights (ECHR) upheld in 2013, in the *Sindicatul* case, the position of the Romanian government that secular authorities cannot be asked to interfere in the internal procedures of the Romanian Orthodox Church, which had disciplined priests who had joined a non-authorized union. "Disaffected priests, the Romanian government argued, could leave the Church at any time, but as long as they chose to remain, they were deemed to have freely consented to abide by its rules and to waive some of their rights." The ECHR observed that, "religious communities traditionally and universally exist in the form of organized structures. Where the organization of the religious community is at issue, Article 9 of the [European Human Rights] Convention must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Seen from this perspective, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organization of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Were the organizational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become vulnerable" (European Court of Human Rights 2013).

An important aspect of the *Sindicatul* decision is that Article 9 of the European Human Rights Convention, which protects freedom of religion and belief, should be interpreted "in the light of Article 11," which protects associations and organizations from state interference. Indeed, any organization is free to discipline and expel members according to its own principles and by-laws. As mentioned earlier, members are free not to join the organization,

to leave it, or to establish a rival organization, but they do not have a right to remain in the organization if the other members believe they are no longer behaving according to its nature and aims. It is, on the contrary, the organization that has a right to expel them according to Article 11.

When the organization has a religious nature, this right becomes even more incontestable, as the states have no right to interfere in the internal activities of religious communities. It is not even necessary to quote Max Weber (1864–1920), one of the fathers of the modern sociology of religion, to argue that the organization of a religious community is in itself theological, and to interfere with its organization is to interfere with its theology and beliefs, which is forbidden by Article 9 ECHR and Article 18 UDHR and Article 18 of the ICCPR.

The principle that states should not stand in the way of the internal organization of religious bodies, including how affiliation and disaffiliation or excommunication are regulated, is uncontested in the case law of the European Court of Human Rights. It was affirmed by the Grand Chamber in 2000 in *Hasan and Chaush v. Bulgaria*, where the Bulgarian government was prevented from interfering in the internal affairs of the Muslim community in Bulgaria (in this case, appointing and dismissing a Mufti: European Court of Human Rights 2000b).

The ECHR had gone one step further in another case decided in 2000, *Kohn v. Germany*, concerning a member of the Jewish Council of Hannover, who was expelled from the community. As a consequence of the decision, he was told that he was no longer allowed to enter the Jewish community center in Hannover. He protested by barricading himself inside the community center, until the local Jewish leaders asked the Regional Court of Hannover an order directing the police to remove him forcibly from the premises. The court agreed, the expulsion was performed, and the ex-member was ordered to stay away from the community center. He complained to the ECHR, who declared his application inadmissible, since "the internal decisions of a religious community (innerkirchliche Maßnahmen) could not be controlled by the state courts, since the latter should respect the autonomy of the religious organizations (Autonomie der Religionskörperschaften)" (des mesures internes à une communauté religieuse [innerkirchliche Maßnahmen], [...] ne pouvaient être contrôlées par les tribunaux étatiques, car ces derniers devaient respecter l'autonomie des corporations religieuses [Autonomie der Religionskörperschaften]). On the other hand,

states have "the monopoly of the use of the force" (le monopole de l'utilisation de la force), and the Jewish leaders could not but ask the secular authorities to use the force to evict Mr. Kohn from the Jewish center's premises (European Court of Human Rights 2000a).

Concerning the disfellowshipping policies of the Jehovah's Witnesses, including the so called "ostracism," courts in Europe and North America have consistently applied the same principles. The first substantial discussion of the practice of "shunning" disfellowshipped members of the Jehovah's Witnesses is included in the 1987 decision of the United States Court of Appeal for the Ninth Circuit *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, which is quoted in all subsequent American cases. The court acknowledged that the plaintiff has experienced some unpleasant incidents in being "shunned" by relatives and close friends who were Jehovah's Witnesses after she was disfellowshipped. Nonetheless, the court maintained that, "Shunning is a practice engaged in by Jehovah's Witnesses pursuant to their interpretation of canonical text, and we are not free to reinterpret that text. Under both the United States and Washington Constitutions, the defendants are entitled to the free exercise of their religious beliefs."

"The Jehovah's Witnesses, the court reported, argue that their right to exercise their religion freely entitles them to engage in the practice of shunning. The Church further claims that assessing damages against them for engaging in that practice would directly burden that right. We agree that the imposition of tort damages on the Jehovah's Witnesses for engaging in the religious practice of shunning would constitute a direct burden on religion." The court observed that punishing shunning would have dramatic consequences for the religious freedom of the Jehovah's Witnesses. "Imposing tort liability for shunning on the Church or its members would in the long run have the same effect as prohibiting the practice, and would compel the Church to abandon part of its religious teachings. [...] The Church and its members would risk substantial damages every time a former Church member was shunned. In sum, a state tort law prohibition against shunning would directly restrict the free exercise of the Jehovah's Witnesses' religious faith" (United States Court of Appeal, Ninth Circuit, 1987).

The plaintiff argued that shunning had caused to her emotional distress. This may well be true, the court answered, but the harm was "clearly not of the type that would justify the imposition of tort liability for religious conduct. No physical assault or battery occurred.

Intangible or emotional harms cannot ordinarily serve as a basis for maintaining a tort cause of action against a church for its practices—or against its members. [...] Offense to someone's sensibilities resulting from religious conduct is simply not actionable in tort. [...] Without society's tolerance of offenses to sensibility, the protection of religious differences mandated by the first amendment would be meaningless" (United States Court of Appeal, Ninth Circuit, 1987).

In this old decision, we find already a convincing criticism of the anti-cult claims based on "emotional harm." While "physical assault or battery" are clearly not justified by an appeal to religious liberty, if courts were allowed to sanction religious groups for inflicting "emotional harm," that would be the end of religious liberty as we know it. The court correctly concluded that, "The members of the Church [Ms.] Paul decided to abandon have concluded that they no longer want to associate with her. We hold that they are free to make that choice. The Jehovah's Witnesses' practice of shunning is protected under the first amendment of the United States Constitution" (United States Court of Appeal, Ninth Circuit, 1987).

In 2007, the Court of Appeals of Tennessee observed that, "The Church [the congregation of the Jehovah's Witnesses] argues that the freedom of religious bodies to determine their own membership is such a fundamentally ecclesiastical matter that courts are prohibited from adjudicating disputes over membership or expulsion. We agree. Because religious bodies are free to establish their own guidelines for membership and a governance system to resolve disputes about membership without interference from civil authorities, decisions to exclude persons from membership are not reviewable by civil courts." Concerning the "shunning" of disfellowshipped ex-members, the court stated that, "The doctrines of the Jehovah's Witnesses and their reading of scripture require that their members ostracize individuals who have been disfellowshipped. While there is no question that this practice has resulted in a painful experience for the Andersons [the plaintiffs in the case], the law does not provide a remedy for such harm. For example, in other contexts, family members sometimes become estranged from each other for various reasons on their own volition, and the law does not recognize a basis for suit for the pain caused by such estrangement. Courts are not empowered to force any individual to associate with anyone else." "Shunning is religiously based conduct, a religious practice based on interpretation of scripture, and is subject to the protection of the First Amendment." "Shunning is a part

of the Jehovah's Witnesses belief system. Individuals who choose to join the Church voluntarily accept the governance of the Church and subject themselves to being shunned if they are disfellowshipped. The practice is so integrally tied to the decision to expel a member that it is beyond judicial review for the same reasons as the membership decision. Conduct that is inextricably tied to the disciplinary process of a religious organization is subject to the First Amendment's protection just as the disciplinary decision itself" (Court of Appeal of Tennessee 2007).

Also in 2007, the Justice Court of Bari, in Italy, in a well-publicized case, rejected the claims of a disfellowshipped ex-Jehovah's-Witness who happened to be a lawyer. The court concluded that, even if the principles governing the ecclesiastical system of the Jehovah's Witnesses are different from those of the Italian law, once they have been correctly followed in disfellowshipping a certain individual, secular courts cannot interfere with the decision (Tribunale di Bari 2007; see also Tribunale di Bari 2004).

Switzerland has signed and ratified the European Convention on Human Rights, and is subject to the jurisdiction of the European Court of Human Rights. The judge was obliged to take into consideration the case law of the European Court of Human Rights in making his decision

In 2010 the Administrative Court of Berlin examined a complaint by a disfellowshipped Jehovah's Witness against the public announcement in congregational meetings of the measure against him, since "members of the association should have no social contact with disfellowshipped persons" and it would become impossible for him to "to have a picnic, celebrate, do sports, go shopping, go to the theatre, have a meal at home or in a restaurant" with friends or relatives who remained in the Jehovah's Witnesses. The court denied the request, commenting that the Jehovah's Witnesses' policy on these matters "is not subject to state authority" and is protected by "freedom of religion, the separation of Church and state, and the right

of religious associations to self-determination." How the Jehovah's Witnesses decide to "exercise their constitutionally guaranteed right to self-determination" is something the state should not interfere with. Disfellowshipping policies and the so called "ostracism" are "internal church measures" (Verwaltungsgericht Berlin 2010).

The Italian Supreme Court (Cassazione) in 2017 ruled that the so called "ostracism" is also protected by the principle of non-interference. The decision observed that in this case "ostracism" is "a refusal to associate" with the disfellowshipped ex-member, and "no law requires a person to behave in the opposite manner." As a conclusion, "no discrimination took place." Even if one would argue that refusing to associate with disfellowshipped members violate "good manners and civilized behavior," this would not "constitute a justiciable crime or civil tort." Individuals, and even a whole "category," have a right to decide to "break off or interrupt personal relations," and courts have no business in telling them otherwise (Corte di Cassazione 2017).

In 2018, in *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, a unanimous Supreme Court of Canada reiterated that "secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion." It added that, "even the procedural rules of a particular religious group may involve the interpretation of religious doctrine," and concluded that, "these types of [religious] procedural rules are also not justiciable" (Supreme Court of Canada 2018 [SCC 26]).

More recently, on March 17, 2020, in *Otuo v. Morley and Watch Tower Bible and Tract Society of Britain*, the Court of Appeal in London, Queen's Bench Division (Court of Appeal [London], Queen's Bench Division 2020), upheld a High Court decision of 2019, which found that "in accordance with Matthew 18:15–17 (the procedural compliance with which is not itself justiciable) it is to be expected that a [Christian] religious body which is guided by and which seeks to apply scriptural principles will have the power to procure that in an appropriate case a sinner can be expelled. Among other things, this is sensible, if not essential, because someone who is unable or unwilling to abide by scriptural principles not only does not properly belong as a member of such body but also, unless removed, may have an undesirable influence on the faithful." Protecting the faithful from such an "undesirable influence" is thus not a violation of the disfellow-

shipped member's human rights, but a right of the congregation (High Court of Justice, Queen's Bench Division 2019).

We understand that these are not Swiss decisions, and Judge Lehner argued that non-Swiss cases are irrelevant in Switzerland. However, Switzerland has signed and ratified the European Convention on Human Rights, and is subject to the jurisdiction of the European Court of Human Rights. The judge was obliged to take into consideration the case law of the European Court of Human Rights in making his decision. The complainants submitted to him a number of judgements by the European Court of Human Rights, yet they were ignored.

At any rate, we are not acting here as lawyers arguing the case before a Swiss court. Since the case is used in international anti-cult propaganda against the Jehovah's Witnesses, foreign decisions are relevant to confirm that Judge Lehner's decision was inherently wrong.

4. Defamatory Statements: (II) Sexual Abuse

It seems to us that Judge Lehner was not perfectly coherent with his claim that the Swiss Jehovah's Witnesses could not rely in the Spiess case on "judgments not issued in Switzerland." He adopted a different standard when he examined the cluster of statements by Spiess related to sexual abuse:

"The closed nature of the system and the dogmatic beliefs essentially foster sexual abuse, particularly of children. They have internalised that their needs take second place."

"There is a two-witness rule that favours sexual abuse: suspicions of a sex crime against a child should only be followed up where there are a minimum of two witnesses [to the crime], which, of course, is never the case. When this is not possible, the elders should leave the matter in Jehovah's hands, remaining inactive."

"The victim must stay silent. Otherwise, she is threatened with expulsion from his family."

In this case, the judge admits that Spiess "essentially bases her exonerating evidence on the October 2016 report from the Australian Royal Commission," which is obviously not a Swiss document. However, he notes that "after all, the Royal Commission is a government appointed truth-seeking commission, to which judges and professors belong and whose working methods are unobjectionable." He concludes that Spiess "can essentially rely on the reports from the Royal Commission in order to provide proof of good faith (but not proof of truth)." We will return to the latter point in the next chapter, but it is important to note immediately that Judge Lehner is not claiming that relying on the Australian Royal Commission report means that what Spiess said was true. He is only claiming that it proves Spiess' (alleged) good faith, which makes a further investigation of truth unnecessary.

We wonder whether the judge considered that a royal commission under Australian law is not akin to a court of law. It is not bound by the legal rules of evidence, witnesses do not take an oath nor are they subject to cross-examination, and the commission can

receive and quote hearsay and other "evidence" that would not be admissible in a court of law. Accordingly, a well-informed reader cannot believe in good faith that all allegations mentioned in a royal commission's report correspond to the truth.

In general, we find the statements by Spiess highly problematic, and the context not suggestive of good faith. One of the authors of the present White Paper (Introvigne) is also a co-author of a report criticizing a study on this matter by a group from the Dutch University of Utrecht. The report co-authored by Introvigne is available on the website of the Dutch government (Folk, Introvigne, and Melton 2020). We return here to some issues discussed in that report, which addresses the matter more extensively.

The first statement by Spiess, that "the closed nature of the system and the dogmatic beliefs essentially foster sexual abuse," is demonstrably false. There are scores of comparative studies of sexual abuse in religious communities (see e.g. Shupe 1995, 1998, 2000, 2007). A cursory reading of them is enough to conclude that there is no clearly established chain-connection between "the closed nature" of a religious system and "dogmatic beliefs" and "sexual abuse." Religious communities with an "open" nature and a liberal theology such as the Church of England have a significant incidence of sexual abuse cases among their clergy. Some new religious movements and other groups that live communally, with few contacts with the outside world, and expect from their members a rigid adherence to their "dogmatic beliefs" have never been accused of sexual abuse. Since Spiess claims to be an expert in "cults," she should have known that her generalization is untenable, and that child abuse is unfortunately equally, or more, prevalent in mainline churches, including denominations whose local bodies in Zurich have financed infoSekta, that it is in groups labelled as "cults."

Equally false in the statement is the comment that children "take second place" in the communities of the Jehovah's Witnesses. This is incorrect both in theory (Jehovah's Witnesses publications recommend a loving and attentive care of children) as it is in practice. The scholarly literature on the Jehovah's Witnesses reports that, in general, they are good and caring parents. One surprising authority who confirmed this was Russian President Vladimir Putin who, in 2017, bestowed the Family Glory award on a family of Jehovah's Witnesses, the Noviks from Petrozavodsk, calling them a "model family" (Churmanova and Coalson 2017).

The second statement, on the "two witness rule," returns on the fundamental confusion between the internal ecclesiastical organization of the Jehovah's Witnesses and their relations with secular justice. Religious communities have their internal rules for dealing with offenses. For example, the Roman Catholic Church has its Canon Law and ecclesiastical tribunals. Obviously, both lay members of the Catholic Church and priests are also subject to the jurisdiction of secular courts. While the states have a right to organize their own legal systems, they have no business in interfering with the internal organization of ecclesiastical courts, as discussed in the previous chapter. States may suspect that ecclesiastical courts are based on principles they regard as unfair, or at any rate different from secular courts. However, they cannot intervene and reorganize ecclesiastical courts based on their own principles.

The so-called two witness rule is part of the internal ecclesiastical disciplining system of the Jehovah's Witnesses. As such, it is protected by the rights of the Jehovah's Witnesses to organize their own community without interference from the state. Critics may regard the two witness rule as unpractical, but they cannot ask the state to determine what internal ecclesiastical rules and procedures Jehovah's Witnesses, or any other religion, should adopt for deciding whether a congregant who is accused of child sexual abuse, or any other infraction, should be expelled from their religious community. Simply stated, as demonstrated in the previous chapter, the Jehovah's Witnesses are free to expel or not to expel whomever they deem fit, and to determine what in their opinion is the most scriptural procedure to be used in cases of expulsion. The states have no business in telling them whether they are right or wrong.

Spiess, however, creates in the mind of those who read her statement a confusion between two vastly different issues: how the Jehovah's Witnesses handle allegations of sexual abuse internally, and how they report them to secular authorities. While states cannot compel religions to expel, or not to expel, members guilty of sexual abuse, they have the right to pass laws requiring that, when informed of cases of sexual abuse (outside of the existing safeguards that explicitly protect the confidentiality of the Roman Catholic confession and similar practices), those invested with responsibilities within a religious congregation should immediately inform secular authorities. Where such laws exist, Jehovah's Witnesses do respect them. It is false that they "leave the matter in Jehovah's hands" only.

What is certainly inaccurate is that among the Jehovah's Witnesses, as Judge Lehner wrote, "there are no regulations requiring child abuse to be reported to the authorities," and that those who report it are disfellowshipped, as Spiess seems to imply. A rapid survey of the relevant literature of the Jehovah's Witnesses (which Introvigne and his colleagues summarized in their criticism of the Dutch study) prove these statements false.

Jehovah's Witness do not disfellowship victims of sexual abuse, or those who report incidents of sexual abuse to secular authorities. The current edition of the official handbook for congregation elders, *"Shepherd the Flock of God"—1 Peter 5:2*, confirms that a person who reports an allegation of abuse (or any other crime) to the secular authorities will not be disfellowshipped or in any other way sanctioned by the Jehovah's Witnesses: "One who reports an accusation to the police, the court, the elders, or others who have authority to look into matters and render a judgment would not be viewed by the congregation as guilty of committing slander [...] This is true even if the accusation is not proved" (Christian Congregation of Jehovah's Witnesses 2019, 12:28). The 2010 edition had a parallel provision: "It is not considered slander to make an accusation to the police, the court, [...] or others who have authority to look into matters and render a judgment [...] This is true even if the accusation is not proved" (Christian Congregation of Jehovah's Witnesses 2010, 5:27).

The current handbook adds that, "Jehovah's Witnesses abhor child sexual abuse (Rom. 12:9). Thus, the congregation will not shield any perpetrator of such repugnant acts from the consequences of his [sic] sin. The congregation's handling of an accusation of child sexual abuse is not intended to replace the secular authority's handling of the matter (Rom. 13:1–4). Therefore, the victim, her parents, or anyone else who reports such an allegation to the elders should be clearly informed that they have the right to report the matter to the secular authorities. Elders do not criticize anyone who chooses to make such a report" (Christian Congregation of Jehovah's Witnesses 2019, 14:4).

The official child safeguarding policy of Jehovah's Witnesses, published in dozens of languages on their official website, states at paragraph 4, "In all cases, victims and their parents have the right to report an accusation of child abuse to the authorities. Therefore, victims, their parents, or anyone else who reports such an accusation to the

elders are clearly informed by the elders that they have the right to report the matter to the authorities. Elders do not criticize anyone who chooses to make such a report—Galatians 6:5" (Christian Congregation of Jehovah's Witnesses 2018, no. 4).

As early as 1993, the *Awake!* magazine recommended that, in case of rape, one should "call the police as soon as you are able to," noting also that, "reporting is not the same as prosecuting, but if you choose to prosecute later, your case will be weakened by a delayed report" ("How to Cope with Rape" 1993). In 1997, the same *Awake!* magazine suggested to Jehovah's Witnesses that, "children should also be warned about—and urged to report to authorities—any person making improper advances toward them, including people they know" ("Sexual Exploitation of Children—A Worldwide Problem" 1997). Also, in 1997, *The Watchtower* asked, "What if a baptized adult Christian sexually molests a child?" The answer was that, "the molester may well have to serve a prison term or face other sanctions from the State. The congregation will not protect him [sic] from this" ("Let Us Abhor What Is Wicked" 1997).

The book *How to Remain in God's Love*, published in 2017, includes a discussion of *I Corinthians* 6:1–8, where Apostle Paul cautions against taking a fellow Christian to court. While in general, "taking our brother to court could reflect badly on Jehovah and on the congregation" (Christian Congregation of Jehovah's Witnesses 2017, 253), there are exceptions. "If a serious crime is involved, such as rape, child abuse, assault, major theft, or murder, then a Christian who reports such a crime to the secular authorities does not violate Paul's counsel" (Christian Congregation of Jehovah's Witnesses 2017, 254).

Also, in the May 2019 issue of *The Watchtower*, we read that, "Elders assure victims and their parents and others with knowledge of the matter that they are free to report an allegation of abuse to the secular authorities. But what if the report is about someone who is a part of the congregation and the matter then becomes known in the community? Should the Christian who reported it feel that he has brought reproach on God's name? No. The abuser is the one who brings reproach on God's name" ("Love and Justice in the Face of Wickedness" 2019, 10–11).

After Introvigne and his colleagues criticized the Dutch study, the anti-Jehovah's-Witnesses organization Reclaimed Voices objected that practice does not always

go along with theory, and that it is possible that some local congregations of the Jehovah's Witnesses do not follow the indications of the official publications (Hintjes 2020). This is certainly possible in all organizations. However, Reclaimed Voices seems to acknowledge that the policy of Jehovah's Witnesses is sound, although in some cases it was not followed. If that is the case, we cannot blame the policy, or the Jehovah's Witnesses in general. We should simply recognize that no human organization is composed exclusively of perfect humans, and that even the best of policies does not guarantee against the reality of human error. We have also examined witness statements by religious ministers of Jehovah's Witnesses who reported allegations of child sexual abuse to secular authorities from 2006 to 2018. Not only were they not disfellowshipped for reporting that abuse to the authorities, but were actually praised and supported by their congregations for making the reports. While we omit the details for reasons of privacy, we have no doubt that these statements reflect the truth.

A final comment concerns the report of the Royal Australian Commission. It is an enormous document, which should be read in its entirety. We are under the impression that Judge Lehner only relied on excerpts supplied by Spiess' defense. Had he read the whole report, he would at least have distinguished between allegations and rumors and cases decided by courts of law, between cases going back to decades ago and cases that were more recent, between policies in use among the Jehovah's Witnesses today and those in use when the awareness of the problems of sexual abuse in our societies in general was different (even then, however, the Jehovah's Witnesses' policies were not less protective of victims than those prevailing in other secular and religious organizations).

Judge Lehner, also, did not take into consideration criticism of the sections on Jehovah's Witnesses of the Royal Australian Commission report by scholars and others. For instance, the Commission was criticized for having gone beyond its mandate, which was limited to abuse within institutions, when it mentioned cases where the perpetrators were Jehovah's Witnesses, but the abuse happened in the family, outside any institutional context. In this regard, we note that the religion of Jehovah's Witnesses does not operate "institutions" such as Sunday Schools, catechisms, kindergartens, schools, boarding schools, or similar, as it happens for other religions.

The Royal Commission also included in its recommendations that the Jehovah's Witnesses change their internal religious organizations and disciplinary bodies, *inter alia* by including women in some of their ecclesiastical judiciary committees and revising their policies on disassociation (Royal Commission into Institutional Responses to Child Sexual Responses 2017, 53). Not surprisingly, the Australian Government reacted to these specific recommendations by stating that they should be left to the consideration of the religious community of Jehovah's Witnesses in Australia. Imposing them would be a breach of the principle of religious liberty, as discussed in the previous chapter.

5. Fake News: The Manipulation of the Spiess Case by Anti-Cult and Russian Propaganda

"Fake news" became a household name after it was used by Donald Trump in his presidential campaign in 2016 (and in his first presidential press conference in 2017). It was also adopted by his opponents to denounce the maneuvers of Trump's domestic and international (i.e. Russian) supporters (Jankowski 2018).

Being in its infancy, the social scientific study of fake news typically spends significant time in trying to determine what fake news is (Tandoc, Lim, and Ling 2017). Farkas and Schou argue that it is a "floating signifier," with no "real" meaning. It is mostly used, with polemical purposes, by the opponents respectively of (a) the mainline liberal media; (b) the Western conservative media and the Russian propaganda supporting them; and (c) the pervasive manipulation of consumers by digital capitalism (Farkas and Schou 2018).

Other scholars criticize these approaches as unilateral (e.g. Jankowski 2018, 251). Although increasingly controversial, the classical paradigm of communication theory suggests that news be studied based on the sequel production—message—reception (McQuail 2010). Reception can be studied empirically (e.g. by Allcott and Gentzkow 2017, in a controversial study dismissing the impact of fake news on the American presidential elections of 2016 as minimal), assessing how much fake news determines our behavior.

Philosophers are among the scholars most interested in fake news, and propose several definitions. Neil Levy argues that, "Fake news is the presentation of false claims that purport to be about the world in a format and with a content that resembles the format and content of legitimate media organizations" (Levy 2017, 20). Regina Rimi believes that, "A fake news story is one that purports to describe events in the real world, typically by mimicking the conventions of traditional media reportage, yet is known by its creators to be significantly false, and is transmitted with the two goals of being widely re-transmitted and of deceiving at least some of its audience" (Rimi 2017, E45). Yet another philosopher, University of Berlin's Axel Gelfert, proposes a simpler definition: "Fake news is the deliberate presentation of (typically) false or misleading claims *as news*, where the claims are misleading *by design*" (Gelfert 2018, 108).

"Fake news" is not simply "false news." It is false news deliberately circulated through sustained and reiterated campaigns, and presented in such a way that many would believe it is true. Contemporary fake news goes one step beyond traditional, Cold War-style disinformation because of its unprecedented capacity of mobilizing simultaneously a variety of media. "A core feature of contemporary fake news is that it is widely circulated online" (Bakir and McStay 2017, 154).

Gelfert argues that skilled producers of fake news exploit four pre-existing cognitive biases

-*confirmation bias*: we accept new information if it confirms our beliefs and prejudices;

-*repetition effect*: "if they continue to say it, it should be true";

-*priming*: use of words that trigger a nonconscious memory reaction, e.g., in our field, "cult";

-*affective arousal*: emotions lower our defenses, e.g. "they abuse children" (Gelfert 2018, 111–13).

Well before the expression "fake news" became fashionable, scholars of religion had noticed how rumors were spread against "bad" minority religions, and made credible by both their reiteration and their endorsement by "authoritative" sources. As early as 1960, David Brion Davis (1927–2019) had studied how what we would today call "fake news" were used in the 19th century against "Mormonism" and Catholicism (Davis 1960). Jim Richardson noticed the same phenomenon when anti-cultists created a widespread "cultphobia" during the "cult wars" and beyond (Kilbourne and Richardson 1986; Richardson 1978, 1979, 1993).

Traditionally, "fake news" about religions labeled as "heresies" or "cults" were spread by private "moral entrepreneurs": secular anti-religious activists or "anti-cultists"—or counter-cultists, i.e. rival religionists. In recent years, we have witnessed the spread of "fake news" about religious movements organized, in a much more systematic way, not by private but by public actors. As noted by USCIRF, Russia has emerged as a leading pro-

ducer of fake news about the Jehovah's Witnesses, whose persecution at home it tries to justify internationally (USCIRF 2020).

It is not surprising that infoSekta and other anti-cultists presented the outcome of the Spiess trial as an epic victory that would change forever the legal situation of the Jehovah's Witnesses in Switzerland and beyond (JW Opfer Hilfe and Fachstelle infoSekta 2020). This is known in legal circles as "puffing," and is regarded with a certain indulgence by courts of law.

As noted by USCIRF, Russia has emerged as a leading producer of fake news about the Jehovah's Witnesses, whose persecution at home it tries to justify internationally (USCIRF 2020)

Soon, however, the propaganda degenerated into fake news. For instance, on July 10, 2020, one of the Italian associations affiliated with the FECRIS posted on Facebook that a "historical and definitive decision of the Court of Zurich" had established that the "ostracism of the Jehovah's Witnesses who have left the cult violates human rights" (AIVS 2020). Things got worse, as mentioned in the first chapter, when the official spokesperson of the Russian Foreign Ministry stated that, "The court recognized some of the methods used by the local group of Jehovah's Witnesses as violating fundamental human rights. Don't you know this? I am referring to the practice where persons who choose to leave the sect or who fail to follow its instructions, are boycotted by their families and friends, children are boycotted, and psychological and social pressure is put on dissidents using various manipulative methods to influence consciousness, punishments, as well as unpunished cases of sexual violence. The sect's members are actually denied the right to freedom of opinion and conscience, and this is what warranted the attention of Swiss justice" (Zakharova 2020).

One recognizes immediately the mark of fake news when Zakharova concludes that, "this is what warranted the attention of Swiss justice." In fact, what "warranted the attention

of Swiss justice" was a complaint by the Jehovah's Witnesses against Spiess. The Jehovah's Witnesses were not on trial. Spiess was. The "intention of deceiving" typical of fake news is in plain sight here. Zakharova, and some anti-cultists before her, tried to create the impression that the Jehovah's Witnesses were investigated in Switzerland for their alleged abuses, while the contrary is true: an anti-cult "expert" was accused of defamation, investigated, and committed to trial, although a judge found her not guilty.

The second manipulation of the news occurs when Zakharova and her anti-cult sources fail to distinguish between three different assessments Judge Lehner made of Spiess' statements. As we have seen, he regarded some of Spiess' comments as not defamatory, some as believed to be true by Spiess in good faith, and others as true. In the case of non-defamatory comments, or comments made by Spiess (according to Judge Lehner) in good faith, there was no investigation about their truthfulness, and it cannot be claimed that the judge stated that these statements are true. This is the case for the whole matter of sexual abuse. The judge *did not* state that there are "unpunished cases of sexual violence" among the Jehovah's Witnesses, he only stated that some comments by Spiess in this field were made in good faith, and therefore not punishable.

Zakharova summarized these charges in the usual language of Russian anti-Jehovah's-Witnesses propaganda. But they were debunked in 2010 by the European Court of Human Rights in the case *Jehovah's Witnesses of Moscow and Others v. Russia*. The ECHR observed that "the term 'coercion' in its ordinary meaning implies an action directed at making an individual do something against his or her will by using force or intimidation to achieve compliance. The [Russian] domestic courts did not give examples of any forceful or threatening action on the part of the applicant community calculated to break the families of its members apart." The ECHR also saw the anti-cult propaganda about brainwashing or "mind control" for what it was, stating that, "the Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, 'mind control' techniques and totalitarian discipline. Leaving aside the fact that there is no generally accepted and scientific definition of what constitutes 'mind control' and that no definition of that term was given in the domestic judgments, the Court finds it remarkable that the courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated by means of those techniques. Nor is it apparent that the prosecution experts had interviewed anyone who had been

coerced in that way into joining the community. On the contrary, the individual applicants and other members of the applicant community testified before the court that they had made a voluntary and conscious choice of their religion and, having accepted the faith of Jehovah's Witnesses, followed its doctrines of their own free will" (European Court of Human Rights 2010).

As for the comments that Judge Lehner regarded as true, they substantially concern the "shunning" or "ostracism." As we discussed in a previous chapter, there is a confusion here between the practice and its legal qualification. Amateurs who have no legal education may believe that declaring Spiess not guilty because, according to the judge, she told the truth when she claimed that "ostracism" is contrary to human rights, is equivalent to declaring the Jehovah's Witnesses guilty of the very serious crime of human rights abuse. It seems an easy equivalence, but it is a false one. Amateurs with no legal education may be excusable when they fall in this common fallacy. The spokesperson of the Foreign Ministry of one of the largest countries in the world has no excuse.

Amateurs with no legal education may be excusable when they fall in this common fallacy. The spokesperson of the Foreign Ministry of one of the largest countries in the world has no excuse

The subject matter of the Zurich case was only whether Spiess was guilty of the crime of defamation. In Europe in general, judges are usually reluctant to find against defendants in criminal defamation cases. This is why many lawyers prefer to file civil rather than criminal cases, seeking damages rather than a criminal verdict against the defendant. They know that succeeding in a civil case is somewhat easier. Coming to the conclusion that Spiess was not guilty of some of the charges because some of her statements appeared to the judge to be "true" is not the same than coming to the conclusion that Jehovah's Witnesses are guilty of the conducts Spiess attributed to them and that may be regarded as criminal.

Had the Jehovah's Witnesses been the defendants in a criminal case, that their behavior, both about "ostracism" and handling of reports of sexual abuse, violated provisions of

the criminal law should have been proved beyond a reasonable doubt. Such rigorous proof was not requested to exonerate Spiess. As defendants, the Jehovah's Witnesses would have been examined by the prosecutor. They would have had the right to defend themselves against the accusations. In the Zurich cases, their lawyers were only allowed to speak shortly at the hearing, and not about imaginary "crimes" committed by the Jehovah's Witnesses, but about why they believed Spiess had committed a crime.

For all these reasons, to present the Spiess case as if it was a prosecution of the Jehovah's Witnesses, and one where they were found guilty, can only be characterized as spreading fake news, something unfortunately Russian propaganda has done for years to the detriment of the Jehovah's Witnesses as well as of others. Judge Lehner's was a biased and wrong decision. But it was a decision circumscribed to absolving Spiess from the charge of criminal defamation. The judge's comments that some of Spiess' statements were "true"—while others were not qualified as such, although Lehner regarded them as either non-defamatory or believed by Spiess to be true in good faith—are not equivalent to the motivations of a non-existing decision against the Jehovah's Witnesses, who were not on trial and did not have an opportunity to defend themselves against these hypothetical charges.

To present the Spiess case as if it was a prosecution of the Jehovah's Witnesses, and one where they were found guilty, can only be characterized as spreading fake news

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