**Abusive taxation of religious minorities is a violation of religious freedom Comparative Study: The case of Tai Ji Men in Taiwan and the case of Jehovah’s Witnesses in France**

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On 23 April last, US Senator Orrin Hatch passed away after having turned 88.

Some of his main interests were tax reform and religious liberty, two topics that sometimes happen to intersect (1). Senator Hatch was well aware that there can be taxation abuses and that they can target religious or spiritual movements or religiously motivated advocacy groups which for whatever reason are disliked by some tax bureaucrats.

Here is now the main story that I am going to share with you about the unresolved case of Tai Ji Men in Taiwan after 25 years of legal battles and public advocacy (2). And I will compare that case with other ones that the European Court of Human Rights had to deal with in the last two decades.

**What is Tai Ji Men?**

Tai Ji Men is a school of qigong, martial arts, and self-cultivation carrying forward Taoist philosophy. It was created in 1966 by Dr. Hong Tao-Tze, also known as the Shifu. (3)

Since a very young age, Dr Hong has inherited the wisdom of esoteric Daoism and studied qigong, martial arts, medicine, yin-yang philosophy, life wisdom, and “heart kungfu”.

After martial law was lifted in 1987 in Taiwan, he started to widely accept *dizi*(disciples), hoping that everyone could enjoy good health and happiness. In that framework, they followed an ancient ritual specific to the *shifu-dizi* relationship. As a sign of gratitude to and faith in their *shifu*, *dizi* madevoluntary monetary gifts to their *Shifu* in a “red envelope” when they were officially accepted as *dizi* and on major traditional holidays. This constitutes a necessary component of the realization of an inner belief or religion, which is protected by the ICCPR.

**The historical context**

The historical context of what happened to Tai Men is important. After a long period of dictatorship in the aftermath of WWII and post-authoritarian rule of the country, free elections took place in 1996 but were followed by a series of heinous major murder cases which remain unresolved as of today.

To divert public attention, the ruling party government carried out a political purge at the end of 1996. The then Minister of Justice launched a comprehensive attack against dissident religious groups labeled as *xie jiao* (4), including investigations, tax inspections by the National Taxation Bureau (NTB), assets seizure, demolitions of allegedly “illegal” structures, and exorbitant fines. Tai Ji Men was caught in the crossfire of that campaign against religious groups that did not support the ruling party in the presidential elections, although it had not taken any political position. The crackdown was supported by the media, most of which were not independent from the ruling politicians.

**The Tai Ji Men case**

On 19 December 1996, Prosecutor Hou Kuan-Jen led hundreds of armed police officers on an unwarranted search at all Tai Ji Men Qigong Academy branches and at private residences of several Tai Ji Men *dizi*. Subsequently, the spiritual master of Tai Ji Men, Dr Hong, and his wife, and two *dizi*, were detained for several months.

Prosecutor Hou charged the defendants with both fraud and tax evasion on the ground that amounts of money put by the *dizi* in so-called “red envelopes” were not tax-free donations but were tuition fees for the Qigong Academy. The case was then forwarded to the National Tax Bureau (NTB), which issued tax bills for the alleged tax evasion. The NTB did not carry out the investigation required by its statutory duty, nor waited for the decision of the criminal court to ascertain the nature of the income; it issued heavy tax penalties for the alleged tax evasion in the years 1991–1996, simply based on the indictment.

Since Tai Ji Men Qigong Academy was established in 1966, the Shifu of Tai Ji Men, Dr. Hong, had never been taxed by the NTB for its activities. Additionally, the Ministry of Education had explained that Tai Ji Men was not a cram school, contrary to what Prosecutor Hou then argued. So, why should these six years be treated differently because of the action by Prosecutor Hou? That was the question.

After 10 years of judicial proceedings that I will not detail here, an important decision was issued by the Supreme Court.

On July 13, 2007, the Supreme Court found Tai Ji Men not guilty of fraud, nor of tax evasion or violation of tax codes. The Supreme Court also determined that the “red envelopes” given by his disciples to the *shifu* were gifts by nature and were tax-free income under the Income Tax Act (Taiwan). In 2019, although the NTB corrected five of the six years of the taxes it had assessed to zero, it still violated the principles of consistency and equality by surprisingly maintaining the tax bill for the year 1992 only, treating the 1992 income as an alleged cram school tuition.

Over 25 years, Tai Ji Men has followed legal procedures to seek administrative remedy. In 2010, at a public hearing in the Legislative Yuan, the Ministry of Finance promised to revoke the tax bills and withdraw their enforcement within two months. However, the tax bills continued to be issued in violation of the promise.

In 2011, the Executive Yuan held an inter-ministerial meeting and resolved to revoke the tax bills if a survey among Tai Ji Men *dizi* would show that the “red envelopes” given to the *shifu* included gifts (rather than tuitions). After a two- month survey, even though 7,401 answers from Tai Ji Men *dizi* all confirmed that they were indeed gifts, the NTB refused to accept the survey results, and continued to issue ill-founded tax bills to Tai Ji Men.

Afterwards, the unjustified 1992 tax bill was transferred to the Administrative Enforcement Agency, resulting in the auction and confiscation of sacred land belonging to Dr. Hong and Tai Ji Men by the government in August 2020.

Noteworthy is that behind this never-ending harassment there exists a bonus system providing for a financial reward for the disclosure of tax fraud cases from which the staff of the National Taxation Bureau and the Administrative Enforcement Agency (AEA) largely benefit. This bonus system has been repeatedly denounced because it is arbitrarily used and abused by the NTB hierarchy to protect the bonuses they can get from successful prosecutions but also to fabricate alleged fraud cases for financial benefits.

Taiwan is however not the only democracy where such misuse of the taxation system to weaken or destroy a religious movement has been activated. The unfortunate experience of Tai Ji Men with the tax administration presents some striking similarities with the cases of four religious groups which were arbitrarily persecuted by the tax administration in France: Jehovah’s Witnesses, the Evangelical Church of Besançon, the Association of the Knights of the Golden Lotus and the Religious Association of the Pyramid Temple. In all these cases, the French tax administration suddenly decided to impose a 60% tax on all the manual gifts they would receive.

**Cases of harassment by the tax administration in France**

In 1996, as I said before, the then Taiwanese government launched a crackdown on groups labelled as *xie jiao*, which according to most scholars having studied the incident was politically motivated. The crackdown also targeted Tai Ji Men, although it had never been involved in politics.

In January of the same year, a French parliamentary report classifying the four aforementioned religious groups as harmful cult-like movements (*mouvements sectaires* in French) led to their stigmatization in the media and resulted in various forms of hostility and discrimination by state bodies, including the tax administration.

In both countries, there were suspicions of fraud and tax evasion on manual gifts. For Tai Ji Men and the incriminated French religious organizations, it was the beginning of a long obstacle race through their respective domestic courts.

Let us start with the emblematic case of Jehovah’s Witnesses v. France.

***The case Jehovah’s Witnesses v. France (application 8916/05)***

On 10 January 1996, the French National Assembly published a report about 172 allegedly dangerous cults (*sectes* in French), which were almost portrayed as criminal associations. (5)

That “blacklist”, as it was soon called by the media, had a devastating impact on those religious and spiritual groups. Jehovah’s Witnesses were on that blacklist. Following that report, they were discriminated against, stigmatized and ostracized both in their private life and public life. Steps were taken by state administrations to marginalise them and treat them differently from mainline religions. In particular, the tax authorities carried out an audit.

On the basis of the information gathered during that audit, the Association of Jehovah’s Witnesses was given notice to declare all the manual gifts that they had received from 1993 to 1996 and to pay taxes. This was an unexpected new interpretation of the General Tax Code that was suddenly applied to the movement of Jehovah’s Witnesses.

The association refused and asked that the tax exemption applicable to manual gifts and legacies to be applied as every year before 1993 as there had not been any change in the Tax Code in this regard.

As the association of Jehovah’s Witnesses failed to submitt the declaration requested by the tax authorities, it was subjected to an automatic taxation procedure on all the manual gifts received from 1993 to 1996.

The tax administration justified its decision by claiming that the manual gifts “[had been] disclosed to the tax authorities in the course of the accounting audits to which it [had been] subjected”.

The term “disclosed” is a key word in the French taxation administrative language because it implies that the “disclosure” was a voluntary move by the association in order to be taxed on the gifts it had received. This was not the case as the audit was not requested by the Association of Jehovah’s Witnesses but was imposed on them by the administration and could therefore not be refused. Moreover, there had never been any legal obligation to disclose manual gifts to the tax administration. Obviously, there was a clear manipulation of the administrative terminology to corner the Association of Jehovah’s Witnesses and, as it appeared afterwards, to kill them financially. Another similarity with Tai Ji Men case.

In May 1998 the Association was notified of a supplementary tax assessment for the equivalent of about **45 million EUR** (about 23 million EUR for the principal and 22 million EUR in default interest and surcharges). The Association of Jehovah’s Witnesses stressed that the tax claimed concerned manual gifts made by 250,000 individuals over four years (or an average of 4 EUR per person per month for the period 1993-1996).

During the next six years, the Association of Jehovah’s Witnesses used all the domestic remedies that it could to assert its rights but in the meantime, with the accumulation of fines for the non-payment of the contested taxes, the amount claimed by the tax administration had risen **from 45 million EUR to more than 57.5 million EUR.**

The only possible way out for Jehovah’s Witnesses was then to go to the European Court of Human Rights in Strasbourg.

*The European Court of Human Rights*

On 24 February 2005, the Association of Jehovah’s Witnesses lodged a complaint against France with the European Court of Human Rights. It alleged, among other things, that the imposed taxation of manual gifts interfered with its right to manifest and exercise its freedom of religion as guaranteed by Article 9 of the European Convention.

The procedures lasted for six years, until 2011, and focused primarily on the controversial interpretation of the “disclosure” of manual gifts and the allegedly undue interference of the state in the freedom of religion of Jehovah’s Witnesses through a punitive taxation.

The Jehovah’s Witnesses claimed that in imposing the controversial tax the state was attacking the freedom of religion of their 200,000 members. Indeed, if the 60% taxation were to be confirmed, it would result in the seizure and sale of their headquarters (Bethel), the loss of their national place of worship, the choking and even the survival in France.

The attorney of the Association, Philippe Goni, argued that the collective practice of a religion implies the possibility of relying on material resources, generally obtained through the adherents' financial contributions to rent or acquire a place of worship, among other things. The manual gifts are religious in nature and represent a major source of income for the Jehovah’s Witnesses’ collective exercise of their religion, namely 86.47%.

Lastly, their counsel accused the state of discrimination as the manual gifts in mainline religions were exempt of any taxation.

*Decision of the European Court*

In its judgment of 30 June 2011 (6), the European Court found a violation of Article 9 (right to freedom of religion), noting that the supplementary tax assessment "had concerned the entirety of the manual gifts received by the association, although they represented the main source of its funding. Its operating resources having thus been cut, it had no longer been able to guarantee to its followers the free exercise of their religion in practical terms."

Consequently, the Court held that France was to reimburse the 4,590,295 euros (EUR) for the taxes unduly claimed by the tax administration that the Association of Jehovah’s Witnesses had paid under coercion and 55,000 EUR for costs and expenses.

It cannot be said that it was a happy end, in the usual sense of this expression, to this 15-year long judicial saga because the damage caused to the association and its members went far beyond the financial issue but that is another story.

The case won in 2011 by Jehovah’s Witnesses has become a pilot judgment that afterwards has been used by the European Court for similar cases of arbitrary prosecution of religious and spiritual groups by France’s tax administration, such as the Missionary Evangelical Church in Besancon and Eric Salaun v. France (7), the Association of the Knights of the Golden Lotus v. France (8) and The Religious Association of the Pyramid Temple v. France (9).

Tai Ji Men’s legal battles have been lasting for 25 years and no end is in sight. Unfortunately for Tai Ji Men, there is no Asian Court of Human Rights where they could lodge a complaint but it is to be hoped that one day the current government of Taiwan will be able to repair the damage caused under previous government since the mid-1990s.

**Conclusions**

In all the four controversial cases in France targeting non-violent and law-abiding religious and belief groups abusively blacklisted by the legislative and executive powers, there was suddenly a clear manipulation of the Tax Code and the administrative terminology in order to kill them financially. This is another similarity with the Tai Ji Men case.

The big difference is that in our continent there is a supra-national court which can correct questionable national judgments, the European Court of Human Rights.

**Footnotes**:

1) Religious Liberty and Tax Reform : Remembering Senator Orrin Hatch, by Marco Respinti, in Bitter Winter, 05/11/2022, <https://bitterwinter.org/religious-liberty-tax-reform-senator-orrin-hatch/>

2) Tai Men Case, Chronology, <https://taijimencase.org/chronology/>

3) Abrogating the Rule of Law: The Tai Ji Men Tax Case in Taiwan, By Kenneth A. Jacobsen, Temple University School of Law Philadelphia, in The Journal of CESNUR, 1 September 2020, <http://cesnur.net/wp-content/uploads/2020/09/tjoc_4_5_6_jacobsen.pdf>

4) *Xie jiao* is often incorrectly translated as “evil cults.” It has been used since the late Ming era, meaning “heterodox teachings” and indicates religious movements which the government regards as hostile. Source: Bitter Winter, <https://bitterwinter.org/vocabulary/>

5) « Assemblée nationale. Rapport fait au nom de la Commission d’enquête sur les sectes » : <https://www.assemblee-nationale.fr/rap-enq/r2468.asp>

6) Decision of the European Court of Human Rights and other documents, in the case “Association Les Temoins de Jehovah v. France” (Ref. 8916/05)

<https://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=515>

7) Decision of the European Court of Human Rights and other documents, in the case “Eglise Evangelique Missionnaire et Eric Salaun v. France” (Ref. 25502/07)

<https://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=264>

8) Decision of the European Court of Human Rights and other documents in the case “Association des Chevaliers du Lotus d’Or v. France” (Ref. 50615/07)

<https://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=265>

9) Decision of the European Court of Human Rights and other documents in the case “Association Cultuelle du Temple Pyramide v. France” (Ref. 50471/07)