



Taxpayer's obligation to disclose non-affiliation with church to employer did not violate his right to freedom of religion

In today's Chamber judgment in the case [Wasmuth v. Germany](#) (application no. 12884/03), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

No violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights;

No violation of Article 8 (right to respect for private and family life).

The case concerned Mr Wasmuth's complaint of the compulsory reference on his wage-tax card to the fact that he does not belong to a religious society authorised to levy religious tax.

Principal facts

The applicant, Johannes Wasmuth, is a German national who was born in 1956 and lives in Munich. He is a lawyer in private practice and is also employed as a lector in a publishing house. On his wage-tax cards of the last few years, the entry "--" could be found in the field "Church tax deducted", informing his employer that he did not have to deduct any church tax for Mr Wasmuth.

After having unsuccessfully requested the local authorities to issue him a wage-tax card without any information concerning his religious affiliation for the fiscal year of 1997 and 1998 and having unsuccessfully brought proceedings before the German courts in that matter, Mr Wasmuth again unsuccessfully made such a request concerning his tax card to be issued for 2002. He subsequently brought proceedings before the finance court, arguing that the information on the tax card violated his right not to indicate his religious convictions, that there was no legal basis for the public treasury to levy church tax and that it could not be expected of him as a homosexual to participate in a tax collection system which benefited social groups – the churches – whose stated goal was to question and to debase an integral aspect of his personality.

The finance court rejected Mr Wasmuth's claim in February 2002, holding that the local fiscal authorities were entitled under the relevant provisions of Bavarian law and German federal law to obtain information about employees' affiliation or non-affiliation with a religious society authorised to levy church tax and to submit that information to the employer in charge of deducting the tax. The entry "--" served to avoid him having to unduly pay church tax. In the court's view, the interference with Mr Wasmuth's fundamental rights was minimal and he had to accept it in the interest of the proper

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

collection of church tax. The court further pointed out that the views of the Catholic and Protestant churches in Germany did not interfere with Mr Wasmuth's personality rights and that their position on homosexual marriage was shared by many other groups. The churches' position did not give Mr Wasmuth the right to refuse to participate in the church tax system. The decision was upheld by the Federal Court of Finance. By decision of 30 September 2002 (1 BvR 1744/02), the Federal Constitutional Court rejected Mr Wasmuth's constitutional complaint, referring to its decision of 25 May 2001 (1 BvR 2253/00) not to accept his earlier complaint, in which it had found that the disclosure of a taxpayer's non-affiliation with a religious society authorised to levy religious tax did not place an unacceptable burden on him.

Complaints, procedure and composition of the Court

Mr Wasmuth complained that the compulsory disclosure on his wage-tax card of his non-affiliation with a religious society authorised to levy religious tax amounted to a breach of Article 8 and Article 9, and also of Article 14 (prohibition of discrimination) taken together with Article 9.

The application was lodged with the European Court of Human Rights on 14 April 2003.

The Protestant Church of Germany and the (Catholic) Association of German Dioceses were granted leave to intervene in the proceedings as third parties and submitted written statements.

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

Peer **Lorenzen** (Denmark), *President*,
 Karel **Jungwiert** (the Czech Republic),
 Rait **Maruste** (Estonia),
 Mark **Villiger** (Liechtenstein),
 Isabelle **Berro-Lefèvre** (Monaco),
 Zdravka **Kalaydjieva** (Bulgaria), *judges*,
 Eckart **Klein** (Germany), *ad hoc Judge*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 9

In accordance with its recent case-law, the Court found that the obligation to inform the authorities of his non-affiliation with churches or religious societies authorised to levy religious tax constituted an interference with Mr Wasmuth's right not to indicate his religious convictions. The Court was satisfied that that obligation had a basis in German law, as the domestic courts had consistently held. The interference had further served the legitimate aim of ensuring the right of churches and religious societies to levy religious tax. It remained to be established whether the interference had been proportionate to that aim.

The German courts had been called on to balance the negative aspect of Mr Wasmuth's right to freedom of religion against the right of churches and religious societies to levy religious tax as guaranteed by the constitution. The Court agreed with the German Government that the reference on the tax card at issue was only of limited informative value as regards his religious or philosophic conviction, as it simply indicated to the fiscal authorities that he did not belong to one of the six churches or religious societies which were authorised to levy religious tax in Bavaria and exercised that right in practice. The

tax card was not in principle used in public; it did not serve any purpose outside the relation between the taxpayer and his employer or the tax authorities. In contrast to other cases in which the Court had found a violation of Article 9, the authorities had not asked Mr Wasmuth to explain why he did not belong to one of the religious societies authorised to levy religious tax and did not verify what his religious or philosophic conviction was. The Court therefore found that the obligation imposed on Mr Wasmuth was, in the circumstances of his case, not disproportionate to the aims pursued.

As regards Mr Wasmuth's complaint that by providing the required information he contributed to the functioning of the church tax system and thereby indirectly supported the churches whose positions he rejected, the Court took note of the German courts' arguments that his participation in the system was minimal and that it served precisely to avoid him having to unduly pay church tax. The Court further had regard to the fact that there was no European standard in the area of funding of churches and religious groups, a question which was closely linked to each country's history and tradition.

In view of those considerations the Court concluded that there had been no violation of Article 9.

Article 8

The Court reiterated that the collection, storage and transfer of data linked to an individual's private life fell within the remit of Article 8 § 1. The obligation imposed on Mr Wasmuth thus constituted an interference with his rights under that Article. However, in the light of its findings under Article 9 the Court held that that interference had been in accordance with the law and that it had been proportionate to a legitimate aim pursued for the purpose of Article 8 § 2. There had accordingly been no violation of Article 8.

Article 14

As regards Mr Wasmuth's complaint under Article 14 that he had been discriminated against as a homosexual, the Court observed that he had not raised that point before the German Federal Constitutional Court. That part of his complaint therefore had to be rejected as inadmissible for non-exhaustion of domestic remedies.

Separate opinion

Judge Berro-Lefèvre expressed a dissenting opinion, joined by Judge Kalaydjieva. This opinion is annexed to the judgment.

The judgment is available only in French.

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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.