Table of Contents

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** judgment[1] 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 **Krenc** (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 applicantnassociations 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 betwwen21.4% (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 us 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 exception 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 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-pecunary 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