

THE ESSENCE OF THE CONSTITUTIONAL REQUIREMENT ON THE ESTABLISHMENT OF TAXES, DUTIES, AND OTHER MANDATORY PAYMENTS IN ACCORDANCE WITH THE LAW

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This article examines the constitutional and human rights dimensions of tax obligations in the Republic of Armenia, focusing on Article 60(8) of the 2015 Constitution, which integrates the obligation to pay taxes, duties, and other mandatory payments into the provision on the right to property. The analysis reveals a legal transformation: whereas previous constitutions treated taxation as a standalone civic duty, the 2015 Constitution reframes it as a legitimate restriction on property rights.

Through a doctrinal analysis of Constitutional Court jurisprudence—particularly Decisions ՍԴՆ-753 (2008), ՍԴՆ-816 (2009), ՍԴՆ-1142 (2014), and ՍԴՆ-1436 (2018)—the article clarifies the principle of legality as applied to taxation. The Court has consistently ruled that both the types of taxes and their constituent elements (e.g., taxable base, rates, and scope) must be defined exclusively by law, not by sub-legislative acts.

The article further compares Armenian constitutional standards to the European Court of Human Rights' interpretation of Article 1 of Protocol No. 1 to the European Convention on Human Rights. It emphasizes that taxation, while an interference with property rights, is permissible when it is lawful, pursues a legitimate public aim, and satisfies the requirement of proportionality.

A practical case study on cadastral valuation illustrates how delegating key components of tax determination (e.g., zoning boundaries) to government decisions violates the principle of legality and may lead to unconstitutional interference with property rights.

Ultimately, the article concludes that to be valid, tax obligations must be clearly and comprehensively grounded in legislation, ensuring legal certainty, predictability, and compliance with constitutional and international human rights standards.

Key words: *tax obligations, taxes, duties, mandatory payments, principle of legality, legal certainty, right to property.*

According to Article 60(8) of the Constitution of the Republic of Armenia, every person is obliged to pay taxes, duties, and other mandatory payments as established in

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accordance with the law. The constitutional regulation of relationships arising in connection with taxes and other mandatory payments indicates their importance and significance for society and the state. Primarily, the significance of this matter is determined by the necessity of forming revenues for the state and community budgets, then by the need to serve the interests of the state and society, and finally by their role in the regulation of economic relations¹.

In earlier versions of the Constitution (1995 and 2005), the obligation enshrined in Article 60(8) of the current Constitution had a different formulation. Specifically, Article 46 of the 1995 Constitution and Article 45 of the 2005 Constitution provided that every individual is obliged to pay taxes, duties, and make other mandatory payments in the manner and amount prescribed by law. Thus, under the 1995 and 2005 editions, these obligations were set forth as constitutional duties of individuals.

By contrast, in the 2015 edition, the obligation is situated within the article guaranteeing the right to property. In other words, the obligation to pay taxes, duties, and other mandatory payments is currently not only framed as a constitutional duty, but also as a restriction and interference with the right to property. This approach more accurately reflects the true content of the obligation.

Additionally, under the 1995 and 2005 Constitutions, the law was required to prescribe only the procedures, and amounts of taxes and duties. However, the 2005 Constitution also added that the types of such payments must be defined by law (Article 83.5, Clause 2). The current Constitution employs the phrase 'established in accordance with the law,' which introduces a crucial clarification that will be discussed further in this article.

It might appear that even in the 1995 and 2005 versions of the Constitution, the requirement that the types, procedures, and amounts of taxes, duties, and other mandatory payments be defined exclusively by law was clear and understandable. In practice, however, several legal acts contrary to this requirement were adopted and implemented. As a result, the Constitutional Court of Armenia has had to address this issue on multiple occasions.

One of the earliest relevant decisions of the Constitutional Court was Decision No. ՄԴՈ-753 of May 13, 2008, based on the application of 'Radio Hay' LLC, regarding the constitutionality of Article 53(3) of the Law on Television and Radio². In that case, the Court addressed the content of the term 'mandatory payment' as mentioned in Article 45 of the Constitution.

The Court noted that the presence of the word 'other' in Article 45 implies that taxes and duties are themselves mandatory payments. Consequently, although mandatory payments other than taxes and duties differ from the latter, they must share common features with them.

The Court further specified that the mandatory payments referenced in Article 45:

- a) possess a public law character, meaning they are established and paid within the framework of public law relationships, and
- b) are intended for allocation to state or community budgets.

¹ Հայաստանի Հանրապետության Սահմանադրության մեկնաբանություններ / ընդհանուր խմբագրությամբ՝ Գ. Հարությունյանի, Ա. Վաղարշյանի, Եր., «Իրավունք», 2010, էջ 526:

² ՀՀՊՏ 2008.05.29/32(622) Հոդ.498:

This position of the Constitutional Court was reiterated in later rulings, including Decision No. ՄԴՌ-816 of July 18, 2009³, and Decision No. ՄԴՌ-1142 of April 2, 2014⁴. Therefore, the initial rulings of the Court on this matter focused on clarifying the meaning and characteristics of the concept of 'mandatory payment' used in the Constitution.

The next phase in the Constitutional Court's development of legal doctrine on this matter came with Decision No. ՄԴՌ-1436 of November 27, 2018⁵, in which the Court examined the requirement that taxes, duties, and other mandatory payments must be established in accordance with the law.

In this decision, the Court stated that the phrase 'taxes established in accordance with the law' used in Article 60 of the Constitution implies that taxes and the elements comprising their substance must be defined exclusively by law.

According to the principle of legality enshrined in Article 6 of the Constitution ('Principle of Legality'), the Government may adopt sub-legislative normative legal acts to ensure the implementation of laws, but such acts cannot alter or supplement the substance of the tax or the scope of the tax obligation. This means that any term used in the Tax Code, the content of which affects the scope of tax obligations, must be defined by law.

The same decision of the Constitutional Court also emphasized that the phrase 'taxes established in accordance with the law' means that both the tax and its constitutive elements must be established exclusively by law. In each individual case, a tax obligation will be considered lawfully established if it is not only formally prescribed by law but also if its constituent elements are fully reflected in that law. Otherwise, the situation will amount to unlawful interference with the right to property.

The European Court of Human Rights (ECtHR) has also developed consistent case law on taxation as interference with the right to property, specifically under Article 1 of Protocol No. 1 to the European Convention on Human Rights.

The ECtHR recognizes that taxation constitutes an interference with the right to property. However, such interference is not inherently incompatible with Article 1 of Protocol No. 1, provided certain conditions are met⁶.

States enjoy a wide margin of appreciation in matters of taxation, as these fall within the domain of economic and social policy. The ECtHR generally defers to the judgment of national authorities unless tax measures are arbitrary or disproportionate⁷.

Taxation must pursue a legitimate aim in the public or general interest, such as increasing public revenues or promoting economic fairness. The ECtHR typically accepts the existence of a public interest in tax legislation without extensive scrutiny⁸.

³ ՀՀՊՏ 2009.07.29/38(704) Հնդ.880:

⁴ ՀՀՊՏ 2014.04.16/19(1032) Հնդ.288:

⁵ ՀՀՊՏ 2018.12.05/90(1448) Հնդ.1216:

⁶ Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights. Council of Europe/European Court of Human Rights, 2020, p. 61.

⁷ Taxation at the European Court of Human Rights. Human Rights Law Review, Volume 24 (1):1, 2024, p.15.

⁸ Balancing Privacy and the Public Interest: The Application of the 'General Measures' Doctrine in L.B. v. Hungary in the Absence of Any Substantive Proportionality Assessment. European Constitutional Law Review, Volume 20, Issue 1, March 2024, p. 148.

The principal criterion applied by the Court is whether there is a reasonable relationship of proportionality between the means employed and the aim pursued. This includes determining whether a fair balance has been struck between the general interest of the community and the individual's right to property. Imposing an excessive or disproportionate tax burden on an individual may result in a violation of the Convention.

Thus, both the ECtHR and the Constitutional Court of Armenia have consistently held that the definition of taxes, duties, and other mandatory payments inherently constitutes a limitation on the right to property. Such limitations may only be considered lawful if they are prescribed exclusively by law, conform to the principle of legal certainty, pursue a legitimate aim, and are reasonably justified.

Developing these positions further, both high courts have affirmed that the imposition of a tax obligation is a lawful restriction on the right to property only when the tax is established by law, and the term 'tax established by law' encompasses both the legal definition of the tax type and the specification of its constituent elements exclusively in legislation.

In other words, any legal norm that affects the scope of a person's tax obligation must be defined by law. To illustrate, consider the following practical example:

According to Article 62(8) of the RA Tax Code⁹, in the case of alienation of buildings, structures (including unfinished constructions), residential or other premises, and land plots, the VAT base is determined according to Article 61 of the Code and the present article, but not less than 80% of the taxable base determined under Article 228, except in cases provided for by the same article.

Article 228(1) provides that the taxable base for property tax shall be the cadastral value approximating market value, as determined by a law regulating cadastral assessment for taxation purposes.

Hence, Article 62 refers to Article 228, which in turn refers to the Law on Cadastral Assessment for Property Taxation Purposes¹⁰. To determine whether the elements comprising a tax obligation are defined by law, one must also examine the relevant provisions of the latter law.

According to Article 3(1) of the Law on Cadastral Assessment, the cadastral value approximating the market value of land plots (except those for agricultural use) is calculated using the following formula:

$CV = BP \times A \times ZC$, where:

CV – cadastral value approximating market value for taxation purposes;

BP – base price per square meter of the land plot (excluding agricultural land);

A – surface area of the assessed land plot in square meters;

ZC – zoning coefficient (reflecting the location-based valuation zone of the land plot).

While two of the three required elements for calculating the cadastral value (base price and zoning coefficient) are defined by the same law (in Articles 3(2) and 3(3)), the zoning boundaries themselves are defined not by law but by Government Decision No. 1023-N of June 4, 2020¹¹, based on Article 3(5) of the same law.

⁹ ՀՀՊՏ 2016.11.04/79(1259) Հնդ.1038:

¹⁰ ՀՀՊՏ 2019.12.11/87(1540) Հնդ.1127:

¹¹ ՀՀՊՏ 2020.06.23/67(1622).1 Հնդ.843.1:

Therefore, one of the components required to determine the cadastral value—zoning boundaries—affecting the scope of the taxpayer’s obligation, is not prescribed by law, but by a sub-legislative act. This means that by changing zoning boundaries via a government decree, the amount of a tax obligation can be increased.

Such delegation contradicts the constitutional requirement that tax obligations be established in accordance with the law and thus may amount to unlawful interference with the right to property.

Conclusion

Taxation as a Constitutional Limitation

The obligation to pay taxes, duties, and other mandatory payments, as enshrined in Article 60(8) of the Constitution of Armenia, constitutes not merely a civic duty but a legitimate limitation on the right to property.

Requirement of Legal Basis

For tax obligations to be lawful under the Constitution, both the type of tax and its essential elements (tax base, rates, conditions, etc.) must be prescribed exclusively by law. Sub-legislative acts may not define or modify these components.

Principle of Legal Certainty

The legal framework governing taxation must satisfy the principle of legal certainty—taxpayers must be able to understand, foresee, and calculate their obligations on the basis of legislation, not administrative discretion.

Alignment with ECHR Standards

The interpretation of taxation as interference with property rights is consistent with Article 1 of Protocol No. 1 to the European Convention on Human Rights, which permits such interference only when it is lawful, pursues a legitimate public aim, and is proportionate.

Judicial Doctrine of the Constitutional Court

The Constitutional Court of Armenia has affirmed that tax obligations are constitutionally valid restrictions on property rights only when established in accordance with the principle of legality and when each element of the obligation is enshrined in statute.

Unlawful Delegation of Tax Components

Delegating the determination of tax-related elements (e.g., zoning boundaries in cadastral valuation) to executive acts violates the constitutional requirement for legality and may result in unlawful interference with property rights.

Implications for Legislative Practice

Going forward, legislative and tax policy-makers must ensure that no component of tax obligations—especially those impacting the scope of the financial burden—is left to be defined by governmental or administrative decisions without clear statutory authority.

ՄԱՅԱՂ ԲԱՂԱԼՅԱՆ – Հարկերի, տուրքերի և այլ պարտադիր վճարների՝ օրենքին համապատասխան սահմանված լինելու սահմանադրական պահանջի էությունը – Հոդվածում վերլուծվում են Հայաստանի Հանրապետությունում հարկային պարտավորությունների սահմանադրական և մարդու իրավունքներին առնչվող հարթությունները՝ կենտրոնանալով ՀՀ Սահմանադրության 60-րդ հոդվածի 8-րդ մասի վրա, որով

հարկեր, տուրքեր, այլ պարտադիր վճարներ կատարելն ամրագրված է ոչ միայն որպես սահմանադրական պարտականություն, այլև որպես սեփականության իրավունքի սահմանափակում և միջամտություն այդ իրավունքին: Նշվածը, անշուշտ, առավել լիարժեք է համապատասխանում այդ պարտականության բովանդակությանը:

ՀՀ սահմանադրական դատարանի պրակտիկայի, մասնավորապես՝ ՍԴՈ-753 (2008), ՍԴՈ-816 (2009), ՍԴՈ-1142 (2014) և ՍԴՈ-1436 (2018) որոշումների վերլուծության արդյունքում կատարվում է եզրահանգում այն մասին, որ օրինականության սահմանադրական սկզբունքի համատեքստում ոչ միայն հարկերի տեսակները և դրանց վճարման կարգը, այլև հարկի բոլոր բաղադրատարրերը (օրինակ՝ հարկման բազան, հարկման օբյեկտը և այլն) պետք է սահմանված լինեն բացառապես օրենքով: Այլ կերպ ասած՝ ցանկացած իրավանորմ, որը կարող է հանգեցնել անձի հարկային պարտավորության ծավալի փոփոխությանը, պետք է սահմանված լինի օրենքով:

Հոդվածում նաև համեմատական վերլուծության է ենթարկվում Մարդու իրավունքների վերոպական դատարանի պրակտիկան և կատարվում է եզրահանգում, ըստ որի՝ հարկերի, տուրքերի և պարտադիր այլ վճարների սահմանումը՝ որպես սեփականության իրավունքի սահմանափակման ձև, կարող է առերևույթ գնահատվել որպես իրավաչափ միայն այն պարագայում, երբ այն նախատեսված է բացառապես օրենքով, համապատասխանում է որոշակիության սկզբունքին, ինչպես նաև հետապնդում է իրավաչափ նպատակ և ունի արդարացի հիմնավորում:

Հոդվածում հողամասերի կադաստրային արժեքների որոշման պրակտիկ օրինակով նաև ցույց է տրվում, թե ինչպես է հողամասերի տարածազնահատման գոտիները սահմանելու լիազորությունը կառավարությանը վերապահելը խախտում օրինականության սկզբունքը և հանգեցնում սեփականության իրավունքի ոչ իրավաչափ միջամտության:

Բանալի բառեր – *հարկային պարտավորություններ, հարկեր, տուրքեր, պարտադիր վճարներ, օրինականության սկզբունք, իրավական որոշակիություն, սեփականության իրավունք*

САЯД БАДАЛЯН – *Суть конституционного требования об установлении налогов, пошлин и иных обязательных платежей в соответствии с законом.* – В настоящей статье рассматриваются конституционные аспекты налоговых обязательств в Республике Армения, в контексте статьи 60(8) Конституции 2015 года, которая трактует обязанность уплаты налогов, пошлин и иных обязательных платежей как ограничение права собственности. В результате анализа выявляется правовая трансформация: если в предыдущих редакциях Конституции налоговые обязательства рассматривались как гражданская обязанность, то в Конституции 2015 года они приобрели статус ограничения права собственности.

Посредством доктринального анализа решений Конституционного суда, в частности ՍԴՈ-753 (2008), ՍԴՈ-816 (2009), ՍԴՈ-1142 (2014) и ՍԴՈ-1436 (2018), раскрывается применение принципа законности в налоговой сфере. Суд последовательно утверждает, что как типы налогов, так и их составляющие элементы должны определяться исключительно законом.

В статье также проводится сопоставление армянских конституционных норм с практикой Европейского суда по правам человека в рамках статьи 1 Протокола № 1 к Европейской конвенции. Налогообложение, как вмешательство в право собственности, признается допустимым при условии его законности, легитимной цели и пропорциональности.

Пример из практики – порядок расчета кадастровой стоимости – показывает, что делегирование полномочий по определению элементов налогового обязательства подзаконным актам может привести к нарушению Конституции.

В заключение делается вывод, что налоговые обязательства будут соответствовать Конституции и международным стандартам прав человека, если они четко и исчерпывающе урегулированы законом и обеспечивают правовую определенность.

Ключевые слова: *налоговые обязательства, налоги, пошлины, обязательные платежи, принцип законности, правовая определённость, право собственности*

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