

Table of Contents

- ***European Court of Human Rights: Belgium found guilty of tax discrimination against the Jehovah's Witnesses***
 - ***Jehovah's Witnesses in Brussels receive €5,000 compensation for discrimination***
 - ***Jehovah's Witnesses win in Strasbourg in a discriminatory taxation case***
-

European Court of Human Rights: Belgium found guilty of tax discrimination against the Jehovah's Witnesses

Granting exemptions from property taxes to "recognized religions" only is not permissible, the Strasbourg judges said.

By Massimo Introvigne

Bitter Winter (11.04.2022) - <https://bit.ly/3Odn9wm> - With a surprisingly quick decision compared to its usual standards, considering that the application was filed on May 14, 2020, the European Court of Human Rights (ECHR) [decided on April 5, 2022](#), that the Jehovah's Witnesses are discriminated by new rules on religion-based exemptions from the property tax adopted by the Brussels Region in 2017, which limit the exemption to state-recognized religions.

Since 2001, in Belgium property tax exemptions are regulated by regional laws. Just as the other regions, Brussels granted an exemption to places of worship and other properties used by religious organizations for religious, educational, or charitable purposes. It was never cast in doubt that the exemption applied to the Kingdom Hall properties of the Jehovah's Witnesses.

In 2017, however, the Brussels Region expressed a concern that the religion-based exemption might be used for tax fraud. In fact, as the ECHR observed, in the discussion on amending the law no specific cases of tax fraud were mentioned. The ECHR also noted that on June 19, 2017, the State Council warned the Brussels Region of the possible discriminatory effects of the proposed new legislation, which might cause problems both with the Belgian Constitution and the European Convention on Human Rights.

Nonetheless, on November 23, 2017, the law was amended restricting the property tax exemption to nationally "recognized religions" only, which in Belgium meant, and means, a small club including Roman Catholicism, Protestantism (insofar as Protestant churches are part of the recognized national organization), Anglicanism, Judaism, and Islam.

In 2018, the six congregations of the Jehovah's Witnesses in the Brussels Region, which had thus lost the property tax exemption and had to pay significant taxes, appealed to the Belgian Constitutional Court, which on December 14, 2019, found in favor of the Brussels Region. The Jehovah's Witnesses then went to the ECHR.

The ECHR noted that it was not contested that the taxed buildings were used by the Jehovah's Witnesses for religious purposes, nor that the law introduced a discrimination between registered and unregistered religions. The ECHR stated that, according to its case law, states are free to grant or not to grant certain tax exemptions based on religion; if they do, however, they should treat all religions equally and in a non-discriminatory way.

The question before the court was, thus, whether the requirement that a religion be registered does create a discrimination prohibited by articles 9, on freedom of religion and belief, and 14, on non-discrimination of the European Convention on Human Rights. The core of the Belgian government's defense argued that there was no discrimination since any religion is free to apply for national registration. The ECHR examined whether the Belgian registration process offers the necessary guarantees of non-discrimination mandated by article 14. It concluded that it does not.

The ECHR observed that the criteria for recognition are vague, and not even included in a law or regulation. Soliciting the recognition is a decision by the Minister of Justice, and granting it is a political act of the Parliament. "Neither the criteria for recognition, nor the procedure by which a religion can be recognized by the federal authorities, are set forth in statutes that meet the requirements of accessibility and predictability inherent in the concept of the rule of law."

"The examination of an application for recognition, the ECHR added, is not accompanied by any guarantee, either with respect to the adoption of the decision on such an application, or to the process leading up to a decision, or the appeal that may be made against it at a later stage." The European judges also observed that there is no delay within which an application should be considered. The representative organization of Belgian Buddhists sought registration in 2006, and the corresponding Hindu body in 2013. They have received no recognition to this date.

The ECHR suspects, not without reasons, that the non-recognition may be based on a value judgment about certain religions. The decision does not explicitly mention the discrimination of some religions as "cults" ("sectes," in French) but quotes the 2011 decision "Association of the Jehovah's Witnesses v. France," which found France had used taxes to discriminate against religious organizations it had listed as "cults (sectes)," including the Jehovah's Witnesses. Quoting that decision, the ECHR observed that "in its relationship with the various religions, faiths, and beliefs, the State must be neutral and impartial," and that in general the right to freedom of religion or belief "excludes any assessment by the State of the legitimacy of religious beliefs or the manner in which they are expressed."

Another defense by Belgium, that in practice the amount of the property tax to be paid was minimal, was also rejected by the ECHR. The European judges concluded that, on the contrary, the amount of the property taxes the Brussels congregations of the Jehovah's Witnesses are requested to pay "is not insignificant, and significantly affects the functioning of the applicants as religious communities." It may also be mentioned that, if unchallenged, the Brussels Region law might have influenced the adoption of similar discriminatory statutes in the other Belgian regions.

As a consequence, the ECHR ruled that the 2017 amendments to its tax laws by the Brussels Region excluding from the property tax exemption non-registered religions such as the Jehovah's Witnesses are discriminatory and prohibited. It ordered Belgium to pay to the Jehovah's Witnesses Euro 5,000 as a contribution to their legal expenses. Judge

Georgios Serghides from Cyprus filed a partially dissenting opinion on the sole point that he would also have ordered Belgium to pay moral damages to the Jehovah's Witnesses, while the other judges concluded that the substantial finding on the property tax "constitutes in itself a just satisfaction for the non-material damage suffered by the applicants."

The decision is a significant precedent both for Belgium, where other forms of discrimination against non-registered religions are now likely to be challenged, and for other countries that may be tempted to grant different rights to different categories of religion, including by distinguishing between "good" and "bad" religions based on these "assessments by the State of the legitimacy of religious beliefs or the manner in which they are expressed" that the ECHR has explicitly prohibited.

Photo : *A view of the Belgium Branch Office of the Jehovah's Witnesses, Kraainem.*
Source: jw.org

Jehovah's Witnesses in Brussels receive €5,000 compensation for discrimination



Credit: Belga

Brussels Times (09.04.2022) - <https://bit.ly/362wbem> - The Belgian State must pay nine Brussels-based Jehovah's Witness associations a total of €5,000 in damages, because they are not a recognised religion in Belgium and therefore miss out on a tax exemption in Brussels.

The case was taken to court by nine associations of Jehovah's Witnesses after an amendment of the Brussels legislation, reports **De Standaard**. Since 2017, non-recognised religions in Belgium are no longer exempt from property tax on their prayer houses.

Recognised churches, mosques or synagogues, on the other hand, no longer have to pay the real estate tax – a fiscal benefit for recognised religions. For this, Brussels applies the recognition system of the Federal Government.

But this system lacks transparency: there are no clear legal criteria, only the Justice Minister can initiate the recognition procedure and approval is decided in the Parliament. That fosters discrimination, **according to a binding ruling by the European Court of Human Rights (ECHR) on Tuesday.**

Within the next three months, the Belgian State must pay the Brussels associations a total of €5,000 in damages to cover their legal costs. As they had not yet paid their property tax, this will not need to be reimbursed.

Professor of Discrimination Law Jogchum Vrieling (Université Saint-Louis) called the ruling "a legal bombshell." He told **De Standaard** that "the core of the entire support system, the access to recognition, is being undermined."

To avoid more convictions and compensations, Belgium will have to quickly work on a legal framework for the recognition of religions.

In 2004, the communities and the federal level already agreed to do so, but no changes have been made. Justice Minister Vincent Van Quickenborne told the newspaper that he will work on such a legal framework. "The judgement is clear."

Jehovah's Witnesses win in Strasbourg in a discriminatory taxation case

Failure to grant congregations of Jehovah's Witnesses exemption from property tax in the Brussels-Capital Region since 2018 was discriminatory ([Assemblée Chrétienne des Témoins de Jéhovah d'Anderlecht and Others v. Belgium - Application 20165/20](#)). See the unofficial English translation [HERE](#)

Registrar of the European Court (05.04.2022) - <https://bit.ly/3ua7CFj> - In today's Chamber judgment¹ in the case of **Assemblée Chrétienne Des Témoins de Jéhovah d'Anderlecht and Others v. Belgium** (application no. 20165/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights and with Article 1 of Protocol No. 1 (protection of property) to the Convention.

The case concerned congregations of Jehovah's Witnesses which complained of being denied exemption from payment of a property tax (*précompte immobilier*) in respect of properties in the Brussels-Capital Region used by them for religious worship. According to an order of 23 November 2017 enacted by the legislature of the Brussels-Capital Region, as of the 2018 fiscal year the exemption applied only to "recognised religions", a category that did not include the applicant congregations.

The Court held that since the tax exemption in question was contingent on prior recognition, governed by rules that did not afford sufficient safeguards against discrimination, the difference in treatment to which the applicant congregations had been subjected had no reasonable and objective justification. It noted, among other points, that recognition was only possible on the initiative of the Minister of Justice and depended thereafter on the purely discretionary decision of the legislature. A system of this kind entailed an inherent risk of arbitrariness, and religious communities could not reasonably be expected, in order to claim entitlement to the tax exemption in issue, to submit to a process that was not based on minimum guarantees of fairness and did not guarantee an objective assessment of their claims.

Principal facts

The applicants are nine associations established under Belgian law which have properties in the Brussels-Capital Region used for public worship.

On 23 November 2017 the legislature of the Brussels-Capital Region amended the Income Tax Code and restricted the exemption from property tax in respect of properties in the region used for public worship to "recognised religions". The amendment took effect from the 2018 fiscal year onwards. As the applicant associations, nine congregations of Jehovah's Witnesses, did not belong to a "recognised religion", they were no longer able to claim the exemption to which they had previously been entitled in the Brussels-Capital Region. They applied to the Constitutional Court seeking the setting-aside of the provision in question, and their application was rejected in November 2019. The Constitutional Court found that the financial impact on the applicant associations was not such as to jeopardise their internal organisation, functioning or religious activities. It also found that the requirement for the religious denomination to be recognised was not disproportionate since faiths that were not recognised could apply for recognition.

In Belgium, religious denominations have the possibility of lodging an application for recognition, which is optional rather than compulsory. The recognition of religions is a federal matter. The procedure for recognition is not enshrined in legislation but is derived from administrative practice. According to the replies given by the Minister of Justice to MPs' questions, a faith must satisfy five criteria to qualify for recognition. The application has to be made to the Minister of Justice, who decides whether the criteria are satisfied. In the event of a favourable decision, the Minister may table draft legislation on recognition in the House of Representatives, as recognition is a prerogative of the legislature. There are currently six recognised religious denominations in Belgium: Catholicism, Protestantism, Judaism, Anglicanism, Islam and the Orthodox faith. Applications for recognition of Buddhism and Hinduism were lodged in 2006 and 2013 respectively, but the authorities have not given a decision on them to date.

Complaints, procedure and composition of the Court

The applicant associations alleged that they had been the victims of discrimination on account of the fact that the new legislation in the Brussels region made exemption from property tax (*précompte immobilier*) contingent on belonging to a "recognised religion". They relied, in particular, on Article 14 (prohibition of discrimination) of the Convention,

read in conjunction with Article 9 (freedom of thought, conscience and religion) and with Article 1 of Protocol No. 1 (protection of property) to the Convention.

The application was lodged with the European Court of Human Rights on 14 May 2020. Judgment was given by a Chamber of seven judges, composed as follows:

Georges **Ravarani** (Luxembourg), *President*,
Georgios A. **Serghides** (Cyprus),
María **Elósegui** (Spain),
Anja **Seibert-Fohr** (Germany),
Andreas **Zünd** (Switzerland),
Frédéric **Kreenc** (Belgium),
Mikhail **Lobov** (Russia),
and also Olga **Chernishova**, *Deputy Section Registrar*.

Decision of the Court

Article 14 in conjunction with Article 9 of the Convention and Article 1 of Protocol No. 1

The applicant associations alleged that the tax in question was equivalent to 23% of the donations they received, which constituted their sole source of funding. It also transpired from the accounting documents produced by the applicant associations that the amount payable by way of this tax accounted for a substantial proportion of the annual running costs connected with their buildings. Overall, their property tax they were required to pay represented between 21.4% (41,984.23 euros for all the applicant associations) and 32% (42,830.25 for all the associations) of those costs, depending on the year.

In the Court's view, these amounts were not insignificant and had a considerable impact on the operation of the applicant associations as religious communities. The facts of the case therefore came within the ambit of Article 9 of the Convention and Article 1 of Protocol No 1 to the Convention.

As to whether there had been a difference in treatment, the Court noted that in enacting the measure in question, the legislature of the Brussels-Capital Region had sought to prevent abuse arising out of the exemption from property tax of premises that were in fact designated for use by "fictitious" religious denominations. It observed that there was nothing in the case submitted to the Court to suggest that the applicant associations had committed, or been suspected of committing, any fraud in benefiting in the past from the exemption of property tax in respect of their places of worship. Nevertheless, the prevention of tax fraud was an aim whose legitimacy *per se* could not be called into question by the Court.

As to whether the means used had been proportionate to the aim pursued, the Court considered that in using the recognition of a religious faith as the basis for distinguishing between claims for exemption from property tax, the authorities had opted for an objective criterion that was potentially relevant with regard to the aim pursued. In itself, the choice of such a criterion fell within the margin of appreciation left to the national authorities in the sphere under consideration.

The government argued that it was open to the applicant association to apply for recognition of their faith at federal level in order to continue to claim exemption in the Brussels-Capital Region. The applicant associations countered that it would be pointless to apply, given the serious shortcomings in the procedure for claiming recognition.

The Court noted in that connection that neither the criteria for recognition nor the procedure leading to recognition of a faith by the federal authority were laid down in an instrument satisfying the requirements of accessibility and foreseeability, which were inherent in the notion of the rule of law governing all the provisions of the Conventions.

It observed, firstly, that recognition of a faith was based on criteria that had been identified by the Minister of Justice only in reply to questions put by members of parliament. Moreover, as they were couched in particularly vague terms they could not, in the Court's view, be said to provide a sufficient degree of legal certainty.

Secondly, the Court noted that the procedure for the recognition of faiths was likewise not laid down in any legislative or even regulatory instrument. This meant, in particular, that the examination of applications for recognition was not attended by any safeguards, with regard either to the actual adoption of the decision on such applications or to the process leading to the decision and the possibility of appealing against it subsequently. In particular, no time-limits were laid down for the recognition procedure, and no decision had yet been taken on the applications for recognition lodged by the Belgian Buddhist Union and the Belgian Hindu Forum in 2006 and 2013 respectively.

Lastly, recognition was only possible on the initiative of the Minister of Justice and depended thereafter on the purely discretionary decision of the legislature. A system of this kind entailed an inherent risk of arbitrariness, and religious communities could not reasonably be expected, in order to claim entitlement to the tax exemption in issue, to submit to a process that was not based on minimum guarantees of fairness and did not guarantee an objective assessment of their claims.

In sum, since the tax exemption in question was contingent on prior recognition, governed by rules that did not afford sufficient safeguards against discrimination, the difference in treatment to which the applicant associations were subjected had no objective and reasonable justification. There had therefore been a violation of Article 14 of the Convention, read in conjunction with Article 9 of the Convention and with Article 1 of Protocol 1 to the Convention.

Just satisfaction (Article 41)

The Court held, by a majority (6 votes to 1), that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant associations. It also held, unanimously, that Belgium was to pay the applicant association 5,000 euros (EUR) in respect of costs and expenses.

Separate opinion

Judge Serghides expressed a partly dissenting opinion which is annexed to the judgment.

Photo: European Court of Strasbourg