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FINANCING RELIGIOUS ORGANISATIONS IN EUROPEAN UNION

Florina TĂVALĂ¹

Abstract

Serious scientific efforts have been made to construct a generally applicable system with a European perspective based on the individual national systems. These have, however, been met with objections on both a political and an administrative level, with countries insisting on the uniqueness of their own national or even regional models. The purpose of the following essay is, however, to determine the common systematic structures and to distinguish tools of financing so general that they need not be associated with Religious Societies only.

Keywords

Financing; religious societies; law of religions; church; taxes.

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1. Introduction

Often, when the topic of financing Religious Societies is at stake, it is regarded from a comparative perspective. European law of religion offers a variety of systems (Gerhard Robbers, (2019), not only concerning the recognition or registration of Religious Societies, but also and apparently even more manifoldly concerning their financing. Although they concede that the models can learn from each other's experiences, they insist on their independence, they insist on the impossibility of achieving any kind of harmonisation.(Gerhard Robbers, (2019)

Due to its legal development in the last century, the host institution of this conference has been undertaking a series of efforts to collect and systematise positions regarding the financing of Religious Societies throughout Europe and beyond. (Wolfgang Wieshaider, (2010), : 69-75)

2. The donors of religious organisations

Usually there are three categories of donors: individuals, who are mostly the Societies' members, institutions independent from governmental structures, and the State. All of them transfer money to the Religious Societies directly and indirectly. While non-governmental donors can give voluntarily, such as e.g. in Poland (Michal Rynkowski, (2019), : 475) or by obligation, in accordance with the law, the States contribution is generally governed by self-binding statutes or contracts. This also applies to restitution for various aspects of damage or financial detriment incurred.

In accordance with the rules of membership, members can withdraw from paying obligatory dues by leaving the body corporate constituting the Religious Society, which is also guaranteed by Art. 9 ECHR. This is the case in both Germany and Austria, although the title is tax-based there and dues-based here, which ought not to be confused. (Wolfgang Wieshaider, (2010), : 70) In order to avoid massive efflux:- of members based for financial reasons, some countries followed the Italian example of a tax assignment model, where parts of the income tax, which has to be paid anyhow, can be assigned to certain recognised Religious Societies. Thus, non-members can assign their tax shares, too (but need not), which widens the spectrum of potential donors.

Where non-members are obliged to support Religious Societies, their contribution is indirect and imposed by State law. In Finland, for instance, the Lutheran Church and the Russian Orthodox Church are entitled to raise taxes from their members, which are however levied by the State. In addition, parts of the income tax paid by bodies corporate of private law. i.e. by companies and associations, are allocated to these two Churches

exclusively, whereas they themselves are exempted from income tax. (Matti Kottiranta, (2019), : 629)

3. The purpose of religious organisations

Religious Societies receive money from different sources and for different purposes. They can provide Services and goods for which they charge. The Services can be of a core religious nature, such as wedding ceremonies, for instance, or of other kinds, such as various social Services. They can sell agricultural products, as often pursued by monasteries, books or any other goods, or run restaurants, hotels, seminar premises or the like. A new trend of monastery holidays where the guests join in the life of the order is a hybrid of the aforementioned. (Wolfgang Wieshaider, (2010), : 71)

With regard to taxes, a similar benefit connection exists where the members pay a tax that is transferred to the Religious Society by the State, such as in Germany. In assignment systems, members can still consume Services, but assign their tax shares to other institutions, for instance, in order to express their protest against some policies of the Religious Society. The benefit connection is hence loosened.

Voluntary donations are offered both in exchange for free benefit and in support of major or minor tasks of the Society. Thus, donors may want to give voluntarily a sum equivalent to the value of Services received or help to maintain a soup kitchen, for instance, where they would however not eat themselves. This may be the case of Romania. (Emanuel Tăvală, (2010), :100-105).

Such a purpose-oriented classification can be applied to State subsidies, too. States financially support denominational schools or social institutions, the renovation and restoration of cultural heritage owned by Religious Societies and the like. (Emanuel Tăvală, (2010), :100-105).

The situation changes somewhat where States subsidise religious ministers' salaries - such as is the case in Slovakia (Milos Klatik, (2010), : 32-41) - because the benefit of their work is mostly restricted to members.

Both the States payment of religious ministers' salaries and fixed dues - be they collected as taxes or private dues - may be the result of a constitutional compromise between the State and a formerly dominant religion, such as is the case for Belgium, Luxemburg and Alsace-Lorraine - all three Systems originating in the Napoleonic Concordat of 1801. (Francis Messner, (2019), :232)

And it lays a bridge to the value based purposes, where Religious Societies are subsidised because they encourage their members to engage in voluntary, socially appreciated activities and thus multiply the corresponding

governmental subsidies, maybe more than within other, non-religious structures. Another reason is restitution, which in many cases is not offered as a single transfer, but paid in repeated instalments every year such as for instance in Romania.

4. The justification for state subsidies under art.9 and 14 ECHR

The State as a donor has to present justification for the use of its budget, justification that must withstand a principle of equality test. This test is easy when the Religious Societies do not receive - be it directly or indirectly - money under a specifically religious title, such as often is the case with subsidies for the renovation and maintenance of cultural heritage. A different picture is produced by tax law where tax advantages for ecclesiastical purposes are equated with such for charitable and humanitarian ones.

Given justification for the State's financing of Religious Societies are generally the compensation, for instance after nationalisation (as the case of Romania is), support for activities organised by ecclesiastical and secular institutions or expansion of subsidies originally granted only to a State or dominant Church.

The crucial parameters involved, however, are religious freedom and the principle of equality. In this regard, the jurisprudence of the Strasbourg instances set forth the interpretative framework, outlining a certain margin of appreciation within which the States may regulate the financing of Religious Societies.

4.1. Church Taxes

The first set of issues concerns church taxes. From the jurisprudence of the European Commission of Human Rights, we can deduce that a church tax as such, levied on individual members, does not constitute a breach of religious freedom, where an individual has the possibility to leave the Religious Society concerned and thus free herself from the tax (case *E&G.R. vs. Austria*, ECHR 9781/1982). If the law does not provide any formal proceeding, it is legitimate and proportionate to require a verbal declaration (case *Gottesmann vs. Switzerland*, ECHR 10616/83). In any case, some corresponding legal action must be provided by State law if Art. 9 ECHR - *argumento* "this right includes freedom to change his religion or belief" - is taken seriously; this procedure cannot be solely mandated to the Religious Societies, because many religious laws would not regulate or accept such individual decisions.

Against this position, it is argued that a simple declaration to the

religious minister of the relevant Religious Society would be enough, such as is the practise in many States without church taxes. This view would deny the possibility of being influenced by the religious minister and declare the official departure from a Religious Society an anachronism not fitting into a modern system of individual and collective religious freedom. (Wolfgang Wieshaider, (2010), : 73) Yet, the State is required to protect precisely this freedom and hence to create a framework where both individuals and Religious Societies can enjoy their liberty free from pressure and influence; this includes a public statutory procedure for the individual to leave a Religious Society.

In Sweden, the situation was insofar different as the church tax was levied on everybody regardless of religious affiliation, whereby Swedish residents could get an exemption. About 30 % had to be paid by everybody, even those with other religious affiliation or with no religious affiliation, because the money was supposed to cover the costs of the Church's public administrative functions. (Lars Friedner, (2019), : 649)

Whereas this part was not challenged in a first case, the European Court of Human Rights held that a limitation of the exemption from Church tax to Swedish residents violates Art. 1 of the First Protocol to the ECHR. Therefore, the Court did not examine further a violation of Art. 9 ECHR as the Commission had established previously (case Darby vs. Sweden, ECHR11581/85).

In a Finnish case, where a freethinkers' company, its manager, and a freethinkers' association challenged the Finnish church tax levied on companies, the Commission, however, repudiated an infringement of Art. 9 ECHR:

“The company form may have been a deliberate choice on the part of the applicant association and its branches for the pursuance of part of the freethinkers' activities. Nevertheless, for the purposes of domestic law this applicant was registered as a corporate body with limited liability. As such it is in principle required by domestic law to pay tax as any other corporate body, regardless of the underlying purpose of its activities on account of its links with the applicant association and its branches and irrespective of the final receiver of the tax revenues collected from it.” (Matti Kottiranta, (2019), : 631)

While the government had pointed at Art. 1, § 1 of Prot. 1 to the ECHR, ascribing the power of taxation to the State, and at the Court's arguments concerning the Church's public functions in the aforementioned Swedish case (which apply to the Finnish Lutheran Church as well), the Commission confined itself to underlining the general obligation to pay taxes as levied by the State. This view is in line with an opinion issued about

a decade earlier when the Commission had stated that “the obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected.

It follows that Article 9 does not confer on the applicant the right to refuse, on the basis of his convictions, to abide by legislation, the operation of which is provided for by the Convention, and which applies neutrally and generally in the public sphere, without impinging on the freedoms guaranteed by Article 9.” (Matti Kottiranta, (2019), : 631)

In a second Swedish case, the general share of the aforementioned church tax, from which dissenters could not be exempted either was alleged to breach religious freedom (case Bruno vs. Sweden, *ECHR 32196/96*). The Court referred to the general public activities of the Church of Sweden. In this regard, it had to be considered that the parishes within the Church of Sweden were obliged to construct and maintain public burial-grounds, whereby the right to be buried there did not depend on the deceaseds religious affiliation. In most parts of Sweden, the local parish of the Church of Sweden was the competent burial authority and additionally had to provide for separate burial-grounds for non-Christians. The parishes were also responsible for the population records made before 1991 till their future transfer to the State archives. Therefore, the Court considered the remaining general shares of the church tax justified in a democratic society and proportionate, which is why Art. 9 ECHR was not violated.

So obviously Art. 9 ECHR can set limits to the margin of appreciation left to the States by Art. 1, § 1 of Prot. 1 to the ECHR.

4.2. Assignment of Income Tax

The second set of issues concerns the assignment of income tax. In this respect, one case where the applicants are members of the Baptist Evangelical Church in Valencia (a member of the Federation of Evangelical Churches of Spain) has to be mentioned. Since the latter had declined to include in its agreement with the State to benefit from income tax assignment, the applicants were offered the opportunity to assign their share of income tax either to the Catholic Church or for other charitable purposes, an arrangement that they alleged to be discriminatory considering Art. 14 ECHR in junction with Art. 9 ECHR. The European Court dismissed the application, arguing that “[...] the obligation imposed on Churches to reach an agreement with the State in order to be eligible to receive part of the revenue from income tax does not appear [...] to be unfounded or disproportionate. Furthermore, regard being had to the margin of

appreciation left to Contracting States, [...] particularly as regards the building of the fragile relations that exist between the State and religions, it cannot be considered as amounting to discriminatory interference with the applicants' right to freedom of religion. [...] Indeed, such a margin of appreciation is all the more warranted in that there is no common European standard governing the financing of churches and religions, such questions being closely related to the history and traditions of each country.”(Case *Alujer Fernandez&Caballero Garcia vs Spain*, ECHR 53072/99)

In regard to the aforementioned decisions of the Strasbourg instances, it is important to discern the applicants position: individual taxpayers, be they members of the Religious Society concerned or not, complain about their obligation to pay.

4.3. Discrimination

There is a different slant to the question when a Religious Society itself claims to be discriminated against in comparison to other communities. The Austrian law, distinguishing two levels of Religious Societies, assigns tax advantages only to those Religious Societies legally recognised as bodies corporate of public law. The European Court of Human Rights called tax advantages for Religious Societies as such “privileges” which “[...] undoubtedly facilitates a religious society’s pursuance of its religious aims. In view of these substantive privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the States authorities to remain neutral in the exercise of their powers in this domain requires therefore that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.” (case of *Relionsgemeinschaft der Zewugen Jehovas vs Austria*, ECHR 40825/98).

The term “privileges” however indicates that freedom of religion does indeed oblige the State to accommodate religion in such a way. The violation occurred because of unfair requirements for application to the higher status, which not only results in tax privileges, but also other rights that have a direct and, in terms of religious freedom, relevant impact on the exercise of religion.

5. Conclusions

This case law might not be complete in term of covering all possible situations. However, some major conclusions can already be drawn:

- a tax system based on the tax payer's religious affiliation must provide for a procedure to opt out;
- a tax used for ecclesiastical purposes and levied on a group of tax payers regardless of their religious affiliation must be specifically justified by the corresponding Religious Society's public functions;
- if a Religious Society refuses to take part in tax assignment, its members cannot assign their share to this Society;
- if a State grants tax privileges to Religious Societies, this legal status must be open to all religious groups who wish to gain it by fulfilling fair and legitimate conditions through a non-discriminatory procedure.

Although the national sets of rules concerning the financing of Religious Societies being deeply rooted in history, the modern standards of the ECHR apply to all of them. Some States have already been challenged, whereas others have not yet; this does, however, not imply that the latter's legal provisions already fully comply with the Convention. The European Court of Human Rights will continue to develop the standards. From the aforementioned considerations, such viable standards seem to converge on two foci which avoid both discriminatory aspects as well as other issues of fundamental rights, such as data transfer from Religious Societies to the State and vice versa.

Bibliography

- Friedner, Lars, (2019) Church and State in Sweden, in Gerhard Robbers, *State and Church in the European Union*, Nomos, Baden-Baden.
- Klatik, Milos, (2010), The Financing of the ECAC in Slovakia, in Michaela Moravcikova, *Financing of Churches and Religious Societies in the 21st Century*, Institute for State-Church Relations, Bratislava.
- Kottiranta, Matti, (2019), State and Church in Finland, in Gerhard Robbers, *State and Church in the European Union*, Nomos, Baden-Baden.
- Messner, Francis, (2019) Church and State in France, in Gerhard Robbers, *State and Church in the European Union*, Nomos, Baden-Baden.
- Robbers, Gerhard, (2019), *State and Church in the European Union*, Nomos, Baden-Baden, 2019.
- Rynkowski, Michal, (2019) State and Church in Poland, in Gerhard Robbers, *State and Church in the European Union*, Nomos, Baden-Baden.
- Tăvală, Emanuel (2010), Financing Religious Communities in Romania, in Michaela Moravcikova, *Financing of Churches and Religious Societies in the 21st Century*, Institute for State-Church Relations, Bratislava.

Wieshaider, Wolfgang (2010), *Modes of Financing Religious Societies*, in Michaela Moravcikova, *Financing of Churches and Religious Societies in the 21st Century*, Institute for State-Church Relations, Bratislava.