

February 2012

A distorted, unfair and worthless trial

Procedure

The facts for which the Church has been sentenced (provisionally, since the Church of Scientology has appealed to the Court of Cassation, France's supreme court of appeal) date from 1998. They involve 3 people who received religious services at Association Spirituelle de l'Eglise de Scientology-Celebrity Centre (ASES-CC). One of them withdrew his complaint even before the case in first instance on the grounds that he had no further reason to blame the Church. The second plaintiff withdrew her complaint before the appeal on the grounds that her dispute with the Church had been settled. The third never filed a complaint and indeed is to this day a Scientologist (we will discuss this further down) and has always maintained the services received by him, for which he paid financial contributions, have been extremely helpful to him.

The two initial plaintiffs were "advised" by an association set up to fight new religious movements, UNADFI (Union nationale des associations de défense des familles et de l'individu). Whereas they had always expressed their satisfaction while practicing the Scientology religion, once they came into the hands of Unadfi, they began to think that they had given money for something without value. Both were fully reimbursed by the Church.

In 2006, after 8 years of investigation, the prosecutor in the jurisdiction of Paris produced his final written arraignment (the only written arraignment in the file), in which he requested a dismissal of the case, rightly arguing that no offense had been committed by either Scientologists or the Church.

Nevertheless, bowing before the prevailing political pressure, the examining magistrate sent the case to trial in September 2008.

Despite the fact that no new evidence emerged during the proceedings in first instance in May 2009, the Prosecutor's Office radically altered its position and demanded the dissolution of the association, an unlawful penalty that no longer exists in the French Criminal Code (the association is currently suing the French State for serious negligence and willful misconduct by the representatives of the Prosecutor's Office who demand its dissolution). The only possible explanation for this groundless change of position was a direct intervention by Miviludes (the executive power) in respect of the prosecutors. Miviludes has admitted that it interfered with "pending cases" of the Prosecutor's Office in early 2009. The judgment in first instance was handed down in September. The Church appealed.

Six months before the appeal, when the hearing dates had already been set, the lawyers of the association sent letters to the Prosecutor's Office and to the Court of

Appeal to request preliminary hearings to examine Unadfi's admissibility as civil party to this trial and all other matters to be reviewed prior to examination of the merits. Unadfi, the only civil party in the process, had not only been judged inadmissible in the case in first instance, but was demonstrably an unlawful party to the process since, in 30 years of case law, it had never been admitted as a valid civil party to a criminal case against the Church or its members and even the Court of Cassation had confirmed this inadmissibility as recently as March 2010. The Court of Appeal and the Prosecutor's Office have nevertheless dismissed any request for preliminary examination of this question.

One month before the appeal, the Ministry of Justice published a circular for magistrates, in which it expressly requested them to relentlessly prosecute certain religious practices of Scientology to be argued before the Court of Appeal of Paris. The circular also urged the magistrates to work together with Unadfi, the only party opposed to the Church in the trial. Faced with this interference of the executive power in a judicial affair, utterly destroying the right of the religious association and Scientologists to a fair trial, ASES-CC has filed a complaint with the Special Rapporteur on the Independence of Judges and Lawyers at the UN. This complaint is currently being examined.

Other violations of fundamental rights occurred during the appeal

- During the hearings, when the lawyers for the defense requested the right to consult the original of the case file in the presence of all parties before the Court of Appeal, at a time when this consultation could clearly and justly have resulted in a refusal to allow Unadfi to participate in the debate, this consultation was refused. This consultation was particularly important and necessary since documents in favor of the defense seemed to have mysteriously vanished from the file. The Church was obliged to file a complaint for theft, currently pending before the District Court of Paris, while the Minister of Justice has failed to respond to the Church's request for an inquiry by the General Inspectorate of the Judiciary.
- The Court of Appeal also refused to review the admissibility of Unadfi before the debate on the merits of the case, demonstrating its intention to allow a patently inadmissible party to participate in the debate, thus ruining any possibility of fair justice and equal arms for the defendant Scientologists.
- Faced with the impossibility to exercise their duties as judicial officers, the lawyers of ASES-CC decided to withdraw in order to protest against this distorted and unfair trial. The other lawyers followed suit. After an interruption lasting 20 minutes, the Court of Appeal resumed the debate as though nothing had happened, without even offering the defendants the possibility to arrange other lawyers, or to request the Order of Barristers to propose an ex-officio lawyer for the defendants.
- One of the defendants, a Scientologist who was living in Great Britain and was

represented by a lawyer who had left the court, expressly requested the assistance of a lawyer to replace the lawyer who had withdrawn from the process. The Court dismissed her request in violation of the most fundamental rights of our Rule of Law.

- Even though the judges were clearly aware that Unadfi was inadmissible in this case (Unadfi's claims were finally dismissed once again in the judgment of 2 February), they did not hesitate to question Catherine Picard, Unadfi President, at length, allowing her to spread lies and rumors about the Church of Scientology before the Court of Appeal during the debate. No other person was questioned during this trial.

- Finally, the Court of Appeal pronounced a decision even though an appeal before the Court of Cassation was pending for abuse of power and even though the Court of Appeal could not, by law, judge the merits of the case as long as the Court of Cassation had not handed down its own decision.

The Church has disputed the entire judgment and appealed to the Court of Cassation. This appeal suspends the penalties and will certainly result in reversal of the judgment pronounced by the Court of Appeal.

The case of P. A.

The Court of Appeal sentenced the Church and the Scientologists for alleged fraud at the expense of Mr P. A. by accepting his payments for the religious services of Scientology. However, Mr P. A. has never filed a complaint against the Church. On the contrary, even though, during extremely trying interrogations by police officers and subsequently the examining magistrate, these officials endeavored to pressure him into filing a complaint against the Church, PA has always declared that he has benefited enormously from the services received from ASES-CC, and has voluntarily paid his contributions for his services (indeed, like the two plaintiffs who finally withdrew their complaints).

Today, PA is still a Scientologist and does not understand how a Court of Appeal can decide in his place whether he should practice his religion freely or not and whether voluntary support of his own Church makes him unknowingly a victim.

What would people think if a Catholic who voluntarily supported his Church were labeled by a judicial authority as a victim despite his protests and his insistence that he wanted to support his Church?

Interference of the executive with the judiciary

For many years, the French State has followed a policy to repress religious minorities. Recently, within the space of one year, France was sentenced twice by European and international judicial bodies for violation of the religious freedom of

its citizens (once by the European Court of Human Rights for infringing the right of Jehovah's Witnesses to practice their religion, once by the UN Commission on Human Rights for violation of the religious freedom of Sikhs).

- The French State has set up an interministerial body charged with fighting "sectarian abuses": Miviludes. This body, which has drawn up a list of "sects" in a "reference list", stigmatizes movements whose philosophy and religious practices it considers "unregulated beliefs". Miviludes President Georges Fenech has made the fight against the Church of Scientology his pet hobby. He has been the only person who has ever ordered the imprisonment of executives from the Paris-based chapter of the Church (unlawfully). This occurred in the 1990s, when he was examining magistrate in Lyons. The innocence of all these Scientologists was subsequently recognized by the French courts.
- In 2008, right before the examining magistrate sent the case to trial despite the prosecutor's submissions to have the case dismissed, the Prime Minister asked Georges Fenech to evaluate ways to use the judiciary system against "sects". As part of his commission, Georges Fenech met prosecutors, judges and examining magistrates. In this extremely harmful environment for new religious movements in France, the examining magistrate in charge of the case sent it to trial to the Criminal Court.
- In early 2009, Miviludes interfered with the Prosecutor's Office's handling of pending cases a few weeks before the start of the process in first instance.
- Again in 2009, one month before the trial, Miviludes President Georges Fenech spoke with dozens of national media to take stance against Scientology and to attack the religious practices of Scientologists even before the start of the trial, allowing him to influence public opinion and to stigmatize tens of thousands of French Scientologists.
- In September 2009, during the deliberations of the Court, the Miviludes President launched a national rumor that the Church of Scientology had orchestrated a change in the law making it impossible to dissolve a legal person for fraud. This groundless rumor, whose lack of substance was subsequently shown by an official investigation, was extremely damaging for ASES-CC, strengthening the presumption of its guilt.
- The French State finances associations set up to fight new religious movements at a cost of hundreds of thousands of euros a year. The main association, Unadfi, orchestrates discrimination campaigns against such movements all year long. It has also, unlawfully, claimed the right to be a civil party in trials involving the Church of Scientology. Every time its demands have been dismissed. But even worse, under the auspices of the Ministry of Justice, it organizes training for magistrates at the National School for Magistrates (ENM), in which it explains how to sentence religious movements considered "sectarian". It has been established that these

"training" courses only use documents for the prosecution, such as court decisions against the Church, even though these same decisions were subsequently overturned and reversed by decisions by the Court of Appeal or the Court of Cassation. In other words, whenever the Church of Scientology is before a District Court or a Court of Appeal against Unadfi, it is in the presence of magistrates who have been potentially trained and indoctrinated by one of the parties to the process. This automatically rules out any possibility of a fair trial.

- France has adopted a system to crush new religious movements all the way up to the Directorate for Criminal Affairs and Pardons of the Ministry of Justice (the executive branch which oversees and directs prosecutors). Its organization chart includes a "sect task force" specialized in the suppression of sects. The system includes magistrates acting as "sect correspondents" in each Court of Appeal in the country, responsible for coordinating the measures taken by magistrates against these religious movements.

This is the background against which religious minorities have to fight to obtain fair justice in France. Under these circumstances, only a miracle could enable a Court of Appeal to judge impartially in a case involving the Church of Scientology.

Only the religious beliefs and practices of Scientologists were judged

In view of the astonishing situation that there was no "victim" to support the accusation, the Court of Appeal, like the first instance tribunal, had to make a direct attack on the beliefs and practices of Scientologists to justify its decision. In this respect it followed the instructions given by the Ministry of Justice in its circular of 19 September 2011, against which a complaint has been lodged before the UN, by attacking the purification practice that has been followed by hundreds of thousands of Scientologists all over the world for dozens of years. This practice, and auditing (pastoral counseling and spiritual exercises of Scientology) were described as lengthy and arduous, thereby avoiding the many expressions of satisfaction with Scientology written by the plaintiffs meaningless. The Court of Appeal argued that these religious practices, recognized as such in all other European countries, were part of a fraud. Since the beginning of the case, this value judgment of the beliefs of Scientologists has extended to the electrometer as used every day by millions of Scientologists all over the world.

The Court of Appeal also held that the Church's use of a personality test amounted to fraud, since its results are not interpreted by qualified psychologists and since the test does not have any "scientific value", while acknowledging that the use of tests by anyone is not governed by any legal text in France or elsewhere in Europe. Requiring a religion to submit its beliefs and practices to the oversight of alleged "scientific experts" is an absolute interference of the State in the beliefs of individuals and violates European and international criteria with regard to religious freedom, as does the demand requiring ministers of the cult to be qualified psychologists to exercise their ministry.

Lastly, to justify its decision, the Court of Appeal, while admitting that the accused were not guilty of personal enrichment, had to assign financial and mercantile intentions to the Scientologists staffing the association, even though they had been exercising their ministry for many years without ever enriching themselves but only to help visiting parishioners understand the religious philosophy of Scientology. The Court of Appeal denied the religious aim of Scientology and its objective of spiritual freedom, as experienced by millions of Scientologists throughout the world, and arbitrarily substituted commercial aims to justify its sentence.

Real intention of adversaries

After the decision was pronounced, the Unadfi lawyer, even though Unadfi has been judged an unlawful party to the process, spoke about Unadfi's real intentions to the press. He announced that his goal was to obtain other convictions in France and subsequently to demand the dissolution of the Association and the prohibition of Scientology throughout French territory. Thus, an association of extremist militants against new religious movements, financed by the French State, uses Justice in an attempt to prevent tens of thousands of citizens from practicing their religion freely and to destroy their fundamental freedoms.