

EQUALITY AS A LEGAL PRINCIPLE OF TAXATION

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The principle of equality is a fundamental basis of modern taxation, standing in close logical and historical connection with the principles of democratic public governance and the rule of law. Democracy is a political expression of the idea of equality [3, p. 1]. The foundation of a democratic society is equal access to power, to making decisions, including on matters of taxation. In the preamble to the Constitution of the Republic of Bulgaria, equality is proclaimed as a universal human value along with freedom, peace, humanism, justice and tolerance, as follows from Article 1 of the Universal Declaration of Human Rights. Equality is also an important element of the principle of the rule of law. In Art. 6, para. 2 of the Constitution of the Republic of Bulgaria, the equality of citizens before the law is formulated as a constitutional principle that underlies civil society and the state. This principle is common to the entire legal system. It is the basis for the interpretation and application of the Constitution and for the rule-making activity. In Art. 6, para. 2 of the Constitution, equality before the law is also formulated as a fundamental right of citizens. In a number of constitutional provisions, it is specified, being referred to certain rights and freedoms (Art. 19, para. 2, Art. 46, para. 2, Art. 47, para. 3, Art. 119, para. 3, Art. 121, para. 1, etc.). Equality before the law means the obligation for their equal treatment by the state authorities in the creation and enforcement of law. Taxation in modern democratic societies is established by law and should reflect all of the above-mentioned ideological characteristics.

The legal principle of equality in taxation can be considered in different aspects. For example, we can distinguish between equality between different persons (interpersonal equality) and equality in the treatment of equal actions (situational equality) [2, p.5]. In the first case, we mean equal taxation of persons regardless of their gender, ethnicity, origin, religion or belief, education, beliefs, political affiliation, etc. In the second – equal taxation of similar factual cases. It is also important to compare formal and substantive equality [2, p. 56]. Equality in the legal sense is not necessarily equality – complete factual identity [1, p. 377 etq]. It is possible that the application of a regulatory provision ensuring formal equal treatment may lead to factual, substantive inequality. Therefore, legal guarantees of equality in some situations may include unequal (compensatory) treatment of certain persons or cases with a view to achieving a balanced, socially fair factual result. We are faced with such a hypothesis, for example, when taxing persons with reduced working capacity. In these cases, in order to compensate for the

essential inequality that would arise from the equal tax treatment of able-bodied persons and persons with reduced working capacity, the legislator usually provides for tax relief in favor of the second group (as, for example, in Art. 18 of the Personal Income Taxation Act in Bulgaria). Thus, in the field of taxation, the principle of equality is posed not only as a legal issue, but also as a matter of social and economic justice. In this connection, we can also speak of the so-called horizontal and vertical equality. Horizontal equality requires that persons with the same ability to pay be taxed equally, i.e. to pay the same amount of taxes. Vertical equality exists when taxpayers with greater ability to pay bear a proportionally greater tax burden than those with lesser economic capabilities. In this sense, equality in taxation also means that the tax burden is distributed proportionately among taxpayers.

As stated above, ensuring the principle of equality in taxation implies flexible, open regulatory rules, which in some cases introduce exceptions and differentiations, justifying unequal treatment. Unequal treatment in this case should be objectively justified in order to achieve a legitimate aim, and the means to achieve the aim should be proportionate, appropriate and necessary. The principle of equality is violated if the introduction of a difference does not have an objective and reasonable justification. Unequal treatment on the basis of specific characteristics constitutes discrimination. Direct discrimination occurs when a person is treated unfavourably compared to the way in which other persons in a similar situation have been or would be treated, and the reason for this is the presence of a specific characteristic of these persons, which falls within the scope of a “protected ground”. Both EU law and the European Convention on Human Rights recognise that discrimination may occur not only in cases of different treatment of persons in similar situations, but also in cases of equal treatment of persons in different situations. In the latter situation, the concept of ‘indirect discrimination’ is identified, because it is not the treatment that differs, but the consequences of that treatment, which affect persons with different characteristics differently. Article 2(2)(b) of the Racial Equality Directive states that ‘indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a certain racial or ethnic origin at a particular disadvantage compared with other persons’. For the purposes of Article 14, different treatment between persons in comparable situations is to be considered discriminatory if it has no objective and reasonable justification, that is to say, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim to be achieved.

Equality before the law and non-discrimination in taxation in its various aspects are consistently enshrined in national, community and international law through various legal instruments (hard law and soft law) – for example, the Protection against Discrimination Act in Bulgaria, the provisions of which can also be applied to the taxation, Article 14 of the European Convention for

the Protection of Human Rights and Fundamental Freedoms (the ECtHR notes that tax obligations fall within the scope of Article 1 of Protocol No. 1, and therefore, Article 14 also applies [Decision of 23.10.1990 of the ECtHR in the case of *Darby v. Sweden*]), the OECD Model Tax Convention, which in Article 24 establishes the principle of equality of treatment (the so-called anti-“discrimination clause”: none of the contracting states may provide for unequal/discriminatory tax treatment due to the fact that the tax treatment is related to the other country, i.e. the connection with that country cannot be a basis for such treatment), European Parliament resolution of 15 January 2019 on gender equality and taxation policies in the EU (2018/2095(INI)), Treaty on the Functioning of the EU and the provision of Art. 110, para. 2, prohibiting in the context of the common internal market discriminatory taxation of goods imported from Member States, which impedes the free movement of goods within the community, etc. In the light of the Treaty of Lisbon, anti-discrimination policy is generally a major priority of the EU.

The principle of equal treatment in taxation in various aspects and contexts is consistently applied in the practice of the relevant national, union and international judicial institutions. For example, in Decision No. 4 of April 9, 2019 in constitutional case No. 15 of 2018, the Constitutional Court of the Republic of Bulgaria stated that despite the legislator's stated aspiration to achieve equality between two categories of tax subjects – persons who rent out property and those who do not rent out property, the contested provision of Art. 22 of the Local Taxes and Fees Act leads to an unfair result in contradiction with the spirit and letter of Art. 6, para. 2 of the Constitution. Persons who do not receive rental income will owe tax on their property in a higher amount than persons who receive income from their property. There is no constitutional basis for the legislator's idea of “equality” of the two types of owners, distinguishable according to how they use their property (for income or not). The opposite is true: this is precisely what leads to unequal treatment of owners with regard to the property tax they owe on the property, by making the amount of the tax dependent on the use of the property.

In the case of *Burden v. the United Kingdom* before the European Court of Human Rights two sisters who lived together and owned property in common bequeathed their share of the property to the other. The applicants claimed that, since the value of the property exceeded a certain threshold, the other would have to pay inheritance tax on the death of one of them. They claimed that this was a discriminatory interference with their right to property, since married couples and couples living in a registered partnership were exempt from paying inheritance tax. The ECtHR concluded, however, that the applicants, who were sisters, could not be compared to cohabiting couples who had entered into a marriage and a registered partnership agreement. Marriage and registered partnership were special relationships entered into freely and knowingly with the aim of giving rise to contractual rights and obligations.

In *Darby v. Sweden*, Dr Darby claimed that the refusal to grant him an exemption from part of the church tax on the sole ground that he was not officially registered as a person with a permanent residence in Sweden constituted discrimination in comparison with the situation of other persons who were not members of the church but were so registered. The Court noted that, as regards his right to exemption under the Non-Church Tax Act, Dr Darby could claim to be in a similar situation to that of other persons who were not members of the church and were officially registered as living in Sweden. With regard to the purpose of this difference in treatment between persons who were permanently resident in the country and those who were not, the following should be noted. According to the Government Bill of 1951, which became the basis of the Non-Church Taxation Act, the reason for limiting the right to tax exemption to persons officially registered as resident in the country was that the reduction was not as defensible in relation to persons without such registration as to those who were, and that the procedure would be more complicated if it were to apply also to those who were not domiciled in the country. Indeed, at the hearing before the Court the Government's representative stated that they did not claim that the difference in treatment had a legitimate aim. In view of the above, the measure complained of could not be regarded as having pursued a legitimate aim under the Convention. The Court held that there had been a violation of Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1.

According to the settled case-law of the Court of Justice of the European Union, discrimination in tax matters can arise only when different rules are applied to similar situations or when the same rule is applied to different situations (Judgment of 14 February 1995 in *Schumacker*, C-279/93, paragraph 30; Judgment of 22 March 2007 in *Talotta*, C-383/05, paragraph 18; and Judgment of 18 July 2007 in *Lakebrink and Peters-Lakebrink*, C-182/06, paragraph 27). Therefore, a difference in treatment between two categories of taxpayers may be regarded as discrimination within the meaning of the Treaty if the situation of those categories of taxpayers is similar in terms of the relevant tax rules (Judgment of 1 December 2011 in *Commission v Hungary*, C-253/09, paragraph 51). By Order of 16 May 2024 in Case C-287/23, the Court of Justice of the EU stated that the introduction of a tax measure of general application, which automatically excludes certain categories of taxpayers from the possibility of benefiting from a tax advantage, while the tax administration is not obliged to provide even the slightest evidence or indication of tax evasion, fraud or abuse, goes beyond what is necessary to avoid tax evasion, fraud or abuse (paragraph 65).

The prohibition on Member States from unequal treatment and restriction of the free movement of goods and capital, as well as the freedom of establishment by providing for higher taxes in relation to the activities of persons resident in another Member State, has been examined in a number of

CJEU decisions – for example, Judgment of the Court of Justice of 8 April 2008 in Case C-167/05, Judgment of the Court of Justice of 17 July 2008 in Case C-426/07, Judgment of the Court of 21 May 2015 in Case C-657/13, Judgment of the Court of 28 March 2019 in Case C-275/18, Judgment of the Court of 30 January 2020 in Case C-725/18, Judgment of the Court of 30 April 2020 in Case C-565/18, Judgment of the Court of 29 April 2021 in Case C-480/19, Judgment of the Court of 9 September 2021 in Case C-449/20, Judgment of the Court of 27 April 2023 in Case C-537/20, Judgment of the Court of 20 June 2024 in Case C-420/23, Judgment of the Court of 27 February 2025 in case C-18/23.

Equality as a principle of taxation contains various semantic connotations related to equality before the law of taxpayers, equal treatment, prohibition of discrimination, fair distribution of the tax burden. It is normatively anchored in national, EU, international law and the rich practice of national courts, the Court of Justice of the European Union and the European Court of Human Rights. In recent decades, the issue of the effective implication of this legal principle in social reality has been particularly acute. For example, the fact that some profitable multinational companies pay extremely low income taxes in practice, while many citizens, small and medium-sized enterprises are severely affected by restrictive fiscal policy, causes dissatisfaction among society, a sense of lack of justice and poses a threat to the social contract between governments and their citizens. In this sense, the actual guarantee of the principle of equality should be a particular focus of the policy and practice of legislative, law enforcement and judicial institutions.

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