

Taxation and Inequalities: Constitutional Underpinnings

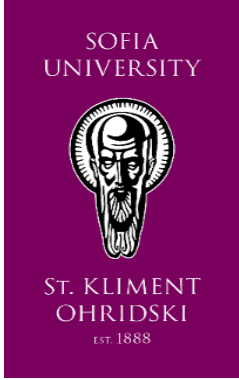


EQUALITY in Law and through Law

04/25/2024
5.15 PM, Hall 224

Key speakers

 <p>Lise Chatain (Université de Bourgogne)</p>	 <p>Yanaki Stoilov (Sofia University)</p>	 <p>Daniel Mainguy (Université Paris 1 Panthéon-Sorbonne)</p>	 <p>Savina Mihaylova-Goleminova (Sofia University)</p>	 <p>Hristo Hristev (Sofia University)</p>
--	---	---	--	---



Content

1. Equality and Non-Discrimination Legislation
2. Constitutional Links between Equality and Taxation
3. Tax Policy and Inequality
4. Conclusion

SOFIA
UNIVERSITY



ST. KLIMENT
OHRIDSKI
EST. 1888

Equality and Non-Discrimination Legislation



Equality and Non-Discrimination Legislation

According to the Constitution of the Republic of Bulgaria (CRB) Bulgaria undertakes to guarantee the life, dignity and rights of the individual and shall create conditions conducive to the free development of the individual and of civil society (Article 4 (2)).

All persons are born free and equal in dignity and rights.

All citizens are equal before the law (Article 6 (1) CRB).

There are no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status (Article 6(2) CRB).

Article 19 and 44 CRB are also applicable and fundamental rights are protected (Article 25-61 CRB).



Equality and Non-Discrimination Legislation

There is a strong link between the CRB and the International treaties containing some rights and principles related to equality and non-discrimination, which have been signed by Bulgaria, because according to Article 5 (4) CRB the *international treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.*

Bulgaria is part of the European system in the field of protection of human rights (built around the European Convention of Human Rights (ECHR) and the European Court of Human Rights).



„Източниците на правото – съвременни национално- и международноправни перспективи“



Equality and Non-Discrimination Legislation

The EU Charter of Fundamental Rights is a part of the primary Law of the EU after 2009 and the Bulgarian court recognizes the more effective protection of the Charter. National judges, however, are still cautious in applying the Charter (i.e., there is not much practice and decisions which, in their motives, reference the Charter's Principle of non-discrimination (Article 21)).

As regards to the secondary legislation, the Protection Against Discrimination Act (PADA) regulates the protection against all forms of discrimination and contributes to its prevention.

Based on Article 6 CRB, the Act addresses the following types of inequalities: *any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, shall be banned* (Article 4 (1) PADA).



Equality and Non-Discrimination Legislation

Bulgarian Constitutional Court fulfilled its role as guardian of the Bulgarian Constitution and of its primacy for the first time with its Decision No 13 under constitutional case No 3/2018 of the Constitutional Court of the Republic of Bulgaria.

See: Decision No. 2894/05.03.2009 SAC, five-member panel, under administrative case No. 15682/2008, Decision No. 10497/10.07.2013 under administrative case No. 13347/2012, etc.

SOFIA
UNIVERSITY



ST. KLIMENT
OHRIDSKI
EST. 1888

Constitutional Links between Equality and Taxation



Constitutional Links between Equality and Taxation

CRB outlines a strong link between Equality and Taxation giving constitutional mandates on Taxation in Bulgaria in line with constitutional identity. The protection of equality and non-discrimination has a strong link at constitutional level with the basic principles of taxation.

In this respect, the first principle, introduced by the CRB is that **taxes should be established by law** – through Article 60, (1), according to which “**citizens shall pay taxes and duties established by law proportionately to their income and property**”.

The provision presents the terms ‘citizens’ as a general provision without making some considerations as regards to any form related to discrimination, namely sex, race, religion, national or ethnic origin, birth, disability, and sexuality, etc.

In addition, the Personal Income Tax Act (PITA) stipulates in Article 3 that the unit of personal income taxation in Bulgaria is the individual (Natural person). Prom. SG. 95/24 Nov 2006, last amend. and suppl. SG. 102/23 Dec 2022.



Constitutional Links between Equality and Taxation

As regards to companies, based on Article 54 TFEU, companies or firms formed in accordance with the legislation of a Member State and having their registered office, central administration or principal place of business within the Union, are **treated in the same way as natural persons** who are nationals of Member States.

The second fundamental principle introduced by Article 60 (2) CRB is that **all tax incentives or surtaxes must also be established by law**.

This should be done in compliance with the principle of equality formulated in Article 6 (2) CRB, the interpretation of which is given in the practice of the Constitutional Court, as well as in view of Article 5 (4) CRB as regards to the international agreements mentioned.

CITA, PITA, the VAT Act, etc. provide tax incentives that in no way discriminate on the basis of sex, race, religion, national or ethnic origin, birth, disability, and sexuality, etc.



Constitutional Links between Equality and Taxation

See some Constitutional court Judgements in the field of taxation also: Decision No. 5 of 5.04.2012 of the CC under constitutional case No. 13/2011; Decision No. 10 of 24.10.2013 of the CC under constitutional case No. 8/2013; Decision No. 3 of 9 February 1996 under constitutional case No. 2/96. Decision No. 9 of 20 June 1996 under constitutional case No. 9/96; Decision No. 1 of 28.02.2008 of the CC under constitutional case No. 10/2007; Decision No. 2 of 30 January 1997 of CC under constitutional case No. 26/96; Decision No. 2 of 18.01.2001 of CC under constitutional case No. 10/2000; Decision No. 2 of 30.03.2000 of CC under constitutional case No. 2/2000; Decision No. 3 of 9.II.1996 of CC under constitutional case No. 2/96; Decision No. 4 of 4.07.2013 of the CC under constitutional case No. 11/2013; Decision No. 4 of 9.04.2019 of the CC under constitutional case No. 15/2018; Decision No. 5 of 19.04.2019 of the CC under constitutional case No. 12/2018; Decision No. 5 of 29.06.2000 of CC under constitutional case No. 4/2000; Decision No. 6 of 1.10.2002 of CC under constitutional case No. 9/2002; Decision No. 6 of 19.03.1998 of CC under constitutional case No. 4/98; Decision No. 7 of 27.06.2017 of the CC under constitutional case No. 2/2017; Decision No. 8 of 8.10.2002 of CC under constitutional case No. 7/2002; Decision No. 8 of 17.06.1997 of CC under constitutional case No. 3/97; Decision No. 9 of 20.VI.1996 of CC under constitutional case No. 9/96; Decision No. 9 of 31.VII.1997 of CC under constitutional case No. 2/97; Decision No. 9 of 21.09.2000 of CC under constitutional case No. 6/2000; Decision No. 11 of 26.11.2013 of the CC under constitutional case No. 20/2013; Decision No. 12 of 1.XI.1994 of CC under constitutional case No. 12/94; Decision No. 13 of 15.07.2003 of CC under constitutional case No. 11/2003; Decision No. 19 of 2.07.1998 of CC; Decision No. 31 of 24.11.1998 of CC under constitutional case No. 24/98; Decision No. 5 of 14.06.2022 of the CC under constitutional case No. 13/2021; Decision No. 8 of 30.06.2020 of the CC under constitutional case No. 14/2019; Decision No. 9 of 14.07.2020 of the CC under constitutional case No. 3/2020.



Constitutional Links between Equality and Taxation

The purpose of the **principle that taxes must be defined by law** is to guarantee interference into the private domain of taxpayers to the extent and in the manner required by public interest, and not to discriminate some taxpayers against others.

In addition, the principle of establishing taxes by law is a guarantee for the protection of the principles of equality and non-discrimination, reiterated in Article 84(3) CRB, because the Republic of Bulgaria is a State governed by rule of law, by the CRB and by the laws adopted by the Parliament.

According to Article 84 (3) CRB the National Assembly (as the national legislator) is the body which establishes taxes and determines the size of state taxes – an exclusive obligation which it cannot delegate to the executive power (the requirement for the establishment of taxes by law covers all their elements – tax object, subject, tax base, tax rate, etc.).



Constitutional Links between Equality and Taxation

CRB does not provide a legal mandate regarding the progressivity of the personal income tax system, or as regards the design of other taxes (e.g., a selectivity principle for general consumption taxes), because it depends on the National Tax and Fiscal Policy of the Government in this field, implemented through the secondary legislation in the form of Bills.

By means of Decision No 3/9 February 1996 under constitutional case No 2/1996, the Constitutional Court ruled that the principle that tax liabilities must be established by law extends to all elements determining the amount of the tax – the taxpayer, the tax base, the tax rate, etc.

The provisions of Article 60 CRB clarify that the definition of a taxable person cannot be provided in an interpretative manner but solely through express statutory text.

SOFIA
UNIVERSITY



ST. KLIMENT
OHRIDSKI
EST. 1888

Tax Policy and Inequality



Tax Policy and Inequality

Income inequality is a consideration in the design of personal income taxes and tax reliefs based on Article 60(2) in line with Article 6 CRB.

Corporate and personal income tax rates are flat — set at 10 % — and among the lowest in the EU, with the aim to attract investors.

Income tax bases are relatively broad, with little use of tax exemptions.

At the same time, the overall administrative burden of complying with the tax system is reported to be high. Bulgaria applies state aid and /or tax incentives in tax measures in order to address income inequality issues.

The most typical form of aid which is provided through national legislation in the field of taxation is the ‘general state aid’.

In general, the power of the Bulgarian tax system to correct poverty and social disparities is limited.

Bulgaria do not apply sectoral policies and does not use taxation as a tool to prevent inequality, because the principal of equality is highly protected.

If this principle is not protected, then some risks related to the negative budgetary impact, breach of competition, high administrative burden and risk of misapplication and fraud should be reviewed.



Tax Policy and Inequality

Based on constitutional identity, income inequality is not a consideration in the design of other taxes, in particular corporate income taxes and VAT, but state aid in tax measures and tax incentives are used as a tool for the economic development of the country.

In general, according to the Ministry of Finance, tax incentives can be conditionally divided into two main groups: general tax incentives and relief and special-purpose tax incentives and relief.

The use of tax incentives and relief as incentives for economic development and employment has both considerable advantages and a number of disadvantages.

The system of tax incentives, relief and preferential tax regimes in Bulgaria, according to the Ministry of Finance, is orientated towards promoting foreign direct investment and innovation, increasing employment, development of certain regions and strategic industries in the country, as well as the achievement of certain social objectives.

The system includes different tax incentives and reliefs – exemption from taxation, reduced tax rates, assigning of corporate tax and tax on incomes, accelerated tax depreciation, tax loss carry forward and others.



Tax Policy and Inequality

In addition, VAT is a regressive tax. VAT exemptions and reduced rates are not used specifically to limit the regressivity of the tax.

The tax has efficiency and neutrality and introduces a principle of taxation at a standard rate to achieve more revenue at a lower cost.

The use of reduced rates is often not the most appropriate tool to achieve policy goals, especially to achieve redistribution to poor households and encourage the consumption of socially useful goods.

Overall, there is a negative budgetary impact, administrative burden and risk of misapplication and fraud, if we have different tax rates.

Property taxes are not designed with a view to limit wealth inequality.



Tax Policy and Inequality

The principle of equality is protected also in Bulgarian case by ECJ as regards to the principle of equality and VAT (Case C-118/11); ECLI:EU:C:2012:97):

(p.80) Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that: a leased motor vehicle is to be regarded as used for the purposes of the taxable person's taxed transactions if there is a direct and immediate link between the use of that vehicle and the taxable person's economic activity and the time when the right to deduct arises and when it is necessary to take into account the existence of such a link is on the expiry of the period to which each payment relates; a motor vehicle leased under a financial leasing contract and placed in the category of capital goods is to be regarded as used for the purposes of taxed transactions if the taxable person acting as such acquires that vehicle and allocates it entirely to the assets of his undertaking, input value added tax payable being fully and immediately deductible, and any use of that vehicle for the taxable person's private purposes or for those of his staff or for purposes other than those of his undertaking being treated as a supply of services carried out for consideration.

See also Bulgarian cases: C-395/22; C-427/16 and C-428/16; C-62/12; C-481/17; C-553/16; C-518/16; C-621/10 и C-129/10 ; C-203/10.



Tax Policy and Inequality

Different rates of corporate income taxes are not applicable to different businesses (e.g., depending on industry or turnover levels), because in general the tax incentive is a tax rate for corporate income tax – 10% (Article 20 CITA).

The tax rate aims at attracting foreign direct investment. The tax rate for the income tax referred to in Article 194 shall be 5 percent (Article 200 (1) CITA).

The tax rate of tax over the incomes under Article 195 shall be 10% (Article 200(2) CITA). The tax rate of tax on expenses referred to in Article 204, para. 1, item 1 and 2 shall be 10 per cent (Article 216(1) CITA).

The tax rate of tax on expenses under Article 204, para. 1, item 4 shall be 3 per cent (Article 216 (2) CITA).

The tax rate of the tax under Article 217a shall be 10% (Article 217d CITA).

The tax rate of the tax under this Section shall be 15 percent.

The tax rate of tax on receipts shall be 3 percent. The tax rate of tax on the receipts of municipalities shall be 2 percent (Article 250 CITA).



Tax Policy and Inequality

The Bulgarian Tax administration cannot use its discretion to address inequalities, because of the requirements of the CRB.

The tax administration acts under conditions of bound competence and has no right of discretion, because it works on the basis of the law and in implementation of the law.



Conclusion

Currently, the wealth taxation and higher personal income tax progressivity are not a subject of debate in Bulgaria, but the political strategic debate regarding whether we should return to progressive income taxation of natural persons is also not so active and focused.

Bulgaria introduces to the maximum extend, based on its Constitutional Identity, equality in Law and through the Law in the field of taxation!

As regards to Tax Competition and Inequality, currently, in strict adherence of EU rules in the field of State Aid, Competition, including protection of Article 18 and four freedoms (TFEU), Bulgaria attracts foreign direct investments in different ways, using tax incentives, applying some investor programmes, “Startup visa”, etc.

SOFIA
UNIVERSITY



ST. KLIMENT
OHRIDSKI
EST. 1888

Assoc. Prof. Savina Mihaylova-Goleminova, Ph.D.

Department Industrial Economics & Management
Faculty of Economics and Business, Sofia University
Director, Master's Programme

“Economics&Management of Public Resources”

email: s.mihaylova@feb.uni-sofia.bg

mobile: +359 888 859229

www.uni-sofia.bg/eng/feba

