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# **ITALY: Disfellowshipping and “ostracism”: Italian Court sides with the Jehovah’s Witnesses**

## **Disfellowshipping and “ostracism”: Italian Court sides with the Jehovah’s Witnesses**

*The Court of Teramo reconfirmed that secular courts cannot second-guess ecclesiastical judicial committees, nor forbid teachings on “ostracism.”*

By Massimo Introvigne

Bitter Winter (08.04.2022) – <https://bit.ly/3voTwzF> – Recently, the Court of Teramo, in Italy, delivered the ground of a decision rendered on January 26, 2022, in the case of a former Jehovah's Witness who had sought the annulment of a decision by an ecclesiastical judicial committee to disfellowship him, and damages for the physical and psychological problems allegedly derived from what disgruntled former members and anti-cult groups call "ostracism."

A local Jehovah's Witness entered into a conflict with the organization, presumably for doctrinal reasons, as the decision referred to 2 John 1:7, 9, and 10. He rejected the help that elders offered and, after deciding not to appear before an ecclesiastical judicial committee, he was eventually disfellowshipped.

He raised two claims against the Italian body of the Jehovah's Witnesses. The first was that in the procedure leading to its disfellowshippment his right to the defense, which is also guaranteed by the European Convention on Human Rights, was violated.

The court observed that the Jehovah's Witnesses in Italy are recognized as a religion by the State, and that the Italian Supreme Court established in 1994, in a case concerning the Seventh-day Adventists, that under Italian law "interfering with a religious organization is totally forbidden to the state."

It is true, the court said, that the Seventh-day Adventists have signed with Italy one of the concordats called "Intese" (the name "Concordato" is reserved to the agreement with the Roman Catholic Church), while in the case of the Jehovah's Witnesses an "Intesa" has been signed by the government but "not yet" ratified by the Parliament. However, the protection

of religious organizations against any interference by the state in their internal matters derives from the Italian Constitution and exists even without an "Intesa."

Italian courts have sometimes decided that, notwithstanding this protection, secular judges can, within strict limits, ascertain whether a religious organization did respect its own rules in internal judicial proceedings, and guaranteed to the defendant the fundamental right of being heard. However, the Court of Teramo noted, these decisions also concluded that when the judiciary has to examine a matter pertaining to an ecclesiastical judicial system of a religious organization "it is enough that an essential core, i.e., the defendant's right to be heard, is respected."

The procedure of the Jehovah's Witnesses, the Court of Teramo said, respects this right in its rules, and respected it in the specific case that the court examined. In fact, the defendant was invited to be heard at a hearing before a judicial committee, and it was "his decision only" not to appear and defend himself.

The second claim by the former Jehovah's Witness is that as a disfellowshipped member he suffered "ostracism" by his former friends, which caused psychological and even physical damages, and his wife not only filed for divorce but started several criminal cases against him. The court answered, based on the same principle of non-interference by the state in religious matters, that secular judges "cannot rule on whether the principles taught by a religious confession are legitimate or otherwise."

Indeed, the court noted that "notwithstanding the need to strike a balance between the freedom given to the association and the right of the individual member,... the judicial review should be agreed and limited to the protection of fundamental personal rights."

Therefore, according to the judgment, the plaintiff's claim must be qualified as a claim for damages for unlawful conduct according to the tortious liability law.

On this point the judgment also referred to the principle set by the Italian Supreme Court of Cassation in its ruling no. 9561, Division 1, April 13, 2017, concerning a similar case. In that landmark decision, the Supreme Court stated that "since the alleged ostracism was a refusal to associate with him [the plaintiff], as there is no law that requires a person to behave in the opposite manner, no discrimination took place." The Court of Cassation also stated that the fundamental personal rights "are certainly not undermined by the free choice of some individuals, or even of a category of people, to break off or interrupt personal relations, which do not have a legal protection."

Therefore, according to this legal framework and the general tortious liability law, the judgement concluded that in the case the damages claim for "ostracism" could not be accepted.

In addition, the Court considered in detail the evidence of damages claimed by the plaintiff. Regarding the divorce between the plaintiff and his spouse, religious freedom, the court stated, includes the freedom for a spouse to divorce for religious reasons and because the "spiritual communion" between husband and wife no longer exists. As for the criminal cases filed by his ex-wife against the petitioner, they concern the non-payment of the alimony and physical threats and abuse, which have nothing to do with religion or ostracism. The petitioner also claimed that, because of the ostracism, he experienced physical problems, but the court ascertained that they existed before his disfellowshipping.

The general principle that "ostracism" per se is not justiciable, and teaching "ostracism" is not forbidden has been affirmed by a large number of precedents, including at the European Court of Human Rights and in cases in the United

States, the United Kingdom, Italy, and Germany. It was confirmed last year by the Court of Rome.

Against this solid international case law, which also included Belgian cases, on March 16, 2021, the Court of Ghent, in Belgium, fined the Jehovah's Witnesses for their practice of "ostracism," and on January 26, 2022, the County Governor for Oslo and Viken, in Norway, issued an administrative decision denying to the Jehovah's Witnesses the state subsidy for the year 2021 they should have received as they did for thirty years, finding "ostracism" objectionable. Both these decisions have been appealed. It is Bitter Winter's position that they are dangerous for religious liberty and open a breach in the century-old wall protecting religions from improper state interference. We hope they will be reformed on appeal.

At any rate, they remain the expression of a minority view with respect to a larger corpus of international decisions, which have all confirmed that interfering with the Jehovah's Witnesses teachings on "ostracism" would violate both their religious liberty and the general principle that secular courts cannot interfere with how religions self-organize themselves. Wisely, the Court of Teramo added its voice to other Italian courts that followed the majority position.

*Photo: A view of the Court of Teramo. Source: Italian Ministry of Justice.*

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**Massimo Introvigne** (born June 14, 1955 in Rome) is an Italian sociologist of religions. He is the founder and managing director of the Center for Studies on New Religions (CESNUR), an international network of scholars who study new religious movements. Introvigne is the author of some 70 books and more than 100 articles in the field of sociology of religion. He was the main author of the *Enciclopedia delle religioni in Italia* (Encyclopedia of Religions in Italy). He is a member of

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**Further reading about FORB in Italy on HRWF website**

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