



Gifts received by “Association of Jehovah’s Witnesses” were taxed under a law that was too imprecise

In today’s Chamber judgment in the case [Association Les Témoins de Jéhovah v. France](#) (application no. 8916/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 9 (right to freedom of religion) of the European Convention on Human Rights.

The case concerned a supplementary tax demand for several dozen million euros, claimed from the association Les Témoins de Jéhovah. According to the association, the procedure in question had been flawed, and, given its scale, had infringed its freedom of religion.

Principal facts

The applicant, Association Les Témoins de Jéhovah (Association of Jehovah’s Witnesses), is a French association with its headquarters in Boulogne-Billancourt (France). Its main objective is to “support the maintenance and practice of the Jehovah’s Witnesses movement”. The Jehovah’s Witnesses movement, which claims to have more than 17 million followers across the world, including more than 250,000 in France, identifies itself as a Christian religion, the beliefs of which are based entirely on the Bible. Their movement is financed by “donations”. In a 1995 parliamentary report entitled “Sects in France”, the Jehovah’s Witnesses were classified as a sect.

The applicant association alleges that, following that report, steps were taken to marginalise it. In particular, the tax authorities carried out an audit. On the basis of the information gathered in that audit, it was given notice to declare the gifts that it had received from 1993 to 1996. The association refused and asked that the tax exemption applicable to gifts and legacies to liturgical associations, unions of liturgical associations and authorised religious congregations be applied to it (Article 795-10° of the General Tax Code, the CGI). As the applicant association had not submitted the declaration requested by the tax authorities, it was subjected to an automatic taxation procedure in respect of manual gifts which it had received and “which [had been] disclosed to the tax authorities in the course of the accounting audits to which it [had been] subjected” within the meaning of Article 757 of the CGI. In May 1998 it was notified of a supplementary tax assessment for the equivalent of about 45 million euros (about 23 million euros for the principal and 22 million in default interest and surcharges). The association stressed that the tax claimed concerned “donations” by 250,000 persons over four years (or an average of 4 euros per person per month for the period 1993-1996).

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In January 1999 the applicant association submitted an official complaint to the tax authorities, which was dismissed in September 1999. The association brought proceedings before the Nanterre *tribunal de grande instance* against the director of the revenue department which had dismissed its complaint. On 4 July 2000 the court dismissed the applicant association's claims. It held that Article 757, on which the automatic taxation procedure had been based, applied both to individuals and legal entities, and that therefore it had been correctly applied to the applicant association. It also held that the latter had not been justified in alleging that it was entitled to the exemptions in question. On 28 February 2002 the Versailles Court of Appeal upheld that judgment. On 5 October 2004 the Court of Cassation dismissed an appeal on points of law submitted by the applicant association.

According to the most recent information submitted by the French Government, the amount claimed from the Association Les Témoins de Jéhovah was more than 57.5 million euros.

Complaints, procedure and composition of the Court

Relying in particular on Article 9, the association Les Témoins de Jéhovah complained that the disputed tax proceedings had infringed its freedom of religion.

The application was lodged with the European Court of Human Rights on 24 February 2005 and declared [partially inadmissible](#) on 17 June 2008. The complaint under Article 9 was declared [admissible](#) on 29 September 2010. The European Association of Jehovah's Witnesses was authorised to submit observations.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Elisabet **Fura** (Sweden),
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 9

The Court had already held in several cases that Article 9 protected the free exercise of the Jehovah's Witnesses' right to freedom of religion. With regard to the applicant association's case, the Court therefore examined, firstly, whether the disputed supplementary tax assessment had amounted to interference in its right to freedom of religion, and, if so, whether that interference was acceptable in the light of the Convention.

It noted that the supplementary tax assessment in question 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. There had therefore indeed been interference in the applicant association's right to freedom of religion.

For such interference to be acceptable from the perspective of Article 9, it had above all be “prescribed by law”, and the law in question had to be formulated with sufficient clarity to be foreseeable: the citizen had to be able to regulate his or her conduct accordingly. The “law” under which the gifts to the association Les Témoins de Jéhovah were automatically taxed was Article 757 of the CGI, under which manual gifts “disclosed” to the tax authorities were subject to gift tax. The Court identified two reasons why that Article and its application to the case of the applicant association had not been sufficiently foreseeable.

Firstly, the disputed Article gave no details about the targeted “donee”; as a result, it was impossible to know whether it was applicable to legal entities and thus to the applicant association. In the light of the relevant legislative history, the Court noted that the text in question had been drawn up to regulate the transmission of property within families and concerned only individuals. It was not until in 2005 that an instruction (published in the Official Journal of the Revenue Department) specified that, by virtue of a ministerial response in 2001, that Article was applicable to manual gifts to associations. Yet the supplementary assessment in respect of the association Les Témoins de Jéhovah predated that instruction (1998).

Secondly, with regard to the concept of the “disclosure” of gifts within the meaning of Article 757, the Court noted that today’s case was the first in which it had been argued that submission of the required accounting records in the context of a tax audit was the equivalent of “disclosure”. Such an interpretation of the Article – which itself gave no detail on the circumstances of “disclosure” – would have been difficult for the association to foresee, in that manual gifts had until then been exempt from any obligation to declare them. As the taxation of manual gifts to the applicant association had depended on the conduct of a tax audit, the application of the tax law had not been foreseeable.

In conclusion, the interference in the applicant association’s right to respect for its freedom of religion had not been “prescribed by law” in violation of 9..

Article 41

The association requested the cancellation of the supplementary tax assessment, restitution of the amounts seized on the occasion of the tax audit (more than 4.5 million euros, plus interest) and amounts in respect of non-pecuniary damage and costs and expenses. The Court found that the matter was not ready for decision and reserved it. It would be decided at a later date in the light of additional observations from the parties and/or an agreement reached by them.

Separate opinion

Judge Costa expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.