

TAXES AND HUMAN RIGHTS: HOW TO ENSURE A BALANCE BETWEEN THE STATE AND THE PAYER

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Annotation. The article reveals in detail the connection between taxation and human rights in Ukraine, with an emphasis on the balance of interests of the state and taxpayers in the conditions of martial law, introduced in accordance with Presidential Decree No. 64/2022 of February 24, 2022. The constitutional principles are analyzed in accordance with Art. 67 of the Constitution of Ukraine (hereinafter - KU), the principles of tax law, as well as international standards used in the study, namely: Art. 8 of the European Convention on Human Rights. The tax-legal compromise is discussed as a mechanism for regulating taxes between public, social and private interests, by strengthening tax assessment to ensure defense capability, for example: increasing the military levy to 5% from January 1, 2025, resuming inspections for individual entrepreneurs, digitalization and electronic audit in accordance with Laws No. 4113-IX and No. 4536-IX. The risks of rights violations (e.g., the case of *Intersplav v. Ukraine*, ECHR), proportionality of state intervention, and the need for transparency are highlighted. The conclusions emphasize the need for balance for social stability, with prospects for further research into the impact of reforms on human rights, comparative analysis with countries in conflict, and the role of digitalization in anti-corruption.

Key words: taxation, human rights, martial law, tax compromise, principles of tax law, Tax Code of Ukraine, Constitution of Ukraine, European Convention on Human Rights, military levy, fiscal policy, balance of interests, taxpayers.

1. Introduction.

The problem manifests itself in the conflict between tax pressure from the state during martial law and the protection of human rights, such as property, privacy and justice.

2. Analysis of scientific publications.

The topic of the relationship between taxation and human rights is actively developed in scientific literature. In particular, A. S. Romanova, in her monograph 'Human Existence in the Natural-Legal Space' considers the natural-legal approach to relations between the state and the individual, emphasising the priority role of the individual. M. P. Kucheryavenko and M. V. Karmalita examine the principles of tax law, including those formed by judicial practice and doctrine, with an emphasis on the balance of private and public interests. I. M. Prots and A. B. Gryshchuk classify the principles of tax law into groups related to the constitutional order, taxpayers' rights and the administrative system. V.A. Vdovichen introduces the concept of a tax-legal compromise as a mechanism for reconciling the interests of the state and taxpayers. In addition, the decisions of the Constitutional Court of Ukraine and the ECHR (the case of *Intersplav v. Ukraine*) illustrate the practical aspects of rights violations through tax measures. These publications form the theoretical basis of the study, but require further analysis in the context of martial law and digitalisation.

 3. The purpose of the work is to analyse the relationship between taxation and human rights in Ukraine under martial law, with the aim of identifying mechanisms to ensure a balance between the interests of the state and taxpayers, including tax-legal compromise, proportionality of intervention



and compliance with international standards. This will allow recommendations to be made to prevent violations of rights and increase the transparency of fiscal policy.

Relevance of the research topic. The relevance of the topic is due to the fact that global changes in the economy are taking place as states increasingly regulate finances, and at the same time, there is growing attention to the protection of human rights at the international level. After the pandemic and due to geopolitical conflicts, such as the war in Ukraine, countries are raising taxes, which leads to conflicts and violations. This is emphasised by the decisions of the UN and the Council of Europe, which refer to proportionality in taxation. In Ukraine, where tax reform is ongoing, this is particularly important for protecting constitutional rights and combating corruption in the fiscal sphere. The research will help develop legal theory and provide practical recommendations for legislators, judges and taxpayers, making it useful for contemporary jurisprudence and practice.

4. Presenting main material.

The relationship between taxation and human rights is an increasingly important area of research, especially given that government fiscal policy intersects with fundamental rights of individual protection. This intersection requires a delicate balance, especially given that taxpayers' rights are, in essence, human rights reinterpreted in a fiscal context. The relationship between the state and the individual is revealed through the prism of the natural law approach. The individual is the primary basis of any social association, and the state merely creates the necessary conditions for its organised existence. Although in the modern world a full life without the state is practically impossible, the leading role in this interaction still belongs to the individual. The ideal model of such relations can be considered one that is based on the principle of equality, but at the same time recognises the priority role and higher value of the individual [1, p. 389].

On 24 February 2022, Presidential Decree No. 64/2022 'On the Introduction of Martial Law in Ukraine' [11] officially introduced martial law in the country. This created a need to strengthen the state's financial capabilities to ensure defence capability and economic stability. To this end, a number of regulatory and legal acts aimed at increasing tax revenues were adopted.

As noted by D. Getmantsev [12, p. 350], increasing the tax burden during martial law is a reasonable step, as it is aimed at ensuring macro-financial stability, covering growing defence costs and supporting the population. The scholar emphasises that proper tax administration and tighter control over tax payments will help reduce the budget deficit. This position should be maintained under martial law, as the state must strike a balance between supporting economic activity and ensuring the stability of the budgetary system. At the same time, it is extremely important to ensure transparency and accountability in the use of tax revenues in order to prevent possible corruption and misuse of financial resources.

According to Part 1 of Article 67 of the Constitution of Ukraine (hereinafter referred to as the CU), it is stipulated that everyone is obliged to pay taxes and fees in the manner and amounts established by law [2]. This emphasises the constitutional obligation, but also restricts the state, since taxes must be lawful and not arbitrary. By Decision of the Constitutional Court of Ukraine No. 15-rp/2009 of 23 June 2009 in the case of the constitutional submission of the President of Ukraine regarding the verification of compliance with the Constitution of Ukraine (constitutionality) of subparagraphs 3.5, 3.6 of paragraph 3 of Article 3 'Final Provisions' of the Law of Ukraine 'On the Customs Tariff of Ukraine' and paragraph 8 of part 2 of Article 9 of the Law of Ukraine 'On Foreign Economic Activity' (case on a temporary surcharge to the current import duty rates), it is stated that the generally recognised elements of the legal mechanism for regulating taxes and fees (mandatory payments) are the taxpayer or payer, the object of taxation, the unit of taxation, the source of payment, the tax rate, the tax period, the terms and procedure for making payments, the tax quota, and tax exemptions [3].

M.P. Kucheryavenko uses the term 'system of principles related to taxation' in his scientific works [4, p. 42]. In his opinion, the principle of tax law is a set of mandatory requirements that determine the main directions of regulation of relations in the field of taxation, while influencing the development of tax law and contributing to the avoidance of legal conflicts.

M.V. Karmalita notes that the principles of tax law are not limited to those enshrined in the Tax Code of Ukraine (hereinafter referred to as the TC of Ukraine), since legal norms are not only found in legislation. In her opinion, the principles of tax law also include those formulated by judicial bodies in the process of law

enforcement or developed within the framework of financial and legal doctrine [5, p. 61]. Such principles ensure compliance with constitutional principles, the realisation of citizens' rights and freedoms, the protection of the interests of legal entities, and consistency with European standards. Some principles are clearly enshrined in tax regulations, while others are formed through interpretation of legislation. They can be of two types: those directly specified in regulatory acts and those derived from their content.

Therefore, considering the above, the legal basis for taxation in Ukraine forms the basis for regulating a specific type of social relations, but there is currently no single approach to classifying the principles of tax law. Thus, I. M. Prots and A. B. Gryshchuk propose dividing these principles into three main groups: those related to the constitutional order; those that guarantee the realisation of taxpayers' rights and freedoms; and those that reflect the foundations of the administrative-territorial structure [4, p. 500].

According to Part 2 of Article 8 of the European Convention on Human Rights (hereinafter referred to as the Convention), special attention is paid to clarifying namely: public authorities may not interfere with the exercise of this right, except where such interference is in accordance with the law and is necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This means that taxation must be proportionate: not excessive and taking into account the interests of the taxpayer. In particular, Article 4 of the Tax Code of Ukraine emphasises the balance of interests, where taxes cannot violate constitutional rights [8]. An example of a violation of taxpayers' rights is the case of *Intersplav v. Ukraine* (ECHR, 2007), where the Court found that systematic delays in VAT refunds violated the right to peaceful enjoyment of property (Article 1 of the Convention). This highlights the need for proportionality and transparency in taxation, especially in conditions of increased fiscal pressure, such as during martial law.

It is important to understand the general meaning of the term 'tax.' According to Part 6.1 of Article 6 of the Tax Code of Ukraine, the legislator has determined that this is a mandatory, unconditional payment to the relevant budget or to a single account, which is collected from taxpayers in accordance with this Code [8].

It is also necessary to distinguish between the legitimacy of the interest of the subject of legal relations and the legitimacy of the means by which this interest is realised. Interests can be of different nature, and their legitimacy is not determined by their content or character, but depends on the means of achieving the set goals [9, p. 31]. For example, a person's desire to live in comfortable conditions, have an adequate level of well-being and satisfy their own needs is entirely legitimate. If these goals are achieved through honest work, paying taxes and respecting the rights of others, this is in line with the principles of legality and social norms. At the same time, the same goals can be achieved by illegal means – through tax evasion, concealment of income, or creation of fictitious grounds for obtaining tax benefits. Such actions violate the requirements of the law. Thus, the legal assessment concerns not the interest itself, but the ways and means of its implementation.

According to V. A. Vdovichenko, a tax-legal compromise means resolving conflicts between the state and taxpayers by reconciling their interests. The scholar emphasises that the state and the taxpayer are not opposing parties, as they are united by a common interest — ensuring the effective functioning of the state, in which the taxpayer is an active member of society [10, p. 4]. A tax-legal compromise between the state and taxpayers, as Vdovichenko notes, is a kind of 'public agreement' between public and private entities, achieved through social dialogue or individual appeals by taxpayers [10, pp. 4–5]. As a result, a balance is established between the rights and obligations of the parties, which is enshrined in the norms of tax law.

In the field of taxation, there is inevitably a conflict between social, public and private interests. Social interest is linked to the general welfare of the population, public interest to the interests of the state and local communities, while private interest reflects the individual needs of taxpayers.

5. Conclusions.

Thus, taxation is closely linked to human rights, especially in the context of martial law introduced in 2022. Increased fiscal pressure is justified to finance defence needs and maintain economic stability, as noted by D. Getmantsev. However, it requires strict adherence to transparency to prevent corruption and abuse. The Constitution of Ukraine establishes the obligation to pay taxes exclusively in accordance with the law, without arbitrary measures.

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