

FRANCE : FRAUD CASE APPEAL

EXTRACTS OF THE JUDGEMENT/29 FEB 80

On the merits :

Whereas in everything that has to do with the background of Scientology and the genesis of this case, the Court intends to refer expressly to the very complete accounts of facts which appears in the preamble of the contested judgement.

(follows the very precise account of the prosecution)

- A. On the application of the dispositions invoked by the law of 9 December 1905.

Whereas the article 1st of this text stipulates :

"That the French Republic ensures the liberty of conscience and guaranties the free exercise of cults, under the sole restrictions enacted there-
after and this in the interest of Public Order,

Whereas the state thus claims its neutrality in religious matters, does not favor any cult and leaves to anyone a total freedom of belief,

Whereas however that this neutrality does not
forbid in any way the secular tribunals and
more specifically to the repressive jurisdiction
- Guardian of Public Order - to intervene as such
in the presence of the practice of a cult whatever
it may be, a penal offense has been committed to
the prejudice of a member of a religious community,

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ENCLOSURE

that is right of intervention is a consequence on one hand of the sovereignty of the secular state which manifests itself by the primacy of the civil law and also by the duty which devolves upon that state to protect the essential interests of its nationals in any circumstances.

Whereas the Scientology fact seems to correspond to an activity which applies to the usual definition of a religion, inasmuch the Court observes that in Scientology, despite the lack of metaphysical preoccupations to which the great occidental religions traditionally cling to,

The subjective element which is faith is supplemented by the existence of a human community, as small as it maybe, whose members are united by a system of beliefs and practices relating to sacred things,

But whereas it does not mean that Scientology, even though regarded as a religion and fitting thereupon the juridical structure set by the law of 9 December 1905, escapes all repression once the relations it maintains with its parishioners are no longer on the terrain of spirituality or belief or of the one of its internal organisation but deal with financial questions on the occasion of which the patrimony of some adepts could have been wronged under circumstances which fit to the qualifications as defined by the article 405 of the Penal Code,

Whereas indeed the Court could not admit the interpretation brought up by ANDREU's counsels according to which the principle of the neutrality of the State in religious matters demonstrated by the organization of secularity in the law of the 1st August 1905, the provision by this text of a mean of financing of Churches by the believers themselves, according to the system known at Cultural Associations and the use by

the said text in its article is of the formulation :
"under the sole restrictions thereafter", confers
vis-à-vis the state a complete autonomy of the
system established and forbids the jurisdiction of
Common Law to withhold their competence towards members
of the Church of Scientology outside the perimeter
laid down by the repressive clauses of the aforementioned
law,

Whereas indeed, the text referred to - article 32 -
which guarantees the free exercise of cult covers
exclusively the acts, assaults, violence or threats
against an individual in order to determine him, either
by fear of losing his job, or by the wrong which
could happen to himself, his family or his fortune,
to exercise or refrain from exercising a cult, to
belong or cease to belong to a cultural association, to
contribute or refrain from contributing to the expenses
of a cult,

Whereas the qualification thus defined is without
relation to the fraud, the said fraud is distinguished
mainly by the existence of fraudulent manoeuvres to
undermine or attempt to undermine the patrimony of some-
body, while the article 31 of the 1905 law intends to
curb an offence which is similar to the crime of
extortion or threats and which if it can in fact be
expressed by a transfer of funds could not be classified
as fraud within the so-called "shrewd" criminality,

That moreover, the spirit of the two opposed texts
is profoundly different, that the article 31 is a
special text whose perimeter of application is limited
to the relations between the Church and its parishioners
and which is liable to cover the facts directed at
by the prosecution while the article 405 of the Penal
Code is a general text whose object is to protect
without any restriction the victims of prejudice to

... patrimony through the use of a false name or false quality, or in a large way of fraudulent manoeuvres,

Whereas the article 33 of the 1905 law manoeuvres enacts that the precedent clauses - that is to say those of the articles 31 and 32 - only apply to troubles outrages or violence whose nature or circumstances do not lead to heavier penalties according to the clauses of the Penal Code, that in this way the 1905 legislator has himself foreseen that the texts of this Code would be, if the case arises, applied to certain infractions in relation with the administration of cults, but about which the repression demands, in view of their gravity, that they be punished by clauses envisioning heavier penalties than those of the articles 31 and 32, that if the article 33 does not expressly aim at the article 405, the principle it states about recourse if need be to the Common Law texts, thwarts the so-called interdiction to base the lawsuit on penal qualifications other than those defined by the 1905 law.

Whereas it does not matter much that the financial resources of Scientology in France be precisely those foreseen, as regards their finality, by the law of 9 Dec 1905, that such a condition is insufficient to exempt its directors from all risks of penal lawsuit,

Whereas it comes into the province of the repressive jurisdiction to which the matter is referred to verify whether or not, under the cover of apparently voluntary adherents' payments, the concerned Church did not use any mean, through its founders or leaders, which turned out to be fraudulent when examined, and leading to any damage to people whose agreement would have been twisted and would have been in fact deceived.

B. Concerning ANDREU's personal position

Whereas the Court has to examine it within the tight extent of its seisin (saisine) since ANDREU as well was the only defendant to appeal the decision, the fraudulent manoeuvres have to be appraised according to his specific position, whereas it appears that this defendant's role was limited, at least regarding his powers extent, whereas he was appointed as president of the French Association of Scientology, in September 1972, when the whole organisation in question was already established and whereas he immediately resigned from the presidency to become again a simple minister of the cult after he was convicted on January the 8th 1976 within the frame work of the examination started on December the 12th 1970,

Whereas in 1972, ANDREU was 21 years old, whereas he got into the Church of Scientology to follow initiation conferences and whereas he did not previously obtain any religious or philosophical education which might have enabled him to appraise with a detached enough attitude the merits or unselfishness of the method chosen by the founder of Scientology, Ron HUBBARD,

Whereas this latter never stopped, in spite of a more apparent than real retirement from his functions of Director of the Church in 1966 to impress with his authority upon the organizing of Scientology associations, whereas a document seized on March the 10th 1972 bears that he was at that time the director of the Scientology centers, whereas LAARHUIS, the executive Director for all the associations was put by HUBBARD above the President of the French Association and was supervising all the activities of that one, of which he was responsible for under senior authorities, to wit, HUBBARD on the

ATHENA ya t, whereas it is to these authorities that LAARHUIS was sending his reports on the activities of the French association.

Whereas before he disappeared, LAARHUIS stated to the Examining Magistrate that the President, the Treasurer, and the secretary were his direct assistants, whereas he was particularly responsible for the good running of the courses, the controlling of the treasury of the association, and that it was up to him to decide finally regarding its budget establishing.

Whereas ANDREU, who did nothing but enforce HUBBARD's general policies, and more specifically LAARHUIS's ones, as regards the French Association, could not have gained due to his functions any profit which can be considered as abnormal, whereas in 1972, he received 8,977 Frs for full time duties, funds which progressively increased to reach 21,682 Frs in 1976, whereas in 1976 he resigned from his president's function - which was no longer allowing him to decently survive in order to devote himself to a remunerated management consultant's activity.

Whereas it is fitting however to examine whether or not, ANDREU who was then in function, was responsible of the facts mentioned by the KOCH couple to support their complaint for fraud,

Whereas in their complaint which, inspite of it having been withdrawn, did let the prosecution running, the KOCH couple were explaining that they got interested when starting on November 1973 and bought several books of this discipline,

Whereas in March 1974, their son Thierry, 16 years old came to Paris to follow the so-called communication course, and appeared to have written a letter to ANDREU, telling him that he was pleased whereas nevertheless in February

1975, when Thierry KOCH was located in Strasbourg, his mother claimed for being refunded of the sum of 6,350 Frs that she paid for an electrometer - which was delivered to her - and for two courses - which were to be followed in Paris - and for a book,

Whereas the repayment was claimed for in a letter of 15 February 1974, and confirmed by another letter of 20 February where Mrs KOCH was threatening to lodge a complaint, whereas it got filed at the Public Prosecutor's in Strasbourg on 24 February, whereas besides, it seems that a post strike delayed the Church of Scientology in the receiving of Mrs KOCH's letters, whereas this latter was later refunded for the entirety of the claimed sums and whereas she decided to withdraw her complaint,

Whereas the facts denounced by the KOCH couple do not appear to constitute a fraud offense, whereas the counterpart of the cost did correspond to an electrometer which was provided, and of two books, and the remainder relating to courses to be delivered on which an advance payment had been claimed,

Whereas inasmuch as upon one of the parties request, the contract may be cancelled and the price refunded, the needed element of chimerical credit and imaginary power is uneasy, or even impossible to detect, the courses not having been followed by Thierry KOCH and their content thus their value cannot be appraised,

Whereas concerning TRAN NCOG LAN's constitution as ~~civil~~ party, it deals with facts prior to ANDREU's appointment as a director of the Association, whereas on another hand, TRAN charges only LAARHUIS, with whom he was frequently in contact, whereas he met ANDREU only the day he decided to leave the association, and whereas upon a decision made

Whereas during the hearings the Court was able to observe ANDREU's spiritual fervor and strength of convictions whereas the sincerity of this young 20 years old man, married with a wife whom he met at the initiation conferences, should not be challenged, whereas he gave himself body and soul to this new religious discipline, whereas this adherence established by LAARHUIS under HUBBARD's directives, and whereas the, moreover not very important role he played, as regards the responsibilities he was entrusted with and the extent of his wages, did not permit him to judge with enough moral independence whether or not the method preached and taught by Scientology could constitute a breach of the French Penal Law, whereas the Court deems that in its entirety, ANDREU's act is impressed with good faith and that the moral element of fraud, the intention to deceive in order to obtain funds not being established, the suit against him was not founded and whereas by annulment of the appealed decision, ANDREU must be discharged,

Whereas by the effect of the decision to occur on the prosecution, TRAN's constitution as civil party against ANDREU is not founded and whereas he will be dismissed, the Court,

By these reasons, invalidating the judgment insofar as it stated ANDREU guilty of fraud, discharges him, states TRAN's constitution as civil party non-founded and dismisses him and leaves the expenses for the Treasury to pay.

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