

THE PROTECTION OF PROPERTY UNDER THE ECHR WITH SPECIAL REGARD TO CENTRAL EUROPE AND FORMER YUGOSLAV REPUBLICS¹



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Abstract

Although the right to the protection of property was not initially part of the original text of the European Convention on Human Rights, after the adoption of Protocol 1, this right experienced growth in the case law of the European Court of Human Rights. Special influence on the development of the right to possession in the case law of the Strasbourg Court goes to the cases decided against Central European countries and ex-Yugoslav Republics.

The paper covers basic concepts of importance for a better understanding of the right to possession/property under Article 1 of Protocol 1 to the European Convention on Human Rights, as well as the case law of the European Court of Human Rights. The paper analyzes the autonomous meaning of possession/property, interference with property rights and a fair balance test. Finally, the paper presents some important cases decided against Central European countries and ex-Yugoslav Republics. These cases, in the authors' opinion, contributed considerably to the progress of the case law of the European Court of Human Rights.

Keywords: European Convention on Human Rights, European Court of Human Rights, Central European countries, ex-Yugoslav Republics, property, possessions,

- 1 This paper analyses case law in respect of nine countries: Bosnia and Hercegovina, Croatia, the Czech Republic, Hungary, Montenegro, Poland, Romania, Serbia and Slovakia.

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legitimate expectation, interference, deprivation or confiscation of property, control of property, a fair balance test, proportionality

1. Introduction

Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) protects the right to property within the Council of Europe system.² This Article of Protocol 1 to the Convention reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The above provisions shall not in any way affect the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”³

The Central European countries were not members of the Council of Europe at the time of the adoption of Protocol 1 and the majority of them became part of the Convention system in the early ‘90s.⁴ The dominant case law of the European Court of Human Rights (hereinafter: the ‘Court’) on the protection of the right to property in these countries stems from their transition from communist and socialist systems to democratic systems, as well as from communist and socialist economies to free market economies. They are also the result of the repair of previous mistakes made by those States regarding wrongful convictions, deprivation of property, expropriation and nationalisation. Finally, the case law of those States in respect of Article 1 of Protocol 1 is the result of the collapse or dissolution of the States, mostly Yugoslavia.⁵ When looking at the statistics and the number of cases in which the Court

2 Due to different and conflicting conceptions of the right to property among the Council of Europe Member States, this right was not included in the Convention’s initial text, see Lopez-Escarcena, 2012, p. 514 and Collected Edition of the *Travaux Préparatoires* of the European Convention on Human Rights, 1985, Vol. I, pp. 198-230.

3 This paper has borrowed the above citation from a previously published Article of one of the authors, Plavšić, 2023. This study cites key elements from the previous Article, in particular broad property protection concepts, to support new materials and arguments.

4 The Czech Republic ratified the Convention in 1992, Hungary in 1992, Poland in 1993, Romania in 1994 and Slovakia in 1993. Former Yugoslav Republics became members depending on the outcome in respect of the dissolution of the relevant Yugoslav State. Bosnia and Herzegovina ratified the Convention in 2002, Croatia in 1997, Montenegro in 2004, Serbia in 2004 and Slovenia in 1994, <https://www.echr.coe.int/country-profiles>.

5 See, among others, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, no. 60642/08.

ruled, it may be asserted that this right is quite important because it is constantly sought before the Strasbourg Court.⁶

This paper analyses the key elements for the interpretation of property and protection of property before the Court, with special regard to some important cases in which rulings were issued against Central European countries and former Yugoslav Republics. These cases, in the authors' opinion, contributed significantly to the development of general property concepts in the case law of the Court, but also influenced the legislation of the States and the jurisprudence of domestic courts.⁷ Finally, the authors mention some country-specific issues related to the dissolution of former Yugoslavia.

2. What is Property under the Convention?

Article 1 of Protocol 1 does not define property or possession, implying that the Court's extensive case law has created an autonomous definition of property.⁸ The Court itself often emphasises in its judgments and decisions that "the concept of 'possession' within the meaning of Article 1 of Protocol 1 has an autonomous meaning that is not limited to ownership of material goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as 'property rights', and thus as 'possessions' for the purposes of this provision".⁹

Case law in respect of Central European countries had a significant impact on the Court's extensive case law in identifying what property is in the Convention system and which property is protected before the Court, particularly in restitution cases and the scope of the concept of a 'legitimate expectation'. According to the case law, the Convention protects existing property rights over movable and immovable assets, other existing rights and economic interests, existing claims, and

6 HUDOC sources retrieved on 30 September 2023, search criterion: Article 1 of Protocol 1: Bosnia and Herzegovina – 155 cases, Croatia – 299 cases, the Czech Republic – 143 cases, Hungary – 245 cases, Montenegro – 17 cases, Poland – 644 cases, Romania – 770 cases, Serbia – 541 cases, Slovakia – 204 cases and Slovenia 99 – cases, <https://hudoc.echr.coe.int>.

7 Only some specific cases are presented in the paper, with some in the text and others in the footnotes. The study does not address neither the questions of positive and negative obligations of States, nor the issues of victim status and incompatibility *ratione personae*. Regarding the obligations of States see Plavšić, 2023, pp. 3–6. Regarding the issue of victim status and incompatibility *ratione personae*, see *Albert and Others v. Hungary* [GC], no. 5294/14, §§148–169, Plavšić, 2023, pp. 6–7, Omejec, 2013, pp. 973–976.

8 This article uses the terms 'possession' and 'property' as synonyms. Regarding terminological explanation, meaning and differences between 'possession', 'property' and 'ownership', see Omejec, 2013, pp. 954–955.

9 *Béla Nagy v. Hungary* [GC], no. 53080/13, § 73 and *Broniowski v. Poland*, no. 31443/96, §129.

other assets,¹⁰ “including claims, in respect of which the applicant can argue that he or she has at least a ‘legitimate expectation’ of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right that it has been impossible to exercise effectively cannot be considered a ‘possession’ within the meaning of Article 1 of Protocol 1, nor can a conditional claim that lapses as a result of the non- fulfilment of the condition”.¹¹

In the case of *Kopecký v. Slovakia*,¹² the applicant wanted to recover movable assets - gold and silver coins of numismatic value that belonged to his late father and were taken from him after he was convicted of illegal possession of coins. After the establishment of a democratic system, Slovakia adopted a special law on rehabilitation on the basis of which the applicant’s father was rehabilitated, after which the applicant tried unsuccessfully at the domestic level to recover the said coins. In *Kopecký*, the Court analysed different cases regarding the legitimate expectation and clarified the autonomous concept and notion of ‘legitimate expectation’, providing guidelines and criteria for determining this notion, stating that ‘legitimate expectation’ must be of a nature more concrete than a mere hope and based on a legal provision or a legal act such as a judicial decision.¹³

In defining the autonomous concept of property, the Strasbourg Court expanded the scope of protected property to include various types of ownership and property rights, such as intellectual property, the right to rent based on contract, savings on bank accounts, various types of social benefits and pensions and a claim based on court decisions that has been sufficiently established to be enforceable. Various economic and financial interests connected to corporate business activities, as well as shares of enterprises having a specific economic value, are examples of property protected by the European court.¹⁴

On the other hand, the Convention does not guarantee, nor does the Court protect, the right to acquire property, and Article 1 of Protocol 1 cannot be interpreted as imposing a general obligation on Contracting States to return a property transferred to them prior to ratifying the Convention. Article 1 of Protocol 1 does not restrict the Contracting States’ authority to establish the scope of property restitution or the conditions under which they agree to restore the property rights of former owners¹⁵. This situation was often analysed in cases against Central European countries, especially in the context of restitution of property and the laws that these

10 Plavšić, 2023, pp. 6–7.

11 *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35, 47, 50, 52.

12 *Ibid.*

13 In the *Kopecký* case, the Court determined that the applicant did not have ‘possession’ under Article 1 of Protocol No. 1, and so the safeguards of that provision did not apply. As a result, the Court determined that there had been no infringement of Protocol No. 1’s Article 1, see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 60, 61.

14 See Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights Protection of property, Council of Europe/European Court of Human Rights, 2022, pp. 11–19 https://www.echr.coe.int/documents/d/echr/Guide_Art_1_Protocol_1_ENG and Plavšić, 2023, pp. 7–8

15 *Jantner v. Slovakia*, no. 39050/97, §34.

countries adopted before the ratification of the Convention, but also in the context of fulfilment of different statutory conditions for restitution claims, such as time limits, nationality, place of residence, etc. In these cases, the Court analysed several aspects of the scope of the right to property, namely compatibility *ratione temporis* and *ratione materiae* in the context of ‘legitimate expectations’. The Court repeatedly rejected complaints regarding deprivation and confiscation that occurred before Convention and Protocol 1 came into force in those countries as incompatible *ratione temporis* and *ratione materiae*, especially when applicants did not fulfil statutory conditions for restitution claims or the applicants belonged to categories of owner who were excluded from restitution.¹⁶

In the case of *Eparhija Budimljansko-Nikšička and Others v. Montenegro*,¹⁷ the applicants, monasteries, and churches of the Serbian Orthodox Church in Montenegro complained that the Government’s failure to decide on their restitution request in accordance with the Just Restitution Act 2002 breached their property rights, in particular their ‘legitimate expectation’ to re-acquire the property that had been taken away from them after World War II. The Court ruled as follows:

“The Court accordingly concludes that the applicants did not have a claim which was sufficiently established to be enforceable, and they therefore cannot argue that they had a ‘possession’ within the meaning of Article 1 of Protocol No. 1. Nor do they have such a claim under the current legislation which simply envisages that the applicants’ situation will be regulated by a separate piece of legislation. The scope of that legislation has never been defined, and there is no indication as to the modalities for the restitution of property including the procedures and responsible authority. The Court reaffirms that Article 1 of Protocol No. 1, as reiterated above, does not impose any general obligation on the Contracting States to restore property transferred to them before they ratified the Convention, nor does it impose any restrictions on their freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners. Consequently, the facts of the case do not fall within the ambit of Article 1 of Protocol No. 1.”¹⁸

In the case of *Jantner v. Slovakia*¹⁹ the applicant’s restitution claim was dismissed as the national courts found that he had not established his permanent residence in Slovakia, which was a statutory condition under national law. That finding of the national courts was contested by the applicant, who alleged that he had met all statutory requirements for his restitution claim to be granted. The Court held that under the relevant national law, as interpreted and applied by the domestic authorities, the applicant had neither a right nor a claim amounting to a ‘legitimate expectation’

16 *Kopecký v. Slovakia* [GC], no. 44912/98, §35.

17 *Eparhija Budimljansko-Nikšička and Others v. Montenegro*, no. 26501/05.

18 *Ibid*, § 75 and see the similar *Malhous v. the Czech Republic* [GC] case, no. 33071/96.

19 *Jantner v. Slovakia*, no. 39050/97, §§33–35.

within the meaning of the Court's case-law to obtain restitution of the property in question.

In the similar Grand Chamber case, *Gratzinger and Gratzingerova v. the Czech Republic*,²⁰ the applicants, US citizens who had lost the citizenship of the former Czechoslovak Republic, requested the return of their property rights after being rehabilitated under the Extrajudicial Rehabilitation Act. The national courts dismissed their claim, noting that they had not met one of the legal prerequisites, namely Czech nationality, and hence were not entitled to try to recover the property. The applicants complained before the Court that they were unable to recover their former property on the ground that they no longer had Czech nationality, in spite of the fact that the decision to confiscate the property had been annulled with retrospective effect. In deciding whether the applicants had a possession, the Court concluded that the applicants have not demonstrated that they had a claim that was sufficiently established to be enforceable, and they therefore cannot argue that they had a 'possession' within the meaning of Article 1 of Protocol 1. The Court also emphasised that the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a 'legitimate expectation' involving the protection of Article 1 of Protocol 1.

In the pilot judgment *Broniowski v. Poland*,²¹ the applicant alleged a breach of Article 1 of Protocol 1 to the Convention since his entitlement to compensation for abandoned property had not been fulfilled. In this very important judgment, the Court underlined that once a Contracting State, having ratified the Convention, including Protocol 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be interpreted as creating a new property right protected by Article 1 of Protocol 1 for persons who meet the eligibility requirements. The Court emphasised that the same may apply with respect to arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the ratification of Protocol 1 by the Contracting State.

3. Three Forms of Interference with the Right to Property

For the effective recognition of the right to peaceful enjoyment of property, it is important that the State has fulfilled its positive obligations – adopted all measures necessary for protection of the right to property, including the legislative framework, as well as appropriate procedural guarantees for the effective protection of this right.

20 *Gratzinger and Gratzingerova v. the Czech Republic* [GC], no. 39794/98, §§ 70–74.

21 *Broniowski v. Poland* [GC], no. 31443/96, §§ 129–133.

There are special positive obligations of the State regarding enforcement proceedings both against the State and against private debtors.²² In addition, the State must also fulfil its negative obligation – it must refrain from various forms of unjustified interference with the property rights of individuals.

In the case *Sporrong and Lönnroth v. Sweden*,²³ the Court, for the first time, described a different type of interference with the right to peaceful enjoyment of property, illustrating three so-called separate rules on property. The first rule is usually referred to as a general rule that the Court applies when the second or third rules cannot be applied to a situation involving interference.²⁴

The second rule, often assessed by the Court in cases brought against the countries under review, specifies the deprivation or confiscation of property and symbolises the classic seizure of goods and rights from the owner, including expropriation, confiscation and nationalisation of property.²⁵ For instance, the case of *Străin and Others v. Romania*,²⁶ is a typical case on the deprivation of property. The applicants, owners of a house nationalised in 1950, brought proceedings before domestic authorities in 1993 to regain the house, which had been converted into four flats. However, the State-owned company controlling the property sold one of the flats to a third party. The applicants unsuccessfully requested the domestic courts for the sale to be declared void. The Court observed that domestic law, as applicable at the time, including case law, lacked clarity regarding the consequences of recognising a private individual's title to the property that had passed into the State's ownership but had been sold by the State to a third party. Taking into account how the taking of their property had violated the fundamental principles of non-discrimination and the rule of law, as well as the complete lack of compensation, the Court determined that this had caused the applicants to bear a disproportionate and excessive burden incompatible with the right to respect for the peaceful enjoyment of possessions. The Court held that Romania must return the building in question to the applicants.²⁷

Restriction on property use is the third rule of interference with the right to property. The third rule on restriction and control of property rights applies where there is no transfer of ownership, but the owner is restricted in the use and/or disposal of the property that is the subject of that right.²⁸ Typical control of property cases in respect of Central European countries are cases addressing the question of

22 Plavšić, 2023, pp. 7-9 and *R. Kačapor and Others v. Serbia*, no. 2269/06, § 108. See footnote 7 for positive and negative obligations of the State.

23 *Sporrong and Lönnroth v. Sweden*, no. 7151/75, 7152/75, § 61.

24 Plavšić, 2023, p. 8.

25 Plavšić, 2023, p. 8 and *Nešić v. Montenegro*, no. 12131/18, *Bistrović v. Croatia*, no. 25774/05, *Pincová and Pinc v. the Czech Republic*, no. 36548/97.

26 *Străin and Others v. Romania*, no. 57001/00.

27 See also the status of execution of *Străin and Others v. Romania* group of cases, 16 judgments currently examined in this group originated in structural deficiencies in the mechanisms set up in Romania as of 1990 to afford restitution of or compensation for properties nationalised in the communist era, see on <https://hudoc.exec.coe.int/>.

28 Omejec, 2013, pp. 979–990 and Plavšić, 2023, p. 9.

a restrictive system of a rent control originated in laws adopted under the former communist regime.²⁹ In the pilot judgment *Hutten-Czapska v. Poland*, the applicant was one of around 100 000 landlords in Poland affected by a restrictive system of rent control, which originated in laws adopted under the former communist regime. The system imposed a variety of restrictions on landlords' rights, including a rent ceiling that was so low that landlords were unable to repay their maintenance costs, let alone profit. The Court found that this type of interference and property control that the Polish authorities had imposed a 'disproportionate and excessive burden' on the applicant, which could not be justified by any legitimate community interest.³⁰

These three rules are interrelated since the second and third rules address specific forms of interference with the right to peaceful enjoyment of property, but they are interpreted in the light of the general principle of the first rule. When the Court does not qualify a measure under the second or third rule, the Court would normally evaluate such a matter within the framework of the general principle of the first rule.³¹

4. (Un)justified Interference with the Right to Property

"For the assessment of interference with the right to peaceful enjoyment of property and alleged violation of Article 1 of Protocol the Court performs a test consisted of a number of continuous phases that is often called 'step by step' test".³² Although, there are different forms of interference with the right to peaceful enjoyment of property, the Strasbourg court applies a single fair balancing test to determine if the interference with the right to peaceful enjoyment of property is justified or not, regardless of the type of interference.³³

The first question to be answered in this test concerns the existence *ratione materiae* of a property within the meaning of Article 1 of Protocol 1, which requires the Court to determine if something to be examined falls under this Article. The second step in this test addresses the question of the existence of an interference with the property right. The Court may, but is not required to, assess whether the impugned interference is related to positive or negative obligations, as well as examine the legal nature of the interference. A negative answer to one of these questions generally results in the rejection of the application.³⁴

29 *Hutten-Czapska v. Poland* [GC], no. 35014/97 and *Bittó and Others v. Slovakia*, no. 30225/09.

30 Following the pilot judgment, from 2006 to 2010 several legislative reforms were adopted in Poland, see <https://hudoc.exec.coe.int/>.

31 Plavšić, 2023, p. 9 and *Đokić v. Bosnia and Herzegovina*, no. 6518/04, §§55, 56.

32 Plavšić, 2023, 10 and *Omejec*, 2013, p. 990.

33 Lopez-Escarcena, 2012, p. 543.

34 Plavšić, 2023, pp. 10–11.

The above-mentioned cases illustrate that the Court has repeatedly considered the question of incompatibility *ratione materiae* and the existence of property under Article 1 of Protocol 1 in cases involving Central European countries. As previously pointed out, this is clearly the outcome of the laws that these countries adopted throughout the changes in their political and economic systems, regarding the return or recovery of previously acquired property. The cited case law had a significant influence on how the autonomous meaning of possession evolved generally.

If the previous questions are addressed affirmatively, notably the question of *ratione materiae* conformity with Article 1 of Protocol 1, the Court will proceed with a fair balancing test to evaluate the justification for the interference. According to the Convention and the Court's case law, the interference is justified if the following conditions are cumulatively fulfilled: the interference was under the conditions stipulated by law; the interference occurred due to the existence of a clear legitimate goal established in the general or public interest; a fair balance was achieved between the general or public interest of the community and the protection of the individual's right to property; and such interference did not impose an excessive or disproportionate burden on the applicant.³⁵

The interference with the right to peaceful enjoyment of property must meet the requirement of legality – it must be done under the conditions established by law and in conformity with the substantive and procedural principles of domestic law. However, simply having a legal basis for the intervention does not satisfy the requirement of legality. To pass the legality test, the domestic law provisions on which the interference occurred must be sufficiently accessible, precise and foreseeable in terms of their application.³⁶ In the Court's case law against Central European countries and former Yugoslav republics, this condition is generally fulfilled or is assessed together with the issue of proportionality. However, in *Nešić v. Montenegro*,³⁷ the Court found unlawful interference with the applicant's right to the peaceful enjoyment of his possessions on account of the deprivation of land he owned on the coast in 2014 without any compensation being paid to him. The Court assessed that the legal principles upon which the deprivation of property was based were not sufficiently accessible, precise and foreseeable.³⁸

Interference with the peaceful enjoyment of property can only be justified if it is carried out in the general or public interest, which is clearly specified in relation to the deprivation of property ('public interest') and the control of use of property ('general interest').³⁹ As a result, in the next phase of the 'step by step' test, the

35 Plavšić, 2023, p. 11.

36 Plavšić, 2023, pp. 11–12 and *Grudić v. Serbia*, no. 31925/08, §§73–74.

37 *Nešić v. Montenegro*, no. 12131/18, §§ 54, 55.

38 In *Grudić v. Serbia*, no. 31925/08, the Court found that the Serbian Pensions Fund had unlawfully suspended the payment of pensions earned in the Autonomous Province of Kosovo and Metohija for more than a decade.

39 In practice the Court does not make a distinction between general and public interest. See: Popović, 2012, p. 408, Lopez-Escarcena, 2012, p. 529 and *James and Others v. the United Kingdom*, §§40–45.

Court considered whether the interference was caused by the existence of a clear legitimate objective established in the general or public interest. A genuine public or general purpose must exist, and it can be related to economic, social, cultural, or other public policies. Regarding these conditions, the States are more or less left with a wide margin of appreciation as to how to govern specific issues in the realm of public policies.⁴⁰

The Court's case law concerning the former Yugoslav republics and Central European countries has made a significant contribution in determining justifications for legally interfering with private property rights, namely concepts of 'general' and 'public' interest – reform of the country following the collapse of the communist regime and economic well-being,⁴¹ fight against money laundering,⁴² confiscation of illegally acquired money,⁴³ protection the financial sustainability of the pension system,⁴⁴ the transition from a communist/socialist economy to a free market economy,⁴⁵ correction of errors committed by the State's officials in the context of Article 1 of Protocol 1,⁴⁶ as well as the protection of creditors⁴⁷ etc. Because the concepts of 'general' and 'public' interest are widely interpreted and governments have a wide margin of appreciation, this requirement is most likely met in the cases brought against the countries under review.

The fair balance test concludes with an assessment of proportionality. This step determines if a fair balance has been struck between general and public interests on the one hand, and individual property rights on the other. The Court will also consider whether the interference with property rights sets an excessive and disproportionate burden on the applicant.⁴⁸ The Court considers several factors when determining proportionality, the first of which is the assessment of the (non-) existence of adequate procedural safeguards at the domestic level. For example, in *Bistrović v. Croatia*,⁴⁹ the Court found that the delay in the calculation of compensation was to the greatest extent caused by the inaction of the domestic administrative body, while additional delays were caused by continuous orders to repeat the procedure, which additionally indicates a deficiency in the procedural system of the respondent State.

Another factor for the assessment of proportionality is the choice of measures that were used when interfering with property rights and the assessment of whether there were other less invasive measures of interference. For instance, in *Vaskrsić v.*

40 Tubić, 2017, pp. 1677–1679 and Plavšić, 2023, pp. 11–12.

41 *Hutten-Czapska v. Poland*, no. 35014/97, § 178.

42 *Boljević v. Croatia*, no. 43492/11, §40, *Gabrić v. Croatia*, no. 9702/04, § 34.

43 *Ulemek v. Serbia*, no. 41680/13, § 65.

44 *Žegarac and Others v. Serbia*, no. 54805/15, § 96.

45 *Vasiljević and Drobniaković v. Serbia*, nos. 43987/11 and 51910/15, § 46.

46 *Trgo v. Croatia*, no. 35298/04, § 61.

47 *Lekić v. Slovenia*, [GC], no. 36480/07, §§ 103–105.

48 Plavšić, 2023, p. 12.

49 *Bistrović v. Croatia*, no. 25774/05, § 37.

Slovenia,⁵⁰ the Court found disproportionate interference due to the sale of the applicant's house at a public auction for 50% of its market value in debt enforcement proceedings arising from a principal debt of EUR 124 and from the failure of domestic courts to carefully take into account other appropriate, but less intrusive alternatives for enforcement.⁵¹ On the contrary, in *Vrzić v. Croatia*,⁵² the Court found that judicial sale of an immovable property for a lower price than its market value, even at a significantly lower price, would not necessarily be considered disproportionate, especially if the applicant had assumed such a risk by accepting the contractual obligation from which his debt arose and which was settled in the enforcement procedure.

The behaviour of the applicant and whether the applicant acted in good faith could significantly influence the Court's assessment of proportionality in a fair balance test. In *Vukušić v. Croatia*,⁵³ the Court found no violation in the case in which the contract on the purchase and sale of real estate was annulled, since the Court concluded that the possibility that the applicant did not act in good faith could not be completely excluded in the final assessment.⁵⁴ In *Zvolský and Zvolská v. the Czech Republic*,⁵⁵ the applicants complained that their right to the peaceful enjoyment of their possessions had been infringed by the obligation imposed on them by the domestic courts to return to the former owner the land that had been transferred to them without consideration in 1967. The Court found that the obligation imposed on the applicants to return, without compensation, the land they had acquired in good faith under a deed of gift that was freely entered into in exchange for equivalent consideration amounts to a disproportionate burden that cannot be justified under the Article 1 of Protocol 1.

Errors made by State officials is another often analysed element in a fair balance test. For instance, in *Szkórits v. Hungary*,⁵⁶ the applicant argued that he had been registered as the owner of the land continuously from 1999 when it had been allocated to him by the Regional Office of Agriculture and that the domestic courts had refused to grant him protection. As a consequence, he could not enter into possession. The Court found that as a result of what was an oversight or mistake in the land register, the applicant suffered serious frustration of his property rights. The Court emphasised that the risk of any mistake made by a State authority must be borne by the State and errors must not be remedied at the expense of the individual concerned. In *Moskal v. Poland*,⁵⁷ the applicant alleged, that the *ex officio* re-opening of the social security proceedings concerning her right to an early-retirement pension,

50 *Vaskrsić v. Slovenia*, no. 31371/12, § 87.

51 Similar *Mindek v. Croatia*, no. 6169/13, §§ 82–86.

52 *Vrzić v. Croatia*, no. 43777/13, §§ 109–114.

53 *Vukušić v. Croatia*, no. 69735/11, § 66.

54 Similar in the case of *Zahi v. Croatia*, no. 24546/09, the Court rejected the application because the applicant did not act in good faith when acquiring the apartment.

55 *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, §§ 72–74.

56 *Szkórits v. Hungary*, no. 58171/09, §§ 44–45.

57 *Moskal v. Poland*, no. 10373/05, § 73.

which resulted in the quashing of the final decision granting her a right to a pension, violated property rights. The Court found that if a mistake has been caused by the authorities themselves, without any fault of a third party, a different proportionality approach must be taken in determining whether the burden borne by an applicant was excessive.⁵⁸

The question of whether the national court awarded and paid compensation for expropriated immovable property could be an important factor in this balancing test.⁵⁹ In *Vajagić v. Croatia*,⁶⁰ the applicants complained about a violation of their right to property and their right to an effective legal remedy as a result of the domestic authorities' repeated failure to determine the amount of compensation to be paid by them, as well as the lack of an effective legal remedy to issue a legally binding compensation decision. The Court concluded that the State had not presented any evidence justifying the failure of the domestic authorities to decide on and to pay compensation to the applicants; that an excessive burden had been imposed on the applicants because of the deadline provided to the domestic authorities for paying a compensation for the expropriation; and that their right to property had been violated⁶¹. In *Bistrović v. Croatia*,⁶² the Court addressed the way in which the value of partially expropriated property was determined and the devaluation of the rest of the property that was not expropriated. The Court found that the domestic authorities failed to establish all the relevant factors, including the reduction of the value of the remaining land, when assessing the compensation payable on the expropriation of a certain part of the applicants' farm.

In the case of *R. Kačapor and Others v. Serbia*,⁶³ the Court addressed the violation of the applicants' right to peaceful enjoyment of property through a denial of their right to access to court, rather than applying the proportionality test. In this specific case, as well as other large groups of similar cases decided later, the Court established the violation of Article 1 of Protocol 1 due to non-enforcement or delayed enforcement of domestic judicial decisions given in the applicants' favour against socially/State-owned companies ordering them to pay their debts for salary arrears or their commercial debts.⁶⁴ The *Kačapor* group of cases is distinctive in that the Court analysed the status of socially owned companies and determined that they did not have 'sufficient institutional and operational independence from the State'⁶⁵

58 See also *Čakarević v. Croatia*, no. 48921/13, § 90.

59 It is important to underline that Article 1 of Protocol 1 does not explicitly require the payment of a compensation in the case of unjust interference. However, the case law regarding the deprivation of property shows that in this situation a compensation is required, whose amount is at least "reasonably related to its 'market' value, as determined at the time of the expropriation", see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 53.

60 *Vajagić v. Croatia*, no. 30431/03, § 45.

61 Plavšić, 2023, p. 14.

62 *Bistrović v. Croatia*, no. 25774/05, §44.

63 *R. Kačapor and Others v. Serbia*, no. 2269/06.

64 See footnote 22 and the special positive obligations of the State.

65 *R. Kačapor and Others v. Serbia*, no. 2269/06, § 98.

to absolve the latter from its responsibility and obligation under the Convention. As a result, the State was ordered to pay their debts, including salary arrears and commercial debts.

Through a detailed analysis of the aforementioned factors and the circumstances of the specific case, the Court will establish a violation of property rights if there is a disproportionality - a disturbed balance between the public or general interests of the community and individual property rights, resulting in an excessive and disproportionate individual burden for the applicant.⁶⁶ Otherwise, the Court will find that the interference was justified if it establishes a fair balance between individual and general or public interests and the applicant does not bear an excessive burden. As a result, the Court will determine that there has been no infringement of Article 1 of Protocol No. 1.

Finally, it is important to mention that in cases involving the dissolution of former Yugoslavia and subsequent territorial changes, the Court's proportionality test has been reaffirmed, while taking into account country- or region-specific factors and circumstances. Namely, in the pilot judgment *Ališić and Others*,⁶⁷ the Court found unlawful interference with the applicants' property rights as a result of their inability to recover 'old' foreign-currency savings deposited in Bosnian-Herzegovinian branches of banks with head offices in Serbia and Slovenia following the dissolution of former Yugoslavia. Although certain delays in the repayment of the aforementioned debts could be justified in exceptional circumstances, and despite the respondent States' wide margin of appreciation in this area, the Court determined that the applicants' continued inability to freely dispose of their savings for over twenty years was disproportionate and thus in violation of Article 1 of Protocol No.1.

In cases addressing occupancy rights, the Court applied the proportionality test while taking into account the characteristics of national legislation passed during the dissolution of Yugoslavia. In *Đokić*,⁶⁸ the applicant complained about his inability to have restored to him his pre-war military flat in Sarajevo and to be registered as its owner, regardless of a legally valid purchase contract.⁶⁹ Pursuant to the Federation laws, those who had served in the armed forces of the successor States of the former Yugoslavia were not entitled to repossess their flats nor to register their title.⁷⁰ After completing the proportionality test, the Court found that the applicant and subsequently his property rights had been treated differently merely because of his service in the armed forces of former Yugoslavia and on the ground of his ethnic origin.⁷¹

66 Plavšić, 2023, pp. 15–16.

67 *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"* [GC], no. 60642/08.

68 *Đokić v. Bosnia and Herzegovina*, no. 6518/04, § 46.

69 Similar in the case of *Mago and Others v. Bosnia and Herzegovina*, no. 12959/05. The applicants did not purchase their flats before the war, but their occupancy rights were annulled under the national legislation.

70 *Đokić v. Bosnia and Herzegovina*, no. 6518/04, § 37.

71 *Ibid.*, §60.

5. Conclusions

Article 1 of Protocol 1 primarily provides for the peaceful enjoyment of possession and covers different elements of property rights, including the right of a person to have, to use, to dispose, to pledge, to lend, and even to destroy possession. Additionally, it provides for the opportunity of a person to fully exercise these rights and to access its own possession.⁷² All this is compatible with the State's primary obligation, which derives from Article 1 of the Convention, to secure for everyone within its jurisdiction the rights and freedoms defined in the Convention. Article 1 of Protocol 1 also implies the protection of property rights from various forms of unjustified and arbitrary interference by the State. In the event that interference occurs, either through deprivation of property, limitation of property, or control of the use of property, the question that arises is whether the interference with the peaceful enjoyment of property is justified or not, where the Court performs a fair balance test.

The existence of property within an autonomous Convention meaning is one of the key issues that must be addressed in a fair balancing test, and the evolution of the scope of property was significantly impacted by the case law regarding Central European countries. The Court's interpretation of the concept of a 'legitimate expectation' and its *ratione materiae* applicability to multiple individual claims were considerably influenced by the Central European countries' national restitution legislation, which varied greatly in terms of circumstances. One could easily argue that the Court's case law on property rights would be less rich if restoration laws and redress of unjust property deprivation committed by communist regimes in these countries had not been enacted. The cases of *Kopecký*, *Broniowski*, *Gratzinger* and *Gratzingerova* shaped the scope of Article 1 of Protocol 1, encouraging continuous development of the Court's case law. One could also argue that there was no subsequent inconsistency over this case law, particularly after the Court 'opened' the notion of a 'legitimate expectation' in the case law of Central European countries. However, one could argue that the autonomous meaning of possession appears to have reached its limit in the case law of the Court and hence offers limited opportunity for further development.

Furthermore, the Court's case law concerning the former Yugoslav republics and Central European countries has made a specific contribution in the areas of 'general' and 'public' interest, which offer justifications for legally interfering with private property rights. These distinctive foundations resulted from the transformation and restructuring of the political and economic systems, as well as the correction of errors made by previous socialist and communist governments.

In addition, cases dealing with restrictive rent control systems adopted by the former communist regimes in these countries had a substantial impact on the third rule of property – property control. The cases of *Hutten-Czapska* and *Bittó*

72 Harris, O'Boyle, and Warbrick, pp. 662–663.

demonstrated the particularity of public and general interest for this form of property control that existed under communist systems, as well as the balance that must be struck when individual rights are restricted for years.

Finally, cases brought against these countries triggered a pilot judgment of the Court, since these transformation societies often dealt with structural and systemic situations that had an influence on a vast group of individuals.⁷³ These pilot judgments recognised all important specificity that existed in ex-communist regimes and transitions that happened in these countries, but also reaffirmed the importance of the principle of subsidiarity and the protection that individuals primarily have to achieve before domestic authorities.⁷⁴

73 See *Hutten-Czapska v. Poland*, *Bittó and others v. Slovakia*, *Broniowski v. Poland*, *Ališić and Others v. Bosnia and Herzegovina*, *Croatia*, *Serbia*, *Slovenia* and *the former Yugoslav Republic of Macedonia*.

74 About execution of pilot judgments in these cases and general measures that countries adopted see <https://hudoc.exec.coe.int>.

References

- Harris, O'Boyle and Warbrick, (2009) *Law of the European Convention on Human Rights*. Oxford University Press (2nd edition), pp. 655–697.
- Lopez-Escarcena, S., (2012) 'Interferences with Property Under European Human Rights Law', *Florida Journal of International Law*, Vol. 24: Iss. 3, Article 3, pp. 513–543, Available at: <https://scholarship.law.ufl.edu/fjil/vol24/iss3/3>
- Omejec, J. (2013) 'Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Evropskog suda za ljudska prava', *Strasbourgški acquis*, *Novi informator*, Zagreb, 2013, pp. 952–1009.
- Plavšić, N. (2023) 'Pravo na imovinu u praksi Evropskog suda za ljudska prava– sa posebnim osvrtom na neke od slučajeva mešanja u pravo na mirno uživanje imovine i na praksu u odnosu na Republiku Srbiju', *Glosarijum*, 7–8/2023, Beograd, pp. 3–18.
- Popović, D. (2012) 'Evropsko pravo ljudskih prava', *Službeni glasnik*, Beograd, pp. 395–419.
- Tubić, B. (2017) 'Ograničenje prava na neometano uživanje imovine u praksi Evropskog suda za ljudska prava', *Zbornik radova Pravnog fakulteta*, Novi Sad, vol. 51, no. 4, pp. 1669–1683.

Case Law

- Albert and Others v. Hungary [GC], no. 5294/14
- Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC], no. 60642/08
- Bélané Nagy v. Hungary [GC], no. 53080/13
- Blečić v. Croatia [GC], no. 59532/00
- Bistrović v. Croatia, no. 25774/05
- Bittó and others v. Slovakia, no. 30225/09
- Boljević v. Croatia, no. 43492/11
- Broniowski v. Poland [GC], no. 31443/96
- Čakarević v. Croatia, no. 48921/13
- Collected Edition of the "Travaux Préparatoires" of the European Convention on Human Rights, (M. Nijhoff, Dordrecht, 1985) Vol. I pp. 198-230
- Đokić v. Bosnia and Herzegovina, no. 6518/04
- Eparhija Budimljansko-Nikšićka and others v. Montenegro, no. 26501/05
- Gabrić v. Croatia, no. 9702/04
- Gratzinger and Gratzingerova v. Czech Republic [GC], no. 39794/98
- Grudić v. Serbia, no. 31925/08
- Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights Protection of property, Council of Europe/European Court of Human Rights, 2022, updated on 31 August 2022, https://www.echr.coe.int/documents/d/echr/Guide_Art_1_Protocol_1_ENG
- <https://www.echr.coe.int/country-profiles>
- Hutten-Czapska v. Poland [GC], no. 35014/97
- <https://hudoc.echr.coe.int>
- <https://hudoc.exec.coe.int/>
- James and Others v. the United Kingdom, Series A no. 98
- Jantner v. Slovakia, no. 39050/97

Kačapor and others v. Serbia, no. 2269/06
 Kopecký v Slovakia [GC], no. 44912/98
 Lekić v. Slovenia [GC], no. 36480/07
 Mago and Others Bosnia and Herzegovina, no. 12959/05
 Malhous v. the Czech Republic (dec.) [GC], no. 33071/96
 Mindek v. Croatia, no. 6169/13
 Moskal v. Poland, no. 10373/05
 Nešić v. Montenegro, no. 12131/18
 Pincová and Pinc v. the Czech Republic, no. 36548/97
 Sporrang and Lönnroth v. Sweden, no. 7151/75; 7152/75
 Străin and others v Romania, no. 57001/00
 Szkórits v. Hungary, no. 58171/09
 Trgo v. Croatia, no. 35298/04
 Ulemek v Serbia, no. 41680/13
 Vajagić v. Croatia, no. 30431/03
 Vasiljević and Drobnjaković v. Serbia, nos. 43987/11 and 51910/15
 Vaskrsić v. Slovenia, no. 31371/12
 Vrzić v. Croatia, no. 43777/13
 Vukušić v. Croatia, no. 69735/11
 Zahi v. Croatia, no. 24546/09
 Zvolský and Zvolská v. the Czech Republic, no. 46129/99
 Žegarac and others v. Serbia, no. 54805/15