European Doctrines of Tax Law: Comparative Analysis

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Regulation of tax relations in European countries has a long history and distinguishes both in common characteristics of essence and in extraordinary variety. The brightest manifestation of the latter circumstance is the simultaneous availability of different tax-legal doctrines in theses countries. First of all the attention should be called to the fact that in every European country the tax-legal relations have the highest level of juridical legitimacy – they are regulated in their most essential characteristics by the Constitutions of the states. For the first time, almost 800 years ago – in 1215 – the Great Charter was adopted in England, in consequence of it there was formed the Parliament which, in its turn obtained an exclusive right to set taxes [4]. As English state-critics consider the constitutional custom has appeared since the adoption of Great Charter, according to which the very Parliament elected by the population of the states has the right to set taxes [7]. In course of time this custom became a common European one and to a considerable extent it caused mostly democratic character of social-economic and socially-political processes in Europe. At the same time contrary to constitutional character of regulation of tax-legal relations in European countries, what is common to all the countries, this regulation in its sense, distinguishes in extraordinary variety that on the basis of its substantial properties can be brought to three tax-legal doctrines.

Etatist tax-legal doctrine started its formation in some European countries as far back as in XIX century, nevertheless it obtained its prevailing dissemination after the end of the World War I (1914-1918) when the constitutions of a new model came into force in these countries. This new model was defined by T,Y.Habrieva and V.E.Chirkin as “an instrumental with social elements of liberal-capitalist model in general of a democratic character”[5]. They did not enrich the constitutional definitions of substantial quantities of a tax as a juridical category and they could not enrich them in principle, as the legal origin of tax income of the budgets of the states having lived or still living according to the same constitutions, remained invariable – it was and still remains **the property of these states**. That is why the constitutional-tax compromise of the state and the society was not subjected either to deep qualitative transformations – it continued to be imposed upon society by etatic state and reflected, in general, the **will of the state and its fundamental interests.**

Nevertheless, the definitive specifying of a technical-tactic character occurred in the constitutions of these models. The Constitution of Austrian Republic of 10 November, 1920 was the first to fix and embody them. Though 90 years have passed since that time, it is still one of the most perfect samples of civilized regulation of tax-legal relation on the highest of all possible positive levels. Specifically, in part one of the Article 13 of the Constitution of Austrian Republic there is defined that “ **the competence of Federation and Lands in the sphere of taxes is regulated by a special Federal Constitutional Law (Constitutional Law on Finance”)** [1, p.33] (indicated by me – G.R.

According to the Article 44 of the Constitution of Austrian Republic the constitutional laws or constitutional regulations contained in general laws are adopted by a special procedure – they can be adopted by National Council only in the presence of not less than half of its members and by the majority of two third of presented voices. Besides, they must be clearly defined as the following: constitutional law, constitutional regulations. In addition to above mentioned the constitutional laws or constitutional regulations contained in general laws on the basis of which the competence of lands in the sphere of legislation and the executive activity is limited, require the approval of Federal Council made in presence not less than half of its members with the majority of not less than two third of represented voices [1, p.53]. Then this approach was constructively borrowed by

many states of Europe, America and many other countries. It allowed to improve the procedure of taxation, to bring it in conformity with the requirements of time and made the tax burden more acceptable for the society. The improved procedure of taxation essentially strengthened the defense of natural rights and legal interests of tax-payers.

Human-centric tax-legal doctrine. Qualitatively new stage in evolution of constitutional approaches of society and state to tax compromise was formed in the middle of XX century. It was a classic postmodern in a given sphere possible due to the latest, by classification of T.Y.Habrieva and V.E.Chirkin, social-instrumental democratic model of a modern constitution [5,p.28-29]. First of all, **the purpose of taxation has essentially changed** – from a net profit of the state destined to satisfy only its needs, those were the taxes in the middle of XX c., tax income of civilized states of the West in the second half of XX c. de-jure still being the property of the state, started to obtain the characteristics of the means, the mechanism of the society to meet public needs of this very society, to affect the economy of the whole country and the economy of the world community.

This turn of a tax-legal compromise to its socialization, to humanization of the purposes of taxation for the first time found its constitutional implementation in France in 1946. Specifically, p.10 of the Preamble of the Constitution of French Republic of this year states: "**The nation provides** (indicated by me – G.R.) the person and the family with the necessary conditions for their development". And in p.11 this approach found its further development: "**It guarantees health services, material support, rest and leisure to everybody**. **Any human creature who** due to age, physical or mental conditions, economic position **is not able to work, has the right to get from the society the means necessary for personal existence** [3,p.431] (indicated by me – G.R.) In the Article 1 of the operating Constitution of the fifth French Republic of October 4, 1958, given statements are synthesized in a principally important and especially capacious formula of a social state [3, p.411].

Historic experience of realization of the constitutions of different models of this kind, especially more than half-century experience of their socially modified variants implementation (and in the USSR more then seventy-year experience!) has convincingly demonstrated that "Welfare State" in any form – liberal, social-democratic, corporative or even socialist – is not able to be effective for a long time. Tax burden in these states steadily strengthens, nevertheless even in such conditions it is not able to cover extraordinary social liabilities, imposed on a social state.

Post-classic (egalitaristic) tax-legal doctrine. Not by accident in the end of the second and in the beginning of the third millenaries in the constitutional tax doctrine of the states there was materialized and obtained a certain propagation a new idea of Work-Fare state – the state supporting socially responsible member of society and not tending only to re-allocate GNP and national yield in its favour by means of tax instumentarium. This state undertakes obligations to support only the main human's needs, encourages the citizens to join socially-useful labour and legally get an adequate part of "social cake". In an explanatory note to the Constitution of Peru of 1993, its elaborators marked that **the state undertakes to take care of the main needs of social communities, and an individual takes care of himself and his family** [6]. Paragraph 110 of the Constitution of Norway Kingdom edited in the Law of May 5, 1980 states: "The duty of state bodies is to create the conditions that every able to work person could provide himself by his work"[2, p.671].

Still more consequently developed and clearly formulated given aims are in the Union Constitution of Swiss Confederation of April 18, 1999. Article 6, part 1" General Regulations" of a given Constitution writes: " Every person is responsible for himself and contributes to solving the tasks of the state and the society according to his power"[2, p.538]. Article 12, part 2 "Basic rights, civil rights and social purposes" of the Constitution of Switzerland defines: only "he, who gets into complicated circumstances and has no opportunity to take care of himself, has the right for help and service and means necessary for worthy existence of a human"[2, p.539]. And Article 41, chapter 3 "Social Purposes ",

part 2 of the Constitution of Switzerland requires:" Union and cantons in addition to personal responsibility and private initiative appeal to:…b) able-bodied should cover their living expenditures due to labour on proportionate conditions…d) no direct demands for state services can arrive from social purposes"[2, p.543].

Thus, democratic and market transformation of societies in the second half of XX – early XXI centuries represented new requirements to the constitutional regulation of taxing, having defined first of all, its purposes and mechanisms. The main, what is inevitable in constitutional tax doctrine of the states, is their ability to transform tax policy from the system of practically total state provision of consumers of public services to the system of " creation of possibilities" for them to create these benefits mostly independently and support themselves.

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