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## Freedom of Expression and the Right to Honor of Religious Denominations: The Case of the Jehovah's Witnesses

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**ABSTRACT:** Many religious entities are the subject of defamatory expressions or accusations of having committed illicit acts that may harm their honor, the religious sentiments of their members, and even the freedom of religious choice of third parties. It is necessary to apply the rules governing the conflict between freedom of expression and the right to honor (in this case, of a private legal entity) to determine whether the former prevails, or if we are dealing with unlawful defamatory acts. We will analyze this dispute based on some activities carried out by a Spanish association and various statements published in media and social networks that denigrate the Jehovah's Witnesses, considering the constitutional jurisprudence and that of the European Court of Human Rights, particularly about Jehovah's Witnesses in Russia. The text is a translation of an article published in the *Revista General de Derecho Canónico y Eclesiástico del Estado* (Ferreiro Galguera 2023) before the recent Spanish decisions discussed in the article by Massimo Introvigne in this issue of *The Journal of CESNUR*.

**KEYWORDS:** Right to Honor of Religious Denominations, Freedom of Expression and Religious Criticism, Minority Religions and Defamation, Jehovah's Witnesses, Jehovah's Witnesses in Spain.

### *I. Introduction*

Honor and freedom of expression are two fundamental rights with a natural inclination to create conflicts. Like individuals, religious denominations, as legal entities, have the right to exercise freedom of expression and may experience the effects that the assertive exercise of this freedom by a third party can have on their right to honor.

In the following pages, we will delve into a campaign of disparagement experienced by a specific religious denomination, the Jehovah's Witnesses, in Spain through various media outlets, social networks, and even through the

bylaws of an association. This campaign will serve as a factual basis for exploring the blurred boundary between the exercise of freedom of expression and the protection of the right to honor, particularly in the case of religious denominations.

We will commence our analysis by examining the legal concept of honor, the ownership of which, while unquestionably belonging to individuals, has also been acknowledged for legal entities, excluding those of public law, for example, municipalities. Considering that religious entities are, therefore, holders of the fundamental right to honor, in the second section we will scrutinize the legal concept of a religious denomination through the lens of the pejorative term “cult” (*secta*, in Spanish) or “cultic deviances,” which, as we have asserted for some time, is an inherently sociological term. From the standpoint of the state neutrality implicit in secularism, it cannot be categorically considered a legal term.

In the third section, we will explore events where individuals and associations conveyed a highly unfavorable image of the religious denomination Jehovah’s Witnesses. This denomination, registered in the Registry of Religious Entities and deeply rooted in Spain, faced negative portrayals through various media channels, social platforms, and television documentaries. Given that these are primarily public expressions or reports ostensibly protected by freedom of expression, yet causing harm to the honor of a specific legal entity, we will present in the fourth section the constitutional parameters within which freedom of expression must express itself. This ensures it maintains the preferential character recognized by the Spanish Constitutional Court derived from parameters based on rules or criteria indebted to the jurisprudence of the European Court of Human Rights.

It is within this framework that we intend to conclude this investigative exercise in section V. Many challenges have been faced by Jehovah’s Witnesses, along with other minority denominations, including the Church of Scientology, in various European countries such as France and Germany. However, our primary focus will be on Russia. We will delve into this country, examining two significant judgments, among many others, issued with a twelve-year gap. Through these rulings, we aim to analyze the criteria adopted by the European Court of Human Rights in resolving conflicts between a state authority (the public authorities of post-Soviet Russia) and a specific religious denomination, the Jehovah’s

Witnesses. This analysis will be based on the current Russian Federal Law on Freedom of Conscience and Religious Associations dated September 19, 1997.

## *II. The Honor of Religious Denominations*

### II.1. Legal concept of honor

Honor, as a legal asset, is not a tangible reality that our senses can consistently perceive with clarity and precision. Its boundaries are extensive enough that, in many cases, from a legal standpoint, it can only be perceived through prior legal consideration (Fernández Bautista 2012, 151; Queralt Jiménez 2010, 326; Carmona Salgado 2008, 1908, Vidal Marín 2007, 6).

Neither the Constitution or the Penal Code, nor the Organic Law 1/1982 of May 5 on the civil protection of the right to honor, personal and family privacy, and one's own image, provide a clear definition of the concept of honor. The Constitutional Court itself has not achieved a precise delimitation and has referred to the vagueness of the term (Fernández Bautista 2012, 154), stating that honor is “an indeterminate concept that depends on the norms, values, and social ideas prevailing at each moment” (STC [Constitutional Court] 8/2022 [FJ3]; STC cases are not included in the final references). STC 139/1995 affirms:

This Court has expressly referred to the impossibility of finding a definition of the honor in the legal system itself (STC 223/1992). It is a concept dependent on the norms, values, and social ideas in force at each moment (STC 185/1989), which easily fits, therefore, into the legal category known as indeterminate legal concepts (FJ5).

The Constitution mentions it in Article 18, stating “the right to honor is guaranteed,” and both Organic Law (LO) 1/1982 (articles 7.7 and 7.8) and the Penal Code relate it to the dignity of the person. Art. 7.7 LO 1/1982 states:

They shall be considered illegitimate intrusions (...) 7. The imputation of facts or expression of value judgment through actions or expressions that in any way injure the dignity of other persons, impairing their reputation, or undermining their own estimation.

The Spanish Penal Code (CP) refers to slander (208 CP) as an

action or expression that injures the dignity of other persons, impairing their reputation, or undermining their own estimation.

Both the fundamental right to honor and the rest of the fundamental rights enshrined in the Constitution are based on the dignity of the individual, a concept that we could approach through a metaphor straddling imagination and biology. All individuals, regardless of their origin, gender, nationality, religion, culture, economic or social background, have, in addition to their physical organs at birth, an invisible but not less real organ: human dignity. This organ is also composed of invisible and potential cells or matter: human rights. It is not the state that grants dignity to individuals, because it is inherent in every person. The state's mission is simply to recognize, guarantee, and protect it. Because "the dignity of the individual" and "the inviolable rights inherent in them" are, along with

the free development of personality, respect for the law, and the rights of others (...), the foundation of the political order and social peace (art. 10 Spanish Constitution [CE]).

Therefore, by violating a fundamental right (such as honor or any other), the dignity of the individual is violated.

In an attempt to narrow down the legal concept of honor (Fuentes Osorio 2007), a doctrinal trend was based on a factual conception (Laurenzo Copello 2002), while another relied on normative conceptions (Gómez Rivero 2008, 764). We find ourselves closer to mixed conceptions (factual-normative: Fuentes Osorio 2007, 412).

The proponents of the factual conception linked honor to a fact: the behavior of each person as a response to individual personality. The right to honor would be determined by an external aspect, the image that society has of the persons' reputation or good name based on their actions, and by an intimate assessment that the individuals have of themselves (self-esteem). According to Fuentes Osorio, a good reputation is the assessment that society makes regarding a person's merits (Fuentes Osorio 2007, 412). This conception implies considering an axiological code prevailing at any given moment, from which these assessments are made consciously or unconsciously.

The factual conception has two drawbacks: a) being based on merit, it does not provide citizens with a minimum level of honor, so some individuals might experience a lack of honor due to their despicable conduct; b) the assessment from an ethical code relies on a subjective component and, as such, is imprecise and volatile.

According to the proponents of normative criteria, norms (legal, social, or moral) ensure that all individuals, by virtue of the inherent dignity of human nature, have the same level of honor regardless of the conduct they display.

The mixed conception argues that norms should guarantee a minimum level of honor to each individual and a variable level that depends, in part, on their own behavior and, in part, on the prevailing ethical or axiological code.

In our opinion, the STC also leans towards the mixed doctrine since it recognizes a minimum level (Fernández Bautista 2012, 156) that can be modulated by behavior. Honor as a fundamental right (Article 18.2 of the Spanish Constitution), protects

the good reputation, the good name of persons, shielding them from expressions or messages that may cause them to be regarded with disapproval by others, leading to discredit or disdain, or being deemed offensive in the public eye (STC 107/1988; 9/200 FJ3).

The doctrine of the STC on honor is condensed in judgment 8/2022 of November 27, 2022 (*Máximo Pradera v. Rodríguez Naranjo*). The right to honor is “a legal concept whose precision depends on the norms, values, and social ideas prevailing at each moment” (see STC 112/2000, May 5, FJ6, also STC 180/1999, October 11, FFJJ 4 and 5). It positively guarantees the “good reputation” (STC 216/2013, December 19, FJ5) and prohibits “being mocked or humiliated before oneself or others” (STC 127/2004, July 19, FJ5), also extending to the professional life of the individual, “which cannot be (...) demeaned without legitimate reason, recklessly, or capriciously” (STC 65/2015, April 13, FJ3).

Sometimes, the STC replaces the term “honor” with “reputation” or “good reputation.” The explanation is that the STC often relies on judgments from the European Court of Human Rights (Queralt Jiménez 2008), which refers to the European Convention on Human Rights. The latter in Article 10 concerning freedom of expression, when mentioning restrictions or limits, uses the term “reputation” instead of “honor.”

Underlining these doctrinal and jurisprudential discussions and aiming at emphasizing the most essential aspects of the concept, we can conclude that the right to honor is a personal right composed of an internal aspect and an external aspect. The internal element corresponds to the right of every person to have a



positive self-image (self-esteem: Merino 2010). The external aspect refers to the right of every person to a good reputation (good name) in society. Therefore, it includes the right that no one can disparage citizens with statements or accusations that harm that positive image.

As a fundamental right, although all individuals are holders of the right to honor, its breadth will be determined by behavior, circumstances (such as profession), and the norms and social values prevailing at any given time.

## II.2. Honor of private legal entities: religious confessions

No one doubts that natural persons are holders of the fundamental right to honor. However, a doctrinal sector raised the question of whether legal entities, either public or private, should be included within the scope of Law 1/1982 and benefit from the protection system created by that law (Rubio Torrano 2016). The STC, initially, excluded public institutions or certain classes of the state as holders of honor in judgment 107/1988.

In an interview with the newspaper *Diario 16*, a conscientious objector, convicted of slander against the Army, had stated:

It's incredible that I get seven months, and they punish a captain with a distinguished surname who called the King a pig with just one month of arrest. This confirms an idea I had firmly rooted in: that a large portion of the judges are truly incorruptible; nothing, absolutely nothing, can force them to do justice.

The court ruled in these terms:

The right to honor has, in our Constitution, a personalistic meaning, in the sense that honor is a value related to individuals considered individually. This makes it inappropriate to speak of the honor of public institutions or certain classes of the state, for which it is more correct, from a constitutional point of view, to use the terms dignity, prestige, and moral authority, which are values deserving of the penal protection provided by the legislator but are not precisely identifiable with honor (J2).

In a second instance, the STC acknowledged that legal entities could be holders of fundamental rights, although it should be specified in each case which fundamental rights apply (STC 139/1995). In this case, an article in the magazine *Interviú* had exposed that a company had bribed some members of the Civil Guard in the Canary Islands to allow their transported merchandise to

circulate without the required permits. The company filed a civil lawsuit against the magazine for the protection of the right to honor.

This capacity, recognized in the abstract, evidently needs to be delimited and specified in view of each fundamental right. That is, not only are the purposes of a legal entity crucial to determine what conditions are met for its ownership of fundamental rights, but also the specific nature of the fundamental right considered, in the sense that it should allow its ownership by a legal entity (J5).

Regarding the right to honor, the STC has stated that although it “is a value granted to individual persons,” being closely linked to the dignity of the individual (Article 10.1 CE) “it is not exclusive to them.” The STC judgment 214/1991 (*Violeta Friedman vs. Revista Tiempo*), for example, extended the protection of honor to the Jewish people who suffered the Holocaust (Shoah: Ferreiro Galguera 1996, 97–102). Due to their specific purposes, legal entities can also be holders of the right to honor, which may be eroded when facts or opinions that defame them or cause them to be discredited in the eyes of others are disclosed (Article 7.7 L.O. 1/1982: Yzquierdo Tolsada 2016).

Even if it is a commercial entity, it would be sufficient to establish the illegitimate intrusion into its honor without the need to prove that it has suffered financial damage to its interests (STC 193/1995). This ruling applies this criterion not only to commercial entities but to all associations in general, including specific ones such as unions, political parties, and foundations, and even in some cases to municipal commercial entities or legal entities of public law whose external activity is governed by private law. However, it establishes as a general criterion that “legal entities of public law are not holders of the right to honor.” As later explained by judgment 195/2015,

fundamental rights and public liberties are individual rights that have the individual as the active subject and the state as the passive subject to the extent that they tend to recognize and protect areas of freedoms or benefits that public authorities must grant or facilitate to individuals.

Therefore, it is difficult to recognize the ownership of fundamental rights to public law entities because the very notion of fundamental right that is at the basis of Article 10 CE is not very compatible with entities of a public nature. The state and legal entities of public law are not holders of fundamental rights as a general rule but rather “possess competencies.” Although there are exceptions to that general rule, the fundamental right to honor is not among those exceptions.

In summary, legal entities, due to their lack of physical existence, cannot be holders of the right to life, the right to physical integrity, or bearers of human dignity. However, they can be holders of other fundamental rights necessary and complementary to the achievement of their purposes, such as the right to honor, except for public law entities.

### II.3. Religions and “cults”

The Spanish Constitution, in guaranteeing collective religious freedom (Article 16.1), mentions the term “communities,” and in Article 16.3, when referring to the obligation of public authorities to consider the religious beliefs of Spanish society, states that it will maintain cooperative relationships with the “Catholic Church and other religious denominations.” Article 16 CE uses the terms “communities” (obviously referring to religious communities) and “religious denominations” to refer to the collective subjects of religious freedom and emphasizes that the Catholic Church is a religious denomination. However, the Constitution does not provide a definition for this term.

The Organic Law on Religious Freedom (LO 7/198, of July 5th, hereinafter LOLR), in Article 2.2, after mentioning various expressions of individual freedom of religion, adds expressions of religious liberty referred to “churches, religious denominations, and religious communities,” terms that do not refer to three different groups but to the same concept. In Article 5 and in Transitional Provision 1, it opts for another term, “religious entity.” Like the Constitution, the LOLR provides several synonymous terms but refuses to define the concept of a religious confession. It only makes an approximation when excluding from the scope of the law activities unrelated to the religious community (Article 3.2). In our opinion, this attempt is unsuccessful because, instead of clarifying, it confuses things by describing non-religious activities or purposes that are characteristic of what is sociologically understood as religion.

Considering the principle of secularity, it is logical that neither the Constitution nor the LOLR have legally defined what a religious confession is. The state, as neutral in religious matters, cannot evaluate or define the religious content of a group because it is incompetent in that matter. The only competent entities to make that assessment are individuals and communities, the sole holders of the fundamental right to religious freedom.

Article 10.2 of the Constitution urges the interpretation of rules regarding religious freedom, or any other fundamental right, “in accordance with the Universal Declaration of Human Rights and the treaties and agreements on the same matters ratified by Spain.” The most authoritative interpreter of the International Covenant on Civil and Political Rights of 1966, the group of experts who make up the Human Rights Committee, in their exegesis of Article 18 regarding freedom of thought, conscience, and religion, consider that the terms “belief” or

“religion” are to be broadly constructed... Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief (UN Human Rights Committee 1993, 2).

The Committee, emphasizing that religious freedom is exercised within the framework of theistic and non-theistic religions, new religions, minority religions, and even atheism, is advocating a broad conception of the term “confession.”

Continuing on the international level, the European Union, aware that its member states maintain differences in the legal treatment of religious confessions present in their societies,

respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States (Article 17 Treaty on the Functioning of the European Union).

What about the so-called “cults” (*secta* in Spanish) or new religious movements? The Spanish term “secta” is sociologically pejorative. According to the dictionary of the Real Academia Española, it refers to a group professing a “religious or ideological doctrine that deviates from what is considered orthodox.” For many, it is synonymous with a false religion. However, individuals and communities can make that assessment, but not the state, which is secular or non-confessional. The term “secta” is not a legal but a sociological term, often used by the media or critics of certain groups. When used by state authorities (legislators, judges, or rulers), they deviate from the principle of secularity. The state, incompetent in religious matters, cannot arbitrarily affirm or deny the religious character of a group that proclaims itself as such, regardless of whether its rituals or beliefs may be considered more or less exotic. It can, however, detect that the group presenting itself as religious has non-religious purposes, not because it can define what is religious, but because it can detect that those purposes are

fraudulent, characteristic of specific associations (profitable, sports, etc.), or simply aim to mock the religion, that is, pursue an *animus jocandi* that, although permissible within the framework of freedom of expression, does not seem to be a religious purpose as the mocker lacks the intent to unite with the mocked (see the decision of the Audiencia Nacional dated October 19, 2020 on the Church of the Flying Spaghetti Monster: Herrera Ceballos 2021).

The state can and should ensure that all groups, regardless of their nature, operate within the limits established by the law. In the case of associations in general, they should not “pursue goals or use means classified as a crime” (Article 22.2 CE). In the context of religious confessions, they should not violate the “public order protected by law” (Article 16.1 CE) developed by Article 3.2 of the LOLR.

Therefore, no confession can be declared illegal unless there is a final judgment supporting it based on conclusive evidence that it pursues criminal goals or uses criminal means or transgresses the specific limits of religious freedom, namely, the rights and freedoms of others and public order in its triple sense: safety, health, and public morality (Article 3.2 of the LOLR). As established by Judgment 46/2001, it is not acceptable to use the “public order clause as a precautionary or preventive measure” based solely on mere conjectures or suspicions of illegality.

In 2002, a controversial office named MIVILUDES (Mission interministérielle de vigilance et de lutte contre les dérives sectaires) was created in France, with the mission of identifying and combating “cultic” activities. Under the Prime Minister’s office, it brings together representatives from different ministries: Interior, Justice, Health, and Education. Its mission is to collect and analyze information about these groups and protect individuals from potential risks associated with “cultic deviances.” The problem is that if the state does not base the definition on legal but on sociological terms, it runs the risk of violating the principle of secularity, which requires it to be neutral in the face of religious phenomena. Without a doubt, some of these groups may commit crimes, but such a determination must be made by the courts based on conclusive evidence.

However, although the LOLR does not define what churches, confessions, and religious communities are, but only mentions them, it introduces concepts (effects of registration [Article 6], well-known roots, and cooperation agreements [Article 7]) that help not only to define but to establish a classification of

confessions from a legal perspective: confessions not registered in the Register of Religious Entities (hereinafter RER); confessions registered in the RER; confessions registered in the RER and that have obtained the state declaration of well-known roots; and confessions registered in the RER, with well-known roots, and that have signed cooperation agreements with the state. Within this group are included both the Catholic Church, which through the Holy See signed the agreements of 1976 and 1979, which have the rank of international treaties, and Islam, Judaism, and Protestantism, which signed cooperation agreements with the state in 1992, having the rank of ordinary laws.

In this classification, the Jehovah's Witnesses, an organization persecuted during the dictatorship of Francisco Franco (1892–1975), are the second religious entity (excluding other religious denominations with cooperation agreements) to have obtained the declaration of well-known roots in the Spanish democracy, on June 29, 2006. Therefore, in accordance with Article 7.1 of Organic Law 7/1980, of July 5th, on Religious Freedom, they are legally entitled to sign future cooperation agreements with the Spanish State.

The Advisory Commission on Religious Freedom (CALR), an advisory body to the Ministry of Justice [now the Ministry of the Presidency] on religious matters, is the state body that *de facto* recognized the well-known roots of Jehovah's Witnesses and other religious denominations that have obtained it (i.e. Mormons, Buddhists, and Orthodox). Although Article 8 of the LOLR, which establishes the creation of the CALR, does not expressly grant it the authority to confer a recognition of well-known roots, it has been the body that, in the absence of regulations specifically governing this concept, has *de facto* granted this declaration to the four religious denominations that currently possess it. The matter is regulated today by the Royal Decree 593/2015, of July 3, which regulates the declaration of well-known roots of religious denominations in Spain. However, to date, no religious denomination has been granted a declaration of well-known roots under the application of this regulation.

As highlighted by the CALR in its report, in compliance with Royal Decree 2398/1977 of August 27, regulating the Social Security of the Clergy, the “ministers of worship” of the Jehovah's Witnesses have been assimilated to employees, allowing them to be included in the General Social Security System (Royal Decree 1614/2007 on the terms and conditions for inclusion in the General Social Security System of the members of the Religious Organization of

the Jehovah's Witnesses in Spain). Currently, only ministers of worship of denominations with agreements, as well as those of the Russian Orthodox Church of the Moscow Patriarchate in Spain and those of the religious organization of the Jehovah's Witnesses, have obtained this assimilation to employees through the corresponding royal decrees. In the case of Jewish rabbis, there seems to be no need for regulatory development because the Agreement with the Federation of Jewish Communities in Spain (FCJE) of 1992 establishes in its Article 5 that assimilation occurs "under the same conditions that current legislation establishes for the clergy of the Catholic Church, with an extension of social protection to their family." This means that Jewish rabbis are assimilated to the status and social protection of the clergy of the Catholic Church.

Furthermore, as a religious entity with well-known roots, after Law 15/2015, of July 2, on Voluntary Jurisdiction, Article 60 of the Civil Code recognizes the Jehovah's Witnesses' ability to celebrate religious marriages with civil effects. The law provides that

Civil effects are recognized for marriages celebrated in the religious form provided by churches, denominations, religious communities, or federations thereof that, registered in the Register of Religious Entities, have obtained recognition of well-known roots in Spain.

### *III. Jehovah's Witnesses in Spain: Intrusion into Their Honor*

#### **III.1. Facts**

In 2021, the religious denomination of Jehovah's Witnesses, along with some of its members, filed lawsuits against the "Spanish Association of Victims of the Jehovah's Witnesses" (hereinafter AEVTJ). These lawsuits sought, among other things, to remove the association's name from the National Register of Associations, as well as the closure of a website and several social media accounts on Facebook and Twitter. Additionally, they requested the cessation of actions they considered illegitimate intrusions into their right to honor, resulting from public expressions made on various digital platforms. A few months later, the Jehovah's Witnesses filed a lawsuit for illegitimate intrusion into their honor against a member of this association. This lawsuit was based on harmful comments and information about their reputation disseminated by this member

on social media platforms (Twitter, LinkedIn, Instagram, Facebook, and Change.Org, where a petition was submitted requesting the government to declare Jehovah's Witnesses an "extremist cult") and in YouTube videos [on these cases, see Introvigne, this issue of *The Journal of CESNUR*].

### III.2. Potential defamation caused by the name of an association

We should first discuss whether the mere name that appears in the statutes of an association, in this case "Spanish Association of Victims of the Jehovah's Witnesses," can constitute an illegitimate intrusion into the honor of a religious entity.

The Organic Law 1/2002, of March 22, on the Right of Association, which develops the right guaranteed by Article 22 of the Constitution, recognizes the importance of the associative phenomenon as an instrument of social integration and participation in public affairs. Nevertheless, public authorities must maintain a careful balance between guaranteeing associative freedom and protecting the fundamental rights and freedoms that could be violated through its exercise. In Article 3, the law recognizes the right of all individuals to freely associate but adds an important nuance: "for the achievement of lawful purposes." This means that an association whose sole and primary objective is to violate the honor of a natural or legal person, without prioritizing the search for truth, would not be pursuing lawful purposes, and therefore should not be considered a legitimate association.

Regarding the name of an association, Article 8 of the Organic Law 1/2002 states that

(...) it may not include a term or expression that leads to error or confusion about its own identity, or about its class or nature, especially by adopting words, concepts, or symbols, acronyms, and similar belonging to different legal entities, whether or not of an associative nature. 2. Names that include expressions contrary to laws or that may imply a violation of fundamental rights of individuals will not be admissible.

According to the president of the AEVTJ in a video statement, the word "victim" had been deliberately chosen to have a "brutal impact."

The mere name mentioned in the statutes, "Spanish Association of Victims of the Jehovah's Witnesses," may lead to "error or confusion about its own identity or about its class or nature" because it implies that the association is concerned with the victims of a religious entity. In essence, it equates a religious



denomination registered in the Register of Religious Entities and recognized as having well-known roots in Spain with a criminal or illicit association. The use of the word “victim” in other associations, such as the Spanish Association of Victims of Nazism or the Spanish Association of Victims of Domestic Violence, implies a criminal ideology or activity. Article 2 of Law 4/2015, of April 27, on the Statute of the Victim, defines a “direct victim” as a person who has suffered “damage (...) directly caused by the commission of a crime.” It would be severely discriminatory and offensive if an association used denominations such as “Spanish Association of Victims of Muslims,” “Spanish Association of Victims of Catholics,” or “Spanish Association of Victims of Gypsies.”

The term “victim” appears in various chapters of the statutes of the AEVTJ, on its web pages, and on social media platforms such as Facebook and Twitter. In Chapter II of the statutes, which deals with duration, purpose, and extinction, it states that the association’s purpose is to “group together all those individuals (...) victims of the religious organization of Jehovah’s Witnesses.” When stating that the association’s duration is indefinite, it asserts that its intention is to

bring visibility to the problem of victims of Jehovah’s Witnesses to society, with the aim of preventing it, especially for those individuals considering a lawsuit against the Jehovah’s Witnesses organization.

This message is also directed at potential members of the association, urging them to refrain from participating in a religious entity that, by generating victims, is portrayed as criminal in nature.

The European Court of Human Rights (hereinafter ECHR) itself has ruled that the use of “hostile or contemptuous terms” in relation to a religious community and its individual members is “sufficient to constitute a violation of religious freedom.” This was the case in the judgments *Tonchev and Others v. Bulgaria* and *Center of Societies for Krishna Consciousness in Russia and Frolov v. Russia*. In the *Tonchev* case, the ECHR condemned the Bulgarian authorities for disseminating a letter and an informative note using hostile terms against religious minorities, including Jehovah’s Witnesses. It stated that, although authorities can make critical judgments about religious groups, they should

be based on evidence of specific acts that may constitute a risk to public order or the interests of third parties (European Court of Human Rights 2022b, 61).

It added that

[The letter and the informative note] contain negative and disproportionate judgments, particularly those that consist of presenting evangelical churches as “dangerous sects” that “contravene Bulgarian legislation, the rights of citizens, and public order” (European Court of Human Rights 2022b, 61).

In the Russian case about the ISKCON (popularly known as the Hare Krishna movement), the ECHR condemned Russia for disseminating a brochure that included hostile terms against various religious minorities, including Jehovah’s Witnesses. It accused them of being “greedy” and “destructive to Russian society,” practicing a “totalitarian cult,” “psychological manipulation,” and “zombification” of youth. According to the ECHR,

Far from attempting to present a nuanced and balanced view of a variety of existing religions, the publication painted a starkly negative picture of new religious movements (European Court of Human Rights 2021b, 42).

(...) by using derogatory language and unsubstantiated allegations for describing the applicant center’s religious beliefs and the ways in which they are expressed, the Russian authorities have overstepped their margin of appreciation (European Court of Human Rights 2021b, 43).

While these cases refer to expressions uttered by public authorities, violating their obligation of neutrality, there is no doubt that uttering “extreme negative stereotypes,” even attributing serious crimes to a religious organization as the AEVTJ did, can violate the honor of that legal entity and even harm the religious freedom of its members.

### III.3. Other accusations

Among other specific accusations made against the Jehovah’s Witnesses, both in the statutes of AEVTJ and on various websites, social media platforms, and YouTube videos, the following are mentioned:

#### a) Expulsion of members and subsequent marginalization (“social death”)

The preamble of the statutes state that

this organization [the Jehovah’s Witnesses] includes internal rules whose disobedience leads to an internal trial parallel to the judicial trial of any state and results in expulsion or internal marginalization.

Furthermore, in Article 5.1, it is mentioned that the AEVTJ will be dissolved when, among other things, the Jehovah’s Witnesses will treat with dignity those

who leave the organization or are expelled. In several videos, it is asserted that Jehovah's Witnesses cause the "social death" of these individuals.

This accusation refers to generic attitudes that are common in many organizations, not only religious but also cultural and political, due to their autonomy. Every religious, political, or associative entity has rules that, if violated, can lead to the expulsion of its members. The ECHR ruling in the case of *Associated Society of Locomotive Engineers and Firemen v. the United Kingdom* stated:

Article 11 cannot be interpreted as imposing an obligation on associations or organisations to admit whosoever wishes to join. Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership. By way of example, it is uncontroversial that religious bodies and political parties can generally regulate their membership to include only those who share their beliefs and ideals (European Court of Human Rights 2007a, 39).

An example of this principle is the recent case that happened on September 2023 when the PSOE (Spanish Socialist Workers' Party) expelled a longtime socialist, Nicolás Redondo, for publicly supporting the then-candidate of the Popular Party for the presidency of the Madrid Assembly, Isabel Díaz Ayuso.

The ECHR has reiterated the right of every religious community to establish norms of religious conduct and to expel those who do not comply with them. In the case *Fernández Martínez v. Spain*, the ECHR ruled that

Article 9 of the [European] Convention [on Human Rights] does not enshrine a right of dissent within a religious community; in the event of any doctrinal or organisational disagreement between a religious community and one of its members, the individual's freedom of religion is exercised by the option of freely leaving the community (...) Moreover, in this context, the Court has frequently emphasised the state's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society, particularly between opposing groups (see, among other authorities (...)) Respect for the autonomy of religious communities recognised by the state implies, in particular, that the state should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them (European Court

of Human Rights 2014, 128; see also European Court of Human Rights 2009c, 80, and 2010c, 137).

The religious freedom of the members of a religious denomination is adequately protected if the freedom to leave that community at any time is guaranteed:

The Article 9 ECHR (...) does not protect (...) the alleged freedom of a person to maintain a heterodox position within their church. On the contrary, churches have the right to establish limits on the exercise of religious freedom by their faithful. They can impose a uniform religious doctrine and, consequently, impose corresponding sanctions on members who deviate from it, and even expel them from the religious denomination. In line with the above, the Commission has stated that individual religious freedom is adequately protected by the fact that a person is free to leave their religious community at any time (Martínez Torrón 2003, 35).

Regarding the accusations of “mind control” of minors, who allegedly are quickly baptized, according to the national representatives of the Jehovah’s Witnesses

they do not practice infant baptism because anyone wishing to be baptized must first undergo a deep study of the Bible, attend their religious services twice a week, and participate in their evangelizing activity. Only if the person meets these requirements, is convinced of what they learn, and applies it in their life, will they be baptized (personal communication).

Regarding “social death,” national representatives of Jehovah’s Witnesses state that they consider acts such as adultery, alcohol, and drug abuse, domestic or other violence, homicide, and theft to be serious sins. If a baptized member commits any of these sins, the elders will try to provide spiritual help. However, if the offenders do not repent, the elders may decide to expel them. In such a case, a brief announcement will be made in the local congregation to inform them that that person is “no longer one of the Jehovah’s Witnesses.”

The process is similar if a baptized member decides to renounce their faith and disassociate from the congregation. In such cases, congregation members will decide whether to interrupt or limit contact with the person according to the biblical mandate recorded in *1 Corinthians* 5:11–3. The expelled persons, they note, can attend religious services, meet with the elders for spiritual help, and, if they show repentance, can request reinstatement. According to the website of the Jehovah’s Witnesses, the Bible instructs in *2 Corinthians* 2:6–8 that when an individual is reinstated into the congregation, fellow believers should “confirm” their love and affection for that person. Among cohabiting relatives, there is no change in the social relationship even in the case of disfellowshipped or

disassociated members (“Do Jehovah’s Witnesses Shun Those Who Used to Belong to Their Religion?” 2023).

Advising a person to avoid contact with another to prevent a negative influence on their behavior or beliefs is something that parents, educators, sociologists, and religious leaders can do. This type of advice may be considered discriminatory if it is based on unreasonable or unjustified reasons or if it is not proportionate to the intended purpose (STC 22/1981, FJ3, and STC 34/1981, FJ3). It is lawful for people to freely decide to avoid contact with someone who has renounced their faith. What would distort this behavior is if the decision were the result of violence or coercion. The exercise of persuasion, in any field (political, religious, or emotional), cannot be considered coercive unless a clearly coercive instrument is used.

b) Discrimination against women and against sexual diversity

The accusation that Jehovah’s Witnesses “discriminate” against women is based on the ecclesiastical category of “elder” being reserved for males. The religious community argues that these rules are also used by other denominations, such as the Catholic Church, which does not allow female priesthood, and that it is justified by the right to the autonomy of religious denominations (Article 6.1 LOLR).

Regarding discrimination based on sexual orientation, such as homosexuality, Jehovah’s Witnesses acknowledge that they disapprove of extramarital sexual relationships, whether heterosexual or homosexual. However, following their biblical interpretation, they do not condemn individuals for being homosexual but rather for engaging in homosexual practices. They emphasize that there is no evidence in their texts that they insult or ridicule homosexuals, and they reject homophobia because, as Christians, they cannot harbor hatred.

The free development of personality allows for sexual freedom within the bounds set by the law. However, any individual or legal entity, based on their freedom of religion and ideology (Article 16), can choose its position on sexual orientation if it doesn’t violate the law and the fundamental rights of others. Being against same-sex marriages is as legitimate as being in favor. It is important not to confuse maintaining a more or less conservative sexual orientation (such as maintaining virginity before marriage or promoting heterosexuality) with insulting women or homosexuals.

In any case, a distinction must be made between illicit acts committed by one or several individuals within an organization and those committed institutionally by the organization itself. The misconduct of politicians does not criminalize their party, just as a crime committed by a member of the Catholic Church does not criminalize the entire religious denomination.

To incriminate an organization for its criminal objectives, these objectives must be reflected in its foundational documents or statutes, or unequivocally inferred from its institutional behavior. From this perspective, if the declared goal of an association were to defame an individual or legal entity, it could be considered an illicit purpose.

c) Cover-up of child abuse

Both in the statutes and on social media platforms like YouTube, the AEVTJ has claimed that Jehovah's Witnesses cover up child abuse and have a policy of not reporting these criminal activities to the authorities. The statement on the YouTube platform "Presentación de la Asociación Española de Víctimas de los Testigos de Jehová" claims the following:

Curiously, child abuse is a separate issue. This religious cult, which is not considered a cult in Spain, should look inside itself to see how it is, with the number of proven suicides and sexual abuses that haven't been reported to the police, and they have hidden the names of pedophiles in a database that they don't want to give to the authorities.

The defense of the religious entity states that no evidence has been provided to confirm these accusations, aside from isolated cases that should not criminalize the entire group. For example, the ECHR condemned a politician for generalized statements accusing the Roma community of "violence and delinquency." It found that by using expressions like "Gipsy terror," "Gipsy gangs," and "genocide committed by [...] Gypsies," undoubtedly, he intended to "vilify Roma in Bulgaria and to stir up prejudice and hatred against them" (European Court of Human Rights 2021a, 65).

Witnesses for the AEVTJ mentioned two alleged cases of sexual abuse that occurred in Spain decades ago but did not prove that they had been concealed. The national representatives of the religious entity asserted that their own publications urge reporting cases of rape to the police "as soon you are able to" ("How to Cope with Rape" 1993, 11). Their literature states that

There are some situations in which a lawsuit may be legally necessary, perhaps situations involving divorce, child custody, alimony, insurance compensation, bankruptcy, or wills. If a Christian uses such legal means to settle the matter as peaceably as he can, he is not violating Paul's counsel. 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 [*1 Corinthians* 6:1–8, which advises against taking a “brother” to civil courts] (Christian Congregation of the Jehovah's Witnesses 2017, 254).

The Jehovah's Witnesses deny the AEVTJ's accusation that they apply the so-called “two-witness rule” to determine whether to report sexual abuse to secular authorities, stating that elders must report even if it is based on the accusation of a single person only. They emphasize that the “two-witness rule” is only applied to decide whether the accused should be expelled from the congregation. They state that this ecclesiastical process does not intend to replace the civil or criminal justice system, to which they fully acknowledge exclusive competence for prosecuting crimes.

#### d) Health damage: blood transfusions

The AEVTJ accuses the Jehovah's Witnesses of causing depression and mental illnesses among their members, and inciting them to commit suicide, by refusing blood transfusions.

The Jehovah's Witnesses argue that they reject blood transfusions because they equate them with the ingestion of blood, which, according to their interpretation of certain passages in the Bible, is prohibited (“Therefore I say to the Israelites, ‘None of you may eat blood, nor may any foreigner residing among you eat blood,’” *Leviticus* 17:10, New International Version). They state that this prohibition is like how other religions reject the consumption or treatment with products derived from certain animals.

The decision of the Jehovah's Witnesses to refuse blood transfusions, even in situations where their life may be in danger, is not only protected by religious freedom but also by the law 41/2002, the Patient Autonomy Act. Article 2.4 of this law states that: “Any action in the health field generally requires the prior consent of patients or users.” The issue arises when the patient in need is a minor. The Constitutional Court has established a clear position on this matter. In the event of a collision of fundamental rights, such as the right to religious freedom and the right to life of a minor, the right to life prevails. However, the

principle of practical concordance must be followed, meaning that the predominance of the prevailing right (in this case, the right to the life of the minor) should not require a sacrifice beyond what is reasonable for the other right (in this case, the religious freedom of the parents). The sacrifice should be limited to what is strictly necessary for the predominant right to be realized while respecting the essential content of the other right.

Applied to this case, the principle of practical concordance dictates that condemning parents for refusing to persuade their child to adopt a position contrary to the teachings they had always conveyed would violate the essential content of their religious freedom. Establishing the predominance of one right over another does not mean that the second right is annihilated. Practical concordance in such cases would be achieved if the state temporarily assumes the custody of the minor and orders the transfusion. However, in the specific case of the Constitutional Court judgment STC 154/2002, the child, also entitled to religious freedom, vehemently rejected the transfusion. The question arose whether imposing it against his will would or would not violate his physical integrity preserved by Article 15 of the Spanish Constitution. In any case, it is essential to note that, in this specific situation, the parents respected and complied with judicial decisions, although they exercised their fundamental right to seek effective judicial protection by resorting to the legal system (art. 53.2 CE).

It is worth mentioning that the General Prosecutor's Office, in its circular 1/2012 regarding the criteria prosecutors should employ when addressing conflicts arising in clinics and hospitals over blood transfusions and other urgent and serious medical interventions that, in the opinion of doctors, should be performed on minors and are met with opposition from the minor or their legal representatives, established the overarching principle of the best interests of the child (Fiscalía General del Estado 2012).

In any case, there is no evidence to demonstrate that belonging to this religious group implies harm to health or incitement to suicide.



#### *IV. Freedom of Expression: Its Prevailing Character Against Honor According to the Constitutional Jurisprudence*

##### **IV.1. Preliminary considerations**

Freedom of expression, by its very nature, is susceptible to colliding with fundamental rights such as honor, privacy, and personal image, especially when exercised through media channels. Sometimes, the limits are clearly defined within legal frameworks, while in other instances, they may not be as clear. In any case, as in any situation involving a collision of fundamental rights, the courts must proceed, considering current legislation, with the corresponding care to determine the prevailing right. Jurisprudence, primarily that of the STC, but also that of the Supreme Court (hereinafter TS) and the ECHR, has established general criteria for evaluating the circumstances involved. These criteria, like in all cases of a collision of rights, must be applied following the principle of practical concordance mentioned earlier. According to this principle, the judge must consider that the prevalence of one of these rights does not mean the annihilation of the other, i.e., the violation of its essential content. The sacrifice borne by the second right should not go beyond what is reasonable, meaning beyond what is necessary for the preponderant right to be realized.

##### **IV.2. Collision between opinion and honor**

First, we will analyze the scenario in which the exercise of freedom of expression in the strict sense infringes upon the right to honor of an individual, i.e., when injurious thoughts, ideas, or opinions are expressed. To determine which right prevails, according to the doctrine of the STC, two premises must be considered:

- a) While facts are susceptible of proof: opinions, by their very nature, are not subject to verification of accuracy, therefore, they cannot be required to be true.
- b) Since freedom of expression is not only a fundamental right of individuals but also a fundamental principle of the democratic state, it holds a preferential status depending on whether or not these two parameters are present.

## 1) Intention to offend

Freedom of expression prevails as long as opinions or value judgments are made without the direct and primary intention to harm others (hate speech). In line with the jurisprudence of the European Court of Human Rights (e.g. European Court of Human Rights 2006b), freedom of expression protects not only the expression of ideas or opinions that are “favorably received” (STC 151/2004) but also those that

may disturb or seriously upset the state or part of the population. It is permissible to express ideas that may disturb or even seriously upset others if they are disseminated with an *animus criticandi* (a critical spirit) or *animus jocandi* (a playful spirit) because freedom of expression includes the right to criticism, even if it is harsh, and to satire, even if it is mocking, but it does not protect the right to insult (STC 105/1990).

It does not protect disqualifications that have been made with a direct and primary intention to harm, humiliate, or defame a person or a group of people, in other words, from an unequivocal *animus injuriandi*. In short, freedom of expression does not protect from what American doctrine calls “hate speech.”

The public statements made by the AEVTJ association and its members, in which Jehovah’s Witnesses are described as a destructive “cult” inciting suicide, violating the dignity of people who leave the organization, homophobic, and systematically violating the law, appear to be value judgments that do not seem to seek constructive criticism (*animus criticandi*) or a humorous tone (*animus jocandi*) but an intention to defame and offend (*animus injuriandi*).

However, as it is sometimes not easy to discern the boundary between criticism or mockery and hate speech, that is, between *animus criticandi* or *jocandi* and *animus injuriandi*, judges must exercise their judgment supported by these clues or criteria:

### a) The medium of expressing an opinion or value judgment

We must distinguish whether the expression is conveyed through a written or oral medium. In the first case, there is assumed to be more contemplation and composure in the sender, and therefore, injurious intent can be presumed. Oral transmission media (radio or television discussions) are more prone to heated discussions, and thus, it can be admitted that an injurious value judgment uttered in that context may have been the result of passion rather than a deliberate intent to injure (STC 20/2002).

In this case, the media through which injurious opinions have been expressed (statutes, social media platforms like Facebook or Twitter, websites, YouTube channels, etc.) allow for prior consideration before their emission, and therefore, they are not excused by possible heated moments. Consequently, they provide an indication of a denigrating animus or *animus injuriandi*.

b) Whether they are the defendant's own opinions or those of others

It is different whether the defendants express their own injurious opinions or simply reproduce, or refer to, defamatory opinions uttered by a third party. This is the case of the so-called "neutral report." In this scenario, freedom of expression prevails, provided two requirements are met: 1) that the journalist, media outlet, or other does not identify with or endorse those derogatory statements but merely reports them; and 2) that the journalist or media outlet provides a platform for the offended parties to respond in that article or program (European Court of Human Rights 1994).

The injurious statements publicly made by the AEVTJ association, and its members cannot be considered as statements from others but rather as their own declarations. These individuals present themselves as "victims" and publish their presumed experiences in public channels without inviting Jehovah's Witnesses to express their point of view. It is not, therefore, a "neutral report."

c) Whether the opinions or value judgments are justified or legitimized by the context and circumstances

This pertains to instances where insults are a reaction (*ius retorquendi*), where the intention is not to offend but to respond to a previous offense (retaliatory insult). For example, when expressed in the context of a debate among journalists, strong opinions in one medium provoke a reaction in another (STC 50/2010). In another example, José María García had started a defamatory campaign against the then president of Real Madrid, Ramón Mendoza. García went on to call him, among other things, "the son of the sausage maker from Soria." Later, during a general assembly of Real Madrid, Mendoza responded by saying, "It's better to be the son of a sausage maker than a *chorizo* [a pork sausage in Spanish but also a slang term for 'crook']," alluding to the fact that the journalist's father had been charged with fraud. The Constitutional Court considered that the prior defamatory campaign initiated by the plaintiff had weakened the limits of his fundamental right to honor.

The injurious statements publicly made by the AEVTJ association and its members, do not appear to be a reaction to previous statements by the Jehovah's Witnesses. Therefore, as it is not established that it is an "expression in response," freedom of expression does not prevail, and honor should predominate.

d) The existence of a relationship between the injurious opinion or value judgment and a fact that is true and of public interest

In the balancing exercise, the opinion or value judgment expressed will be all the more protected the greater the relationship with truth and with a fact of public interest. Conversely, freedom of expression does not prevail if injurious opinions are unrelated to facts that are true and of public interest.

For example, if, through a media outlet, an authority is called a thief when there is evidence of embezzlement (STC 105/1990), freedom of expression prevails because it is related to news that are true and of public interest, and the holder of the right to honor must bear it. The STS ruled on September 17, 2012, that if a cartoon depicts Prophet Muhammad (570–632), a sacred figure in Islam, with a bomb in his turban, especially at a time when terrorist groups attempt to justify their crimes using the name of God in vain, thus defiling Islam, the cartoon, as an expression of freedom of speech, prevails when linked to events of public interest and to a truthful criticism. The presumption is that there is an *animus criticandi* or *jocandi* (a motive to criticize or joke) rather than an *animus injuriandi* (a motive to injure). Therefore, such conduct would not be considered as part of the offense of scorn (525 CP).

However, in such cases, the judge must also weigh whether the expressions used are proportional to the ideas conveyed, i.e., whether the injurious expressions are necessary to convey that political criticism or denunciation. In the example of the bureaucrat accused of embezzlement, for example, it would not be proportional to add humiliating expressions regarding the physical appearance of the criticized person.

Alleged illegal or criminal activities committed by a religious entity, like any association, would be a matter of public interest. But, in the case of the injurious statements publicly made by the AEVTJ association and its members, there is a lack of truthfulness (we will delve into the concept later) because there is no diligent informative work by the informants. For this reason, the injurious

statements made cannot enjoy the preference of freedom of expression because they are injurious opinions of former members who accuse retrospectively without evidence supporting the truth of their accusations and, in many cases, without having gone through the judicial process as it would be appropriate if they had knowledge of criminal activities (Article 259 of the Criminal Procedure Law).

e) Occupation of the person who transmits the opinion and of those who receive it

The right to honor is an inalienable right of which all individuals are holders. However, sometimes the profession exercised by certain individuals, or their public projection, narrow the scope of their honor, and therefore, they must tolerate a higher threshold of disparagement than they would if they did not perform such a function. Politicians, for example, must endure disparagements that would be considered insults if they did not hold that profession (STC 192/1999 FJ7, and European Court of Human Rights 2000c).

The injurious statements publicly made by the AEVTJ association, and its members are directed towards Jehovah's Witnesses, a private legal entity that, neither by its activities nor its connection with the democratic system, has the duty to endure injurious disparagements.

Conversely, individuals such as politicians or journalists may see their freedom of expression enhanced due to the nature of their professions. Regarding politicians, Article 2 of Law 1/1982 refers to Article 71.1 of the Spanish Constitution (Members of Parliament and Senators shall enjoy inviolability for the opinions expressed in the exercise of their functions), from which it is deduced that any civil proceeding initiated for opinions expressed by MPs or Senators requires prior authorization from the Congress of Deputies or the Senate. However, as the ECHR has emphasized, this is not an absolute right, especially when exercised outside of Parliament. For example, discriminatory, racist, or xenophobic speeches delivered at a rally are not protected by freedom of expression.

Freedom of expression "reaches its maximum level when utilized by information professionals through the institutionalized vehicle for shaping public opinion, which is the press, understood in its broadest sense" (STC 165/1987 and 150/1990).

In the case of injurious statements made publicly by the AEVTJ association and its members, since they are not information professionals, they would not enjoy that precedence referred to by the Constitutional Court, nor have they acted with the due diligence of a good reporter.

#### IV.3. Collision between information and honor

Freedom of information, which involves gathering and transmitting truthful facts, may collide with honor, in this case, the honor of legal entities. When weighing such conflicts, the courts must consider the two premises mentioned earlier:

a) Objective facts or data, unlike opinions or value judgments, are susceptible of proof; that is, they lend themselves to a demonstration of accuracy.

b) Freedom of information is not only a fundamental right but is also necessary for the functioning of the democratic state, which requires the formation of a free and plural public opinion. For this reason, it holds a prevailing character. However, for this prevalence to be activated, two elements must concur in the informative piece: it must be truthful and of public interest.

##### 1) Truthfulness

Truthfulness, logically, should be understood as a correspondence between the transmitted facts and reality. However, considering that all information must be collected and published promptly (before the “11<sup>th</sup> hour”) so as not to lose its newsworthiness, the professional diligence applied by the journalist takes precedence over absolute accuracy in the requirement of truthfulness.

From a legal standpoint, truthful news is that which has been crafted with the rigor and diligence of a good journalist. The paradigm of a good journalist implies that, in preparing the news, reliable, credible, and respected sources have been used, and the information has been properly cross-verified (even though professional secrecy, which includes protecting the confidentiality of sources, is one of the conditions for freedom of expression: European Court of Human Rights 1996a). The journalist should not merely transmit the information received but must carry out an investigation, inquiry, and verification of the facts (STC 50/2010). There would be no rigor if the reporter limited themselves to conveying mere rumors to the public.

In the case of publicly made injurious statements by the AEVTJ association and its members against Jehovah's Witnesses, many of them involve serious accusations: discrimination against women, homophobia, incitement to suicide, systematic violation of Spanish law and human rights, complicity with and concealment of child abuse, personality control, and marginalization of followers. However, these statements do not pass the truthfulness test because they are not crafted with the diligence of a good informant, which requires developing information from a necessary distance to avoid attributing crimes based on unsatisfactory subjective experiences rather than verified facts.

As mentioned earlier, if some were witnesses to such criminal activities, they should bring it to the attention of the public prosecutor to initiate the corresponding criminal proceedings instead of simply disclosing them to the public.

## 2) Public interest

For information to have a prevailing character, it must be of public interest. This concept is determined by two parameters: the subject matter of the news and the individuals involved in it.

As for the first characteristic, matters of public interest are those that are relevant and contribute to the formation of public opinion. It is important to differentiate between facts of public interest and those that, while not being of public interest, arouse curiosity "from" the public due to morbid fascination (e.g., the sexual privacy of a celebrity). Although they have the potential to arouse public curiosity in a journalistic sense, such gossip items cannot be legally termed "of public interest" because they do not contribute to the formation of public opinion.

The other circumstance that can give certain facts the character of public interest is the individuals involved (STC 174/2006). The situation is not the same for an anonymous individual walking down a central street as it is for a government official. Some people, due to their profession or activities, assume a public status and must show greater tolerance towards the close scrutiny of their actions and gestures by journalists and the public in general (European Court of Human Rights 2010a). As Americans say, "enduring the heat of the stove is the price to pay for entering the kitchen."

In the case of publicly made criminal accusations by the AEVTJ association and its members against the Jehovah's Witnesses, as we have already mentioned, they could be of public interest, but the element of truthfulness is lacking in legal terms. Without this element, the freedom of information loses its preferential character over the right to honor.

#### *V. Honor and Jehovah's Witnesses in Russia: ECHR Case Law*

While there are numerous judgments condemning various countries for their actions against Jehovah's Witnesses (González Sánchez 2015), we have chosen two that condemn Russia. Both the country and these judgments are emblematic or significant, containing many elements present in all these ECHR resolutions: the judgment of *Jehovah's Witnesses in Moscow v. Russia* dated June 10, 2010, and the Local Religious Organization (hereinafter LRO) *Taganrog and Others v. Russia* dated June 7, 2022.

Jehovah's Witnesses have existed in Russia since 1891. Following the Bolshevik Revolution and throughout the Soviet era, they, like other religions, were persecuted. During the "perestroika" period led by Mikhail Gorbachev (1931–2022: Rodríguez García 1995), a Law on Freedom of Conscience and Religious Associations was approved in 1990, allowing the existence of religious groups and their registration. The Administrative Center of Jehovah's Witnesses in Russia was registered with the Ministry of Justice on March 27, 1991. Subsequently, around 400 local congregations were created and registered, comprising approximately 175,000 members under the umbrella of the said Administrative Center.

The 1993 Constitution, despite the influence exerted by the Russian Orthodox Church in the political sphere, acknowledged the secular nature of the Russian Federation and the equality of all faiths before the law. During the seven years of the validity of the 1990 law, the Russian Orthodox Church expressed concern that many citizens were embracing other religions, many of them of foreign origin. The church requested the government to tighten legislation to prevent a loss of national identity, Russian cultural heritage, and "spiritual security" (Combalía Solís 2020). However, the 1993 Constitution stated in its Article 14:



The Russian Federation is a secular state. 1. No religion may be established as state or obligatory. 2. Religious associations are separate from the state and equal before the law.

Before delving into the analysis of the two judgments, we emphasize the general principles that the ECHR relies on in conflicts related to religious freedom and freedom of association. The freedom of thought, conscience, and religion, recognized in Article 9 of the European Convention on Human Rights (hereinafter, the Convention), is one of the freedoms that shape the identity and life outlook of believers, atheists, agnostics, skeptics, and the indifferent. This freedom has both an individual and a collective dimension. Preserving and guaranteeing this freedom requires the state's duty of religious neutrality and impartiality, implying its incompetence to assess the legitimacy of religious beliefs (European Court of Human Rights 2000d, 62; European Court of Human Rights 2001, 118 and 123).

As religious communities traditionally exist in the form of organized structures, Article 9 must be interpreted considering Article 11, which safeguards the right to association against unjustified interference by the state. The way national legislation enshrines and guarantees the freedom of association indicates the level of pluralism and, therefore, the democratic essence of a country.

While states must ensure that their associations use means or pursue goals that do not violate their legal systems, they must respect the breadth of these rights reflected in the Convention. The state's power to protect its institutions and citizens from associations must be exercised with moderation, and exceptions or restrictions to the freedom of association should be interpreted in the least restrictive manner possible so that they only apply when there is a "pressing social need." This implies that interferences that are merely "useful" or "desirable" for the state are not legitimate (European Court of Human Rights 2004a, 94–5).

*V.I. Jehovah's Witnesses of Moscow and Others vs. Russia*: ECHR judgment of June 10, 2010 (European Court of Human Rights 2010b)

a) Facts: attempts by the Orthodox Church to criminalize the Jehovah's Witnesses

In 1995, the Committee for the Salvation of Youth from Totalitarian Cults (hereinafter “the Salvation Committee”), a non-governmental organization aligned with the Russian Orthodox Church, filed a complaint against Jehovah’s Witnesses in Moscow with the prosecutor’s office of the Savyolovski District in Moscow. They accused this religious community of engaging in illegal activities such as inciting hatred towards traditional religions or imposing exorbitant payments on believers, forcing them into economic precarity. However, the prosecutor’s office rejected the request to open a criminal investigation due to lack of evidence.

A year later, the Salvation Committee persisted, but the prosecutor’s office again did not process the complaint due to insufficient evidence. They persisted a third and a fourth time. Both complaints were dismissed by the respective prosecutors, but in the fourth complaint filed in November 1997, the prosecutor gave the Committee a reprimand, stating that their statements “are based on their active hostility towards this religious organization.”

In the same year, under pressure from the Orthodox Church warning that the freedom of conscience law could contribute to fanaticism and terrorism, the Parliament passed the Law on Freedom of Conscience and Religious Associations (no. 125-FZ on September 26, 1997). Signed by then-Russian President Boris Yeltsin (1931–2007), it came into effect on October 1, 1997. This legislative response aimed to address the Orthodox Church’s demand to protect the Russian people from “cults” and fanaticism (Combalía Solís 2020, 226).

Taking advantage of this favorable legal context, the Salvation Committee launched a fifth attack and filed a new complaint with the Moscow prosecutor’s office. The prosecutor appointed an investigator who issued a report very different from those of his four predecessors. He acknowledged the accusations that Jehovah’s Witnesses were alienating their members from their families, controlling their minds, and inciting them to civil disobedience and religious discord. Since he did not consider these actions as criminal acts, he closed the criminal case but urged the prosecutor to file a civil suit, and based on the new law, to dissolve the religious entity and prohibit its activities. The complaint was filed in these terms in April 1998 before the Golovinskiy District Court in Moscow. The judge ordered an investigation by five experts (two in religions, two linguists, and one sociologist). Four affirmed the prosecutor’s charges, and one rejected them.

In light of these discrepancies, the judge deemed that there was no legal basis to dissolve the entity and prohibit its activities because the accusations were not based on proven facts (judgment of February 23, 2001).

On appeal, the Moscow Municipal Court annulled that ruling, arguing that the trial court should have ordered a new expert study to reconcile the differences between the conflicting opinions. The case was transferred to a new judge who proceeded accordingly, issuing an order to dissolve the religious organization and prohibit its activities. We briefly describe the accusations that led to this dissolution under various articles of the 1997 Freedom of Conscience Law.

(i) “Incitement to the destruction of the family” (Article 14.2 of the 1997 law): the District Court, relying on statements from seven relatives of Jehovah’s Witnesses (five of whom were members of the Salvation Committee), claimed that although the Jehovah’s Witnesses’ texts did not directly encourage the destruction of families, their actions and recommendations created psychological pressure leading to that destruction.

(ii) “Violation of rights and freedoms of citizens” (Article 14.2): the court considered that the Jehovah’s Witnesses violated the privacy rights of their members by determining where and how they should work, and the equality rights of parents because some involved their children in the religious activities of the community without the permission of the other non-Witness parent (Article 3.5).

(iii) “Inciting citizens to refuse to perform civil duties established by law and to perform other acts contrary to the law” (Article 14.2): the District Court believed that Jehovah’s Witnesses literature encouraged rejecting military service and alternative service, as well as being disrespectful to state emblems such as the flag and the national anthem.

(iv) Proselytism and “mind control”: the court asserted that Jehovah’s Witnesses differed from traditional religions due to their “theocratic hierarchy” and “military-like discipline in domestic life.”

(v) “Inciting suicide or the rejection of medical assistance for religious reasons to individuals in a life-threatening and health-endangering situation” (Article 14.2): according to the Russian judgment, by persuading their members to reject blood transfusions and/or blood components, Jehovah’s Witnesses were considered to be inciting suicide. The court invoked both the community’s literature and the “No Blood” card carried by its members as evidence. For the

court, the fact that a person's health had been harmed was sufficient reason to prohibit their activities.

They added that the community's activities had a "negative influence on the mental health of its followers": "sudden and negative changes in personality" and sometimes tears or emotional exhaustion after meetings.

In summary, the District Court held that the dissolution of the entity and the prohibition of its activities were justified because they were prescribed by the law and pursued a legitimate objective. Jehovah's Witnesses in Moscow appealed the decision. The Moscow City Court dismissed the appeal (resolution of June 16, 2004) and confirmed the judgment of the Golovinskiy District Court.

The religious community, along with some of its members, appealed to the ECHR for a violation of Articles 9 and 11. We will separately analyze the ECHR's criteria regarding the dissolution of the community and the denial of re-registration in the Ministry of Justice's registry.

#### b) Dissolution of the religious community

The Jehovah's Witnesses argued before the ECHR that, in addition to the accusations lacking credible evidence, the trial had spent more time discussing psycholinguistic studies or biblical issues than alleged illegal activities committed by the entity. They pointed out that their texts, distributed in more than 200 countries (including 45 Council of Europe member states) and translated into 150 languages, had not been previously banned in Russia. Therefore, it was an intrusion that was neither prescribed by the 1997 Law on Freedom of Conscience and Religious Associations, whose provisions they considered imprecise, nor pursued a legitimate purpose, nor responded to a pressing social need.

The Russian government supported its internal courts, asserting that the dissolution of the community was justified, as it was prescribed by law, pursued a legitimate objective, and was necessary in a democratic state that could verify whether a religious group engaged in activities harmful to the population.

As consistently proclaimed in its jurisprudence, the ECHR does not doubt that the decision to dissolve a religious community constitutes an interference with

the exercise of the rights to freedom of religion (Article 9) and freedom of association (Article 11).

In principle, the interference was “prescribed by law” because it had been issued by judicial bodies under Article 14 of the Russian Law on Freedom of Conscience.

Regarding whether the interference pursued a legitimate objective, the ECHR reiterates that states have the right to verify whether a religious association engages in activities harmful to the population or public safety. However, for interferences to be “necessary in a democratic society,” they must be interpreted restrictively and based on compelling reasons. The role of the ECHR is not to replace the opinion of national authorities with its own but to assess whether the reasons given to justify the interference are “relevant and sufficient” according to the principles of the Convention. The court analyzed this in each of the accusations against the religious entity:

— Incitement to the destruction of the family

Within its context, law provision implies an action aimed at forcing an individual to do something against their will through the use of force or intimidation. However, as noted by the ECHR, there was no evidence presented in court that Jehovah’s Witnesses used violence or intimidation to make their members break ties with their families or make demands to continue their family relationships. The Russian experts themselves acknowledged in their reports that the texts of Jehovah’s Witnesses did not promote “direct coercion to destroy the family,” but they claimed that the religious denomination exerted “direct psychological pressure” on their members, leading to the risk of family ruptures (European Court of Human Rights 2010b, 56), although they provided no proof.

According to the ECHR, what the Russian courts considered “coercion to destroy the family” was simply the frustration felt by some individuals at the decision of their relatives to organize their lives according to religious precepts and attitudes that implied distancing. Many religions require their followers to adhere to certain precepts and dedicate themselves to tasks that occupy their time, sometimes absolutely.

As long as this dedication is the result of a free decision by the believer, no matter how much distress the distancing causes in their families, it cannot be

affirmed that the religious organization seeks the rupture or destruction of the family.

Furthermore, since the Moscow community of the Jehovah's Witnesses consisted of around ten thousand members, the six cases of family conflicts that the Russian District Court had accepted as evidence are not a reasonable basis for sustaining that accusation.

This is especially true when considering that five of these cases were presented by members of the Salvation Committee, a party with an interest in the proceedings.

The ECHR also disapproved of the District Court's decision to reject as evidence a report containing statements from over a thousand Jehovah's Witness families, arguing that these reports did not include family disagreements that "must have 'objectively existed'" (European Court of Human Rights 2010b, 109). This reasoning reflected that the District Court had a prejudice about the inevitable existence of conflicts within the families of Jehovah's Witnesses.

— Violation of citizens' rights: privacy, parental authority, mental autonomy

The Russian courts considered that when Jehovah's Witnesses advised their members to perform certain types of work, or work according to a specific schedule, they were violating the members' "right to privacy."

The ECHR emphasized that privacy, or "private life," is a broad term encompassing the sphere of personal autonomy within which every person can exercise the free development of their personality and relate to other people and the outside world, including the professional sphere. The decisions of Jehovah's Witnesses to work full-time, part-time, for pay, or voluntarily, as well as the decision to celebrate or not celebrate significant religious and personal events (such as wedding anniversaries, births, and graduations), fell within the sphere of "private life" (European Court of Human Rights 2010b, 117, quoting European Court of Human Rights 2007c).

Many religions prescribe rules regarding private life, such as wearing specific clothing (European Court of Human Rights 2005, 78), dietary restrictions (European Court of Human Rights 2000b, 73), observance of rituals and religious festivals, or abstention from working on certain days of the week (European Court of Human Rights 1999a). By voluntarily obeying these precepts, believers are exercising their freedom of thought, conscience, and

religion, as they freely express their beliefs through worship, teaching, practices, and observance of rituals, whether publicly or privately.

The state, from its position of religious neutrality, cannot assess the legitimacy of beliefs or how they are expressed or manifested. Consequently, it must provide serious and compelling reasons to interfere in these manifestations. According to Article 9.2, the state could oppose practices such as polygamous marriage, marriage of minors (European Court of Human Rights 1986), gender equality violations, or the imposition of belief through coercion or force. However, in the present case, there was no evidence that members of the religious community had been forced or compelled to choose a profession, workplace, specific schedule, or engage in voluntary work. According to their own testimony, they made these decisions freely.

The Russian courts considered that the right to family privacy had been eroded by door-to-door preaching. As noted by the ECHR, a distinction must be made between legal proselytism and improper proselytism, which occurs when it is exercised with undue pressure, such as the use of violence or extreme psychological pressure. Furthermore, neither Russian legislation contemplated at that time the crime of proselytism nor had any evidence of improper proselytism by Jehovah's Witnesses been provided.

The problem had been examined by the ECHR in the landmark case *Kokkinakis v. Greece* (European Court of Human Rights 1993). Minos Kokkinakis was a retired Greek man who had become one of the Jehovah's Witnesses at the age of seventeen. He had been arrested several times because proselytism was prohibited in Greece (a prohibition that is now nuanced but still exists in the Constitution). In 1986, he and his wife knocked on the door of some neighbors to proselytize without knowing that it was the home of a member of the choir of the Orthodox Church of the village. Later, the neighbors reported them to the police, and they were arrested. Kokkinakis was fined, but he appealed. After exhausting the Greek judicial process, he went to the ECHR, which, in the mentioned judgment, recognized that religious freedom includes the right to transmit one's beliefs to others to try to convince them. Therefore, a law that simply prohibited proselytism would violate the essential content of religious freedom, which includes the freedom to "manifest" religion or beliefs both "in public" and "in private," through "teaching" with the intention that the recipient exercises their "freedom to change one's religion or beliefs" (European Court of

Human Rights 1993, 29). Improper proselytism would occur if it were practiced with people in distress, need, or vulnerability, offering them material or social advantages to join a church or using violence or “improper pressure” (European Court of Human Rights 1993, 48).

Regarding the violation of parental authority, according to Russian courts, in cases of mixed marriages, when the Jehovah’s Witness spouse decided to take their children to community activities despite the objections of the other spouse, the right of the latter parent to participate in their education was violated.

The ECHR reiterates that Article 2 of the Additional Protocol to the Convention requires the state to respect the rights of parents to educate their children in accordance with their own religious convictions. Article 5 of Protocol No. 7 further establishes that

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This article shall not prevent States from taking such measures as are necessary in the interests of the children.

The Russian freedom of conscience law does not make the religious education of children contingent on an agreement between the parents. When parents profess different beliefs, they can educate their children according to their convictions, whether religious or non-religious. Disagreements between them are private disputes that should be resolved through family law procedures.

In relation to the freedom of conscience of minors, the Russian Law on Freedom of Conscience of 1997, as we have seen, prohibits incorporating minors into religious associations or giving them religious classes against their will or without the consent of their parents or guardians. In this case, Russian courts did not provide any evidence that such a thing had occurred.

Regarding whether the Jehovah’s Witnesses hindered the development of patriotic feelings in minors by turning them into social outcasts, there was no indication that the judge had questioned the children, their teachers, social workers, or family members. Therefore, these conclusions were not supported by evidence.

According to Russian courts, the Jehovah’s Witnesses had violated the freedom of conscience of their members by subjecting them to psychological pressure, “mind control” techniques, and totalitarian discipline. According to the



ECHR, setting aside the fact that there is generally no accepted and scientific definition of what “mind control” is and that national courts did not discuss any definition, no evidence was provided of individuals who had been victims of such techniques. On the contrary, several witnesses stated that they had chosen that creed freely and consciously (European Court of Human Rights 2010b,129).

— Incitement to suicide and denial of medical assistance

Suicide cannot be equated with the refusal of a blood transfusion, in which Jehovah’s Witnesses do not seek to end their lives but to request alternative treatment for religious reasons. These believers argue that certain precepts of the Bible (*Genesis* 9:4; *Leviticus* 17:10 and *Deuteronomy* 12:13) establish that life is sacred, and as blood is an integral part of life; they reject transfusions but accept alternative treatments.

The ECHR understands that there is a conflict between the state’s interest in protecting the life and health of its citizens and the individual’s right to personal autonomy regarding their physical integrity and religious beliefs (European Court of Human Rights 2002).

The cornerstone of the Convention is the respect for human dignity and freedom based on the principles of self-determination and personal autonomy. The right to lead one’s own life includes the possibility of making dangerous or harmful decisions about one’s health, regardless of how irrational or foolish they may seem to third parties, such as refusing medical treatment regardless of its consequences. Imposing medical treatment without the consent of the adult patient constitutes interference with their physical integrity (Article 8 of the Convention).

Except in cases of public health (e.g., mandatory vaccination during an epidemic), the state should refrain from interfering in an individuals’ right to make decision regarding their health because such interference would devalue the value of life.

The Russian law on the foundations of health protection of July 22, 1993, itself recognizes that the patients’ right to refuse medical treatment, provided they have had access to rigorous information about the consequences of their decision (informed consent), prevails except in three specific situations: prevention of contagious diseases, treatment of severe mental disorders, and compulsory treatment of offenders. In the case of parents rejecting treatment for

their children, the law provides the possibility for a judge to revoke that decision (Article 33.3). In summary, Russian legislation protects the autonomy of the patients as long as they are informed adults, and there is no danger to innocent third parties.

If the decision to refuse a transfusion is free and not imposed by undue pressure (which is a possibility: the European decision mentions a British case of 1992, Court of Appeal, Civil Division 1992), the ECHR emphasizes that, even if the decision is a result of religious teachings, it would still be considered a free act (European Court of Human Rights 1993, 31).

The ECHR finds nothing in the Russian judgments suggesting that pressure was exerted on adults. On the contrary, it appears that they voluntarily rejected transfusions in advance, as evidenced by the fact that they carried “No Blood” cards and reaffirmed their decision upon entering the hospital. The “No Blood” card certified the decision the patient had already made, although, as anticipated by Article 33 of the Foundations of the Russian Law on the Protection of Citizens’ Health of 1993, the patient could appoint a representative from the community as a Liaison Committee with the Hospital. This was to ensure, in case of unconsciousness or inability to communicate, that the patient’s decision was known and respected by the medical staff.

For the ECHR, Article 14.2 of the 1997 Law on Freedom of Conscience, which includes “incitement to suicide or denial of medical assistance for religious reasons to persons in danger of life and health” as grounds for the cessation of religious organizations, reflects two shortcomings. Firstly, it signifies a protective stance of the state that positions itself as a protector of believers against their own personal decisions when it deems them irrational or imprudent. It is based on the premise that the state’s right to protect individuals from harmful consequences of their decisions takes precedence over the citizens’ right to lead their private lives and practice and observe their religion. Due to this “legal precedence,” Russian courts did not carry out the necessary balancing exercise between the state’s duty to protect public health and the patients’ autonomy based on their religious freedom. Secondly, not requiring literal proof of harm to life and health, as stipulated in Article 14.2, would imply that the religious doctrine regarding the sacred nature of blood is illegitimate, constituting a state interference in religious matters and violating the principle of neutrality.

In the case of *Manoussakis and Others v. Greece*, decided by the ECHR in 1996, a group of Jehovah's Witnesses had requested the necessary permit from the Greek authorities, which was mandatory under Greek law, to open a place of worship. Since they did not receive a response to their request within a time frame they deemed excessive, they began their worship activities. They were convicted by the Greek courts. The ECHR stated that the restrictions imposed on religious freedom were "not necessary in a democratic society": a) due to the excessive discretion granted by Greek law to the authorities to decide on religious matters; b) due to the absence of a deadline for deciding on the application; c) due to the intervention of the hierarchy of the Greek Orthodox Church in the licensing procedure (European Court of Human Rights 1996b).

In conclusion, although in case of the Jehovah's Witnesses, the interference was provided for by the Law on Freedom of Conscience (Article 14.2), Russian courts did not convincingly demonstrate a "pressing social need" or "relevant and sufficient reasons" to justify a restriction on personal autonomy in the realm of religious beliefs.

Regarding the mental health of its members, who were accused of experiencing strong emotions and personality changes, the ECHR reminded that the rituals of some religions could impact the well-being of believers, such as strict fasting. However, suppressing the practices of a religion for alleged mental health harm would require evidence, which was absent in the national judgments. The judgments did not even cite any studies establishing a causal relationship between the community's activities and mental harm. The judicial records only contained testimonies from non-Witness family members about "sudden and negative changes of personality" (European Court of Human Rights 2010b, 145). However, the ECHR considered that changes in personality, which are part of human development, did not necessarily indicate medical problems. Many religious experiences are a source of emotions, and crying can stem from a sense of unity with the divine.

— Incitement to non-compliance with civic duties such as alternative civilian service, promoting a "disrespectful attitude" towards the flag and national anthem, and prohibiting the celebration of state holidays

As I have already emphasized, the ECHR has noted that Jehovah's Witnesses are a religious group committed to pacifism, and their doctrine prohibits members from engaging in military service, wearing uniforms, or wielding

weapons, based inter alia on *Isaiah* 2:4 (not learning war); *John* 13:34–5 (love your neighbor); *Romans* 14:19 (seek things that contribute to peace); *2 Corinthians* 10:4 (the weapons of our warfare are not carnal); *Hebrews* 12:14 (seek peace with everyone). However, they accept the performance of alternative civilian service, provided it is not integrated into military structures.

In the case *Thlimmenos v. Greece*, decided by the ECHR Grand Chamber in 2000, Mr. Thlimmenos, a Jehovah's Witness, had been convicted for refusing to perform military service at a time when Greece did not offer an alternative service for conscientious objectors. Years later, after winning a public competition, he obtained the position of auditor. His appointment was annulled to ensure adequate punishment for his military objection. The ECHR considered that there had been a violation of Article 14 in conjunction with Article 9 since it was a disproportionate measure, given that the applicant had already served a prison sentence for that offense (European Court of Human Rights 2000a).

An alternative service is recognized in the Russian legislation. Both the Constitution (Article 59.3) and the 1997 Law on Freedom of Conscience and Religious Associations (Article 3.4) explicitly acknowledge the citizens' right to conscientious objection to military service, substituting it with alternative civilian service. In the ECHR case of *Faizov v. Russia*, Mr. Faizov, a Jehovah's Witness conscientious objector, requested alternative service but was assigned to tasks subject to military control and requiring military training. Faizov requested the withdrawal of his application (Article 37) after being acquitted of the charges (European Court of Human Rights 2009a).

On the other hand, the laws concerning the national anthem, the state flag, or state emblems of the Russian Federation do not indicate any civic obligation to honor these symbols. Although the Russian Criminal Code penalizes the desecration of the flag or state emblems (Article 329 of the Criminal Code), no Witness was cited in this proceeding for committing such an offense.

Lastly, no Russian law establishes obligations to “participate in state holiday celebrations” or in any secular or religious festivities. If such obligations existed, they would have conflicted with Articles 9 and 10 of the Convention. In the twin cases of *Efstathiou v. Greece* and *Valsamis v. Greece* (1996), parents who were Jehovah's Witnesses had decided that their children would not participate in a national commemoration parade involving ecclesiastical authorities and a liturgy.

The children were sanctioned. The ECHR considered that the parade, in its own way, had pacifist objectives, and the presence of clergy did not alter that nature, so it did not offend their religious beliefs (European Court of Human Rights 1996c, 32; European Court of Human Rights 1996d, 31). Two dissenting opinions, however, argued that the parade had a character and symbolism clearly contrary to their pacifist and religious beliefs, and participation in it was not necessary in a democratic society, even if it was considered by the majority as an expression of national values and unity (European Court of Human Rights 1996c, 1996d).

The ECHR emphasizes that the nature and severity of the sanction are factors that must be taken into account when assessing the proportionality of interference. The sanction was applied to a religious community with a presence in many countries, even though in some of them, its recognition had experienced delays and difficulties (see European Court of Human Rights 1997, 44). After the dissolution of the USSR, Jehovah's Witnesses legally practiced their religion in Russia from 1992 until 2004, registering their entities at the federal and regional levels. In the numerous criminal investigations initiated, based on complaints filed by the Salvation Committee, no evidence of illegal or criminal acts committed by Jehovah's Witnesses has been found.

The sanction provided for in Article 14 of the 1997 Law on Freedom of Conscience—forced dissolution and prohibition of activities—is deemed excessively burdensome by the ECHR. This is because it entailed depriving 10,000 of its members of the right to express their religious freedom. Although the Russian Supreme Court considered the sanction imperative, the ECHR regards it as disproportionate in relation to the legitimate objective pursued, especially since the law does not incorporate flexible elements such as preventive warnings or less radical alternative sanctions, such as fines or the withdrawal of tax benefits (see European Court of Human Rights 2009d). As the national courts did not provide “relevant and sufficient” reasons to justify such a severe and inflexible sanction, an unjustified interference occurred in the applicants’ right to religious freedom and their freedom of association, constituting a violation of Article 9 of the Convention in light of Article 11.

Furthermore, the ECHR held that Article 6 had been violated, which states that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal,” due to the excessive duration of the

dissolution proceedings. Of the six years and almost two months that the process lasted through two judicial instances (administrative and judicial), six years, one month, and thirteen days were spent within the judicial system. According to the ECHR's doctrine, to assess whether the duration of a legal process is reasonable, factors such as the complexity of the case, the behavior of the litigant and authorities, and the rights at stake in the dispute must be taken into account.

While the ECHR acknowledged that the dissolution of a religious community and the prohibition of its activities are complex matters, it deemed excessive that the proceedings lasted for more than six years. Although the delays requested by the plaintiff caused a delay of about six months, the delay attributable to the authorities amounts to approximately five and a half years. Certain delays were attributable to the courts, such as four months between the annulment of the initial judgment and the commencement of a new trial, or a three-month adjournment of the trial. However, the majority of the delays were due to the suspension of the proceedings for expert studies (more than three years), the first of which took over twenty months to complete.

#### c) Denial of re-registration in the Registry

The Law on Freedom of Conscience and Religious Associations of 1997 required all registered religious associations to re-register with the Ministry of Justice to align their statutes with the new legal requirements. The Administrative Center of Jehovah's Witnesses in Russia registered with the Ministry of Justice as a federative religious organization on April 29, 1999. However, six months later, the same ministry rejected the re-registration application of Jehovah's Witnesses in Moscow, citing missing documents without specifying which ones. The religious group made attempts two more times in the following months, and in both cases, the registration requests were again rejected for the same reason.

On October 16, 2000, a parishioner inquired in writing with the Ministry of Justice about the missing documents while filing a lawsuit with the Presnenskiy District Court in Moscow. The court ordered the Ministry of Justice to respond within a deadline. On the last day of the established deadline, the Ministry, asserting that it had no obligation to respond, informed them that they had not submitted the original statutes or the 1993 registration certificate. The religious entity sent the required documents two days later, but the Department of Justice

again denied registration, this time claiming that the submitted documents had an incorrect expression (the term “adopted” instead of “approved”) and a deficiency (indicating “legal domicile” instead of “location”).

After rectifying the error and deficiency, on December 12, 2000, 19 days before the deadline set by law for re-registration, they submitted a new application. This time, the Ministry of Justice justified its refusal by claiming that there was a civil dissolution proceeding of the entity before the Golovinskiy District Court in Moscow.

The Jehovah’s Witnesses appealed the ministry’s denial to the Presnenskiy District Court, which partially upheld the appeal based on two arguments: that the administrative body had incorrectly requested original documents when copies were in the file, and that the reference to the ongoing procedure before the Golovinskiy District Court was not admissible as it had not been invoked in the previous denial of registration. Nevertheless, instead of ordering re-registration, the Presnenskiy court urged the religious entity to submit a new application, which was impossible as it was beyond the deadline. The religious entity appealed this decision to the Moscow Municipal Court, which, by resolution on December 2, 2002, rejected the registration.

After exhausting domestic remedies, the Jehovah’s Witnesses in Moscow appealed to the ECHR, arguing that the denial of re-registration constituted an interference with their rights to religious freedom and freedom of association. They also claimed that it had collateral effects, such as depriving them of the rights to military service exemption for their clergy, establishing educational centers, inviting foreign preachers, or producing, importing, and distributing religious literature.

They argued that this interference was neither provided for by the law nor necessary in a democratic society, as none of the four criminal investigations conducted between June 1996 and April 1998 had revealed any criminal activity. Moreover, during those periods, the Ministry of Justice had accepted the re-registration of their federal organization (Administrative Center), to which the plaintiff community belonged, and 398 local Jehovah’s Witnesses communities had been registered or re-registered in various Russian regions.

The Russian government did not consider that there had been interference with the right to freedom of association because the organization had been

registered in the Unified State Register of Legal Entities on December 9, 2002. It also did not believe that the right to religious freedom had been violated since its members continued to profess their faith, as evidenced by the fact that they had held a regional congress in July 2002 attended by about 24,000 believers.

The ECHR acknowledged that the authorities' decision not to register a religious association not only deprived it of legal personality and associated rights but also of the rights that the Law on Freedom of Conscience and Religious Associations of 1997 granted to registered religious groups. These rights included the right to establish places of worship, conduct religious services, produce and distribute religious literature, or create charitable and educational institutions (Articles 16, 17, and 18).

Additionally, the registration of a religious association in the Unified State Register of Legal Entities did not equate to the "re-registration" required by the Law on Freedom of Conscience of 1997, thus stripping the entity of the rights that this law granted to registered religious entities.

Regarding the alleged lack of documents in the first three applications, the court observed that the Department of Justice not only systematically failed to specify which documents were missing but also the deputy director had stated that they were not legally obligated to do so. By proceeding in this manner, the administrative body not only prevented the applicant from correcting the alleged defects in the applications but, by not providing reasons for the denial of registration, acted arbitrarily and, therefore, not in accordance with the law. The requirement for the community to submit the original statutes lacked legal basis because it did not derive from the 1997 law or any other normative text and was excessively burdensome for the applicant, as it would prevent it from resubmitting corrected applications.

The ECHR also did not find justifiable the argument that there was a pending dissolution proceeding, as the accusations against the plaintiff were not based on solid evidence. Regarding the judicial requirement to submit a new re-registration application with new forms, the ECHR pointed out that the 1997 Law did not allow re-registration once the deadline (extended until December 31, 2000) had expired.

According to the ECHR, the reasons for denying re-registration should have been clear and consistent, which had not happened in this case. The court



concluded that the Moscow authorities, in denying the re-registration of the plaintiff, had not acted in good faith, had failed in their duty of neutrality and impartiality, and had caused an unjustified interference with the right to religious freedom and freedom of association, violating Article 11 of the Convention in light of Article 9.

Other cases of denial of re-registration that occurred after the enactment of the 1997 Law on Religions also reached the ECHR, such as those suffered by the Salvation Army (European Court of Human Rights 2006a) and the Church of Scientology (European Court of Human Rights 2007b). In both cases, the court considered that “the Moscow authorities did not act in good faith and neglected their duty of neutrality and impartiality” (European Courts of Human Rights 2006a, 97; European Court of Human Rights 2007b, 97). This differential treatment had raised concerns in the Parliamentary Assembly of the Council of Europe (Parliamentary Assembly of the Council of Europe 2002).

V.2. *Taganrog LRO and Others v. Russia*, ECHR judgment of June 7, 2002 (European Court of Human Rights 2022a)

a) Facts

The plaintiffs in this case include the local religious organization (LRO) of Jehovah’s Witnesses, Taganrog (registered in 1992 as a religious association and in 1998 as a local religious organization), the Administrative Center (federal body), German and American publishers of Jehovah’s Witnesses’ books and pamphlets, and twelve local congregations that shared the Kingdom Hall with the Taganrog LRO.

In January 2007, the deputy prosecutor general sent a circular to regional prosecutors, asserting that Jehovah’s Witnesses and other denominations posed a public danger by violating laws, causing social tensions, and engaging in activities harmful to the physical and moral health of their members. The circular instructed prosecutors to identify extremist material from these groups.

In compliance with this order, in September of the same year, the prosecutor of the Rostov region directed local prosecutors to inspect the activities of the organization. A month and a half later, the prosecutor of the Taganrog region urged the LRO to cease its “extremist activities.” Months later, he filed a lawsuit

to outlaw and declare the Taganrog LRO extremist, accusing it of various irregularities, many of which were analyzed in the previous judgment. Additionally, he requested the confiscation of 68 publications and some of the LRO's properties.

In September 2009, the Rostov regional court ordered the closure of the Taganrog LRO, the prohibition of its activities, and the confiscation not only of its properties, including the Kingdom Halls, but also of 34 out of the 68 publications for inciting religious discord by portraying a negative image of Catholicism, the Orthodox Church, and other Christian religions. The Taganrog LRO appealed this decision, but the Russian Supreme Court did not admit their appeal without explaining the reasons. When the judgment was appealed to the ECHR, the Court examined each measure taken by the Russian authorities one by one.

b) Dissolution of the local religious organization (LRO) Taganrog

The Russian government invoked Article 17 of the Convention, which prohibits individuals or groups from using their rights to engage in activities contrary to the principles of the Convention. Russia quoted the ECHR decision *Norwood v. United Kingdom*. Norwood, a member of an extreme right-wing political party, had placed a sign in the window of his apartment calling for the expulsion of all Muslims from Britain. The police removed the sign, and Norwood was charged with an offense under the Public Order Act 1986. According to the ECHR, the sign constituted a vehement attack on a religious group, implying that every Muslim was a terrorist. Therefore, freedom of expression (Article 10) had to give way to the principle that no one, group, or state has the right to engage in any activity aimed at the destruction of the rights and freedoms recognized in the Convention (Article 17: European Court of Human Rights 2004b).

Also, a group can be banned when it seeks to shield itself under the right of association (Article 11) to pursue illegal activities, such as the destruction of a state. In *Hizb ut-Tahrir and Others v. Germany*, the ECHR examined the case of Hizb-ut-Tahrir, an association founded in Jerusalem in 1953 that had been active in Germany since the 1960s. In January 2003, the Federal Ministry of the Interior banned the association's activities in Germany and ordered the confiscation of its assets for promoting violence. After filing an annulment appeal,

the Federal Administrative Court dismissed it. Having analyzed its published articles, it considered that this association denied the right of Israel to exist, called for its violent destruction, and the expulsion and murder of its inhabitants. The Federal Constitutional Court did not admit the constitutional complaint filed by the association. The ECHR reiterated that the plaintiff had tried to shield itself behind freedom of assembly and association (Article 11) to achieve ends contrary to the values of the Convention, particularly the commitment to the peaceful resolution of international conflicts and the inviolability of human life. Under Article 17, the association could not benefit from the protection provided by Article 11 (European Court of Human Rights 2012).

However, invoking the peaceful nature of the Jehovah's Witnesses, the ECHR understood that Article 17 of the Convention was not applicable in this case. Regarding the substance of the matter, the ECHR considered that the decision of the Russian courts to dissolve the Taganrog LRO and prohibit its activities constituted a clear interference with the entity's freedom of association and the religious freedom of the organization and its members. These members faced criminal charges for manifesting their religion individually or collectively, in public or in private. In essence, it was an interference with Article 9 of the Convention in light of the right of association (Article 11).

Furthermore, declaring some of their publications as "extremist" and prohibiting their distribution and use in worship also constituted an interference with freedom of expression (Article 10). However, to determine if these interferences constituted lawful exceptions, it was necessary to analyze whether they were provided for by the law, pursued a legitimate purpose, and were necessary in a democratic society.

The Russian government argued that the imposed sanctions were provided for in both the federal law against extremist activities No. 114-FZ of July 25, 2002, and the federal Law on Freedom of Conscience and Religious Associations of September 19, 1997.

The ECHR reiterates two ideas. Firstly, that the term "law" should be understood broadly, including not only laws passed in Parliament but any provision emanating from an institution with normative competence. Secondly, that such a norm must be drafted with sufficient clarity and precision for any natural or legal person to foresee and anticipate the legal consequences of their conduct.

The ECHR addressed each charge that fell on the Taganrog LRO, leading to its dissolution. Many of these accusations had already been addressed in the previous judgment, such as the refusal of medical assistance (blood transfusions), the destruction of family relationships, or the violation of family privacy. In others, although they were also addressed, some nuances were added, such as the accusation that children's participation in celebrations hindered their progress because in their leisure time, they should engage in sports or cultural activities. The ECHR added that as there is no single educational system, the assertion that specific activities are essential for harmonious development should be supported by evidence of scientific, legal, or social consensus, which was lacking in this case.

Decisions regarding a child's religious education, the distribution of their free time, or whether they should associate with like-minded individuals are exclusively the responsibility of parents or guardians. Belonging to the realm of family privacy, these decisions are protected against unjustified interference by the state. State interference would be justified if parents made decisions contrary to the principles of the Convention, for example, in cases of child marriages or the use of force.

Regarding the accusation of neglect of civic duties, an additional charge was added: that members of the Taganrog LRO had tried to convince a recruit not to perform military service and instead opt for an alternative civilian service not linked to military structures. However, as emphasized by the ECHR, they were not urging the abandonment of civic duties but advocating for an alternative right recognized in the Constitution and Russian legislation. It would not be a case of unlawful proselytism either, as no pressure mechanisms were used that could have existed if there were a hierarchical relationship between the active and passive subjects of proselytism, making it difficult for the latter to withdraw from conversations initiated by their superiors. In this case, it was a conversation among soldiers with the same rank, as they were all recruits (see European Court of Human Rights 1998). Dissolving the Taganrog LRO for spreading pacifist convictions could also reflect undue interference by the state in questioning the legitimacy of beliefs that only individuals and communities are entitled to evaluate.

A new accusation in this process was "proclaiming the superiority of the religion of the Jehovah's Witnesses." Russian courts declared Jehovah's

Witnesses extremist, among other reasons, because they believed that these statements in their texts were expressions that incited religious hatred by casting a negative light on other Christian religions.

As noted by the ECHR in previous cases, almost all religions present themselves as the only true one and consider others to be false. Attempting to convince others of one's religious ideas is an expression of lawful proselytism, as long as expressions that incite or justify violence or hatred are not used. The case *Ibragim Ibragimov and Others v. Russia* (European Court of Human Rights 2018) involved the publication of an exegesis on the Quran, categorized by experts as moderate, advocating for tolerance, cooperation between religions, and rejecting violence. However, Russian courts declared it extremist under the 2002 anti-extremism law for "incitement to religious discord" and the propaganda of its superiority. Its publication and distribution were prohibited, and copies were seized. The ECHR considered that the definition of "extremist activity" in Russian law was too broad, imprecise, and open to different interpretations as it did not require the element of violence or something similar. Although the book treated non-Muslims as inferior and proclaimed that not being a Muslim was an "infinitely big crime" (European Court of Human Rights 2018, 35) the ECHR deemed these statements common in monotheistic religious texts. Even if they claimed it was better to be a Muslim, they did not insult, ridicule, or defame non-Muslims or their sacred concepts.

In the case *Gündüz v. Turkey*, Mr. Gündüz, the leader of the Islamic group Tarikat Aczmendi, participated in a televised debate on an independent Turkish channel (HBB) where he criticized the democratic system, labeled some civil institutions as "impious," and called for the establishment of *sharia* (Islamic law). He was convicted of inciting hatred. The ECHR considered that the restriction on freedom of expression was provided for by Turkish law (Article 312 of the Penal Code) and pursued a legitimate aim. However, since it was a public debate where representatives of various organizations expressed their ideas, stating that democracy was incompatible with Islam, at a time when it was a matter of great interest in Türkiye, did not constitute incitement to violence or hate speech. Consequently, the imposed criminal conviction was not necessary in a democratic society (although a dissenting opinion held that these expressions did constitute hate speech: European Court of Human Rights 2003).

In the case of the Jehovah's Witnesses, regarding the use of statements from Orthodox priests who felt offended by those publications as evidence, the ECHR affirmed that in a democratic society, believers of a religion, whether majority or minority, cannot claim to be shielded from ideas that may offend, hurt, or disturb them. They must accept that others may oppose their beliefs, criticize, or satirize them, and propagate different ones. The only prohibition in this area is using words as mere vehicles for hate speech. The fact that an expression is perceived or felt as an insult by one or several individuals does not automatically make it hate speech (European Court of Human Rights 2022a, 154).

The ECHR had ruled that only what can be interpreted as an incitement to promote violence, hatred, or intolerance can be sanctioned as hate speech. In the case of *Perinçek v. Switzerland*, about a Turkish politician who, in two conferences and a political rally, claimed that the "Armenian genocide" was a massive international lie, the ECHR ruled that

the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance, that the context in which they were made was not marked by heightened tensions or special historical overtones in Switzerland, that the statements cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal-law response in Switzerland, that there is no international-law obligation for Switzerland to criminalize such statements, that the Swiss courts appear to have censured the applicant for voicing an opinion that diverged from the established ones in Switzerland, and that the interference took the serious form of a criminal conviction—the Court concludes that it was not necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the present case (European Court of Human Rights 2015, 280, although with a dissenting opinion of seven of the Grand Chamber judges).

The ECHR had also ruled that incitement to hatred can exist in cases where, even if there is no express or implied call for violence, there are insults, defamation, or ridicule of vulnerable groups (e.g., immigrants). In the case *Féret v. Belgium*, a Belgian MP from the National Front, Daniel Féret, was convicted for using language that incited discrimination and racial hatred during an election campaign. The ECHR found that the criminal conviction, although interfering with freedom of expression, was justified because it was provided for by the law, pursued legitimate aims (defending the public order and protecting the reputation and rights of others), and was necessary in a democratic society. Incitement to hatred does not necessarily require a call to violence or another criminal act. It also occurs in racist speeches that insult, ridicule, or incite

discrimination against specific groups of the population (European Court of Human Rights 2009b, with the dissenting opinion of three judges).

In the *Taganrog* case, the ECHR did not perceive in the texts of the Jehovah's Witnesses declared "extremist" any expressions that incited hatred, violence, or intolerance against other religions. There were no insults, ridicule, or defamation of their members or severe terms against their symbols or sacred doctrines. In summary, there is nothing extremist, harsh, or hostile in mere criticism of beliefs, opinions, and institutions as long as it is not directly and primarily aimed at sowing hatred against individuals or groups (see Venice Commission 2008).

The Russian courts sought to justify interference with religious freedom based on an excessively broad definition of the term "extremism" in the 2002 Law on Countering Extremism. As Article 1 of that law, referring to "extremist activities," does not require the element of violence or incitement to hatred, this term can be applied to individuals or organizations expressing their ideas peacefully. Broad, vague, and imprecise criminal definitions legitimize arbitrary persecution and prevent individuals from knowing whether they are acting within the law and measuring the consequences of their actions. In summary, the legal definition of "extremist activities" in Russia, due to its vagueness, imprecision, and lack of guarantees, can be considered an intrusion into religious freedom and freedom of expression provided by the law (European Court of Human Rights 2022a, 158).

The ECHR stated that the forced dissolution of the Taganrog LRO and the ban on its activities, affecting the religious freedom of many local congregations and hundreds of its members, was a very serious sanction, especially if imposed to protect members of the majority religion from lawful proselytism exercised by a minority religious denomination (European Court of Human Rights 2022a, 187–88). The free exchange of ideas, which characterizes any democratic society, does not imply that the views of the majority should prevail but rather ensures the rights of minorities and prevents any abuse of a dominant position. In the ECHR case *Religious Community of Jehovah's Witnesses v. Azerbaijan* the authorities of Azerbaijan had ruled that the Jehovah's Witnesses' books *What Does the Bible Really Teach?*, *Worship the Only True God* and *What Is the Purpose of Life?* could not be imported into the country based on an "expert report" declaring that they included "extremist" remarks. The ECHR found in favor of the Jehovah's Witnesses, stating that the "expert report" had "failed to

carry out a comprehensive assessment of the impugned remarks by examining them within the general context of the books,” and that the statements did not incite religious hatred and were protected by general principles of freedom of religion and belief and freedom of expression (European Court of Human Rights 2020b).

In the *Taganrog* case, the regional prosecutor’s letter presuming the existence of illegal activities revealed a prejudice against Jehovah’s Witnesses. By considering them an extremist organization without evidence of incitement to hatred or violence, Russian authorities did not act in good faith and violated the state’s duty of neutrality in religious matters.

The ECHR concluded that these penalties were neither “prescribed by law” with the necessary precision and clarity nor “necessary in a democratic society” for the protection of the rights of others, public order, or the health, safety, and morals of society (Article 9.2). Therefore, the forced dissolution of that entity had violated Article 9 of the Convention, considering Article 11, and the declaration of its publications as “extremist” constituted a violation of Article 10 of the Convention.

#### c) Prohibition of Jehovah’s Witnesses’ publications and of their use in worship

In several regions (Altay, Rostov, Krasnodar, Kemerovo), the religious publications of Jehovah’s Witnesses were prohibited and confiscated as they were considered extremist. However, in some places, these pamphlets had been introduced into places of worship by police officers disguised as “electricity inspectors.” When they returned to search the premises, they knew exactly where to look (European Court of Human Rights 2022a, 195). According to the ECHR, the mere fact that they used invalid evidence invalidates this interference by the authorities in the right to freedom of expression (Article 10 of the Convention), the right to association (Article 11), and religious freedom (Article 9).

Moreover, these pamphlets did not contain calls for violence, hatred, or discrimination, nor were they likely to cause public disturbances or disorder. A similar reasoning can be found in the 1999 ECHR decision *Öztürk v. Turkey* (European Court of Human Rights 1999b). In 1998, Turkish citizen Ünsal Öztürk published the second edition of a work by N. Behram titled *A Testimony*



*to Life—Diary of a Death Under Torture* about the life of Ibrahim Kaypakkaya (1948–1973), a Turkish far-left leader. Four months later, the Ankara State Security Court found Öztürk guilty of inciting public hatred and hostility (Article 312 of the Turkish Penal Code) for editing and publishing that book. However, two months later, the author of the book, N. Behram, who had been charged with the same offense, was acquitted. Based on this acquittal, Öztürk filed an appeal that was rejected by the Court of Cassation. The ECHR ruled that the sanction imposed on Öztürk constituted an “interference” with the exercise of his right to freedom of expression, provided for by Article 312.2 of the Penal Code.

In general, given the sensitive nature of the fight against terrorism and violence, it could be admitted that banning certain books may pursue purposes compatible with Article 10.2: the defense of public order and the prevention of crime. The Turkish State Security Court argued that, although the book was written in the form of a biography through which the author criticized the Turkish authorities for repressing far-left groups, by promoting communism and the “terrorist” Kaypakkaya, it incited hatred and hostility, and therefore the sanction was “necessary in a democratic society.” According to the ECHR, although Article 10.2 of the Convention leaves little room for restrictions on freedom of expression in the field of political discourse or matters of general interest, state authorities can take measures, even criminal ones, against publications that “incite violence,” for the assessment of which national authorities enjoy a margin of appreciation within which the interference with freedom of expression must be justified. If the courts have not made that assessment, the ECHR must do so. In this case, however, the ECHR considered that it was objectively disproportionate to attribute responsibility for Türkiye’s terrorism problems to Öztürk; therefore, the use of criminal proceedings was not justified. The confiscation of copies was also not a “pressing social need (...) proportionate to the legitimate aim pursued” (European Court of Human Rights 1999b, 71).

The publications of the Jehovah’s Witnesses simply presented interpretations of the Bible. The interference was based on an overly broad definition of “extremism” that could be applied to peaceful expressions. Therefore, according to the ECHR, it did not meet the clarity and precision required by the “prescribed by law and necessary in a democratic society” standard (European Court of Human Rights 2022a, 201).

There were also other procedural flaws in the judicial proceedings: a) the law on combating extremism did not provide for the hearing or participation of the defendants (authors, editors, etc.) in the proceedings, leading to a lack of defense; b) legal issues were not decided by judges but by experts in linguistics and religion (including an Orthodox priest) who conducted a legal assessment of the publications based on the linguistic and religious meaning of words and expressions. The courts simply endorsed the conclusions of these non-legal experts; c) the applicants were denied the right to appeal the judgment.

By ignoring the jurisprudence of the ECHR regarding the exercise of balancing and the need to provide “relevant and sufficient” reasons to justify interference, the Russian courts, the ECHR concluded, declared these publications “extremist” and ordered the forced dissolution of the local religious organization for using them, creating an unjustified interference not necessary in a democratic society, and consequently, Articles 10 and 11 of the Convention, in light of Article 9, were violated.

d) Withdrawal of the permission to distribute religious magazines

According to Russian legislation, the distribution of foreign-printed publications required the corresponding permission. In 1997, the competent authorities had granted distribution permission to the German publisher that produced the books of the religious denomination (*Watchtower* and *Awake!*) and to the Administrative Center. When, in 2010, the courts in Rostov and Gorno-Altaysk declared some contents of these publications extremist, the Russian federal agency responsible for monitoring and censoring the media (Roskomnadzor) ordered the withdrawal of distribution permissions.

Challenging this order, the Moscow Commercial Court ruled that the law did not allow revoking distribution permission for a foreign publication if only a part of its contents had been declared extremist. Roskomnadzor argued that it had applied, by analogy, Article 32 of the Mass Media Law. The Moscow court considered that, besides not having been invoked previously, it was not appropriate to apply analogously to written publications an article that referred exclusively to television and radio. It added that licenses could only be revoked by a court order and with prior notice to the interested party, and there was no evidence that Roskomnadzor had issued a prior warning.

The Russian authorities appealed to the Commercial Court of the IX Circuit, which annulled the judgment because it believed that an analogical interpretation of a law whose aim was to combat extremism was allowed.

The ECHR declared that the interference (withdrawal of the distribution license), lacking a clear and predictable legal basis, could not be considered “prescribed by national law” and was not “necessary in a democratic society” for three reasons: a) it was not preceded by notification or prior warning, as is customary in a democratic system, depriving the Jehovah’s Witnesses of the opportunity to correct the alleged irregularity; b) it was disproportionate to sanction all issues of the magazines if only some had been declared extremist. In summary, the revocation of the distribution permission violated Article 10 of the Convention, in light of Article 9 (European Court of Human Rights 2022a, 213–18).

#### e) Blocking of the international website of Jehovah’s Witnesses

In 2013, at the request of the prosecutor, the Tver District Court ruled that the international website of the Jehovah’s Witnesses, owned by Watchtower New York, was extremist. The decision was appealed, and the regional court annulled it, considering the resolution disproportionate as it closed a website that published many documents and videos available in over 900 languages, including sign language for visually impaired believers. However, this decision was overturned by the Supreme Court, which reinstated the Tver District Court’s judgment.

Before delving into the matter, the ECHR recalled that the internet, due to its accessibility and capacity to store and communicate vast amounts of information, had become one of the main means through which individuals exercise their right to freedom of expression and information, guaranteeing people and media the right to receive and disseminate information and ideas (European Court of Human Rights 2022a, 223).

The ECHR applied its conclusions in similar cases related to blocking access to websites in Russia, where it had already noted that Russian legislation did not contain procedural guarantees for website owners. In the case *OOO Flavus and Others v. Russia* (European Court of Human Rights 2020c), the Russian authorities blocked a website that published opinion articles and research papers

by politicians, journalists, and opposition experts, many of whom were critical of the government. They claimed that some of its pages contained “illegal” content. In *Bulgakov v. Russia*, a website was closed because it offered an e-book declared “extremist.” Even after the e-book was removed, the website remained blocked (European Court of Human Rights 2020d). In both cases, the ECHR ruled against Russia.

In the case of the Jehovah’s Witnesses, the Russian authorities not only relied on a vague and imprecise legal definition of “extremist activities,” as seen before, but also did not warn the applicant of the infringing content to give them the opportunity to remove it and avoid closure. Furthermore, they did not allow participation in the process for the defense, leading to a lack of the contradictory nature of the procedure and, therefore, legal defenselessness. The previously mentioned Extremism Law of 2002 did not require authorities to assess the impact of the blockade on freedom of expression, nor did it foresee the possibility that it would strictly target illicit content to avoid arbitrary or excessive effects, such as blocking the entire website when only three publications (0.07% of the 3,900 religious articles available) had been declared extremist. In the absence of exceptional circumstances justifying the expansion to legitimate content, it constituted indiscriminate blocking.

The Government did not provide any legal provision for such a total blockade, nor did it explain the legitimate objective or “pressing social need” it pursued. This lack of justification is particularly striking when Watchtower New York had already removed the “offensive” publications from its website upon learning of the District Court’s decision, fourteen months before the Supreme Court reinstated the blocking order, at which point there was no allegedly illicit content on the website. Consequently, taking into consideration Article 9, and since the interference was not “prescribed by law” nor “necessary in a democratic society,” a violation of Article 10 of the Convention, was found (European Court of Human Rights 2022a, 224–33).

#### f) Dissolution of the Administrative Center and local religious organizations

In March 2017, the Minister of Justice asked the Supreme Court to extend the accusation of “extremist activities” to 387 local religious organizations (LRO) of Jehovah’s Witnesses that had never received such an accusation and to the

Administrative Center for coordinating, directing, and financing them. This request came after eight entities had been declared “illegal” and because the Administrative Center had not taken measures to prevent their religious activities. On the same day, the Supreme Court granted the request, prohibited the activities of these entities, and ordered the confiscation of their property. The organizations were not notified of the measures by the Ministry of Justice or the Supreme Court and only learned about them through the press. The Supreme Court also decreed the confiscation of their belongings.

The applicants argued that this was the culmination of a state attack against Jehovah’s Witnesses that began in January 2007 when the deputy prosecutor general ordered local prosecutors to search for “extremist material” in their religious literature. The Administrative Center and 387 of the 395 local organizations had never been accused of “extremist” activities in their more than twenty years of legal existence. They argued that the peaceful religious activities of more than 175.000 Jehovah’s Witnesses in Russia, such as gathering to read and study the Bible or teaching their beliefs to their children, were being criminalized as “extremist” and, therefore, criminal. Following a Ministry of Education circular urging their “resocialization,” hundreds of Jehovah’s Witnesses fled Russia.

The Russian government argued that these were judicial measures provided for by the law (Constitution of 1993, Freedom of Conscience Law of 1997, and Extremism Law of 2002). These measures pursued legitimate goals, such as protecting individual rights and public order, and were necessary in a democratic society. According to the government, the forced dissolution of these organizations was the only measure capable of preventing harm to the health and life of citizens, public order, and national security. Furthermore, these measures did not prevent Jehovah’s Witnesses from practicing their religion individually.

The ECHR affirmed that the forced dissolution of the Administrative Center and the LROs constituted an interference with their religious freedom (Article 9) considering the right to association (Article 11). These entities were deprived of legal identity and, consequently, the exercise of the rights that Russian legislation recognized for registered religious organizations. Therefore, their members could not engage in collective expressions of religious freedom.

For the ECHR, the suspension of the activities of the Administrative Center, without a judicial process, was an indication of the prejudice of the state

authorities against the Jehovah's Witnesses organizations in Russia. The argument to extend the dissolution to 387 local religious organizations (LROs) that had not been accused of extremist activity because they were "financed, coordinated, and directed" by the same organization (Administrative Center: European Court of Human Rights 2022a, 251) that coordinated the eight accused organizations was very weak.

Additionally, it should be noted that neither the LROs nor the Administrative Center had been informed of the proceedings, granted the right to a hearing, or allowed to appeal, as provided for in Article 7 of the law against extremist activities.

Finally, the Supreme Court had not examined the matter in light of the Convention's standards, nor had it undertaken the balancing exercise to verify whether the interference with the rights of the applicants was proportionate to the legitimate objectives pursued. The court did not weigh,

much less consider at any length, the effect of its dissolution, banning and confiscation decision on the rights of 175,000 individual Jehovah's Witnesses in Russia who were put before a stark and impossible choice: to reduce their religious activities to praying in isolation, without the company and support of fellow believers and without a place for worship, or to face criminal prosecution on charges of "continuing the activities of an extremist organisation" (European Court of Human Rights 2022a, 253).

The court also did not explain whom these intrusions were protecting or what kind of "real threat" to public order these peaceful and non-violent religious activities posed.

In summary, the ECHR considered that the Russian judges, far from applying legal provisions with neutrality and impartiality, engaged in acts of intolerance and discrimination. Therefore, the dissolution of the Administrative Center and the LROs of Jehovah's Witnesses in Russia constituted a violation of Articles 9 and 11 of the Convention.

#### g) Criminal convictions of members

As some members of the Taganrog LRO and other LROs (Oryol) continued to engage in religious activities after the dissolution of their entities, they were prosecuted and sentenced to five years of probation and a fine of 100,000 rubles each for "continuing the activities of an extremist organization."

According to the Russian government, legislation only allowed “religious organizations,” rather than “religious groups,” to own places of worship and distribute religious literature. These individuals, the government claimed, had been prosecuted and convicted not for participating in religious acts but for organizing and participating in activities of organizations previously banned as extremists. The Law on Freedom of Conscience and Religious Associations of 1997 established two types of associations: “religious groups” and “religious organizations” (Article 6.2). A religious group is a “voluntary association of citizens formed for the purpose of common worship and the dissemination of their faith” and is not registered in the state registry, thus having “no legal personality.” If later registered, they become a “religious organization,” which can be local (if it has at least ten members, has existed for 18 years, and is permanently located in a locality within the Russian Federation) or regional if it includes at least three local organizations.

According to the ECHR, imposing criminal sanctions for expressing religion or beliefs collectively is an interference with Article 9 of the Convention, which would only be legitimate if it was provided for by law, pursued a legitimate aim, and was necessary in a democratic society.

The ECHR reiterated that such restrictive measures were based on an arbitrarily broad definition of “extremist activities,” and there was no evidence that these activities or publications incited, even implicitly, violence, hatred, or discrimination. Proclaiming the superiority of the Jehovah’s Witnesses’ religion, rejecting blood transfusions, or attempting to persuade soldiers to choose conscientious objection to military service cannot be construed as a call or incitement to violence, hatred, or discrimination. Therefore, this interference cannot be considered provided for by law, pursuing a legitimate aim, or required by a “pressing social need.”

Finally, the ECHR applied the same reasoning regarding the violation of the right to the peaceful enjoyment of their property caused by the seizures ordered in homes, buildings for religious worship, and other premises containing a significant number of publications, electronic devices, and real estate of the Administrative Center and the local religious organizations.

The ECHR reiterated that the first and most important requirement of Article 1 of Protocol No. 1 of the Convention is that any interference by an authority in the peaceful enjoyment of possessions must be “provided by law.” Since the

orders declaring publications as “extremist” and dissolving the religious organizations are based on a broad, loose, and arbitrary concept of “extremist activities,” this is considered an interference with the “possessions” of the applicants not provided for by law in terms of the required clarity and precision. Therefore, a violation of Article 1 of Protocol No. 1 occurred. In *Kruglov and Others v. Russia*, the ECHR had recognized that while the retention of material evidence may be necessary in the interest of the administration of justice, the continued retention of objects unrelated to a criminal offense serves no legitimate purpose. Therefore, it constitutes a disproportionate interference with the right to peaceful enjoyment of private life (European Court of Human Rights, 2020a, 144–46).

## *VI. Conclusions*

The objective of this study is to try to provide insights into cases of intrusions on the honor suffered by minority religious denominations in these times.

We have chosen Jehovah’s Witnesses because they have recently been the target of such attacks in Spain, and the cases are pending judgments as of the time of this writing.

There is no doubt that religious denominations are holders of the right to honor, as recognized by Article 18 of the Constitution and developed by Organic Law 1/1982 on civil protection of the right to honor, privacy, and personal image, as well as by the Penal Code. The religious entity of the Jehovah’s Witnesses, as a private legal entity, is the holder of this right, which has an internal aspect—the right of every individual to a positive self-image and self-esteem—and an external aspect—the right of every individual to a good image, reputation, good name, or good fame in society.

It is also indisputable that individuals, in the exercise of the fundamental right to freedom of expression, as outlined in Article 20 of the Constitution, can express ideas or opinions not only favorable to other individuals or legal entities, such as religious denominations, but also those that “annoy or disturb,” whether expressing criticism, even if it is sharp, mockery, or satire. In these cases, the freedom to express opinions will prevail over honor as long as they are expressions of *animus criticandi* or *animus jocandi*. However, freedom of



expression does not cover the right to insult; it does not protect disqualifications uttered with an unequivocal *animus injuriandi*, that is, with a direct and primary intention to harm, vilify, or defame a natural person or, in this case, a religious denomination that has acquired legal personality once registered in the Register of Religious Entities and has obtained the declaration of well-known roots in Spain. Expressions falling within the scope of hate speech are outside the realm of freedom of expression.

In the fourth section, we have gathered several criteria provided by the Constitutional Court so that legal operators can weigh whether there is an injurious intent, that is, if the expressed opinion is a manifestation of hate speech, or if, on the contrary, it pursues a critical or even mocking purpose and, therefore, can be framed within the scope of freedom of expression.

Citizens, associations, and companies, among others, have the right to express not only opinions but also to convey information that will prevail over honor (in this case, of religious denominations) if it meets the dual requirement of being truthful, meaning that the information has been compiled with the diligence of a good journalist using reliable sources and verifying it, and that it is also information of public interest, either due to the content (not just gossip) or to the individuals involved (public figures). In the case of the defamation trials against the honor of the Jehovah's Witnesses started in Spain between 2022 and 2023 and pending judgment, some of the accusations made by the defendants, whether through the association's bylaws, social media, or YouTube videos, contain allegations of crimes such as discrimination against women, promotion of homophobia (incitement to hatred: Article 510 of the Penal Code), cover-up of sexual abuse of minors. Accusations of criminal conduct, when made with knowledge of their falsehood or reckless disregard for the truth, could constitute defamation (Article 205 of the Penal Code).

What is unclear is why the victims of these alleged criminal acts or those aware of these practices did not seek the protection of the law by activating the mechanisms established by current legislation. Remember that witnesses to a public crime have the obligation to

immediately report it to the investigating judge, peace judge, district judge, or municipal judge or prosecutor closest to the location (Article 259 of the Criminal Procedure Law).

And those who are the subject of these attacks have the possibility to

access, free of charge and confidentially, in the terms determined by regulations, the assistance and support services provided by public administrations, as well as those provided by Victim Assistance Offices. This right may be extended to the victim's family (Article 10 of Law 4/2015, of April 27, on the Statute of the Victim).

It is striking that the alleged victims of crimes committed by religious denominations, instead of asserting their fundamental right to effective judicial protection (Article 24 of the Constitution), ignore the state's protection mechanisms and prefer to report these incidents to uncontrolled audiences, such as social media or the media, where the accused parties (the religious denominations) often cannot even defend themselves or, when they do, they already bear the heavy burden of defamatory propaganda.

The overstepping of freedom of expression can not only erode the right to honor of a religious entity, both internally (self-esteem) and externally (good reputation among others), but also injure the religious sentiments of its members. An injurious narrative based on unproven accusations can ultimately restrict the free exercise of religious freedom by others.

We have included a section (V) dedicated to two judgments from the ECHR related to this religious denomination. Although there are many more judgments, not only in Russia but also in other member states of the Convention, we have chosen these because they seem emblematic and give us an idea of the type of accusations made by public authorities and society in various states towards this religious group. We also wanted to emphasize the ECHR criteria, which, among others, insists that the state, in its neutrality, cannot evaluate religious beliefs. In a system governed by the rule of law, accusations must be proven. And, as long as manifestations of religious freedom by individuals and communities are not clearly prohibited by the law, or if they are, the restrictions do not pursue a legitimate purpose and are not necessary in a democratic society, they would not be acceptable under the European Convention on Human Rights.

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## Jehovah's Witnesses and Right to Honor: Four Spanish Decisions

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**ABSTRACT:** In the last quarter of 2023, four decisions by the Spanish Court of First Instance of Torrejón de Ardoz examined statements by an anti-cult association called Spanish Association of Victims of the Jehovah's Witnesses (AEVTJ). The Jehovah's Witnesses found the statements as spread by the AEVTJ, its members, and in one case the daily newspaper *El Mundo*, to be both incorrect and offensive to their right to honor. The Jehovah's Witnesses prevailed in two cases, decided by the First Section of the Court of First Instance of Torrejón de Ardoz, while they lost the two cases decided by the Sixth Section of the same court. The main themes of the international anti-Jehovah's-Witnesses propaganda were discussed, and differently evaluated, by the two sections of the court. It is, however, important to read all decisions in their entirety. Perhaps the contradictions will be solved by superior courts.

**KEYWORDS:** Jehovah's Witnesses, Jehovah's Witnesses in Spain, Right to Honor in Spain, Spanish Association of Victims of the Jehovah's Witnesses, AEVTJ, Asociación Española de Víctimas de los Testigos de Jehová.

### *Introduction*

Between October 2 and December 22, 2023, the Spanish Court of First Instance of Torrejón de Ardoz issued four decisions in cases where the Jehovah's Witnesses lamented that statements by an anti-cult organization called Asociación Española de Víctimas de los Testigos de Jehová (AEVTJ, Spanish Association of Victims of the Jehovah's Witnesses) violated their right to honor. Two decisions were favorable to the AEVTJ and two against them. The two favorable decisions were rendered by the First Section of the Court of First Instance of Torrejón de Ardoz and the two against the Jehovah's Witnesses by the Sixth Section.



The contradictory judgments have been appealed and perhaps will be reconciled on appeal or further on by superior courts. The substance of the matter is discussed in the article by the distinguished Spanish law professor Juan Ferreiro Galguera written before the decisions were rendered and published in this issue of *The Journal of CESNUR*. Complementing that article, I will comment here on the four decisions.

### *Torrejón de Ardoz #1: The Case of the Newspaper El Mundo*

The first case won by the Jehovah's Witnesses was not against the AEVTJ directly but concerned information the anti-cult association had supplied to the Spanish newspaper *El Mundo*, which on November 21, 2022, had published a slanderous article against the religious organization. On October 2, 2023, the Court of First Instance no. 1 of Torrejón de Ardoz dismissed the newspaper argument that responsibility lied only with the AEVTJ. It ordered *El Mundo* to publish the Jehovah's Witnesses' reply and to pay the litigation's costs.

In the decision, however, the court did not limit itself to recognize the right of reply of the Jehovah's Witnesses. It also discussed the merit, finding the allegations of the AEVTJ both likely to cause damage to the religious organization and inaccurate.

The court found it self-evident that the article “generated verifiable damages” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6) to the Jehovah's Witnesses. To start with,

the title of the article itself included the word “cult” [‘secta’ in Spanish] that has unquestionable negative connotations with respect to any religion (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6).

The stories coming from the AEVTJ are, the court said,

objectively harmful to the fame and credibility [of the Jehovah's Witnesses organization], such as referring that it is a religious association (which they call a “cult”) with “cultic” practices, stating that it causes “social death” to those who leave it, that it “compels” its members not to report crimes, that it alienates its members, and that it “encourages physical and moral suicide” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6),

and so on. Thus,

from any point of view, the article mentions allegations by third parties that cause undeniable damage to the religious association (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6).

Then, the judges examined whether the allegations in the article were inaccurate and concluded that most were. The decision noted that

the first thing that is striking is the title of the article itself, where the plaintiff entity is catalogued as a “cult,” then throughout the extensive text the words “cultic practices” are used (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6).

According to the decision,

the information in this case is based on a fact that is clearly inaccurate, since the Jehovah's Witnesses are a religious denomination registered in the General Section (Minority Religions), inscription number 000068 of the Register of Religious Entities kept at the Ministry of Justice, so we are dealing with a legitimately recognized denomination in our country like many others. Therefore, to classify the plaintiff entity as a cult is legally erroneous since, in the context of the analyzed article, it implies attributing to the plaintiff some pernicious or harmful features as opposed to the rest of the religious confessions legally established in Spain (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6).

Second, the article referred to

testimonies of alleged victims of sexual abuse within the religious denomination ..., alluding to a certain situation in Australia where allegedly “they hid more than a thousand cases of sexual abuse” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6–7).

The article also mentioned a

former Jehovah's Witness who reports that he was allegedly abused “among the Witnesses,” concluding that “they kill you in life” ... [and] another former Witness who explains the context of some alleged rapes and that “they constantly threatened him that if he spoke, they would form a judicial committee” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 7).

The court concluded that, when carefully examined,

these facts are not accurate and further affect the public consideration of the plaintiff [the Spanish Jehovah's Witnesses] since, on the one hand, there is no certain record of any conviction of the religious entity as a whole for the aforementioned unspecific cases of sexual abuse in Australia, so it is an inaccurate fact that the alleged events were concealed in that oceanic country. On the other hand, with respect to the specific accounts of alleged sexual abuse, it is not so much that the fact is true or not (in fact, no evidence of any convictions arising from such allegations, if any, has been provided), but that at all

times the plural and collective number is used when referring to the alleged sexual abuse, to attribute to the religious denomination as a whole the responsibility for “sexual abuses perpetrated within the group” rather than to the persons who in each case had caused the alleged abuses or sexual aggressions (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 7).

Overall, the part of the article concerning sexual abuse should be “classified as inaccurate” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 7).

Third, the practice by the Jehovah’s Witnesses of the so-called ostracism or shunning, i.e., counseling members not to associate with ex-members who have been disfellowshipped or have publicly left the organization (Introvigne and Richardson 2023; Introvigne 2024) is qualified in the article as sentencing these former members to “social death” and “a silent hell.” The court found the description of the practices by the Association of Victims of the Jehovah’s Witnesses as based on

facts that are not clearly proved, since it is one thing to assert the right or freedom to choose to relate with a certain person inside or outside a certain religious confession, and another that, as indicated in the article, “when they are inside the cult they are explicitly or implicitly forced to relate only with other faithful,”

which is “inaccurate” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 7).

Worse, the court reports, “the article expressly states that ‘there are double standards, because many elders are either adulterers or pedophiles,’” and that the Jehovah’s Witnesses “encourage physical and moral suicide.” These allegations, the court found, “once again lack a demonstrable objective basis,” and are “inaccurate and extremely damaging to the prestige of the plaintiff entity” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 7).

In summary, the AEVTJ was caught red-handed spreading false information, and *El Mundo* was caught red-handed uncritically reporting it. “It is not a question here of refuting or censoring opinions—explained the court—, but to legally sanction the erroneous or directly false facts that support such opinions” (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 8). The court also confirmed that the media “is responsible for the content of what is disseminated,” including allegations made by third parties:

To admit otherwise would be as much as to legitimize any type of publication based on unquestionably false or untrue facts, just because it is a third party who maintains this

erroneous view of the facts (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 6).

It is not the first time that media fall into the trap of publishing slander fed to them by anti-cult organizations, “experts” on “cults” (in this case, the “expert” interviewed was Carlos Bardavío, i.e., the lawyer representing the AEVTJ), and “apostate” ex-members (Introvigne 2022a). It is also not the first time that a media outlet—even one that is a member of The Trust Project—refuses to publish a religious community’s reply to an insulting article. The decision should teach these media a lesson. However, it is unlikely this will happen. Some journalists are like the crow in Aesop’s (ca. 620–564 BCE) fable as retold by Jean de la Fontaine (1621–1695), which is deceived by the fox and swears that it has happened for the last time—only, it swears “un peu tard,” i.e., when it is too late (La Fontaine 1682, 4).

### *Torrejón de Ardoz #2: The Anti-Cultists Lose a Case but Claim They Won*

What happened after the second Torrejón de Ardoz decision was part of a new game among anti-cultists. They keep losing court cases, particularly against the Jehovah’s Witnesses, but they claim they won. This strange game started when FECRIS (European Federation of Centres of Research and Information on Cults and Sects), the French-based umbrella organization of European anti-cult movements, lost a landmark case in 2020 at the District Court of Hamburg, in Germany, where it was found guilty of 18 counts of untrue factual allegations against the Jehovah’s Witnesses. On May 24, 2021, *Bitter Winter*, a daily magazine I am the editor in chief of, published a commentary of the decision (Introvigne 2021a). On May 30, 2021, i.e., six days after *Bitter Winter*’s article, FECRIS published a press release about the case (FECRIS 2021).

In the press release, FECRIS falsely claimed that it had won a case that it had in fact lost. Since the Jehovah’s Witnesses had claimed that 32 FECRIS statements were defamatory, and the court found 17 of them defamatory, one partially defamatory, and 14 non-defamatory, FECRIS claimed that it had successfully defended its case in Hamburg. Obviously, it had not, as evidenced by the fact that FECRIS was sentenced to pay money to the Jehovah’s Witnesses rather than vice versa. Later, documents obtained by *Bitter Winter* proved that in an internal meeting FECRIS had admitted it had lost the case (Introvigne 2021b).

Lawyers know that defamation cases are difficult. Not all false statements constitute defamation. Some statements may be inaccurate, yet the courts may regard them as a mere statement of opinion (referred to in the case law as “value judgments”) rather than statements of fact, thus falling outside the scope of statutes protecting the right to honor. Organizations and tabloids that resort to systematic defamation know that they will be often sued about several statements, and that they will be sentenced for some and found not guilty for others. Their strategy is normally to downplay the negative decisions and claim victory when only some of the statements for which they were sued, but not all, are found defamatory—which is a common occurrence even in the most successful defamation cases. They would also falsely claim that, when some of their statements have been found as non-defamatory, the courts have “certified” that they are “true”—while in fact a statement may be both inaccurate and outside the scope of defamation or breach of the right to honor.

The strategy was repeated in Spain by the AEVTJ after its secretary, Enrique Carmona, was found guilty of having violated the Jehovah’s Witnesses right to honor by a decision rendered on October 25, 2023, by the Court of First Instance Number 1 of Torrejón de Ardoz.

The court found that certain

expressions of the video entitled “Presentation of the Spanish Association of the Victims of the Jehovah’s Witnesses” uploaded to its YouTube channel, constitute an unlawful interference with the fundamental right to honor of the plaintiff [i.e., the Spanish Jehovah’s Witnesses]. The defendant is ordered to pay 5,000 euros for the damages suffered by the plaintiff as a result of the aforementioned intromission (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 13).

The decision found that in the video the defendant defines the plaintiff religious association as a “cult” [“secta”], as “the worst of the cults,” and then as a “dangerous cult.” This is, the court said with words similar to those used in the decision against *El Mundo*,

inaccurate, since the Christian Jehovah’s Witnesses are a religious denomination registered in the General Section (Minority Religions), registration number 000068, of the Registry of Religious Entities that is kept at the Ministry of Justice, so we are dealing with a confession legitimately recognized in our country, like many others. Therefore, to classify the plaintiff entity as a cult is erroneous since, in the context of the analyzed video, it implies attributing to it pernicious or harmful traits as opposed to the rest of the

religious confessions legally established in Spain (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 11).

Worse, the decision notes, the representative of the AEVTJ

makes a parallelism between the Jehovah's Witnesses, cults, and "diseases," and catalogs the plaintiff organization as a "dangerous cult," which, beyond the subjective opinions that some ex-members may hold, has no objective basis, and undoubtedly goes against the public consideration that every religious confession legally recognized by the state is entitled to, as is the case here. And there is more: the defendant, by implicitly alluding to the fact that the Jehovah's Witnesses (or membership in their confession) are a disease, even makes a comparison in his lecture with "the cases of jihadism and terrorism." Although he recognizes that the Jehovah's Witnesses "are not like that," he does insist that they are a disease "like diabetes, which people live with a certain normality but when they care to remember it they are broken inside" (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 11).

So, the court said, not only did Carmona call the Jehovah's Witnesses a "cult," but also a "disease," an "expression that can hardly have a positive meaning." It is a disease you may not always realize you suffer of, but "when you do, you are broken inside." Obviously,

such a statement cannot be covered by freedom of expression. These are words clearly disproportionate and manifestly injurious against this or any other legally recognized religious confession, attacking its honor and public consideration (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023a, 11).

Indeed, this is just the latest international decision to repeat that Jehovah's Witnesses are not a "cult" in the usual derogatory meaning of the term. The European Court of Human Rights has ruled on several occasions that the Jehovah's Witnesses are a "well-known Christian denomination ... [which has] established an active presence in many countries throughout the world, including all European States which are now members of the Council of Europe" (European Court of Human Rights 2010, 155; see European Court of Human Rights 1993; European Court of Human Rights 1996).

In cases of defamation, there is a clear test to understand who won and who lost. The party that wins receives an indemnification. The party that loses pays it. In this case, Carmona was sentenced to pay 5,000 euros to the Jehovah's Witnesses, which should have clarified the issue of "who won" once and for all. As mentioned earlier, in most similar cases the plaintiffs submit a list of statements they regard as violating their right to honor and reputation. When the

plaintiffs succeed in their cases, the courts list some statements as injurious, but normally not all. However, who had “won” the case can be easily seen by looking at who has to pay damages.

A common fallacy is to believe that when a court defines a statement as not injurious, it somewhat certifies it as true. This is not the case. For instance if somebody would argue that I am not Italian but American the statement, although perhaps formulated for malicious purposes, would probably be defined by a court of law as one not offending my honor. Yet, the statement would remain false.

Unfortunately, even some Spanish media (see e.g., Jorro 2023) accepted the argument that since the court did not regard certain statements by the AEVTJ as formulated in a way that violated the right to honor of the religious organization, the judge stated that they were true. This is an impression created on social media by the same anti-Jehovah’s-Witnesses association, but it is false. They claim, for example, that “99% of the statements” in the video have been “endorsed” by the court. It is not so.

For instance, the AEVTJ implies that since it has not been sanctioned for the sentences where it suggested that the Jehovah’s Witnesses hide perpetrators of child sexual abuse, its corresponding statements were certified as true by the court. But this is not what the judgment says. In reality, the Court states that

although perhaps Mr. Carmona’s words in his speech are somewhat excessive, he does not impute to the plaintiff entity the execution of a manipulative scheme aimed at actively preventing the sexual abuse of minors from being brought to the attention of the authorities (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 9).

In other words, had Carmona made such an accusation, then it would have been judged to be defamatory. Importantly, the judge clarifies that the evidence showed that at no time are the Jehovah’s Witnesses prevented from going to the police or judicial authorities to report crimes such as sexual abuse.

How internal ecclesiastical courts among the Jehovah’s Witnesses handle cases of sexual abuse for the purpose of disfellowshipping the perpetrators and whether the Witnesses report the incidents to the secular authorities are two different questions that should not be confused, the court said:

There are two spheres of action or intervention of the religious entity: the internal one, which is part of the freedom of self-regulation that all religions have to deal with such issues (including how to deal with or sanction an alleged sexual abuse among members), and the external one, where... at no time are the Jehovah’s Witnesses prevented (nor is it

clarified by the opposing party how they could be prevented) from going to the police or judicial authorities to report the abuses. These are different and parallel spheres that can perfectly coexist. It is irrelevant for our case whether or not there is a kind of “ecclesiastical” court that judges these matters internally, because this does not prevent that one can and should, if necessary, go to the police or judicial authorities (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 9).

It is not true, the court added, that Jehovah's Witnesses are “forced to lie to the judicial authorities,” as demonstrated by the fact that “there are no convictions for crimes of obstruction of justice” against them (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 10).

The judge made a similar conclusion concerning the already mentioned “shunning” or ostracism. The court did not find that Carmona's statement against the practice had risen to the level of violating the right to honor of the Jehovah's Witnesses. Again, this did not mean that the court agreed with Carmona who alleged that the practice is illegal. On the contrary, the court repeated the commonsense conclusion that

if a person decides to stop talking or dealing with another person, this is part of the freedom that all subjects have to relate to whomever they wish (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 10).

More specifically, the judge ruled that

if someone chooses to ignore or refuse contact with another person, it is a personal choice, and if the religious confession morally imposes that fact (which even the plaintiff's witnesses have confirmed to a certain extent), it would be part of the religious norms that the members accept, freely, when they decide to join or remain in the organization. Connecting a “mental damage” to this state of social isolation may be appropriate if it refers to a logical personal suffering when you see that those who used to speak to you do not do it any longer. But this would not justify attributing the greater responsibility to the religious entity nor to its members, who do nothing more than following their dogmas and principles, which is part of their religious freedom (Juzgado de 1ª Instancia nº 1 de Torrejón de Ardoz 2023b, 10).

Summing up, the decision found the representative of the AEVTJ guilty of having violated the Jehovah's Witnesses' right to honor by calling them a “cult,” which the court said they are not, and sentenced him to pay Euro 5,000 as damages. Although it did not conclude that Carmona's statements about sexual abuse and “shunning” clearly amounted to a right to honor violation, the court very clearly concluded that the Jehovah's Witnesses do not protect abusers from justice, do not prevent their members to report sexual abuse to secular authorities, and have



a right to teach and practice “shunning,” which is part of their freedom of religion.

### *Torrejón de Ardoz #3: A House Divided*

Several individual Jehovah’s Witnesses and their Spanish religious organization also sued the AEVTJ directly. They claimed that its activities and publications violated the right to honor of the Jehovah’s Witnesses. This case was decided by the Sixth rather than the First Section of the Court of First Instance of Torrejón de Ardoz. On December 5, the Sixth Section found against the Jehovah’s Witnesses and declared that the AEVTJ had not violated their right to honor. It seems somewhat strange that Section VI of the Torrejón de Ardoz court ignored and contradicted what Section I had clearly stated, yet this is what it did.

It is always useful, however, to read the whole decision, which AEVTJ propaganda on social media quickly reduced to “we won, they lost, and a judge certified that the Jehovah’s Witnesses are a bad cult.” While I find the decision poorly motivated and biased, it is nonetheless more complicated than that.

It is based on two legal arguments. The first is that in Spanish case law, more than in the case law of other countries, freedom of expression has been traditionally protected over the right to honor when the two rights enter into a conflict. According to this judge, this is particularly true when the right to honor of a religious organization is considered. For example, the decision explains, Spanish courts have allowed critics of the Catholic Church to declare that it is “a political power rather than a religion,” that it has systematically protected pedophile priests, and has committed a variety of crimes (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 59).

Even when the accusations are not true, some Spanish decisions found that associations targeting a particular religion and gathering its disgruntled ex-members may play the role of the “watchdog” and provided that “they do not go beyond the limits... of religious liberty,” may even exert a positive role in inducing religions to improve and reform (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 71).

The judge's interpretation of Spanish case law is questionable. A leading Spanish legal scholar such as Professor Juan Ferreiro Galguera expresses a different opinion. Quoting Spain's Constitutional Court, he explains that

“It is permissible to express ideas that may disturb or even seriously upset others if they are disseminated with an *animus criticandi* (a critical spirit) or *animus jocandi* (a playful spirit) because freedom of expression includes the right to criticism, even if it is harsh, and to satire, even if it is mocking, but it does not protect the right to insult” (Constitutional Court 105/1990). It does not protect disqualifications that have been made with a direct and primary intention to harm, humiliate, or defame a person or a group of people, in other words, from an unequivocal *animus injuriandi*. The public statements made by the AEVTJ association and its members, in which Jehovah's Witnesses are described as a destructive “cult” inciting suicide, violating the dignity of people who leave the organization, homophobic, and systematically violating the law, appear to be value judgments that do not seem to seek constructive criticism (*animus criticandi*) or a humorous tone (*animus jocandi*) but an intention to defame and offend (*animus injuriandi*) (Ferreiro Galguera 2023, 53; English translation in this issue of *The Journal of CESNUR*).

The second principle mentioned by the Torrejón decision is that “veracity [veracidad] should not be confused with truth [verdad]” (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 21). Quoting Spanish legal precedents, the decision states that to be protected by freedom of expression, even when potentially harmful to the right to honor of a community, “veracity” is enough, and truth is not required. For example, when media report that an organization has been accused of a certain harmful behavior, “veracity” should not be identified with the “accuracy of the news [exactitud de la noticia].” “The veracity required is limited to the objective truth of the existence of the statement,” even if the statement reported is not accurate (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 22). Veracity

must be understood as the result of the diligent activity deployed by the communicator in verifying that the information he intends to disseminate conforms to reality, even if, in the end, it is proven that such information is not accurate, and may even turn out, after the corresponding judicial or investigative process, to be false (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 23).

Accordingly, the decision stated that establishing the “truthfulness” or the “accuracy” of the accusations raised by the AEVTJ was not necessary to conclude that they are protected by freedom of expression. Assessing their “veracity” was enough.

The decision then devoted several dozen pages to reporting statements by “apostate” former Jehovah’s Witnesses who testified that they believe the accusations of the AEVTJ in the fields of shunning, sexual abuse, blood transfusion, and others to be true, and quoting media that repeated the same accusations. Interestingly, the court also reported that

in September 2019, both the newspapers “El País” and “ABC” reported that in Milan the parents, Jehovah’s Witnesses, had had their parental authority temporarily withdrawn from a 10-month-old baby so that he could receive an indispensable blood transfusion (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 59).

However, the judge seems not to be aware that the 2019 decision of the Juvenile Court of Milan, whose content had been reported by media quite incorrectly, was overturned on appeal by the Appeal Court of Milan on September 10, 2020 (DIRE 2020).

Even the unavoidable Australian Royal Commission report on child sexual abuse, or its current interpretation by anti-cultists, was quoted, ignoring the objections by scholars (e.g., Folk 2021), and the fact that on June 2021, News Corp (Daily Telegraph Australia), the largest media outlet in Australia, published an apology for misusing (as many other media did) the Royal Commission report, spreading inaccurate information that the Jehovah’s Witnesses had been covering child abuse (News Corp Australia 2021).

The judge also inaccurately wrote that in Belgium “the confession [the Jehovah’s Witnesses] was condemned” for hiding sexual abuses (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 50), while in fact the contrary happened. It was the Belgian government and its anti-cult agency that were found guilty by the Court of Brussels of having falsely and without evidence accused the Jehovah’s Witnesses of concealing sexual abuses (see Introvigne 2022b).

While the “veracity” standard would make the fact that several media and organizations had spread the same accusations sufficient to exonerate the AEVTJ from any liability, the decision is biased to the extent that the opinions of scholars, Jehovah’s Witnesses who are happy to remain in the organization, and foreign courts of law (not to mention Section 1 of the same Court of Torrejón de Ardoz) are ignored or quickly dismissed, and a disproportionate weight is given to anti-cultists and “apostate” ex-members, towards whom the sympathy of Judge Raquel Chacón Campollo, who drafted the decision, is clearly directed.

I also believe that the judge erred when she used dictionaries to conclude that the expressions “secta” (cult) and “victim” may have a neutral or non-offensive meaning, while in the context of the current media controversies about “cults” they have certainly acquired a clear derogatory meaning (Ferreiro Galguera, this issue of *The Journal of CESNUR*). This is what the *Tonchev* decision of the European Court of Human Rights about the use of the Bulgarian expression equivalent to “secta” or “cult” also stated (European Court of Human Rights 2022b). It was a decision the Spanish judge regarded as not applicable to her case since it protected religious liberty rather the right to honor.

Ultimately, the decision adopted a free-market approach.

Even if some expressions are inaccurate or exaggerated, as discussed above, the right to freedom of expression and information prevails over the right to honor (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 71).

Rather than relying on courts of law, the Jehovah's Witnesses are incited to go public

to explain or defend their beliefs, their practices, their traditions and to contradict, if necessary, with total freedom, the criticisms received, even more so in today's society in which there are various means of communication, social networks, and digital resources to freely express their opinions (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 72).

This comment appears to be quite naïve, as it assumes that a slandered religious minority and its opponents have equal access to the media. In fact, it is almost only the opponents' voice that is heard through the media, whose bias against groups stigmatized as “cults” has been studied by scholars for decades. Paradoxically, this is confirmed by the decision itself, which relies heavily on anti-cult propaganda spread through Spanish and international media. In turn, the same decision has been reported by several Spanish media by relying on AEVTJ's social media posts and press releases only, and without even bothering to read its text.

The decision recognizes that

it is also known that the Jehovah's Witnesses are absolutely peaceful citizens as they are forbidden to take up arms against another human being, that they do not enter into conflict in society and that they promote very positive behaviors for human beings such as work well done, care for the family, the prohibition of drugs, and very limited consumption of alcohol. All these virtues, which also benefit the Spanish society, can be

expressed publicly in the same way from the confession or by the devotees themselves (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023a, 72).

Not surprisingly, this part of the decision was not publicized by the AEVTJ. The question, however, remains whether courts of law should act only as a distant and somewhat lazy referee, allowing the players to hurt each other and leaving some of them free to use false, although perhaps technically “veracious” allegations, or should intervene to protect the dignity of slandered minorities and their freedom of religion or belief that can be separated from their right to honor in theory but not in practice.

Most courts throughout the world, and even another section of the same court, answered the question differently from Section 6 of the Court of First Instance of Torrejón de Ardoz. I believe that these other courts were right, and Section 6 was wrong. Until it will be hopefully corrected by a superior court, domestic or European, the decision of December 5 (with its companion decision of December 22) should be better considered as an anomaly, the proverbial exception that confirms the rule established by dozens of decisions that found in favor of the Jehovah’s Witnesses.

#### *Torrejón de Ardoz #4: Judge Raquel Chacón Campollo persiste et signe*

“Persiste et signe” is a French expression used to indicate the act of somebody who insists in stubbornly saying or doing something that is clearly wrong. With all due respect, it seems to me that the expression reflects the attitude of Judge Raquel Chacón Campollo, of the Sixth Section (not to be confused with the First) of the Court of First Instance of Torrejón de Ardoz.

Given her precedent decision of December 5, 2023, the second one of December 22 is not surprising. It was based on the same interpretation of Spanish law, claiming that to avoid being regarded as offending the right to honor of a person or group, the “truth” (verdad) of a statement is not necessary and its “veracity” (veracidad) is enough. The December 22 decision repeats that it refers to “veracity, which should not be confused with truth” (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 17). To prove “veracity,” the defendants should simply show that the information they are spreading, although possibly false, is found in a plurality of sources that they might have regarded (perhaps wrongly) as reliable.

I understand that this is a subtle distinction for those without legal training. Yet, it is important since the AEVTJ, its lawyers, and the media claimed again that Judge Chacón confirmed the “truth” of the claim that the Jehovah’s Witnesses are a “destructive cult.” In fact, she didn’t. She wrote that

the defendant describes the religious denomination as an extremist and destructive cult which, for all the above, can be considered veracious, which does not mean that it is true, but... is an opinion or statement in which the requirement of veracity is met (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 48).

Journalists are not lawyers, but those claiming that Judge Chacón certified that the statement that the Jehovah’s Witnesses are a “destructive cult” is true misunderstood her decision. She has explained time and again that considering a statement “veracious,” thus not offending the right to honor, “does not mean that it is true.”

However, in this second decision, Judge Chacón stretched the notion of “veracity” to paradoxical consequences. Defendant Gabriel Pedrero Sánchez, the Madrid representative of the AEVTJ, had written *inter alia* that

it took him five years to deprogram his mind, to rebuild his life outside the Jehovah’s Witnesses’ cage and to be able to leave a religion about which at that time we did not know what we all know today. That they have blood on their hands from various suicides: both the collective ones, for not allowing medical treatment with blood, and the suicides caused by stress, anxiety, and depression caused by being locked in the Watchtower cage, the religious company behind the medieval regulations and ideology they are forced to follow. We cannot allow ourselves to be influenced by a corporation that is only after money. They are becoming more and more millionaires, and their followers are becoming poorer and poorer in every way. They annul them as persons, who are no longer able to think or decide freely (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 2–3).

Pedrero also launched a petition on the platform Change.org where he expanded these concepts and hailed the repression of the Jehovah’s Witnesses in Russia, which has been condemned by most democratic countries and the European Court of Human Rights (European Court of Human Rights 2010; European Court of Human Rights 2022a). The petition’s aim was to have the Jehovah’s Witnesses banned in Spain for “extremism” as it happened in Russia.

Readers should be by now familiar with Judge Chacón’s methodology to establish veracity: she hears from “apostate” testimonies, she collects press clippings, she watches anti-cult TV programs, and she concludes that, true or not,

Pedrero's and the AEVTJ's accusations are repeated often enough to be "veracious." She also reiterates the same mistakes of her December 5, 2023, decision, in considering the word "cult" ("secta") not offensive based on some dictionary definitions (while its social use is different and certainly derogatory), and in misinterpreting the Jehovah's Witnesses' practices about how accusations of sexual abuses are handled and the Australian Royal Commission report. She also misinterpreted the European Court of Human Rights case law when she stated that interviews or opinions of former members accusing a group of unreported and unproven crimes can be reproduced or quoted without violating the organization's right to honor just because they were "previously published by other media" (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 17). Paradoxically, in a decision so full of factual mistakes, she accused Ferreiro Galguera, a leading Spanish legal scholar, who expressed a different opinion, of being misinformed (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 54).

The main problem is, however, another. Veracity or not, it is a general principle of international law—and of Spanish law, as the same Ferreiro Galguera demonstrates (this issue of *The Journal of CESNUR*)—that derogatory speech cannot be admitted when it betrays an *animus injuriandi*, i.e., an intention to insult and defile a person or organization.

As mentioned earlier, Pedrero described a large world religious organization as a "corporation" that "is only after money" and is full of "blood in [its] hands." Yet, Judge Chacón assures us that she has seen videos where Pedrero attacks the Jehovah's Witnesses and has found him as meek as the proverbial lamb:

From the videos examined, it can be concluded that Mr. Pedrero has in no way incited or generated hatred against the religious confession by these broadcasts, since in them he expresses himself calmly and his body language is serene, he does not raise his voice especially loud or use expressions or swear words; neither do they show an aggressive scenography, it seems that they are recorded in a home, bedroom and living room, and the videos show warm tones, white, pastel colors, nor does Mr. Pedrero appear with aggressive accessories or display sinister or violent objects or decoration (Juzgado de 1ª Instancia nº 6 de Torrejón de Ardoz 2023b, 54).

Again with all due respect to Judge Chacón, this is frankly laughable. If the expressions used by Pedrero do not offend the right to honor of the Jehovah's Witnesses, then such offenses do not exist.

Let me suggest an experiment. In these times of artificial intelligence, we can ask an appropriate software to produce a video where somebody calmly, without swift bodily movements, without raising his voice, speaks from a bedroom or living room with “warm tones, white, pastel colors,” without raising hammers or swords, and explains to us that the Jews are not a religion but a “destructive” corporation out for our money and our blood, and hails regimes who persecuted them (as Pedrero did for Russia). Would Judge Chacón conclude that this gentle, kind anti-Semite who likes warm colors and do not paint his bedroom in black or brown has not offended the right to honor of the Jewish community?

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## The Police Raids Against MISA in France, November 28, 2023

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**ABSTRACT:** On November 28, 2023, yet another militarized raid against a “cult” led to the arrest in France of Gregorian Bivolaru, the spiritual master of MISA, the Movement for Spiritual Integration into the Absolute, and of several disciples. The police also claimed that “victims” had been “liberated.” This article is based on interviews with 25 MISA yoga students 14 of whom were caught in the raids. Some were initially classified as “perpetrators,” but liberated for lack of evidence, and others as “victims.” Although those arrested were accused of human trafficking and sexual abuse, none of the “liberated victims” admitted to being a victim. All said they had freely embraced a spiritual path based on Tantrism and including teachings on sacred eroticism. This article discusses the raids within the broader framework of France’s government-sponsored campaigns against *sectes* (“cults”) and their “gurus.”

**KEYWORDS:** Gregorian Bivolaru, MISA, Movement for the Spiritual Integration into the Absolute, Anti-Cult Movement in France, Tantra Yoga, Police Raids Against “Cults,” MIVILUDES.

### *Introduction*

On November 28, 2023, there was a militarized police raid on a yoga school in France known as “MISA” in Romania and “Atman” in Europe. “MISA” stands for “Movement for Spiritual Integration into the Absolute.”

Just after 6 a.m., a SWAT team of around 175 police, wearing black masks, Kevlar helmets, and bullet proof vests, descended on eight separate houses, five in Paris and three located in the same yard in Nice, brandishing semi-automatic rifles. They smashed in the doors and ran up and down the stairs, shouting orders. Their targets were neither terrorists nor drug dealers. What the police were searching for were members of a *secte* (“cult” in English). They found some 95 vegetarian, non-smoking, alcohol-abstaining yoga practitioners.

On that fateful morning, most of these yogis were still in bed. A few were in the kitchen boiling water for tisane. The masked police handcuffed them, made them stand outside the house without coats or shoes in the freezing courtyard, then bussed them to the police station of Nanterre, in the Paris suburbs, and other police stations, where they were held for questioning (*garde à vue*) for up to 48 hours (there is no habeas corpus in France).

As co-author of a book called *Storming Zion: Government Raids on Religious Communities* (Wright and Palmer 2016), I was curious about this raid. So, I contacted MISA's administrators and arranged to visit their yoga school in Bucharest, where several of those released with no charges had returned (others went to their respective countries, other than Romania, and some remained in France). Among the six who are being detained in different prisons of the Paris area on charges related to "abuse of weakness," rape, kidnapping, and human trafficking, is Gregorian Bivolaru (b.1952), MISA's co-founder and spiritual teacher.

I flew to Bucharest on January 7, 2024, and interviewed twenty-five Romanian yogis, all students of MISA, 14 of whom were caught in the French raids, over nine days. The interviews were conducted in English and occasionally in French, with the help of an interpreter for those who spoke only Romanian. Their ages ranged from 27 to 72, and their professions and occupations were quite varied.

There are two aspects of the raid on MISA that I found significant. First, the masked police team belonged to a special unit called CAIMADES. They are specially trained to deal with crimes and misdemeanors perpetrated by the *gourous* of *les sectes* ("cult leaders") and to "rescue the victims." Second, Gregorian Bivolaru teaches a form of sacred eroticism, and he has been incorporating ancient Tantric erotic philosophy and techniques into MISA's yogic practice for decades. From the perspective of the "cult watchers" in France's state-sponsored anti-cult movement, these would be considered as *dérives sectaires* (cultic deviances), which must inevitably result in the *abus de faiblesse* (abuse of weakness) of Bivolaru's "victims." Moreover, for France's anti-cult activists, Tantra yoga and ancient Hindu erotic practices in a "cult setting" could hardly be considered consensual. "Brainwashing," rape, kidnapping, and human trafficking must somehow be involved.

The story of how Bivolaru, a Romanian spiritual leader and erotic mystic, came to be captured and put on trial by France's government-sponsored anti-cult movement is complicated but fascinating. One finds three fiercely conflicting perspectives in the case.

From a feminist #MeToo perspective, one sees a powerful male leader imposing Hindu patriarchal dogma on Western female disciples to facilitate sexual exploitation and maintain a rigid gender-based hierarchy.

From the French anti-cult perspective, one sees a "guru" relying on techniques of mental manipulation to enslave his female followers in a vast, international human trafficking ring that funds his *secte*. In France a *secte* is not a "religion." Rather, it is regarded as a kind of *bande organisée* (criminal gang).

Finally, there is the third perspective on the case shared by MISA's 30,000-odd yoga students who view "Grieg" (Gregorian Bivolaru) as an enlightened spiritual master who has devised the spiritual path of "mystical eroticism" based on his studies of Tantra yoga in ancient Indian sources, filtered through the writings of his correspondent and source of inspiration, Mircea Eliade (1907–1986), one of the great scholars in the Chicago school of comparative religion (Vojtíšek 2018).

From MISA students' perspective, Bivolaru's 2010 book *The Secret Tantric Path of Love to Happiness and Fulfillment in a Couple Relationship* (Bivolaru 2010) is a practical guide for a harmonious and long-term heterosexual relationship (Stoian 2010; Introvigne 2022a). For Bivolaru's women disciples, since his Tantric teachings are centered on the Mother Goddess, every woman on this path can become the incarnation of the goddess Shakti (Frisk 2024). MISA women explained in our interviews how through "mystical eroticism" their minds became liberated from patriarchy and their bodies exalted as feminine symbols of the Divine.

There is no time or space in this article to discuss these conflicting views on Bivolaru's case. For those interested in this "cult controversy" (Beckford 1985) and for MISA members awaiting trial, the *denouement* to this story is impossible to predict. Therefore, I will limit my efforts to exploring this complex situation within the context of France's government-sponsored anti-cult movement and "anti-sect wars" (Palmer 2002). To this end, I will follow three steps:

1. I will present an anatomy of the raid and its aftermath. Based on the data gleaned from interviews with MISA students, I will argue that the Judicial Police violated France's legal regime for the *garde à vue* (the detention and interrogation of suspects in police custody).

2. I will examine the role of MIVILUDES (Mission interministérielle de vigilance et de lutte contre les dérives sectaires, Inter-ministerial Mission for Monitoring and Combating Cultic Deviances) in Bivolaru's arrest and will discuss MIVILUDES' concept of *dérives sectaires* and its mission to control France's *sectes*.

3. I will explain the charges of *abus de faiblesse* against Bivolaru and five MISA members within the context of France's 2001 About-Picard law. The modus operandi of *abus de faiblesse* allegations as a "weapon" for controlling *gourous* will be explored and its implications for Bivolaru's legal situation will be discussed.

The accounts below of the 2023 raids on MISA and the Romanian detainees' experiences with the French police are gleaned from the interviews that I conducted in Bucharest in January 2024 at MISA's Yoga School. My research participants described blatantly illegal treatment by the police and a general disregard for their rights and well-being while they were being held in police custody for questioning.

Law professor Jaqueline Hodgson describes the proper procedures of *garde à vue*:

Under art 63 of the CPP (*Code de procédure pénale*) a police officer may place a person in *garde à vue* where there is reasonable suspicion that she has committed or attempted to commit an offence and the officer considers detention necessary to the investigation. The public prosecutor (the *procureur*) must be informed at the start of the *garde à vue*, which lasts initially for 24 hours, and her authority is required to extend the period of detention for a further 24 hours. This is the primary guarantee for the proper treatment of the suspect (...). Under art 63-1 CPP, the detainee must be informed, in a language that she understands, of the nature of the offence for which she is being held and of her rights to inform someone of her detention (under art 63-2 CPP), to be examined by a doctor (art 63-3 CPP) and to see a lawyer (art 63-4 CPP). The right to custodial legal advice was first introduced in 1993; the suspect was allowed a 30- minute meeting with her lawyer, 20 hours after the start of the *garde à vue*. In 2000, this was amended to allow access to legal advice from the start of detention, but still only for 30 minutes (Hodgson 2010).

### *The Paris Raids*

The Paris raids were carried out simultaneously and targeted five locations. One location raided was a yoga studio administered by Sorin Turc, a violinist who played with the Monaco orchestra. Three large houses that were used as yoga-meditation retreats where around 90 Romanian yogis were staying on vacation were raided, as well as small 2-room apartment where Gregorian Bivolaru was temporarily residing.

The Nice raids were conducted that same morning. There, the police targeted three buildings in the same yard in Nice's suburbs, where twelve Romanian yogis who were working on a construction contract were staying.

My informants' accounts of the Paris raids were all very similar. One woman spoke of how her family owned a large house with twenty-two rooms in a beautiful rural area 100 kms from Paris, and she had invited her yogi friends from Romania and other countries to visit for a spiritual retreat:

I woke up with police in my room, with masks, heavily armed. I got scared and hid under my blanket and started to pray. They threw the blanket off and cast it aside. I asked the policeman to let me get dressed, in English. He put himself between me and my clothes and pointed the gun at me. He finally let me get dressed and put handcuffs on behind my back. I was just in pajama pants, bare feet, and a light blouse and I started to get cold. The door to the outside courtyard was open.

A man who was staying at another spiritual retreat house also described being subjected to hypothermia:

I stood outside for an hour and a half, and it was almost zero and I was in pajamas and t-shirt with bare feet. Then they took us downstairs to the kitchen, but they left all the doors open so it was cold. They were warm [the police] enough in boots and jackets and bullet proof vests, but we were mostly barefoot in our PJs.

One man who was staying in a wooden cabin on the grounds of the main house described a similar experience:

I heard dogs barking, then a masked policeman came into the cabin, dragged me to the ground and put handcuffs on me. Then took me to the courtyard of the house. The police were running up and down the stairs shouting, 'Ouvrez la porte!' [Open the door!] and smashing in the doors. I shouted, 'I have the keys!' But it was too late, they had already broken all the doors and mirrors. We were twenty–twenty-five people, the police were maybe fifty.

My informants identified four different kinds of police involved in the raid:

the masked ones with guns, the police without masks, the drug squad, and the human trafficking police—the ones who were taking videos and photos of us and communicating with their boss on the phone.

Several Romanians were surprised by the attitude of the masked police: “They acted like they came to rescue us. They said, ‘We are here to help you.’ (I thought, but you are the ones abusing us now!).” Several of my informants noticed that the police seemed to be puzzled, as they were trying to categorize each Romanian as a “suspect,” as a “victim,” or as a “witness.” They noticed a pattern where the police were trying to discern whether their captives were suspects (of rape, trafficking, etc.), victims, or whether they might be useful as witnesses. One woman said,

It was very confusing. Some of us were treated like traffickers, others like victims—but how did they decide who was what? The Judiciary Police who took over the case told us, ‘We are part of a very big investigation that involves human trafficking, rape, mental abuse—and you are the victims—but you don’t recognize that you are victims. We are here to help you.’ I tried to talk to my friends, but [the police] said ‘Shush!’ We were not allowed to speak at all. Very weird.

Those detainees who understood French reported overhearing the police express their uncertainty and surprise. One woman said:

I signed everything. I tried to be very open and honest, but it was difficult to understand what they wanted. It seems it was not clear to them either. I understand a bit of French and they were speaking between themselves saying, ‘Who are these people? It is not like what we were told it would be.’

### *The Nice Raids*

As mentioned earlier, three houses in the same yard in the suburbs of Nice were raided, where twelve Romanian construction workers were staying. One man from the Nice raids told me his story. He was around 6’6” tall and very strong. He explained how he often traveled to France to work on contracts with his team of construction workers, all members of the MISA yoga school in Bucharest:

Me and my friends we prefer to work together. We find it difficult to work with people who are drinking and smoking [something MISA students do not do]—it leads to problems.

These workers were guests of Sorin Turc, the already mentioned musician who was a yoga teacher at one of the schools affiliated with Atman. The violinist owned the three contiguous houses in Nice and had offered them free accommodation, with four men staying in each house.

On the morning of November 28, one of my informants told me he was in bed with the flu when he heard a crash and loud bellowing:

Police were coming up the stairs pointing big guns at me, and they told me to kneel with my hands up. Why so much force? There were around 150 police with three dogs, and they were screaming and pushing me as they put on the handcuffs. They kept us outside in the garden for three hours, squatting against the wall in handcuffs, I was freezing, shivering. I told them I was sick and needed to dress, but they would not allow me even to get my coat in the hallway. We asked if they had an arrest warrant and they said they did not need one. At first, we thought they suspected us of working in France with no papers, but we were all legal employees of a construction company. They kept asking me, 'Where are the girls? There are supposed to be women staying in the house.' 'No women,' I said, 'only men working on construction.' They asked, 'Where is the room in the house for the sex video chats?' We told them there was no internet in the whole house. So, it seems they thought we were part of a human trafficking ring. Then at the police station they told us we were 'suspects' and took our ID and made us fill out forms. We were held for 48 hours. 'The FBI' came to my cell... at least they were wearing FBI badges and spoke in English. They asked for my passwords so they could access my laptops. I refused. They later told me all my belongings had been sent to Nanterre to the prosecutor in charge of the case.

Suddenly, they released us all, around 10 or 11 p.m. They had taken our cellphones and our money and would not give them back to us. We were downtown in the city of Nice, 30 kilometers from our house. It was dark, cold, and raining heavily. They allowed us socks and shoes and I had my windbreaker with a hood, so I walked very fast, almost running and after five hours I arrived home. The house was not sealed, the gate was smashed in, and the front door was open, but I found my wallet with my cards still in my room, and the key to the car. So, I took the car and collected my friends who were walking home. Some of them did not take the main route, so I could not find them, and they had to walk all the way back alone in the cold rain.

### *The Pressure to Sign French Documents*

The police interrogators exerted heavy pressure on the Romanian detainees to sign documents written in French. With few exceptions, none of the Romanians read or spoke French. One detainee who had just been dragged out of bed and



was handcuffed in the freezing cold kitchen was told she had to sign now: that it was mandatory, that she would be able to see a lawyer later on that afternoon at the police station—after she had already signed.

Even when interpreters were supplied who could translate the documents, the allegations listed were baffling to these Romanians and seemed irrelevant to their lives. One woman described her treatment at the Nanterre police station:

A translator and a policeman came with papers and wanted my declaration. I filled in my ID page and then there were five accusations they wanted me to sign. I didn't understand what they had to do with me. I said, 'What are these accusations? Why should I sign?' They said it was mandatory, that it was 'just a procedure.' But I did not sign, and so I sat in handcuffs for three to four hours.

### *Deceptive and Coercive Treatment*

Some of the Romanians described how they were deliberately deceived about the nature of the documents they were asked to sign. They were told it was a simple "declaration" affirming that they had been arrested, or that "it's just a procedure." Some of these Romanians complied, not realizing they were signing a confession to charges of human trafficking, rape, kidnapping, and abuse of weakness. One Romanian detainee even found her translator unhelpful and deceptive:

My translator said, 'I am not going to read you these ten pages again. I am not going to translate these questions again.' I begged her, 'But it's my life, my freedom! I want you to translate, I cannot sign otherwise.' Then, on the last page of the document, I saw a note in a smaller font that read, 'She refused to have a lawyer.' Then I felt sick. I knew I could not trust these people.

### *Deprived of the Right of Legal Representation*

Many of my informants described how their demands for a lawyer were ignored or brushed aside:

They said I could have one call, but it had to be in France. I said I would not sign anything without my Romanian lawyer, but they said there was a lawyer at the police station who was free. I said I need my own lawyer. They said, 'No, no, no! You are jeopardizing the investigation!' They were not pleased.

Another woman asked if she had a designated lawyer.

They said, ok they would call a lawyer later when we went to the police station. But I said I would not sign anything except in the presence of a lawyer.

A few of the detainees were given an “in-house” lawyer, who advised them to “tell the truth or you will be jeopardizing the investigation.” In the two instances where a Romanian detainee was able to contact a French lawyer unaffiliated with the police, the lawyer strongly advised, “Don’t say anything, don’t sign anything. Wait until you are in the presence of the magistrate.”

But even the external French lawyers did not always prove helpful, according to one detainee:

On the second day my lawyer arrives. He has the same attitude as the prosecuting attorney. He said, ‘Listen, you are celebrities in the mass media, you are a Tantric cult, so it would be good to speak up. I am sure you will remain in custody for more than 48 hours.’ ‘Why are you so sure?’ I asked. He replied, ‘Honestly, with what you are accused of, I am sure it will be long.’

### *Insulting Treatment*

Several informants complained they were “insulted” by the police. One Romanian reports he was asked by the police if he would agree to take a psychological test that would prove he was mentally manipulated. “I said no. Do I look like a person who can’t make my own decisions?”

Some complained of being “treated like criminals”: “We had to give our fingerprints DNA samples, our saliva samples, they took photos with ID.” Others were asked insulting questions by their interlocutors. One man said he was asked, “Do you have sex with men?” Another man was asked, “Do you rape your girlfriend?” He replied, “You should be kidding! Why don’t you ask her?”

One woman was asked leading questions:

The police officer who was interrogating me was talking on the phone with his boss and getting more stressed, and he got aggressive with me just to impress his boss. He asked loaded questions like, ‘When you were drugged... When you were raped... When you had sex with your brother-in-law...’ It sounded like a comedy in a stupid movie.

### *Harsh Prison Conditions*

All the detainees I interviewed described unpleasant and harsh prison conditions:

My cell was 2x3 meters and very cold with a concrete floor and a Turkish toilet—very filthy and smelly. I had sore muscles and did a lot of yoga. I could not sleep. There was no night and no day. I had two cell colleagues who were very hostile. A policeman took... brought us to a cell that was very cold. I asked many times if I could have a second blanket, or toilet paper, there wasn't even a glass where we washed, or plastic cups. There was a thin mattress on the cement floor, one blanket, no pillow. Lights were on all night and there were drugs addicts with withdrawal symptoms screaming their heads off, and all night there were prisoners brought in and out.

My informants complained of being very uncomfortable in police custody. They were interrogated for up to five hours at a time, often handcuffed to a chair, and had to beg to be escorted to the toilet. Many were deprived of food and water during the interrogations:

When we arrived at the police station the translators were waiting. They gave us some food—but then we realized it was from our own storage unit in the house, like they gave us these very familiar Romanian biscuits.

### *How the Detainees Were Released from Garde à Vue*

In most cases, after being held for 48 hours, the detainees were suddenly told they had to leave. This usually occurred between 10:30 p.m. and midnight, when they were promptly escorted to the exit of the police compound and locked out. They found themselves on the street late at night with their ID, but no money or cellphone. One helpful policewoman at the Nanterre police station had advised two of my informants to walk to the nearest metro station and told them there would be no conductors on duty this late, so they could sneak in under the turn style and return to Paris.

But one man told her he needed to catch a train to the country house, and he had no money to buy a ticket. This policewoman then gave him the most extraordinary advice: “You don’t need money,” she told him. “Just watch the black people and do what they do.” “She told me to go to the part of the platform where the ‘black people’ were standing,” the man reported, “because they know how to sneak on trains without paying. So I did, and it worked!”

Several detainees who had been just released had to ask passersby if they could borrow their cellphones, so they could contact friends for help. Most of them contacted their lovers in Romania who bought their airline tickets so they could return home.

For one man, being released was almost as shocking as being raided:

Then, suddenly, I was released. I found it very disturbing that they never explained why we were suspects. One minute we are under judicial control, and the next: ‘You are free. Grab your things and go!’ As soon as I got out, I was running down the street, away from the police station, afraid they might change their mind.

### *Garde à Vue and Its Dérives*

These interviews tell us that the police refused to inform most these Romanians in their own language about the allegations for which they were being held. They denied them their right to inform someone of their detention, which under article 63-2 CPP is the legally required treatment of a suspect held in *garde à vue*. Moreover, the police denied most of them the right to legal advice during the 48 hours of their *garde à vue*, which under art 63-4 CPP is “the primary guarantee for the proper treatment of the suspect” (Hodgson 2010).

It appears likely that the police figured that, since the detainees were the “brainwashed,” powerless members of a *secte*, and non-French to boot, they could get away with cutting corners in trying to extort confessions and incriminating signatures.

### *The Role of the MIVILUDES in the MISA Case*

The investigation on MISA and Bivolaru that culminated in the November 2023 multipronged raid arose from a report of July 2023 from the MIVILUDES that cited twelve testimonies from former members of MISA (Fernandez 2023). The Paris Prosecutor’s Office then opened a judicial investigation (*Le Figaro* 2023).

The MIVILUDES was created on 28 November 2002 under President Jacques Chirac (1932–2019), as the successor of the MILS (Mission interministérielle de lutte contre les sectes, Inter-ministerial Mission for Combating Cults). The

French government acknowledged the criticism that the MILS had received from outside France for certain activities that could be considered in violation of religious freedom. The 2002 decree thus repealed the decree of 7 October 1998 establishing the MILS.

When the MILS (whose purpose was literally to “fight cults”) was replaced by the MIVILUDES in 2002, the latter found it expedient to revise its mission. Most of France’s smaller persecuted spiritual movements were no longer visible on the French landscape due to the vigorous intense anti-cult persecution and had either relocated to other countries or disbanded as legal “associations” to operate under the radar or had transformed into cultural centers (Palmer 2011). For this reason, MIVILUDES could no longer rely on picturesque sectes like the Mandarom, or on violent groups like the Solar Temple to regularly commit spectacular crimes, which would justify its ongoing government funding. Therefore, instead of rooting out and cracking down on *sectes*, MIVILUDES’ new mission was to focus on *dérives sectaires* (cultic deviances, “going off the rails,” “cultic harm,” etc.)

*Dérives sectaires* is a concept that is conveniently vague and nebulous. It purports to mean “the harm resulting or emanating from *les sectes*.” It has been translated variously and ineptly as “cultic harm,” “sectarian drift” or “sectarian deviance.” This new concept was in essence based on the assumption: “Cults are bad. Ergo, bad things come out of cults.”

A MIVILUDES spokesperson admitted in a March 2003 interview that the current French law lacked a definition for a “*secte*” therefore “the law cannot define *dérives sectaires*.” However, he predicted that the MIVILUDES would contribute “to defining what could simply be an administrative jurisprudence” (Fautré 2003).

The MIVILUDES’ social construction of a new social problem (Berger and Luckmann 1966) that they have dubbed *dérives sectaires*, and how this applies to MISA, should be analyzed, as well as the strategies of this anti-cult “Mission” to root out, expose, and prosecute the “gurus” held responsible for the “cultic deviances.” In recent years, the MIVILUDES has conducted annual training workshops on the “phenomenon of cults” to sensitize the judges of France to the dangers of *les sectes*. This was already stated in the 2004 MIVILUDES report to the Prime Minister, reporting that for seven years, the National School for Magistrates (ENM) had organized a one-week workshop on cults, conducted by

the head of *the cult section* of the Department of criminal affairs. This workshop was aimed at magistrates and the personnel of various legal administrations. The MIVILUDES also noted it was in regular contact with magistrates designated as its correspondents within each Court of Appeals. If France's magistrates are indoctrinated into anti-cult attitudes and biased perspectives to prepare them for cases involving "cult leaders," it appears reasonable to assume that many of the latter are unlikely to receive a fair and impartial hearing in court (Palmer 2011).

### *The MIVILUDES' Mounting Concerns Regarding Yoga*

The MIVILUDES is bound to write an annual report in which it justifies its government funding, demonstrates its usefulness to the Republic, and attempts to expand its jurisdiction. A review of the MIVILUDES' annual activity reports reveals its dedication to rooting out the latest spawning grounds for *dérives sectaires*, which might lurk in seemingly respectable and benign secular institutions like public schools or sales motivational workshops. In 2021, the MIVILUDES began to target yoga schools as potential *domaines d'infiltration* (UNADFI 2024) for the *gourous* and their *dérives sectaires*.

In 2020, MIVILUDES had recorded 160 complaints about yoga and its "component," meditation. In the MIVILUDES 2021 report, "Alerte sur le yoga et ses dérives," they warn the public:

Yoga, perceived in the West as a healthy and moderate practice, is however not free from cultic abuses....[since] yoga and meditation are often associated with unconventional healing practices, personal development techniques or belief systems... this generates an increase in the risk of cultic aberrations (UNADFI 2021b).

Based on the data provided in the bulletins of the anti-cult organization UNADFI (Union nationale des associations de défense des familles et de l'individu, National Union of Associations for the Defense of the Families and the Individual) and media reports, it appears that in 2021–2022 yoga became a new focus for France's anti-cult movement. One French yoga practitioner described it as a "chasse aux sorcières" (witch hunt). On July 13, 2022, the UNADFI bulletin featured the report, "The Declining Reputation of Yoga" (La réputation du yoga en baisse). In 2021, MIVILUDES warned of a "growing increase in cultic risks in... movements focused on health, well-being, and pure food" (UNADFI 2022). MIVILUDES is also concerned about the gurus who offer "sacred feminine"

workshops, or “discussion and meditation groups reserved for women,” where the risks of “psychological influence exerted on vulnerable female members” is higher (MIVILUDES 2022, 118–19).

Before the November 2023 arrest of Gregorian Bivolaru, three other yoga teachers had been arrested in France on charge of “abus de faiblesse.” In 2011, Gabriel Loison (b. 1940), described in the media as a “Tantra sex guru,” was captured in a raid by CAIMADES. A self-styled psychologist and alchemist, Loison is the founder of L’Université de la nature et de l’écologie de la relation. In 2022, he was found guilty of *abus de faiblesse*, *escroquerie* (fraud), and the rape of a “vulnerable person” (a 14-year-old girl who enrolled in one of his Tantra workshops in Morocco). Loison was condemned to 15 years in prison. His female companion was initially prosecuted as his accomplice in *abus de faiblesse* and other crimes but while she was held in *garde à vue* the charges against her were dismissed since she was considered as a victim of Loison. CAIMADES took full credit for liberating her from his *emprise* (Radio France 2023).

In 2016, Christian Rouhaut, a yoga teacher was arrested and charged with *abus de faiblesse* and forcing his yoga students to participate in sexual rituals “outside the norm.” The investigators determined that Ruhaut and his wife had allegedly subjected a dozen people to “cultic” psychological subjection with physical violence and forced sexual practices (Sud-Ouest 2016; La Nouvelle République 2016). These “forced sexual practices” appear to have been nothing more than private sexual fantasies Ruhaut’s students shared in a therapeutic setting. He didn’t literally force them to have sex with eels and deer, as the media claimed. Ruhaut was sentenced to four years in prison for abuse of weakness and money laundering, and his wife was sentenced to two years in prison—both sentences were suspended (UNADFI 2021a).

On October 19, 2023, just one month before Bivolaru was arrested, Jean-Louis Astoul, the director of Amrit Nam Sarovar, a kundalini yoga school in Michel-les-Portes, was taken into *garde à vue* (Jacob 2023). He had been accused of sexual aggression, forcing disciples to work without salary, and *abus de faiblesse* within a context of *dérives sectaires* (Minisini 2023). Astoul is a Sikh and teaches techniques of kundalini yoga. He was accused by four women of inappropriate touching during private yoga sessions. The “travail dissimulé” in this case concerned the tasks performed by volunteers as part of the yoga student’s “seva”—a “selfless service” tradition that is common among Sikhs, and

at this ashram took the form of unpaid household services. The case is still pending.

These cases indicate that the MIVILUDES has been monitoring yoga teachers since 2011 but has recently moved yoga to the top of its list of *domaines d'infiltration*. Also, it identified those yoga teachers who “mix” different yogic systems, such as kundalini or Tantra, with the regular and harmless “sport” of yoga asanas as being suspects of particular interest.

On July 13, 2022, France’s main anticult group UNADFI published an article that described the “brainwashed” state of a yoga instructor in training:

She decided, a few months ago, to follow professional yoga training (...) She seems anesthetized, robotic sometimes. And she has memory loss, she searches for words as she goes along. And she seems elsewhere, disconnected from everything, except her approach to becoming a yoga teacher (UNADFI 2022).

This passage echoes one in the 1960 book by Edward Hunter (1902–1978), a CIA agent whose cover job was that of a reporter and who coined the word “brainwashing,” *Brainwashing, from Pavlov to Powers*. Hunter describes how Mao Zedong’s (1893–1976) Red Army allegedly used terrifying ancient techniques to turn the Chinese people into mindless, Communist automatons:

The intent is to change a mind radically so that its owner becomes a living puppet—a human robot—without the atrocity being visible from the outside. The aim is to create a mechanism in flesh and blood, with new beliefs and new thought processes inserted into a captive body. What that amounts to is the search for a slave race that, unlike the slaves of olden times, can be trusted never to revolt, always to be amenable to orders, like an insect to its instincts (Hunter 1960, 309).

### *Brainwashing Theory Revisited: Allegations of “Abus de Faiblesse”*

To understand the charges against Bivolaru and MISA members in France, one must deconstruct the notion of *abus de faiblesse* within the socio-political context of the 2001 About-Picard law (often referred to as “France’s brainwashing law”). This law was passed by the National Assembly in May 2001. Its co-sponsors were centrist Senator Nicholas About and Catherine Picard, a socialist deputy in the National Assembly.

This law of 2001 was a strategical move by France’s government-sponsored anti-cult movement to control the “problem of cults.” The purpose of the 2001



law was to enable the state to prosecute “cult leaders” (labelled as *gourous* in France) who (putatively) harm their followers through the power of mental manipulation. This law created the new crime called *abus de faiblesse* that pointed to the exploitation of vulnerable followers by ruthless charismatic leaders of “cults,” whose influence was predicted to lead inexorably to various forms of social deviance: fraud, physical and psychological abuse, mass suicide, mental illness, pedophilia, money laundering, and the illegal practice of medicine. Any “cult” leader found guilty of “*abus frauduleux de l’état d’ignorance ou de faiblesse*” (fraudulent abuse of a state of ignorance or weakness) can be liable to a five-year prison sentence and fines of up to 750,000 euros.

The first application of the 2001 law was in October 2004, when Arnaud Mussy stood on trial before the Tribunal Correctionnel of Nantes, charged with *abus de faiblesse* (Palmer 2018). As the prophet/leader of the tiny Theosophical group Néo-Phare, he was accused of “mentally manipulating” a vulnerable follower to commit suicide. Mussy was found guilty and sentenced to three years in prison (suspended) and fined 115,000 Euros.

This trial received much publicity in France, for it possessed both a legal and pedagogical value. It was a warning to all “cult leaders” to stop “brainwashing,” and to all French citizens to stop joining *les sectes* (Palmer 2011, 147).

“Cults” are also accused of “human trafficking” as they allegedly “abuse the weakness” of their followers to make them work for free (see UNADFI 2020). It is well-known that voluntary labor (washing dishes and laundry, chopping carrots, or sweeping floors) is commonly practiced in Catholic monasteries (where domestic work is a kind of “worship”) and in Hindu ashrams and Buddhist sanghas (where unpaid domestic labor is understood to be “karma yoga” and is imbued with a meditative quality). It appears extraordinary that in the past decade we have witnessed a series of police raids on spiritual communes simply (or mostly) because an ex-member has complained of being forced to wash too many dishes (as in the military-style raids on Ananda Assisi in Italy, and on MISA itself in Romania in 2004, and on various spiritual communities in France and Belgium accused of *travail dissimulé*).

There are several characteristics of the legal process in *abus de faiblesse* cases that appear to undermine the principles of presumption of innocence and the impartiality of the court. First, there is the question of the authenticity and

reliability of the alleged victims. It only takes one client or ex-member to file a complaint against a therapist or spiritual master at their local ADFI. This is enough to stimulate investigations and/or arrests, as an article in *Le Monde* pointed out (Bordenave 2009). Questions have been raised concerning the personal motives of some of the self-styled “victims” and often it turns out they are overprotective parents, or jealous spouses, spurned ex-lovers, or competitive co-workers (a factor in the MISA case as well).

One serious problem for those charged with *abus de faiblesse* is that the lawyers working for the UNADFI or the MIVILUDES, have the power to file complaints on behalf of the alleged victims—without the latter’s assent, or even without their knowledge. When the so-called “victims” protest they are not victims, the court’s response is often to interpret their denial as *proof* of “brainwashing,” since “brainwashed” people don’t realize they are “brainwashed.” If their statements are not accepted by the court, it is the job of the Prosecutor to scrounge up additional “victims.”

In the case of the alleged “guru” Neelam Makhija’s girlfriend, she pointed out that since the police had conducted surveillance on her phone calls for over a year, the names of people who had called a wrong number to her cell and immediately hung up were included among the prospective clients who were her putative “victims”—and of course these were complete strangers she had never met or spoken to (see Palmer 2018).

Finally, the *abus de faiblesse* concept relies on the highly-contested theory of “brainwashing,” called *manipulation mentale* or *emprise* in France. The concept of “brainwashing” dates back to the 1950s and its origins and plausibility as a theory has been amply documented and debated by sociologists and psychologists (Lifton 1961; Barker 1984; Anthony and Robbins 2004; Introvigne 2022b).

The scientific validity of the “brainwashing” theory has been questioned since it fails to pass the test of Karl Popper’s (1902–1994) principle of falsifiability (Popper 1934). “Brainwashing” is even one of the entries in the *Encyclopedia of Pseudoscience: From Alien Abductions to Zone Therapy* (Williams 2013, 217–18).

Although the public in various countries still embrace “brainwashing” as if it were a scientific fact that offers a straightforward psychological explanation for an individual’s sudden conversion to a radical religious or political movement, since

the 1980s the scientific community and the courts have discarded “brainwashing” theory as lacking in scientific rigor. The vagueness of the “brainwashing” theory, and the inherent difficulty in proving or disproving its claims puts the alleged perpetrator of *abus de faiblesse* into what one of my informants described as a “Kafkaesque” situation (Palmer 2018).

The law of 2001 is based on three “anticult” stereotypical assumptions:

1. That all *sectes* are like organized gangs or cartels: intrinsically evil and ineluctably prone to harmful and criminal activities.
2. That *gourous* tend to be manipulators who have mastered a mysterious, ineluctable technology of mind control/ coercive persuasion/ “brainwashing”—which they rely on to convert, control, and exploit their followers.
3. All “cult members,” due to their “brainwashed” state, are “vulnerable,” weak, and psychologically helpless, and therefore cannot be held accountable for their regrettable decisions—hence they must be protected by the state.

It is important to be aware of the social and political context of the law of 2001. It emerged out of the anti-cult activism of France’s state-sponsored *antisectes* movement, which established a series of interministerial missions at the highest level of government, whose stated mandate was *la lutte contre les sectes*, “fighting cults.” Hence, one finds a strong bias against new alternative religions written into the About-Picard law. The amendments the government introduced in 2023, creating yet another new crime of “psychological subjection” in addition to the “abuse of weakness,” the difference being that one can become a victim of “psychological subjection” without being in a situation of “weakness,” signal the willingness to make the “fight against cults” even tougher (Introvigne 2023, Barker 2024).

However, the new provisions will not be applicable retroactively to Bivolaru. His case is yet another application of the About-Picard law in France’s “war against the *sectes*,” and it points to a growing tendency to frame, psychologize, and criminalize the guru-chela (master-disciple) relationship, a venerable Hindu tradition, as an “abuse of weakness.”

## *Conclusion*

The complex legal history of Bivolaru that spans forty years and extends across seven countries has been documented in book-length studies of MISA by Andreescu (2008, 2013) and Introvigne (2022a) and has not been recounted herein. However, these studies make it clear that allegations of rape, prostitution, human trafficking, so eagerly broadcast in the media, have not been supported by the Supreme Court of Sweden in 2005, the European Court of Human Rights in 2014, 2016, 2017, and the Romanian courts themselves. Moreover, the charges against Bivolaru in Finland are based on theories of “brainwashing” that have been rejected as pseudoscientific in other jurisdictions (Introvigne 2022a, 115).

It appears that France has taken up these old allegations based on the complaints of female apostates and crafted a new, “only in France” case against MISA’s *gourou* in which nebulous notions of *abus de faiblesse* and *dérives sectaires* clash with esoteric concepts of sacred eroticism.

Why is MISA so controversial? Introvigne suggests that there is one “red line” that, in most societies, should not be crossed; that “religion and eroticism should not be offered together” (Introvigne 2022a, 117).

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## Legal, Financial, Religious and Political Issues at Stake in the Struggle over the Unification Church's Corporate Status in Japan

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**ABSTRACT:** Shinzo Abe, Japan's longest serving Prime Minister (2006–7, 2012–20), was assassinated on July 8, 2022. The assassin claimed that his action was prompted by Abe's support of the Unification Church (UC), known officially as the Family Federation for World Peace and Unification (FFWPU, of which the author is a member), against which he held a grudge due to his mother's excessive donations twenty years previously. The Japanese government opened a probe of the church on October 17, 2022, and on October 12, 2023, announced that it would seek a court order revoking the UC's legal status. Controversy in Japan over the UC, a Korea-based new religious movement (NRM) founded by Moon Sun Myung has been ongoing for more than half a century. This article examines legal, financial, religious, and political issues at stake in the government's action.

**KEYWORDS:** Unification Church, Family Federation for World Peace and Unification, Unification Church in Japan, Assassination of Shinzo Abe, Dissolution Proceedings Against the Unification Church in Japan.

### *Introduction*

While campaigning for a provincial candidate in Nara City, former Japanese Prime Minister Shinzo Abe (1954–2022) was shot from behind at close range by an assassin with a homemade gun. Abe was transported by medical helicopter to a local hospital where he expired six hours later. Police apprehended the assassin, 41-year-old Tetsuya Yamagami, at the scene. He told investigators that he shot Abe in retaliation for the former Prime Minister's support of the Unification Church (UC), known officially as the Family Federation for World Peace and Unification (FFWPU), a Korea-based new religious movement (NRM) founded by Moon Sun Myung (1920–2012). Yamagami stated that he held a grudge



against the UC over his mother's excessive donations which had driven his family into bankruptcy.

Abe was a staunch conservative and regarded by many as a right-wing nationalist. There was controversy over his state funeral, which was not a tradition in post-World-War-II Japan. There also was controversy over the National Police Agency's security lapses. However, the main controversy was over the UC. The assassination "powered Japan's largest-ever Twitter event" with the UC next to Abe as "the most frequently appearing keyword in the approximately 350 million tweet firestorm" (McLaughlin 2023, 209). An analysis of 4,238 UC-related stories in Japanese media found "not one gave a positive angle on the Unification Church" (Hawksley 2022).

Outrage initially focused on alleged pressure tactics used by UC members in selling religious artifacts and obtaining donations. A National Network of Lawyers Against Spiritual Sales (NNLASS) claimed that "between 1987 and 2021," they had "pursued more than 35,000 claims against the church and won back 123.7 billion yen, or just under \$900 million" (*The Asahi Shimbun* 2022a). Media accounts featured anguished stories of UC members' adult children who testified to have been negatively affected, even broken by their parents' donations. This, ironically, led to sympathy for the assassin. An online petition to reduce or commute Yamagami's sentence "garnered more than 13,500 signatures," gifts including "over 1 million yen in cash" flooded into his detention center, and a hastily-made feature-length film depicting him as a "sympathetic underdog" screened on September 27, the day of Abe's state funeral (McLaughlin 2023, 214).

Japanese media also scrutinized links between the UC and Japan's ruling Liberal Democratic Party (LDP). *The Asahi Shimbun*, in an online survey of 3,333 Japanese lawmakers, found that 447, including 150 Diet members, 290 prefectural assembly members, and seven governors, affirmed that they had ties to the UC. Eighty percent were affiliated with the LDP (*The Asahi Shimbun* 2022c). In a separate investigation, the LDP announced that 179 of its 379 Diet members disclosed links with the church (Uechi 2022). It was further revealed that at least 30 deputies in LDP Prime Minister Fumio Kishida's cabinet had various levels of contact with the UC (Yoshikawa 2022).

These disclosures resulted in a series of measures directed against the UC:

- On August 31, 2022, the LDP announced that it would no longer have any relationship with the UC and its associated organizations.
- On October 16, 2022, PM Kishida announced that the government would exercise the “right of inquiry” provision under the Religious Corporations Act (Religious Corporations Act 1951) to open an investigation into the UC.
- On October 19, 2022, Kishida stated an order to dissolve the UC could include civil as well as criminal violations.
- On December 10, 2022, the Japanese Diet passed two bills, one restricting the solicitation of donations by religious organizations such as the UC, the other providing relief to victims.
- On September 7, 2023, Japan’s Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced that the Family Federation of Japan might be fined for not answering properly to questions from the ministry.
- On October 12, 2023, the MEXT stated it will apply to the Tokyo District Court for a “dissolution order.”
- On October 13, 2023, the MEXT asked the Tokyo District Court to issue an order to dissolve the UC under Japan’s Religious Corporations Act.

The UC, its attorneys and various human rights activists vigorously opposed these measures in public statements, press conferences, petitions, lawsuits, and multiple articles, but to little effect. An attorney for the UC provided data that “only four lawsuits have been filed for refund of donations since 2009, and not a single case has been filed in the last seven years” (Nakayama 2023, 72). He also compared the UC to Japanese religious groups that had committed malicious crimes, including group assaults and murder, but against which courts did not grant orders to dissolve (Nakayama 2023, 72–3).

The UC alleged bias and one-sidedness in the government’s handling of its case. Suzan Johnson Cook, former U.S. Ambassador at Large for International Religious Freedom, and Katrina Lantos Swett, former chair of the U.S. Commission for International Religious Freedom, expressed concern that

Dissolving a religious organization that has not been found guilty of any crime would taint the image of Japan as a country committed to democratic principles (Johnson Cook and Lantos Swett 2023).

Controversy in Japan over the UC has been ongoing for more than fifty years. The Abe assassination brought the controversy to a head. This article examines legal,

financial, religious, and political issues at stake in the government's effort to revoke the UC's corporate status.

### *Legal Issues*

Article 20 of the Japanese Constitution (1947) guarantees freedom of religion and does not allow religious organizations to exercise political authority or receive privileges from the state. However,

the constitution allows an individual belonging to a political party backed by a religious organization to hold public office... Religious organizations are also allowed to lobby and campaign for politicians and express political opinions publicly (U.S. Department of State 2023).

Japan's Religious Corporations Act (1951) provides the legal framework for establishing and running religious organizations, and the government's MEXT has jurisdiction over the approximately 180,000 registered religious organizations. Religious corporations are designated "non-profit foundations" and are tax exempt.

Section 81 of the Religious Corporations Act covers the dissolution of religious corporations. Courts may order the dissolution of a religious corporation when "in violation of laws and regulations... [it] commits an act which is clearly found to harm public welfare substantially." Only two religious corporations have been ordered to dissolve since its enactment. One was Aum Shinrikyo, a Buddhist sect which released sarin gas into the Tokyo subway system in 1995, killing 14 and injuring more than 1,000. The other was Myokakuji Temple, which was dissolved in 2002 for corporate fraud. The leaders of both groups were criminally convicted and jailed (and in Aum's case, executed). In both cases, the groups' assets were liquidated. A new provision was added to the law in 1995, "giving authorities the power to question members of a religious corporation" should the government "have sufficient reason to believe that cause exists... to dissolve the corporation" (Madden 1997, 357).

The UC-Japan was legally incorporated in 1964 and has had a checkered legal career. Its first missionary entered the country illegally in 1958 (Japan and Korea not having established diplomatic relations until 1965) and was deported the same year that the UC obtained legal status (Nishikawa 1966). Three years later, *The Asahi Shimbun* termed the UC "The Religion that Makes Parents Weep"

because contrary to other “newly arisen religions,” the UC detached young adults from jobs, colleges, and families (Beckford 1983; Mickler 1994; Clarke 2006). This sparked the formation of anti-UC parents’ associations and the beginning of religious deprogramming. In 1977, the Japanese Communist Party (JCP) declared war on the UC for its anti-communist activities and in 1987 the>NNLASS, alleged to be comprised of leftist lawyers and involved with religious deprogramming, began filing civil lawsuits against companies employing UC members for their solicitation practices. The>NNLASS filed unsuccessful requests to investigate and dissolve the UC in 1994, 1998, and 2012 (Nakayama 2023, 73). Its October 2022 request to disband the UC/FFWPU gained traction in the wake of the Abe assassination. In October 2023, following a year-long investigation, the MEXT asked the Tokyo District Court to issue an order dissolving the FFWPU.

The government’s action raises a host of issues, beginning with disputed facts. As noted, Nakayama, an attorney for the UC, claims that only four lawsuits have been filed for refund of donations since 2009 and not a single case has been filed since 2015. On the other hand, the>NNLASS reported that the situation did not improve and in 2021 alone, it “received legal inquiries involving over 300 million yen [\$2 million USD] from victims of the UC” (*Nippon TV News* 2022).

Nakayama countered that Japan’s Consumer Affairs Agency reported that in 2021,

only 1.9% of the damage consultations it invited for “spiritual sales” problems were related to the Family Federation. The remaining 98.1% involved “spiritual sales” for other organizations (Nakayama 2023, 90).

The government’s stated rationale for its investigation of the UC was based on judgments in 22 civil cases. However, the UC claims that it won half the cases and

90 percent of the plaintiffs in the 22 cases had been abducted, confined, and forced to leave the church... those who left... were then brought to court to claim damages (Holdhus 2023c; see Nakayama 2023, 87).

The UC and supporters claimed that the government’s right of inquiry and dissolution requests were driven by religious hate speech, public opinion, and politics. They criticized the appointment of one of the most uncompromising activists from the>NNLASS as an “expert” for the government investigating committee, and personal meetings of PM Kishida and MEXT officers with apostate former members (in-person meetings were denied to the UC). They also

argued that the MEXT provided distorted representations of the UC's submitted responses to questions. The UC filed a lawsuit against the MEXT and described its investigative probe as illegal. It also called for transparency in what will be a closed trial (Holdhus 2023a, 2023b).

The government's revised interpretation of Article 81 (1) (i) of the Religious Corporations Act will be a serious point of contention. The dissolution standard applied in the Aum Shinrikyo and Myokakuji Temple cases was a breach of criminal law. PM Kishida acknowledged this on October 18, 2022, when he stated, "violation of laws and regulations does not include torts under the Civil Code." However, the following day he changed his interpretation, declaring that if violations are "organized, malicious and continuous," civil law tort actions could be included (Holdhus 2023b).

UC attorney Nobuya Fukumoto (cited in Holdhus 2023b) argued that laws and regulations in Article 81 mean "actual laws, orders and substantive regulations." At an October 16, 2023, press conference, he noted that in exercising its right of inquiry, the government did not specify any law that had been violated, only saying, "the Family Federation has acted in breach of civil law and order" (Holdhus 2023b). He questioned whether this would be admissible in court and objected to the vagueness and broad application of the government's new interpretation.

Another issue raised by Fukumoto was "the interpretation of requirements for an act to be considered an act of a religious corporation." He cited the Tokyo High Court which ruled in the appeal of the Aum Shinrikyo case that

The acts referred to in the first sentence of Article 81 (1) (i) and (ii) of the Act are acts committed by the representative officers of a religious corporation, using property acquired and accumulated in the name of the organization (Holdhus 2023b).

In 2009, police raided several UC centers but failed to discover documents or evidence linking the church to illegal activities. The UC was subject to civil judgments over donations, but no UC official was charged, much less convicted on criminal charges.

### *Financial Issues*

Financial issues have been a major source of controversy over the UC in Japan since 1987 when the Japanese Bar Association issued a 41-page report against so-called “spiritual sales,” a practice which influenced buyers through high-pressure sales tactics and “fortune-telling” to purchase items such as marble vases, ivory seals, and miniature pagodas at highly inflated rates (Mickler 1994). Separately incorporated businesses operated by UC members allegedly employed the practice in generating huge profits donated to the UC or related entities. After 1987, these companies became subject to civil lawsuits and out-of-court settlements. In 2000, Japan tightened consumer protections, and in 2009, two UC members who were senior officials of Shinsei, a seal retailer, were criminally convicted, fined, and sentenced to suspended jail terms. The UC denied involvement but “acknowledged responsibility for not having instructed members about the law and their duty to respect it” (Introvigne 2022, 81). The church president resigned, the UC issued a Statement of Compliance, and implemented reforms.

This dramatically reduced lawsuits (and profits) from the public and increased the UC’s dependence on donations from members. In reality, the line between customers and adherents was not clear. Housewives whose husbands worked long hours but who controlled household budgets (still common in Japan) were a target demographic for both sales and proselytization. However, large donations of women who became members resulted in family friction. Yamagami’s mother, whose husband died in 1984, joined the UC during the 1990s. She donated approximately 100 million yen to the church (\$720,000 USD) and filed for bankruptcy in 2002. Relatives pressed the UC for a refund and in 2009, an agreement, signed by both mother and son, was reached whereby members of the UC refunded 50 million yen by 2014. This did not lessen Yamagami’s grudge or desire for revenge. His July 2022 assassination of Abe exploded the issue of donations and its impact on families.

In December 2022, the Japanese Diet passed a Prevention of Unfair Solicitation of Donations by Corporations Act. The Consumer Affairs Agency (CAA) followed with guidelines in the form of questions and answers to courts and agencies for enforcing the Act. Although not mentioned by name, the text of the guidelines had the UC “squarely in its sights” (Lewis 2023):

- The Guidelines define “malicious and socially unacceptable forms of solicitation” as those “generally regarded by our society as inappropriate” (Q 1).
- In the case of donors who have joined a religious organization, they refer to “doctrines that take advantage” of people’s anxiety and “induces in them a state of confusion whereby they are mentally incapable of making judgments under free will” (Q 9).
- The Guidelines grant revocation rights for those claiming to be victims of “mind control” (Q 11).
- They prohibit “suggesting that the donor should borrow money to donate” (Q 14) and allow broad recovery rights to relatives and others who object to donations (Q 16).
- In the case of minors, the Guidelines provide for “special procedures... such as the suspension of parental authority, [or] the appointment of a guardian” (Q 17).
- Legal support “is considered to be particularly important ... to the relief of damage suffered by the relatives of donors” (Q 17: Introvigne 2023, 81–92).

Introvigne wrote that “the pseudo-scientific theory of brainwashing (or ‘mind control’)” was “being resurrected in Japan” (Introvigne 2023, 73). He also criticized Japanese authorities invoking “a standard of what society in general regard as appropriate” which he described as “a recipe for discrimination” (Introvigne 2023, 75). Lewis suggested that

in its rush to enact something, Japan has skipped over some extraordinarily nuanced theological questions and created potential trouble for a much larger circle of organizations and activities (Lewis 2023).

The Prevention of Unfair Solicitation Act and Guidelines imposes a “duty of consideration” whereby organizations (or individuals) soliciting donations “should ensure that the donation not make it [life] difficult for the individual, the individual’s spouse, or the individual’s relatives” (Article 3).

At a press conference on November 7, 2023, UC President Tomihiro Tanaka announced plans to allocate up to 10 billion yen (\$67 million) to the Japanese government to cover possible compensation for former believers and their families for damage they claim to have suffered. He apologized for circumstances that led to the situation but clarified that the apology did not equate to an acknowledgment of wrongdoing by the church toward former believers (*Kyodo News* 2023). The announcement was made in response to fears that the UC

would transfer assets overseas and calls to freeze its assets. Tanaka noted that the UC “had addressed 664 refund requests totaling around 4.4 billion yen” since July 2022 and “would continue to assess claims” but that “it would not be possible to comply with every request.” What impact, if any, the action will have on the government’s dissolution request, which Tanaka termed “impossible to accept,” is an open question.

### *Religious Issues*

Japan is something of a religious anomaly. It consistently ranks among the least religious nations in the world with nearly three-fourths of its population indicating that they have no religious faith (Iwai 2017). On the other hand, membership in religious groups totaled 181 million as of December 31, 2020, out of a population of 124 million (reflecting affiliation with multiple religions) and there are approximately 180,000 registered religious organizations. Yoshihide Sakurai, professor of Sociology at Hokkaido University, explains,

From the Japanese standpoint, being on the rolls of a temple or shrine doesn’t count as having religion. That’s why most Japanese don’t consider themselves religious, even though they engage in religious activities like praying at shrines of temples on the New Year, visiting ancestral graves, and holding Buddhist memorial services for the dead (Itakura 2022).

McLaughlin points out a distinction in Japanese culture between “good religion” embedded in Japanese “culture, custom, spirituality, tradition, or another safe tradition” and “aberrant sects, misleading superstitions, nefarious cults, and other heterodoxies.” These minority groups account for what he describes as Japan’s “unease with religion” and trigger periodic “moral panics” (McLaughlin 2023, 210–11).

The UC clearly falls into the latter category. It was broadly stigmatized within Japanese society long before the Abe assassination. The first parent associations opposing the UC arose in the early 1970s. Vigilante-style kidnappings and “deprogramming” of UC members followed. Bromley reported 396 coercive deprogrammings of UC adherents in the U.S. from 1973–86 (Bromley 1988). In contrast, the UC Japan (UCJ) claimed as many as 300 a year and 4,300 total over a 40-year period, the most egregious case being that of Toru Goto, who was confined for twelve and a half years (Kamono 2009). Apart from “brainwashing”



claims, the nascent Japanese anti-cult movement (ACM) raised the specter of the UC's Korean origins and labeled it an organ of the Korean intelligence service KCIA.

The Japanese Communist Party (JCP) declared war on the UC in 1978 and called upon its members to "isolate and annihilate" it (Study Group on Communism and Religion 1984). In 1986, the United Church of Christ in Japan (UCCJ), Japan's largest grouping of Protestant bodies, disassociated itself in "faith" and "organization" from the UC and criticized its converts "rapid personality changes" (Clarke 2006, 48). In 1987, the NNLASS began filing lawsuits against the UC and agitating for its dissolution.

The Abe assassination focused attention on "second generation religious" (*shukyo nisei*) as a class of UC victims. Lyons notes that their stories "could be readily interpreted through the familiar lens of Yamagami's biography," opening "the door for self-identified *nisei* to express their grievances to a broader audience and to begin to mobilize for political recognition" (Lyons forthcoming). Apart from the UC, unpopular groups such as the Jehovah's Witnesses and Soka Gakkai were identified. However, attention focused primarily on the UC.

In November 2022, the Japanese Diet conducted hearings, and in December, the Ministry of Health, Labor, and Welfare published new guidelines on the "religious abuse of children." Similar to the guidelines on religious donations, they included a series of questions and answers. These were titled, "Handling Child Abuse and Similar Cases Related to Religious and Similar Beliefs." Among the listed prohibited actions were:

- Forcing children to participate in religious activities such as worship services and requiring them not to move for a long period of time (Q 2-3).
- Preventing children from socializing with friends in a way that our society generally accepts, and impairing the children's socialization, i.e., calling children's friends, teachers, or other persons with whom the children socialize "enemies," "Satans," or other similar names (Q 3-2).
- Prohibiting children from accessing forms of entertainment that are considered age-appropriate based on their general acceptance in society, i.e., fairy tales, cartoons, comics, and games; and allowing children to access only the forms of entertainment approved by their religious organizations (Q 3-3).

- Requiring children to wear ornaments and similar that objectively reveal their belief in a specific religion (Q 3-4).
- Forcing children to participate in missionary activities (Q 3-5).
- Spending money on belief-related, religious, or similar activities, and not providing children with appropriate housing environment, clothing, foods, and so on, which are needed for creating a healthy child-rearing environment (Q 4-2).
- Threatening children with expressions such as, “If you don’t do this, or do this, you will go to hell,” or with images or materials that may arouse fear (Q 4-3: see Introvigne 2023, 92–113).

Introvigne highlighted problems in defining “what child abuse in a religious or spiritual context is” and cited examples from multiple religious traditions that would be violations of Japan’s guidelines (Introvigne 2023, 76–9). He also criticized the rationale of the directive, i.e., “that religionists do not have the right to pass to their children a way of living that is different from what is ‘generally accepted’” because “many religions teach that what is ‘generally accepted’ by the majority is in fact morally decadent or unacceptable” (Introvigne 2023, 77–8). Parents’ “right to pass on their religious faith to their children,” he argued, “is not a right for parents in mainline and majority religions only” but “extends to parents who belong to minority religions, whose values are not those regarded as ‘normal’ by social majorities” (Introvigne 2023, 80). Lyons similarly notes,

If the government were to establish a new regulatory framework for religions, then the repercussions of the Abe assassination could be felt by the entire sector of religious organizations in Japan (Lyons forthcoming).

### *Political Issues*

The exposure of UC inroads into Japan’s ruling LDP party was a driver of public outrage and calls for its dissolution. However, the involvement of religious organizations in Japanese politics, including electoral politics, is a pattern in Japanese political life. The most conspicuous example is Komeito, a political party founded by the lay Buddhist organization Soka Gakkai in 1964 and since 2012, the LDP’s junior coalition partner. According to McLaughlin,

For decades, Soka Gakkai has distinguished itself as Japan’s most potent vote-gathering engine. Komeito and allied LDP candidates alike rely on Gakkai adherents’ electioneering to win and keep their seats (McLaughlin 2023, 211).

Even when under pressure in the aftermath of the Abe assassination, LDP PM Kishida said that the separation of politics and religion contained in the country's constitution "is not meant to foreclose political activities by religious institutions." Likewise, Komeito president Natsuo Yamaguchi asserted that "political activities by religious groups are guaranteed by the constitution" (U.S. Department of State 2023). McLaughlin references other organizations with close LDP relationships including the Association of Shinto Shrines and Nippon Kaigi, a nationalist organization with links to state Shintoism (McLaughlin 2023, 211). He contends,

Abe's connection with the... Unification Church was therefore neither unusual nor exclusive. It was one of many interest groups, religious and otherwise, with which he maintained ties to further his and his party's policy aims and gain LDP parliamentary majorities (McLaughlin 2023, 211).

The issue, then, was not the UC's involvement in politics, but its identity as a social pariah. As Susumu Shimazono, professor emeritus at the University of Tokyo expressed it, "The priority should be to maintain a distance between politics and cult organizations with strong anti-social tendencies" (*Nikkei Asia* 2022).

The UC gained access to LDP leadership initially through its anti-communist work. During the 1960s and 1970s, UC members confronted Marxists on Japanese college campuses, gaining the attention of right-wing figures. Ryōichi Sasakawa (1899–1995), chair of the Japan Shipbuilding Industry Foundation, served as honorary chair of the UC's International Federation for Victory Over Communism (IFVOC, est. 1968). Sasakawa was close to Nobusuke Kishi (1896–1987), a founder of the LDP, Prime Minister of Japan (1957–60) and Abe's grandfather. Both served time as "Class A" war criminals but were released as part of a U.S. cold war effort to steer Japan in an anti-communist, pro-American direction.

UC members served LDP interests in a hotly-contested 1978 Kyoto governor's race (won by the LDP) and in LDP's unsuccessful 1985 campaign to enact an Espionage Prevention Bill (revived successfully by Abe in 2013). Shintaro Abe (1924–1991), Kishi's son-in-law and Abe's father, served as Japan's Minister of Foreign Affairs (1982–85) but fell short of becoming Prime Minister. He encouraged leaders in the LDP's nationalist-conservative faction (Seiwa Kai) to accept UC support (*The Asahi Shimbun* 2022b). In recent years,

UC activists have opposed legalization of same-sex marriage, congruent with the LDP's position, Japan being the only G7 country not legally recognizing same-sex unions (Imahashi and French 2022).

Despite commonalities on anti-communism and pro-traditionalist family values, the UC-LDP pairing included a discordant note with respect to Japan-Korea relations. A major criticism of the UC was that its Japanese branch "coerced" donations as "necessary atonement for Japan's colonial rule on the Korean peninsula from 1910 to 1945" (Kosuke 2022). On the other hand, the LDP, and particularly the conservative faction associated with the Kishi-Abe dynasty, held nationalist views on Japanese history. The only public comments Shinzo Abe issued on the UC were statements of support to the Universal Peace Federation (UPF), a UC-affiliate. In May 2006, while chief Cabinet secretary, he sent a congratulatory telegram to UPF; his office later said it was a mistake. In September 2021, he recorded a video message for a UPF event after he was assured that former U.S. President Donald Trump and other international luminaries had recorded messages. This recording allegedly prompted his assassination.

McLaughlin noted, "Critics charge that the UC has enjoyed decades of protection from police investigations thanks to its political influence" (McLaughlin 2023, 213). More likely, the UC benefited from the government's policy of non-interference with religion. There was unease, particularly when the UC came "under fire" for "spiritual sales" (*Yomiuri Shinbun* 2022). Still, public clamor did not rise to the level that the government took action. That changed with Abe's assassination. Public attention was riveted on "atrocious" narratives of UC donors and scandalized by the number of politicians acknowledging connections to the UC or its affiliates. In the face of plummeting poll numbers, Kishida was forced to re-shuffle his Cabinet, sever LDP ties with the UC, announce an investigation and push for dissolution. Introvigne described what occurred as a "textbook example of... mob psychology" (Introvigne 2022, 88). He identified "hate speech of anti-Unification-Church activists" as causal in Abe's assassination and cited more than 400 "hate incidents" perpetrated against UC adherents following the assassination (Introvigne 2022, 76–7, 88–90).

### *Concluding Remarks*

Going forward, Japan faces a decision on the UC. There will be significant pressure on Japan's judiciary to align with the government's dissolution request, particularly given the LDP's reign over judicial appointments and a "long-standing tendency of Japanese courts to show judicial restraint toward the actions of the executive and legislative branches" (Keiichi 2020). In addition, the public weighs heavily in support of dissolution with one national opinion survey showing 83% approval of the government's request for an order to dissolve the UC (*The Mainichi* 2023). The Tokyo District Court's judicial independence will be put to the test in separating legal arguments from political pressure and public opinion.

Provisions in Japanese constitution for freedom of religion and the separation of church and state were pushed by the U.S. occupation to disband state-sponsored Shinto and encourage Japan to become a secular nation. This succeeded but the Japanese populace retains a residue of diffuse religious sentiment at odds with strong religious organizations and sharply defined beliefs. Thus, vague and subjective allegations such as acting in a way different that is "generally accepted" rather than criminal violations have buttressed the government's case against the UC. In the longer term, Japan may need the revisit its tradition of "non-separation between religion and politics" (Introigne 2022, 84), notably the allowances it makes for religious organizations to lobby and campaign for politicians. As it stands, the UC has been singled out for practices common to other religious bodies.

Regardless of the outcome, the UC case raises legal, financial, religious, and political issues of significance. How they are adjudicated will bear on competing legal and communal traditions in Japanese society.

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