Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Granting Tax Benefits: "Recognition" of Smaller (New) Religious Movements as a Condition for Equal Treatment

Question(s) at stake:

Whether tax legislation that henceforth limits a tax exemption for religious buildings to a specific category of state-funded religious communities, in order to guarantee that the tax exemption is only granted to "authentic" religions, is discriminatory and whether this legislation affects the neutrality obligation to which the government is bound.

Outcome of the ruling:

Tax legislation that henceforth limits a tax exemption for religious buildings to a specific category of "recognized" state-funded religious communities is not discriminatory, since the recognition system is open to new entrants (new religious groups) and the tax advantage can therefore be regained by applying for and obtaining recognition status.

Topic(s):

- Financing and Taxations
- State recognition of Groups and Their Practices

Keywords:

- Concepts and criteria
- Indirect State support
- Legal status
- Legal toolbox
- New Religious Movements
- Non-discrimination
- Non-recognition

- Recognition and registration of groups
- Rights and freedoms
- State approaches and constitutional framework
- State neutrality
- Tax exemptions
- Taxes

Tag(s):

- Jehovah’s Witnesses

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Date:

14 November 2019

Jurisdiction / Court / Chamber:

Constitutional Court

Remedy / Procedural stage:

Previous stages:

None

Subsequent stages:

- ECtHR, Assemblée chrétienne des témoins de Jéhova d'Anderlecht a.o. v. Belgium, App. no. 20165/20, 5 April 2022 ECLI:CE:ECHR:2022:0405JUD002016520

Branches / Areas of law:

Constitutional law, Tax law

Facts:

On 23 November 2017, the legislator of the Brussels-Capital Region, one of the three constituent regions of the Belgian federal state, adopted an Ordinance (i.e., a regional statute law) modifying the property tax regime. Article 12 of this ordinance amends the Income Tax Code to restrict a property tax exemption for buildings used solely for public worship in the Brussels-Capital Region exclusively to "recognized" local communities of "recognized" religions.

The applicants, nine congregations of Jehovah's Witnesses, could no longer benefit from the exemption they had hitherto enjoyed in the Brussels-Capital Region because they did not belong to a "recognized religion".

The applicants brought an action for annulment against the contested provision of the 2017 Ordinance before the Constitutional Court. They invoked the violation of Articles 10 and 11 (principle of equality and non-discrimination), 19 (freedom of religion), and 172 (equality in tax issues) of the Constitution combined with Articles 9, 11, and 14 European Convention on Human Rights (ECHR) and Article 1 of Protocol No. 1 ECHR.

According to the applicants, the contested provision created an unjustified difference in treatment between the applicants and the communities of

“recognized” religions that continued to benefit from the real estate tax exemption – a difference in treatment which undermined the State’s duty of neutrality with regard to religious freedom. Furthermore, they argued that the criterion for making this distinction was discriminatory, since the exemption depended, as a result of the amendment of the law, on the status of “recognized religion”, a category which was not defined and for which no procedures were laid down in Belgian law.

The State’s duty of neutrality, they argued, had therefore been violated in so far as the benefit of the tax exemption depended on a “recognition” resulting from a political process and thus entailed a great risk of subjectivity and arbitrariness.

Ruling:

The Constitutional Court rejected the appeal for annulment.

The Court held that the criterion of “recognition” of a religion for the applicability of the tax exemption scheme was objective and relevant to meeting the legitimate aim of combating tax evasion.

It also found that the financial impact suffered by the applicants was not such that it would threaten their internal organization, their functioning, or their religious activities.

The Court concluded that the criterion was not disproportionate, since unrecognized religions could apply for recognition. For the rest, the Court pointed out that the procedure for recognition of religions criticized by the applicants was not governed by the provision challenged before it. As such, this procedure was not the subject of the present appeal.

Main quotations on cultural or religious diversity:

- The applicants […] argue that the difference in treatment created by the contested provision between, on the one hand, recognized religions, which benefit from the exemption from tax on immovable property intended solely for public worship, and unrecognized religious communities, which do not or

no longer enjoy such an exemption, is not objectively and reasonably justified and that it results in a violation of the freedom of religion". (B.4.)

- "The right to freedom of religion applies only to beliefs that are sufficiently valid, serious, coherent, and relevant. When that condition is met, however, the State is bound by a duty of neutrality and impartiality which is incompatible with any discretion on its part as to the legitimacy of the religious beliefs or the manner in which they are expressed". (B.6.2.)
- "It appears from the preparatory parliamentary documents that the legislator, by reserving the exemption from tax on real estate to the cadastral income of real estate intended exclusively for the public exercise of recognized religions and managed by recognized local institutions, sought to combat the practice of claiming exemption from tax on real estate for property intended for fictitious worship services. The fight against tax fraud is a legitimate aim". (B.7.)
- "Moreover, the criterion of recognition of a religion and of the institution responsible for the management of material affairs of the [local] religious community is objective". (B.8.)
- "This criterion is relevant in the light of the objective pursued, which is to combat tax fraud. In order to be recognized, religions must meet organizational and functioning criteria and therefore cannot be regarded as fictitious religions which can therefore no longer benefit from the exemption from tax on real estate". (B.9.)
- "The Court must also verify whether the regional legislator, by choosing the criterion of recognition of a religion [...], has not created disproportionate consequences for non-recognized religions, such as the requesting parties, and prejudiced their freedom of religion". (B.10.)
- "Freedom of religion does not imply that the churches or their faithful should have a tax status different from that of other taxpayers [...]. Nor does Article 9 [ECHR] imply the right for a religious association to be exempt from any

tax […]. However, a measure concerning the taxation of a religious association constitutes an interference with the exercise of the rights guaranteed by the aforementioned Article 9 if it has the effect of depriving the association of its vital resources, so that the latter is no longer able to concretely ensure adherents the free exercise of their worship, and when it threatens the survival or hinders the internal organization, the functioning of the association, and its religious activities". (B.11.1.)

- "In accordance with Article 255 of the Income Tax Code 1992 […] the tax on real estate amounts to 1.25% of the cadastral income […]. The applicants *do not demonstrate* that a property tax calculated on such a basis […] is disproportionate to the resources of the non-recognized religions and their existence or seriously impedes their internal organization, their functioning, and their religious activities". (B.11.2.)
- "When the regional legislator sets its tax policy, it has a wide discretion. That is the case in particular when he determines the chargeable objects and the taxpayers of the tax he imposes. The Court is only allowed to disapprove the policy choices of the regional legislator, as well as the motives underlying them, if they are based on a manifest error or if they are not reasonably justified. […]
- However, where the tax exemption is related to the right to manifest one's religion, either alone or in association with others, the legislator is bound by the neutrality and impartiality obligation imposed on him under Articles 19 and 21, paragraph 1, of the Constitution". (B.12.1.)
- "In order to achieve the legitimate aim of preventing fictitious religions from benefiting from the tax exemption, the regional legislator could legitimately use the criterion of recognition of the religion and of the local institution responsible for the material management of the religious community. After all, this criterion enables the regional legislator to achieve both the objective of combating tax fraud and to comply with its neutrality and impartiality obligation arising from Articles 19 and 21(1) of the Constitution." (B.12.2.)

- “The fact that the advantage of the tax exemption […] is linked to the recognition of a religion and of the institution responsible for the management of material affairs of a local religious community does not have a disproportionate effect on the non-recognized religions, as they can apply for recognition of their worship”. (B.12.3.)

Main legal texts quoted in the decision:

Domestic law

- Art. 12, § 1, and Art. 255 of the Income Tax Code 1992
- Art. 10, 11, 19, 21, and 172 of the Belgian Constitution

International law

- Art. 9, 11, and 14 of the European Convention of Human Rights
- Art. 1 of Protocol No. 1 to the European Convention of Human Rights

Cases cited in the decision:

Relevant domestic case law

- Constitutional Court, no. 18/1993, 4 March 1993.

ECLI:BE:GHCC:1993:ARR.018

Relevant European Court of Human Rights case law

- EComHR, *Association Sivananda de Yoga Vedanta v. France*, App. no. 30260/96, decision 16 April 1998 ECLI:CE:ECHR:1998:0416DEC003026096
- ECtHR, *Alujer Fernandez and Caballero Garcia v. Spain*, App. no. 53072/99, decision 14 June 2001 ECLI:CE:ECHR:2001:0614DEC005307299
- ECtHR, *Association les Témoins de Jéhovah v. France*, App. no. 8916/05, 30 June 2011 ECLI:CE:ECHR:2011:0630JUD000891605
- ECtHR [GC], *Izzettin Doğan a.o. v. Turkey*, App. no. 62649/10, 26 April 2016 ECLI:CE:ECHR:2016:0426JUD006264910

Commentary

Granting Tax Benefits: "Recognition" of Smaller (New) Religious Movements as a Condition for Equal Treatment

Depending on the framework of their national system for church-state relations, state authorities are free, within some limits set by the ECHR (which will be discussed below), to grant or to withhold direct financial support for certain religious communities or non-confessional life-stance organizations. There is also room to manoeuvre when granting indirect aid such as tax benefits.

This can lead to a layered system of state support, with specific categories of religious communities qualifying for benefits that other categories lack. This does not necessarily mean that smaller groups in a diverse religious landscape, who do not qualify for the support that larger (often traditional) groups do, are totally left out in the cold.

Belgium maintains a system in which local communities of so-called "recognized" religions and (non-religious) beliefs are granted direct government funding. The Constitution stipulates this for the salaries and pensions of their ministers and counsellors. This system, dating back to 1830, is open to new entrants. Several criteria for recognition (which, incidentally, are not enshrined in legislation) are mentioned (Velaers and Foblets 2014: 110–111; Torfs and Vrielink 2019: 20–21), but in practice, there is a crucial demographic criterion for new religious denominations applying for recognition: they must have *several tens of thousands of followers*, a threshold that the three "newcomers" (Islam in 1974, Orthodoxy in 1985, Humanism in 2002) easily surpassed. Smaller minorities are thus not eligible for recognition status, even if they meet other recognition criteria.

When it comes to the eligibility for indirect tax support (tax exemptions), until 2017 it did not matter whether a local religious community belonged to the category of "recognized" religions for obtaining indirect tax support: property tax exemptions were granted for all buildings used for public religious practice, regardless of the legal status of the religion concerned and the size of its

following. *The religious activity itself* was the decisive criterion.

The legislation on this point remained unchanged for a long time, until the three regions (state entities within the Belgian federation) became competent for this tax matter. The Brussels-Capital Region, the most religiously diverse part of the country, decided to limit the tax exemption to “recognized” local communities (namely communities belonging to the category of “recognized” religions) and thus to remove the exemption from the other religions. The government wanted to prevent this exemption scheme from being used for fraud by fictional religions pretending to practice religion. In the view of the government, the category of “recognized” religion is one for which fraud can be considered out of the question: after all, it concerns traditional religions, which are usually financed by the state.

This change in tax law means that local communities of less traditional, “non-recognized” religions have to invest more of their own financial resources in their houses of worship. Since the state does not directly support these local communities, the measure demands considerably greater financial sacrifices from their members.

The introduced distinction raises fundamental questions with regard to the principle of equal treatment, questions that the Constitutional Court does not shy away from. If the effect of the measure has consequences for the survival of religious communities, it is questionable for the Court whether religious freedom has not been violated. It found, however, that the complainants had not demonstrated that such a serious situation had arisen in their case (see B.11.2).

The assessment of the material impact of the new tax exemption regime on the Jehovah Witness congregations is important in the view of the Constitutional Court. Here it made use of a standard derived from Strasbourg jurisprudence, according to which a measure that threatens the existence and functioning of a religious community must be regarded as an interference with religious freedom (see B.11.1). This impact test is important now that the Belgian religious landscape is home to many smaller religious communities which, partly because

of the small size of their local communities, are simply not eligible for state aid and therefore remain dependent on the contributions of their own group of believers.

In this ruling, the outcome of this impact assessment was unfavourable for the religious community (unlike in the subsequent ECtHR judgment *Assemblée chrétienne des Témoins de Jéhovah d'Anderlecht a.o. v. Belgium*, App. no. 20165/20, 5 April 2022), but the fact that the Court is prepared to apply this test is relevant in principle, given the fact that the new tax regulation mainly affects smaller, self-financing minority communities which are not admitted to (or, in terms of number of believers, not eligible for) the financially favourable state-support system for recognized religions.

On one point the Constitutional Court is particularly sensitive to the new distinction created by the tax exemption scheme and in its judgment proposes an apparently appropriate solution. The Court points to the fact that denominations deprived of a tax exemption due to their unrecognized status are still free to pursue recognition (B.12.3). This is a position that fits in well with the open character of the Belgian state-support system. The Court thus seems to indicate that new religious diversity is accommodated in principle thanks to a basic feature of the Belgian religion-state regime: it does not exclude new entrants. The possibility of seeking legal recognition as a religion has never been explicitly referred to in earlier case law of the Constitutional Court. It was also the first opportunity to make this point.

The route to recognition has already been taken by Islam (recognized in 1974), Orthodoxy (recognized in 1985), and the non-religious Humanist movement (recognized in 2002). The recognition process of two other religions, Buddhism and Hinduism, is ongoing. After completion of the pending procedures, nine different religions and life-stance movements will be recognized and state-funded.

It can be deduced from this that the system for "recognition" of religions is actually open and that growing religious diversity brings new recognitions. The

Court assumes, it must be concluded from the reasoning, that the principle of openness also applies to (new) religious movements that are not traditional or even controversial, in this case the communities of Jehovah's Witnesses. In this sense, the Court is solution-oriented, and thus the approach adopted by the Court can be characterized as religiously neutral, especially since Jehovah's Witnesses are now regarded as a controversial non-traditional religion.

The solution proposed by the Court – the pursuit of "recognition" in order to regain eligibility for property tax exemptions – is highlighted briefly, but not elaborated on. It is therefore not possible to determine whether a recognition procedure is also a realistic way of averting the consequences of the termination of the tax exemption system for the faith communities concerned. This is where the intervention of the ECtHR, to which the complainants referred their case after the final judgment of the Constitutional Court, becomes significant.

The 2022 judgment of the ECtHR in *Assemblée chrétienne des Témoins de Jéhovah d'Anderlecht a.o. v. Belgium* differs from that of the Belgian Constitutional Court, because the analysis of the former goes one step further. The ECtHR examines the recognition process itself and comes to the conclusion that the procedure is not appropriate in the light of the ECHR, because it is based on criteria that do not offer a sufficient degree of legal certainty and because it is not governed by any text, whether legislative or regulatory. The ECtHR's reasoning can be read as a first step towards the establishment of a full-fledged, transparent recognition procedure, which could lead to a recognition system that is effectively accessible to religious newcomers.

The second major difference, and in a sense an adjustment of the Constitutional Court's reasoning, lies in the assessment of the impact the tax measure will have on the local communities of Jehovah's Witnesses. The ECtHR's impact analysis differs from that of the Belgian Constitutional Court. The Constitutional Court measures the proportionality of the tax against an asset value (1.5% of the market value of the real estate), while the ECtHR measures this against the annual income of the local religious communities. The latter test ties in with what is at stake: the functioning of the religious communities as a whole after the tax

on their places of worship is added to their annual expenditure – in this case amounting to 24% of the annual budget of those communities.

What can be learned from the ruling of the Constitutional Court, also in the light of the subsequent ECtHR judgment?

First of all, we can see that there is no objection in principle to retaining a system in which different categories of religions are given a different status, especially in the area of financial state support. This fits with the idea that it is up to the states themselves to maintain or change the (often tradition-based) design of the relationship between state and religious groups.

Furthermore, the Constitutional Court has indicated that the possibilities that exist in law for the inclusion of new religious communities, such as the "recognition" status provided for in Belgian law, are to be taken into account when a difference in treatment must be assessed. A thorough argumentation for this approach is lacking, even though the complainants pointed out defects in this recognition procedure. The solution indicated by the Constitutional Court – applying for recognition – only becomes truly useful if one also takes into account what the ECtHR in 2022 considered to be shortcomings of the Belgian recognition process. The ECtHR notes that neither the criteria for recognition, nor the procedure by which a religion may be recognized by the federal authority, are provided for in a regulation that satisfies the requirements of accessibility and foreseeability, which are inherent in the concept of the rule of law governing all the articles of the Convention. Here, the ECtHR joins the applicants' claim (not evaluated by the Constitutional Court) that the state's duty of neutrality has been violated, in so far as the tax benefit depends on obtaining recognition though a political process, which entails a great risk of subjectivity and arbitrariness.

The ECtHR's correction to the Constitutional Court's impact assessment is important in a system where growing religious diversity means that newly established (often small) local religious communities are initially by definition unrecognized and therefore ineligible for direct state support. This applies both to local communities of religions that are not recognized (and are dependent on

successfully completing the recognition procedure) and to (often small) local communities of already recognized religions that are not yet recognized locally or will never be recognized because they do not meet the minimum number of believers required for this purpose.

These new and often smaller and financially weaker groups are placed in a worse position for their religious practice as soon as they need physical space to practise their religion, since they no longer enjoy the tax exemption for buildings used for public worship.

In assessing religious diversity and plurality and the government's management of this diversity, the position and status of a religious community in national law plays an important role. If bottlenecks arise in practice, as in this case in tax law, an important role is reserved for those religions that are strongly organized and have to deal more frequently with government measures they consider to pose an obstacle to their functioning. Jehovah's Witnesses, although a minority religion, are strong players in legal matters in this field. The significance of the outcome of proceedings, leading to judgments such as those commented on here, has an impact by extension on the weaker, often smaller communities that do not turn to the courts.

Literature related to the main issue(s) at stake:

Specific legal publications

- Wattier, Stéphanie and Romain Mertens. 2020. "Les cultes non reconnus désormais discriminés en Région de Bruxelles-Capitale?" *Journal des Tribunaux*: 121–123.
- Christians, Louis-Léon. 2022. "La Belgique condamnée pour discrimination envers les cultes non reconnus", available at < http://belgianlawreligion.unblog.fr/2022/04/06/la-belgique-condamnee-pour-discrimination-envers-les-cultes-non-reconnus/> accessed 15 December 2025.

- Judo, Frank. 2022. “Jehova’s Getuigen en erkenning van erediensten: de olifant in de Kamer”. *Juristenkrant* 449 (11 May 2022): 1.
- Overbeeke, Adriaan. 2022. “Le régime belge des cultes reconnus : pas de problème en soi pour Strasbourg, mais … où est la procédure de reconnaissance fédérale?”, available at < http://belgianlawreligion.unblog.fr/2022/04/28/le-regime-belge-des-cultes-reconnus-pas-de-probleme-en-soi-pour-strasbourg-mais-ou-est-la-procedure-de-reconnaissance-federale/> accessed 15 December 2025.

General legal literature

- Denotte, Thibaut. 2008. “Le traitement fiscal des lieux affectés au culte ou à l'assistance morale laïque”. *Recht, Religie en Samenleving* 1 (2): 187–208.
- Torfs, Rik and Jogchum Vrielink. 2019. “State and Church in Belgium”. In Gerhard Robbers (ed), *State and Church in the European Union*, 11–50. Baden-Baden: Nomos.
- Velaers, Jan and Marie-Claire Foblets. 2014. “Religion and the State in Belgian Law”. In Javier Martinez-Torron & W. Cole Durham (eds), *Religion and the Secular State*, 199–220. Washington/Madrid: Brigham Young University/Complutense University of Madrid.

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