



## Taxation Limits by the Property Protection in the Charter of Fundamental Rights of the European Union: the Portuguese Study Case

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### Abstract

The Welfare State is increasingly concerned with providing its citizens with an improvement in their living conditions, especially in the protection of universal and free health, free education, unemployment protection and retirement, but to this end it has to obtain financial resources from these same citizens. Each of us thus supports a growing tax burden in return for our social benefits. This study analyzes the tension between the duty to pay taxes and the protection of property in Portugal, to know what is the maximum limit that each one has to pay to avoid confiscation. Methodologically, among others, we rely on the protection of property given by the Convention to the “Protection of Human Rights and Fundamental Freedoms” and the Charter of Fundamental Rights of the European Union, as well as, the judgments of the European Court of Human Rights, in addition to statistical data of the Portuguese Tax and Customs Authority.

**Keywords:** Fundamental Rights, Social State, Taxes; Property Protection

### Introduction

Our analysis focuses on the study of the main Human Rights instruments under the First, Second and Third Generations, intertwined with the interpretation applied in the rulings of the European Court of Human Rights, delivered in the Grand Chamber judgments and made available on its website, under the search «*Double Taxation*» and that translates into only twelve.<sup>1</sup>

This study is about the obligations assumed by the Minimum and Maximum States towards their people and their integration into their Social Contract and which must necessarily be translated into financial self-satisfaction through fair taxation, whether analyzed in their domestic legislation, above all in the obligations assumed between States, through the norms of International Tax Law, in the international aspect, presenting as an example the tax statistics in Portugal.

### Method

The method of the research is based on a technical-legal analysis of the statistical data on income taxation in Portugal, which is drawn up by the Portuguese Tax and Customs Authority, in the multiple International Conventions on Human Rights, and the Judgments of the European Court of Human Rights.

### 1. From the Human Rights conceptualization and evolution

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<sup>1</sup> See link: HUDOC – European Court Human Rights:



Human Rights require a cross-sectional view based on different dimensions such as historical, political, social, cultural, economic / financial. Oliveira (2012) p. 8<sup>2</sup>. In fact, "universal awareness of the value of fundamental rights, or at least of an essential core of rights linked to the recognition of the dignity of the human person, is one of the most significant political, cultural and legal phenomena." Miranda (1989), p. 7, it has to be interpreted in the global context, time and space, politically, legally and judicially, in its national, regional, international and even organizational dimensions.

Human rights must correspond to what has been defined by the United Nations system and in particular to the *Universal Declaration of Human Rights* of 1948, and everything that pertains to earlier periods should be defined as Fundamental Rights. By the way, when thinking about *citizenship* we should remember Gouveia (2003) pp. 55-56 by stating that «similarly would play a major role in the liberal revolution of the XVIII e XIX centuries, the intention was established to establish the status of person, speaking of the true position of "citizen"». It is because not all and / or all (men and women) were recognized as citizens and, for all this, 1948 marks, thus, the true global recognition of Human Rights for all Humanity.

It's important to be aware that in the Middle Ages the rights assigned by princes arise as rights of each social category, as privileges or prerogatives. The *Magna Carta*<sup>3</sup> - See yourself for all, Fernandes (2004)<sup>4</sup> - does not go beyond that, however the *Petition of Rights* (1628), and the *Bill of Rights* (1689), establish the rights of the English people, as it. However, «the biggest change happened (...) in XVIII century, with the *Virginia Bill of Rights* and *United States Declaration of Independence (1776)*» but the paradigm change was a reality with the *Declaration of the Rights of Man and Citizen 1789*<sup>5</sup>, recognizing the rights to all citizens, considering them, by nature, free and equals.

In 1979 Karel Vasak applies the terminology «generation» in order to demonstrate the evolution of Human Rights along the ideological line of the French Revolution– «*Freedom, Equality e Fraternity*» and Bobbio consecrated the phases of these generations due to the evolution of humanity. Generations are a necessary context for understanding the evolution of Human Rights, but it is true that "the issue of Human Rights is still complex. (...) It puts it at the heart of politics, at the center of relations between Power and the Person. It thus determines the policy rights» Mourgeon (1982), p. 26<sup>6</sup>.

Briefly and succinctly we can say globally that First Generation rights refer to individual rights, civil and political in nature, that is, they are considered the generation of negative freedoms because they limit State power and action. The *Second Generation* develops *Equality* rights - economic, social and cultural - in which the State has an active and intervening role. The *Third Generation* embraces the rights of the community to *solidarity* and *fraternity*. The *Fourth Generation*, which emerges in the 19th century. It is the result of the globalization and universalism of Human Rights. It is related to democratic participation, pluralism, bioethics and the limits of genetics, all supported by the protection and defense of the dignity of the human person. The *Fifth Generation* is mainly based on gender issues and all their complexity. Finally, the so-called *Sixth Generation* sets the limits to genetic manipulation, that is, part of the bioethics plan.

<sup>2</sup> OLIVEIRA, Samuel Antonio Merbach, *A Teoria Geracional dos Direitos do Homem*. in: <[http://www.theoria.com.br/edicao0310/a\\_teorias\\_geracional\\_dos\\_direitos\\_do\\_homem.pdf](http://www.theoria.com.br/edicao0310/a_teorias_geracional_dos_direitos_do_homem.pdf)>. Consulted 26-05-2019, p.18

<sup>3</sup> Arising from the Monarchical Parliamentarism, political regime that was implemented in England, after the revolutions of the century of the XVII. The king's power became limited under political control of the State and parliament. From this follows the Magna Carta of 1215 which is to this day the symbol of legislative advancement, as it gives the full right to the "free men" (Men with possessions and members of the Nobility) of England, by the King, who does not should abuse their power to coerce them.

<sup>4</sup> FERNANDES, António, *Direitos Humanos e Cidadania Europeia – Fundamentos e Dimensões*, Almedina, Coimbra, 2004

<sup>5</sup> In 1789, the French people succeeded in abolishing the absolute monarchy, allowing the establishment of the First French Republic, thus, after the abolition of feudalism, the Declaration of Human and Citizen Rights, adopted by the National Constituent Assembly which would be the first step towards drafting of the Constitution for the French Republic.

<sup>6</sup> MOURGEON, Jacques, *Os Direitos do Homem*, Publicações Europa-América, Mira-Sintra, 1982



In a regional dimension, in 1950 the Council of Europe System emerged, with the *European Convention on Human Rights and the Additional Protocols*, as well as the *European Social Charter*<sup>7</sup>, which dates from 1981, which aims to guarantee Human Rights and Fundamental Freedoms to all, recognizing and protecting Housing, Health, Education, Employment, Social Protection, Integration and Participation and Non-Discrimination and the interdependence of United Nations Human Rights legal documents and, in particular, arising from the European Convention on Human Rights.

As Gabriella Battaini Dragoni<sup>8</sup> said: «*The social and economic rights guaranteed by European Social Charter are fundamental rights which parallel and complement the civil and political rights enshrined in the European Convention on Human Rights. (...)*» e reforça o facto de «*(...) the Charter represents a vital guarantee in terms of safeguarding the exercise of democracy in Europe*».<sup>9</sup>

## **2. Dependence of the Social Rights and the Principle of Equality: analysis of its evolution and violation through the application by states of their Human Rights tax policies**

The focus of the subject of this study focuses on its regional framework and the European Convention on Human Rights and Social Rights in general, and on the Principle of Equality focused on Taxation and its evolution as a legally recognized *right* and *duty*.

An important element of analysis is the reports of the European Court of Human Rights<sup>10</sup>, which, due to its intense and fruitful judicial activity, show that there are many violations, including by states, which shows that interventions at national level are urgent for action and resolution, effective in order to prevent Human Rights violations.

But let's start by analyzing the great international moments *The Magna Carta* of 1215 is one of the most influential historical rights documents, and it implements the separation of church and political power and stems from the need to protect citizens from excessive taxes and to protect the right to property and equality by the law, aimed to safeguard personal freedom from abuse of power, and insists that “no free man could be detained, imprisoned, deprived of his property, exiled or otherwise Kingdom Law” Fernandes (2004) p. 25. Concerning the Bill of Rights, signed in England on 1689, declared a diversity of rights, imposing that “the collection of taxes without the granting of Parliament is illegal” by a Rule of Law.

The *United States Declaration of Independence* of July 4, 1776<sup>11</sup> contemplates in its genesis the principle of equality and the question of arbitrariness in 'imposing taxes without our consent', a fact of major relevance at the time and the importance attached to the payment of taxes as a need for self-sufficiency, but without abuses of political power. , followed by the *Bill of Rights*, signed in 1789, which reveals a social protection with hanging property, which in addition to being innovative at the time is a right that needed, and still needs, the most attention.

The *Declaration of the Rights of Man and Citizen*, Paris, France, in 1789, implements “a social revolution, calling for the abolition of feudal rights and privileges and the end of the regime of hereditary positions and class

<sup>7</sup> In its preamble, the European Social Charter states that “the objective of the Council of Europe is to establish a closer union among its members in order to safeguard and promote the common heritage ideals and principles and to foster their economic and social progress. in particular by upholding and developing human rights and fundamental freedoms.” Miranda (1989) p. 253

<sup>8</sup> Deputy Secretary General Council of Europe, Strasbourg, since 2012.

<sup>9</sup> *The European Social Charter at a Glance*, Council of Europe (2017), p. 1

<sup>10</sup> *European Court of Human Rights Annual Report* (2017), Conselho da Europa Publicações.

<sup>11</sup> Founding document of the United States of America proclaiming the separation of the original thirteen colonies of the United States and leading to the definitive separation of England, also known as the American Revolution. Although initially Independence was not the goal of the Americans, it is certain that the overarching goal was based on the need for the government to pay attention and resolve its claims, a fact that was aggravated by the war and generated such sentiment and need. This Declaration was first published in the newspapers, read to the multitudes, and later taken over by the American Congress.



distinctions, stating that all French became equal before the law. ' Fernandes (2004) p. 41 is based on “*Freedom, Equality and Fraternity*” and therefore on the recognition of substantive - economic, social and cultural rights. Please note that Articles 14, 15 and 17 of the Declaration<sup>12</sup> Social Rights are evident, in particular fair taxation and the protection of the right to property, which has proved to be fundamental to the evolution of the self-sufficient Maximum State. Note that self-taxation Article 14 required that “all citizens have the right to verify, by themselves or their representatives, the need for public contribution, to consent freely, to observe employment, and to fix the breakdown, collection, collection and duration”. This is because “the protection of fundamental rights has for centuries been a recurring object in the course of humanity, representing in some way the search for approximative models of justice and perfection, in harmony with ideological, political-economic and social assumptions. of each historical time, erecting in epicentral desiderate the preservation of the right of every man and every woman to full life.” Poiares, CDHOA<sup>13</sup> (2005) p. 21.

Internationally and globally, the United Nations in 1945<sup>14</sup> drafted the document of “greater” recognition and protection of human rights, the *Universal Declaration of Human Rights*. So, "maintaining international peace and security, the Declaration aims at achieving international cooperation to solve economic, social, cultural (logo) humanitarian problems" Fernandes (2004) p. 53, among which we highlight the rights to work, fair wages, paid holidays, freedom of association and social security. But we must not forget that the evolution of economic spaces and the heterogeneity of tax systems have led to potentially serious situations such as avoidance, fraud, tax evasion and unfair tax competition, which has required particular attention from the United Nations, in partnership with other international organizations of a specific nature. It is true that every action of the United Nations lies in the effective protection, defense and legal promotion of human rights, but it is elementary to understand that the sustainability of states is of the utmost importance, which requires that the diagnosis and recognition of collective needs and individuals, the building of socially self-reliant states with respect for self-taxation and international law and their national jurisdictions are the path to unconditional respect for Human Rights.

At the regional level, the United Nations system has adopted "instruments, established bodies and established mechanisms for the protection of human rights, in some cases far more effective than mechanisms of universal scope." Fernandes (2004) p. 72. In this context, the 1948 Hague Congress created the Council of Europe and, consequently, the European Court of Human Rights.

In this context we have a fundamental and most important issue, which is the recognition of the need for tax collection in view of the need for a Minimum State to become a Social State, and therefore, the Maximum State.

It is therefore important to interpret and recognize taxes as the basis for sustainability, from which the dependence on social rights derives, both at the Council of Europe level, in a fundamental line with the European Union, while respecting international law unconditionally.

### **3. Portuguese Government Budget as a demonstrative element of the collective needs of the Nation**

#### **1. Public Finance**

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<sup>12</sup>*Declaration of Human and Citizen's Rights* (1789)

«Art.º 15.º - The company has the right to hold all public officials accountable for its management.

Art.º 17.º - Since property is an inviolable and sacred right, none of it can be deprived except when legally proven public necessity so requires and subject to fair and prior compensation.»

<sup>13</sup> CDHOA = Ordem dos Advogados Association - Human Rights Commission (2005).

<sup>14</sup> The *Universal Declaration of Human Rights* is a document of principles that embodies the inalienable rights of individuals. This Declaration was proclaimed by the United Nations General Assembly as a result of the severe atrocities committed by the Holocaust during World War II. (1939-1945).



Teixeira Ribeiro (1997) p. 28<sup>15</sup> explains to us that “The State wants certain collective needs to be met; for this purpose it is proposed to produce the goods; but the production of goods entails expenses; the state therefore needs to obtain revenues to cover these expenses, that is, it needs money, means of financing”. Obviously, the State for obtaining public goods and services, which are intended to meet collective needs, must have financial means. Teixeira Ribeiro (1997) p. 31 and explains to us that government revenues are obtained through equity income, taxes, taxes and loans. It is because the State, especially since World War II, has broadened its intervention in society, Teixeira Ribeiro (1997) p. 31, through the redistribution of incomes and wealth to those with the lowest incomes, promoting economic stability, and ultimately by economic development so that *per capita* income can provide the population with a good standard of living.

## 2. Government Budget

The Constitution of the Portuguese Republic - CRP - imposes in its article 105 that the annual budget of the State has to make a breakdown of its revenues and expenses and this has a dual function, that is, Gomes Canotilho, JJ e Vital Moreira (2007), p. 1109<sup>16</sup>, at the financial level, the State establishes in this management instrument its financial and budgetary appropriations, but, as the people who elect their representatives, they are the ones who create the tax systems and authorize self-taxation on a representative basis every year.

## 3. The tax system as a source of financial income

Article 103<sup>o</sup> of the CRP sets out the three objectives of the national tax system, the satisfaction of the state's financial needs, the collection of taxes, and the distribution of income and after wealth. It is that meeting the state's financial needs is a strictly financial objective of the tax system, Gomes Canotilho, JJ e Vital Moreira (2007), p. 1088, It is important to remember that the other purpose is to make a fair distribution of income and wealth that Gomes Canotilho, JJ e Vital Moreira (2007), p. 1089, translated into the idea of social justice in order to achieve the intrinsic desiderate of the welfare state, even if income is generated outsider, Alberto Xavier (2007)<sup>17</sup>.

## 4. Effective tax collection - Does the tax system respect the principle of fair distribution of income and wealth?

The analysis of the principle of fair distribution of income and wealth that we will make next is based on the statistics made by the Tax and Customs Authority - AT.

### 1. Statistics of the Personal Income Tax

AT makes available on its portal <sup>18</sup> statistical data related to the Personal Income Tax - IRS of the year 2017 - and that were extracted from 5 180 463 periodic forms of incomes that generated a total income of € 11934 millions. Thus, in order to understand who actually pays taxes in Portugal to meet state expenses, and to know how the tax burden is divided among the national population, we draw up the table 1:

**Table 1** – Effective taxation by income classed

<sup>15</sup> RIBEIRO, José Joaquim Teixeira, *Lições de Finanças Públicas*, 5.ª Edição, Refundida e Atualizada (Reimpressão), Coimbra Editora, Coimbra, 1997.

<sup>16</sup> GOMES CANOTILHO, JJ e VITAL MOREIRA, *CRP – Constituição da República Portuguesa – Anotada*, Vol. I, Coimbra Editora, Coimbra, 2007.

<sup>17</sup> Alberto Xavier, com a colaboração de Clotilde Celorico Palma e Leonor Xavier, *Direito Tributário Internacional*, 2.ª Edição Atualizada, 2007, Almedina

<sup>18</sup> Tax Authority\_Portal of Finance

[http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas\\_ir/Pages/Estatisticas\\_IRS.aspx](http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Pages/Estatisticas_IRS.aspx) – consultado em 2019-07-26



| Annual Income Classes                        | Til 10.000€ | From 10.000 €<br>to 19.000 € | From 19.000 €<br>to 40.000 €, | From 40.000 €<br>to 100.000 € | Superior to<br>100.000 € |
|--|-------------|------------------------------|-------------------------------|-------------------------------|--------------------------|
| Number of Households - by<br>Income Rank     | 43,48%      | 28,15%                       | 20,07%                        | 7,45%                         | 0,85%                    |
| Personal Income Tax Paid -<br>by Income Rank | 2,55%       | 8,44%                        | 27,55%                        | 40,70%                        | 20,75%                   |
| Effective Gross Tax Rate - by<br>Income Rank | 2,27%       | 4,75%                        | 12,50%                        | 21,02%                        | 40,37%                   |

To find out which types of income pay the most taxes, we draw up the table 2.

**Table 2** – Breakdown of Income Types by Total Income Set

| Income Types                                  | Employment | Self Employment | Pensions | Other Incomes |
|---|------------|-----------------|----------|---------------|
| Gross income by income category in % of total | 63,43%     | 5,23%           | 27,60%   | 3,74%         |

## 2. Conclusions of the Statistic of the Personal Income Tax

We conclude that the ones who pay taxes in Portugal are the income from paid work and retirement pensions, that means, 91,03% of the tax payers, and that 8,3% of the taxpayers paid 61,39% of the total, 20,07% bore the burden of 12,50% and the others 64,63 just paid 7,02% of all Personal Income Taxes.

## 3. Statistics Data of Corporate Income Tax

AT makes available on its portal<sup>19</sup> Statistical Data on Corporate Income Tax - IRC of 2017, based on 475 119 periodic tax forms that generated a total tax payable of Euro 4 493 million.

Note that only 50.7% of those taxpayers had positive fiscal results: Table 3.

**Table 3** – Relationship between number of tax forms and tax result

| Total Number of Forms - 475.119                        | With tax loss | With Fiscal result = Zero | With taxable<br>profit |
|--|---------------|---------------------------|------------------------|
| Percentage of the Number of Forms by Taxable<br>Result | 30,2%         | 19,1%                     | 50,7%                  |

In order to know the economic dimension of companies in Portugal and which companies, in view of their size, which effectively Corporation Income Taxes we draw up the Table 4.

**Table 4** – Relation between the number of societies and the Corporation Income Taxes by the business volume.

| Turnover / Year  | Till 500 000€ | 500 000€<br>to 2,5 M€ | 2,5M€<br>to 25M€ | Superior a<br>25M€ |
|--|---------------|-----------------------|------------------|--------------------|
| Number of the Forms by Types of the<br>Business Volume         | 87,2%         | 9,5%                  | 2,9%             | 0,4%               |
| Corporation Income Tax Paid by Types<br>of the Business Volume | 11,8%         | 12,5%                 | 22,2%            | 53,5%              |

## 4. Conclusion of the Corporation Income Tax statistic

Of these tables we can conclude that, between the 50,7% of the societies that have tax profits, only 3,1% (2,9% + 0,4%) of them contributed to 75,7% of all Corporation Income Tax.

<sup>19</sup> Tax Authority\_Portal of Finance

[http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas\\_ir/Pages/Estatisticas\\_IRC.aspx](http://info.portaldasfinancas.gov.pt/pt/dgci/divulgacao/estatisticas/estatisticas_ir/Pages/Estatisticas_IRC.aspx) – consultado em 2019-07-26



## 5. Tax Havens - Worldwide Problem in the Fair Distribution of Tax Burdens

The use of tax havens represents a significant loss of tax revenue for the state coffers, leading some to cease to contribute according to their real economic / financial capacities and others to do just as much as necessary to cover this escape. income / wealth / wealth for *offshores*.

To exemplify only and only this global storm, we use a report prepared by Richard Phillips and Matt Gardner, of the U.S. Public Interest Research Group Education Fund (U.S. PIRG Education Fund) and by Alexandria Robins and Michelle Surka of the Institute on Taxation and Economic Policy (ITEP), titled «Offshore Shell Games – 2017 - The Use of Offshore Tax Havens by Fortune 500 Companies»<sup>20</sup>.

The analysis shows how it is estimated that there is an annual loss in the United States alone, and only in taxes to the federation, of about \$ 100 billion, which represents a tax burden for taxpayers alike, less investment and / or less utilities, so that for example the profits of these large *offshored* companies exceed \$ 2.6 trillion and that only four of these big companies, Apple, Pfizer, Microsoft and General Electric, represent a quarter of that total.

## 6. The ECHR and the freedom of States to create / shape tax systems - analysis based on case law

Taxes are an invasive means of each taxpayer's assets and so we are interested in whether the European Court of Human Rights (ECHR) has imposed limits on states in the taxation imposed on their citizens, or whether they have ample scope to implement their obligations within Taxation Policies.

The judgments of the European Court of Human Rights (ECHR) show us case law based on the recognition of the right of states to formulate and implement their Taxation Policies, and to that end they have a wide margin of appreciation, either in its creation or in its application, assuming that the ECtHR will always respect the evaluation of the legislation created in such matters, and has, on several occasions, understood that the relationship between the demands of the general interest of the people and the proceeds of tax revenue, as opposed to the requirements of protection of Individual Fundamental Rights of each of the concrete contributors must always be sustained in a fair balance between the general interest and the individual interest so that there is a proportional relationship between the legal means that are achieved to obtain the revenue and the desired objectives with their purpose<sup>21</sup>.

The ECHR's concern, in a way, to protect the community in its tax rights, was evident when it decided that states to protect themselves from the avoidance, evasion, tax fraud and unfair tax competition, whether practiced internally or practiced internationally, through the use of tax havens - *offshores* - may use the exchange of information between these<sup>22</sup> and<sup>23</sup>, by enacting legislation to prevent this abusive reduction in tax revenue

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<sup>20</sup> RICHARD PHILLIPS e Matt Gardner, Alexandria Robins e Michelle Surka, Offshore Shell Games - The Use of Offshore Tax Havens by Fortune 500 Companies, 2017, U.S. Public Interest Research Group Education Fund (U.S. PIRG Education Fund) and Institute on Taxation and Economic Policy (ITEP) - USA

<sup>21</sup> Please see, what all have state by the Judgement of ECHR P. PLAISIER B.V. AND OTHERS c. THE NETHERLANDS, nos.46184/16, 47789/16, 19958/17, 14 de Novembro de 2017 §71: «According to the Court's well-established case-law, an interference, including one resulting from a measure to secure payment of taxes, must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must be a reasonable relationship of proportionality between the means employed and the aims pursued. Furthermore, in determining whether this requirement has been met, it is recognised that a Contracting State, not least when framing and implementing policies in the area of taxation, enjoys a wide margin of appreciation and the Court will respect the legislature's assessment in such matters unless it is devoid of reasonable foundation (see, among many other authorities, National & Provincial Building Society, the Leeds Permanent Building Society and the Yorkshire Building Society, cited above, §§ 80-82; and M.A. and 34 Others (dec.), cited above)»

<sup>22</sup> Decided by the ECHR Judgement HUITSON c. THE UNITED KINGDOM, in 50131/12, 13-01-2015

<sup>23</sup> Decided by the ECHR Judgements G.S.B. c. SWITZERLAND, in 28601/11, 22/12/2015 e OTHYMIA INVESTMENTS BV c. THE NETHERLANDS, in 75292/10, 16-06-2015



collection, and even the ECHR made decisions in favor of retroactive tax legislation, including to deal with the crisis that plagued Europe at the beginning of this century<sup>24</sup>.

## CONCLUSIONS

It is clear that Human Rights, with regard to the obligation of each citizen with financial values to contribute to the community's expenses, have developed and growing, since the Magna Carta of 1215 until the ECHR

The generational evolution of Human Rights has imposed an evolution in the functions of the state, which went from a Minimum State to a Maximum State, with new tasks but which demand from the community, the people, a greater tax burden.

As the wellness collective overlaps the individual, it has to be through a fair balance, words of the ECHR, that a key point must be found between the collective right to collect taxes and the necessary collective expenses with the invasion of individual citizen heritage to pay their taxes.

We can conclude that the ECHR has always agreed with the tax systems set up by States to finance themselves, even if it entails taxes with retroactive effect in times of crisis, or to address possible tax evasion and evasion schemes, as well as the exchange of tax information for this purpose, imposing only and only on the part of the States the guarantee of the principle of the search for the material truth and its effective control by the Judicial Power, reason why even if each one of us surrenders to the State, through the payment of taxes most of its heritage, this will not be a real confiscation as long as, in the words of the ECHR, there is such a fair balance between collective need and individual protection of property.

## REFERENCES

- ALBERTO XAVIER, com a colaboração de Clotilde Celorico Palma e Leonor Xavier, *Direito Tributário Internacional*, 2. Edição Atualizada, 2007, Almedina
- COUNCIL OF EUROPE, *The European Social Charter at a Glance*, 2017
- COUNCIL OF EUROPE, *European Court of Human Rights Annual Report*, 2017
- CUNHA, Paulo (Org.), *Direitos Humanos – Teorias e Práticas*, Almedina, Coimbra, 2003
- Comissão dos Direitos Humanos da Ordem dos Advogados, *Direitos do Homem – Dignidade e Justiça*, Principia, 2005
- FERNANDES, António, *Direitos Humanos e Cidadania Europeia – Fundamentos e Dimensões*, Almedina, Coimbra, 2004
- GOMES CANOTILHO, JJ e VITAL MOREIRA, *CRP – Constituição da República Portuguesa – Anotada*. Vol. I, Coimbra Editora, Coimbra, 2007
- MARQUES, Viriato, *Direitos Humanos e Revolução*, Colibri, Lisboa, 1991
- MIRANDA, Jorge, *Direitos do Homem – Principais Textos Internacionais*, Livraria Petrony, Lisboa, 1989
- MOURGEON, Jacques, *Os Direitos do Homem*, Publicações Europa-América, Mira-Sintra, 1981
- OLIVEIRA, Samuel, *A Teoria Geracional dos Direitos do Homem*. Disponível em: <[http://www.theoria.com.br/edicao0310/a\\_teorias\\_geracional\\_dos\\_direitos\\_do\\_homem.pdf](http://www.theoria.com.br/edicao0310/a_teorias_geracional_dos_direitos_do_homem.pdf)>.
- PAINE, Thomas, *Direitos do Homem*, Publicações Europa-América, Mira-Sintra, 1998
- RICHARD PHILLIPS e Matt Gardner, Alexandria Robins e Michelle Surka, *Offshore Shell Games - The Use of Offshore Tax Havens by Fortune 500 Companies*, 2017, U.S. Public Interest Research Group Education Fund (U.S. PIRG Education Fund) e Institute on Taxation and Economic Policy (ITEP) - USA

<sup>24</sup> Appreciated and decided by the ECHR in his Judgement P. PLAISIER B.V. AND OTHERS c. THE NETHERLANDS, in 46184/16, 47789/16, 19958/17, 14 November 2017



TEIXEIRA RIBEIRO e José Joaquim, *Lições de Finanças Públicas*, 5.<sup>a</sup> Edição, Refundida e Atualizada (Reimpressão), Coimbra Editora, Coimbra, 1997  
XAVIER, A., *et al*, *Direito Tributário Internacional*, Editora Almedina, 2.<sup>a</sup> Edição Atualizada, 2007