

APPLICATION/REQUÊTE N° 17522/90

Iglesia Bautista "El Salvador" and José Aquilino ORTEGA MORATILLA
v/SPAIN

Iglesia Bautista «El Salvador» et José Aquilino ORTEGA MORATILLA
c/ESPAGNE

DECISION of 11 January 1992 on the admissibility of the application

DÉCISION du 11 janvier 1992 sur la recevabilité de la requête

Article 9, paragraph 1 of the Convention *This provision does not authorise the right to refuse to abide by legislation (tax law), the operation of which is provided for by the Convention, and which applies neutrally and generally in terms of freedom of conscience*

The right to freedom of religion does not guarantee churches or their adherents a different tax status from that of other taxpayers. In particular, it does not include a right for places of worship to be exempted from all taxes

Article 14 of the Convention in conjunction with Article 9 of the Convention *It is not discriminatory to grant the Catholic Church tax exemptions provided for in a Concordat between the respondent State and the Holy See which involves reciprocal obligations, but to refuse the same tax treatment to another church which has not concluded a similar agreement with the State*

(TRANSLATION)

THE FACTS

The first applicant is an evangelical Protestant church which has been listed in the register of religious associations since 1969. The second applicant is a Spanish national born in 1929 and resident in Valencia. He is a Protestant minister. The two applicants are represented by Mr Miguel Ramón Manceto Monge, a lawyer practising in Valencia.

The facts of the case, as submitted by the applicants, may be summarised as follows:

On 21 June 1985 the applicants requested exemption from property tax in respect of their place of worship in Valencia, arguing in particular that the Catholic Church enjoyed such exemption. The tax office refused this request on the ground that the exemption enjoyed by the Catholic Church was provided for in the Concordat between Spain and the Holy See signed in 1979, whereas there was no legal basis for granting the applicants such exemption. The applicants then applied to the administrative courts. On 28 February 1990 the Valencia Audiencia Territorial found against them. Their subsequent 'de amparo' appeal was dismissed on 3 May 1990 by the Constitutional Court, which noted, in particular, that under the Freedom of Religion Act (Institutional Act No 7/1980) the State could conclude co-operation agreements providing for tax exemptions *inter alia* with churches, according to the number of their adherents, the strength of their roots in Spanish society, and the beliefs of the majority of Spanish citizens. As no agreement of that kind had been concluded with the first applicant, it had no right to claim the tax exemptions in question.

THE LAW

1. The applicants complain in the first place that levying property tax in respect of the premises they use for worship infringes their right to freedom of religion set forth in Article 9 of the Convention, which reads as follows:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The Commission notes that under the terms of this provision the right to freedom of religion includes the right to manifest one's religion, in public or in private, in worship or observance. The possibility of possessing premises open to adherents and used for the above purposes is clearly one of the means of exercising this right. However, the Commission fails to see how a right to exemption of places of worship from all forms of taxation can be derived from Article 9 of the Convention. It considers that the right to freedom of religion by no means implies that churches or their adherents must be granted a different tax status from that of other taxpayers. The possibility referred to by the applicants of the premises used for worship being seized by court order is in this case merely hypothetical, and the applicants cannot claim to be actual victims of such a measure within the meaning of Article 25 of the Convention.

It follows that in this respect the application is manifestly ill-founded and must be rejected pursuant to Article 27 para. 3 of the Convention

2 The applicants further allege that, as the Catholic Church in Spain enjoys exemption from property tax in respect of places of worship, the refusal of their request to be treated in the same way for tax purposes infringes Article 14 of the Convention in conjunction with Article 9.

Article 14 of the Convention reads as follows :

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

However, the Commission recalls that this provision does not prohibit all differences in treatment in the exercise of the rights and freedoms recognised, equality of treatment being violated only where the difference in treatment has no objective and reasonable justification (cf Eur Court H R , Belgian Linguistic judgment of 9 February 1967, Series A no 5, para 38)

The Commission notes that the Freedom of Religion Act (Institutional Act No. 7/1980) authorises agreements between the State and the various churches or religious associations according to the number of their adherents and the beliefs of the majority of Spanish citizens. It observes that the tax exemptions enjoyed by the Catholic Church in Spain are provided for by the agreements concluded on 3 January 1979 between Spain and the Holy See, which place reciprocal obligations on the two parties. For example, the Catholic Church has undertaken to place its historical, artistic and documentary heritage at the service of the Spanish people (Agreement on education and cultural affairs, Article XV). On the other hand, its places of worship enjoy tax exemption (Agreement on economic affairs, Article IV)

However, the applicant church has not concluded such a concordat with the Spanish State, and it does not appear from the file that it has sought to do so. Consequently, it does not have the same obligations to fulfil vis-à-vis the State.

It follows that this complaint must be rejected as being manifestly ill founded within the meaning of Article 27 para. 2 of the Convention

3. Lastly, the applicants allege that the sums they are required to pay in property tax indirectly contribute to the funding of the Catholic Church on account of the allowances the latter receives from the State

In this connection the Commission recalls that the obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in that respect is also illustrated by the fact that no taxpayer can influence or determine the purpose for which his or her contributions are applied, once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Article 1 of Protocol No. 1 (cf. No. 10358/83, Dec. 15 12 83, D.R. 37 pp. 142, 147). The Commission further notes that the applicants have by no means established or even alleged that property tax is a tax used for a particular purpose.

It follows that Article 9 does not confer on them any right to refuse, on that account, to submit to the tax legislation in force.

Consequently, the remainder of the application is also manifestly ill founded, within the meaning of Article 27 para. 2 of the Convention.

For these reasons, by a majority, the Commission

DECLARES THE APPLICATION INADMISSIBLE