

entered into for a shorter trial period to test its working. Accordingly, the chancellor granted the amendments sought to the 2018 faculty, albeit with changes to the proposed licence agreement to reflect its shorter trial period. [Jack Stuart]

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Anderlecht Christian Assembly of Jehovah's Witnesses & Others v Belgium

European Court of Human Rights, 4 April 2022

[2022] ECHR No 20165/20 [in French]

Recognition of religious denominations – exemption from regional property tax – Articles 9 and 14 ECHR

In Belgium, the recognition of religions is a federal matter; faith groups may apply for recognition but that is optional rather than compulsory and the procedure is not enshrined in legislation but is derived from administrative practice. There are currently six recognised religious denominations: Roman Catholicism, Protestantism, Judaism, Anglicanism, Islam and Orthodoxy—but not the Jehovah's Witnesses. The Witnesses have chapels in the Brussels-Capital Region, where, in 2017, the regional legislature amended the income tax code from the 2018 fiscal year to restrict the exemption from property tax (*précompte immobilier*) on places of worship to 'recognised religions', meaning that the Witnesses could no longer claim the exemption. Appeals to the domestic courts were unsuccessful.

Before the European Court of Human Rights, the Witnesses argued that the new legislation in the Brussels region had discriminated against them, contrary to Article 14 ECHR (discrimination) taken with Article 9 (thought, conscience and religion) and Article 1 of Protocol No 1 (property). The Government contended that the Witnesses could apply for recognition of their faith at federal level in order to continue to claim exemption in the Brussels-Capital Region, to which the Witnesses countered that it would be pointless to apply, given the serious shortcomings in the procedure for doing so. Nor was it a small matter: the tax was equivalent to 23 per cent of their funding income and a substantial proportion of the annual running costs of their buildings. The court agreed that the amounts payable were not insignificant and had a considerable impact on the Witnesses' operations as religious communities, and the facts therefore engaged Article 9 and Article 1 of Protocol No 1. It was common ground between the parties that there was a difference in treatment between recognised and unrecognised religious communities.

The Brussels-Capital Region had intended to combat misuses of the exemption perpetrated by so-called 'fictitious' cults; but no specific case of fraud had been cited in the *travaux préparatoires* preceding the adoption of the order by

the region, nor had the Belgian Government offered an example. Further, it did not appear on the evidence that the Witnesses had either committed or were suspected of having committed any previous tax fraud. The recognition of religion as the distinguishing criterion governing the exemption from property tax was within the margin of appreciation available to the national authorities. However, in the present case neither the recognition criterion nor the procedure for obtaining it was set out in a text that satisfied the requirements of accessibility and foreseeability inherent in the notion of the rule of law governing all the articles of the Convention; it did not, therefore, meet the test of legal certainty. The system under which recognition was subject to the sole initiative of the Minister of Justice and the purely discretionary will of the legislature inherently involved a risk of arbitrariness. The difference in treatment to which the applicants had been subjected lacked objective justification and had therefore been unreasonable. There had been a violation of Article 14, taken with Article 9 and with Article 1 of Protocol No 1. [Frank Cranmer]

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