

Abusive taxation of religious minorities

A comparative study of Tai Ji Men in Taiwan and the Jehovah's Witnesses in France

Willy Fautré¹

1. Introduction

On 23 April 2023, US Senator Orrin Hatch passed away at age 88. Two of his main interests were tax reform and religious liberty, topics that sometimes happen to intersect.² Senator Hatch was well aware that abusive taxation can target religious or spiritual movements or religiously motivated advocacy groups which, for whatever reason, are disliked by some tax bureaucrats.

One such instance is the case of Tai Ji Men in Taiwan, which remains unresolved after more than 25 years of legal battles and public advocacy.³ I will compare that case with ones that the European Court of Human Rights has considered in the last two decades.

2. Tai Ji Men

Tai Ji Men is a school of qigong, martial arts, and self-cultivation carrying forward Taoist philosophy. It was created in 1966 by Dr. Hong Tao-Tze, also known as the Shifu.⁴ Since an early age, Hong has inherited the wisdom of esoteric Daoism and has studied qigong, martial arts, medicine, yin-yang philosophy, life wisdom, and “heart Kungfu.”

After Taiwan ended martial law in 1987, Hong started to accept large numbers of *dizi* (disciples), hoping to help others enjoy good health and happiness. In that framework, they followed an ancient ritual specific to the *shifu-dizi* relationship. As a sign of gratitude to and faith in their *shifu*, *dizi* made voluntary monetary gifts to their *shifu* in a red envelope when they were officially accepted as *dizi*

1 Willy Fautré is the director of Human Rights Without Frontiers. This paper was presented at the ISFORB seminar of the Evangelical Theology Faculty in Leuven on 6 May 2022.

2 Marco Respinti, “Religious Liberty and Tax Reform: Remembering Senator Orrin Hatch,” *Bitter Winter*, 5 Nov. 2022. Available at: <https://bit.ly/3Gc8RsZ>.

3 “Tai Ji Men Case Chronology,” <https://taijimenecase.org/chronology/>.

4 Kenneth A. Jacobsen, “Abrogating the Rule of Law: The Tai Ji Men Tax Case in Taiwan,” *Journal of CESNUR*, 2020, 4(5): 101-120. Available at: <https://bit.ly/47uPSWz>.

and on major traditional holidays. This constitutes a necessary component of the realization of an inner belief or religion, which is protected by the International Covenant on Civil and Political Rights.

2.1. *The historical context*

The historical context is important in understanding what has happened to Tai Ji Men. After a long period of dictatorship and authoritarian rule in the aftermath of World War II, free elections took place in 1996 but were followed by a series of heinous major murder cases which remain unresolved.

To divert public attention, the ruling party carried out a political purge at the end of 1996. The Minister of Justice launched a comprehensive attack against dissident religious groups labeled as *xie jiao*,⁵ including investigations, tax inspections by the National Taxation Bureau (NTB), asset seizure, demolitions of allegedly “illegal” structures, and exorbitant fines. Tai Ji Men was caught in the crossfire of that campaign against religious groups that did not support the ruling party in the presidential elections, although it had not taken any political position. The crackdown was supported by the media, most of whom were not independent from the ruling politicians.

2.2. *The Tai Ji Men case*

On 19 December 1996, Prosecutor Hou Kuan-Jen led hundreds of armed police officers on an unwarranted search at all Tai Ji Men Qigong Academy branches and at private residences of several Tai Ji Men *dizi*. Subsequently, Dr. Hong, his wife, and two *dizi* were detained for several months.

Prosecutor Hou charged the defendants with both fraud and tax evasion on the ground that amounts of money put by the *dizi* in the so-called red envelopes were not tax-free donations but tuition fees for the Qigong Academy. The case was then forwarded to the National Tax Bureau (NTB), which issued bills for the alleged tax evasion. The NTB did not carry out the investigation required by its statutory duty, nor did it wait for the decision of the criminal court to ascertain the nature of the income; rather, it issued heavy penalties for alleged tax evasion from 1991 to 1996, simply based on the indictment.

Since Tai Ji Men Qigong Academy’s establishment in 1966, its activities had never been taxed by the NTB. Additionally, the Ministry of Education had explained that Tai Ji Men was not a cram school, contrary to what Prosecutor Hou

5 *Xie jiao* is often incorrectly translated as “evil cults.” The term, used since the late Ming era, means “heterodox teachings” and indicates religious movements which the government regards as hostile. See Bitter Winter, “About China,” <https://bitterwinter.org/vocabulary/>.

had argued. So why should these six years be treated differently because of the action by Prosecutor Hou? That was the question.

After 10 years of judicial proceedings that I will not describe here, Taiwan's Supreme Court issued an important decision. On 13 July 2007, it found Tai Ji Men not guilty of fraud, nor of tax evasion or violation of tax codes. The Supreme Court also determined that the red envelopes given by his disciples to the *shifu* were gifts by nature and were thus tax-free income under Taiwan's Income Tax Act. Nevertheless, in 2019, although the NTB corrected five of the six years of the taxes it had assessed to zero, it still violated the principles of consistency and equality by surprisingly maintaining the tax bill for 1992 only, treating that year's income as alleged cram school tuition.

Over 25 years, Tai Ji Men has followed legal procedures to seek an administrative remedy. In 2010, at a public hearing in the Legislative Yuan, the Ministry of Finance promised to revoke the tax bills and withdraw enforcement within two months. However, the tax bills continued to be issued in violation of this promise.

In 2011, the Executive Yuan held an inter-ministerial meeting and resolved to revoke the tax bills if a survey among Tai Ji Men *dizi* would show that the red envelopes given to the *shifu* contained gifts (rather than tuition payments). After a two-month survey, even though 7,401 answers from Tai Ji Men *dizi* all confirmed that they were indeed gifts, the NTB refused to accept the survey results and continued to issue ill-founded tax bills to Tai Ji Men.

Afterwards, the unjustified 1992 tax bill was transferred to the Administrative Enforcement Agency (AEA), resulting in the auction and confiscation of sacred land belonging to Hong and Tai Ji Men by the government in August 2020.

Notably, behind this never-ending harassment there exists a bonus system providing for a financial reward for the disclosure of tax fraud cases. This system mainly benefits staff of the NTB and AEA. The bonus system has been repeatedly denounced because it is arbitrarily used and abused by the NTB hierarchy to protect the bonuses they can get from successful prosecutions, and also to fabricate alleged fraud cases for financial benefit.

3. Cases of harassment by the tax administration in France

Unfortunately, Taiwan is not the only democracy that has engaged in misuse of the taxation system to weaken or destroy a religious movement. The unfortunate experience of Tai Ji Men with the Taiwanese tax administration presents some striking similarities with the cases of four religious groups which were arbitrarily persecuted by the tax administration in France: Jehovah's Witnesses, the Evangelical Church of Besançon, the Association of the Knights of the Golden Lotus, and the Religious Association of the Pyramid Temple. In these cases, the French

tax administration suddenly decided to impose a 60 percent tax on all the manual gifts (literally, “hand to hand” donations, or donations in a collection plate) they would receive.

In January 1996, a French parliamentary report classifying the four aforementioned religious groups as harmful cult-like movements (*mouvements sectaires* in French) led to their stigmatization in the media and resulted in various forms of hostility and discrimination by state bodies, including the tax administration.

In both Taiwan and France, there were suspicions of fraud and tax evasion related to manual gifts. For Tai Ji Men and the incriminated French religious organizations, this was the beginning of a long obstacle race through their respective domestic courts.

3.1. *Jehovah’s Witnesses v. France (application 8916/05)*

On 10 January 1996, the French National Assembly published a report about 172 allegedly dangerous cults (*sectes* in French), which were portrayed as tantamount to criminal associations.⁶ That “blacklist,” as the media described it, had a devastating impact on the religious and spiritual groups identified. Jehovah’s Witnesses were on the blacklist. Following that report, they were discriminated against, stigmatized and ostracized in both their private and public life. State administrations took steps to marginalize them and treat them differently from mainline religions. In particular, the tax authorities carried out an audit.

On the basis of the information gathered during that audit, the Association of Jehovah’s Witnesses was given notice to declare all the manual gifts they had received from 1993 to 1996 and to pay taxes on that money. This was an unexpected new interpretation of the General Tax Code that was suddenly applied to the Jehovah’s Witnesses.

The association refused and asked that the tax exemption applicable to manual gifts and legacies to be applied as every year before 1993 as there had not been any change in the Tax Code in this regard.

As the Association of Jehovah’s Witnesses failed to submit the declaration requested by the tax authorities, it was subjected to an automatic taxation procedure on all the manual gifts received from 1993 to 1996. The tax administration justified its decision by claiming that the manual gifts “[had been] disclosed to the tax authorities in the course of the accounting audits to which it [had been] subjected.”

The term “disclosed” is a key word in the French taxation administrative language because it implies that the “disclosure” was a voluntary move by the asso-

6 Assemblée Nationale, “Rapport fait au nom de la Commission d’enquête sur les sects,” 22 December 1995. Available at: <https://www.assemblee-nationale.fr/rap-enq/r2468.asp>.

ciation in order to pay tax on the gifts it had received. But this was not the case, as the audit was not requested by the Association of Jehovah's Witnesses; rather, it was imposed on them by the administration and therefore could not be refused. Moreover, there had never been any legal obligation to disclose manual gifts to the tax administration. Obviously, there was a clear manipulation of the administrative terminology to corner the Association of Jehovah's Witnesses and, as it appeared afterwards, to kill them financially. This is an important similarity with the Tai Ji Men case.

In May 1998, the Association was notified of a supplementary tax assessment of approximately 45 million euros (about 23 million euros for the principal and 22 million in default interest and surcharges). The Association of Jehovah's Witnesses stressed that the tax claimed concerned manual gifts made by 250,000 individuals over four years (or an average of 4 euros per person per month for the period from 1993 to 1996).

During the next six years, the Association of Jehovah's Witnesses used all the domestic remedies that it could to assert its rights. In the meantime, with the accumulation of fines for non-payment of the contested taxes, the amount claimed by the tax administration rose from 45 million to more than 57.5 million euros.

The only possible way out for Jehovah's Witnesses was to go to the European Court of Human Rights in Strasbourg.

3.1.1. The European Court of Human Rights

On 24 February 2005, the Association of Jehovah's Witnesses lodged a complaint against France with the European Court of Human Rights. The complaint alleged, among other things, that the imposed taxation of manual gifts interfered with the association's right to manifest and exercise its freedom of religion as guaranteed by Article 9 of the European Convention.

The procedures lasted for six years, until 2011, and focused primarily on the controversial interpretation of the "disclosure" of manual gifts and the allegedly undue state interference in the freedom of religion of Jehovah's Witnesses through punitive taxation.

The Jehovah's Witnesses claimed that in imposing the controversial tax, the state was attacking the freedom of religion of their 200,000 members. Indeed, if the 60 percent taxation were confirmed, it would result in the seizure and sale of their headquarters, the loss of their national place of worship, and perhaps the complete elimination of this religious group in France.

The association's attorney, Philippe Goni, argued that the collective practice of a religion implies the possibility of relying on material resources, generally obtained through the adherents' financial contributions, to rent or acquire a place

of worship, among other things. The manual gifts, Goni contended, are religious in nature and represent a major source of income (specifically, 86.47 percent of total revenue) for the Jehovah's Witnesses' collective exercise of their religion. Lastly, Goni counsel accused the state of discrimination, since the manual gifts given to mainline religious groups were exempt from taxation.

3.1.2. *Decision of the European Court*

In its judgment of 30 June 2011 (6),⁷ the European Court found a violation of Article 9 (on the right to freedom of religion), noting that the supplementary tax assessment had concerned the entirety of the manual gifts received by the association, although they represented the main source of its funding. Its operating resources having thus been cut, it had no longer been able to guarantee to its followers the free exercise of their religion in practical terms.

Consequently, the Court held that France was to reimburse 4,590,295 euros for the taxes unduly claimed by the tax administration that the Association of Jehovah's Witnesses had paid under coercion, along with 55,000 euros for costs and expenses.

It cannot be said that it was a happy ending, in the usual sense of this expression, of this 15-year judicial saga, because the damage caused to the association and its members went far beyond the financial issue. But that is another story.

The legal victory gained by Jehovah's Witnesses in 2011 has become a precedent that the European Court of Human Rights has since cited on other similar cases of arbitrary prosecution of religious and spiritual groups by France's tax administration, such as *Missionary Evangelical Church in Besançon and Eric Salaun v. France*,⁸ *Association of the Knights of the Golden Lotus v. France*⁹ and *Religious Association of the Pyramid Temple v. France*.¹⁰

Tai Ji Men's legal battles have continued for 25 years and no end is in sight. Unfortunately for Tai Ji Men, there is no Asian Court of Human Rights where the group could lodge a complaint, but it is hoped that one day the current government of Taiwan will repair the damage caused under previous governments since the mid-1990s.

7 Decision of the European Court of Human Rights and other documents, in the case *Association Les Témoins de Jehovah v. France* (Ref. 8916/05). Available at: <https://bit.ly/46rCH7z>.

8 Decision of the European Court of Human Rights and other documents, in the case *Église Évangélique Missionnaire et Eric Salaun v. France* (Ref. 25502/07). Available at: <https://bit.ly/47JOP4L>.

9 Decision of the European Court of Human Rights and other documents in the case *Association des Chevaliers du Lotus d'Or v. France* (Ref. 50615/07). Available at: <https://bit.ly/47F5TcN>.

10 Decision of the European Court of Human Rights in the case *Association Culturelle du Temple Pyramide v. France* (Ref. 50471/07). Available at: <https://bit.ly/3RaLq9z>.

4. Conclusions

All four of the controversial cases in France targeting non-violent and law-abiding religious and belief groups involved abusive blacklisting by the legislative and executive powers, in the form of sudden, blatant manipulation of the Tax Code and related administrative terminology for the purpose of destroying the groups financially. This is another similarity with the Tai Ji Men case. The big difference is that Europe has a supra-national court which can correct questionable national judgments, namely the European Court of Human Rights.

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