EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 122 (2017)
06.04.2017

Taxes and fees imposed by German churches did not violate religious freedom

Under German law, some churches and religious societies are entitled to levy a church tax and/or fee on their members. The five applicants complained that, when such taxes or fees were calculated and levied on the basis of the joint income of both the applicant and their spouse, it violated their right to freedom of religion. In particular, they complained variously of being obliged to pay for their spouse's special church fee when they themselves were not a member of the church; of requiring the financial assistance of their spouse to pay their own special church fee, making them dependant on their spouse for their freedom of religion; or of being obliged to pay an unfairly high church tax, as it had been calculated taking their spouse's income into account. Some applicants also complained that the taxes or fees had been discriminatory.

In today's **Chamber** judgment[1] in the case of Klein and Others v. Germany (application nos. 10138/11, 16687/11, 25359/11 and 28919/11) the European Court of Human Rights held, unanimously, that most of the complaints under **Article 9 (freedom of religion) of the European Convention of Human Rights** were inadmissible. In particular, this was because in these cases the taxes/fees had been levied not by the State, but by the applicants' churches – which the applicants were free to leave under German law. As such, in most of the cases the levying and calculation of the taxes/fees had been an autonomous church activity, which could not be attributed to the German State.

However, in one case the State had been involved in levying a special church fee on an applicant who was not a member of the relevant church. This was because the fee which had been levied on the applicant's wife had been subtracted directly from the applicant's tax reimbursement claim by way of an off-set – therefore subjecting the applicant to his wife's financial obligations towards her church. However, this off-set had arisen because the couple themselves had chosen to file a joint tax assessment, and it appeared that the applicant could have cancelled it by lodging a settlement notice. In these circumstances, the off-set had been a proportionate way for the State to try to rationalise the couple's tax liabilities, which had involved **no violation** of the Convention.

The Court also held inadmissible all of the applicants' further complaints under **Article 8 (right to respect for private and family life)**, **Article 9 (freedom of religion)** and **Article 12 (right to marry)**, taken alone and/or in conjunction with **Article 14 (prohibition of discrimination)**.

Principal facts

The first applicant, Jörg Max Klein, was born in 1964 and lives in Heidelberg. Mr Klein's wife is a member of the Protestant Church, but Mr Klein is not. For the tax assessment period of 2008, the couple opted for a joint tax assessment. Their tax bill included a special church fee for Mr Klein's wife amounting to 2,220 euros (EUR). Mr Klein complains that the fee had been offset against his own tax reimbursement claim, meaning that he had been compelled to pay it – even though he was not a member of his wife's Church. He also complains that the tax bill did not contain any

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.

information on his rights in regard to the offsetting; and that the fee discriminated against him when compared with other married couples.

The second applicant is Fritz Nussbaum (born in 1935), and the fifth applicant is Uta Gloeckner (born in 1963). They live in Sulzbach-Rosenberg and Nuremberg, respectively. Both Mr Nussbaum and Mrs Gloeckner are members of the Protestant Church, whilst their spouses are not. In the relevant tax year, the applicants' incomes were significantly lower to those of their respective spouses (indeed, Mrs Gloeckner had no income at all). Both applicants were made liable for a church fee that had been calculated on the basis of the joint living expenses (and ultimately the joint income) of the applicant and their respective spouse. Both applicants complain that this method of calculation meant that the fee could exceed their personal income, which would render them dependent on their spouses in the exercise of their freedom of religion. Mrs Gloeckner further complained that the fee discriminated against women, as it was mainly women in Germany who had no income and on whom the fee was levied.

The third and fourth applicants are a married couple, Philip Redeker (born 1963) and Heike Redeker (born 1965). They live in Gera. Mr Redeker is a member of the Protestant Church, whilst Mrs Redeker is not. For the relevant tax years, Mr Redeker had a far higher income than his wife. Their complaint concerns their liability for church tax (not the special church fee complained of by the second and fifth applicants). As Mr and Mrs Redeker had opted for a joint tax assessment, Mr Redeker's church tax was calculated with his income tax as a proportion of the income tax attributable to him, rather than in proportion to his share of the couple's total income. The couple complain that this method of calculation made the tax too high; that Mrs Redeker had been involuntarily obliged to contribute to her husband's church; and that they had been discriminated against when compared with spouses who both belong to a church levying church taxes.

All of the applicants lodged objections about these taxes or fees with the relevant tax office. All except Mr Klein also lodged legal proceedings to challenge them. However, all of the objections and legal claims were dismissed.

Complaints, procedure and composition of the Court

The applicants complained that the church taxes or fees had violated their rights under Article 9 (freedom of religion), alone and/or in conjunction with Article 14 (prohibition of discrimination). The second and fifth applicants also made discrimination claims under Article 8 (right to respect for private and family life) and Article 12 (right to marry), taken alone and in conjunction with Article 14.

The applications were lodged with the European Court of Human Rights on 8 February 2011, 9 March 2011, 21 April 2011 and 6 May 2011, respectively.

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

Erik **Møse** (Norway), *President*,
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

Article 9 (freedom of religion)

The Court noted that Article 9 enshrines negative as well as positive rights concerning religion, including the right not to be compelled to be involved in religious activities. The payment of a specific tax to a church to fund its religious activities may, in certain circumstances, be seen as such involvement. There will be an interference with the negative right when the State brings about a situation in which individuals are obliged – directly or indirectly – to contribute to a religious organisation of which they are not a member.

The first applicant

In regard to the issue of whether there had been an interference with Mr Klein's freedom of religion, the Court noted that the special church fee which had been levied on his wife had been subtracted directly from Mr Klein's tax reimbursement claim by way of an off-set. This had followed as an automatic consequence of the spouses' decision for a joint tax assessment. German legislation had therefore brought about a situation where Mr Klein had been subjected to his wife's financial obligations towards her church without himself being a member of it. The Court therefore held that there had been an interference with the negative aspect of Mr Klein's rights under Article 9.

The Court further held that the interference had been prescribed by law, and that it had pursued a legitimate aim (namely, to guarantee the rights of churches and religious communities which, under German law, have the right to levy church taxes). The remaining question was whether the interference had been necessary in a democratic society.

In this regard the Court observed first that the couples choice of a joint tax assessment not only had consequences for the calculation of the couple's overall tax, but also for the administration of the tax claims against Mr Klein and his wife, which were put together in one document and which allowed the tax authorities to offset the special church fee of the applicant's wife against the applicant's tax reimbursement claim. Insofar the Government argued that the spouses' decision in favour of a joint income tax assessment led to a net reduction of Mr Klein's tax burden in spite of the offsetting the Court noted that the reduction did not remove the link between the spouses' choice on financial grounds for a joint tax assessment and the possibility of offsetting. That link had, however, to be seen in the context of the domestic tax system as a whole.

In this connection, the Court noted that the off-setting had not led to an irreversible financial loss to Mr Klein. This was because he could have applied to undo it using a settlement notice under Article 218 of the Fiscal Code. It therefore appears that Mr Klein had an opportunity to remove the interference with his freedom of religion by his own action.

When balancing, on the one hand, Mr Klein's right to negative freedom of religion and, on the other hand, the public interest in the efficient collection of church taxes, the Court has to take into account the burden put on the Mr Klein in the offsetting procedure. In this connection, regard must be had to the fact that it was in the first place the spouses' decision to make a joint tax declaration which led to the two separate tax claims being handled together – which in turn obliged the State to engage in a more complex assessment involving offsetting. The offsetting was therefore an administrative mechanism induced by the couple's own actions, which could be undone by them with a further administrative mechanism, namely the settlement notice. There was no evidence to suggest that applying for a settlement notice would have caused Mr Klein any financial burden, taken up much of his time, or entailed any further consequences. Furthermore, though Mr Klein had complained that the tax bill contained no information on available remedies for the offsetting, the Court noted that the Convention does not guarantee, as such, the right to be informed of domestic remedies. In the circumstances, the Court held that the possibility to apply for a settlement notice could be regarded as a counterbalancing factor in the case.

In light of the above, taking into account the wide margin of appreciation left to States in regard to the relations between churches and the State, the Court held that the Government had produced relevant and sufficient reasons to justify the interference with Mr Klein's freedom of religion. There had therefore been no violation of Article 9.

The second and fifth applicants

When an individual is voluntarily a member of a church and is obliged by the church to pay a tax as a result, as long as State legislation provides for the possibility to leave the church and thus not be liable for the tax, the tax does not, as such, interfere with the right to freedom of religion. Mr Nussbaum and Mrs Gloeckner are both members of the Protestant Church. Neither called into question their obligation to pay a church fee whilst they were members of the organisation, nor their right to leave the church and not be liable for its taxes or fees in the future. Their complaint concerned the method by which their special church fees were calculated. However, the decision to levy the special church fee and the method of its calculation was not taken by the German State. As such, it had been an autonomous church activity, and cannot be attributed to the German State. Given the State's limited role in this field, and that the applicants neither called into question their obligation to pay the fee nor their right to leave their church, the Court held that the authorities had included sufficient safeguards to ensure freedom of religion. There had therefore been no interference with the applicants' freedom of religion, making this part of the application manifestly ill-founded and inadmissible.

The third and fourth applicants

The Court held that in this application the church tax had been levied on and collected from the person liable to pay it, namely Mr Redeker, who is a member of the relevant church. Furthermore, there was no evidence to suggest that the couple's decision to have a joint tax assessment had increased Mr Redeker's church tax. Indeed, the Court noted that the decision to have a joint tax assessment meant that Mr Redeker had benefited from Germany's progressive tax system and that his church tax had been lower as a result. In this context, the authorities' decisions cannot be said to have involved Mrs Redeker in religious activities against her will. As regards Mr Redeker's objection about the particular method of calculation of his tax, the Court again found that it was the responsibility of the church and cannot be attributed to the State. There had therefore been no interference with the applicants' freedom of religion, making this part of the application manifestly ill-founded and inadmissible.

Other articles

The Court held that Mr Klein's further complaint under Article 14 in conjunction with Article 9 was inadmissible *ratione materiae*. The additional complaints made by the other applicants were also ruled inadmissible, as they were manifestly ill-founded.

Separate opinion

Judge Grozev expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

George Stafford (tel: + 33 3 90 21 41 71)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)

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.