CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 36846/97
by Kjell E. LUNDBERG
against Sweden

The European Court of Human Rights (First Section), sitting on 28 August 2001 as a Chamber composed of

Mrs W. THOMASSEN, *President*,
Mrs E. PALM,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 29 September 1996 and registered on 11 July 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Swedish national, born in 1949 and living in Vällingby. The respondent Government are represented by Ms E. Jagander, Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant, who is not a member of the Lutheran Church of Sweden, requested in his tax returns for the income years 1992-94 to be exempted from church tax. He claimed that the levying of church tax on a non-member of the Church of Sweden contravened, inter alia, the Swedish Constitution and Article 9 of the Convention. He also stated that the municipality of Stockholm and not the relevant parish of the Church, Brännkyrka, was financing the construction and maintenance of burial-grounds and the maintenance of churchyards in the area where he lived.

The tax authorities rejected the applicant's request and decided to charge him approximately 425, 362 and 385 Swedish *kronor* (SEK) respectively for the three years in church tax, totalling SEK 1,172. This corresponded to 0.156 per cent of his taxable income for 1992 and 0.13 per cent for 1993 and 1994. The decision was taken in accordance with section 1 of the Act on Reduction of Tax Liability of Persons Not Members of the Church of Sweden (*Lag om viss lindring i skattskyldigheten för den som icke tillhör svenska kyrkan*, 1951:691; hereinafter "the Dissenter Tax Act") which provided that, of the ordinary church tax, a non-member of the Church of Sweden should pay 30 per cent for 1992 and 25 per cent for 1993 and 1994.

The applicant appealed to the County Administrative Court (*länsrätten*) of the County of Stockholm but did not request an oral hearing. On 30 December 1994 the Court rejected his appeal as far as it concerned 1993 and, on 11 September 1996, it rejected his appeal with regard to 1992 and 1994.

The applicant appealed to the Administrative Court of Appeal (*kammarrätten*) in Stockholm. Again, he did not request an oral hearing. On 14 February 1997 his appeals were rejected.

On 23 April 1997 the Supreme Administrative Court (*Regeringsrätten*) refused the applicant leave to appeal. In his appeal to that court he had requested an oral hearing.

B. Relevant domestic law and practice

1. The activities of the Church of Sweden

According to the Burial Act (*Begravningslagen*, 1990:1144), the parishes within the Church of Sweden are obliged to construct and maintain public burial-grounds, unless the Government decide in the case of a specific municipality that this task shall be performed by the municipality itself (chapter 2, section 1). The right to be buried in a public burial-ground is not dependent on the deceased being a member of a particular religious community (chapter 2, section 4). However, the responsible organ, whether it be the local parish or the municipality, is obliged to provide for separate burial-grounds for those who are not members of any Christian community. The construction and maintenance of such burial-grounds are done in consultation with the religious communities concerned (chapter 2, section 2). Decisions taken under the Act by the parish or the municipality may be appealed against to the County Administrative Board (*länsstyrelsen*) (previously regulated in chapter 9 of the Act, now in chapter 11). In the municipality where the applicant was liable to pay tax the burial administration was – and still is – the responsibility of the municipality.

When the responsibility for the keeping of population records was transferred from the Church of Sweden to the local tax authorities in July 1991 (see further below), it was decided that the parishes should take care of population records made before that date until these old records have been transferred to the State archives (section 10 of the Act on Promulgation of the Population Registration Act; *Lagen om införande av folkbokförings-lagen*, 1991:481). It was estimated that it would take up to twenty years before all old records had been so transferred.

The Church Act (*Kyrkolagen*, 1992:300) also specifically stipulated that a parish may, *inter alia*, use its financial means to acquire and maintain church buildings and other ecclesiastical property.

2. Church tax

At the material time, a church tax was collected together with the ordinary municipal tax. Chapter 21, section 1 of the Church Act referred in this respect to the provisions of the Municipal Tax Act (*Kommunalskatte-lagen*, 1928:370). The rate was determined by the local parish council which, under the transitional provisions of the 1974 Constitution (*Regeringsformen*), had a status similar to that of the municipalities, including the right of taxation. This system had a long tradition, based on the fact that the Lutheran Church of Sweden is the established church. In 1990 the rates applied by the parishes varied between 0.56 and 2.64 per cent of the taxpayer's taxable income. The lowest rates were applied by the parishes of Stockholm where it is the municipality – and not the parishes –

that has the responsibility for the burial administration (cf. *Svenska kyrkans ekonomi*, *Statskontoret* 1991:12, p. 9, a report on the economy of the Church of Sweden made by the National Agency for Administrative Development). In 1992-94, the relevant years in the present case, the rate applied in the parish of Brännkyrka, where the applicant lived, was 0.52 per cent.

3. Dissenter tax

The Dissenter Tax Act stipulated that a person who was not a member of the Church of Sweden should pay a reduced church tax, the so-called dissenter tax. The reduction was motivated by the fact that non-members, referred to as dissenters, should pay the share of the tax that corresponded to the costs relating to the civil, i.e. non-religious, activities of the parish. The dissenter tax, like the church tax, was collected by the local tax authority and forwarded to the relevant parish.

Originally, the dissenter tax amounted to 60 per cent of the ordinary church tax. In 1974 it was reduced to 30 per cent of what the members of the Church of Sweden had to pay. The rationale behind this change was that the share of the costs for the civil tasks performed by the Church – the keeping of population records and the maintenance of churchyards and public burial-grounds – amounted on average to approximately 30 per cent of the Church's total costs (cf. Government Bill 1973:184, pp. 3-5).

On 1 July 1991 the responsibility for the keeping of population records was transferred to the local tax authorities. With effect as from 1993, the dissenter tax was consequently further decreased, this time to 25 per cent of the amount paid by the members of the Church of Sweden. It was considered that this percentage corresponded to the average costs of the parishes for the burial of the deceased (cf. Government Bill 1991/92:100, appendix 8, p. 141). Reference was made to the above-mentioned report on the economy of the Church of Sweden, according to which 1.25 billion SEK, or about 24 per cent of the Church's total costs, related to the burial of the deceased.

4. Tax equalisation

Under Chapter 42 of the Church Act the tax revenue of the different parishes was to a certain extent equalised through payments to and subsidies from the so-called Church Fund. Poor parishes received a general equalisation subsidy which was not ear-marked for any particular purpose. They could also be granted extra subsidies for specific purposes.

5. Reforms

On 1 January 2000 the relations between the Swedish State and the Church of Sweden were changed, involving in practice a separation between the State and the Church. The Church Act and the Dissenter Tax Act were abolished.

The parishes' right of taxation, previously regulated in the Church Act and the Municipal Tax Act, was replaced with an obligation, laid down in section 7 of the new Act on the Swedish Church (*Lagen om svenska kyrkan*, 1998:1591), on persons belonging to the Church to pay a church fee.

According to the new chapter 9 of the Burial Act, every person who is registered as resident in Sweden has to pay a burial fee to defray the costs of the burial of the deceased (section 1). The fee is based on the taxpayer's taxable income (section 3) and is paid to the organ – parish or municipality – responsible for burials at the place where the individual is registered (section 2 § 1). In the municipalities where the local parishes are responsible for burials, the fee of the members of the Church of Sweden is to be included in the church fee (section 2 § 2). According to the Burial Fee Ordinance (*Förordningen om begravningsavgift*, 1999:729), the burial fee of non-members is fixed by the National Judicial Board for Public Lands and Funds (*Kammarkollegiet*) following a proposal by the Church of Sweden. The Church of Sweden and the municipalities responsible for burials are obliged to provide the tax authorities and – in the case of the Church – the National Judicial Board with the information needed to calculate and collect the fees. Under the new chapter 10 of the Burial Act, the relevant County Administrative Board supervises the parishes' burial administration in respect of persons who are not members of the Church of Sweden.

As the parishes continue to be responsible for the care and maintenance of church buildings and other ecclesiastical property of historic value, the Church of Sweden is to receive certain financial compensation from the State for the performance of this task.

COMPLAINTS

1. The applicant claims that the levying of church tax on him, who is not a member of the Church of Sweden, violated his freedom of religion as protected by Article 9 of the Convention.

2. He further complains that the administrative courts were not independent and impartial tribunals as required by Article 6 § 1 of the Convention and that no oral hearing was held.

THE LAW

1. The applicant complains of a violation of his right to freedom of religion under Article 9 of the Convention. This provision 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 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 respondent Government submit that the present complaint is manifestly ill-founded. They state that the obligation of non-members to pay church tax, i.e. dissenter tax, to the Church of Sweden was based on the notion that the Church had been entrusted with certain tasks carried out in the interest of everyone – members as well as non-members – including the legal obligation to provide a final resting-place in public burial-grounds for both members and non-members. Although the burial administration no doubt is the most costly non-religious task entrusted with the Church, it also performs other civil activities in the interest of society as a whole, *inter alia* the care and maintenance of old church buildings and other ecclesiastical property and the care of old population records. Considering that religious buildings and property form part of the Swedish cultural heritage which should be preserved for future generations and that the old population records are of importance to researchers and to the general public, the Government submit that it has been natural to demand financial contributions from both members and non-members of the Church of Sweden for the performance of those tasks.

The Government state that the dissenter tax was designed to cover only the civil activities of the parishes. The 30 and 25 per cent rates fixed by the Dissenter Tax Act was based on investigations into the economy of the Church of Sweden. They refer to the above-mentioned Government Bills and the report by the National Agency for Administrative Development.

Noting that the parish of Brännkyrka, where the applicant lived, was not responsible for the burial administration in its area, the Government assert that that parish was still contributing to the burial administration in the country in general by means of contributions to the Church Fund. They state that the parish paid more than SEK five million to the Church Fund in 1994. The Government also point out that the rate applied by the parish for the church tax – and consequently for the dissenter tax – was very low due to the fact that it was not responsible for the burial administration but only for its other civil activities.

The applicant maintains that his obligation to pay tax to the Church of Sweden has violated his right to freedom of religion. He points out that the relevant parish had no costs for the burial of the deceased, as this task was the responsibility of the municipality of Stockholm. Further, as the cost of keeping population records could be estimated at 5 per cent of the parishes' tax income on account of the corresponding reduction of the dissenter tax when this task was transferred to the tax authorities, the cost of taking care of old population records must be only a fraction of those 5 per cent. As regards the care and maintenance of church buildings, the applicant asserts that the property is used exclusively by the Church of Sweden and, thus, the need for care and maintenance is mainly caused by religious activities.

Moreover, the applicant claims that, as the parish of Brännkyrka was a net payer to the Church Fund and the tax equalisation system covers all expenses of the receiving parishes, the dissenter tax he paid went to religious activities, not only in the parish of Brännkyrka but in other parishes as well. He also submits that, although non-members pay the dissenter tax, they have no influence on the tax rates to be applied since, as non-members, they cannot be elected to the local parish council deciding on the rates.

The Court notes that the issue at stake is whether the applicant's rights under Article 9 of the Convention have been violated due to the fact that he had to pay a special tax to the Church of Sweden although he is not a member of that Church. Considering that the payment of a tax cannot be characterised as a "manifestation" of one's religion, the Court will examine this complaint under the first limb of Article 9 § 1 which concerns the general right to freedom of religion.

This general right protects everyone from being compelled to be involved in religious activities against his will without being a member of the religious community carrying out those activities. The payment of a specific tax to a church for its religious activities may, in certain circumstances, be seen as such involvement (see the Darby v. Sweden judgment of 23 October 1990, Series A no. 187, opinion of the Commission, p. 19, § 51).

In the present case, the Court agrees with Government that the administration of burials, the care and maintenance of church property and buildings of historic value and the care of old population records can reasonably be considered as tasks of a non-religious nature which are performed in the interest of society as a whole. It must be left to the State to decide who should be entrusted with the responsibility of carrying out these tasks and how they should be financed. While it is under an obligation to respect the individual's right to freedom of religion, the State has a wide margin of appreciation in making such decisions.

In the present case, the Court recalls that the applicant, not being a member of the Church of Sweden, did not have to pay the full church tax but only a portion thereof – 30 or 25 per cent of the full amount depending on the year – as a dissenter tax. As has been noted above, the rationale behind the obligation to pay the dissenter tax was that non-members should contribute to the non-religious activities of the Church. The 25 per cent tax rate was determined on the basis of an investigation of the economy of the Church of Sweden, which showed that the costs for the burial of the deceased amounted to about 24 per cent of the Church's total costs. The reduction from 30 to 25 per cent as from 1993 was due to the transfer from the Church to the tax authorities of the task of keeping population records, the cost of which apparently amounted to about 5 per cent of the Church's total costs.

It is thus apparent that the dissenter tax paid to the Church of Sweden was proportionate to the costs of its civil responsibilities. It is true that the relevant parish of Brännkyrka was not responsible for the local burial administration, which is undoubtedly the most costly civil activity of the Church of Sweden. However, through payments to the Church Fund in accordance with the tax equalisation scheme under chapter 42 of the Church Act, that parish contributed to the overall costs of the Church of Sweden, including the burial administration in other parts of Sweden. Having found that the rate of the dissenter tax in general corresponded to the costs of the Church's civil responsibilities, the Court cannot find that the fact that the parish of Brännkyrka did not concern itself with the burial administration meant that the applicant, by being obliged to pay the dissenter tax, was compelled to contribute to the religious activities of the Church. In this connection, the Court further notes that the rate of the applicant's dissenter tax was considerably lower than the rates applied in most other parishes, apparently on account of the burial administration having been entrusted with the municipality rather than the parish.

Moreover, the fact that the Church of Sweden has been entrusted with the tasks in question cannot in itself be considered to violate Article 9 of the Convention. In this respect, it should be noted that the Church was in charge of keeping population records for many years and it is thus natural that it takes care of those records until they have been finally transferred to the State archives. Also, the administration of burials and the maintenance of old church property are tasks that may reasonably be entrusted with the established church in the country. The Court further takes into account that the payment of the dissenter tax and the performance of the civil activities of the Church were overseen by public authorities, including the tax authorities and the County Administrative Board.

The Court therefore concludes that the applicant's obligation to pay the dissenter tax did not contravene his right to freedom of religion under Article 9 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complains also that his rights under Article 6 § 1 of the Convention were violated in the court proceedings. This provision states, in so far as relevant, the following:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

The Court recalls that the proceedings in the Swedish courts concerned the applicant's tax assessment for the income years 1992-94. The Court considers that these proceedings did not involve a determination of the applicant's civil rights and obligations and that, thus, Article 6 of the Convention is not applicable to the present complaint (see *Ferrazzini v. Italy* [GC], no. 44759/98, §§ 29-31, to be published in the Court's official reports).

It follows that this part of the application must be rejected as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Wilhelmina THOMASSEN
President