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NORWAY: Jehovah's Witnesses: A strange Norwegian decision

Jehovah's Witnesses: A strange Norwegian decision

A Norwegian court "annulled" an ecclesiastical decision disfellowshipping a woman—a clear violation of religious freedom.

By Massimo Introvigne

Bitter Winter (06.08.2021) – <https://bit.ly/3s0Yy2W> – Last month, anti-cultists posted on social media news that a woman

had been disfellowshipped by the Jehovah's Witnesses in Norway, and accused of immorality for having been raped, but happily a Norwegian court had ordered the Witnesses to take her back into their fold and pay an exorbitant sum in damages and expenses.

The story sounded immediately very strange. Later, a former Jehovah's Witness published in a scholar's mailing list an account still hostile to the Witnesses but that made somewhat more sense. However, only when I received from the lawyers involved the voluminous decisions of the case at all stages, with the names of the persons involved redacted for reasons of privacy, I was able both to understand what happened and to realize that the Norwegian court had indeed produced one of the most dangerous decisions for religious liberty in recent years.

The case concerns a married woman from a provincial Norwegian town, who was a Jehovah's Witness from 1987 to 2018. In 2018, she accepted to have dinner with a male Jehovah's Witness, himself divorced, in a restaurant in Oslo, after which they went to the man's hotel room. Of what happened there, two versions exist. According to the Jehovah's Witnesses who were part of the judicial committee that examined the case, the woman told them that in the hotel room they drank more alcohol with respect to what they had already drunk in the restaurant, engaged in "kissing and fondling," and lied on a bed together. The woman didn't remember what happened next, except that she woke up naked with the man on top of her.

In the court case, the woman told the judges that they went to the hotel room to recover a coat she had left there, denied that they had drunk more alcohol or engaged in kissing or fondling in the room, and stated that she took a nap there because she was tired, from which she woke up more than 12 hours later when she found the man on top of her and realized she was naked.

In both versions, the two then separated (in the elders' version, she told them they still had a friendly breakfast before going their separate ways), but the woman was later told by the man that he had started engaging in oral sex with her while she was asleep.

What the two versions have in common is that the woman was repeatedly asked whether she had felt raped, and she repeatedly said no, and the Witnesses' judicial committee found that the woman and the man were "obviously not enemies," as they still "had contacts" after the incident. She testified that she had realized that what happened might legally be described as rape only several months later, and after she had been disfellowshipped. However, she did not take any action against the man at the time, including going to the police, and in fact has never done so.

It was the woman herself who had moral scruples that she might have been guilty of sexual immorality, a ground for being disfellowshipped among the Jehovah's Witnesses. A judicial committee was convened, found that she had indeed behaved immorally, and disfellowshipped her in 2018. She appealed, but an ecclesiastical appeal committee confirmed the judicial committee's decision. Before the ecclesiastical appeal committee, she also denied having been raped.

Considering also that the public announcement, which normally follows such decisions, that she was no longer one of the Jehovah's Witnesses, exposed her to the risk that relatives and friends who remained in the congregation would no longer associate with her (because of the so-called "shunning" practiced by the Witnesses), she went to see a lawyer and first challenged her local congregation of the Jehovah's Witnesses before a Conciliation Board. The Board rendered its decision on June 5, 2019. It concluded that the woman had been disfellowshipped for having been "assaulted," and declared the decision to disfellowship her invalid. It also ordered the Jehovah's Witnesses to pay NOK 100,000 (\$11,365) as damages,

plus the woman's legal costs.

The Jehovah's Witnesses took the case to the Follo District Court, located in Ski, arguing, first, that secular courts had no jurisdiction on internal congregational matters, and second, that the judicial committee and the appeal committee had correctly applied the rules about immorality of the religious organization. On February 27, 2020, the District Court found in favor of the Jehovah's Witnesses. It stated that "freedom of religion" implies that "Courts cannot review the decisions of a religious community that require an assessment of religious issues." Assessing what constitutes, or does not constitute, sexual immorality within the context of Jehovah's Witnesses' theology is a religious issue. It cannot be determined by secular courts through secular criteria, the District Court said, and "falls outside what a court can review."

The woman appealed the District Court's decision before the Borgarting Court of Appeal, which rendered its decision on July 9, 2021. Two out of three judges found in favor of the woman. The third wrote a dissenting opinion, where he explained why he believed the District Court's decision to be correct. The majority opinion stated that § 10 of the Religious Communities Act of 1969 should apply in this case, which was in force in 2018 although omitted in the new Act on Religious and Life Stance Communities of 2020, which came into force on January 1, 2021. The old § 10 stated that "no one must use improper arguments, promises or threats, or proceed by other questionable means for the purpose of persuading another person to join or resign from a religious community." According to the Court of Appeal, both § 10 and general principles of Norwegian law that survived its repeal allow secular courts to examine and eventually annul decisions of exclusion of members by ecclesiastical bodies when they have been rendered by violating their own rules or based on incorrect descriptions of facts, and when their consequences

seriously affect the welfare of the persons involved. Some legal decisions rendered abroad, which stated that pronouncements of exclusion by judicial committees of the Jehovah's Witnesses cannot be annulled by secular courts as they are internal matters of a religious body, were examined, but the Borgarting court concluded that they referred to different cases, where there had been no factual or procedural errors.

Based on these principles, the court concluded that what had happened to the woman was rape under the definition of Norwegian law, that the relevant elder's manual of the Jehovah's Witnesses states that "one who was raped would not be guilty of *porneia* [sexual immorality]," and that consequently the judicial and appeal committees misinterpreted the facts and did not faithfully apply the Jehovah's Witnesses' own internal rules. The decision caused to the woman considerable distress, considering the policies of the Jehovah's Witnesses towards disfellowshipped members. The judge stated that "it would be offensive to the general sense of justice if someone is excluded from a religious community on the basis of something that it is possibly a rape," and ordered the Jehovah's Witnesses to readmit the woman within their fold, and pay to her NOK 100,000 in damages, NOK 512,063.50 as expenses for the Court of Appeal case, and NOK 386,082 for the expenses before the District Court, i.e., a total bill of NOK 998,145.50, equivalent to \$113,440.

An appeal will be sought before the Supreme Court. I believe the verdict to be a catastrophic assault on religious freedom, and I hope it will be overturned. I understand that there is today a special sensitivity when rape or "possible rape" of vulnerable women is involved. I agree that tolerance for sexual abuse of women has been a plague of our societies for centuries, and that religious liberty may never be an excuse for sexual abuse. This, however, refers to causes of action the woman may have against the man who took advantage of her

sleep in the Oslo hotel. What we are discussing here is the different matter whether a secular court can second-guess a decision by an ecclesiastical body, and order a religious organization to readmit a member it has excluded.

I believe the decision is wrong on three different counts. First, it seems to me that the (repealed) § 10 of the Religious Communities Act of 1969 has nothing to do with decisions by ecclesiastical bodies excluding a member from a religious organization. It clearly seems to refer to cases where citizens are compelled to leave their religion or join another one through physical violence or fraud. I would have been reluctant to interpret Norwegian law, of which I am not an expert, had it not be for the circumstance that Judge Agnar A. Nilsen, Jr., one of the judges of the Appeal Court, came to the same conclusion after a detailed analysis of the legislative history of the provision. He noted that § 10 was never applied to allow secular courts to review a decision of exclusion by an ecclesiastical body or authority. Judge Nilsen also criticized the comment that this review remains permissible in Norwegian law after § 10 was repealed, and stated that “the view that under the current law one can establish a legal norm of ‘offensive to the general sense of justice’ as barrier to a religious community’s right to exclude persons they do not want as a member, is also not legally rooted in any source.”

Second, it seems to me that the facts were reconstructed tendentiously and one-sidedly by the majority in the appeal case. Unlike the District Court, they took for granted that the woman’s account of what happened in that fateful night before the secular judges was true, and the earlier one she gave to the Jehovah’s Witnesses’ judicial committee was either false, or misinterpreted by the committee. Based on this questionable reconstruction, the majority embarked in a dissertation about *porneia*, a word used 24 times in the New Testament, and whose exact meaning has been a bone of

contention between Christians for centuries, as it has consequences inter alia on whether divorce is permissible or not, a question on which Catholics have different opinions from most Protestants. The centuries-old question about what is and is not *porneia* is a typical theological matter, solved differently by different Christian denominations and organizations, and a textbook example of issues on which secular courts should not interfere.

Interpreting the elder's manual of the Jehovah's Witnesses (which is not the only source on which the judicial committees base their decisions) is also a religious matter, on which secular courts have no competence nor jurisdiction. At any rate, sleeping in a room with a man who is not a woman's husband, and drinking a significant quantity of alcohol with him, not to mention "kissing and fondling" if it happened, may already amount to "sexual immorality" according to the standards of the Jehovah's Witnesses.

Third, and perhaps most importantly, the argument that ecclesiastical decisions excluding members from a religious organization can be annulled by a secular court when the latter believes that they are based on factual or procedural mistakes is wrong, inconsistent with the European Convention on Human Rights, and also with the international decisions on the Jehovah's Witnesses that the court of appeal quoted but misinterpreted.

It is clear, and understandable, that in this case the sympathy of the two judges who ruled in her favor was with a woman they regarded as a victim of rape. But, as Judge Nilsen said in his dissenting opinion, believing that a "general sense of justice" may be invoked when a decision of exclusion from a religion appears as unfair means that all such decisions may be overturned by secular courts. If the latter are authorized to interpret the procedural rules of a religious organization in a different way from the religious body itself, or even revisit theological interpretations (such

as in the question of whether the woman's acts might be defined as *porneia*), this simply means that secular courts operate as courts of appeal authorized to re-examine any and all decisions of ecclesiastical bodies.

It seems also bizarre that they can "annul" a decision of exclusion by an ecclesiastical body, nor is it clear what legal or practical effects this is supposed to have. If what is asked is that the Jehovah's Witnesses take back the woman into their fold, this would be tantamount to order to a husband or a wife who has ceased the cohabitation with his/her spouse to start living together again, if the court believes that the decision to separate was based on an incorrect assessment of facts that the judges presume to know better than the parties involved.

That states may interfere with the internal activities of a religious organization is precisely what the international decisions quoted by the Jehovah's Witnesses in the Norwegian case tried to prevent. The Norwegian decision is an example of an alarming reductionist trend considering religious liberty as a right vested on the individual believer, and ignoring the collective freedom of religious organizations. One hopes the Norwegian Supreme Court will accept to hear the appeal, and render a decision consistent with the case law of the European Court of Human Rights and high courts worldwide.

Photo: *The Old Building, the Borgarting Court of Appeal, Oslo, Norway (credits).*

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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