



Private Plaintiff

Association of Jehovah's Witnesses of Switzerland, Zelglistr. 6, 3608 Thun,

represented by Oliver Huber, lic. iur., Büsserachstr. 2, Postfach 22, 4246 Wahlen b.  
Laufen

represented by Dr Haykaz Zoryan, of the Zoryan Law Office, Buchholzstr. 7a, P.O. Box,  
3607 Thun

### **Accusation:**

The indictment of the Zurich-Sihl public prosecutor's office dated 20 November 2018 (act. 16) is attached to this judgement.

### **Parties present at the trial:**

(prot. p. 7)

The accused personally accompanied by the requested defense attorney RA Dr. iur. U. Eschmann and RA O. Huber, RA Dr. H. Zoryan and Mr. B. Menne for the private applicant.

### **Applications:**

#### 1. The Prosecution: (act. 16 p. 9)

- Guilty verdict in the sense of the indictment
- Punishment with a fine of 60 daily rates at CHF 100.-
- Granting the conditional execution of the fine with a trial period of 2 years
- Decision on the civil claims of the private claimant
- Costs (costs, including the fee for the preliminary proceedings of CHF 1,500)

#### 2. The defender: (act. 48 p. 1; Prot. P. 1)

- Failure to appear on the press release charge
- acquittal on all other charges
- Order the private applicant to pay the costs
- Full compensation
- The applicant's applications were rejected

#### 3. The accused: (Prot. P. 11 ff., analogously)

- Decision according to the requests of the requested defense counsel

#### 4. The private claimant: (act. 47 p. 10)

- Guilty verdict as defined in the indictment
- Party cost compensation according to fee note

## **Considerations:**

### **I. Process history**

1.1. By letter from their legal representative to the Chief Prosecutor's Office on October 23, 2015, the association of Jehovah's Witnesses in Switzerland (injured party 1) and the religious community of Jehovah's Witnesses in Switzerland (injured party 2) filed a criminal complaint and demand for penalty against the accused Regina Spiess regarding defamation (act. 1). The demand for penalty was made in due time and in accordance with the form (act. 1, Art. 30 f. StGB in conjunction with Art. 173 No. 1 StGB, Art. 304 Paragraph 1 StPO). The senior public prosecutor transferred the criminal complaint and the demand for penalty on November 2, 2015 to the public prosecutor's office in Zurich-Sihl with a request for examination and further initiation (act. 3). The public prosecutor's office did not take the investigation into account by decision of January 19, 2016, since it was of the opinion that the injured party 2 was neither a legal nor a natural person and therefore was not the holder of the legal right of Art. 173 Criminal Code. In addition, the injured party 1 as an association was fundamentally the holder of the legal interest, but was not entitled to make an application because its rights were not directly violated (act. 6). The appeal lodged against this was called the Higher Court, III. Criminal division, partially well, with the reason, the aggrieved party 1 is very well entitled to the penalty (act. 8/10): The order of the Public Prosecutor's Office Zurich-Sihl was lifted insofar as an investigation into defamation to the detriment of the Association of Jehovah's Witnesses of Switzerland was not initiated. With regard to the non-application to the detriment of the religious community of Jehovah's Witnesses in Switzerland, the complaint was not upheld. The Zurich-Sihl public prosecutor then opened a criminal investigation (act. 9) by order of May 10, 2016 and finally filed charges on November 20, 2018 (act. 16).

1.2. The indictment of the Zurich-Sihl prosecutor's office dated 20 November 2018 was received by the district court on 27 November 2018 (act. 16). By decision of 9 May 2019, the summons to the main hearing was issued for 9 July 2019 (act. 23/1-6). The accused appeared at the main hearing in person, accompanied by her requested defence counsel and attorney O. Huber, attorney Dr. H. Zoryan and Mr. B. Menne for the private plaintiff (prot. p. 7). Following the hearing, the verdict was opened orally. The verdict was handed over to the defendant, the requested defence counsel and the private plaintiff in writing in the Dispositiv (act. 50; prot. p. 44). By letter dated 11 July 2019, the private plaintiff filed an

appeal in due time (act. 52). In a letter dated 11 July 2019, the defendant also requested the written statement of grounds for the judgment within the time limit (act 53).

## **II. Admission to the indictment**

1.3. The defense argues that the indictment regarding the media release should not be dealt with, since within the indivisibility of the criminal complaint, prosecution has not been instituted against everyone involved in the release (act. 48 p. 5 f.).

1.4. The fact that the law enforcement authorities do not prosecute everyone involved in an act - even if this was at best advisable - does not make the indictment inadmissible. There is no right to equal treatment.

1.5. The indictment must therefore be dealt with.

## **III. Facts**

### **1) Charge**

#### **a) Interview "Jehovah's Witnesses tear families apart" from July 27, 2015**

1.1. According to the accusation by the public prosecutor, the accused, as an employee of the specialist department for cult issues infoSekta (Streulistrasse 28, 8032 Zurich), was interviewed by Hugo Stamm at xxxxxxxxxxxxxxxxxxxxxxxx in Zurich at a time that cannot be determined exactly before July 27, 2015. This interview was afterwards published on July 27, 2015 under the title "Jehovah's Witnesses tear families apart" on the Internet portal of the daily newspaper (Tamedia AG, Werdstrasse 21, 8004 Zurich). In this interview, the accused was claimed to have made various, untruthful and defamatory statements to the detriment of the victims.

1.2. Through her statements and the type of publication, the accused had at least accepted that the average reader would have the impression that the injured party had a practice that violated human rights, violated human rights and the constitution, denies their members the right to freedom of thought, conscience and religion, let their members die based on their known position regarding the prohibition of blood transfusions after traffic accidents or births, in the event of exclusion of children and adolescents from the community, refuse family love and care towards them, and let the children of their community

live in constant fear. In addition, it had given the average reader the impression that the system of the injured promotes the sexual abuse of children and that the whole community deliberately hushed up alleged acts. Finally, the accused had given the impression that the members of the injured party were experiencing severe forms of violence and their physical, psychological and social integrity were being violated; The injured party is therefore a totalitarian organization that manipulates its members and violates the physical, psychological and social integrity of its members.

b) Media release infoSekta dated July 23, 2015

1.3. Furthermore, the public prosecutor's office accuses the accused, as member of the specialist department for sects infoSekta, on July 23, 2015, to have released a media release, entitled "Sect Counseling Center infoSekta and affected initiative, jwexit.org: Memorial Day Campaign for the Victims of the Watchtower Society on Saturday, July 25th", in which she expressed hurtful words about the injured.

1.4. Due to the untruthful composition and the type of publication, the accused at least accepted that the average reader would get the impression that the members of the injured party would experience violence and their physical, psychological and social integrity would be violated; The injured party is therefore a totalitarian organization that manipulates its members and violates the physical, psychological and social integrity of its members. There is also the impression that the family is no longer allowed to maintain contact with excluded family members, which is why family ties no longer exist, that the injured person has a practice contrary to human rights and violates human rights and the constitution, and and denies their members the right to freedom of thought, conscience and religion. In addition, there is the impression that the injured party deprives their young members of their perspective and influences which profession they have to learn and that the injured party would be subject to corresponding bans or regulations. Finally, there is the impression that the injured party has a ban in connection with the choice of friends and that members are not allowed to take part in school holidays.

2. Position of the accused

On the occasion of her public prosecutor's hearing on January 12, 2017, the accused acknowledged the objective facts and emphasized that she was fully committed to the content of the interview and the media release. The criticisms made by her are correct and she also has the corresponding evidence for this; she had therefore not made any untruthful

statements about the injured party (act. 10/2). By letter from her legal representative dated July 14, 2017 and September 27, 2018, the accused offered various pieces of evidence (documents, printouts, websites, witnesses, etc.) to provide the *Proof of Truth* and / or *Proof of Good Faith* (act. 12/2 -3 and 12 / 10-11).

### 3. Conclusion

3.1. The court bases its judgment on the facts that it considers to have been realized according to its free conviction based on the main hearing and the investigation files (Art. 10 Para. 2 StPO).

3.2. Since the accused acknowledged that she had given the interview and written the media release and this coincides with the other files - in particular the article and the media release (act. 2/3; act. 2/4) - the matter is deemed to have been created. For the legal assessment, the facts according to the indictment must therefore be assumed.

## **IV. Legal assessment**

### 1. Legal assessment of the public prosecutor's office

The public prosecutor's office classifies the behavior of the accused as defamation within the meaning of Art. 173 StGB. The accused made a damaging statement about the private plaintiff and / or at least accused her of dishonorable behavior, which the accused knew and wanted to accept at least knowingly.

### 2. General information on violations of honor

3.3. Defamatory statements in the sense of defamation or libel can only be factual claims or mixed value judgments about the injured that were made against a third party (RiKLIN in: Niggli / Wiprächtiger, Basl. Komm. Strafrecht II, 4th ed. , Basel 2018, N 36 to Art. 173). Facts are events or states of the present or the past that appear externally and thus become perceptible and accessible to the evidence (TRECH-SEL / LIEBER in: Trechsel et al., Practice Commentary Criminal Code, 3rd ed., Zurich / St . Gal-len 2017, N 2 to Art. 173, mwH). Mixed value judgments are valuations with a recognizable reference to facts. It is about expressing opinions with actual content. Mixed value judgments are treated like factual claims in relation to the underlying facts; if the assessment of the true or deemed facts is not within the limits of what can be justified, there is at best an insult (Art. 177 StGB).

3.4 In the case of statements in press products, the meaning of a statement is always decisive, which an impartial listener or reader had to enclose according to the circumstances. It is based on the impression of the impartial average reader with average knowledge and sound judgment. The statement in the overall context recognizable to the reader is to be appreciated (BGE 131 IV 160 E. 3.3 with references [= Pra 95 (2006) No. 59]; judgment of the Federal Court 6B\_202 / 2013 of May 13, 2013 E. 2.4). In order to determine whether a journalistic product contains a violation of honor, the interpretation must not only take into account the textual content of the article, but also the photographic content and the graphic design of the article (BGE 137 IV 313 E. 2.1.3 [= Pra 101 (2012) No. 53]; BGE 131 IV 160 E. 3.3.3 [= Pra 95 (2006) No. 59]).

3.5. It is not only the isolated individual statements that are important, but the overall context of the text (TRECHSEL / LIEBER, op. Cit., N 11 on Art. 173, m.w.H.). Based on the overall context, it is decided whether a statement should be understood as a factual assertion, mixed value judgment or pure value judgment (formal injuries) (cf. BGE 121 IV 76. 82 f.).

3.6. Whether the factual claim is true or untrue does not concern the factual existence, but the criminal liability (Art. 173 No. 2 SCC). Whether the prerequisites for admitting the accused to the discharge evidence within the meaning of Art. 173 prov. 3 of the Criminal Code are checked by the judge, because the author of a violation of honor will not be admitted to the discharge certificate if he has acted without reason and primarily with the intention of accusing someone of evil (BGE 137 IV 313 E. 2.4. 2 and 2.4.4 [= Pra 101 (2012) No. 53]). The *Proof of Truth* according to Art. 173 para. 2 SCC is rendered if the factual assertion expressed by the incriminated statement, insofar as it is violating honor, corresponds in its essential points to the truth. Relatively insignificant exaggerations and inaccuracies are irrelevant.

3.7. It must be determined in advance whether the incriminated statements are purely factual claims or are (pure or mixed) value judgments. If the incriminated statement is judgmental, the court must then examine whether the assessment made has a recognizable relationship to other facts alleged by the perpetrator (in the overall context, i.e. within the same text) and appears objectively justifiable in view of these facts. If one of these prerequisites is missing (factual reference and factual justifiability of the value judgment), only the fact of the abuse (Art. 177 StGB) has to be checked. It is to be determined what significance the impartial addressee had to attach to the value judgment. It should not be based primarily on today's

language usage, but rather, as has already been stated several times, on the overall context, and therefore on the impression that arises from the other statements contained in the text (cf. BGE 121 IV 76 recital 2 / a / bb). It should be noted that the answer to the question of how the unbiased reader understands the individual complaints made in the overall context is a legal question (cf. BGE 124 IV 162 recital 3 / b / aa).

3.8. If it is clear what the concrete meaning of the mixed value judgment or what the factual assertion contained therein is, the mixed value judgment can be treated as a purely factual assertion. It must therefore be checked whether the alleged fact is honorary and - if necessary - whether it is true or untrue. If the incriminated utterance can also have multiple meanings in the overall context, the judge must examine with regard to each possible meaning of the utterance whether it can fulfill the objective and subjective facts (cf. BGE 121 IV 76 Em. 2 / a / bb ).

#### 4. The incriminated statements in the overall context

4.1. The statements made by the accused were made on the one hand in an interview by Hugo Stamm from the Tagesanzeiger. The interview was given by Regina Spiess (accused) as part of a commemorative campaign that took place in Zurich the next day. The article appeared in the Tagesanzeiger along with another article that highlighted the Jehovah's Witness community and their issues. The articles are not lurid, but factual. They relate specifically to the commemorative campaign.

4.2. On the other hand, the accused wrote a media release, which she uploaded to the website of the organization infoSakta. InfoSakta is a specialist unit for cult issues. It is a politically and denominationally independent consumer protection organization that is intended to inform people and educate them about problematic sects and communities, and to advise dropouts and members of sect members.

4.3. In the overall context it is clear that the statements made by the defendant are not purely value judgments. The statements can be substantiated on the basis of the overall context. From the information on the website it can be seen that the association is holding talks with (former) members, its assessments of the sects and the information disseminated by the association on these discussions, specialist literature from various experts as well as judicial and official procedures (including criminal proceedings). The website is by no means lurid

or hurtful, but rather discusses the topics objectively and in a structured manner. The department also handles various inquiries and sees itself as a department for all sects, not just for Jehovah's Witnesses. In the present case, the statements are mixed value judgments, which are based on various factual claims.

## 5. Concept of honor

5.1. According to the practice of the Federal Supreme Court, the protection of honor under criminal law is limited to the human and moral sphere, namely to the reputation and the feeling of the person concerned to be an honorable person, that is to behave in a manner that, according to general beliefs, permanent man tends to behave. If a statement is only suitable to reduce someone in another respect, for example as a businessman or professional, as a politician, artist or athlete, in the social standing or social function or to violate their self-confidence, there is no violation of honor (DONATSCH in: Do-natsch / Flachsmann / Hug / Weder, Kommentar StGB, 20th ed., Zurich 2018, N 1 f. To Art. 173, mwH). The reputation of special ability or proficiency is not protected, and everyone has to accept a certain amount of criticism in their human imperfection. However, it is a prerequisite that the criticism of the sides of the image that are not protected under criminal law does not at the same time affect the validity of the person as an honorable person (BGE 119 IV 44 E. 2a; 117 IV 27 E. 2c: Judgment of the Federal Court 6B\_683 / 2016 of 14. March 2017 E. 1.3 with notes). When interpreting the statement in question, it must be assumed that an unbiased addressee must attach a statement to the circumstances. Violation of honor in the media must be interpreted in accordance with the constitution with regard to freedom of expression and information (BV Art. 16) and freedom of the media (BV Art. 17) (BGE 104 IV 11, 131 IV 160). In the case of statements in press products, the impression of the impartial average reader with average knowledge and sound judgment must be taken into account, taking into account the overall context (BGE 131 IV 163 ff.)

5.2. A generally decent person is expected, among other things, to perform his duties towards the state and his fellow human beings, not to commit crimes, to maintain human rights, not to refuse family love and care, and to stop sexual abuse towards children etc.

5.3. The Federal Supreme Court has held that the repetition of an already well-known allegation fulfills the offense by the variant of retransmission (BGE 73 IV 30E. 1).

## 6. Defamation within the meaning of Art. 173

6.1. In objective terms, the defamation within the meaning of Art. 173 para. 1 StGB is guilty who violates the honor of another by a factual assertion or a mixed value judgment or by a corresponding suspicion towards a third party.

6.2. In the present case, the interview of the accused (incident a) was published on the Internet portal of the Tagesanzeiger on July 27, 2015 and was thus accessible to the general public. The media release she wrote (incident b) was published on July 23, 2015 on the internet portal of the specialist office for cult issues infoSekta and was thus accessible to the general public. Her comments were made "to a third party".

6.3. The claim must then have been based on facts (as opposed to pure value judgments). Facts are "events or states of the present or past [...] that appear externally and thus become perceptible and accessible to the evidence" (BGE 118 IV 41 E. 3).

6.4. As stated above, the statements are mixed Value judgments based on various factual claims.

6.5. Then the claim must attack honor or ethical integrity. The concept of honor includes - as explained above - according to the federal judicial jurisprudence "to be an honorable person, i.e. to behave as is generally believed a person of decent character would behave" (BGE 131 IV 154 E. 1.2).

6.6. Fundamentals: Just because other courts (some in other countries) are said to have confirmed "faithfulness of the religious community of Jehovah's Witnesses" and have given them the status of a corporation under public law, does not mean that they will not follow them or may behave in a manner that is unlawful in other countries, or that any statement that claims otherwise is automatically defamatory. All of this must be checked in individual cases. The private claimant cannot derive anything from the fact that they are a "corporation" - apart from the right to file a criminal complaint.

6.7. In the following, each individual statement by the accused is therefore examined and checked whether these statements meet the criteria of Art. 173 para. 1 StGB.

6.8. From a subjective point of view, it is required that the perpetrator was intentional with regard to the defamatory statement and the knowledge of a third party, but not necessarily with regard to the falsehood of the statement (BGer 6B\_613 / 2015 of November 26, 2015, E. 3.4; TRECHSEL / LIEBER, loc. Cit., Art. 173 N 11). It is then not a prerequisite for the fulfilment of the subjective fact that there was an intention to insult (*animus iniurandi*) (RIKLIN, Basl. Komm. StGB, Art. 173 N 10). In cases in which different interpretations of the text are possible, especially in consideration of the freedom of the press and freedom of expression, high demands are to be made on the act of defamation.

6.9. If the objective and subjective criteria are fulfilled, the accused of the defamation within the meaning of Art. 173 para. 1 SCC made criminal.

## 7. Assessment of the individual statements

7.1. In the present case, the statements must be analyzed for their deceptiveness.

a. "We draw attention to the practice of ostracism that violates human rights." / "Ostracism is a kind of bullying prescribed above. It violates human rights and the constitution." / "Everyone has the right to freedom of thought, conscience and religion - a right that Jehovah's Witnesses claim for themselves, but do not grant their members."

This is a factual allegation that concerns events, namely that the victim operates a "practice of ostracism contrary to human rights" and does not grant their members freedom of thought, conscience and religion. These events are externally perceptible and accessible to the evidence.

With these statements, the accused gives the impression that Jehovah's Witnesses are practicing human rights violations, violating human rights and the constitution, and denying their members the right to freedom of thought, conscience and religion - in short, they are not decent in character, not behaving with integrity. These statements are quite suitable to damage the honor of the association or its members.

The statements under point a. are defamatory. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

b. "Saying something sweet, asking how the day was, or hugging the child - that is no longer possible. Children experience permanent fear."

Whether this statement is defamatory must be answered in the overall context. This statement followed the question of what consequences an exclusion of children and adolescents from the religious community has for them. She answers the question of whether the witnesses deny their children family love and care in the event of exclusion, which is in the affirmative. In addition, it is accused that the children live in permanent fear. Such a statement is well suited to attack the honor of Jehovah's Witnesses. It gives the impression that the organization is loveless and hard, destroys the families of its members and ensures that the children of the members live in constant fear.

The statements under point b. are defamatory. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

c. "Believers keep dying after traffic accidents or women giving birth."

This statement relates to the world-famous position of Jehovah's Witnesses to reject blood transfusions. However, it is not clear to what extent this should affect the honor of the members. From the statement that people die after traffic accidents or at birth, it cannot be concluded that the community is responsible for it to a degree that would be defamatory.

It is a simple factual statement without a value judgment, in particular this statement is not made or underlined that Jehovah's Witnesses are principally responsible for it.

It is also judicial that the baptized Jehovah's Witnesses are prohibited from accepting blood transfusions. This is seen as a violation of the divine commandment. May 22, 1994, "Awake" shows photos of 26 children who died because Jehovah's Witnesses rejected blood transfusions because of their beliefs. Awake says that these children put God first in their lives. (Source: [https://www.planet-wissen.de/kultur/religion/jeseits\\_der\\_traditionellen\\_kirchen/pwiediezeugenjehovas100.html](https://www.planet-wissen.de/kultur/religion/jeseits_der_traditionellen_kirchen/pwiediezeugenjehovas100.html)).

The statement is not judgmental and is formulated in such a way that the reader can make up his own mind about it. In particular, it cannot be concluded from the sentence "believers die after traffic accidents" that the community is "fanatical" or "dangerous".

The statement c) is not defamatory and therefore does not fulfil the criteria of the defamation as of Art. 173 SCC. The accused must therefore be acquitted of this statement.

d. "The closed nature of the system and the dogmatic belief fundamentally promote sexual abuse, especially among children. They have internalized that their needs come second." / "There is a Two-Witness rule that favors sexual abuse: the suspicion of a sexual offense against a child should only be investigated if there are at least two witnesses for it, which is naturally never the case. In case there aren't any two witnesses, the elders should put the matter in Jehovah's hands, i.e. remain inactive. The victim must remain silent. Otherwise, he or his family may be excluded."

Such statements are fundamentally defamatory. At the first statement, one may wonder whether this is generally formulated and therefore does not specifically target Jehovah's Witnesses in Switzerland. The statement can be understood to mean that closed systems and dogmatic belief fundamentally promote child sexual abuse and that Jehovah's Witnesses are such a group. In the context and due to the density of the statements, the average reader is, however, suggested that Jehovah's Witnesses are a closed group with dogmatic beliefs that promote sexual abuse. Such a statement is defamatory.

The statements under point d. are defamatory. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

e. "Most people simply do not know what a problematic community Jehovah's Witnesses are. They don't seem extreme to the outside world, at best a little old-fashioned. However, a broader awareness is gradually emerging of the serious forms of violence that people experience in such groups."

Due to the context and density of the statements, the average reader is suggested by this statement that Jehovah's Witnesses are a problematic, extreme group, the members of which engage in severe forms of violence. Such a statement is well suited to violating the honor of Jehovah's Witnesses.

The statements under point e. are defamatory. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

f. "infoSekta judges Jehovah's Witnesses as a highly problematic group that tries to manipulate their members down to the level of existential identification. Community guidelines violate the physical, psychological and social integrity of their members."

This statement is likely to violate the honor of Jehovah's Witnesses. The community is portrayed as "highly problematic" and "manipulative" and is intended to violate the "physical, social and psychological integrity" of its members.

The statements under point f. are defamatory. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

g. "There is hardly a Jehovah's Witness family without excluded family members: parents, siblings, or children with whom no contact is allowed."

It is not clear to what extent this statement is supposed to be defamatory. It is a purely factual assertion with no judgment and without the fact in itself being defamatory. Whether or not it has excluded family members in a family is not a matter of honor. A person is no more honorable if he has a family from which no one has been excluded.

The statement g. does not fulfil the criteria of libel i.S.v. Art. 173 SCC. The accused must therefore be acquitted of this statement.

h. "In addition, Article 18 provides that everyone has the right to freedom of thought, conscience, and religion - a right that the Watchtower Society claims but does not grant to its members."

This statement is clearly likely to violate the honor of Jehovah's Witnesses. The community is accused of not granting elementary human rights to its members. Such a statement is defamatory because it relates to the community's reputation for being honorable people who respect human rights.

The statements under point h. are hurtful. It remains to be seen whether the accused succeeds in providing *Proof of Truth* or *Proof of Good Faith*.

i. "Young people can hardly develop prospects in the Jehovah's Witness community: Often they cannot learn the profession that suits them because higher education is considered a waste of time [...]."

It is not clear to what extent this statement is supposed to be defamatory. Such a statement could also be made in relation to other groups / classes, for example "People from poorer families cannot learn the profession that corresponds to them". That higher education should be considered a "waste of time" is not an honor. Many people share this opinion. In our society, an honorable, character-decent person is not required to view higher education as a valuable asset and not as a waste of time.

The statement i. does not fulfil the criteria of the evil libel i.S.v. Art. 173 SCC. The accused must therefore be acquitted of this statement.

j. "And they have only limited knowledge about the world, because secular friends are forbidden and they could not have many social experiences - [...] school vacation camps [...]."

It is not clear to what extent this statement is supposed to be defamatory. Such a statement could also be made in relation to other faith communities. The fact that worldly friends are forbidden is not per se very defamatory, whether it is true or not. Even whether the children of the members are allowed to take part in school holidays or not is not a question of defamation, it is rather a purely factual assertion without evaluating elements, which in itself cannot constitute an honor violation.

The statement j. does not fulfil the criteria of the libel i.S.v. Art. 173 SCC. The accused must therefore be acquitted of this statement.

## 8. Subjective facts

8.1. There is no evidence that the accused may not have been aware of the honor violations and the knowledge of a third party. It must be concluded that she at least accepted the violations of honor and acknowledgment by a third party. She knowingly and willingly gave and prepared both the interview and the media release and made it available to the general public.

## 9. Proof of exoneration

9.1. Anyone who can prove that the defamatory statement he has made or disseminated is true (*Proof of Truth*) or that he had serious reasons to believe it to be true in good faith is able to exonerate himself from the fact of defamation (and thus escape punishment) (so-called proof of exoneration, Art. 173 No. 2 SCC).

9.2. First of all, it has to be checked whether the accused is to be admitted to the proof of exoneration according to Art. 173 para. 2 SCC. According to Article 173(3) of the Penal Code, the accused person "shall not be admitted to evidence and shall be liable to prosecution for statements made or disseminated without respect for public interests or otherwise without reasonable cause, mainly with the intention of accusing someone of evil, in particular if the statements relate to private or family life".

9.3. In principle, the author of the defamatory statement on the proof of exoneration must be admitted (BGE 132 IV 116). He is only excluded from this if he lacks a well-founded reason for his statements and he also did so primarily with the intention of accusing someone of evil (cumulative; BGE 101 IV 294, 116 IV 37, 132 IV 116). A justified reason can be assumed if the author protected either public or private interests. It must have existed objectively and had been the reason for the statement. It is necessary that there is a sufficient reason to do the statement on the occasion and in this form, at which and how it is done (BGer 6B\_584 / 2016 of February 6, 2017, E. 3.1.4; BSK StGB- RikLin, Art. 173 N 27). If there is no justified reason, the author is only excluded from the evidence if he acts primarily with the intention of insulting. Such is the case if the perpetrator is primarily concerned with exposing or "bringing down" someone to shame (BGE 101 IV 294, 116 IV 38, 132 IV 115).

9.4. There must be a reasoned motive for the statements. This is the case if the offender used the information in question to protect either public or private interests. Furthermore, the justified reason must also have been the motive for the statements.

9.5. The tasks of the specialist unit infoSekta, which, as part of its statutes, offers advice for those affected and provides information in the sense of consumer protection on the global market, provide sufficient evidence that the statements have been made in the protection of public interests. The department fulfils public tasks and receives financial support from the

public sector. In addition, the specialist unit infoSekta not only provides information about Jehovah's Witnesses, but also about various organizations and religious communities. It is a factually presented and argumentative criticism of beliefs and practices, as well as their effects on followers and their environment (which also takes place in the exercise of fundamental freedoms, see BGE 118 Ia 43 ff. Esp. S. 53). The accused tries to base her statements broadly, which is particularly evident in the documentation she submitted (act. 12/3). She bases her statements on scientific publications, original Jehovah's Witnesses documents (Watchtower and Awake!), and specialist literature on the subject. So, she not only gets her information from conversations with dropouts who have left the community in the dispute and who are at risk of drawing an overly negative picture. Nonetheless, she also consulted many drop-out reports in order to get the most complete picture possible. The accused is not concerned with badly speaking about Jehovah's Witnesses, but with educating about various organizations and denominations. In addition, the statements do not refer to specifically named followers of Jehovah's Witnesses, but are generally formulated.

9.6. The accused must therefore be admitted to the proof of exoneration.

9.7. Not only factual judgments but also mixed value judgments are accessible to the *Proof of Truth*. The *Proof of Truth* is provided when all essential points of the expression have been proven; relatively insignificant exaggerations will not be punished (BGE 71 IV 188). Evidence of the facts is required, not just the suspicions (BGE 102 IV 180). The *Proof of Truth* can be based on circumstances that become known to the perpetrator only after the complaint is lodged or that arise from a later clarification (BGE 102 IV 182, 106 IV 116, 107 IV 34, 122 IV 315, 124 IV 150).

9.8. For the *Proof of Good Faith*, the perpetrator must demonstrate that he had serious reasons to believe that the statement was true in good faith. For this purpose, he can only refer to facts that were known to him at the time of the defamatory statement (BGE 102 IV 182, 107 IV 34, 124 IV 152). The accusation must be based on serious evidence (BGE 85 IV 185, 86 IV 176). It is not enough for the perpetrator to prove the individual facts on which he bases his suspicions (BGE 102 IV 183). Rather, he has to show that, based on these facts, he could seriously suspect the violations in good faith of the dishonorable behavior (BGE 102 IV 183, 124 IV 150). The mere fact that the perpetrator relied on communications from third parties did not relieve him. Rather, he must have checked the information with the

available and reasonable means and, if possible, made sure that there were serious indications for the allegations or suspicions he passed on (BGE 86 IV 176). Lower requirements apply if the perpetrator not only acted without a predominant intent to insult, but also wanted to protect high-quality interests or had another reason for doing so (BGE 116 IV 208). A particularly careful examination of the situation is required if statements are to be published in the press or the media. Those who provide *Proof of Good Faith* must be acquitted (BGE 119 IV 48).

9.9. The defamatory statements are to be analyzed below in relation to the *Proof of Truth* and *Proof of Good Faith*:

a. "We draw attention to the practice of ostracism that violates human rights." / "Ostracism is a kind of bullying prescribed from above. It violates human rights and the constitution." / "Everyone has the right to freedom of thought, conscience and religion - a right that Jehovah's Witnesses claim for themselves, but do not grant their members."

The private applicant does not deny that she uses the practice of ostracism. She simply claims that this practice is not against human rights and that it is defamatory to say so. She further claims that other courts have already found that Jehovah's Witnesses are "law-abiding" and have not violated fundamental rights. However, some of the judgments date from 2005 or earlier and cannot be used in the present case. First, the judgments were not made in Switzerland, which means that the association of Jehovah's Witnesses in Switzerland cannot derive anything from them for itself. Second, it does not mean that all future allegations are automatically wrong just because a court once found them innocent.

However, various judgments have been passed (some abroad) that recognize contrary results or findings - for example, the findings of the Royal Commission in Australia (a state commission of inquiry) summarized in a "Final Report".

Basically, there is this practice of ostracism (not contested by the plaintiffs). Jehovah's Witnesses refer to it as deprivation of community. It is questionable whether this practice is contrary to human rights and unconstitutional and whether Jehovah's Witnesses deprive their members of their right to freedom of thought, conscience and religion. In the Watchtower publication, "Keep Yourselves in God's Love" (2008), Chapter 3, you can read that contact with excluded people should be broken. "God's Word clearly tells us not to deal

with such people anymore". In addition, the Watchtower July 15, 2011 article (act. 12/4/9) states: "Our love for Jehovah must be stronger than that for family members who are unfaithful to him." Apostates are portrayed by Jehovah's Witnesses as "Satan's kitchen helpers (act. 12/4/11) and" mentally ill "(act. 12/4/9).

The practice of ostracism, even if partially denied, is documented in writing (see act. 12/4/12); there is therefore a sufficient basis to assume that this practice exists and is used (at least in part). The practice is very difficult to bear for those affected and can have serious consequences (especially for victims of sexual abuse who have to choose whether they want to stay in the organization and always want to meet the perpetrator or lose their entire social environment) (act. 12/4/2). In addition, there are hundreds of reports by those affected that show that the practice of ostracism is being practiced - the exit is compared to "social death" (act. 12/3 p. 10-11). The statements are supported by several other reports (act. 12/12 / 1-13).

It can certainly be said that the organization of Jehovah's Witnesses, through the use of the practice of ostracism, decides who should no longer have contact with family and friends, who should be isolated. The organization has great control over its members. Such behavior can certainly be understood as "bullying" (for definition see act. 12/4/1 T): these are acts committed in a systematic manner against certain persons with the aim of expelling them from the community. Bullying is a violation of a person's personal integrity. The practice of ostracism therefore proves to be a kind of "bullying", which is at least in essence a violation of human rights, in the way that bullying is a violation of a person's personal integrity.

This type of bullying is also used when Jehovah's Witnesses no longer believe or develop or have a different faith. In such a case, the relevant people are excluded and ostracized, which should motivate them to return to the community. Without not belonging to the same faith, they are or cannot be part of the community. They are therefore implicitly denied freedom of belief and conscience within the community (cf. act. 12/12/34 and 12/12/2).

The statements of the accused prove to be correct, which is why she succeeds in providing the proof of exoneration (*Proof of Truth*).

b. "Saying something sweet, asking how the day was, or hugging the child - that is no longer possible. Children experience permanent fear."

For proof of the practice of ostracism, reference can be made to the above statements. The private plaintiff does not deny this either (criminal charges p. 10) - it does not deny that ostracism is practiced, but claims that children would still receive loving care. The private applicant quotes from its magazine. Objectively, however, the words there do not sound very loving: "must support their outcast child" - the accused also said - but then "instruct with God's Word and take discipline" as well as "conduct a Bible study". It also says in the Watchtower publication, "Keep Yourselves in God's Love" (2008), Chapter 3: You should break off contact with excluded people. "God's Word clearly and unequivocally instructs us not to deal with such people anymore". In addition, the Watchtower July 15, 2011 article (act. 12/4/9) states: "Our love for Jehovah must be stronger than the love for family members who are unfaithful to him." The only thing that is mentioned is that the child must "be brought up and given moral guidance". Nothing is mentioned about love or care.

Rather, the members are encouraged to take the children further to the meetings of the religious community, to conduct a Bible study with him and to refer them to various Bible texts. First, it forces the child to attend religious events that they may not want to attend. Furthermore, the child is reduced to physical and spiritual needs, whereby no consideration is given to emotional needs. This is evidenced by a large number of reports by relatives and dropouts (see, for example, act. 12/4 / 19-21). Such an expulsion leads to great conflict and can cause psychological damage, especially for children and adolescents. It is a kind of emotional blackmail to get the renegade people to return to the denomination or to stop them from leaving.

So, it can be seen that Jehovah's Witnesses are of the opinion that the parents are still responsible for excluded children and must give them food and a place to sleep. They should also lead them back on the right path through Bible studies. However, no mention is made of the child's emotional needs. This can be seen as a kind of qualified silence. Outlawing and deprivation of love towards renegade children is considered a child-friendly punitive measure.

This fact, as well as the central message of Jehovah's Witnesses - the nearing end of the world in Armageddon, a big and bloody final battle, in which all unbelievers are destroyed - with which all members, including children, are confronted for several hours each day, can cause anxiety especially in children (act. 12/4 / 22-25, 12/12/2, 12/12/14). There are enough

dropout reports in which people report how much they suffered as children and how great their fear was (act. 12/4/28). Based on the numerous reports, the corresponding opinions of various experts (act. 12/3, pp. 26-27) and the texts on which the belief of Jehovah's Witnesses is based (act. 12/4/18, 12 / 4 / 23-24, 12/4/27), it can be assumed that the affected children and adolescents experience fear among Jehovah's Witnesses.

The statements of the accused prove to be correct, which is why she succeeds in providing the proof of exoneration (*Proof of Truth*).

d. "The closed nature of the system and the dogmatic belief fundamentally promote sexual abuse, especially among children. They have internalized that their needs come second." / "There is a Two-Witness rule that favors sexual abuse: the suspicion of a sexual offense against a child should only be investigated if there are at least two witnesses for it, which is naturally never the case. If there aren't, the elders should put the matter in Jehovah's hands, i.e. remain inactive. The victim has to remain silent. Otherwise, he or his family threatens to be expelled."

The accused relies heavily on the Australian Royal Commission's report of October 2016 (act. 12/4/2) for the evidence of discharge. It should be noted that, firstly, this is not a final judgment by a criminal court and secondly, it was written abroad. However, the private plaintiffs also rely on foreign judgments (see criminal charges) to justify themselves. So, they have to have other foreign judgments made to you. In addition, the Australian Royal Commission is a government-appointed commission of inquiry, the members of which included judges and professors. This commission examined the responses and reactions of the institutions to child abuse and related issues for five years. Both public and non-public hearings and panel discussions took place and various reports were published, most recently the so-called "final report". The accused can therefore fundamentally rely on the reports of the Royal Commission to provide *Proof of Good Faith* (but not the *Proof of Truth*).

First of all, it should be noted that the so-called Two-Witness rule exists (act. 12/4/2, act. 12/12/21). The plaintiffs also do not dispute the basic existence of the rule, but initially claim that it will no longer be used. Today, however, the private plaintiff claimed that the two-witness rule was only used to determine whether a perpetrator would be excluded from the community or not. It is irrelevant whether the Two-Witness rule is used effectively in every grouping and always or not or whether it is no longer used or only for the question of the

exclusion of a person from the community. The rule at least existed and is still anchored in writing.

The rule states that only one witness to an act is not sufficient; an act must be confirmed by a second witness. So, if no one can testify the abuse other than the victim and the alleged perpetrator denies the act, nothing will be done. In summary, the Royal Commission investigation shows that basic beliefs and practices of Jehovah's Witnesses are important in relation to child abuse - the patriarchal and highly hierarchical structure of the community leads to a weakened position of women and children. The notion that biblical law is above secular legislation plays an important role in not reporting crimes. In addition, victims can hardly defend themselves because of the "separation from the world" (act. 12/4/2, p. 18). On the one hand, there is the problem of the high hurdle for the formation of an internal legal commission. On the other hand, it is also very questionable whether victims would contact the state law enforcement authorities at all if they were not taken seriously in the community with their allegation. Not only are there no requirements that child abuse should be reported to the authorities, there are also no measures to protect the child (act. 12/4/2, p. 61; act. 12/12/22). According to the report, the Two-Witness rule generally works in the interests of the perpetrator, who not only escapes punishment but also remains in society, where he continues to meet his victims and other potential victims. In addition, victims of sexual abuse must face the suspected perpetrator (act. 12/4/2, p. 64) when questioned by the "legal committee" of the denomination, which is traumatic. The surveys were also only carried out by men, which can further traumatize those affected (pp. 66-67). Ultimately, victims of sexual abuse would have to reckon with it or be afraid of being excluded and ostracized based on their statements, especially if they then decided to leave the community (pp. 47, 70 ff.; act. 12/12 / 19, 20, 23). The Royal Commission concludes that they do not regard the Jehovah's Witness community as an "organization that adequately responds to child sexual abuse" (see also act. 12/12 / 24-32).

On the basis of the reports and expert opinions mentioned, in particular on the basis of the "Final Report" of the Royal Commission, it can be assumed that the statements of the accused correspond to the truth, at least in the core content. The accused was entitled to trust that the statements made by those concerned and the various opinions based on expert opinions are true - after all, the Royal Commission is a government-installed truth-finding commission that includes judges and professors and whose way of working is not objectionable.

The accused thus at least succeeds in providing *Proof of Good Faith*.

e. "Most people simply don't know what a problematic community Jehovah's Witnesses are. They don't look extreme on the outside, at most a little old-fashioned. However, a growing awareness of the serious forms of violence that people experience in such groups is gradually emerging."

Here, too, the accused's statements are based on reports from dropouts and supporters, as well as various expert opinions. In principle, psychological violence is defined with isolation, social violence, threats, coercion and fear, as well as insults and devaluations (act. 12/4/40). The analysis of Watchtower materials for children shows that they are aimed at frightening the children: those who do not obey, who do not follow, who do not believe, who do not suffice must exclude themselves from the community and then expect destruction in Armageddon. The shunning discussed above can be seen as a form of psychological violence. This is made clear by reports from dropouts and the materials of the Watchtower Society itself (act. 12/4 / 40-42; act. 12/11 p. 14-15 and act. 12/12/34). Furthermore, reports from the dropouts show that community pressure, manipulation, punishment and the exclusion mentality are perceived as forms of social violence.

The accused was entitled to trust that the statements made by those affected and the results of various expert opinions are true. The accused thus at least succeeds in providing the *Proof of Good Faith*.

f. "infoSekta judges Jehovah's Witnesses as a highly problematic group that tries to manipulate their members down to the level of existential identification. Community guidelines violate the physical, psychological and social integrity of their members."

Here, too, the accused's statements are based on the reports of dropouts and supporters, as well as on various expert opinions.

Basically, it can be based on the points already mentioned. The practice of ostracism can be seen as a violation of the psychological and social integrity of the members. The fact that the other members are encouraged to actively avoid excluded and withdrawn people and to have no contact with them - even their own family members - can certainly be seen as

manipulative influence on the members of the community. In addition, it has already been established that children and adolescents in particular suffer from fear. A wide variety of reports by resigned and experts (including psychologists who look after excluded or resigned members of the witnesses as patients) show that some of them still have fears for years after leaving or being excluded or were influenced through their upbringing with the Jehovah's Witnesses (see act. 12/4 / 19-21, 12/4/28, 12/3, pp. 26-27).

The accused was entitled to trust that the statements made by those affected and the results of various expert opinions are true. The accused is at least successful in providing the *Proof of Good Faith*.

h. "In addition, Article 18 provides that everyone has the right to freedom of thought, conscience, and religion - a right that the Watchtower claims but does not grant to its members."

As noted above, some form of bullying is used when Jehovah's Witnesses no longer believe or develop or have a different faith. In such a case, such people will be excluded and ostracized, which should lead them to return to the community. Without shared belief, they are or cannot be part of the community. They are therefore implicitly denied freedom of belief and conscience within the community (cf. act. 12/12/34, 12/12/2, 12/3 p. 55).

The accused was able to trust that the statements resulting from the reports of those affected and from various expert opinions are true. The accused thus at least succeeds in providing the *Proof of Good Faith*.

## 9. Conclusion

9.1. The accused thus succeeds in proving the exoneration (*Proof of Truth* or *Proof of Good Faith*) for all statements made. Although the accused has committed libel within the meaning of Article 173(1) of the Criminal Code, it is not unlawful because of the evidence of exoneration provided.

9.2. The accused must therefore be exonerated from the accusation of defamation.

## **V. Civil claims**

1.1. The injured person can assert civil law claims from the crime either independently by way of the civil process or by means of adhesion by written or oral request to the criminal court responsible for the decision on the indictment (Art. 119 in conjunction with Art. 122 Para. 1 StPO).

1.2. The private claimant makes no civil claims.

## **VI. Consequences of costs and compensation**

1.1. If the accused is acquitted, she will be ordered to pay the costs if she initiated the investigation by reprehensible or reckless behavior or if she has made it difficult to carry out the investigation (Art. 426 (2) Code of Criminal Procedure). In the present case, it is not evident that the suspect had caused the investigation by frivolous behavior or made it difficult, rather she has written extensive documentation and has actively tried to assist the court in assessing the allegations. The costs of the proceedings are therefore to be borne by the court.

1.2. According to Art. 429 Para. 1 of the Code of Criminal Procedure, the acquitted person is to be awarded compensation from the state treasury for the costs and activities incurred by the procedure. She is entitled to compensation for damages in the sense of compensation for the material damage caused causally in connection with the criminal proceedings. This includes compensation for expenses for the appropriate exercise of procedural rights (Art. 429 Para. 1 lit. a StPO) as well as for economic losses that the acquitted person has incurred as a result of their necessary participation in criminal proceedings (Art. 429 (1) b). According to constant teaching and case law, the defense costs are to be compensated in accordance with the Ordinance on Lawyers' Fees (AnwGebV). It should be noted that with regard to the judicial proceedings for simple standard cases, the approaches listed in the aforementioned regulation must always be assumed (ZR 101 No. 19). The basic fee for conducting a criminal trial regarding crimes or misdemeanors before the sole judge is CHF 600 to CHF 8,000 (8 10 Para. 1 lit. AnwGebV). Given the circumstances, in particular the very extensive files, the long procedure and the fact that 13 sentences had to be analyzed for their factual nature, a flat-rate legal remuneration for legal defense appears in the amount of CHF 20,500. (including VAT) as appropriate.

1.3. In addition, it justifies to award the accused for her personal activities, in particular the preparation of the extensive documentation, a personal flat-rate compensation of CHF 4,000.00 from the court register, especially since she also relieved their defense lawyers which would otherwise have incurred an even greater effort.

1.4. There is no indication of a cost requirement to the private claimant, especially since the latter had a legitimate interest in denying the not insignificant allegations. They were entitled to lodge a complaint; there is no evidence of willful litigation.

**It is recognized:**

1. The accused is not guilty and is acquitted.

2. The decision fee shall not be charged; the remaining costs shall be paid by the court cashier.

3. The accused is awarded a litigation compensation of a lump sum of CHF 20,500.00 (including VAT) for legal defense and a personal lump-sum compensation of a lump sum of CHF 4,000.00 from the court register.

4. Oral opening, justification and written notice in the dispositive to

- the defense in double for itself and for the accused (hand over);
- the representatives of the private claimant (handed over);
- the Zurich-Sihl public prosecutor's office (delivered);

and afterwards as a justified judgment to

- the defense in double for itself and for the accused;
- the representatives of the private claimant, accompanied by a copy of act. 49 / 1-10 and Prot. Pp. 7-45;
- the Zurich-Sihl public prosecutor's office;

as well as after the legal effect

- to the VOSTRA coordination center for the removal of data in accordance with Art. 12 Para. 1 lit. d VOSTRA.

5. An appeal against this judgment may be lodged orally or in writing within 10 days of its opening with the Zurich District Court, 10th Division, Wengistr. 28, Postfach, 8036 Zurich. With the appeal, the judgment can be challenged comprehensively in all points. With the appeal can be reprimanded:

Violations, including exceeding discretion, refusal and delay, the incomplete and incorrect determination of the facts or inappropriateness.

The party making the appeal must submit a written notice of appeal to the higher court of the canton of Zurich, criminal division, P.O. Box, 8021 Zurich, within 20 days of delivery of the reasoned decision. It must state whether it contests the judgment in full or in part, which amendments to the first instance judgment it requires. If only parts of the judgment are challenged, it is binding to which the appeal is limited.

In the event of an apparently late registration or declaration of appeal, the appeal will not be accepted without further extensions.

Zurich, July 9, 2019

ZURICH DISTRICT COURT  
10th division – single court

The district judge:

The clerk:

Dr. Ch. Lehner

MLaw A. Onder