

# The Relationship Between The Taxation Authority And The Social Rights

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## ABSTRACT

*The classical purpose of taxes, (the financial goal of taxes) refers to the financing of public expenditures to meet the requirements of public services. This classical purpose which expressed as the financial (fiscal) aim has played an important role in the process of historical development of taxes.*

*This classical aim has changed today. Now, taxes are collected not only for the purpose of covering the public expenses but also the purpose of creating a variety of effects on the economic and social structure. This is expressed as the non-financial (extra fiscal) goal of taxes. Such a shift has occurred on fiscal policy after the big economic crisis in 1929-1930. Trying to be effective on the country's overall social, economic, and financial structure through taxes is desired. Taxes are one of the most important tools in achieving the objectives of fiscal policy.*

*In this way, the neutral tax opinion that expresses not to affect the taxpayers' preferences and the behaviors has become intrusive and regulatory tax concept. Taxes are no longer collected as for the financial purpose. Taxes are also begun to perform an important function in regulating and leading character on realizing the goals of the state. Taxation is effective on individuals' behavior using the methods of encouraging or discouraging.*

*The article 73 of Turkish Constitution includes this provision: "Everyone is under obligation to pay taxes according to his financial resources, in order to meet Public Expenditure." This provision must interpret that taxes will be collected to create extensive economic and social effects as well.*

*Overall, the rights to ensure social justice, to reduce social inequalities in society, to protect the rights of economically weaker ones called social rights.*

*The social and economic rights and freedoms are organized in the third section of Turkish Constitution (1982) between the articles 41-64. The article 65 of Turkish Constitution includes this provision: "The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties."*

*The social rights of the Constitution are protection of the family, the right to education and training, use of coastal areas, land ownership, nationalization, rights related to working life, the right to social security, the right to housing, the right to health and the environment. The state must use it its taxation authority to improve the social rights. In this study some examples of regulations concerning social rights in tax laws.*

**Keywords:** Taxation Authority; Social Rights

## **1. SOCIAL RIGHTS**

### **1.1 The Notion of Social Right**

In democratic societies, freedoms assigned to people are divided into three categories: negative statute rights, positive statute rights and active statute rights. Negative statute rights represent the freedoms that determine the boundaries for a person's inviolable private space. This imposes a negative deed and non-involvement duty on the state. Positive statute rights provide a positive deed from the state as well as the opportunities to request an aid or service and in exchange, they impose certain duties to the state in social areas. In many ways, active statute rights are the political rights that give people the right to have a say in social management and to participate in decisions. These categories are respectively called protective rights, demand rights and the participation rights (Kapani, 1993, p. 6).

There are many views with regards to the definition of social rights. According to a view, social rights are the ones that the individual is assumed to have over the society and therefore, they represent a kind of right to claim it suggests against the state (Demir & Karatepe, 1986, p. 197).

Although the individual remains passive in his rights and freedoms in other rights, he is active in social rights. Similarly, while the state protects the rights and freedoms of the people, the individual needs governmental support to make use of social rights. He requires that a part of these needs are met by the state.

According to another definition, Rights protecting the ones who are financial weak in the society and the rights to provide a social justice and to diminish social injustice. ensuring that the social justice is provided and social injustices are diminished- are called the social rights regardless of whether they require a positive deed, whether they are used as a whole or on individual levels (Özbudun, 1988, p. 110).

The difficulty of defining social rights derives from that the rights subject to different comments and changes depending on social events. That social rights include other rights with two different characters -which are intercepting within the cluster of classical rights and financial rights-, makes it more difficult to define it. Consequently, rights in different categories are regulated under a single title in legal texts. The 1982 Constitution prefers "Financial and Social Rights" as a title.

While defining social rights, one must rather start with technical criterias. In that sense, all rights imposing a positive deed upon the state are included in social rights category. However, this criterion does not seem to be enough to define social rights since it is a fact that there are also social rights such as the right to strike that imposes non-involvement deed upon the state.

### **1.2 Classifying Social Rights**

Social rights are one of the most important elements of social state. Classical rights are the right requiring the positive deeds of the state or in other words- the right to demand while imposing a negative deed and non-violation obligation. As it is stated above, not all social right impose a positive deed upon the state. Social rights such as the right to found a union or the right to have collective business agreement or the right to strike are the negative statute rights imposing a negative deed upon the state. It is not totally possible to differentiate social rights depending on that they impose positive or negative deeds upon the state (Özbudun, 1998, p. 110).

Social rights are also defined and differentiated based on their subjects. Contrary to classical freedoms, social rights are the rights with financial and social content. However, this view does not correspond with the quality of social rights. This is because they are categorized in a narrow sense within the same group with the right protecting the financially strong for the purpose of ensuring social justice; such as property right, private enterprise right (Özbudun, 1998, p. 110).

Social rights are also distinctive in that they are collective since they are assigned to categories, groups or classes to be protected although classical rights are assigned to individuals. It is true that social rights are collective

so that they can be used. However, it is also necessary to indicate that these rights are also personal rights in legal terms and in terms of legal security (Özbudun, 1998, p. 110).

It is better to differentiate social rights according to their purposes. No matter these rights require either positive or negative deed or they can be used individually or as a whole; they are the rights to protect financially weak groups or classes as well as to ensure social justice and to decrease social injustice (Özbudun, 1998, p. 110).

As it is seen, various views were suggested for the classification of rights as well as their definition. Besides, there are differences between the previous classifications and modern classifications.

According to Burdeau who considers social rights as a tool to fix social injustices, social rights are *primarily* the fundamental rights and financial security rights of the employees. The provision for this right is the right to work in an efficient and beneficial way. In addition, the insurance which will be applied in case of accident, disability and old age also completes the security of the person. *Second group social rights* are about work conditions and workplace conditions. Considering that the person who is working is not a machine but a human being; problems such as their working conditions, work period, holiday, resting problems, and health conditions in the workplaces can be overcome with a regulation on social rights. In this group, social rights -enabling moral and material development and equal opportunity for the individual- is included such as occupational education. *In third group*, obligatory social rights that will activate the system are included in order for the social rights to be used. These are primarily the freedom to work and the right to strike and then the right to have a union. *Finally*, when the property right is limited to social purposes, property's being used as a pressure tool is prevented (See Göze, 1976, pp. 114-115).

As it is seen, in Burdeau's classification, social rights are explained as the rights of the working class. On the other hand, it is acknowledged that these rights assign people the right to request certain positive deeds from political powers (Göze, 1976, p. 115).

Rivero preferred to have a classification of three in social rights notion. First of all, social right is primarily about the statute of the employees such as employment right, the right to have a union, the right to have strike and the right to have a say in determining working conditions. Secondly, social rights are the rights directly linked to financial structure such as employee's right to participate in business management, nationalization or etatisation opportunities against de facto monopoly- which are applied by the state. Thirdly, social rights are the rights about preparing and ensuring the terms required for the protection and development of the person and the family in moral and material terms (Vedel & Rivero, 1947, p. 16 reported by Göze, 1976, p. 116).

When evaluated from an individual's perspective, social rights are the rights protecting the ones who are weak and in need of protection in social and financial terms; that is to say they are the rights protecting the employees, the women, the child and family institution. Duties are assigned to the state in terms of protection. The state will take necessary precautions to protect the ones in need or will have them taken (Göze, 1976, p. 116).

The legal results of the state's non-involvement duty and the duty it has undertaken to ensure that the social rights gain applicability are different. In order to make a social right applicable, the state cannot be forced to actualize this duty in case the state is obliged to have a deed. However, if the legislative power has not issue a legal regulation before, then it might be requested to actualize this from the state by means of judicial remedy. Sub-constitutional regulation does not give people the right to demand these rights. Constitutional provisions regulating social rights are not directly applicable provisions. When state's non-involvement duty is considered, judicial review takes place in case those in power do not obey (Göze, 1976, p. 119).

### **1.3 Social Rights in 1982 Constitution**

1982 Constitution has brought a governmental order with an outweighing authority against freedoms. In addition to that the legislation works more efficiently, execution is strengthened and President is equipped with various authorizations in execution are the most important features of this Constitution with regards to the state system (Eker, 1992, p. 34).

Virtually, constitutions are the complete set of rules setting the norms which must exist in a society in order to protect individual freedoms and ensuring that rights and freedoms they have are used. This set of rules includes personal rights and duties, political rights and duties, and social rights and duties.

In social life, with the purpose of ensuring social justice and decreasing social injustice, financial and social rights provided by the constitutions must be preserved with the institutions to be established by means constitution and they must be organized in such a level that they will able to meet the needs of the individuals and the society in a developing and changing world (Eker, 1992, p. 35). Conforming to this understanding, 1982 Constitution regulated social rights under title of “Social and Financial Rights and Duties” in the third section of second part. Financial and social rights section is a requirement of article 5 in the constitution with regards to that the state provides the required conditions for the improvement of citizens’ moral and material existence.

While regulating social and financial rights and freedoms between article 41 and article 64 in chapter three, 1982 Constitution states in article 65 that the state will perform its duty in social and financial areas determined by the Constitution as long as the financial resources are sufficient and the financial sustainability is preserved. Article 65 of the Constitution has a provision stating that “*the State will perform its duties determined by the Constitution in social and financial areas by pursuing the priorities for the purposes of these duties as long as the financial resources are sufficient.*”

### *1.3.1 Family Protection*

The regulation for family protection in our Constitution states that “*The family is the foundation of the Turkish society. The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning*”(Constitution, article 41). This article imposes certain obligations upon the state and the regulation purpose of this article is stated as such: “It is clear that all protection duties imposed upon the government are about improving and fixing inter-family conditions. The objective is to preserve the union and unity of the family consisted of husband, wife and children” in a verdict by the constitutional court. (Constitutional Court dd 12.11.2002 and B. 1999/35, V. 2002/104).

It is indicated that the notion of family has to be understood in wider terms and that it includes relationship between “close relatives” who have a significant role in the family such as the relationship between a grandson and a grandfather, in addition to the family’s relationship with legitimate and illegitimate children of the parents. (Tezcan, Erdem, Sancaktar, & Önok, 2006, p. 171). This will differ depending on whether the family notion is regarded as a nuclear family or expanded family.

The idea of protecting the family is first and foremost about popularising, simplifying and supporting marriages in the sense of Civil Code. According to our constitution, the mother and child also have to be protected in addition to family protection (Duman, 1997, p. 128).

### *1.3.2 Education and Training Right and Duty*

Social state considers training and education as a primary duty of the state and it is about ensuring that all citizens are educated in equal opportunities which will make them think on scientific basis, which will give them awareness, a creative, peaceful, secular and demoractic education. As it is understood from this sentence, ensuring equal opportunities and integrating education into the society are among the duties of a social state. The primary duties of the government are to plan education activities, to make education free of charge, to spread educational institutions all around the country, to focus on occupational and technical education (Yaman, 2009).

According to the UN International Covenant on Financial and Social and Cultural Rights, the States Parties agree that primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and that parents have a liberty to choose for their children schools, other than those established by the public authorities, which

conform to such educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.” (Article 13)

According to European Convention on Human Rights protocol no 1; no one can be deprived of their right to be educated. The State will abide by the parents’ right to provide this education and training in line with their religious and philosophical beliefs while accomplishing the duties it will undertake in education and training areas (Article 2).

As it is stated in above mentioned international documents, the education right requires the State to provide everyone with qualified education opportunities free of charge. It has to be provided regardless of educational or social class, race, ethnicity, skin color, gender, language, religion, political opinion or nation (Gök, 2004).

### *1.3.3 Land Property*

According to article 44 of 1982 constitution, “The state takes necessary precautions to protect and improve efficient cultivation as well as to prevent land loss due to erosion and to provide the peasants who do have insufficient amount of or no land with land. The law can detect the land width depending on various farming zones and types, for this purpose. Providing the farmer who do have insufficient amount of or no land with land cannot result in decrease in manufacturing, downsizing of the forests or decrease in other ground and underground wealth.”

Constitutional Court also indicated in its verdict that land reform is based on these principles primarily (Constitutional Court, dd 11.07.1966 and B. 1966/3, V. 1966/ 23):

- 1- Providing the peasant who do not have insufficient amount of or no land with the land,
- 2- Ensuring social justice,
- 3- Ensuring economical development over agricultural development

In 1961 Constitution, although the text on land property is included under title of Basic Rights and Duties, it is included in Social and Financial Rights and Duties section in 1982.

### *1.3.4 Socialization and Etatisation*

1982 Constitution was accepted with certain limitations restricting property right based on the right to obtain property (Korkusuz, 1998, p. 293). Socialization and etatisation suggests that the property right should be ended in case it is for the public benefit.

Socialization is that a private real property is taken over public legal entity in case it is for the public benefit. Our constitution has regulated socialization in article 46. Our constitution includes following provisions in this article (Duman, 1997, pp. 53-54):

- 1- Socialization can be done by the Government and public legal entities.
- 2- However, socialization can be done when the public benefit is required. Public benefit decision is made.
- 3- Expropriated price is paid in cash and in advance as a rule. However, it can be paid in installments in certain cases suggested by the Constitution.
- 4- However, all or a part of real property subject to private property can be socialized.

Etatisation is a process ensuring that the enterprises owned by a private corporation are handed over by the government property or managed by the government. The purpose of nationalization is to ensure that the enterprises that belong to the private corporations are managed more efficiently and in a wider sense, conforming to the benefit of people. Not every enterprise but private enterprises with public service might be nationalized (Armağan, 1980, p. 65).

Etatisation notion is different than socialization. Socialization is about meeting the land demand as per the public benefit, benefit of the state as long as it is in favor of private entities. Etatisation is that a financial institution

such as a commercial, industrial or transportation etc. institution becomes a state property. For an etatisation to take place, a corporation must be owned by a private enterprise beforehand. In addition, etatisation and nationalization are two different economical and legal terms. In nationalization, the owner of the enterprise is a foreign person or the companies of foreign people. When the state itself or the citizens take this for their own properties, nationalization takes place. Etatisation is about the real estates in a private property are taken over by the state ([www.ansiklopedi.turkcebilgi.com/Devletle%C5%9Ffirme](http://www.ansiklopedi.turkcebilgi.com/Devletle%C5%9Ffirme)). In brief, it is said that etatisation defined as the opposite of privatization exists in the laws of many nations (Şeref, 2009).

Both socialization and etatisation are the tools ensuring that the responsibilities imposed upon the state by the social rights are fulfilled in line with the public benefit in particular. In addition, socialization has nothing to do with a social state normally; however, it is said that socialization might take place in line with social state principle in article 46 of the constitution (Berber, 2009).

### *1.3.5 Rights on Business Life*

It is possible to allocate the provisions on business life in 1982 constitution in two groups. Provisions regulating the individual business relations are in group one. These are: the right and duty to work (Cons. art. 49), working conditions and the right to rest (Const. Art 50) and fair wage (Const. Art. 55). Provisions regulating group work relations are in group two. These are: the right to found a union (Const. Art. 51), the right to have collective business agreement (Const. Art. 53), and the right to strike and to lock-out (Const. Art. 54) (Demir & Karatepe, 1986, p. 203).

The right to work is a constitutional principle and it means that everyone has the right and duty to work. An important feature differentiating the right to work from other rights and freedoms is that using this right depends on the factors occurring other than the subject of the right. People can make use of this right only if their business and working environment and opportunity is available (Kabaoğlu, 1994, p. 253).

According to the Constitution; *“Everyone has the right and duty to work. The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace in relations between the employee and the employer.”* (Const. Art. 49).

The right to work is one of the fundamental rights in a social state. A person needs to work in an efficient and beneficial way in order to sustain his and his family’s life. And it is state’s duty to support working and to take required precautions in order to create a financial environment sufficient enough to prevent unemployment (Korkusuz, 1998, p. 283). On the other hand, the right to work is a dynamic social process and it is directly relevant to the size of unrecorded economy. While legal regulations on unemployment insurance, business security, female equality; it is said that it becomes difficult to bring forward many demands within the scope of the right to work due to the size of unemployment and since the notion of social state was abandoned when the union declined (Yurt, 2009).

The right to work is not limited to having a job no matter how. In order to ensure that the right to work is applicable and can be used in real sense, it is a must to provide certain rights which might be considered as a sub-category. For example, business security right, the right to request that the workplaces are conforming to working and medical conditions, the rights on protecting working children or young people in particular, the right to have fair wages, paid vacations, the right to rest, social security right and the right to ask for being employed at the positions conforming to his age, his strength and gender (Kabaoğlu, 1994, p. 254).

1982 Constitution makes it obligatory for the state to take necessary precautions in order to ensure fair wages and benefiting from other social aids. According to article 55 of the constitution, *“Wages shall be paid in return for work. The state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall be taken into account.”*

### *1.3.6 Social Security Right*

One of the most important requirements of social state is social security and it is assigned to everyone without making any distinctions. According to the constitution, “*Everyone has the right to social security. The state shall take the necessary measures and establish the organisation for the provision of social security*” (Const. Art. 60). According to this, social security aims at protecting the individuals against the risks deriving from social life. At that point, that the whole country’s population is in a social security regime is essential (Kaboğlu, 1994, p. 466).

Social security right is actualized within the scope of social security and insurance regime to be founded by the government; it must be understood that the state must help the right owners at no charge. It can be suggested that this right is actualized in a concept of organization and system managed with the participation of those in charge. However, there might be two different groups in terms of the subjects of social security right: The first represents the ones that have to be protected in particular and there has to be more protection provided for those (Kaboğlu, 1994, p. 256). People who have to be protected in particular are identified in article 61 of the constitution. According to this article, “*the state shall protect the widows and orphans of those killed in war and in the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living*”(Const. art. 61/1). The constitution added the disabled (const. art. 61/2), old people (Const. art. 61/3) and the children in need (const. art. 61/4). With the purpose of protecting all, the state is assigned with the duty of founding required facilities and organizations and getting them founded (const. art. 61/final). The second group in terms of social security right subjects includes the unemployed. They benefit from a rather limited security system in comparison to the employed (Kaboğlu, 1994, p. 256). From this point of view, it is indicated that social security right is not a right unique to the employed but everyone is a subject of this right (Kaboğlu, 1994, p. 467).

### *1.3.7 Right to Housing*

According to article 57 of the constitution, “*The state shall take measures to meet the need for housing within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.*”

With this law, the constitution emphasizes the importance of housing for individuals and the state is assigned a supportive and planner role. Providing everyone with a sufficient estate, making residential areas securer, healthier and more liveable and more efficient are among the primary targets of a state. However, our constitution explains the role of a state as taking precautions. Therefore, by constructing and giving estates for the individuals, the state does not have to meet the right to housing. On the other hand, it is the state’s duty to support the individual’s efforts to obtain sufficient estates as long as they make plans by considering the features of the cities and environmental conditions and provide lands. In collective housing attempts, the state is responsible of first degree (Duman, 1997, p. 176).

### *1.3.8 Medical and Environmental Rights*

1982 Constitution has issued the medical and environmental right in the same article. According to the second and third paragraph of article 56 of the constitution; “*Everyone has the right to live in a healthy, balanced environment. It is the duty of the state and citizens to improve the natural environment, and to prevent environmental pollution.*”

As it is said by the environmental right and the constitution, it is everyone’s right to live in a healthy and balanced environment. That is to say; everyone in the country is the owner of this very right and especially the citizens; and all these people might request that their environmental right is respected. The subject of this right is about living in a healthy and balanced environment. With regards to the obligators of this right, our Constitution has brought forward an interesting regulation. As the obligator of the right, our constitution points at the state and the citizen. There is nothing abnormal in showing the state as the obligator of the right. However, it is difficult to understand that citizens are also presented as the obligators of the right in addition to the state. This is because it is contradictory that the foreigners living in this country are not shown as the obligators although they are considered as the right owner (Tunç & Göven, 1997, p. 115).

Our constitution imposes the duty to take precautions on preventing environmental pollution and on protecting the environment. The individuals follow the precautions taken and they contribute to the environmental protection and prevention of environmental pollution.

## **2. MAKING REGULATIONS ON SOCIAL RIGHTS WITH TAXING POWER**

### **2.1 Taxing Power in General and Directive Taxation**

Taxing power can be defined as the legal and actual power which the state has on getting tax based on its sovereignty on the country (Çağan, 1982, p. 3; Öncel, Çağan, & Kumrulu, 2008, p. 33). The main reason for the use of taxing power by law is that taxes are closely related to fundamental rights and freedoms of persons (Çağan, 1982: pp. 3, 100).

Taxing power has a great importance in terms of being able to continue the existence of the state. The State needs revenue to fulfil the duties and to fulfil its public service. The largest portion of public revenues is consisted of taxes collected by force on the basis of taxing power. In this respect, financial objective which is a classic purpose of taxes refers to meet the financing of public expenditure as required by the public service undertaken by the government. This objective expressed as financial (fiscal) purpose has always played a role in the process of historical development of taxes. (Akdoğan, 2009, p. 120). However, nowadays, this classic purpose of taxes has undergone change. It may be applied for tax with the purpose of forming various effects on financial and social structures as well as the purpose of meeting public expenses. (Akdoğan, 2009, pp. 122, 134). It is utilized the taxes for creating effect in a wide range such as protecting the environment, ensuring economic improvement, increasing employment other than financial purpose. (See Göker, 2011, p. 11 et al.; See also. Üstün, 2012, p. 154 et al.). This is a requirement of fiscal policy. It is tried to be effective on the country's overall social, economic and financial structure through taxes which is one of the most important tools on attaining the objectives of fiscal policy (Akdoğan, 2009, p. 474).

In essence, after 1929-1930, neutral tax view expressing not to be effective on decisions and behaviours of taxpayers gave place to the understanding of the intrusive and regulatory tax. (Akdoğan, 2009, p. 121; Çoban, 2008, p. 12) Accordingly, State seeks to ensure the realization of various effects which it determines through the taxes. Taxes are not only taken with financial objectives, but It is also made to be resorted to taxes in order to ensure also significant impacts having a regulatory and guiding nature in various areas where the state aims to achieve (Üstün, 2012, p. 155).

Even if taxes are not levied for only financial purpose, the financial purpose of taxes holds good actually for every time (Aliefendioğlu, 1981, p. 595; Göker, 2011, p. 12). Moreover, even taxes levied for only fiscal purposes can always result in the consequences other than the purpose of obtaining revenue. However, it is important to ascertain what the main purpose for the receipt of a tax is (Göker, 2011, p. 8; Aliefendioğlu, 1981, pp. 595-596). Despite some taxes are applied with directly financial purposes, some taxes can be implemented by being kept non-financial reasons in the forefront and of course, it is in question to generate revenue of these; that is a matter of the emergence of fiscal objective.

To be effective of taxation on the behaviour of people, to be effective with the methods of encourage or discourage over them is expressed as directing taxation. (Göker, 2011, p. 1). Directing taxation has many application areas. Cultural purposes, changing consumption habits, family planning, prevention of the use of addictive substances are some of these reasons (see Göker, 2011, p. 59 et al.). For example, in dangerous situations in terms of health, the state can reduce the consumption of harmful substances and increase their prices artificially.

In this regard, those who consume substances such as alcoholic drink, cigarette may be liable for a special indirect tax (Turhan, 1998, p. 39). However, in most countries, such materials are subject to taxation for the financial purpose in addition to the reasons related to health policy (Turhan, 1998, p. 39; Göker, 2011, p. 75). Many of these effects which are provided through taxes may be related to social rights held in the constitution.



Social rights and effects intended in many other areas are not provided only through taxes. Of course, the means such as the public expenditures other than taxes are effective. This point is stated as follows: "the modern welfare state uses three main instruments': direct public expenditures such as health, unemployment, education, retirement benefits; tax reductions for socially desirable expenditures (health, education) of individuals; arrangements for the protection of those who work with the means such as minimum wages, reduced tax rates or some special groups" (Çevik, 2003, p. 356).

## **2.2 Relationship between Taxing Power and Constitutional Principles**

Taxing power is closely related to several principles contained in the constitution. The principles of state of law and the social state are the leading ones among these. As our topics of examination, it should be mentioned that it has close relationship with the principle of the social state. Essentially, the main objectives and tasks of the social state is to ensure social justice, social welfare and social security. Under these purposes, the state will protect weaker ones financially and lead to the social security for the citizens on the other hand the state will try to provide economic development (Öncel, Kumrulu, & Çağan, 2008, p. 52). In other words, the principle of social state of law imposes duty to make positive acts to the state both for regulation of social life and for its development (Kaneti, 1989, p. 319). It is expressed that the state's degree for being a social state determines the realization rate of economic and social rights in the constitution (Bellek, 1997, p. 71).

Social state uses taxing authority both in the realization of redistribution of social justice, income and wealth, and in taking the necessary incentive measures for planned development. When the assignments covered by the principle of the social state are fulfilled by the state, it is required that a portion of the resources created in the private sector will be transferred to the state and they will be converted into public spending at the state level. (Öncel, Kumrulu, & Çağan, 2008, p. 52; Kaneti, 1989, p. 320; Çoban, 2008, p. 13; Üstün, 2003, p. 255).

Pursuant to Article 73/1 of Constitution, it is stated that the taxes will be collected "to meet public expenses". This statement specifies only financial purposes and functions of taxes, so it is missing. Therefore, "public expenditures" statement should be interpreted to include expenses made with economic and social purposes by the state (Üstün, 2003, p. 259). Again, in Article 73/1 of Constitution, it is adjudged that everyone is liable to pay tax "depending on the financial power". This principle called taxation based on the financial power is the principle related to social justice of social state. It can be easily said that the view of the principle of the social state in tax law creates an embodied expression relating to tax law. The concept of the rule of law is interested in the direction of the horizontal equity of tax justice. Although the social state is interested in the problem of vertical equity, to what extent those who are in different situations from income, wealth, spending, family burden and the other aspects will be taxed (Çağan, 1982, p. 148). It can be utilized from a variety of ways and measures in order to provide taxation according to the financial power. 38 Minimum living allowance, progressive tax rates, lesser taxation of labour incomes when compared to capital income, tax exemptions and exceptions, heavy taxation of luxury goods consumption are examples of these measures (Akdoğan, 2009, p. 218 et al.).

In accordance with Article 65 of the Constitution, State fulfils its duties designated by the Constitution in the social and economic areas to the extent of the adequacy of financial resources by taking into consideration the priorities appropriate to the purposes of these duties. The arrangement format of the substance is available to be understood in a way that makes it possible to avoid assignments where the state is always responsible and which reduces the value of social and economic rights. Or, it may be claimed that the state will fail to fulfil economic and social rights and neglect them by giving justification this article. Furthermore, there are some rights granted to citizens which are impossible to be neglected. This is because these rights are the rights which will take place with the recognition of state in the level of the constitution and the law. For example, unions, collective agreement and strike rights etc. Therefore, it is possible to say that the above article finds the application area for the only rights assigned to the state. State will try to do its best in order to take measures to ensure social security, but it will remain within the limits of financial opportunities at hand (Soysal, 1986, p. 238). Constitution relied on the adequacy of financial resources to the duties which will be fulfilled by the state by considering the protection of economic stability. So the State will try to do its best, but while making them, it will not force the limitations of opportunities at hand (Kocaoğlu, 1997, p. 99).

### **3. EXAMPLES THAT CAN BE ASSOCIATED WITH SOCIAL RIGHTS IN THE TAX CODES**

As highlighted above, it can be effective on social rights through taxation and also be utilized from taxes in terms of the protection and the development of social rights held in the constitution. In this regard, it will be seen that there are several provisions for this when tax laws are analysed. A portion of these provisions are intended to direct social rights. It is possible to establish an indirect link between social rights and several regulations. Some of these provisions can be specified as follows:

Considering that social rights, whether positive or negative act, are the rights to achieve social justice, to reduce social inequalities, to protect financially weaker classes and groups in society (Özbudun, 1998, p. 110), it can be said that lighter taxation of wage income is a tax regulation for social rights. While being applied 27% to amounts between TL 26000-60000 in non-wage incomes in the description of Article 103 of Income Tax Law (ITL), it is applied 27% up to TL 26000-94000 in wage incomes. While being applied 35% for more than TL 94,000 in non-wage incomes, this amount is TL 94000 in wage incomes. This arrangement provides an advantage for highly paid although it is insufficient (see Üstün, 2010, p. 604), because of ignoring those who obtain income fee with a lower amount.

Also, minimum subsistence allowance laid down in Article 31 of the ITL is a regulation that can be associated with social rights for the exclusion of tax a certain portion both in the taxation of wages and for being taken into account the family. Article 31 of the ITL is as follows: "The minimum subsistence allowance; which is valid at the beginning of the current calendar year in which the charge is obtained and for the amount of the annual gross of the minimum wage applied for workers older than 16 years 16 years working in the industrial sector; it is 50% for taxpayer, 10% for wife not working and not having any income, 7,5% for two children and 5% for other children including separately for each of the children. If the revenue belongs to the partial period, the amounts corresponding to this period shall prevail thereby month fractions are considered as the full month."

It is regulated in Article 73 of the ITL regulating the equivalent rental value that the equivalent rental value will not apply" in case that the buildings are allocated for owners' base, descendants or brothers. This provision comprises also an arrangement for the protection of the family. However, it will so well-directed that the families which will not apply the equivalent rental value should be determined in a wider.

It can be specified as one of the provisions taken into account by the family in Article 16 of Inheritance and Gift Tax, the provision of "the tax is calculated by applying half of ratios contained in the description related to gratuitous devolutions in case of gratuitous goods devolution from mothers, fathers, wives and children to a person (except for gratuitous devolutions made to those who adopt from foster). As seen, these examples are shown that the family is directly taken into account in the context of the social rights.

Environmental rights are also important. Arrangements for making some positive effects can be realized with the environment-related taxes. In this regard, Motor Vehicle Tax can be addressed. Today, in many countries, the taxation is made according to the amount of carbon dioxide (CO<sub>2</sub>) emitted by vehicle in taxation of motor vehicles. This shows that the environment is directly taken into account (Üstün, 2012, p. 165 et al.). In this case, when making taxation, the purpose of environmental protection emerges as the main aim. The financial goal of tax is of secondary importance. In Turkey, it is taxed by the cylinder volume and the age of the vehicles. The reduction of tax with increasing age leads to quite undesirable consequences for the environment. However, considering that a high volume of cylinder vehicles further pollute the environment when compared to others, it is concluded that the environment is only indirectly taken into account (Üstün, 2012, p. 184). It is not possible to say that the existing motor vehicle tax provides a positive impact on the protection of the environment. This issue should be taken into consideration in the arrangements to be made.

All expenditures, donors and aids made for facilities such as schools, health facilities, dormitories, kindergartens, orphanages, nursing homes to public institutions and organizations listed in Article 10 of the Law on Corporate Income Tax can be deducted from tax basis; this arrangement shows also that the social rights are taken into account. R & D reductions can be also considered in this context. The earnings exemption in education and training works contained in Article 20 of the ITL is a nature of regulation directly related to the social rights.

"Profits derived from the operation of the pre-school education, primary education, special education and secondary education private schools are exempted from income tax of five taxation period within the framework of the principles and procedure specified by the Ministry of Finance by taking the opinion of the relevant Ministry."

The fact that provisions (art. 40, 63, 68) related to deductions from insurance premiums and pension contributions and individual pension contribution fees held in the Income Tax Act, shows that social security rights are taken into account. Another provision which might be associated with the right to social security emerges as trade exemptions. The employees working in accordance with the provisions in Article 9 of the Income Tax Code are exempted from income tax.

In Article 40 of the Income Tax Code, the dues paid to the trade unions according to the provisions of the Trade Unions Act by employers will be deducted from the tax basis; this arrangement is a nature of provision supporting social rights held in the Constitution.

The following provision contained in Article 8 of the Law on Property Taxes is a provision directly related to social rights, "Council of Ministers is authorized to deduct tax rates belonging to this dwelling up to zero in event that those who documented that there is no income except those under the age of eighteen and those who are dependent to him, those consisting of only salary which they receive from social security institution exclusively established by law, Veterans, disabled persons, martyrs, widows and orphans have a single dwelling not exceeding 200 m<sup>2</sup> gross within the borders of Turkey (including the state of having a right of usufruct)."

#### **4. CONCLUSION**

The most important element bringing the nature of the social state to a social order is that comprehensive economic and social rights are secured and recognized by the constitution as one basic right. Today's modern constitutions stipulate that the state will be a social state of law by harmonizing the requirements of the principle of social state with the requirements of the rule of law. Social state of law refers to a society taking on guaranteeing social and economic rights as well as fundamental rights and freedoms.

Today's contemporary state is a state that takes measures and it will enable all citizens to look to the future with confidence as well as the citizens with no material power. This state is a state aiming at fulfilling all kinds of social and economic needs of the community without damaging the fundamental rights and freedoms of the person, in a balanced manner.

The state also benefits from the taxes while performing the social rights and offering better, within this context, various tax exemptions and discounts are provided. In this way, it contributes to the development of social rights and the presentation better. While a portion of tax-related regulations relates directly to social rights, it is seen that many provisions are related indirectly to the social rights. It is obvious that increasing the number and scope of these provisions will be much more exact in fulfilment of the requirements of the principle of social state.

It is not enough to include the social rights in the constitution. In order to have the realization of these rights, the state must fulfil its duties. State will fulfil its social and economic assignments in large measure it is undertaken, to the extent of the adequacy of financial resources by considering the protection of economic stability. Tax regulations on social rights will lead to a loss in tax revenue of the state. In this regard, it should be taken into account that the provision of, "State fulfils its duties designated by the Constitution in the social and economic areas to the extent of the adequacy of financial resources by taking into consideration the priorities appropriate to the purposes of these duties" which is contained in Article 65 of the Constitution and tax-related regulations should be made in this direction. This is essential for ensuring the public interest. State should act very carefully and should determine priorities in social preferences while distributing the national income in a fair way. The recognition of tax facilities in a manner to be exceeded the state's opportunities will constitute an inconsistency for the public interest.

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