

## German court upholds church tax challenge

Moya St. Leger | Aug. 28, 2009



Freiburg Minster, the cathedral of the Freiburg archdiocese in Germany (Dreamstime)

In a landmark ruling, a German court has upheld the right of Catholics in Germany to refuse to pay church tax but remain members of the Catholic church.

The judgement of the Administrative Court in Freiburg of July 15 dismissed the case brought by the Catholic church against Staufen-im-Breisgau, which, as the hometown of Hartmut Zapp, had certified his unorthodox application to leave the church.

The German Catholic church is facing a significant wave of members renouncing their official registration as Catholics -- departures that are diminishing the institution's significant coffers, long fed by taxes collected and allocated by the German state based on denominations' registered numbers. Meanwhile, over 300 Catholics a day are being 'excommunicated' after they register their departures.

Most recently, observers have connected these departures to the controversy unleashed in January by Pope Benedict XVI's lifting of the excommunication of Lefebvrist Bishop Richard Williamson, a Holocaust denier. The move was followed by an unprecedented number of German Catholics renouncing their church affiliation.

At the start of this year, in Stuttgart, the number of departures rose 25 percent from the same month in 2008. It was up by 43 percent in Paderborn, and by 100 percent in the solidly Catholic city of Münster. Meanwhile, Mass attendance in Germany, which 20 years ago stood at 28 percent, is now below 14 percent.

In 2007, 31 percent of Germany's population of 82 million was Catholic; 30.2 percent was Protestant.

These downward trends have serious financial implications for the German church, which sends millions of euros into Vatican accounts and millions more to ministries in poor nations. German Christians who leave their churches cease to pay church taxes, which run from 8 to 9 percent of their income tax and is separate from it.

Leaving the church in Germany starts with a visit to the local court or registry office where the applicant completes an official declaration of withdrawal before a court official. The court then sends notifications to the parish, the employer and the local registration office.

Excommunication from the church ensues automatically and one's baptismal certificate is endorsed to that effect.

The German Catholic church has meted out the penalty of excommunication to 1.1 million former members from 1998 to 2007.

In August 2007 Zapp, an emeritus professor of canon law, went to his local registry office to announce that he was leaving the Catholic church. After signing the required document, he went to the archbishop's office and declared that he was still a Catholic.

In Germany, Protestant and Catholic churches are at once denominations and legal statutory bodies. In the latter capacity, the churches have tax-raising powers. The state collects the tax and passes it on to the churches, receiving a payment for this service. The sole way of avoiding church tax is formally to leave one's church.

Zapp added a rider to his formal declaration saying that he was only leaving the Roman Catholic church as a statutory body under German law. His rider signaled his intention to continue as a member of the church as a community of faith. He was thus publicly resisting the automatic excommunication incurred as a result of completing the formal procedure.

His action threw the Freiburg archdiocese into confusion. First, Zapp's membership in the church was said to be unaffected until the legal status of his declaration of withdrawal was clarified. "An endorsement [of excommunication] on his baptismal certificate would be inappropriate," said the diocese.

Then within days, an official statement was released, saying that church tax law prohibits any form of rider on the declaration of withdrawal. Zapp's rider, the archdiocese argued, rendered his withdrawal from church membership invalid; therefore he remained a statutory member of the church.

The Catholic church then sued Zapp's hometown of Staufen-im-Breisgau for certifying his declaration of withdrawal with the rider. The basis of the church's case was that the status of the German Catholic church as a community of faith and a statutory body is indivisible. The court disagreed and ruled against the church.

German church tax and the legitimacy of penalizing nonpayment with excommunication have exercised canon lawyers for years. Canon lawyer Renée Löffler published *Ungestraft aus der Kirche austreten?* ("Leaving the Church Without Being Punished?") in 2007. In the book, Löffler concluded that the German bishops' adherence to the secular procedure was unlawful under canon law. Like Zapp, Löffler distinguished between leaving a statutory body and leaving a community of faith.

Löffler's book and Zapp's provocative act are shaking the foundation of German church tax.

Zapp argues that the question of what constitutes a formal act of leaving the church was decided conclusively in a letter from the Pontifical Council for Legislative Texts dated March 13, 2006, to Bishop William Skylstad, then president of the U.S. Conference of Catholic Bishops, but circulated to all episcopal conferences by order of Pope Benedict XVI.

The letter states: "The juridical-administrative act of abandoning the church does not per se constitute a formal act of defection as understood in the [Code of Canon Law], given that there could still be the will to remain in the communion of faith."

Zapp said he believes the Vatican will ultimately intervene concerning the provisions in the 1933 Reich Concordat, which allows the church to levy the tax.

For decades, the Catholic church in Germany has been accustomed to dizzying wealth underpinned by tax revenues: \$61 billion in from 1998 to 2007, with \$6.5 billion in the year 2007 alone.

The church has had to sell of some of its assets in recent years. Rising costs and ever heavier demands on services, such as parish activities, youth work, advice centers and education, are stretching resources as never before.

*Moya St. Leger is a freelance journalist and legal translator.*

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