EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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European Court of Human Rights accepts request by Ukraine's Supreme Court for advisory opinion on dispute about proportionality of tax penalty calculated at flat rate set by law

The European Court of Human Rights has accepted a request (no. P16-2026-001) for an advisory opinion under Protocol No. 16 to the European Convention on Human Rights submitted by Ukraine's Supreme Court on 7 January 2026.

In its request, the Supreme Court has asked the European Court to provide guidance on the Convention issues arising in a case pending before it, concerning a dispute between a private company and the tax authorities about the proportionality of a penalty calculated at a flat rate set by law.

The request raises issues regarding, first, whether the domestic courts may impose on taxpayers more lenient sanctions even if they are not provided for by law and, second, what criteria should be taken into account in examining the proportionality of a penalty.

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The request was accepted by a five-judge panel of the Grand Chamber on 16 February 2026. At this stage only the question of the admissibility of the request, as such, was decided by the Panel.

The advisory opinion requested will be provided by the Grand Chamber, comprising 17 judges, constituted in accordance with Rule 24 of the Rules of Court.

The time-limits that have been set for requests for leave to intervene as a third party in these proceedings, and for written submissions, are indicated below.

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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. The advisory opinions are not binding. The Court has delivered seven advisory opinions since Protocol No. 16 came into force on 1 August 2018. For more information see the Q&A.

Facts

The advisory opinion requested relates to a dispute pending before Ukraine's Supreme Court between a private company and the tax authorities.

The company retails fuel and alcoholic beverages under trading licences. Domestic legislation requires such sales to be performed 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 alcoholic beverages between 18 January 2023 and 20 June 2023 using a cash register that was not indicated in the licence appendices.

On 7 November 2023 the tax authorities imposed a fine of 63,860,222.48 hryvnias (UAH), equivalent to approximately 1,640,000 euros at the time, corresponding to the flat-rate fine of 200% of the value of the goods sold (with a minimum amount of UAH 10,000).

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

Both the Zhytomyr Administrative Court and the Administrative Court of Appeal found in the company's favour and set aside the tax authorities' decision. In particular, they noted that the amount of the fine was nearly three times greater than the value of the company's assets. It was also excessive, since the offence had been remedied by the company itself, with no harm to the public interest that was commensurate to the severity of the sanction imposed.

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

On 4 December 2025 the Supreme Court decided to request an advisory opinion from the Court and to suspend the proceedings pending its reply.

Referring expressly to certain judgments and decisions of the Court, the Supreme Court considered that issues relating to tax penalties imposed on business entities constituted questions of principle under the Convention. It added that the Court's case-law illustrated the variety of solutions adopted with regard to the proportionality of such measures, concluding that the problem was a complex one and that there was a need to clarify what criteria the domestic courts should take into account when ruling on such matters.

Furthermore, the Supreme Court considered that the case raised the issue of whether the domestic courts were able not only, on the one hand, either to impose the statutory penalty or to set it aside purely and simply, but also, on the other, to impose a more lenient sanction of their choice – even if it was not provided for by law – when they found such a measure disproportionate, all in the light of the provisions of the second paragraph of Article 1 of Protocol No. 1, read together with Article 7 of the Convention.

Questions asked by the Supreme Court

"(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 Article 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 right guaranteed by Article 1 of Protocol No. 1 to the Convention?"

Grand Chamber Panel decision

The request for an advisory opinion was submitted on 7 January 2026. It was accepted by the Panel of the Grand Chamber on 16 February 2026. At this stage only the question of the admissibility of the request, as such, was decided by the Panel. When the Panel accepts the request, a Grand Chamber is constituted in accordance with Rule 24 of the Rules of Court to deal with the request and to deliver the advisory opinion.

Important information: subsequent procedure and time-limits

Any Contracting Party or any interested person wishing to intervene as a third party in these proceedings (Rule 44 § 7) must request leave to do so by **16 March 2026**. If leave is granted, the written observations must be filed with the Court by **30 March 2026 at the latest**.

Protocol No. 16

Protocol No. 16 allows the highest courts and tribunals, as specified by the member States that have ratified it, to request 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.

The aim of Protocol No. 16 is to enhance interaction between the Court and national authorities and thereby reinforce the implementation of Convention rights and freedoms by the requesting courts in their adjudication of pending cases.

An advisory opinion may only be sought in the context of a case pending before the requesting court. The acceptance or refusal of a request is left to the Court's discretion. A panel of five judges decides whether to accept the request, giving reasons for any refusal.

Advisory opinions, which are given by the Grand Chamber, are not binding. The Panel and the Grand Chamber include *ex officio* the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. Judges are entitled to deliver a separate opinion.

Useful links:

- What is a request for an advisory opinion?
- Advisory opinions under Protocol No. 16

Press contacts
echrpress@echr.coe.int | tel: + 33 3 90 21 42 08

We are happy to receive journalists' enquiries via either email or telephone.

Denis Lambert (tel: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Jane Swift (tel: + 33 3 88 41 29 04)
Claire Windsor (tel: + 33 3 88 41 24 01)