Information Note on the Court's case-law No. 142

June 2011

Association Les témoins de Jéhovah v. France - 8916/05

Judgment 30.6.2011 [Section V]

Article 9

Article 9-1

Freedom of religion

Unforeseeable taxation of donations to religious association: *violation*

Facts – The applicant association's main purpose is to support the maintenance and practice of its movement, which it describes as a Christian religion. The movement is financed by "donations". In 1995 a parliamentary report classified the Jehovah's Witnesses as a sect. In the same year a tax audit of the applicant association's finances was conducted. On the basis of the information gathered, it was given notice to declare the gifts that it had received in the period 1993 to 1996. The association refused, and asked that the tax exemption applicable to gifts and legacies to liturgical associations be applied to it; the authorities then decided to subject it to the automatic taxation procedure in the absence of a declaration. In May 1998 the association was notified of a supplementary tax assessment for the equivalent of about EUR 45,000,000. The tax claimed concerned donations by 250,000 persons over four years. All of the appeals lodged by the applicant association were unsuccessful.

Law – Article 9: The disputed supplementary tax assessment had concerned the totality of the manual gifts received by the applicant association, although they represented 90% of its income. Taxation of those gifts amounted to interference, which had had the effect of cutting off the association's operating resources; it had no longer been able to guarantee to its followers the free exercise of their religion in practice. The appeal court had considered that the amounts of money recorded by the applicant association as "donations" in its accounts amounted to manual gifts, whatever the total of those amounts. Those gifts were therefore taxed in application of Article 757 of the General Tax Code, since they had been "disclosed" by submission of the applicant association's accounts to the tax authorities during the tax audit that began in 1995.

As to the foreseeability of the measure, the Tax Code stated that manual gifts "disclosed" to the tax authorities were subject to gift tax. The legislature's initial intention had been to regulate the transmission of property within families and therefore concerned only natural persons. A ministerial reply dated March 2001 had stated that the provisions of the Tax Code were applicable to manual gifts received by associations; in the present case, however, the notification of the automatic taxation procedure and the supplementary tax assessment dated from 1998. In addition, the Government had not referred to the decisions by the Court of Cassation which, at the material time, had interpreted the Tax Code as applying to legal entities. The relevant article of the Tax Code had been amended in 2003 following the applicant association's court case, in order to take account of the financial consequences of this fiscal measure on associations and to exclude taxation of organisations that operated in the public interest.

As to the concept of "disclosure" of gifts, it was held in this case, for the first time, that the submission of accounts to the authorities during a tax audit was the equivalent of "disclosure". Such an interpretation of the disputed provision by the courts would have been difficult for the applicant association to foresee, in that manual gifts had until then been exempt from any declaration requirement and had not been systematically subjected to duty on transfers without consideration. This lack of clarity regarding the concept of "disclosure" in the Tax Code could not, as the law stood at the relevant time, have permitted the applicant association to envisage that the mere submission of its accounts would amount to disclosure. Ultimately, this concept as interpreted in the instant case had made taxation of manual gifts dependent on the conduct of a tax audit, which necessarily implied an element of chance and therefore a lack of foreseeability in the application of the tax law.

Thus, the applicant association had been unable reasonably to foresee the consequence which the receipt of donations and the submission of its accounts to the tax authorities might entail. Accordingly, the interference had not been prescribed by law within the meaning of Article 9 § 2. Having regard to the above conclusion, the Court did not consider it necessary to examine further whether the other requirements of the second paragraph of Article 9 had been met.

Conclusion: violation (unanimously).

Article 41: Question reserved.
