

The right to property in the Case Law of the European Court of Human Rights.

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Introduction

The right to any kind of property, is regulated in Article 1 of Protocol 1, annexed to the Convention on Human Rights. In Article 1, entitled "protection of property" consists of two paragraphs:

The first paragraph states that 'any 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 pursuant to the conditions provided by law and by the general principles of international law. "

The second paragraph provides that 'the above provisions shall not affect the right of any state to bring into force the laws it considers necessary for regulating the use of property in accordance with the general interest or to secure the payment of taxes or other contributions and fines. "

The right to property was one of the most controversial provisions in the context of discussions on the drafting of the Convention. The states that had the most objections to the inclusion of this right in the Convention were the states with socialist ideas of their governments, who doubted that the right to property was a fundamental human right. And they succeeded in not including a provision for the Property Right in the Convention. Almost two years later, in March 1952, this situation was completely overthrown, and the additional Protocol to the Convention recognized the Right to Property as an equal with the other rights that were included in it.

The judicial interpretation of Article 1.

The judicial organ of protection of human rights is the European Court of Human Rights (hereinafter the Court). In the case of Article 1 the Court has developed a rich jurisprudence, which affects almost all property questions, and faces protection, based on a division of this article into three different sentences: the first sentence of the first paragraph (peaceful enjoyment) is a general clause, and also serves to meet the protection needs which cannot be met by the other two settings. The second sentence of the first paragraph is the most common form of protection, and the third, located in the second paragraph reflects the exclusions and limitations of protection. Despite this distinction, the Court recognizes the unity of the Rule, and the complementarity of regulation.

Let us see, however, a breakdown of the components of that article:

The first sentence of Article 1 refers to the peaceful enjoyment of property. As mentioned, the introductory proposal is an omnibus imperative but is used for cases where there is no ground for the implementation of two other phrases. In this category are usually cases concerning pension rights, coming from origins retiree persons or promise or from employer

pension payment, which is included in the employment contract. The Court has ruled that no one is obliged to pay a certain amount for pension, but the reduction or elimination of the pension is an "intervention" to the right, which may result in a violation of the Convention.

A second category of cases falling within the first sentence is immovable property expropriations, which remain pending for a long time, and excludes the owner his right of using or exploiting his property. Because this category is not within the "deprivation" of the second sentence, the Court considered that it should be included in the first sentence.

A third category concerns the existence of the goods, for which the State has deprived the access to it, without having respected the expropriation procedure. The most famous case of such a phenomenon is the *Loizidou* case against Turkey, where the applicant claimed that the occupying forces prevented access to the occupied territories of Cyprus, where she had real assets, and consequently did not allow peaceful enjoyment of her possessions. The Court awarded a compensation of 400,000 British pounds for this violation, besides the fact that the applicant has maintained intact her property rights.

But an intervention in the asset from the state does not automatically constitute a violation of the Convention. The Court checks the existence of supporting causes that have led to this intervention. As with all other Articles of the Convention which are relevant (but not exactly the same), so for Article 1, the Court examines whether or not there are grounds which make the intervention in the asset, consistent with the Convention. And first of all examine the legality of the intervention. Moreover the law which allows the intervention must be serving the public interest. If the law exists and the public interest is served, the Court examines the existence of a fair balance between the public interest and the right to protection of property.

The fair balance is examined ad hoc in each case and for every case. For example, we could refer to some relevant cases:

The Court, applying the fair balance has concluded that the reduction of social security benefits did not violate their property rights. The same as to establish ceilings for high pensions. On the contrary in case of total interruption of pension, the Court has diagnosed a violation. Especially in the case *Apostolakis v Greece*, the Court ruled that the termination of a pension due to the penal conviction of the applicant, was disturbing the fair balance between the public interest and the individual right of the applicant.

The deprivation of the asset by the State (the second sentence of the first paragraph of Article 1) is the main invoking rule of applicants. In order for the Court to rule the finding of a violation based on deprivation of property rights, it examines the results and the purpose of the deprivation. Deprivation means definitive and universal loss of property rights. In particular in the case of *James v United Kingdom*, the Court found a violation because the applicant was deprived of his property by the law of the United Kingdom, which obliged him to turn over his property without his consent, to the leaseholder, at a price determined by the law.

The second sentence includes all cases of forced expropriations, nationalizations, and measures involving the direct and forced transfer of the asset to the public or the private sector. But the Court goes beyond all that and into the term “expropriation”, includes also cases of de facto loss of property, as in the case of *Sporrong and Lönnroth* in Sweden, where the Court pointed out that is looking forward to the effective protection of property rights.

According to Article 1, the deprivation of property asset, in order to be compatible with the Convention, must meet the following criteria: be provided for by law, be in the public interest, and that the conditions of the general principles of international law are met.

In connection with the law requirements, it should be emphasized that according to the case law, there is no requirement for the existence of formal law, permitting or forcing the deprivation of the asset, of a series of normative provisions in place is enough. The legal coverage, however, must meet the requirements of the rule of law and provide the person with guarantees against possible arbitrariness. If this condition is not satisfied, then there is a breach, and the Court does not proceed to consider the other criteria.

The second criterion is the public benefit from deprivation. The Court considers that the State is in a more favourable position than itself to judge what is the public interest. Consequently, this Court is limited to cases of blatant violation of the concept of public interest.

Finally, on the basis of the general principles of international law. International law requires compensation, if foreigners lose their property from state intervention. And the Court, in the early case, followed this direction. Subsequently the rule was generalized, and so today compensation is awarded for both foreigners and nationals.

As in the case of peaceful enjoyment of property, so in the case of deprivation, there should be a fair balance between public interest and individual property rights. The court in this respect considers that there is a wide margin of discretion of local authorities and the internal legal order to rule on this ratio, but does not give up completely its right to judge the necessary proportions. A fair balance is realized with the payment of compensation by the State. In this the Court attaches particular importance, in order to accept that a fair balance has been kept in every case.

And this brings us to the limitations of property rights provided for by the second paragraph of article 1. Originally the second paragraph refers to the right of the State to regulate the use of assets by law in order to serve the public interest. Regulating the use differs from deprivation, because the second implies the final loss of the asset. Examples of the arrangement in the use is when the state requires the landowner to plant trees in it, to protect the environment. In the same category belongs the prohibition of imports or exports as well as seizure or confiscation of real estate property.

In the first case belongs the case of *Agosi v United Kingdom*, in which the Court ruled that the ban on import of foreign gold coins in the United Kingdom is a clear case of regulation and therefore there is no violation. Regarding the seizure or confiscation of private property,

the Court has a case law concerning assets confiscated as they had been used as the subject of a criminal offense, or means for realizing such an offense.

Furthermore the concept of the regulation of property assets under the country planning or building regulations, setting hunting seasons, regulation of rents, setting the conditions for professionals (doctors, lawyers), the social security scheme, the car licencing system, and other related provisions.

In this category fall, with explicit reference to the specific paragraph of Article 1, the setting for cases relating to payment of taxes or other contributions or penalties. According to the case, seizing property, allowed for non-payment of taxes or contributions, as well as for non-payment of court costs.

Required documentation means that the restriction on the use of goods is subject to the condition that it serves the public interest superior to the individual good. And in this case we have the Court to carry out an exercise to find a fair balance between public and private interest.

Epilogue.

The right to property has now grown into one of the most important rights contained in the Convention, judging from the number of appeals each year, submitted to the Court Registry. Certainly there was a period when the number of appeals had multiplied, and that as a result of transition when most east European countries transited. It is true that during that period, that time can be identified between 1996 and the early 21st century, the plenitude of Appeals was due to the fact that these countries did not meet the criteria of the case law, or were adopting laws to protect property rights, but they did not have the ability to comply with the obligations they imposed. Classic example of the second category is the Broniofski case against Poland which the Polish Parliament passed a law brought back alive in personam rights -in place of the real property rights that had been lost after nationalization of the former socialist regime, which the government was unable to meet. The case prompted the Court to include a new category of Court procedure, the pilot-cases. The Court decisions of this kind had an erga omnes effect, since the conviction resulted in a plethora of identical applications, on the same subject by Polish applicants.

In recent years, however, we have a smaller number of appeals, which must be because of the gradual adaptation of States to the case. This applies to the case of Greece, which had a significant number of cases of Article 1, particularly in matters of expropriation, which saw the number of cases before the Court to decline significantly. This must be due to the adaptation of the administration to the infallible truth of the case law, or in a more effective administration of justice by the Greek courts. An evolution for which we are delighted!

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