

Arrêt no. 152/2005

1) Reference Details

Jurisdiction: Cour d'Arbitrage, Belgium

Date of Decision: 5 October 2005

Case Status: Concluded

2) Facts

The case concerned the application for annulment of the Flemish Region's Décret of 7 May 2004 relative to the material organisation and functioning of recognised religions. In particular, articles 10 and 126 which created an upper age limit of 75 for membership of the church council or body responsible for the management of church goods and property.

3) Law

- Décret of 7 May 2004 relative to the material organisation and functioning of recognised religions (Flemish Region)
- Belgian Constitution articles 10, 11, 19 and 21
- Article 9 European Convention on Human Rights

4) Legal Arguments

The applicants contested that the freedom of religion guaranteed by the Belgian Constitution includes the freedom to direct the material organisation of the religion internally. This was bolstered further by article 9 of the ECHR which enshrines the freedom of religion and the freedom to manifest that religion individually or collectively whether in public or in private. They further argued that the measures constituted discrimination on the basis of age, contrary to articles 10 and 11 of the Constitution.

The Flemish government asserted that the rule was enacted to ensure the good management and functioning of church councils which have at their disposal public money. The government argued that the application of an age limit served two objectives, the continued renewal of membership of church councils, and the efficient and effective management of religious communities and their property.

5) Decision

The European Court of Human Rights decision in *Hassan and Tchaouch v. Bulgaria* (26 October 2000) asserted that participation in the life of a religious community, including the organisation and functioning of that community, is the expression of religious conviction and therefore protected under the freedom of religion. This same principle is recognised in article 21 of the Belgian Constitution. In order for interference in this freedom to be justified, it must be a response to an important social need, and necessary within a democratic society.

However, the court considered that, taking account of the public responsibility for financial deficits of the church, and the need for renewal within the membership of the church council in order to ensure the modernisation and the effective management of church property, there is

room to conclude that the Décret does not impose an unjustified limitation on the freedom of religion.

The Court then went on to consider whether the measure was justified, taking account of articles 10 and 11 of the Constitution, concerning discrimination on the basis of age. The measure concerned imposed an age limit which is an objective criterion by which to ensure the renewal of membership of church councils. However, the measure is based on the assumption that persons who have reached the age of 75 no longer have the ability to effectively manage the church property. The Court concludes that the creation of an age limit for membership of the church council, without exception, excludes an entire category of elderly believers from any participation in the management of church goods and property. Such a measure, the court concludes, is disproportionate to the objective.

The relevant articles of the Décret are annulled.