

Варто зазначити, що Міністерство цифрової трансформації України анонсувало нові можливості в застосунку «Дія», зокрема, і переклад англійською мовою усіх доступних документів [4]. Такі новели дозволять визнати прийнятним країнам такі цифрові документи українців за кордоном аналогом паперових у всіх правовідносинах.

Отже, питання вдосконалення адміністративних процедур, які здійснюються консульськими установами України, виконавчими органами, що забезпечують перетинання державного кордону України, є актуальним та може бути вирішеним за рахунок використання цифрових інструментів. Важливим є співробітництво України з країнами перебування українських дітей (наприклад, щодо ідентифікації дітей, шкільного навчання та медичного обслуговування тощо).

#### Література:

1. 2 млн українських дітей втекли від війни за кордон, 3 млн стали ВПО – ЮНІСЕФ. Новинарня. 18.06.2022. URL: <http://surl.li/cnozp>
2. Директива Ради 2001/55/ЄС від 20.07.2001 року. URL: <http://surl.li/cnpby>
3. Резолюція Парламентської Асамблеї Ради Європи (ПАРЄ) 2449 (2022) 22.06.2022 року. URL: <http://surl.li/cnpbx>
4. Нові можливості в застосунку «Дія». URL: <https://thedigital.gov.ua/>

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## THE RIGHT TO EFFECTIVE JUDICIAL PROTECTION. TAX PERSPECTIVES

### ПРАВО НА ЕФЕКТИВНИЙ СУДОВИЙ ЗАХИСТ. ПОДАТКОВІ ПЕРСПЕКТИВИ

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Provision of a person's right to effective judicial protection is the one of fundamental, guaranteed by European legislation legal principles, which

includes the right to an effective means of restoring of violated rights, as well as judicial protection of rights and freedoms.

Primarily, these rights are contained in the European Convention on Human Rights (hereinafter – the Convention) (Art. 6 – Right to a fair trial, Art. 13 – Right to an effective remedy)[1] and the Charter of Fundamental Rights of the European Union (Art. 47 – Right to an effective remedy and to a fair trial) [2]. The purpose of these fundamental, inalienable and non-limitable rights is to protect the legitimate interests and rights of the individual through the application of effective and fair justice, as well as to ensure the effectiveness and implementation of the general goals of EU law in the national legislation of the States [3].

Special nature of the right to judicial protection in tax legal relations is determined by the fact that it is a complex right that combines a number of rights related to the protection of the legitimate interests of the taxpayer. Thus, the European Court of Human Rights (hereinafter referred to as the ECHR, the Court) emphasizes the complex nature of the taxpayer's right to judicial protection. In particular, the ECHR draws attention to the fact that this right includes the right to apply to the court and the right to have his case heard and decided by the fair and public court. At the same time, the person must be provided with the opportunity to exercise the specified rights without any obstacles or complications, in compliance with the requirement of a *reasonable time* of proceedings (cases *Matsuk v. Ukraine* [4], *Rakitin v. Ukraine* [5], *Hentrich v. France* [6], *Sokor v. Ukraine* [7] etc.).

The special role of the right to effective judicial protection in the system of the taxpayer's rights is conditioned by the dominant in the Ukrainian domestic tax legal doctrine ideology of the relationship between the State, with its sovereign, asymmetric tax powers, and the taxpayer, endowed with a compulsory tax obligation, as two opposite sides of tax relations with completely opposite interests. The specified ideology creates the conditions for the State to go beyond the legitimate, fair and legally established interference with the taxpayer's rights.

In view of this, the taxpayer's right to effective judicial protection acts as a kind of guarantee of the full implementation of his other subjective rights and legitimate interests in tax legal relations and a means of mitigating the negative consequences for the taxpayer of the asymmetry of the tax powers of the State [8].

The taxpayer's right to judicial protection is enshrined in Ukrainian legislation in Art. 55 of the Constitution of Ukraine [9], and is also specified in Clause 17.1.7 of Art. 17 of the Tax Code of Ukraine [10], which establishes the right of the taxpayer «...to appeal ... decisions, actions (inaction) of controlling bodies ...» [10] and Art. 56 of the Tax Code of Ukraine, which allows the taxpayer to appeal administratively or judicially the decisions made by the controlling body [10].

However, the extremely high social importance of this right and its regulation by European and Ukrainian (at the constitutional and special legislative levels) legislation do not guarantee its proper implementation in practice. In particular, the research of the ECHR disputes with a tax-legal component, in which the taxpayer's right to judicial protection violated by the State appears, demonstrates the State's abuse of such tax right and ignoring the legally established rights and interests of taxpayers. Despite the general inapplicability of Art. 6 of the Convention (which directly concerns the right to a fair trial) to tax legal relations, the study of these cases indicates that due to the problems raised during their consideration, they fall under its influence. Their analysis allows us to record a violation of a fair balance between the observance of the general interests and the protection of property rights, combined with a violation of the taxpayer's right to an effective and fair trial by the State.

For example, in the ECHR case «*Hentrich v. France*», the Court draws attention to the State's abuse of its sovereign, asymmetric right to tax and, as a result, the State's violation of the balance of interests of the taxpayer and the State in tax relations [6]. Besides, the court established an important provision, indicating a violation of Art. 1 of Protocol No. 1 of the Convention, since the tax authorities violated «a fair balance between the protection of property rights and the requirement to observe common interests» and made an attempt to establish the limits of the State's behavior in tax legal relations, in particular, the inadmissibility of selective application certain measures, certainty and predictability as criteria for legislative intervention by the State, as well as the reality of the possibility of protecting of the rights of a private person as a criterion for a fair balance. In its decision, the Court also established a violation of Art. 6 of the Convention, since the courts limited the applicant's ability to provide evidence of the conformity of the land sale price with its market value, as well as the requirement of a *reasonable time* of proceedings [6]. By Court's decision, the satisfaction of the public interests to the detriment of the private is unacceptable, the actions of the State in relation to the taxpayer must be strictly limited by legal norms and be aimed at maintaining a fair balance in tax legal relations.

Thus, the violation of the fair balance between the satisfaction of general, public interests and the encroachment on the private interests of taxpayers, combined with the failure to comply with the requirements of an independent and fair judicial review of the case, as well as a reasonable period of such review, demonstrates the State's abuse of its asymmetric tax law and ignoring the rights and legitimate interests of the taxpayers. This statement is also substantiated in other ECHR decisions on tax disputes. Thus, in the case «*Sokor v. Ukraine*», the Court established the fault of the State in delaying of the trial of the case by public bodies and the impossibility of the taxpayer to renew his violated rights in a timely manner [7], in the case «*Matsyuk v.*

*Ukraine*» the Court drew attention to the importance of the effectiveness of the taxpayer's access to justice and his ability to challenge an act that indicates an interference with his rights [4], and in the case «*Rakitin v. Ukraine*» the Court decided the need for a fair and public hearing of the case within a reasonable time, timely and full execution of the court decision and the importance of having effective means of legal protection for the applicant's complaints in accordance with the Convention [5].

Accordingly, the analysis of ECHR cases with a tax-legal component indicates that the taxpayer's right to effective judicial protection includes the following requirements: efficiency of access to the court, a practical possibility for the taxpayer to appeal the act in the authorized body or in the court, availability of court proceeding, a *reasonable time* of proceeding, independence and impartiality of judges ect. However, the research of the ECHR's case law indicates the absence of the full implementation of the taxpayer's right to effective judicial protection, despite of its detailed normative regulation. Complexity in such an implementation reflects the impossibility of satisfying taxpayer's interests in tax legal relations and indicates that the true purpose of tax legal relations is at the stage of its transformation into a goal of provision of the subjective fiscal interest of the State. By systematically violating the requirements for the protection of the taxpayer's right to judicial protection, the State demonstrates the sovereign, unlimited, asymmetric nature of its tax powers. It is apparent that in the conditions of the asymmetric nature of the tax law of the State, the taxpayer's right to judicial protection, despite its true purpose – guaranteeing the realization of the subjective rights and interests of taxpayers, becomes only one of the many rights that are enshrined in law, and aimed at the taxpayer's fulfillment of his compulsory tax obligation, as well as the meeting of the fiscal needs of the State.

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**ENSURING PUBLIC SAFETY DURING PEACEFUL GATHERINGS  
IN UKRAINE UNDER MARTIAL LAW: THE PLACE  
AND ROLE OF THE NATIONAL GUARD OF UKRAINE**

**ЗАБЕЗПЕЧЕННЯ ГРОМАДСЬКОЇ БЕЗПЕКИ  
ПІД ЧАС ПРОВЕДЕННЯ МИРНИХ ЗІБРАНЬ В УКРАЇНІ  
В УМОВАХ ВОЄННОГО СТАНУ: МІСЦЕ  
ТА РОЛЬ НАЦІОНАЛЬНОЇ ГВАРДІЇ УКРАЇНИ**

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Сучасні правоохоронні тенденції, зокрема й у питаннях забезпечення фундаментальних конституційних прав людини і громадянина на території України зумовлюють необхідність активізації наукових досліджень. Право громадян України збиратися мирно, без зброї – є непорушним і невід’ємним елементом комплексу демократичних цінностей у будь якій правовій системі держав сучасності. Водночас, стрімка зміна структури органів правопорядку, динамічність їх компетентнісного наповнення, а також триваюча російська агресія проти українського народу та держави зумовлюють необхідність наукового