

# Protection of Property

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## ABSTRACT

The purpose of this paper contains establishing the genesis and evolution of the content of the peaceful enjoyment of the natural and legal person's possessions within the European Convention on Human Rights (ECHR) system. To achieve this goal, the paper proposes objectives such as defining "possessions" under the ECHR, determining the right to property content, exploring future extensions of Article 1 of Protocol No. 1 in light of the evolution of medical sciences, and examining the relevant jurisprudence, including cases from Central and Eastern Europe. As a case study, the cases vs. the Republic of Moldova were analysed. To determine the content and development of the property protection institution within the framework of the European Convention on Human Rights, we have utilised relevant scientific research methods in the field of legal sciences as a methodological support. Logical analysis was applied throughout the study to identify the legal content of the right, which is the subject of this scientific investigation, and to examine the principles of the protection mechanism for this right, examined in the article. The comparative analysis has allowed us to highlight aspects regarding the compatibility of national legislation on property protection with the standards of the ECHR. The historical method, inherent to research in the field of legal sciences, facilitates the examination of the factors that have influenced the development of legal norms concerning property protection. This method helps identify important material legal sources to understand the evolution of the legal reasoning behind the ECHR's decisions on property protection cases. As we will observe in this work, the European Court often engages in historical analysis when grounding its decisions, especially in cases of the nationalisation of private property. Dynamic analysis (from a forward-looking perspective) is relevant whenever we need to plan amendments to national legislation in the process of implementing the European Court of Human Rights' decisions concerning Article 1 of Protocol No. 1 to the European Convention on Human Rights.

## KEYWORDS

Convention for the Protection of Human Rights and Fundamental Freedoms, expropriation, possessions, protection of property.

## 1. Introduction

Considered to have emerged alongside the individual, property is fundamental to the development of human society and represents one of the key issues of individual

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existence, in particular, and human society, in general.<sup>1</sup> Numerous scholars have developed the concept of private property and mechanisms for its protection, deeming it entirely justified that property, together with fundamental civil liberties, constitutes guarantees of well-being and enables the full realisation of dignity, which is itself conceived as, ... ‘the real foundation of human rights and freedoms,’ recognised through universally and regionally adopted instruments since 1948.<sup>2</sup>

After the adoption of the Universal Declaration of Human Rights, containing the provision that ‘Everyone has the right to own property...,’ regional intergovernmental cooperation structures and individual states initiated the process of implementing the provision of the Declaration at the regional and national levels. We must, however, acknowledge that this mission was extremely complicated at the time due to the ideological factor. The states belonging to antagonistic systems at the time had completely contradictory views regarding the concept and scope of private property.

The mass expropriations that occurred in the 20th century had disastrous consequences for thousands of families. The post-Soviet countries, upon declaring their independence, signed the European Convention on Human Rights, reaffirming their deep commitment to these fundamental freedoms, which constitute the very foundation of justice and peace in the world. The maintenance of these freedoms relies essentially, on the one hand, on a truly democratic political regime and, on the other hand, on a shared understanding and respect for human rights from which these freedoms derive. The internal normative framework underwent a difficult process of adjustment to social and economic realities, during which gaps were addressed, but human rights in general, and property rights in particular, were violated.<sup>3</sup>

Later, the collapse of the socialist system brought with it a series of new challenges. Thus, the guarantee of private property against arbitrary abuses becomes a common imperative for European states. Additionally, growing concerns about environmental protection have created a new conflict between property rights and environmental regulations. Innovative technologies have revealed aspects that might be considered possessions in the sense of the Convention, such as: human organs and tissues, human genetic material, information, programs, and cyberspace, among others.<sup>4</sup>

The European Convention on Human Rights is the first regional treaty to proclaim a list of fundamental rights and freedoms along with an effective mechanism for their enforcement. However, due to the post-war context, as with universal human rights instruments, the authors of the Convention were unable to reach a compromise on including all fundamental rights and freedoms from the first and second generations in the content of the regional treaty at the time of its drafting in 1950. In the years that followed, the original text of the Convention was supplemented with additional

1 Bîrsan, 2007, p. 27.

2 Dorul and Cazacu, 2022, pp. 10–15.

3 *Kopecný v. Slovakia*, Application no. 44912/98, Judgment 28 September 2004.

4 Coban, 2005, pp. 536–537.

protocols, which expanded the range of protected rights. Today, the text of the European Convention on Human Rights encompasses a wide range of civil and political rights, although it includes fewer economic and social rights.

In his work ‘Introduction générale à la Convention Européenne des Droits de l’Homme’, author J.F. Renucci expresses an opinion with which we concur: despite the fact that economic rights are marginally addressed in the European Convention on Human Rights, they cannot be ignored, as they often extend civil and political rights.<sup>5</sup>

The development of the content of fundamental rights and freedoms is important both for states and for the European Court of Human Rights itself, the unique guarantor of compliance by the High Contracting Parties to the Convention. The Court’s jurisprudential creations often drive research and legislative innovations in the Member States of the Council of Europe.

## **2. General Rule: The Protection of Property in the System of the European Convention on Human Rights**

The European Convention on Human Rights and Fundamental Freedoms has succeeded in creating a system that has given rise to a genuine European public order, in which states have become debtors to creditors, who are simultaneously other states and individuals within an exclusive civic Europe. Technically, the European Convention on Human Rights represents an international treaty under which states assume certain legal obligations.<sup>6</sup> The Convention encompasses 59 articles and has been extended and amended by 16 additional protocols. The first additional protocol to the European Convention was adopted on May 20, 1952, and supplemented the material content of the Convention with certain rights, thereby providing explicit regulation for the right to property in Article 1, which states:

‘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 preceding provisions shall not, however, in any way impair 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.<sup>7</sup>

Three general rules for the application of the protected right can be derived from this legal text: the general principle of respect for property; the conditions under

5 Renucci, 2005, p. 273.

6 Balan and Sârcu, 2014, pp. 11–24, p. 18.

7 Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

which a natural or legal person may be deprived of possessions; and the states' right to control the use of property in accordance with the general interest, by implementing such laws as they deem necessary for this purpose.<sup>8</sup>

The right to property is classified under economic rights, historically considered an unquestionable right. However, coexistence in society also requires establishing limits, as property entails obligations and recognises the role of public interest. This creates a middle ground between individual excesses and socialising tendencies regarding property. It implies accepting the public law aspect of property relations and the interventionist role of the state, while being closely tied to the private law dimension of these relationships, necessitating firm guarantees for individuals. Thus, as mentioned earlier, the right to property is absolute and inviolable in relations between individuals, but becomes relative in relation to public authority<sup>9</sup>. The thesis presented is regulated by Article 1 para. 2 of the aforementioned Protocol No. 1.

### ***2.1. The Meaning of the Concept of “Possession” in the System of the European Convention on Human Rights***

The argument that Article 1 of Protocol No. 1 guarantees the right to property found in many of the ECtHR's judgements regarding the application of this provision. Examining this case law, as well as that developed by the former Commission, it shows that the issue of defining the object of the regulations in Article 1 is much more complex. The bodies of the Convention have extended the protection established by Article 1 to other real rights, to claims rights, and to “economic interests,” encompassing various patrimonial values. All of these fall under the notion of “property” in civil law.<sup>10</sup>

The practice of the European Court of Human Rights regarding the application of the Convention indicates that the terms used in the text of Article 1 of Protocol No. 1 have an autonomous meaning. In particular, the notion of “property” has a broad interpretation, encompassing both movable and immovable assets, real rights as well as claims rights, intellectual property rights, inheritances, the right to salary, pensions, social security<sup>11</sup> and more. The European Court of Human Rights, in its interpretations of Article 1 of Protocol No. 1, states that a claim can qualify as a “property” in the sense of Article 1 if the claimant can argue that they had at least a “legitimate expectation”<sup>12</sup> that they would obtain a property right. To determine whether the expectation is “legitimate,” the Court must assess whether the claimant's claim is based on a sufficient legal foundation and “examine whether there was a sufficient legal basis that would allow the claimant's claim to be considered possessions”.<sup>13</sup> The European Court of Human Rights, referring to the notion of “possession,” states

8 Poalelungi et al, 2017, p. 329.

9 Baeşu, 2015, pp. 89–100, p. 98.

10 Birsan, 2005, p. 971.

11 *Stec and Others v. the United Kingdom*, Application nos. 65731/01, 65900/01, Judgment 12 April 2006.

12 *Cazacu v. Moldova*, Application no. 40117/02, Judgment 23 October 2007.

13 *Kopecký v. Slovakia*, Application no. 44912/98, Judgment 28 September 2004.

that the provisions of Article 1 of Protocol No. 1 do not apply to the right to acquire future property.<sup>14</sup> The hope of seeing a property right that is impossible to effectively exercise cannot be considered “possession” in the sense of Article 1 of Protocol No. 1.<sup>15</sup>

The category of “possessions” primarily includes movable and immovable assets, a statement reiterated by the former Commission in the case of *Wiggins v. United Kingdom*.<sup>16</sup> The protection provided by Article 1 of Protocol No. 1 also extends to real rights as well as claims rights. Real rights refer to the subjective right under which the holder directly and immediately exercises attributes over a specific asset, without the intervention of third parties. A claims right is a subjective right through which the creditor – the active subject – can demand that the debtor – the passive subject – either give, do, or refrain from doing something.<sup>17</sup>

The recognition of the right of easement as property in the sense of the Convention was articulated in the case of *S. v. United Kingdom*<sup>18</sup>, where the right to receive an annual rent as a result of establishing an easement over a property can constitute a «possession» in the sense of the Convention. This implies that a real right of contractual origin also qualifies as property.<sup>19</sup>

The notion of “possessions” also extends to claims recognised by a judicial decision, and the annulment of such a decision after it has become final and enforceable constitutes an interference with the beneficiary’s right to protection of property.<sup>20</sup> In the case of *Tudor-Auto S.R.L. v. Republic of Moldova*, the court reiterates that a debt based on a judicial decision can be considered “possessions” in the sense of Article 1 of Protocol No. 1. In this context, the enforcement claims resulting from judicial decisions that remained unexecuted for 8 years, including the time the Court examined the case, led to the claimant’s inability to obtain registration certificates necessary to conduct their insurance business. This constituted an interference with their right to protection of property as outlined in the first sentence of Article 1 para. 1 of Protocol No. 1 to the Convention.<sup>21</sup>

Immovable properties, even if unauthorised and not properly registered, can be classified as “possessions” in the sense of the Convention. In the case of *Hamer v. Belgium*, the court noted that the use of an unauthorised building for 37 years demonstrated the claimant’s substantial economic interest, which was sufficient to constitute a recognised and substantial interest, thus qualifying as “possessions.” Consequently,

14 *Marckx v. Belgium*, Application no. 6833/74, Judgment 13 July 1979.

15 *Kopecký v. Slovakia*, Application no. 44912/98, Judgment 28 September 2004.

16 *Paul Henry Wiggins v. the United Kingdom*, Application no. 7456/76, Decision on admissibility 8 February 1978. European Commission of Human Rights.

17 Adam, 2002, p. 26.

18 *S. v. United Kingdom*, Application no. 10741/84, Judgment 13 December 1984. European Commission of Human Rights.

19 Karadjova, n.d., p. 5.

20 Carss-Frisk, 2001.

21 *Tudor-Auto SRL and Triplu-Tudor SRL v. Moldova*, Application nos. 36344/03, 30346/05 and 36341/03, Judgment 9 December 2009.

the claimant had a “legitimate expectation” to continue enjoying these possessions.<sup>22</sup> On the contrary, the fact that the claimant occupied public land for approximately five years does not transform them into the holder of rights that can be considered as “possessions.” However, the court opined that, disregarding the illegality of the disputed construction, the claimant was the owner of the structures and components of the shed they built, as well as all household and personal items located there. For these reasons, the court concluded that the residence constructed by the claimant, along with their and their relatives’ habitation within it, represented a substantial economic interest. Such an interest, whose persistence over time was tolerated by the authorities, constitutes “possessions” in the sense of the norm expressed in the first sentence of Article 1, para. 1 of Protocol No. 1.<sup>23</sup>

Specific aspects of the subject matter may also surface regarding the rights derived from the exercise of a particular profession, typically a liberal profession. The former Commission decided that the volume of activity of a person engaged in such work does not constitute property in the sense of the provisions of Article 1, as it is subject to the inherent risks of economic life. Similarly, the expectation of public notaries that their fees will not be reduced by future applicable regulations does not fall under the protection established by this text. In turn, the court ruled that if a lawyer provides legal assistance without a contract with their client – specifically when designated to perform this activity by their bar association – they cannot claim protection under Article 1 of Protocol No. 1, given that the legal aid and defence office organised by the bar established that the individual being defended was genuinely in a state of necessity and lacked any material means. Thus, the court determined that, in this situation, no claim ever existed within the claimant’s patrimony. This conclusion was particularly relevant because the expenses incurred were not significant, and the work performed could be considered a socially beneficial activity. This aligns with the provisions of Article 4 of the Convention, which prohibits forced labour. Conversely, the Commission ruled that the right of doctors to demand the adjustment of fees paid by patients for medical consultations, arising from agreements with public social security bodies, constitutes property in the sense of Article 1 and is protected by the provisions it establishes.<sup>24</sup>

The patrimonial aspects of intellectual property rights are encompassed within the notion of property, such as the right of an author to receive due remuneration from the execution of a publishing contract for their work or the right to remuneration for the performance of a literary or musical work. Personal non-patrimonial rights, on the other hand, are more likely to fall under the protection established by Article 8 of the Convention regarding the right to private life, as these pertain to private-social rights. When it comes to an intellectual property right that results not only from the creator’s activity but also from undergoing certain administrative procedures, the

22 *Hamer v. Belgium*, Application no. 21861/03, Judgment 27 November 2007.

23 *Oneryildiz v. Turkey*, Application no. 48939/99, Judgment 30 November 2004.

24 *Bîrsan*, 2005, pp. 976–977.

former Commission made some distinctions. Thus, to the extent that an inventor has obtained a patent under national legislation, the holder is designated as the owner of that patent with the right to assign or transfer it as provided by law. Therefore, it was concluded that a patent falls under the notion of “property” in the sense of Article 1 of Protocol No. 1 of the ECHR. In contrast, it ruled that as long as a patent has not been granted by the competent national authority, there can be no discussion of “a civil right,” and the patent registration procedure is essentially administrative in nature, which falls outside the scope of the provisions of the Convention.<sup>25</sup>

In the sense of the Convention, a trademark is also considered as “possessions”. The court establishes that the concept of “possessions” in the first part of Article 1 of Protocol No. 1 has an autonomous scope that is not limited to the ownership of tangible assets and is independent of the formal qualifications of domestic law. Other rights and interests that constitute assets can also be regarded as “economic rights” and, therefore, “possessions” in the sense of this provision. In each case, it is important to consider whether the circumstances, taken as a whole, have granted the claimant a substantial interest protected by Article 1 of Protocol No. 1.<sup>26</sup>

In the case of *Malmström v. Sweden*<sup>27</sup>, the Court examined whether shares constituted “possessions” in the sense of Article 1 of Protocol No. 1. It assessed the complex nature of shares, which are certificates that grant the holder the right of ownership over a part of the company, along with associated rights (including the right to vote). This also involves an indirect claim to the company’s assets. It was undisputed that shares had an economic value. Therefore, the former Commission concluded that shares constituted “possessions”.

The Grand Chamber’s judgement in the *Ališić and Others v. Bosnia and Herzegovina*<sup>28</sup> case (App. no. 60642/08, 16 July 2014) offers a substantial interpretation of the notion of “possessions” under Article 1 of Protocol No. 1 to the European Convention on Human Rights. The case concerned the applicants’ inability to withdraw foreign-currency savings deposited prior to the dissolution of the Socialist Federal Republic of Yugoslavia, due to unresolved issues related to state succession and the banking reform.

The court reaffirmed that the term “possessions” encompasses not only physical property but also legitimate expectations arising from a proprietary interest. It held that the applicants’ deposits constituted “possessions” despite the systemic and political complexities following the state’s dissolution. The long-standing denial of access to these funds, combined with the absence of effective remedies, led to the violation of the applicants’ right to the peaceful enjoyment of their possessions. Moreover, the judgement underscored the requirement of legal certainty, stating that the ambiguity surrounding the responsibility for the deposits undermined the foreseeability and

25 Ibid, 2005, pp. 975–976.

26 *Anheuser-Busch Inc. v. Portugal*, Application no. 73049/01, Judgment 11 January 2007.

27 *Lars Bramelid and Anne-Marie Malmström v. Sweden*, Applications nos. 8588/79 and 8589/79, Decision of the European Commission on Human Rights on the admissibility of 12 October 1982.

28 *lišić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, Application no. 60642/08. Grand Chamber, Judgment 16 July 2014.

lawfulness of the interference. The court concluded that the disproportionate burden imposed on the applicants did not satisfy the requirement of a fair balance between individual rights and public interest.

We find it necessary, in the context of research on the content of the right to property, to express our disagreement with the recent trends in the works of certain contemporary scholars who endorse the concept of “biological property.” The individual’s freedom to freely dispose of their own tissues, organs, cells, and genes is not absolute and, in the opinion of contemporary jurists well-versed in international human rights law, contradicts the concept of human dignity. The Grand Chamber of the European Court of Human Rights had the opportunity to rule on such allegations in the case of *Parrillo v. Italy*<sup>29</sup>, where the claimant argued, in particular, that the prohibition under Italian law against donating embryos created through assisted reproduction for scientific research was incompatible, among other things, with the provisions of Article 1 of Protocol No. 1 to the Convention.

In its ruling on the indicated case, the Court reiterated that the concept of “possessions” within the meaning of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the 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. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1.<sup>30</sup>

Additionally, Article 1 of Protocol No. 1 applies only to a person’s existing possessions. Future income cannot be considered to constitute a “possession” unless it has already been earned or is definitely payable. Further, the hope that a long-extinguished property right may be revived cannot be regarded as a “possession”; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition. However, in certain circumstances a “legitimate expectation” of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a legitimate expectation if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence.

The Court notes that the present case raises the preliminary question of the applicability of Article 1 of Protocol No. 1 to the facts of the instant case. It notes that the parties have diametrically opposed views on this matter, especially regarding the status of the human embryo *in vitro*. Ultimately, the Court concluded that it is not necessary to examine here the sensitive and controversial question of when human life begins as Article 2 of the Convention is not in issue in the instant case. With regard

29 *Parrillo v. Italy*, Application no. 46470/11, Grand Chamber, Judgment 27 August 2015.

30 *Parrillo v. Italy*, Application no. 46470/11, Grand Chamber, Judgment 27 August 2015, para. 211.

to Article 1 of Protocol No. 1, the Court considers that it does not apply to the present case. Having regard to the economic and pecuniary scope of that Article, human embryos cannot be reduced to “possessions” within the meaning of that provision.<sup>31</sup>

### 3. State Obligations and the Control of Use of Property Under Article 1 of Protocol No. 1 to the ECHR

The commitment of states to ensure the right to respect for property entails both negative and positive obligations. The essential purpose of this provision is to protect individuals from unjustified interference by the state in the exercise of their right to respect for their property.<sup>32</sup>

In the case of *Brumărescu v. Romania* (1999)<sup>33</sup>, the European Court of Human Rights found a violation of Article 1 of Protocol No. 1 to the Convention, emphasising that the interference by the Romanian authorities with the applicant’s property rights contravened fundamental principles of legal certainty and the rule of law. The applicant had been granted ownership of a nationalised property through a final and enforceable court decision, which had been implemented by restoring possession and registering his title in the official land records. However, this right was later annulled following a “recurs în anulare” (extraordinary appeal) initiated by the Prosecutor General, resulting in the reversal of the final judgement and the restitution of the property to the state. The Court held that such interference, occurring after the right had been legally consolidated, lacked foreseeability, was arbitrary in nature, and was not justified by a legitimate public interest. Consequently, Romania failed to maintain a fair balance between the protection of individual property rights and the demands of the general interest. This led to a breach of the applicant’s right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1.

Negative obligations under the provisions of Article 1 of Protocol No. 1 are particularly relevant in cases of expropriation or destruction of immovable property, as well as in cases of inherent restrictions related to land use policies or confiscation.<sup>34</sup> In general, negative obligations require the state to refrain from forced expropriation, forced eviction, and excessive control over land use.<sup>35</sup>

Positive obligations of the state to protect rights are opposed to the negative obligations of the state to refrain from interference. The latter function is the classic role of protecting human rights against state interference. Although the distinction between positive and negative obligations is expressed through active actions and omissions, it is clear that, in practice, this can be difficult to determine. Cases where interference

31 *Parrillo v. Italy*, Application no. 46470/11, Grand Chamber, Judgment 27 August 2015, paras. 212–215.

32 Grgic et al., 2007, p. 10.

33 *Brumărescu v. Romania*, Application no. 28342/95, Judgment 8 October 1999.

34 Grgic et al, 2007, p. 10.

35 Besson, 2003.

with the exercise of a fundamental right occurs solely as a result of an action or exclusively based on an omission are extremely rare, due to the ever-increasing presence of the state in all areas of society.<sup>36</sup>

To illustrate the aforementioned points, it is useful to present the legal reasoning followed by the European Court of Human Rights in examining the case of *Broniowski v. Poland*. Following the alteration of Poland's borders at the end of World War II, the Polish state committed to providing compensation to Polish repatriates who were forced to abandon their properties located across the Bug River, now within the territories of Ukraine, Belarus, or Lithuania. When a Polish national complained that he had not received the compensation in kind to which he was entitled, the court found that this request revealed a systemic deficiency that deprived an entire category of individuals (nearly 80,000 people) of their property rights.<sup>37</sup> In this case, the Court found that the primary purpose of Article 1 of Protocol No. 1 is to protect individuals from unjustified interference by the state in the exercise of their property rights. However, under Article 1 of the Convention, each contracting party 'recognises the rights and freedoms defined [in] the Convention' for everyone under its jurisdiction. Fulfilling this general obligation may involve positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, these positive obligations may require the state to take necessary measures to protect property rights. However, the boundaries between the positive and negative obligations of the state under Article 1 of Protocol No. 1 of the ECHR cannot be precisely defined. The applicable principles are, however, similar. Whether the case involves a positive obligation of the state or the criteria for the application of the rule of law, in both contexts, there must be a balance between the competing interests of the individual and those of the community as a whole. The state enjoys a certain margin of appreciation in determining compliance with the Convention. The interconnection between the alleged omissions by the state and the related actions can be viewed as an "interference" with the claimant's property, making it difficult to classify them into a precise category. In the present case, the court did not find it necessary to strictly categorise the examination of the case as falling under the positive obligations of the state or the negative obligation to refrain from unjustified interference in the exercise of the right to property protection.<sup>38</sup>

Article 1 of the Protocol No. 1 to the European Convention on Human Rights guarantees every person the right to respect for their possessions. Just as is provided for several other fundamental rights protected by the Convention, the state may impose restrictions on the right to property.<sup>39</sup> In this context, it is important to recall that para. 1 of Article 1 of Protocol No. 1 to the ECHR establishes the obligation of authorities to act in accordance with the law and the general principles of international law.

36 Klatt, 2011, pp. 64–65.

37 *Hotărâri pilot. Fișă tematică.*, 2020.

38 *Broniowski v. Poland*, Application no. 31443/96, Judgment 22 June 2004.

39 Gomien, 2000, p. 83.

It is noteworthy that, in its practice, the European Court of Human Rights rarely references general principles of international law in the context of property protection.

Furthermore, this provision is one of the most debated among both public international law specialists and practitioners of the European Convention on Human Rights. In the case of *James and Others v. the United Kingdom*, the claimants argued that by referring to the ‘general principles of international law,’ the second sentence of Article 1 of Protocol No. 1 imposes upon national authorities the requirement – stemming, in their view, from international law – for prompt, adequate, and effective compensation for foreigners deprived of their possessions. The European Commission of Human Rights consistently stated that these principles were designed to apply exclusively to foreigners and are not relevant in cases of expropriation by a state of its own nationals. The court considered that it is more natural to deduce from the text rather than refer to the general principles of international law, which are incorporated in Article 1 of Protocol No. 1, but exclusively for acts that fall under its scope, namely state actions towards foreigners. Furthermore, it is necessary to assign to the terms of a treaty their ordinary meaning (Article 31 of the Vienna Convention on the Law of Treaties). In the case of *Lithgow and Others v. the United Kingdom*, the court reiterated that the general principles of law under Article 1 of Protocol No. 1 apply exclusively to non-nationals. They were specifically developed for the benefit of non-citizens. As such, these principles do not pertain to the treatment afforded by the state to its own citizens. Therefore, in this case, the court concluded that the general principles of law do not entail, as the applicants claimed, the application of principles for prompt, adequate, and effective compensation to citizens of their own state for nationalised property.

#### **4. Guarantees in Case of Deprivation of Possessions**

The protection of property within the framework of the European Convention on Human Rights entails a system of guarantees against arbitrary or disproportionate forms of interference by authorities in the exercise of this right by individuals and legal entities. Interference with the right to respect for possessions may take the form of deprivation or limitation of rights.

Deprivation of a person’s possessions can only occur in cases of public utility. When such circumstances arise, the state is obligated to ensure just compensation. Both governments and private individuals are prohibited from taking property without just cause. The former owner of the land must be fairly compensated if the government appropriates it for public use.

The essence of deprivation of possessions lies in the removal of the property subject or the extinguishment of the legal rights of owners.<sup>40</sup> Determining what constitutes deprivation can be challenging. Generally, deprivation of possessions

40 Grgic, 2007, p. 10.

includes the transfer of ownership. The European Court of Human Rights has stated, whenever it has had the opportunity to address this issue that deprivation of the right to property is the most radical form of interference with the exercise of the right to respect for the property of individuals or legal entities. The Court has adopted a broad definition of “deprivation” to include expropriation and the loss of other rights arising from the right to property. To fall under the provisions of Article 1 of Protocol No. 1 to the ECHR, deprivation must be definitive and involve expropriation or a transfer of property rights.

In cases of interference with the right to property, the Court has applied a test of “fair balance” between individual interests (protection of the right to property) and public interest. Such a fair balance is not achieved when the individual owner is required to bear “an individual and excessive burden”.<sup>41</sup>

In *Beyeler v. Italy*<sup>42</sup> (Application no. 33202/96), the European Court of Human Rights reaffirmed that any interference with property under Article 1 of Protocol No. 1 to the European Convention must meet three core requirements: it must be lawful, foreseeable, and must strike a fair balance between the demands of the general interest and the protection of individual rights.

The Court found that while the Italian legislation on the state’s right of pre-emption lacked clarity – particularly concerning deadlines for its exercise – it did not render the interference arbitrary per se. However, such uncertainty in the law, coupled with the broad discretion afforded to authorities, significantly impacted the assessment of whether a fair balance was achieved.

Ultimately, the court concluded that the prolonged uncertainty and disproportionate burden placed on the applicant violated his right to peaceful enjoyment of possessions. The judgement emphasises that legal certainty and predictability of the law are essential components of the protection of property under the Convention.

*Hutten-Czapska v. Poland*<sup>43</sup> represents a landmark Grand Chamber judgement addressing systemic issues in Poland’s landlord-tenant legal framework, particularly the extensive state controls on rent and property use. The applicant, a property owner, challenged Poland’s statutory regime that severely limited landlords’ ability to adjust rents or regain possession, which effectively diminished the value and enjoyment of their property.

The Court examined Poland’s compliance with Article 1 of Protocol No. 1 to the European Convention on Human Rights, which protects the right to the peaceful enjoyment of possessions. Central to the judgement was the court’s assessment of whether the domestic legislation struck a “fair balance” between the general interest (social protection of tenants) and the individual rights of landlords.

The court identified systemic deficiencies in the Polish legal framework: rigid rent controls, ineffective judicial remedies for landlords, and burdensome administrative

41 *Hentrich v. France*, Application no. 13616/88, Judgment 03 July 1995.

42 *Beyeler v. Italy*, Application no. 33202/96, Grand Chamber, Judgment 5 January 2000.

43 *Hutten-Czapska v. Poland*, Application no. 35014/97, Grand Chamber, Judgment 19 April 2006.

procedures that collectively imposed a disproportionate and unforeseeable interference with property rights. The Court emphasised the importance of legal certainty, proportionality, and effective safeguards in protecting property interests.

Consequently, it found a violation of Article 1 of Protocol No. 1, noting that Poland failed to provide adequate compensation or restitution mechanisms, thereby undermining the very essence of property rights. This case underscores the court's stance that states must carefully balance social and economic policies against individual property rights, ensuring that interventions remain within reasonable and predictable limits.

In its case law, the court has established that deprivation of possessions is essentially permissible only if it is based on law, the general principles of international law, and invokes public utility.

To be justified, any interference with the right to property must serve a legitimate objective in the public or general interest.<sup>44</sup> However, it is not enough for the interference to serve a legitimate objective, it must also be proportional. In the judgement of *Sporrong and Lönnroth v. Sweden*<sup>45</sup>, the court detailed important aspects of the principle regarding the justification of an interference:

'[...] The court must determine whether a fair balance has been struck between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights [...] The search for this balance is inherent in the entire Convention and is reflected in the structure of Article 1 [of Protocol No. 1].'

An interference with the exercise of the right to property must imperatively respect the requirements of the principle of legal certainty. This requirement is expressly mentioned in Article 1, para. 1 of Protocol No. 1, which states that deprivation of possessions must be "subject to the conditions provided by law." Furthermore, we reiterate in the context of this research that the principle of legal certainty can be considered the cornerstone of the system of protection of human rights established under the European Convention on Human Rights. It is inherent to the Convention as a whole and must be respected in the implementation of all rights guaranteed by the Convention.

The phrase "subject to conditions provided for by law" concerning any and all interference with the right to the peaceful enjoyment of "possessions" is to be construed in the same manner as the phrase "in accordance with law" in Article 8 in respect of interference with the rights protected by this provision or "prescribed by

44 *James and Others v. the United Kingdom*, Application no. 8793/79, Judgment 21 February 1986, para. 46.

45 *Sporrong and Lönnroth v. Sweden*, Application nos. 151/75; 7152/75, Judgment 23 September 1982, para. 69.

law” relating to interferences with the rights protected under Articles 9, 10 and 11 of the Convention.<sup>46</sup>

The European Court of Human Rights distinguishes between the concepts of “public interest” and “general interest,” but does not clearly differentiate between the two. At the same time, it acknowledges that public interest can be the interest of another person.

‘A taking of property carried out under social, economic, or other policies can be “in the public interest”, even if the community as a whole has no direct utility related to it or a benefit derived from the taken property.’<sup>47</sup>

The Strasbourg Court has determined that the following purposes fall within the notion of “public interest” as defined by the relevant provision: elimination of social injustices in the housing sector; combating the effects of a foreign-currency loan crisis particularly in the context of preventing mass homelessness; nationalisation of specific industries; regulation of the energy sector; adoption of land and city development plans; securing land in connection with the implementation of the local land development plan; prevention of tax evasion; measures to combat drug trafficking and smuggling; protection of the interests of crime victims; restrictions on alcohol consumption; protection of morals; control of the legitimate provenance of vehicles in circulation; confiscation of sums of money acquired illegally; transition from a socialist economy to a market economy; proper functioning of the justice system, emphasising the importance of administering justice without delays that could undermine its effectiveness and credibility etc.<sup>48</sup>

Although the Convention does not extend its applicability to the general protection of the environment, as its articles were not designed within this scope, environmental protection has become an increasingly important consideration in modern society.

Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the state has legislated in this regard. The public authorities therefore assume a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted with the purpose of protecting the environment are not entirely ineffective.<sup>49</sup>

Consequently, environmental protection can be classified under the category of public interest, under certain conditions.

Moreover, we consider it relevant to mention that in the case of *Depalle v. France*<sup>50</sup> the European Court of Human Rights examined the compatibility of the French authorities’ decision to refuse renewal of temporary occupancy permits and order the

46 European Court of Human Rights, 2025, p. 27.

47 *James v. United Kingdom*, Application no. 8793/79, Judgment 21 February 1986, paras. 39, 45.

48 European Court of Human Rights, 2025, p. 31.

49 *Hamer v. Belgium*, Application no. 21861/03, Judgment 27 November 2007, para. 79.

50 *Depalle v. France*, Application no. 34044/02, Grand Chamber, Judgment 29 March 2010.

demolition of a house built on maritime public property with the rights guaranteed under Article 1 of Protocol No. 1 (protection of property) and Article 8 (right to respect for private and family life, and home) of the European Convention on Human Rights.

The applicants had constructed a residence on a coastal plot in Brittany, for which they had held successive temporary permits. Upon expiration of the last permit in 1992, the French State declined to renew the permit, subsequently ordering the house's demolition in 1998 on the grounds of protecting public maritime property. The court acknowledged that the applicants had "possessions" within the meaning of Article 1 of Protocol No. 1 and that their home was protected under Article 8. However, it emphasised the state's broad margin of appreciation in regulating access and use of public property, particularly in environmentally sensitive areas.

The court found the interference to pursue a legitimate aim – namely, the protection of public property and environmental interests – and stressed the proportionality of the measures. It was noted that the applicants were aware of the temporary nature of their occupancy and the legal status of the land, and alternative solutions, including relocation, were proposed and rejected. Consequently, the court held that the French authorities' actions did not constitute a violation of the applicants' property or home rights under the Convention. This judgement reinforces the principle that states possess a wide discretion in balancing individual property rights with public interests, particularly in contexts involving environmental protection and management of public land.

In the *Guiso-Galisay v. Italy case (2009)*, the European Court of Human Rights examined whether Italy violated Article 1 of Protocol No. 1 of the European Convention on Human Rights concerning the applicant's property rights. The case concerned the Italian authorities' refusal to register the applicant's land ownership title due to a dispute over the validity of a cadastral map, effectively preventing the applicant from exercising ownership rights.

The court recognised the existence of a "possession" under Article 1 of Protocol No. 1 but emphasised the need to balance individual property rights with the requirements of legal certainty and public interest. The court underscored the margin of appreciation afforded to the state in land registration and property formalities to ensure the proper administration of land tenure.

Ultimately, the court concluded that the interference was lawful and pursued legitimate aims, including the prevention of legal uncertainty and protection of third parties' rights. It found no violation of the applicant's property rights, highlighting the necessity for procedural safeguards in property registration systems.

This case underscores the principle that procedural rules governing property registration may justify restrictions on property rights when aimed at preserving legal clarity and public interest.<sup>51</sup>

Proportionality, including assessing the legality of interference under Article 1 of Protocol No. 1, requires a just balance between conflicting interests: the public

51 *Guiso-Galisay v. Italy*, Application no. 58848/00, Grand Chamber, Judgment 22 December 2009.

interest and the private interest. This balance entails ensuring that neither of the interests involved receives absolute protection, which would lead to the general denial of protection for the other. At all times, there must be certain limits of protection for each interest involved, even if those limits vary in extent and content.<sup>52</sup> A measure that interferes with the peaceful enjoyment, possession, and use of property must be necessary in a democratic society aimed at achieving a legitimate purpose. We reiterate that the measure must strike a fair balance between the requirements of the general interest of the community and the fundamental rights of the individual.<sup>53</sup>

The purpose of the proportionality criterion is to determine, first and foremost, how and to what extent the claimant has been restricted in exercising the right affected by the alleged interference, and what the adverse consequences of that restriction are on the claimant's ability to exercise their right in their particular situation. Subsequently, this impact is weighed against the public interest served by the interference.<sup>54</sup> The time needed to contest the measures restricting the claimant's rights is also taken into consideration.<sup>55</sup>

In cases of deprivation of possessions, proportionality is respected if the dispossessed owner is granted compensation.<sup>56</sup> This is why the examination of cases under Article 1 of Protocol 1 differs from the examination of other cases regarding the violation of fundamental human rights and freedoms as proclaimed by the ECHR. Only when the authorities' interference involves the payment of just compensation to the owner will it not be considered a violation of property protection in the sense of the ECHR.

In simple terms, the fair balance test can be satisfied in one of two ways: either the victim receives compensatory benefits that reduce the impact of the interference to a modest level, or the public interest served by the interference is so compelling that it justifies even a severe impact. The court favours the first option, as it mitigates the impact on the victim by providing monetary compensation as a substitute for the property.<sup>57</sup>

In this context, questions arise regarding the use of money as a substitute for property, as money does not fulfil this role in relation to other human rights. For example, demonstrating that a compelling public interest outweighs individual interests may justify an interference with religious freedom, but showing that the state has paid money as a substitute for the opportunity to exercise one's beliefs does not suffice.<sup>58</sup> Compensations, on the other hand, are a form of restitution granted to owners

52 Morărescu, 2013, pp. 233–234.

53 Grgic et al., n.d., p. 14.

54 Grgic et al., n.d., p. 27, para. 129.

55 European Court of Human Rights, 2025, p. 24.

56 *Lithgow and Others v. the United Kingdom*, Application nos. 006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, Judgment 8 July 1986, para. 120.

57 Allen, 2007, pp. 286–335.

58 *Ibid*, 2007, pp. 286–335.

when the conditions for interference with property have not been met.<sup>59</sup> The ECHR has noted that, in the legal systems of contracting states, expropriation of possessions without any compensation would be justified only in exceptional circumstances; otherwise, the right to property would be largely “illusory and ineffective”.<sup>60</sup>

In the context of the present unit of content, we consider it relevant to present the case of *Jahn and Others v. Germany*<sup>61</sup> (2005). The Grand Chamber of the European Court of Human Rights examined whether the revocation of property rights, originally granted under GDR legislation and later annulled by German reunification laws, violated Article 1 of Protocol No. 1 of the Convention. The applicants had received ownership of agricultural land during the land reform in the former East Germany (GDR). After German reunification, legislation was passed that retrospectively withdrew ownership rights from individuals who had acquired land under the GDR system but did not meet certain eligibility criteria. The applicants argued that this amounted to an unjustified deprivation of possessions.

The court acknowledged that the applicants had a “possession” under Article 1 of Protocol No. 1. However, it concluded that the interference pursued a legitimate aim in the public interest – namely, the rectification of irregular property allocations under the former regime and the re-establishment of legal continuity post-reunification.

Importantly, the Grand Chamber emphasised the wide margin of appreciation afforded to states in transitional contexts. It found that the means used were proportionate to the aim pursued and that the applicants could not have had a legitimate expectation of retaining their titles, as they were aware of the contested legal basis of their acquisition. The court held that there had been no violation of Article 1 of Protocol No. 1, affirming that retroactive legislative measures affecting property rights may be justified in exceptional historical and legal circumstances, particularly during systemic transitions such as reunification.

The content of Article 1 of Protocol 1 to the ECHR indicates that the public interest objective is also achieved by addressing certain errors made in the distribution within the pension system, such as unjustified or improperly obtained advantages. Through legislative intervention, enhanced equity within the pension system is ensured. The case of *Bélné Nagy v. Hungary*<sup>62</sup> reached the Grand Chamber of the European Court of Human Rights with a landmark judgement on 13 December 2016, which significantly refined the court’s approach to the protection of social benefits under Article 1 of Protocol No. 1. The Grand Chamber reversed aspects of the earlier Chamber judgement of 10 February 2015 by placing stronger emphasis on the principle of legitimate expectation and the “essence” of property rights in the context of social security benefits.

59 Sermet, 1992, p. 38.

60 Carss-Frisk, 2001.

61 *Jahn and Others v. Germany*, Application nos. 46720/99 and 72203/01, Grand Chamber, Judgment 30 June 2005.

62 *Bélné Nagy v. Hungary*, Application no. 53080/13, Grand Chamber, Judgment 13 December 2016.

The applicant, Ms. Béláné Nagy, had initially been granted a disability pension. However, following a legislative change in the method of assessing disability, her pension was withdrawn despite no substantial change in her health condition. A subsequent reform introduced additional eligibility criteria for disability compensation. Although she met the medical requirements, after reassessment, Ms. Béláné Nagy was denied benefits because she failed to meet newly introduced administrative criteria related to social insurance contributions, which were beyond her control.

The Grand Chamber held that the refusal to grant the disability benefit constituted an ‘excessive and disproportionate individual burden,’ emphasising that the applicant had a legitimate expectation to receive the pension, given her prior entitlement and the stability of her medical condition. This expectation brought her interest within the protective scope of “property” under Article 1 of Protocol No. 1. The court acknowledged a state’s margin of appreciation in regulating social benefits but underscored that this discretion could not undermine the very essence of the right to property. The principle of *impossibilia nulla obligatio est* was invoked to highlight the unfairness of requiring contributions that the applicant could not reasonably make, given her situation.

This ruling marked an important development from the Chamber’s earlier decision, which was more restrictive and less focused on legitimate expectations and proportionality.

The Grand Chamber’s reasoning in the Béláné Nagy case also aligns with the court’s established jurisprudence on legitimate expectations in social benefits as seen in *Stec and Others v. United Kingdom* (2006) and *Moskal v. Poland* (2009). These cases similarly recognise that while states enjoy a margin of appreciation in social policy, once a benefit is conferred, applicants develop legitimate expectations that must be protected against arbitrary or disproportionate interference.

In conclusion, *Béláné Nagy v. Hungary* (Grand Chamber) broadened the scope of Article 1 of Protocol No. 1 to extend beyond traditional property rights to include social security benefits, stressing the protection of legitimate expectations and fairness in the face of legislative changes affecting those benefits.

## **5. Protection of Property in Armed Conflicts Under the European Convention on Human Rights**

The first case in which the European Court of Human Rights examined the human rights implications of a situation of occupation was *Loizidou v. Turkey*<sup>63</sup>, which ensued from the Turkish occupation of Northern Cyprus in 1974. In its reasoning, the court took into account the broader context of the occupation in order to assess the specific circumstances affecting the applicant’s rights under the Convention. In this case the claimant alleged that access to several of her land parcels was denied following the

63 *Loizidou v. Turkey*, Application no. 15318/89, Judgment 23 March 1995.

Turkish invasion, claiming a violation of Article 1 of Protocol 1. Despite the apparent military occupation, the ECHR did not apply the principles of international humanitarian law. This is surprising, as the court expressed in its judgement the importance of interpreting its decisions in accordance with the principles of the Vienna Convention on the Law of Treaties, particularly Article 31(3)(c) of that treaty, which states that ‘any relevant rules of international law applicable in the relations between the parties’ must be taken into account.

In cases where claimants complained about the destruction of their homes in the context of armed conflicts, the ECHR accepted the claim of property rights based on excerpts from an inventory of residences issued by the city administration after the alleged attack (*Kerimova and Others v. Russia*<sup>64</sup>). In the case of *Damayev v. Russia*<sup>65</sup> the ECHR held that a claimant complaining about the destruction of their home should provide at least a brief description of the property in question. As additional examples of *prima facie* evidence regarding property rights or residence, the court accepted documents such as titles of ownership for the home or land, excerpts from land or tax registers, documents issued by local authorities, plans, photographs, and receipts for maintenance work, as well as evidence of postal deliveries, witness statements, or any other relevant evidence (*Prokopovich v. Russia, Elsanova v. Russia*).<sup>66</sup>

The relationship between international humanitarian law and the European Convention on Human Rights has evolved significantly in the jurisprudence of the European Court of Human Rights, particularly in response to situations involving armed conflict and military occupation. A major turning point came with the *Hassan v. United Kingdom*<sup>67</sup> Grand Chamber judgement in 2014. The case commenced from the detention of an Iraqi civilian by British forces during the international armed conflict in Iraq. The applicant alleged violations of Article 5 of the Convention, which guarantees the right to liberty and security. In a landmark decision, the court held that the ECHR remained applicable even in the context of armed conflict conducted outside a state party’s territory. Crucially, the court interpreted Article 5 in light of relevant rules of international humanitarian law, particularly those governing the detention of civilians during armed conflict as set out in the Geneva Conventions. This marked the first time the court explicitly integrated international humanitarian law norms into the interpretative framework of the Convention, adopting a harmonised approach rather than treating the two legal regimes as mutually exclusive.

The Hassan judgement thus opened the door to a more nuanced understanding of how the Convention can function in situations where International humanitarian law is also applicable. It demonstrated the court’s willingness to acknowledge that certain procedural guarantees under the Convention may be read in light of the legal realities

64 *Kerimova and Others v. the Russian Federation*, Application nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05, 5684/05, Judgment 03 March 2011.

65 *Damayev v. Russian Federation*, Application no. 36150/04, Judgment 22 October 2012.

66 European Court of Human Rights, 2025.

67 *Hassan v. The United Kingdom*, Application no. 29750/09, Grand Chamber, Judgment 16 September 2014.

of warfare, provided that such interpretation does not undermine the essence of the rights protected.

This approach was further refined in the 2021 Grand Chamber judgement in *Georgia v. Russia (II)*<sup>68</sup>, which concerned the international armed conflict between Georgia and the Russian Federation during the August 2008 war over South Ossetia and Abkhazia. In this case, the court was called to assess Russia's responsibility for widespread violations of human rights during and after the hostilities. Importantly, the court drew a sharp distinction between the period of active hostilities and the subsequent phase of military occupation. It concluded that the Convention does not apply during the conduct of hostilities in the absence of effective control by the respondent state, deferring to International humanitarian law as the *lex specialis* in that context. However, once hostilities cease and a state exercises effective control over a territory or population, the obligations under the Convention are fully re-engaged.

Through *Georgia v. Russia (II)*, the court clarified that while International humanitarian law governs the conduct of military operations and hostilities, the ECHR resumes (or continues) to apply in situations of occupation or prolonged control, allowing the court to assess potential violations under the Convention framework.

This jurisprudential development reflects the court's effort to maintain the relevance of the Convention in times of armed conflict without undermining the specific legal regimes governing the laws of war.

## 6. Derogation From the Provisions of Article 1 of Protocol No. 1 of the ECHR

Under Article 15 of the ECHR, in time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Derogation is the legal right of a state, under a treaty, to limit the full application of certain rights in cases of emergency or crisis (including war).<sup>69</sup>

The text of Article 15 of the ECHR grants the governments of States parties, in exceptional circumstances, the possibility to derogate, temporarily, in a limited and controlled manner, from the obligation to ensure certain rights and freedoms under the Convention. In connection with this, the application of Article 15 para. (1) shall be made in compliance with the following procedural and substantive conditions: the right to derogate can be invoked only in time of war or in other situations of public danger that threaten the life of the nation; a State may take measures derogating from its obligations under the Convention only to the extent that the situation so requires;

68 *Georgia v. Russia (II)*, Application no. 38263/08, Grand Chamber, Judgment 21 January 2021.

69 Ni Aolain, 2017, p. 42.

the derogations cannot be in contradiction with other obligations under international law.<sup>70</sup>

In the context of the pandemic, several Central and Eastern European states among few other states that are members of the Council of Europe issued declarations of derogation from the provisions of the Convention.

Romania<sup>71</sup> and Serbia<sup>72</sup> took a similar approach in announcing their derogations. Both states announced derogation from the provisions of the ECHR without explicitly indicating which provisions of the Convention were being derogated, implying that they opted to derogate from all provisions of the Convention, except for those mentioned in Article 15, para. 2 of the ECHR.

Albania notified the Secretary General of the Council of Europe, that the application of measures taken by the Government gives reasons for the necessity to derogate from certain obligations of Republic of Albania under Articles 8 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 1 and 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 2 of Protocol No. 4 to the Convention for the protection of Human Rights and Fundamental Freedoms.<sup>73</sup>

Georgia announced the necessity to derogate from certain obligations of Georgia under Articles 5, 8 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 1 and 2 of Protocol to the ECHR, Article 2 of Protocol No. 4 to the Convention. Subsequently, Georgia extended the derogation from the stated provisions of the ECHR six times.

North Macedonia<sup>74</sup> made declarations regarding derogation under Article 15, however, the text of the declarations did not address the provisions of Article 1 of Protocol No. 1 to the ECHR.

The Republic of Moldova, in its declaration<sup>75</sup> did not formulate a derogation from the provisions of Article 1 of Protocol No. 1 to the Convention, even though the Decision on the declaration of the state of emergency, announced to the Secretary General of the Council of Europe through a Communication on April 6, 2021,<sup>76</sup> provided that, during the period of the state of emergency, the Commission for Emergency Situations of the Republic of Moldova shall issue decisions with a view to implementing

70 Cazacu and Nastas, 2021, pp. 9–23.

71 Notification – JJ9014C Tr./005-226, 18 March 2020, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

72 Notification – JJ9025C Tr./005-234, 7 April 2020, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

73 Notification – JJ9020C Tr./005-231, 1 April 2020, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

74 Notification – JJ9021C Tr./005-232\_2 April 2020, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

75 Notification – JJ9016C Tr./005-228, 20 March 2020, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

76 Notification – JJ9209C Tr./005-275, 6 April 2021, Declaration related to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

the following measures: ‘...carrying out, in the manner established by the law, the requisition of goods in order to prevent and liquidate the consequences of the situations which imposed the declaration of the state of emergency;’ (para. 11).

To date, the European Court of Human Rights has not ruled in any of the cases that COVID-19-related measures constituted a formal derogation from Article 1 of Protocol No. 1 under Article 15 of the European Convention on Human Rights. Although the applicant referred to a possible derogation in the case of *Georgia v. Russia II (2021)*, the court did not rule on the existence or validity of any derogation from the provisions of Article 1 of Protocol No. 1 in the context of an armed conflict.

## **7. Standards Regarding Property Protection Established by the ECHR in Cases Against the Republic of Moldova**

Since May 18, 2004, the day when the first judgement (case *Prodan v. Republic of Moldova*<sup>77</sup>) was adopted under Art. 1 of Protocol 1 to the European Convention on Human Rights, the Republic of Moldova has been involved in over 100 cases to date in which a violation of the right to respect for property belonging to individuals or legal entities has been established by the Moldovan authorities.

*Ab initio*, we find it appropriate to describe the historical circumstances in which the national mechanism for property protection was created and functioned in the Republic of Moldova, as this contributes to a better understanding of the increased number of violations found by the ECHR under Article 1 of Protocol No. 1 to the Convention. During the period of Russian dominance over the current territory of the Republic of Moldova, private property was a concept that contradicted the policies and objectives of the regime at that time. Until the Republic of Moldova gained independence in 1991, the economic foundation of the Moldovan Soviet Socialist Republic was based on collective ownership of the means of production.<sup>78</sup> During the period of the complete establishment of Soviet power under mass collectivisation, the sense of ownership was lost amidst repression and mass deportations, and socialist property encompassed all large and small enterprises. In 1964, the Civil Code was adopted, which in Article 10 stated: ‘In accordance with the law, citizens may own property in personal ownership, may have the right to use housing and other property, and may inherit and bequeath property (...).’<sup>79</sup> The second title, entitled “Right to Property,” distinguished between two categories of property: socialist property and personal property. Socialist property was composed of ‘state property (of the entire people); cooperative and collective farm property; and property of trade union organisations and other public organisations.’

77 *Prodan v. Moldova*, Application no. 49806/99, Judgment 18 May 2004.

78 Simboteanu, 2012, pp. 9–19.

79 Civil Code of the R.S.S.M, repealed by Law no. 1107/06.06.02.

With the proclamation of independence and the recognition of the Republic of Moldova as a state, there was a rapid transition from a planned economy to a market economy. However, this process was compromised by the imperfections of the regulatory system and the difficulties in the implementation of the law.

The grounds for which the Republic of Moldova has been held liable by the ECtHR under Article 1 of Protocol No. 1 is essentially summarised as follows: deprivation of possessions through an additional ruling, deprivation of possessions following the annulment of privatisation, invalidation or unjustified withdrawal of licenses for conducting economic activities, rejection of judicial claims that were legitimate under national law, liability for payment of taxes and fines due to fraudulent actions of a third party with whom they had contractual relations, illegal confiscation of property, inability to recover goods seized by the police, non-enforcement of judicial decisions, deprivation of effect of certain court rulings regarding property rights through subsequent judicial procedures, and inadequate compensation for violations of Article 1 of Protocol No. 1 to the ECHR.

Most cases in which the Republic of Moldova has been held liable under Article 1 of Protocol No. 1 to the ECHR pertain to the non-enforcement of judicial decisions.

This category of cases typically refers simultaneously to violations of both the right to a fair trial concerning the enforcement of judicial decisions within a reasonable time and the right to property, particularly when a court ruling has awarded the individual certain sums or attributed property rights that they have not actually received or have only collected after a lengthy delay, exceeding reasonable time limits.<sup>80</sup>

### **7.1. Non-Enforcement of Court Decisions**

In the cases of *Prodan v. Moldova*<sup>81</sup>, *Popov v. Moldova (No. 1)*<sup>82</sup>, *Popov v. Moldova (no. 2)*<sup>83</sup> the claimants were descendants of parents who were deported in the 1940s, and whose properties were nationalised. In the context of the Parliament of the Republic of Moldova adopting the Law on the Rehabilitation of Victims of Political Repression committed by the occupying totalitarian communist regime, after several years of inspecting cases regarding the reclamation of nationalised property through the internal legal system, the claimants faced the issue of enforcing court decisions issued in their favour, with authorities citing a lack of financial resources. Before the Strasbourg Court, the claimants alleged, *inter alia*, a violation by the Moldovan authorities of the provisions of Article 6, para. 1 of the ECHR, and argued that due to the non-enforcement of court decisions issued in their favour, they were unable to benefit from their properties, thus their right to property protection under Article 1 of Protocol No. 1 to the Convention being violated.

80 Poalelungi et al., 2017.

81 *Prodan v. Moldova*, Application no. 49806/99, Judgment 18 May 2004.

82 *Popov (No. 1) v. Moldova*, Application no. 74153/01, Judgment 18 January 2005.

83 *Popov v. Moldova (No. 2)*, Application no. 19960/04, Judgment 6 March 2006.

In reference to these cases, the court reiterated that a “claim” can constitute a “possession” in the sense of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established to be enforceable.

By failing to enforce the decisions of national courts, the national authorities prevented the claimants from receiving the money they could reasonably have obtained and from evicting tenants from their apartments. The Government provided no justification for this interference, and the court found that a lack of funds and alternative housing could not justify such interference. Consequently, Article 1 of Protocol No. 1 to the Convention was violated.

In the ruling on the aforementioned cases, the judges of the ECHR affirmed the existence of violations of Article 6, para. 1, and Article 1 of Protocol No. 1 to the Convention, ordering the respondent state to pay compensation to the claimants for the material and moral harm suffered.

Similarly, under Articles 6, para. 1, and Article 1 of Protocol No. 1 to the ECHR, the court found that the Republic of Moldova had failed to meet its obligations by not enforcing national court decisions made in favour of the claimants, who were seeking the recalculation of benefits<sup>84</sup>, and the establishment of compensation for the material harm caused.<sup>85</sup>

It is important to note that the non-enforcement of court decisions in the national system has also been reported to the ECHR by legal entities registered both in the Republic of Moldova<sup>86</sup> and abroad<sup>87</sup>.

### **7.2. Legal Certainty and Abusive Extraordinary Remedies**

Another reason for which the Republic of Moldova incurs liability before the European Court of Human Rights relates to the defective practices of national courts, specifically the abusive revision of court rulings that, in certain situations, lead to individuals being deprived of their possessions. This raises serious concerns regarding the principle of legal certainty, enshrined in the right to a fair trial under Article 6, para. 1 of the Convention.<sup>88</sup> For the same reasons, the ECHR upholds the claims of the applicants when they concern the improper execution of extraordinary appeals. The European Court of Human Rights, as a leading arbiter in the field of fundamental human rights and freedoms, meticulously examined cases involving the Republic of Moldova in which the extraordinary appeal was processed inconsistently with

84 *Sîrbu and Others v. Moldova*, Application nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01, 73973/01, Judgment 15 June 2004.

85 *Mazepa v. Moldova*, Application no. 1115/02, Judgment 10 May 2007; *Bulava v. Moldova*, Application no. 27883/04, Judgment 8 January 2008; *Istrate v. Moldova*, Application no. 53773/00, Judgment 13 June 2006; *Botezatu v. Moldova*, Application no. 17899/08, Judgment 14 July 2015; *Arzamazova v. Moldova*, Application no. 38639/14, Judgment 4 November 2020.

86 *Oferța Plus SRL v. Moldova*, Application no. 14385/04, Judgment 19 December 2006.

87 *Unistar Ventures GMBH v. Moldova*, Application no. 19245/03, Judgment 9 December 2008.

88 *Balan v. Moldova* (No. 2), Application no. 49016/10, Judgment 28 February 2023; *Cereale Flor S.A. and Roșca v. Moldova*, Application nos. 24042/09, 3159/10, Judgment 14 February 2017; *Rusu Lintax SRL v. Moldova*, Application no. 17992/09, Judgment, 13 December 2016.

established legal principles, resulting in a negative impact on the property rights of the applicants.<sup>89</sup>

### **7.3. Licenses as Possessions and Arbitrary Revocation**

Several applications submitted by claimants from the Republic of Moldova concerned illegal procedures for the invalidation or withdrawal of licenses.<sup>90</sup> In this context, the case of *Megadat.com S.R.L. v. Moldova*,<sup>91</sup> brought before the ECHR by the largest internet service provider in Moldova, is of particular interest. The company held approximately 70% of the market share for internet services in the country and had two licenses for providing internet and fixed-line telephone services. After changing its registered address, the licenses were not updated to reflect the new address. When the company failed to pay a license fee and update its address within the specified periods, the National Agency for Regulation in Telecommunications and Informatics (ANRTI) declared the licenses invalid. ANRTI argued that the company had operated for months with an invalid license and reported its actions to various authorities for potential sanctions. The claimant's license was the only one invalidated among the warned companies.

The court noted that the measure imposed on the claimant company was so severe that the largest internet service provider in Moldova was forced to terminate operations and sell all its assets within a few months. Not only did this measure have future consequences, but it was also applied retroactively. The arbitrariness of the procedure, the discriminatory treatment of the claimant company, and the disproportionately harsh measure applied led the court to conclude that it had not been demonstrated that the authorities followed genuine and consistent political considerations when invalidating the licenses of the applicant company. Given that the claimant company was burdened with an individual and excessive hardship, a violation of Article 1 of Protocol No. 1 was determined.

### **7.4. Denial of Legitimate Claims and Economic Rights**

Other cases against the Republic of Moldova are based on the claimants' allegations regarding the denial of legitimate claims<sup>92</sup>, delayed payments of compensation for the depreciation of deposits from the *Banca de Economii*, which was owned by the

89 *Macovei and Others v. Moldova*, Application nos. 19253/03, 17667/03, 31960/03, 19263/03, 17695/03, 31761/03), Judgment, 25 July 2006; *Pîrnău and Others v. Moldova*, Application nos. 37225/07, 7456/08, 12255/08, Judgment 31 January 2012; *Iurii v. Moldova* Application no. 24446/09, Judgment, 13 December 2016.

90 *Bimer S.A. v. Moldova*, Application no. 15084/03, Judgment 10 October 2007; *Vitan v. Moldova*, Application No. 6901/03, Judgment 16 January 2008; *DONPRUT S.R.L. v. Moldova*, Application no. 45504/09, Judgment, 21 October 2015; *Tiramavia S.R.L. and Others v. Moldova*, Application nos. 54115/09, 55707/09, 55770/09, Judgment 04 September 2018.

91 *Megadat.com S.R.L. v. Moldova*, Application no. 21151/04, Judgment 8 July 2008.

92 *Cazacu v. Moldova*, Application no. 40117/02, Judgment 23 January 2008.

state during the Soviet period<sup>93</sup>, and issues related to the protection of intellectual property.<sup>94</sup>

Cases involving the annulment of privatisation in the Republic of Moldova have highlighted concerns regarding legality and fairness. The Court's examination underscores the potential for disputes over property rights and the necessity of adhering to proper procedures.<sup>95</sup>

The Court's examination of the issue of investment recovery highlighted problems arising from state actions that impeded or obstructed the process. The analysis underscores the need to protect individuals' rights to peaceful possession and the pursuit of fair compensation.

### **7.5. Unlawful Interference With the Peaceful Enjoyment of Possessions Through Confiscation**

The cases involving the illegal confiscation of possessions have been examined by the court, illustrating potential violations of property rights and guarantees of a fair trial. The analysis emphasises the importance of preventing arbitrary actions by the state and ensuring appropriate legal procedures. Thus, the ECHR found a violation by the Russian Federation, which exercises effective control over the Transnistrian region, of its obligations under Article 1 of Protocol No. 1 to the ECHR when vehicles,<sup>96</sup> a truck and goods<sup>97</sup> were confiscated by individuals claiming to be customs officials of the self-proclaimed "Moldovan Republic of Transnistria." Similarly, the ECHR found a violation of Article 1 of Protocol No. 1 in the case concerning the eviction of a lawyer from the office where he practiced, as well as the seizure of movable possessions from the office<sup>98</sup>; in the case concerning the confiscation by the Moldovan customs of banknotes from the self-proclaimed "Moldovan Republic of Transnistria" (RMT), the claimant, a member of numismatic organisations, reported the banknotes and intended to send them to an American company for numismatic purposes<sup>99</sup>. Illegal confiscation was also established by the ECHR in a case against the Republic of Moldova in the context of a "raider attack" against the applicant company, which involved the alleged illegal seizure of its goods with the assistance of presumably corrupt courts and law enforcement agencies<sup>100</sup>.

93 *Dolneanu v. Moldova*, Application no. 17211/03, Judgment 12 February 2018.

94 *Balan v. Moldova (No. 1)*, Application no. 19247/03, Judgment 29 January 2008; *AsDAC v. Moldova*, Application no. 47384/07, Judgment 8 March 2021.

95 *IPTEH SA and Others v. Moldova*, Application no. 35367/08, Judgment, 07 April 2010; *Baroul Partener-A v. Moldova*, Application no. 39815/07, Judgment 16 October 2009.

96 *Turturica and Casian v. Moldova and Russia*, Application nos. 28648/06, 18832/07, Judgment 30 January 2017.

97 *Pădureț v. Moldova and Russia*, Application no. 26626/11, Judgment 13 November 2017.

98 *Sobieski – Camerzan v. Moldova*, Application no. 3792/05, Judgment 13 February 2018.

99 *Ziaunys v. Moldova*, Application no. 42416/06, Judgment 28 November 2016.

100 *Theo National Construct S.R.L. v. Moldova*, Application no. 72783/11, Judgment 11 January 2023.

### **7.6. Expropriation Without Fair Compensation**

In the case law of the European Court of Human Rights, we can identify a single case against the Republic of Moldova concerning the expropriation of an individual's possessions. The Court emphasises in this context the importance of respecting individuals' property rights, ensuring compliance with legal guarantees, and providing appropriate compensation. In the case of *Mocanu and Others v. Moldova*<sup>101</sup>, in November 2004, the Government of Moldova decided to continue the construction of a railway through the city of Sângera, citing improvements in traffic and increased transit flow. In this context, the first claimant lost 0.41 hectares of land, the second 1.53 hectares, and the third 1.12 hectares. Compensation was determined, and the government transferred the land to the state-owned company "Calea Ferată a Moldovei" in December 2004. Construction began in January 2005. The claimants filed a lawsuit in May 2005, alleging illegal expropriation of their land without fair compensation. The courts rejected their claims, stating that the expropriation served a public interest.

The Court emphasises that any interference with property rights must be lawful. The practice of de facto expropriation allows authorities to occupy and irreversibly alter the use of possessions, effectively transferring it to public ownership. National law does not permit expropriation without fair compensation, which must be awarded through a court decision in cases of disagreement. However, the state expropriated the claimants without providing adequate compensation. Considering these factors, the court found that the interference was not compatible with the principle of legality and violated the claimants' property rights. Therefore, there was a violation of Article 1 of Protocol No. 1 to the Convention.

### **7.7. ECHR Findings on Property Rights Violations Arising From Armed Conflict**

In relation to the case law of the European Court of Human Rights regarding Article 1 of Protocol No. 1 in the context of the armed conflict that occurred in 1992 in the Republic of Moldova, the case of *Ilaşcu and Others v. Moldova and Russia*, the decision of July 8, 2004, is particularly noteworthy. The applicants were convicted by a court in the left bank region of the Nistru, which lacked jurisdiction under Article 6 of the ECHR. They did not receive a fair trial, and as a result of the judicial proceedings, among other consequences, they were deprived of their possessions.

The Government of the Russian Federation stated that the claims of the applicants cannot be attributed to Russia and that, in any case, they are unfounded. The governments of Romania and the Republic of Moldova did not express any opinion on this issue.

Even if we assume that the ECHR had *ratione temporis* jurisdiction to examine these claims, the court at the time found that the facts presented to support the respective claims were insufficient. Therefore, since this claim was not substantiated, the court concluded that there was no violation of Article 1 of Protocol No. 1 to the ECHR.<sup>102</sup>

101 *Mocanu and Others v. Moldova*, Application no. 8141/07, Judgment 26 September 2018.

102 Dorul and Loghinescu, 2021, pp. 165–167.

It is important to note in this chapter that the existence of the separatist regime continues to amplify the discrepancies within the unified legal framework of the Republic of Moldova, hindering the provision of legal assistance to citizens from the left bank of the Dniester River. This situation jeopardises international judicial cooperation in this area. There is a pressing need to intensify efforts to address the issue of providing legal assistance to citizens of the Republic of Moldova living in the left bank areas (Transnistria), while ensuring the protection of fundamental rights and freedoms enshrined in international and European legal instruments to which the Republic of Moldova is a party to.<sup>103</sup>

***7.8. De Lege Ferenda Proposals in the Context of Systemic Issues Regarding the Republic of Moldova's Compliance With Article 1 of Protocol No. 1 to the European Convention on Human Rights***

The various cases brought before the European Court of Human Rights have highlighted a number of challenges within the normative and institutional system of the Republic of Moldova. These cases reveal multidimensional issues related to the right to respect for the property of individuals or legal entities, which can be violated in numerous ways. To address these concerns and promote a stronger framework for the protection of human rights, several recommendations are pertinent for the Republic of Moldova: amending legislation to revise limitation periods; reviewing procedures for the revision of court decisions to ensure that legal provisions adequately protect property rights and the right to a fair trial; consistent and appropriate application of existing legislation; strengthening the legal and governmental system; joining and continuously reaffirming the state's commitment to international human rights standards, particularly those included in the European Convention on Human Rights.

In particular, the Moldovan authorities are recommended to take the following measures in the spirit of the European Convention on Human Rights:

It should be recognised that the inability of an individual to obtain enforcement of a court decision rendered in their favour constitutes an interference with the right to respect for possessions and prevents the individual from exercising control over property rights that have already been legally recognised.

When assessing whether administrative authorities have acted diligently in enforcing a court ruling awarding property or monetary compensation to an individual, the mere lack of funds and/or alternative housing space should not be accepted as a plausible or legitimate justification for restricting the person's rights under Article 1 of Protocol No. 1 to the Convention.

Continued non-enforcement of a final court judgement, lacking reasonable and convincing arguments, constitutes an impermissible interference with the right to property protection.

It must be taken into account that reopening judicial proceedings and quashing a final judgement does not undermine the enforceability of that judgement and does

103 Cernomoreț, 2019, pp. 230–245.

not exempt authorities from responsibility for non-enforcement during the period in which the judgement was valid.

When reviewing a final judgement, it should be considered that a debt established by a court decision may qualify as “possessions” within the meaning of Article 1 of Protocol No. 1. Moreover, quashing such a final judgement without the right to appeal constitutes an interference with the beneficiary’s right to the protection of property.

In cases of withdrawal, invalidation, or suspension of a license of a legal entity, competent authorities must invoke very serious reasons serving the general interest, especially when such sanction has a deterrent effect resulting in the interruption or cessation of the entire commercial activity of the company. Withdrawal of a license for minor or insignificant violations will never be consistent with Article 1 of Protocol No. 1.

Complaints arising from the annulment of privatisation procedures must be carefully analysed in terms of the grounds that led to the annulment. The absence of serious reasons to declare a public tender or privatisation procedure null and void – especially when the acquiring company has properly fulfilled its obligations – undermines legal certainty and protection of property rights.<sup>104</sup>

By implementing these measures, the Republic of Moldova can promote an environment that respects, supports, and protects the rights and dignity of its citizens, strengthens the rule of law, and contributes to the establishment of a just and prosperous society.

## 8. Conclusions

In the years following the end of World War II, the international community witnessed impressive developments in the realm of property protection. At that time, the bipolar world, characterised by socialist states with planned economies and capitalist states centred on market economies, established the first regional mechanism for the protection of human rights – the European Convention on Human Rights. Thus, the bodies of the Convention (the Court and the Commission) were compelled to apply the provisions of Article 1 of Protocol No. 1 to cases involving states with entirely opposing normative approaches. This has been a true challenge for the Court, but the points raised in this paper demonstrate that the European judicial body has managed over more than seven decades to coherently address the content of fundamental rights, consistently referring to the purposes and objectives stated in the Convention.

The terms used in Article 1 of Protocol 1 to the ECHR provide a strong shield for a wide range of interventions in the field of property protection. This includes both real estate and personal property, as well as tangible and intangible assets.

Summarising the positions of theorists, definitions found in international acts, national legislations, and the practice of the Strasbourg jurisdiction, we can deduce

104 Poalelungi et al., p. 356.

that the right to respect for property, in the sense of Article 1 of Protocol No. 1 to the ECHR, can be defined as an economic, subjective, real, and perpetual right belonging to individuals and legal entities. It has an absolute nature in horizontal relationships and is a relative right in vertical relationships, provided that it is exercised in accordance with the law and the general principles of international law.

The meaning of the term “possessions,” as argued by the practice of the European Court of Human Rights, indicates a broad and autonomous field of application. We believe that the term “possessions” used in the first sentence of Article 1 of Protocol No. 1 is broader than “property.”

The protection of property, in the sense of the European Convention on Human Rights, entails guarantees against arbitrary or disproportionate forms of interference, such as deprivation or limitation of rights.

Deprivation of a person’s possessions can only occur in the presence of a public necessity. If such circumstances arise, the state is obliged to provide a fair compensation.

The term “deprivation” in the sense of Article 1 of Protocol No. 1 to the ECHR should be understood as the “removal” or “dispossession” of the rights holder from the object and attributes of property rights.

In terms of the obligations that fall on states under Article 1 of Protocol No. 1 to the ECHR, the European Court of Human Rights takes a similar approach to that applied in the examination of other substantive rights. In cases concerning the protection of property, the court addresses both positive and negative obligations without explicitly distinguishing between them.

States have a wide margin of appreciation in determining the extent of public interest as understood in the context of Article 1 of Protocol No. 1. Thus, national authorities can decide both on the purpose and the means to achieve that purpose in cases of deprivation of possessions for public utility. The European Court of Human Rights will consistently assess compliance with the “golden rule,” which is the principle of proportionality concerning state actions that constitute an interference under Article 1 of Protocol No. 1.

In this paper were analysed *in concreto* specific cases against the Republic of Moldova concerning Article 1 of Protocol No. 1 of the ECHR, particularly arising from issues such as the non-execution of court decisions, abusive revision of court rulings, improper handling of appeals, license withdrawal, delayed payment of financial deposits, protection of intellectual property, confiscation, expropriation, and investment recovery. By examining the claims of the applicants regarding property issues, the European Court of Human Rights has sometimes identified systemic problems. This has led to the initiation of political mechanisms to monitor how the Republic of Moldova adheres to the provisions of the Convention and the Court’s rulings. Unfortunately, the failure of national authorities to respect the right to property, within the framework of the European Convention on Human Rights, affects the state’s image and has serious consequences on the evolution of the situation within society.

## PROTECTION OF PROPERTY

Protection of property rights is a concern both at times of peace and during armed conflicts. The protection of possessions in the context of armed conflicts is governed by *lex specialis* - international humanitarian law.

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