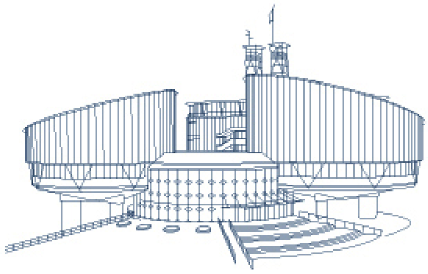
EUROPEAN COURT OF HUMAN RIGHTS

# PRESS RELEASE

## ADVISORY OPINION ON THE PROPORTIONALITY OF A FIXED-RATE TAX PENALTY AND WHETHER A NATIONAL COURT IS EMPOWERED TO APPLY A LOWER PENALTY

ECHR 238 (2026) 29.09.2026

Press release issued by the Registrar of the Court



The European Court of Human Rights has today issued its response to a request (no. P16-2026-001) from Ukraine's Supreme Court for an advisory opinion, under Protocol no. 16 to the European Convention on Human Rights.

Ukraine's Supreme Court requested an opinion on how to apply the Convention in the context of a company's challenge to a tax fine equivalent to triple the value of its assets. It asked for guidance on the criteria to be considered when undertaking their proportionality assessment in the case pending before it. It also asked whether a national court could decide not to impose a statutory sanction for failing to comply with tax-law requirements if disproportionate and instead apply a lower level of sanction not provided for by law.

The opinion concerns Article 1 Protocol 1 of the Convention which protects the right to property. The Court affirmed that this Article requires any interference in property rights to be lawful and for a legitimate aim, and States must ensure their legal systems include safeguards to protect against disproportionate control of use of property in individual cases. Criteria which might be relevant to assessing proportionality in such an individual case include the choice and appropriateness of the means employed to achieve the aim pursued, the impact on the company in question; and the conduct of the company.

The Court further advised that the legal framework as a whole should provide the necessary safeguards to ensure proportionality, how this is done is a choice for the State. The Convention does not prohibit automatic sanctions where they are proportionate; neither does it require or give domestic courts the power to adjust fines, the existence of such a power is a matter for domestic law.

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Protocol No. 16 enables member States' highest national courts and tribunals to ask the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the European Convention or its Protocols. Advisory opinions are not formally binding. The Court has now delivered nine advisory opinions since Protocol No. 16 came into force on 1 August 2018. For more information see the FAQ.

A legal summary of this case will be available in the Court's database HUDOC (link).

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COUR EUROPÉENNE DES DROITS DE L'HOMME

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## Background

The advisory opinion requested relates to a dispute pending before Ukraine's Supreme Court between a private company, OvruchHazAvto, and the State Tax Service of the Zhytomoyr region. The company sells fuel and alcoholic drinks under trading licences. Under national law, such sales must be made using an electronic cash register, which must be expressly listed in the licence appendices. Failure to comply is punishable by a fine calculated at a flat rate of 200% of the value of the goods sold.

Following a routine inspection in October 2023, the company was accused of selling fuel and alcohol between 18 January 2023 and 20 June 2023 using a cash register that was not indicated in the licence appendices. In November 2023 the tax authority fined the company 22,576,700 Ukrainian hryvnias, equivalent to approximately 1,640,000 euros at the time, corresponding to the fixed rate of 200% of the value of the products sold.

The company brought proceedings against the tax authorities before the Administrative Court seeking to have the tax assessment and fine set aside. It acknowledged that it had unintentionally committed a tax offence but argued, in particular, that the amount of the penalty was excessive.

Both the Zhytomyr Administrative Court and the Administrative Court of Appeal found in the company's favour and set aside the tax authorities' decision. They noted that the amount of the fine was nearly three times greater than the value of the company's assets. Furthermore, the offence had been remedied by the company itself, with no harm to the public interest.

The tax authority appealed on points of law. The company, in its submissions seeking to have the appeal dismissed, emphasised the issue of proportionality of the penalty.

On 4 December 2025 the Supreme Court decided to request an advisory opinion from the Court and to stay the proceedings while awaiting the reply. The Supreme Court considered, firstly, that the issues relating to tax penalties imposed on businesses constituted questions of principle under the Convention. Secondly, it considered that the case raised the issue of whether the national courts were able not only, on the one hand, either to impose the statutory penalty or to set it aside, but also, on the other, to impose a more lenient sanction of their choice – even if that were not provided for by law – when they found such a measure disproportionate.

## Questions submitted in the advisory opinion request

"(1) In view of the mandatory nature of tax-law provisions, is a national court empowered to refrain from applying the direct provisions of legislation establishing financial sanctions for non-compliance with tax-law requirements and instead apply a lower level of sanctions not provided for by law?

(2) On the basis of which criteria may the sanction provided for in [section] 17 of the Law of Ukraine 'On State Regulation of the Production and Circulation of Ethyl, Cognac and Fruit Alcohol, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuel' No. 481/95-VR of 19 December 1995 be regarded as constituting a disproportionate interference with the rights guaranteed by Article 1 of Protocol No. 1 to the Convention?"

## The court's opinion

The Court decided to address the second question, which related to the stage at which the courts assessed the proportionality of an interference, first. It was only where a national court had found a statutory sanction disproportionate, as part of that assessment, that the issue raised in the first question would become relevant.

In answering the second question first, the Court reiterated that the first and most important requirement of Article 1 of Protocol No. 1 was that any interference by a public authority with the peaceful enjoyment of possessions be lawful. Any interference with the rights protected under Article 1 of Protocol No. 1 had also to pursue a legitimate aim in the general interest.

As regards the proportionality of an interference, the Court's case law did not offer an exhaustive set of criteria to be applied in any given situation. The Court had regard to the specific circumstances of the case, that was, the concrete facts of the case as established by the national courts. States had to ensure that in their legal systems, taken as whole, there were safeguards to prevent a disproportionate burden in the circumstances of each case. As regards the imposition of financial sanctions for non-compliance with tax law requirements, a fair balance had to be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Decisions about taxes or other contributions or penalties commonly involved an assessment of political, economic and social questions, which the Convention left within the competence of the Contracting States, which had a wide discretion in those areas.

The Court set out the criteria which might prove relevant for an examination of the fair balance in the specific circumstances of the case pending before the Ukrainian Supreme Court. Those included the choice of means employed to achieve the aim pursued and their appropriateness to those aims; the impact of the means employed on the company in question; and the conduct of the company.

Returning to the first question, the Court advised that the Convention did not prohibit the use of automatic sanctions. It had previously held that a system of administrative fines was not incompatible with the Convention so long as taxpayers could bring any such decision affecting them before a court. The Convention did not, however, confer on national courts any particular power to reduce an automatic sanction, nor did it require States to ensure that they had one. The solution to the requesting court's first question could only be found in its national legal system, through the use of any relevant mechanisms available under national law, and the choice of appropriate means in that respect was for the State to make.

The Court's task was not to determine itself whether the national law empowered courts to reduce or otherwise adjust the sanction in question, nor to identify any mechanism through which compliance with Article 1 of Protocol No. 1 could be secured. The Court pointed to various mechanisms found in the legal systems of other contracting States to ensure compliance, including powers of assessment and adjustment conferred on the courts and reviewed by the constitutional court, or through the statutory framework.

Compatibility with Article 1 of Protocol No. 1 did not depend on the mechanism chosen but on whether the legal framework, viewed as a whole, provided safeguards to prevent disproportionate burdens.



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