



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

Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights

Protection of property

Updated on 31 August 2019

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, and, more recently, *Jeronovičs v. Latvia* [GC], § 109).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], § 156).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a [List of keywords](#), chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The [HUDOC database](#) of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the [HUDOC user manual](#).

** The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. Introduction

Article 1 of Protocol No. 1 – Right to property

“1. 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.

2. 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.”

HUDOC keywords

Positive obligations (P1-1)

Possessions (P1-1-1) – Peaceful enjoyment of possessions (P1-1-1) – Interference (P1-1-1) – Deprivation of property (P1-1-1); Public interest (P1-1-1) – Prescribed by law (P1-1-1); Accessibility (P1-1-1); Foreseeability (P1-1-1); Safeguards against abuse (P1-1-1) – General principles of international law (P1-1-1)

Control of the use of property (P1-1-2): General interest (P1-1-2) – Secure the payment of taxes (P1-1-2) – Secure the payment of contributions or penalties (P1-1-2)

1. This guide is intended to provide information for legal practitioners concerning the most important judgments on the subject delivered by the European Court of Human Rights (“the Court”) from its inception up to the present day¹. It sets out the key principles developed in the Court’s case-law, together with relevant precedents. The case-law cited is selective: these are leading, significant and recent judgments and decisions².

2. The Strasbourg Court’s judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the European Convention on Human Rights (“the Convention”), thereby contributing to the honouring by the States of the commitments into which they have entered as Contracting Parties (*Ireland v. the United Kingdom*, § 154). The mission of the Convention system is thus to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89).

3. Article 1 of Protocol No. 1 guarantees the right to property. In *Marckx v. Belgium*, §§ 63-64, the Court stated for the first time that:

“... By recognising that everyone has the right to the peaceful enjoyment of his possessions, Article 1 is in substance guaranteeing the right of property. This is the clear impression left by the words "possessions" and "use of property" (in French: "*biens*", "*propriété*", "*usage des biens*"); the *travaux préparatoires*, for their part, confirm this unequivocally: the drafters continually spoke of "right of property" or "right to property" to describe the subject-matter of the successive drafts which were the

1. Case-law references updated to 31 August 2018.

2. The hyperlinks to the judgments and decisions cited provide a link to the original text in English or French (the two official languages of the Court). Readers can consult the [HUDOC](#) database of the Court’s case-law, which gives access to the judgments and decisions in English and/or French and to [translations into around twenty other languages](#).

forerunners of the present Article 1. Indeed, the right to dispose of one's property constitutes a traditional and fundamental aspect of the right of property ...

The second paragraph of Article 1 nevertheless authorises a Contracting State to "enforce such laws as it deems necessary to control the use of property in accordance with the general interest". This paragraph thus sets the Contracting States up as sole judges of the "necessity" for such a law As regards "the general interest", it may in certain cases induce a legislature to "control the use of property" (...)

II. General issues

A. Applicability of Article 1 of Protocol No. 1 – “possessions”

Article 1 of Protocol No. 1 – Right to property

“1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. ...”

HUDOC keywords

Possessions (P1-1-1) – Peaceful enjoyment of possessions (P1-1-1)

1. Concept of “possessions”

4. The concept of “possessions” in the first part of Article 1 of Protocol No. 1 is an autonomous one, covering both “existing possessions” and assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation”. “Possessions” include rights “*in rem*” and “*in personam*”. The term encompasses immovable and movable property and other proprietary interests.

a. Autonomous meaning

5. The concept of “possessions” has an autonomous meaning which is independent from the formal classification in domestic law and is not limited to the ownership of physical goods: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The issue that needs to be examined in each case 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 (*Depalle v. France* [GC], § 62; *Anheuser-Busch Inc. v. Portugal* [GC], § 63; *Öneriyıldız v. Turkey* [GC], § 124; *Broniowski v. Poland* [GC], § 129; *Beyeler v. Italy* [GC], § 100; *Iatridis v. Greece* [GC], § 54; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 171; *Fabris v. France* [GC], §§ 49 and 51; *Parrillo v. Italy* [GC], § 211; *Béláné Nagy v. Hungary* [GC], § 76).

6. The fact that the domestic laws of a State do not recognise a particular interest as a “right” or even a “property right” does not necessarily prevent the interest in question, in some circumstances, from being regarded as a “possession” within the meaning of Article 1 of Protocol No. 1 (*Depalle v. France* [GC], § 68, in respect of a revocable and precarious right to occupancy of a public property on account of a lapse of time; *Öneriyıldız v. Turkey* [GC], § 129, in respect of the applicant's proprietary interest in his unauthorised dwelling). A long-standing tolerance on the part of the authorities has also conferred property rights on applicants in respect of a disputed plot of land (*Kosmas and Others v. Greece*, §§ 68-71). Furthermore, the domestic law ordering the expropriation

of a plot of land in certain circumstances, with the right to compensation, was considered to have created a proprietary interest (*Kutlu and Others v. Turkey*, § 58).

7. The Court may have regard to the domestic law in force at the time of the alleged interference if there is nothing to suggest that that law runs counter to the object and purpose of Article 1 of Protocol No. 1 (*Pressos Compania Naviera S.A. and Others v. Belgium*, § 31). For example, illegal constructions can in certain circumstances, be regarded as “possessions” (*Öneryıldız v. Turkey* [GC], § 127; *Depalle v. France* [GC], § 85, see the preceding paragraph; *Brosset-Triboulet and Others v. France* [GC], § 71; *Keriman Tekin and Others v. Turkey*, §§ 42-46), especially if the domestic law accepts that they are objects of the right to property (*Ivanova and Cherkezov v. Bulgaria*, § 68). Thus, the recognition of a proprietary interest by domestic courts is highly relevant in the Court’s assessment (*Broniowski v. Poland* [GC], §§ 130-131), although not decisive.

8. The fact that a right to property is revocable in certain circumstances does not prevent it from being considered as a “possession” protected by Article 1, at least until its revocation (*Bélané Nagy v. Hungary* [GC], § 75; *Krstić v. Serbia*, § 83; *Čakarević v. Croatia*, § 52). For instance, in *Beyeler v. Italy* [GC], §§ 104-105, the Court found the existence of a proprietary interest protected by Article 1 of Protocol No. 1, even though the contract for the purchase of a painting was considered null and void by the national authorities, on the grounds that the applicant had been in possession of the painting for several years, that he had been considered *de facto* by the authorities as having a proprietary interest in it and that he had received compensation (see also below the chapter on Social welfare cases).

9. In the case of non-physical assets, the Court has taken into consideration, in particular, whether the legal position in question gave rise to financial rights and interests and therefore had an economic value. It has thus considered, for example, intellectual property, such as trademarks and copyrights (*Melnychuk v. Ukraine* (dec.); *Anheuser-Busch Inc. v. Portugal* [GC], §§ 72, 76 and 78), or licences to use property in a particular way (such as licences to serve alcoholic beverages or fishing rights, *Tre Traktörer Aktiebolag v. Sweden*, § 53; *Alatulkkila and Others v. Finland*, § 66; *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, § 89) to constitute “possessions”; as well as the exclusive right to use the Internet domains registered in the name of a company (*Paeffgen GmbH v. Germany* (dec.)).

b. Protected “possessions”

10. Article 1 of Protocol No. 1 applies only to a person’s existing “possessions” (*Marckx v. Belgium*, § 50; *Anheuser-Busch Inc. v. Portugal* [GC], § 64).

11. Thus, an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right (*Pressos Compania Naviera S.A. and Others v. Belgium*, § 31; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], § 61; *Von Maltzan and Others v. Germany* (dec.) [GC], § 74 (c); *Kopecký v. Slovakia* [GC], § 35 (c)).

12. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (*Prince Hans-Adam II of Liechtenstein v. Germany* [GC], §§ 82-83; *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], § 69; *Kopecký v. Slovakia* [GC], § 35(c); *Malhous v. the Czech Republic* (dec.) [GC]; *Nerva and Others v. the United Kingdom*, § 43; *Stretch v. the United Kingdom*, § 32; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 172) (see below in the specific context of restitution of expropriated property).

13. A person who complains of a violation of his or her right to property must first of all show that such a right existed (*Pištorová v. the Czech Republic*, § 38; *Des Fours Walderode v. the Czech Republic* (dec.); *Zhigalev v. Russia*, § 131). Initially, the ascription and identification of property rights is for the national legal system and it is incumbent on the applicant to establish the precise nature of the right in the national law and his entitlement to enjoy it. A judgment by which the Constitutional Court had declared a piece of legislation unconstitutional, but postponed its application, did not create a legitimate expectation for the period before the judgment became applicable (*Dobrowolski and Others v. Poland* (dec.), § 28).

14. Where there is a dispute as to whether an applicant has a proprietary interest which is eligible for protection under Article 1 of Protocol No. 1, the Court is required to determine the legal position of the applicant (*J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], § 61). The Court found no proprietary interest sufficient to constitute a “possession” in a case where the liquidation of the applicant’s father’s estate occurred well before her filiation had been established (*Wysowska v. Poland* (dec.), §§ 51-52).

15. On the other hand, where the domestic courts had validated the applicant’s husband will, the applicant had subsequently accepted her husband’s estate by notarised deed and she had then registered the property transferred to her in the Land Registry, the Court considered that the applicant’s proprietary interest in inheriting from her husband was of a nature and sufficiently recognised to constitute a “possession” (*Molla Sali v. Greece* [GC], §§ 128-132).

i. Legitimate expectations

16. In certain circumstances, a “legitimate expectation” of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (*Pressos Compania Naviera S.A. and Others v. Belgium*, § 31; *a contrario Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], § 73).

17. For an “expectation” to be “legitimate”, it must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision, bearing on the property interest in question (*Kopecký v. Slovakia* [GC], §§ 49-50; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 173; *Saghinadze and Others v. Georgia*, § 103; *Ceni v. Italy*, § 39; *Béláné Nagy v. Hungary* [GC], § 75).

18. The concept of “legitimate expectation” in the context of Article 1 of Protocol No. 1 was first developed by the Court in *Pine Valley Developments Ltd and Others v. Ireland*, § 51. In that case, the Court found that a “legitimate expectation” arose when outline planning permission had been granted, in reliance on which the applicant companies had purchased land with a view to its development. The planning permission, which could not be revoked by the planning authority, was “a component part of the applicant companies’ property” (*ibid.*, § 51; *Stretch v. the United Kingdom*, § 35, in respect of exercising the option to renew a long-term lease; and *Ceni v. Italy*, § 43, in respect of a signed preliminary contract for the purchase of an apartment, the full price paid and the applicant’s taking possession of the apartment). In this category of cases, the “legitimate expectation” is thus based on a reasonably justified reliance on a legal act which has a sound legal basis and which bears on property rights (*Kopecký v. Slovakia* [GC], § 47).

19. Another aspect of the notion of “legitimate expectation” is illustrated in *Pressos Compania Naviera S.A. and Others v. Belgium*, § 31. On the basis of a series of decisions of the Court of Cassation, the Court held that the applicants could argue that they had a “legitimate expectation” that their claims deriving from shipping accidents would be determined in accordance with the general law of tort, according to which such claims came into existence as soon as the damage occurred. The “legitimate expectation” here identified was not in itself constitutive of a proprietary interest; it related to the way in which the claim qualifying as an “asset” would be treated under domestic law (*Draon v. France* [GC], § 70; *Maurice v. France* [GC], §§ 67-69). Similarly, in *Uzan and Others v. Turkey*, § 193, the Court found that the minor applicants had a legitimate expectation

falling within the concept of “possession”, the domestic court having had acknowledged their capacity to acquire certain rights by inheritance and donation.

20. On the contrary, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant’s submissions are subsequently rejected by the national courts (*Anheuser-Busch Inc. v. Portugal* [GC], § 65; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 173; *Bélné Nagy v. Hungary* [GC], § 75; *Karachalios v. Greece* (dec.), § 46; *Radomilja and Others v. Croatia* [GC], § 149).

21. No legitimate expectation arises in a situation where the applicant relies on the mere fact that members of the respondent Government made political statements favourable to the applicant’s restitution claims (*Bata v. Czech Republic* (dec.), § 77), or on a programmatic statement in a statute, referring to a future statute which ultimately was not adopted (*Zamoyski-Brisson v. Poland* (dec.), § 78).

22. In applications concerning claims other than those relating to existing “possessions”, the requirement that the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest has been examined in different ways in the Court’s case-law (*Bélné Nagy v. Hungary* [GC], § 76). By way of example, in a number of cases the Court examined, respectively, whether the applicants had “a claim which was sufficiently established to be enforceable” (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], § 74); whether they demonstrated the existence of “an assertable right under domestic law to a welfare benefit” (*Stec and Others v. the United Kingdom* (dec.) [GC], § 51); or whether the persons concerned satisfied the “legal conditions laid down in domestic law for the grant of any particular form of benefits” (*Richardson v. the United Kingdom* (dec.), § 17).

23. The Court’s case-law does not contemplate the existence of a “genuine dispute” or an “arguable claim” as a criterion for determining whether there is a “legitimate expectation” protected by Article 1 of Protocol No. 1, unlike in the context of determining the applicability of Article 6 of the Convention under its civil limb to the proceedings in a case (*Kopecký v. Slovakia* [GC], §§ 50 and 52; *Draon v. France* [GC], § 68). There is therefore no necessary interrelation between the existence of claims covered by the notion of “possessions” within the meaning of Article 1 of Protocol No. 1 and the applicability of Article 6 § 1 to the proceedings complained of. The fact that the applicants did not have a legitimate expectation to have their property restored to them under the substantive provisions of domestic law was sufficient to exclude the application of Article 1 of Protocol No. 1 of the Convention to the circumstances of the case. At the same time, it did not suffice to exclude a conclusion that, once a genuine and serious dispute concerning the existence of property rights arises, the guarantees of Article 6 § 1 become applicable (*Kopecký v. Slovakia* [GC], § 52; *J.S. and A.S. v. Poland*, § 51).

24. In sum, notwithstanding the diversity of the expressions in the case-law referring to the requirement of a domestic legal basis generating a proprietary interest, their general tenor can be summarised as follows: for the recognition of a “possession” consisting in a “legitimate expectation”, the applicant must have an assertable right which, applying the principle enounced in paragraph 52 of *Kopecký v. Slovakia* [GC] (see the following chapter on Claims and judgment debts) may not fall short of a sufficiently established, substantive proprietary interest under the national law (*Bélné Nagy v. Hungary* [GC], § 79).

c. Different types of “possessions” and other proprietary interests

i. Claims and judgment debts

25. For a claim to be capable of being considered an “asset” falling within the scope of Article 1 of Protocol No. 1, the claimant must establish that it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (*Kopecký v. Slovakia* [GC], § 52;

Plechanow v. Poland, § 83; *Vilho Eskelinen and Others v. Finland* [GC], § 94; *Anheuser-Busch Inc. v. Portugal* [GC], § 65; *Haupt v. Austria* (dec.), § 47; *Radomilja and Others v. Croatia* [GC], § 142). Where that has been done, the concept of “legitimate expectation” can come into play (*Draon v. France* [GC], § 65).

26. With regards to claims, the concept of “legitimate expectation” relates also to the way in which the claim qualifying as an “asset” would be treated under domestic law and in particular to reliance on the fact that the established case-law of the national courts would continue to be applied in the same way (*Kopecný v. Slovakia* [GC], § 48).

27. By way of contrast, the Court excluded the applicability of the notion of “legitimate expectation” to an established claim that could not succeed owing to foreseeable legislative intervention (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 69).

28. A conditional claim which lapses as a result of the non-fulfilment of the condition does not constitute a possession for the purposes of Article 1 of Protocol No. 1 (*Kopecný v. Slovakia* [GC], § 35; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], § 83; *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], § 69).

29. A judgment debt which is sufficiently established to be enforceable constitutes a “possession” (*Stran Greek Refineries and Stratis Andreadis v. Greece*, § 59; *Burdov v. Russia*, § 40; *Gerasimov and Others v. Russia*, § 179; *Yuriy Nikolayevich Ivanov v. Ukraine*, § 45; *Streltsov and other “Novocherkassk military pensioners” cases v. Russia*, § 58). By way of contrast, a judgment debt which is not final and thus not immediately payable, cannot be considered “sufficiently established to be enforceable” and accordingly does not constitute a “possession”.

30. A breach of Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention may occur where the condition is discriminatory (*Zeïbek v. Greece*, §§ 45-46). Inheritance and succession claims concerning difference in treatment have been considered as “possessions” (*Marckx v. Belgium*, §§ 52-55; *Fabris v. France* [GC], §§ 52-55).

ii. Company shares and other financial instruments

31. In general, a company share with an economic value together with various rights attaching to it which enable a shareholder to exert influence on a company, can be considered a “possession” (*Olczak v. Poland* (dec.), § 60; *Sovtransavto Holding v. Ukraine*, § 91; *Shesti Mai Engineering OOD and Others v. Bulgaria*, § 77). This encompasses also an indirect claim to the company’s assets, including the right to a share in these assets in the event of its being wound up, but also other corresponding rights, especially voting rights and the right to influence the company’s conduct and policy (*Company S. and T. v. Sweden*, Commission decision; *Reisner v. Turkey*, § 45; *Marini v. Albania*, § 165).

32. In certain circumstances the sole owner of a company can claim to be a “victim” within the meaning of Article 34 of the Convention in so far as the impugned measures taken with regard to his or her company are concerned (*Ankarcrona v. Sweden* (dec.); *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, § 40). However, when that is not the case the disregarding of an applicant company’s legal personality can be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (*Agrotexim and Others v. Greece*, § 66; *Lekić v. Slovenia* [GC], § 111; *CDI Holding Aktiengesellschaft and Others v. Slovakia* (dec.)); *Meltex Ltd and Movsesyan v. Armenia*, § 66; *Veselá and Loyka v. Slovakia* (dec.)) or where the acts or decisions complained of related to the actions of persons such as a liquidator acting on the company’s behalf (*G.J. v. Luxembourg*, § 24).

33. In *Lekić v. Slovenia* [GC], § 111, the Court clarified that the *Agrotexim* test had been applied on a number of occasions, when dealing with shareholders' claims to be identified with companies for the purposes of "victim" status – that is, "from within" in the parlance of the International Court of Justice ("ICJ"). The *Agrotexim* line of case-law cannot be transposed directly to cases concerning the lifting of the corporate veil of a limited liability company in the interest of its creditors – or "from without" in the parlance of the ICJ. In situations, where a limited liability company was used merely as a façade for fraudulent actions by its owners or managers, piercing of the corporate veil may be an appropriate solution for defending the rights of its creditors, including the State, and is not wrong as such (*Khodorkovskiy and Lebedev v. Russia*, § 877). Moreover, in cases introduced by creditors of State-owned limited liability companies or banks, the Court has found a breach of Article 1 of Protocol No. 1 because of the refusal of the respondent State to pay a debt of the impugned company or a bank, hiding behind the corporate veil (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], §§ 114-15). The Court relied in this regard on the following factors: whether the State siphoned the corporate funds to the detriment of the company and its stakeholders, failed to keep an arm's-length relationship with the company or otherwise acted in abuse of the corporate form (*ibid.*).

34. Finally, Article 1 of Protocol No. 1 extends to bonds which are negotiable on the capital market, are transferred from one bearer to another and whose value may fluctuate depending on a number of factors (*Mamatas and Others v. Greece*, § 90). However, it was considered that a "special-purpose" or "commodity" State bond, initially providing for a right to receive a car in kind and subsequently the subject of framework legislation in the immediate post-ratification Convention period and subsequently, did not encompass the right to acquire property (*Grishchenko v. Russia* (dec.)).

iii. Professional clientele

35. The Court acknowledged that rights akin to property rights existed in cases concerning professional practices where by dint of their own work the applicants concerned had built up a clientele which had, in many respects, the nature of a private right and constituted an asset and, hence, a possession within the meaning of the first sentence of Article 1 of Protocol No. 1 (*Lederer v. Germany* (dec.); *Buzescu v. Romania*, § 81; *Wendenburg and Others v. Germany* (dec.); *Olbertz v. Germany* (dec.); *Döring v. Germany* (dec.); *Iatridis v. Greece* [GC], § 54; *Van Marle and Others v. the Netherlands*, § 41; *Malik v. the United Kingdom*, § 89; *Rola v. Slovenia*, nos. 12096/14 and 39335/16; § 71; for a comprehensive overview of the case-law, see *Könyv-Tár Kft and Others v. Hungary*, §§ 31-32).

iv. Business licences

36. A licence to run a business constitutes a possession; its revocation is an interference with the right guaranteed by Article 1 of Protocol No. 1 (*Megadat.com SRL v. Moldova*, §§ 62-63; *Bimer S.A. v. Moldova*, § 49; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, § 49; *Capital Bank AD v. Bulgaria*, § 130; *Tre Traktörer Aktiebolag v. Sweden*, § 53; *Vékony v. Hungary*, § 29; *Fredin v. Sweden (no. 1)*, § 40; *Malik v. the United Kingdom*, § 90).

37. A banking licence, the effect of its revocation being to automatically place the bank in compulsory liquidation, was considered a "possession" (*Capital Bank AD v. Bulgaria*, § 130).

38. Furthermore, a licence for nationwide terrestrial television broadcasting without the allocation of broadcasting frequencies was deprived of its substance (*Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 177).

39. Similarly, a mussel seed fishing authorisation, connected to the usual conduct of the applicant's aquaculture business, was considered a "possession" and the temporary prohibition on mussel seed

fishing was regarded as a restriction placed on such permit (*O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, § 89).

v. Future income

40. Article 1 of Protocol No. 1 does not create a right to acquire property (*Denisov v. Ukraine* [GC], § 137). Future income constitutes a “possession” only if the income has been earned or where an enforceable claim to it exists (*Ian Edgar (Liverpool) Ltd v. the United Kingdom* (dec.); *Wendenburg and Others v. Germany* (dec.); *Levänen and Others v. Finland* (dec.); *Anheuser-Busch Inc. v. Portugal* [GC], § 64; *Denisov v. Ukraine* [GC], § 137).

41. Conversely, the volume of business enjoyed by a liberal profession – with no fixed income and no guaranteed turnover – which is subject to the hazards of economic life does not constitute a “possession” (*Greek Federation of Customs Officers, Gialouris and Others v. Greece*, Commission decision).

vi. Intellectual property

42. Article 1 of Protocol No. 1 applies to intellectual property as such (*Anheuser-Busch Inc. v. Portugal* [GC], § 72).

43. It is applicable to an application for registration of a trade mark even prior to the trade mark being registered (*Anheuser-Busch Inc. v. Portugal* [GC], § 78) and *a fortiori* to trade marks (*Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.S. v. Turkey*, § 37),, patents (*Smith Kline and French Laboratories Ltd v. the Netherlands* (dec.); *Lenzing AG v. the United Kingdom*, Commission decision), copyright (*Melnychuk v. Ukraine* (dec)). Copyright holders are protected by Article 1 of Protocol No. 1 (*Neij and Sunde Kolmisoppi v. Sweden* (dec.); *SIA AKKA/LAA v. Latvia*, § 41). A right to publish a translation of a novel falls within the scope of this provision (*SC Editura Orizonturi SRL v. Romania*, § 70), and so does the right to musical works and the economic interests deriving from them, also by means of a licence agreement (*SIA AKKA/LAA v. Latvia*, § 55).

vii. Lease on property and housing rights

44. In certain cases the Court considered a lease as a proprietary interest attracting the protection of Article 1 of Protocol No. 1 (*Stretch v. the United Kingdom*, §§ 32-35; *Bruncrona v. Finland*, § 79; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], § 140). In *Di Marco v. Italy*, §§ 48-53, the Court considered that the applicant’s legitimate expectation in connection with property interests such as the use of land and commercial activities attached to it was of sufficient importance to constitute a “possession” in the sense of Article 1 of Protocol No.1.

45. In the field of housing, often, a key question is whether Article 1 of Protocol No. 1 is applicable (see also “Destruction of property in situations of international or internal armed conflict”).

46. In the Commission case of *S. v. the United Kingdom* (dec.), the applicant had lived for many years in a same-sex relationship with another woman, who was a tenant in a house owned by the local authority. The applicant herself had no tenancy or any other legal right over that house. After the death of her partner, the local authority brought proceedings against the applicant and obtained a court order for her eviction. The Commission found that there had been no contractual nexus between the applicant and the local authority and that the fact that the applicant had been living in the house for some time without legal title could not constitute a “possession” within the meaning of Article 1 of Protocol No. 1.

47. As to the existence of “possessions”, the Commission decision in *Durini v. Italy* concerned the allegations of a mother and her daughters that they should have a right to continue living in a family castle (belonging to a foundation), in spite of the dispositions of their late husband and father’s ancestor’s will dating from 1918 stipulating that this right should be conferred on the eldest-born

male descendant. The Commission held that the right to live in the castle which one does not own was not a "possession" within the meaning of Article 1 of Protocol No. 1 and that that provision was not therefore applicable to the case.

48. Finally, the nature of the applicant's right to "a social lease" ("*bail social*") did not amount to a "possession" under Article 1 of Protocol No. 1 (*Tchokontio Happi v. France*, § 60) since according to the domestic judgment, the applicant was to enjoy the right to use a flat, not the right to acquire one.

viii. Social security benefits/pensions

49. In the older case-law of the Convention organs the making of compulsory contributions towards social insurance schemes of any kind was considered to create a right protected under Article 1 of Protocol No. 1 only where there was a direct link between the level of contributions paid and the benefits awarded (*Müller v. Austria*, Commission decision, p. 49). Otherwise the applicant did not, at any given moment, have an identifiable and claimable share in the fund (*G. v. Austria*, Commission decision, p. 86; *Kleine Staarman v. the Netherlands*, Commission decision, p. 166).

50. However, in a number of later cases the Court has consistently held that even a welfare benefit in a non-contributory scheme could constitute a possession for the purposes of Article 1 of Protocol No. 1 (*Bucheň v. the Czech Republic*, § 46; *Koua Poirrez v. France*, § 37; *Wessels-Bergervoet v. the Netherlands* (dec.); *Van den Bouwhuijsen and Schuring v. the Netherlands* (dec.)).

51. Uncertainty as to the applicability of this provision to social insurance benefits was ultimately clarified in the case of *Stec and Others v. the United Kingdom* (dec.) [GC], §§ 47-56. The Court noted that in most States, there existed a wide range of social security benefits designed to confer entitlements which arise as of right. Benefits are funded in a large variety of ways: some are paid for by contributions to a specific fund; some depend on a claimant's contribution record; many are paid for out of general taxation on the basis of a statutorily defined status. Given the variety of funding methods, and the interlocking nature of benefits under most welfare systems, it was no longer justified to hold that only benefits financed by contributions to a specific fund fall within the scope of Article 1 of Protocol No. 1. Moreover, to exclude benefits paid for out of general taxation would be to disregard the fact that many claimants under this latter type of system also contribute to its financing, through the payment of tax.

52. In the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits. Many domestic legal systems recognise that such individuals require a degree of certainty and security, and provide for benefits to be paid – subject to the fulfilment of the conditions of eligibility – as of right. Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable (*Stec and Others v. the United Kingdom* (dec.) [GC], § 51; *Moskal v. Poland*, § 39; *Andrejeva v. Latvia* [GC], § 77).

53. Article 1 of Protocol No. 1 imposes no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social-security scheme, or to choose the type or amount of benefits to provide under any such scheme (*Sukhanov and Ilchenko v. Ukraine*, § 36; *Kolesnyk v. Ukraine* (dec.), §§ 89 and 91; *Fakas v. Ukraine* (dec.), §§ 34, 37-43, 48). If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Stec and Others v. the United Kingdom* (dec.) [GC], § 54).

54. Legislation providing for payment of an old-age pension, whether conditional or not on contributions, generates a proprietary interest falling within the ambit of that Article for those satisfying its requirements (*Carson and Others v. the United Kingdom* [GC], § 64).

55. Where the person concerned does not satisfy (*Bellet, Huertas and Vialatte v. France* (dec.), § 5), or ceases to satisfy, the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (*Rasmussen v. Poland*, § 71), where the conditions had changed before the applicant became eligible for a specific benefit (*Richardson v. the United Kingdom* (dec.), § 17). Where the suspension or diminution of a pension was not due to any changes in the applicant's own circumstances, but to changes in the law or its implementation, this may result in an interference with the rights under Article 1 of Protocol No. 1 (*Béláné Nagy v. Hungary* [GC], § 86). Furthermore, Article 1 of Protocol No. 1 was found applicable in a case where the applicant was ordered to repay benefits received, in good faith, in reliance on an administrative decision and where the authorities had made a mistake (*Čakarević v. Croatia*, §§ 54-65).

56. In *Gaygusuz v. Austria*, § 41, the Court found that the right to emergency assistance – a social benefit linked to the payment of contributions to the unemployment insurance fund – was, in so far as provided for in the applicable legislation, a pecuniary right for the purposes of Article 1 of Protocol No. 1. In *Klein v. Austria*, § 57, it was noted that entitlement to a pension payable from a lawyers' pension scheme – was linked to the payment of contributions, and, when such contributions had been made, an award could not be denied to the person concerned. Contributions to a pension fund may thus, in certain circumstances and according to the domestic law, create a property right (*Kjartan Ásmundsson v. Iceland*, § 39; *Apostolakis v. Greece*, §§ 28 and 35; *Bellet, Huertas and Vialatte v. France* (dec.); *Skórkiewicz v. Poland* (dec.)). For further details, see the chapter on Social welfare cases below.

ix. Destruction of property in situations of international or internal armed conflict – the required level of proof

57. In cases where the applicants complained about destruction of their houses in the context of armed conflicts, the Court accepted the claim of ownership on the basis of extracts from a housing inventory issued by the town administration after the attack complained of (*Kerimova and Others v. Russia*, § 293). In *Damayev v. Russia*, §§ 108-111, it considered that an applicant complaining about the destruction of his home should provide at least a brief description of the property in question. As further examples of *prima facie* evidence of ownership of or residence in property, the Court has accepted documents such as land or property titles, extracts from land or tax registers, documents from the local administration, plans, photographs and maintenance receipts as well as proof of mail deliveries, statements of witnesses or any other relevant evidence (*Prokopovich v. Russia*, § 37; *Elsanova v. Russia* (dec.)). Also so-called technical passports, seen as "inventory-technical documents", were considered to constitute indirect evidence of title to houses and land (*Chiragov and Others v. Armenia* [GC], §§ 140-141). Generally, if an applicant does not produce any evidence of title to property or of residence, his or her complaints about that property having been destroyed are bound to fail as the Court may not be satisfied that it has sufficient evidence to accept that the property concerned existed and that it fell within the ambit of the applicant's "possessions" (*Sargsyan v. Azerbaijan* [GC], § 183; *Lisnyy and Others v. Ukraine and Russia* (dec.), §§ 26-27).

58. In the case of *Doğan and Others v. Turkey*, which concerned the forced eviction of villagers in the state-of-emergency region in south-east Turkey and the refusal to let them return for several years, the respondent Government raised the objection that some of the applicants had not submitted title deeds attesting that they had owned property in the village. The Court considered that it was not necessary to decide whether or not in the absence of title deeds the applicants had rights of property under domestic law. The question was rather whether the overall economic activities carried out by the applicants constituted "possessions" coming within the scope of Article 1 of Protocol No. 1. Answering the question in the affirmative, it noted that it was undisputed that the applicants all lived in Boydaş village until 1994. Although they did not have registered property, they either had their own houses constructed on the lands of their ascendants or lived in the houses

owned by their fathers and cultivated the land belonging to the latter; they had unchallenged rights over the common lands in the village, such as the pasture, grazing and the forest land, and earned their living from stockbreeding and tree-felling. All these economic resources and the revenue that the applicants derived from them were qualified as “possessions” for the purposes of Article 1 of Protocol No. 1 (*ibid.*, § 139).

59. To sum up, applicants are required to provide *prima facie* evidence in support of their complaints under Article 1 of Protocol No. 1 to the Convention about destruction of property in the context of armed conflict.

x. Human embryos

60. Having regard to the economic and pecuniary scope of Article 1 of Protocol No. 1, human embryos cannot be reduced to “possessions” within the meaning of that provision” (*Parrillo v. Italy* [GC], § 215).

B. Interference with the right to the peaceful enjoyment of one’s property

1. “Three rules” approach

61. Once the Court is satisfied that Article 1 of Protocol No. 1 is applicable to the circumstances of the case, it embarks on the substantive analysis of the circumstances complained of.

62. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers only deprivation of “possessions” and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest (*Sporrong and Lönnroth v. Sweden*, § 61; *Iatridis v. Greece* [GC], § 55; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], § 52; *Anheuser-Busch Inc. v. Portugal* [GC], § 62; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 98; *Immobiliare Saffi v. Italy* [GC], § 44; *Broniowski v. Poland* [GC], § 134; and *Vistiņš and Perepjolkins v. Latvia* [GC], § 93).

63. The three rules are not “distinct” in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (*Former King of Greece and Others v. Greece* [GC], § 50; *Brunckrona v. Finland*, § 65; *Anheuser-Busch Inc. v. Portugal* [GC], § 62) (for further details, see the sub-chapters on Deprivation of property, Control of use or General rule).

64. To be deemed compatible with Article 1 of Protocol No. 1, the interference must fulfil certain criteria: it must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (*Beyeler v. Italy* [GC], §§ 108-114).

65. This approach structures the Court’s method of examination of cases where it is satisfied that Article 1 of Protocol No. 1 is applicable (see the chapter on Applicability of Article 1 of Protocol No. 1). It consists of a number of successive steps whereby the following questions are addressed: Has there been interference with the applicant’s right to the peaceful enjoyment of his/her “possessions”? If so, does the interference amount to a deprivation of property? If not, was control of use of property concerned? If the measures which affected the applicant’s rights cannot be

qualified as either deprivation or control of use of property, the facts of the case are interpreted by the Court in the light of the general principle of respect for the peaceful enjoyment of “possessions”.

66. In the great majority of cases if it is established by the Court that the interference was not subject to conditions provided for by law or did not pursue the public interest, it finds a violation of the Convention for that reason alone and does not find it necessary to embark on the analysis of proportionality of the measures complained of (*Simonyan v. Armenia*, §§ 25-26; *Vijatović v. Croatia*, § 58; *Gubiyev v. Russia*, § 83; *Dimitrovi v. Bulgaria*, §§ 52-56; and *Bock and Palade v. Romania*, §§ 58-65) (for further details, see the sub-chapters on the Principle of lawfulness and Public or general interest).

67. However, in certain rare cases the Court leaves one of these questions open and continues the examination of the case under the proportionality limb (*Megadat.com SRL v. Moldova*, § 67, and *Ünspeđ Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, § 43)(for further details, see the sub-chapter on Proportionality and related issues (fair balance, compensation, margin of appreciation)).

68. Once the Court is satisfied that there has been an interference with the applicant’s rights, it examines in each case to which category the interference complained of belongs. If the applicant’s ownership has been extinguished under the provisions of domestic law, it will examine the case under the second sentence of the first paragraph, i.e. as deprivation of “possessions”. Deprivation of “possessions” covers a range of situations, regardless of how they are qualified under domestic law, where the very substance of an individual right has been extinguished.

69. Measures less invasive than expropriation may be qualified by the Court as “control of use of property”. In certain cases a fine line is to be drawn between measures which are qualified as control of use of property and those which amount to deprivation of property. The same holds true as regards the distinction to be made between control of use of property and measures examined by the Court under the first general principle of peaceful enjoyment of one’s “possessions”. Generally, the less intrusive the measure, the more it lends itself to the analysis under the first general principle than under the head of control of use.

70. Similar measures may be qualified differently by the Court (e.g. in *Sporrong and Lönnroth v. Sweden*, §§ 62-64, an expropriation order combined with prohibition of construction for a considerable period of time was analysed as control of use of property, while similar measures were examined under the general principle in *Phocas v. France*, § 52; *Iatridis v. Greece* [GC], § 55; *Katte Klitsche de la Grange v. Italy*, § 40; *Pialopoulos and Others v. Greece*, § 53. Likewise, in *Pressos Compania Naviera S.A. and Others v. Belgium*, § 34, the extinguishing of compensation claims by means of legislative intervention was examined as a deprivation of property, whereas in *Stran Greek Refineries and Stratis Andreadis v. Greece* the Court examined the same kind of measure under the first rule of Article 1 of Protocol No. 1.

71. In some cases it is more difficult for the Court to qualify a measure or a series of measures as either deprivation or control of use of property, essentially because it cannot be easily assimilated to measures qualified in the existing case-law or because the series of measures consists of disparate decisions belonging to various branches of domestic law. In such cases it will probably analyse the circumstances of the case under the general principle of the first sentence of Article 1 of Protocol No. 1. This will apply in particular to situations where not just one decision, but a combination of various measures/decisions affected the applicant’s property (*Đokić v. Bosnia and Herzegovina*, §§ 55-56 – a contract of purchase in respect of a flat legally valid, applicant registered as an owner, but unable to have the flat restored to him; and *Matos e Silva, Lda., and Others v. Portugal*, § 85 – in the absence of a formal expropriation decision restrictions on the right to property stemmed from the reduced ability to dispose of it and from the damage caused by the fact that expropriation was contemplated; but the applicants continued to work the land). In a case where the applicants complained that their rights had been violated on account of the discrepancy between the assessments of the market value of expropriated property for the purposes of the determination of

compensation and for the purposes of inheritance tax in respect of the same property, expropriation and taxation were examined separately and no violation was found. However, the combined effect of both measures was examined under the first rule and resulted in a finding of a violation (*Jokela v. Finland*, §§ 61-65).

72. In such cases, although the measures did not all have the same legal effect and had different aims, the Court normally considers that they must be looked at together in the light of the general principle of respect for the peaceful enjoyment of one's "possessions" (*Matos e Silva, Lda., and Others v. Portugal*, §§ 84-85).

73. This difficulty in qualifying measures as control of use or as coming under the general principle is also reflected in the fact that in some cases the Court does not indicate expressly which part of Article 1 of Protocol No. 1 applied in the case (*Papamichalopoulos v. Greece*, § 46) or expressly leaves the question open (*Lavrechov v. the Czech Republic*, § 43; *Denisova and Moiseyeva v. Russia*, § 55; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, §§ 39-40).

74. In any event, the Court will apply the same criteria of assessment, regardless of the classification of the interference. In all cases it must serve the public interest (see the chapter on interference in public interest below), comply with the conditions provided for by law (see the chapter on Interference subject to conditions provided for by law below) and pass the fair balance test (see the chapter on Proportionality and related issues below).

75. Proceedings concerning a civil-law dispute between private parties do not engage by themselves the responsibility of the State under Article 1 of Protocol No. 1 to the Convention (*Ruiz Mateos v. the United Kingdom*, Commission decision, pp. 268 and 275; *Gustafsson v. Sweden* [GC], § 60; *Skowroński v. Poland* (dec.); *Kranz v. Poland* (dec.); *Eskelinen v. Finland* (dec.); *Tormala v. Finland* (dec.); *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia**, § 310). The mere fact that the State, through its judicial system, provides a forum for the determination of a private-law dispute does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1 (*Kuchař and Štis v. the Czech Republic*, Commission decision), even if the substantive result of a judgment given by a civil court results in the loss of certain "possessions". It is, however, part of the States' duties under Article 1 of Protocol No. 1 at least to set up a minimum legislative framework including a proper forum allowing those who claim that their right had been infringed with to assert their rights effectively and have them enforced. By failing to do so a State would seriously fall short of its obligation to protect the rule of law and prevent arbitrariness (*Kotov v. Russia* [GC], § 117).

76. The Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and it is not its function to take the place of the national courts. Rather, its role is to ensure that the decisions of those courts are not arbitrary or otherwise manifestly unreasonable (*Anheuser-Busch Inc. v. Portugal* [GC], § 83). The State may be held responsible for losses caused by such determinations only if the court decisions are not in accordance with domestic law or if they are flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 or a person has been arbitrarily and unjustly deprived of property in favour of another (*Bramelid and Malmström v. Sweden*, Commission decision, pp. 82-83; *Dabić v. the former Yugoslav Republic of Macedonia* (dec.); *Vulakh and Others v. Russia*, § 44).

77. It is only very exceptionally that the Court has regarded a judgment of a civil court as an interference because the modalities of its execution were so inflexible as to impose an excessive burden on a party (*Milhau v. France*, §§ 48-53). This was also the case where an apartment bought by the applicant on the basis of forged documents indicating that it had been purchased as part of a privatisation scheme was subsequently taken away from her by the municipality, the Court considering that the subject matter of the dispute and the substantive provisions applied comprised significant elements of public law and implicated the State in its regulatory capacity (*Gladysheva v. Russia*, §§ 52-59). Similarly, in *Zhidov and Others v. Russia*, §§ 94-95, the Court found that the court injunctions issued in proceedings between private parties had constituted an "interference"

because they were pursuing the public interest. In *SIA AKKA/LAA v. Latvia*, §§ 58-59, a judgment issued in proceedings concerning the protection of the intellectual property of authors who had entrusted the applicant organisation to manage the copyright of their musical works was considered to amount to an interference because it limited the right of the applicant organisation to freely enter into contracts in relation to the broadcasting of music.

a. Deprivation of property

78. Where the applicant's rights have been extinguished by operation of law, the Court will examine the applicant's complaints under the second rule, which is deprivation of property.

79. In *The Holy Monasteries v. Greece*, §§ 60-61, the Court held that a statutory provision automatically giving the use and possession of designated property to the State had for effect the transfer of full ownership of the land in question to the State and constituted a deprivation of "possessions"

80. Deprivation of "possessions" may arise also in situations where there has been no formal decision extinguishing individual rights, but the impact on the applicant's "possessions" of a set of various measures applied by the public authorities is so profound as to make them assimilable to expropriation. In order to determine whether there has been a deprivation of "possessions", the Court must not confine itself to examining whether there has been dispossession or formal expropriation; it must look behind the appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are "practical and effective", it has to be ascertained whether that situation amounted to a *de facto* expropriation (among other authorities, *Sporrong and Lönnroth v. Sweden*, § 63; *Vasilescu v. Romania*, § 51; *Schembri and Others v. Malta*, § 29; *Brumărescu v. Romania* [GC], § 76; *Depalle v. France* [GC], § 78). Indeed, under various Convention Articles, the Court's case-law indicates that it may be necessary to look beyond the appearances and the language used and concentrate on the realities of the situation (for example, *Apap Bologna v. Malta*, § 83).

81. For example, in a case where the navy took possession of the applicants' land, established a naval base there and the applicants were subsequently unable either to have access to their property or to sell, bequeath, mortgage or make a gift of it, the ability to dispose of the land taken together with the failure of the attempts made to remedy the situation, entailed sufficiently serious *de facto* consequences for the applicants for the Court to consider that they had been expropriated, even in the absence of any formal expropriation decision (*Papamichalopoulos v. Greece*, §§ 44-46).

82. In a case concerning continuing detention of gold coins confiscated prior to the entry into force of Protocol No. 1, where the judgment ordering return of the coins to the applicant given after that entry was subsequently quashed, the Court noted that practical hindrance can amount to a violation of the Convention just like a legal impediment. The loss of all ability to dispose of the property taken together with the failure of the attempts made to have the situation remedied entailed sufficiently serious consequences for the applicant to be regarded by the Court as a *de facto* confiscation (*Vasilescu v. Romania*, §§ 51-54).

83. In a case where a municipality issued an order, under an expedited procedure, for the possession of the applicant company's land, took physical possession of that land and began road-building works, the subsequent judgment retrospectively authorising the unlawful possession by public authorities, deprived the applicant company of the possibility of obtaining restitution of its land. The effect of the judgment amounted to a deprivation of its "possessions" (*Belvedere Alberghiera S.r.l. v. Italy*, § 54). The loss of 40 per cent and 100 per cent of value of plots of land combined with the partial loss of physical access to them as a result of the construction of a dam was also held to amount to a *de facto* expropriation (*Aygun v. Turkey*, § 39). A similar conclusion was drawn in respect of an unlawful demolition of a building (*Zammit and Vassallo v. Malta*, § 54).

84. If the Court regards a measure or a set of measures as an expropriation, this normally entails for the State an obligation to award compensation to the affected owner (see the sub-chapter on compensation for the Interference with property as an element of fair balance).

b. Control of use

85. Measures qualified by the Court under the third rule, as control of use, cover a range of situations, including, for example, the following: revocation or change of conditions of licences affecting the running of businesses (*Tre Traktörer Aktiebolag v. Sweden*, § 55; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, § 49; *Bimer S.A. v. Moldova*, §§ 49 and 51; *Megadat.com SRL v. Moldova*, § 65); introducing a State monopoly on the school books market (*Könyv-Tár Kft and Others v. Hungary*, §§ 43 and 59); rent control systems (*Mellacher and Others v. Austria*, § 44; *Hutten-Czapska v. Poland* [GC], § 160; *Anthony Aquilina v. Malta*, § 54; *Bittó and Others v. Slovakia*, § 101); statutory suspension of the enforcement of orders for re-possession in respect of tenants who had ceased to pay rent (*Immobiliare Saffi v. Italy* [GC], § 46); limitations imposed by law on the level of rent that the property owners could demand from the lease holder and the indefinite extension of a lease contract on the same terms, while the owners continued to receive rent on the same terms they had freely agreed to when signing the contract and were free to sell their land albeit subject to the lease attaching to the land (*Lindheim and Others v. Norway*, § 75-78); loss of certain exclusive rights over land (*Chassagnou and Others v. France* [GC], § 74 – obligation to tolerate hunting on the applicants' land; *Herrmann v. Germany* [GC], § 72); refusal to issue official registration of a car (*Yaroslavtsev v. Russia*, § 32; *Sildedzis v. Poland*, § 45); imposition of positive obligations on land owner (e.g. obligatory reforestation – *Denev v. Sweden*, Commission decision); or imposition of a legal qualification as forest land, with the attendant obligations imposed on the owner (*Ansay and Others v. Turkey* (dec.)).

86. Demolition of buildings which have been unlawfully constructed is usually regarded as control of use of property (*Ivanova and Cherkezov v. Bulgaria*, § 69). In *Saliba v. Malta*, § 46, the Court held that the effect of ordering the demolition of a totally unlawful construction was to put things back in the position they would have been in had the requirements of the law not been disregarded. However, in a number of cases the demolition measure amounted to a penalty and therefore came under the criminal head of Article 6 of the Convention, even though there had been no criminal conviction (*Hamer v. Belgium*, §§ 59-60). Similarly, in *Sud Fondi srl and Others v. Italy* (dec.), the Court held that Article 7 applied to the confiscation of unlawfully developed land resulting in subsequent demolition of the buildings already erected.

87. Forfeiture and confiscation are regarded by the Court as control of use of property, to be considered under the second paragraph of Article 1 of Protocol No. 1 despite the obvious fact that they entail a deprivation of “possessions” (*AGOSI v. the United Kingdom*, § 51; *Raimondo v. Italy*, § 29; *Honecker and Others v. Germany* (dec.); *Riela and Others v. Italy* (dec.)). Therefore, the Court's constant approach is that a confiscation measure constitutes control of use of property (*Air Canada v. the United Kingdom*, § 34; *Silickienė v. Lithuania*, § 62).

88. Even preventive confiscation measures, imposed in the absence of a criminal conviction, do not, as such, amount to a breach of Article 1 of Protocol No. 1. The operation of the presumption that the property of a person suspected of belonging to a criminal organisation represents the proceeds from unlawful activities, if the relevant proceedings afford the owner a reasonable opportunity of putting his or her case to the authorities, is not prohibited *per se*, especially if the courts are debarred from basing their decisions on mere suspicions (*Arcuri and Others v. Italy* (dec.)).

c. General rule

89. The first rule is of a general nature. If the interference with the property rights cannot be qualified under the second or the third rule, the first rule applies (the so-called catch-all formula).

90. In *Sporrong and Lönnroth v. Sweden*, §§ 64-65, the Court held that the expropriation permits were an initial step in a procedure leading to deprivation of “possessions” and examined them under the first sentence of the first paragraph.

91. In *Stran Greek Refineries and Stratis Andreadis v. Greece*, §§ 62 and 68, the Court examined the legislative intervention declaring the arbitration award void and unenforceable under the general rule and found a violation of the applicants’ right to property.

92. The case *Loizidou v. Turkey* (§§ 61-64), concerned the applicant’s access to her property in Northern Cyprus. The Court held that the applicant’s complaint was not limited to the right to freedom of movement and that Article 1 of Protocol No. 1 applied. The applicant remained the legal owner of the land. The continuous denial of access by Turkish forces was regarded as interference and a violation of the applicant’s right to property under the general rule was found.

93. Measures such as land consolidation proceedings (*Prötsch v. Austria*, § 42), town-planning policy (*Phocas v. France*, § 52), administrative eviction (*Iatridis v. Greece* [GC], § 55), approval of land-use plan (*Katte Klitsche de la Grange v. Italy*, § 40), and a planning measure – a building freeze – on the applicant’s property (*Pialopoulos and Others v. Greece*, § 56) were examined under the general principle.

2. Principle of lawfulness

94. Any interference with the rights protected by Article 1 of Protocol No. 1 must meet the requirement of lawfulness (*Vistiņš and Perepjolkins v. Latvia* [GC], § 95; *Béláné Nagy v. Hungary* [GC], § 112). 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 law” relating to interferences with the rights protected under Articles 9, 10 and 11 of the Convention.

95. The principle of lawfulness is the first and most important requirement of Article 1 of Protocol No. 1. The second sentence of the first paragraph authorises a deprivation of “possessions” “subject to the conditions provided for by law” and the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (*Iatridis v. Greece* [GC], § 58; *Former King of Greece and Others v. Greece* [GC], § 79; *Broniowski v. Poland* [GC], § 147).

96. The existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness. In this connection it should be pointed out that when speaking of “law”, Article 1 of Protocol No. 1 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statutory law as well as case-law (*Špaček, s.r.o., v. the Czech Republic*, § 54; *Vistiņš and Perepjolkins v. Latvia* [GC], § 96).

97. The requirement of “lawfulness” within the meaning of the Convention also demands compatibility with the rule of law which includes freedom from arbitrariness (*East West Alliance Limited v. Ukraine*, § 167; *Ünspeđ Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, § 37). Divergences in the case-law may create legal uncertainty, which is incompatible with the requirements of the rule of law (*Molla Sali v. Greece* [GC], § 153).

98. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (*Beyeler v. Italy* [GC] § 109; *Hentrich v. France*, § 42; *Lithgow and Others v. the United Kingdom*, § 110; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia*

[GC], § 103; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 187; *Hutten-Czapska v. Poland* [GC], § 163).

99. As to the accessibility of law, the term “law” is to be understood in its substantive sense and not in its formal one. Hence, the fact that certain regulations pertaining to the exercise of rights protected under Article 1 of Protocol No. 1 were not published in official gazettes in the form provided for by law for promulgation of legislative or regulatory instruments binding on citizens and legal entities in general, does not prevent such regulations from being considered law if the Court is satisfied that they were made known to the public by way of other means (*Špaček, s.r.o., v. the Czech Republic*, §§ 57-60).

100. A norm is “foreseeable” when it affords a measure of protection against arbitrary interferences by the public authorities (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 143). Any interference with the peaceful enjoyment of possessions must, therefore, be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by that provision. In ascertaining whether that condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (*Lekić v. Slovenia* [GC], § 95; *Jokela v. Finland*, § 45; *Capital Bank AD v. Bulgaria*, § 134; and *Stolyarova v. Russia*, § 43). A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess the consequences which a given action may entail. This is particularly true with regard to persons carrying on a professional or commercial activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can, on this account, be expected to take special care in assessing the risks that such activity entails (*Lekić v. Slovenia* [GC], § 97).

101. In the context of Article 6 of the Convention, the principle of the rule of law and the notion of a fair trial preclude, except for compelling public interest reasons, interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute (*Stran Greek Refineries and Stratis Andreadis v. Greece*, § 49; *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 112; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], § 57; *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, § 76). Nevertheless, when examined under Article 1 of Protocol No. 1, laws with retrospective effect which were found to constitute legislative interference still conformed to the lawfulness requirement of Article 1 of Protocol No. 1 (*Maggio and Others v. Italy*, § 60, *Arras and Others v. Italy*, § 81; *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, § 104). Measures of control of use effected on the basis of laws enacted posterior to facts giving rise to the interference are not as such unlawful (*Saliba v. Malta*, §§ 39-40), if these laws were not enacted specifically with the purpose of influencing the outcome of an individual case. Neither the Convention nor its protocols preclude the legislature from interfering with existing contracts with retroactive effect (*Mellacher and Others v. Austria*, § 50; *Bäck v. Finland*, § 68).

102. However, in certain circumstances, the retrospective application of legislation whose effect is to deprive someone of a pre-existing “asset” that was part of his or her “possessions” may constitute interference that is liable to upset the fair balance between the demands of the general interest on the one hand and the protection of the right to peaceful enjoyment of “possessions” on the other (*Maurice v. France* [GC], §§ 90 and 93). This also applies to cases in which the dispute is between private individuals and the State is not itself a party to the proceedings (*Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.S. v. Turkey*, § 40).

103. The principle of lawfulness entails also a duty on the part of the State or other public authority to comply with judicial orders or decisions against it (*Belvedere Alberghiera S.r.l. v. Italy*, § 56; see the chapter on Enforcement proceedings below).

3. Public or general interest

104. Any interference by a public authority with the peaceful enjoyment of “possessions” can only be justified if it serves a legitimate public (or general) interest (*Bélané Nagy v. Hungary* [GC], § 113; *Lekić v. Slovenia* [GC], § 105).

105. The following purposes have been found by the Court to fall within the notion of public interest within the meaning of this provision: elimination of social injustice in the housing sector (*James and Others v. the United Kingdom*, § 45); nationalisation of specific industries (*Lithgow and Others v. the United Kingdom*, §§ 9 and 109); adoption of land and city development plans (*Sporrong and Lönnroth v. Sweden*, § 69); *Cooperativa La Laurentina v. Italy*, § 94; securing land in connection with the implementation of the local land development plan (*Skibiński v. Poland*, § 86); prevention of tax evasion (*Hentrich v. France*, § 39); measures to combat drug trafficking and smuggling (*Butler v. the United Kingdom* (dec.)); measures to restrict the consumption of alcohol (*Tre Traktörer AB v. Sweden*, § 62); protection of morals (*Handyside v. the United Kingdom*, § 62); control of legitimate origin of cars brought into circulation (*Sildedzis v. Poland*, § 50); confiscation of monies acquired unlawfully (*Honecker and Others v. Germany* (dec.)); transition from a socialist to a free-market economy (*Lekić v. Slovenia* [GC], §§ 103 and 105); and the smooth operation of the justice system, with further references to the importance of administering justice without delays which might jeopardise its effectiveness and credibility (*Konstantin Stefanov v. Bulgaria*, § 64).

106. The protection of the environment is also considered to be in the public interest (*G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], § 295; *Bahia Nova S.A. v. Spain* (dec.); *Chapman v. the United Kingdom* [GC], § 82). In the case of *Hamer v. Belgium* (§ 79) the Court noted that while none of the Articles of the Convention is specifically designed to provide general protection of the environment as such (*Kyrtatos v. Greece*, § 52), “in today’s society the protection of the environment is an increasingly important consideration” and that “economic considerations and even certain fundamental rights such as the right of property should not take precedence over considerations relating to protection of the environment, in particular where the State has enacted legislation on the subject”. Finally, it was considered that the development of housing, both for private commercial and public interest purposes, did not involve as strong a public interest as the protection of the environment (*Svitlana Ilchenko v. Ukraine*, § 70).

107. Correction of errors committed by the State in the context of Article 1 of Protocol No. 1 also falls within the notion of public interest (*Albergas and Arlauskas v. Lithuania*, § 57; *Pyrantienė v. Lithuania*, §§ 44-48; *Bečvář and Bečvářová v. the Czech Republic*, § 67); including situations where social insurance benefits have been validly acquired by individuals on the basis of individual decisions which subsequently turned out to have been erroneous (*Moskal v. Poland*, § 63). More broadly, putting an end, by way of legislative intervention, to pension advantages regarded as unwarranted or acquired unjustly, in order to ensure greater fairness in the pension system (*Cichopek and Others v. Poland* (dec.), § 144) has also been found to pursue the public interest.

108. Various regulatory measures applied by the State in the area of housing, such as rent control or protected tenancies, have been often accepted by the Court as being in the public interest as serving the purpose of social protection of tenants (*Anthony Aquilina v. Malta*, § 57; *Velosa Barreto v. Portugal*, § 25; *Hutten-Czapska v. Poland* [GC], § 178; *Amato Gauci v. Malta*, § 55).

109. Conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities (*Beyeler v. Italy* [GC], § 112; *SCEA Ferme de Fresnoy v. France* (dec.); *Debelianovi v. Bulgaria*, § 54; *Kozacioğlu v. Turkey* [GC], § 54).

110. The list of purposes which interference may serve so as to fall within the ambit of the notion of public interest is extensive and may include various new purposes served by public policy considerations in various factual contexts. In particular, the decision to enact laws expropriating property (*Former King of Greece and Others v. Greece* [GC], § 87; *Vistiņš and Perepjolkins v. Latvia* [GC], § 106) or concerning social-insurance benefits will commonly involve consideration of political, economic and social issues. The Court will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation (*Bélané Nagy v. Hungary* [GC], § 113).

111. Under the system of protection established by the Convention, it is for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures of deprivation of property or interfering with the peaceful enjoyment of “possessions”. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a wide margin of appreciation. For example, the margin of appreciation available to the legislature in implementing social and economic policies will be a wide one and the Court will respect the legislature’s judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation (*Bélané Nagy v. Hungary* [GC], § 113). Furthermore, the notion of “public interest” is necessarily extensive (*Vistiņš and Perepjolkins v. Latvia* [GC], § 106; *R.Sz. v. Hungary*, § 44; *Grudić v. Serbia*, § 75). The Court normally shows deference to the Contracting States’ arguments that an interference under its examination was in the public interest and the intensity of its review in this regard is low. Hence, an applicant’s argument that a given measure served in reality another purpose than that relied on by the defendant Contracting Party in the context of a given case before the Court seldom has any serious prospects of success. In any event, it is sufficient for the Court that the interference serves the public interest, even if it is different from that expressly relied on by the Government in the proceedings before the Court. In certain instances, the Court even identified the purpose of its own motion (*Ambruosi v. Italy*, § 28; *Marija Božić v. Croatia*, § 58).

112. The margin of appreciation will, in particular, be wide when, for instance, laws are adopted in the context of a change of political and economic regime (*Valkov and Others v. Bulgaria*, § 91); the adoption of policies to protect the public purse (*N.K.M. v. Hungary*, §§ 49 and 61); or to reallocate funds (*Savickas and Others v. Lithuania* (dec.)); or in the context of austerity measures prompted by a major economic crisis (*Koufaki and Adedy v. Greece* (dec.), §§ 37 and 39; and *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), § 22; *Da Silva Carvalho Rico v. Portugal* (dec.), § 37).

113. As a result of this deference to the domestic authorities’ appraisal, examples of where the Court found no public interest justifying interference are rare (*S.A. Dangeville v. France*, §§ 47 and 53-58 – failure to pay back overpaid tax; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, § 56) – annulment of a licence to run the applicants’ business without any public interest reasons relied on by the authorities in the relevant decisions; *Vassallo v. Malta*, § 43 – the lapse of twenty-eight years from the date of the taking of the property without any concrete use having been made of it in accordance with the requirements of the initial taking, raises an issue under Article 1 of Protocol No. 1, in respect of the public interest requirement; and *Megadat.com SRL v. Moldova*, § 79 – not shown to the Court’s satisfaction that the authorities followed any genuine and consistent policy considerations when invalidating the applicant company’s licences).

4. Proportionality and related issues (fair balance, compensation, margin of appreciation)

114. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1 of Protocol No. 1, an interference with the right to the peaceful enjoyment of “possessions”, apart from being prescribed by law and in the public interest, must strike a “fair balance” between the demands of the general interest of the community and the requirements of

the protection of the individual's fundamental rights (*Beyeler v. Italy* [GC], § 107; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 108).

115. In other words, in cases involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden. In assessing compliance with that requirement, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct (*Broniowski v. Poland* [GC], § 151).

116. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 of Protocol No. 1 (*Sporrong and Lönnroth v. Sweden*, § 69; *Brumărescu v. Romania* [GC], § 78; *Saliba v. Malta*, § 36; *Bistrović v. Croatia*, § 34).

117. The issue of whether a fair balance has been struck becomes relevant only once it has been established that the interference in question served the public interest, satisfied the requirement of lawfulness and was not arbitrary (*Iatridis v. Greece* [GC], § 58; *Beyeler v. Italy* [GC], § 107).

118. The issue is most often decisive for the determination of whether there has been a violation of Article 1 of Protocol No. 1. The Court conducts normally an in-depth analysis of the proportionality requirement, unlike the more limited review of whether the interference pursued a matter of public interest (see the chapter on Interference in the public interest above).

119. The purpose of the proportionality test is to establish first how and to what extent the applicant was restricted in the exercise of the right affected by the interference complained of and what were the adverse consequences of the restriction imposed on the exercise of the applicant's right on his/her situation. Subsequently, this impact is balanced against the importance of the public interest served by the interference.

120. Numerous factors are taken into consideration by the Court in this examination. There is no fixed list of such factors. They vary from case to case, depending on the facts of the case and the nature of the interference concerned.

121. Generally, where a public-interest issue is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (*Fener Rum Erkek Lisesi Vakfı v. Turkey*, § 46; *Novoseletskiy v. Ukraine*, § 102). The Court has regard to the conduct of the parties to the proceedings as a whole, including the steps taken by the State (*Beyeler v. Italy* [GC], § 114; *Bistrović v. Croatia*, § 35).

122. Some typical factors for the examination of the fair balance test in the context of Article 1 of Protocol No. 1 are as follows.

a. Procedural factors

123. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, it has been construed to mean that persons affected by a measure interfering with their "possessions" must be afforded a reasonable opportunity to put their case to the responsible authorities for the purpose of effectively challenging those measures, pleading, as the case might be, illegality or arbitrary and unreasonable conduct (*G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], § 302; *Yildirim v. Italy* (dec.); *AGOSI v. the United Kingdom*, §§ 55 and 58-60; *Air Canada v. the United Kingdom*, § 46; *Arcuri and Others v. Italy* (dec.); *Riela and Others v. Italy* (dec.)). These procedural guarantees are inherent in the principle of lawfulness *Lekić v. Slovenia* [GC], § 95) (see the sub-chapter on the principle of lawfulness above).

124. In ascertaining whether this condition has been satisfied, the Court must take a comprehensive view of the applicable procedures (*AGOSI v. the United Kingdom*, § 55; *Bowler International Unit v. France*, §§ 44-45; *Jokela v. Finland*, § 45; *Denisova and Moiseyeva v. Russia*, § 59; *Microintellect OOD v. Bulgaria*, § 44).

125. In cases where the applicants did not have the possibility of effectively challenging the measure, the Court has found that an excessive burden had been borne by them (*Hentrich v. France*, § 49; *Könyv-Tár Kft and Others v. Hungary*, § 59; and *Uzan and Others v. Turkey*, § 215). The Court checks whether the procedure applied provided the applicant a fair possibility of defending his or her interests (*Bäck v. Finland*, § 63). A violation was found on account of a refusal by the receiver of a credit union to grant its directors access to the union’s accounting documents to enable them to show that it was financially sound (*Družstevní Záložna Pria and Others v. the Czech Republic*, §§ 94-95). The fact of whether major arguments advanced by the applicants were carefully examined by the authorities is also relevant (*Megadat.com SRL v. Moldova*, § 74; *Novoseletskiy v. Ukraine*, § 111; *Bistrović v. Croatia*, § 37). The operation of unchallengeable presumptions of benefit resulting from expropriation (*Papachelas v. Greece* [GC], §§ 53-54), and presumptions used in the context of calculating compensation for expropriation (*Katkaridis and Others v. Greece*, § 49; *Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, § 33) were held against the Governments.

126. A failure on the part of the national authorities to carry out the balancing exercise between the private interests involved in the case and the public interest may also be held against the respondent State (*Megadat.com SRL v. Moldova*, § 74). A violation was found in a case where all life savings generated by employment were confiscated from a person who had obtained that employment using a false passport. The domestic courts failed to examine whether the confiscation order had maintained a fair balance between the property rights and the public interest. Hence, the failure by a domestic court to make the proportionality analysis can result in a breach of Article 1 of Protocol No. 1 (*Paulet v. the United Kingdom*, §§ 68-69). Similarly, an automatic, general and inflexible protective measure of uncertain duration can result in a violation (*Uzan and Others v. Turkey*, § 193).

127. The length of time it took to challenge the measures restricting the applicant’s rights are also taken into consideration. In *Luordo v. Italy*, § 70, where there was no justification for restricting the applicant’s right for the full duration of the bankruptcy proceedings. While, in principle, it is necessary to deprive the bankrupt of the right to administer the “possessions” in order to achieve the aim of these proceedings, the necessity will diminish with the passage of time and the excessive length of the bankruptcy proceedings. In *Uzan and Others v. Turkey*, § 207, one of the factors deemed relevant by the Court was that the relevant restrictions on the applicants’ property lasted roughly 10 years or more.

b. Choice of measures

128. One of the elements of the fair balance test is whether other, less intrusive measures existed that could reasonably have been resorted to by the public authorities in the pursuance of the public interest. However, their possible existence does not in itself render the contested legislation unjustified. Provided that the legislature remains within the bounds of its margin of appreciation, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislature’s discretion should have been exercised in another way (*James and Others v. United Kingdom*, § 51; *Koufaki and Adedy v. Greece* (dec.), § 48).

129. It may also be relevant whether it would have been possible to achieve the same objective by less invasive interference with the applicant’s rights and whether the authorities examined the possibility of applying these less intrusive solutions (*OAO Neftyanaya Kompaniya Yukos v. Russia*, §§ 651-654; *Vaskrsić v. Slovenia*, § 83).

130. Even when the Government had given no specific reasons as to exactly why the measure in question had been the only appropriate measure for achieving their desired social and economic goals, whether it seriously considered other means for achieving them or assessed the proportionality of the measure to the aims sought, the Court was prepared to accept that the reason for the choice of the measure may have been implicit at the beginning (*Zelenchuk and Tsytsyura v. Ukraine*, § 122). The Court has also taken into account the fact that no other Council of Europe member State, including those in a similar position, had in place a similar measure (*ibid.*, § 127).

c. Substantive issues relevant for the fair balance test

131. In certain cases the fair balance test includes a question whether the special circumstances of the case were sufficiently taken into consideration by the State, including whether expropriation of part of a property affected the value or amenities of the non-expropriated part belonging to the applicant (*Azas v. Greece*, §§ 51-53; *Interoliva ABEE v. Greece*, §§ 31-33). The failure to do so may give rise to a violation of Article 1 of Protocol No. 1 in cases where the nature of the construction in the vicinity of the applicant's property had evidently contributed directly to the substantial depreciation of the value of the remaining property, for instance where public roads or other constructions were built in the close vicinity of the remaining land (*Ouzounoglou v. Greece*, § 30; *Bistrović v. Croatia*, §§ 42-44).

132. The application of an irrefutable presumption that the value of the applicant's remaining property had increased as a result of expropriation and that the applicant had therefore benefited from it was held against the respondent State in the context of the examination of proportionality (*Papachelas v. Greece* [GC], §§ 53-54).

133. When scrutinising the proportionality of an interference with an applicant's right to peaceful enjoyment of "possessions", the state of uncertainty in which the applicant might find himself as a result of delays attributable to the authorities is a factor to be taken into account in assessing the State's conduct in such litigation (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, § 54; *Broniowski v. Poland* [GC], §§ 151 and 185; *Barcza and Others v. Hungary*, § 47; *Frendo Randon and Others v. Malta*, § 55; *Hunguest Zrt v. Hungary*, §§ 25 and 27; *Zelenchuk and Tsytsyura v. Ukraine*, §§ 91 and 106).

134. In cases where interference did not consist in expropriation the Court will also examine whether the laws allowed for some form of redress for restrictions which lasted for a certain period of time (*a contrario*, *Skibiński v. Poland*, §§ 93-95); whether the interference was prohibitive or oppressive (*Allianz-Slovenska-Poistovna, A.S., and Others v. Slovakia* (dec.); *Konstantin Stefanov v. Bulgaria*, § 67); whether the State was not accorded a preferential treatment in the context of civil proceedings, putting an individual at a disadvantage (*Zouboulidis v. Greece (no. 2)*, §§ 32 and 35) – violation on account of shorter period of prescription in favour of the State); whether the value of property was established under the same rules for the tax purposes and for the purposes of compensation for expropriation to be paid by the State (*Jokela v. Finland*, §§ 62 and 65 – violation on account of the former being established as much higher than the latter).

135. Temporary character of measures complained of is normally to the advantage of the State (*Da Conceição Mateus and Santos Januário v. Portugal* (dec.), § 29; *Savickas and Others v. Lithuania* (dec.), § 92).

136. Where an interference with the right to the peaceful enjoyment of one's "possessions" was caused in the context of a rectification of an error committed by the public authority (which, as it has been stated previously, serves the public interest), the principle of good governance may not only impose on the authorities an obligation to act promptly in correcting their mistake (*Moskal v. Poland*, § 69; *Paplauskienė v. Lithuania*, § 49), but also such errors must not be remedied at the expense of the individual concerned, especially where no other conflicting private interest is at stake (*Gashi v. Croatia*, § 40; *Gladysheva v. Russia*, § 80; *Pyrantienė v. Lithuania*, § 70; *Moskal v. Poland*,

§ 73; *Albergas and Arlauskas v. Lithuania*, § 74; *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, § 48).

d. Issues concerning the applicant

137. One of the significant factors for the balancing test under Article 1 of Protocol No. 1 is whether the applicant attempted to take advantage of a weakness or a loophole in the system (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 109; *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, §§ 69 and 71). Similarly, in *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], § 301, the Court noted that the degree of culpability or negligence on the part of the applicants or, at the very least, the relationship between their conduct and the offence in question may be taken into account in order to assess whether a confiscation was proportionate. A person's qualification as an accountant was one of the decisive reasons for deciding that reimbursing excess contributions without interest was proportionate (*Taşkaya v. Turkey* (dec.), §§ 49-50). In certain cases the applicant's personal vulnerability is also taken into consideration, as in *Pyrantienė v. Lithuania*, § 62, where the applicant was of pensionable age and suffered from long-term disability). An obligation imposed on the applicant to repay benefits already received in reliance on an administrative decision, in her good faith and where the authorities had made a mistake, while not taking into account her health and financial situation, was considered to be disproportionate (*Čakarević v. Croatia*, §§ 82-90).

138. The Court may also examine whether the measure complained of targeted only a certain group of individuals who were singled out, or was generally applicable (*Hentrich v. France*, § 47; *R.Sz. v. Hungary*, § 60).

139. It is also relevant whether the applicant could reasonably have been aware of the legal limitations on his property in situations where he was prevented, for example, from building another house on his property or from changing its use, or lost the "possessions" (*Allan Jacobsson v. Sweden* (no. 1), §§ 60-61; *Z.A.N.T.E. – Marathonisi A.E. v. Greece*, § 53; and *Depalle v. France* [GC], § 86 – for the purposes of determination of whether the applicant's rights were protected) and, in particular, whether he was aware of these restrictions when buying the property concerned. In several cases the Court has accepted a total lack of compensation when the owner knew, or ought to have known, or reasonably would have been aware of the possibility of future restrictions. In *Fredin v. Sweden* (no. 1); §§ 12, 16 and 54, the environmental law provided for the revocation of a mining licence without compensation after the expiry of ten years. It had already been in force for several years when the applicant had initiated the investment. In *Łqcz v. Poland* (dec.), relevant excerpts from the local development plan concerning the road construction were appended to the sale contract. The Court therefore concluded that the applicants acquired the property being fully aware of its particular legal status and that in the circumstances the State cannot be held responsible for the impugned difficulties with the sale of the property. The same approach has been applied in the social insurance context (*Mauriello v. Italy* (dec.)).

140. In *Uzan and Others v. Turkey*, § 212 the Court took into account the absence of evidence to suggest that the applicants could have been involved in any fraud.

e. Compensation for the interference with property as an element of fair balance

141. Compensation terms are material to the assessment of fair balance and, notably, whether the contested measure does not impose a disproportionate burden on the applicants (*The Holy Monasteries v. Greece*, § 71; *Platakou v. Greece*, § 55). The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances.

142. What is reasonable will depend on the circumstances of a given case, but a wide margin of appreciation is applicable to the determination of the amount of compensation. The Court’s power of review is limited to ascertaining whether the choice of compensation terms falls outside the State’s wide margin of appreciation in this domain (*James and Others v. the United Kingdom*, § 54). The Court will respect the legislature’s judgment as to the compensation due for expropriation unless it is manifestly without a reasonable foundation (*Lithgow and Others v. the United Kingdom*, § 122).

143. The provision does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of “public interest” (such as those pursued in measures of economic reform or designed to achieve greater social justice) may call for less than reimbursement of the full market value (*James and Others v. the United Kingdom*, § 54; *Papachelas v. Greece* [GC], § 48; *The Holy Monasteries v. Greece*, §§ 70-71; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], § 54; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, § 115).

144. The balance between the general interest of the community and the requirements of the protection of individual fundamental rights mentioned above is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its “market” value, as determined at the time of the expropriation (*Pincová and Pinc v. Czech Republic*, § 53, *Gashi v. Croatia*, § 41; *Vistiņš and Perepjolkins v. Latvia* [GC], § 111; *Guiso-Gallisay v. Italy* (just satisfaction) [GC], § 103; *Moreno Diaz Peña and Others v. Portugal*, § 76).

145. The adequacy of compensation would be diminished if it were to be paid without reference to various circumstances that increased its value, such as that the value of the expropriated property consisted not only of land but also of business activities, for example a quarry, that were taking place on it (*Werra Naturstein GmbH & Co Kg v. Germany*, § 46; *Azas v. Greece*, §§ 52-53; *Athanasiou and Others v. Greece*, § 24). Losing the main source of income because of expropriation may mean that the applicant had borne an excessive individual burden if the authorities did not address the issue of whether the compensation granted would have covered the actual loss involved in deprivation of means of subsistence or at least would have been sufficient to acquire equivalent land within the area in which the applicant lived (*Osmanyan and Amiraghyan v. Armenia*, § 70).

146. Unreasonable delay in payment of compensation is another relevant factor (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, § 54; *Czajkowska and Others v. Poland*, § 60). The Court found against the State in a case where the fact that the public authorities determining the amount of compensation did not take account of the fact that over twenty years had elapsed and the applicant had not yet received any compensation (*Schembri and Others v. Malta*, § 43). A delay of seventy-five years in payment of compensation gave rise to a violation of Article 1 of Protocol No. 1 (*Malama v. Greece*, § 51).

Abnormally lengthy delays in the payment of compensation for expropriation in the context of hyperinflation led to increased financial loss for the person whose land has been expropriated, placing him in a position of uncertainty (*Akkus v. Turkey*, § 29; *Aka v. Turkey*, § 49). Even if at the time when the Court examines the case a part of the compensation was already paid, the delay in paying compensation in full remains problematic (*Czajkowska and Others v. Poland*, § 62).

147. The applicant’s personal and social situation should be taken into account in determining the compensation (*Pyrantienė v. Lithuania*, § 62). Failure to take into consideration the applicant’s good faith when she acquired the property subsequently expropriated operated to the detriment of the State (*ibid.*, § 60).

148. The fact that persons to be expropriated in the future continued to use the property during the proceedings in which the amount of compensation to be paid was determined does not exempt the State from the obligation to fix compensation in an amount reasonably related to its value (*Yetiş and Others v. Turkey*, § 52).

149. In certain situations a refusal to grant special indemnities can amount to a violation of Article 1 of Protocol No. 1 (*Azas v. Greece*, §§ 52-53; *Athanasidou and Others v. Greece*, § 24). For example, in cases of partial expropriation, where a motorway was built in the near vicinity of an applicant's house, such interference might warrant the granting of additional compensation on account of the limitation on the use of the house. The nature of the construction had evidently contributed more directly to the substantial depreciation of the value of the remaining property (*Bistrović v. Croatia*, §§ 40-42; *Ouzounoglou v. Greece*, § 30).

150. In cases where property was taken unlawfully, compensation should still have a compensatory role as opposed to a punitive or dissuasive role vis-à-vis the respondent State (*Guiso-Gallisay v. Italy* (just satisfaction) [GC], § 103). According to the approach adopted by the Grand Chamber in that case, in order to reflect the lapse of time, the market value of property at the time of taking should be converted to current value to offset the effects of inflation and (simple statutory) interest applied to offset the period for which the applicant has been deprived of the property (*ibid.*, § 105). In addition, the Grand Chamber assessed the loss of opportunities sustained by the applicants following the expropriation (*ibid.*, § 107).

151. Where expropriation was a result of broad economic reforms or measures designed to achieve greater social justice, the margin of appreciation accorded to the States will normally be broad also in respect of the determination of the amount of compensation to be awarded to applicants. A decision to enact legislation regarding the nationalisation of a whole industry will commonly involve consideration of various issues on which opinions within a democratic society may reasonably differ widely. Because of their direct knowledge of their society and its needs and resources, the national authorities are in principle better placed than the international judge to appreciate what measures are appropriate in this area, and consequently the margin of appreciation in deciding whether to deprive an owner of his or her property and to lay down the terms and conditions of the compensation should be a wide one (*Lithgow and Others v. the United Kingdom*, §§ 121-22).

152. Likewise, that margin is broad where expropriation was carried out under legislation in force during a transitional period between two regimes which had been passed by a non-democratically elected parliament (*Jahn and Others v. Germany* [GC], §§ 113 and 117). In the latter case, the unique nature of the general political and legal context, German reunification, had justified a total lack of compensation (*Vistiņš and Perepjolkins v. Latvia* [GC], § 123).

C. Positive obligations on member States

153. The obligation to respect the right to property under Article 1 of Protocol No. 1 incorporates both negative and positive obligations.

154. The essential object of Article 1 of Protocol No. 1 is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her "possessions" (negative obligations). However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail 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, those positive obligations may require the State to take the measures necessary to protect the right of property (*Broniowski v. Poland* [GC], § 143; *Sovtransavto Holding v. Ukraine*, § 96; *Keegan v. Ireland*, § 49; *Kroon and Others v. the Netherlands*, § 31; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 100; *Likvidējamā p/s Selga and Vasilevska v. Latvia* (dec.), §§ 94-113).

155. Genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect

from the authorities and his effective enjoyment of his “possessions” (*Öneryıldız v. Turkey* [GC], § 134), even in cases involving litigation between private individuals or companies (*Sovtransavto Holding v. Ukraine*, § 96).

156. In the case of *Öneryıldız v. Turkey* [GC], §§ 135-136, which concerned the destruction of many houses and the death of several persons resulting from the States’ dangerous activities (a methane gas explosion which had built up in a rubbish tip) in an illegal settlement, the Court found that the domestic authorities had not complied with their positive obligations under Article 1 of Protocol No. 1 since they failed to do everything within their power to protect the applicant’s proprietary interest in the light of a risk they knew or ought to have known (*Kurşun v. Turkey*, § 115). In particular, the authorities failed to inform the inhabitants of the danger posed by the tip in the settlement, which had been ascertained in an expert report years before, but also did not take any practical measures to avoid such risk, such as the timely installation of a gas-extraction system.

157. A distinction, however, must be drawn between the positive obligations under Article 2 of the Convention and those under Article 1 of Protocol No. 1 to the Convention. While the fundamental importance of the right to life requires that the scope of the positive obligations under Article 2 includes a duty to do everything within the authorities’ power in the sphere of disaster relief for the protection of that right, the obligation to protect the right to the peaceful enjoyment of possessions, which is not absolute, cannot extend further than what is reasonable in the circumstances (*Budayeva and Others v. Russia*, § 175, for natural hazards beyond human control; *Kurşun v. Turkey*, § 121, for property damage resulting from a dangerous activity but not involving injury/deaths). Likewise, there was no positive obligation on the State under Article 1 of Protocol No. 1 in the absence of State negligence, and given the applicant’s own responsibility as an entrepreneur as well as the specificity of a natural hazard beyond human control such as a landslide (*Vladimirov v. Bulgaria* (dec.), §§ 37 and 39-41).

158. The boundaries between the State’s positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analysed in terms of a positive duty of the State or in terms of an interference by a public authority which needs to be justified, **the criteria to be applied do not differ in substance**. In both contexts regard must be had to the **fair balance to be struck** between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in that provision may be of some relevance in assessing whether a balance between the demands of the public interest involved and the applicant’s fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (*Broniowski v. Poland* [GC], § 144; *Keegan v. Ireland*, § 49; *Hatton and Others v. the United Kingdom* [GC], §§ 98; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 101; *Kotov v. Russia* [GC], § 110).

159. Accordingly, in many cases, having regard to their particular circumstances, the Court considers it unnecessary to categorise its examination of the case strictly as being under the head of positive or negative obligations of the respondent States; to the contrary, it will determine whether the conduct of the respondent States – regardless of whether that conduct may be characterised as an interference or as a failure to act, or a combination of both – was justifiable in view of the principles of lawfulness, legitimate aim and “fair balance” (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 101; *Kotov v. Russia* [GC], § 102; *Broniowski v. Poland* [GC], § 146; *Skórits v. Hungary*, §§ 37-38).

160. This was also the case in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 101, where the applicants complained of their inability to withdraw their deposits from their bank accounts, which had become unavailable owing to such factors as the lack of funds in the relevant banks, the imposition by law of a freezing

of the accounts and the failure by national authorities to take measures with a view to enabling deposit holders in the applicants' situation to dispose of their savings. In such circumstances, the Court found it unnecessary to categorise its examination of the case strictly as being under the head of positive or negative obligations of the respondent States.

161. In a number of cases concerning positive obligations arising under Article 1 of Protocol No. 1 the Court stressed in particular the importance of the principle of good governance. This principle requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner (*Beyeler v. Italy* [GC], § 120; *Megadat.com SRL v. Moldova*, § 72; *Rysovskyy v. Ukraine*, § 71; *Moskal v. Poland*, § 72). This obligation is relevant both in the context of negative and positive obligations which Article 1 of Protocol No. 1 imposes on the State. The good governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence. However, the need to correct an old “wrong” should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith (*Beinarovič and Others v. Lithuania*, § 140).

1. Horizontal effect – interferences by private persons

162. The “positive measures of protection” to which the Court refers concern not only interferences by the State, but also by private persons, and they can be of a preventive or remedial nature.

163. Indeed, the Court has found that even in horizontal relations there may be public-interest considerations involved which may impose some obligations on the State (*Zolotas v. Greece (no. 2)*, § 39). Therefore, certain measures necessary to protect the right of property may be required even in cases involving litigation between individuals or companies (*Sovtransavto Holding v. Ukraine*, § 96).

164. However, where the case concerns ordinary economic relations between private parties such positive obligations are much more limited. Thus, the Court has stressed on many occasions that Article 1 of Protocol No. 1 to the Convention cannot be interpreted as imposing any general obligation on the Contracting States to cover the debts of private entities (*Kotov v. Russia* [GC], § 111; *Anokhin v. Russia* (dec.)).

165. In particular, when an interference with the right to peaceful enjoyment of “possessions” is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained (*Kotov v. Russia* [GC], § 113; *Blumberga v. Latvia*, § 67). It follows that the measures which the State can be required to take in such a context can be preventive or remedial (*Kotov v. Russia* [GC], § 113).

166. For instance, in *Zolotas v. Greece (no. 2)*, where the applicant could no longer claim the deposits on his bank account since for over twenty years he had not made any transaction on it, the Court held that the State had a positive obligation to protect citizens and to require that banks, in view of the potentially adverse consequences of limitation periods, should inform the holders of dormant accounts when the limitation period is due to expire and thus afford them the possibility to stop the limitation period running. Not requiring any information of this kind to be provided was liable to upset the fair balance that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

2. Remedial measures

167. With specific reference to the remedial measures which the State can be required to provide in certain circumstances, the Court has held that they include an appropriate legal mechanism allowing the aggrieved party to assert its rights effectively. Although Article 1 of Protocol No. 1 contains no explicit procedural requirements, the existence of positive obligations of a procedural character under this provision was recognised by the Court both in cases involving State authorities (*Jokela v. Finland*, § 45; *Zehentner v. Austria*, § 73) and in cases between private parties only.

168. Thus, in cases belonging to the latter category the Court has held that States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons (*Kotov v. Russia* [GC], § 114; *Sovtransavto Holding v. Ukraine*, § 96; *Anheuser-Busch Inc. v. Portugal* [GC], § 83; *Freitag v. Germany*, § 54; *Shesti Mai Engineering OOD and Others v. Bulgaria*, § 79; *Plechanow v. Poland*, § 100; *Ukraine-Tyumen v. Ukraine*, § 51). In cases where damage to property arose from a dangerous activity of a private person, the State could either set up a criminal, civil or administrative remedy (*Kurşun v. Turkey*, §§ 123-124).

169. This principle applies with all the more force when it is the State itself which is in dispute with an individual. Accordingly, serious deficiencies in the handling of such disputes may raise an issue under Article 1 of Protocol No. 1 (*Plechanow v. Poland*, § 100).

170. State responsibility for the failure to provide an adequate remedial action has been found in the context of enforcement of judgment debts: restitution of property (*Păduraru v. Romania*, § 112); payment of compensation for expropriation (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, §§ 109-111); enforcement of court orders for the eviction of tenants and the repossession of dwellings (*Immobiliare Saffi v. Italy* [GC], §§ 43-59; *Matheus v. France*, §§ 69-71; *Lo Tufo v. Italy*, § 53; *Prodan v. Moldova*, § 61).

3. Enforcement proceedings

171. The positive obligations of the State have been extensively relied on in the context of enforcement proceedings against both the State and private debtors. This means, in particular, that States are under a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensure that the procedures enshrined in the legislation for the enforcement of final judgments are complied with without undue delay (*Fuklev v. Ukraine*, § 91).

172. Where an applicant complains about the inability to enforce a court award in his or her favour, the extent of the State's obligations under Article 1 of Protocol No. 1 varies depending on whether the debtor is the State or a private person (*Anokhin v. Russia* (dec.); *Liseytseva and Maslov v. Russia*, § 183).

173. When it is the State which is the debtor, the Court's case-law usually insists on the State complying with the respective court decision both fully and timeously (*Anokhin v. Russia* (dec.); *Burdov v. Russia*, §§ 33-42). The burden to ensure compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable (*Burdov v. Russia* (no. 2), § 69).

174. Failure to ensure the enforcement of a final judicial decision against the State in a case concerning pecuniary claims normally amounts to a violation of both Article 6 and Article 1 of Protocol No. 1. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party.

It would be inconceivable for Article 6 § 1 to describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would likely lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention (*Hornsby v. Greece*, § 40; *Burdov v. Russia*, § 34).

175. An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (*Immobiliare Saffi v. Italy* [GC], § 63; *Hornsby v. Greece*, § 40; *Burdov v. Russia (no. 2)*, § 65; *De Luca v. Italy*, § 66).

176. It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. Admittedly, a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (*Immobiliare Saffi v. Italy* [GC], § 74). Similarly, the complexity of the domestic enforcement procedure or of the State budgetary system cannot not relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time (*Burdov v. Russia (no. 2)*, § 70; *Süzer and Eksen Holding A.Ş. v. Turkey*, § 116).

177. A person who has obtained a final judgment against the State cannot be expected to bring separate enforcement proceedings (*Metaxas v. Greece*, § 19, and *Lizanets v. Ukraine*, § 43; *Ivanov v. Ukraine*, § 46). In such cases, the defendant State authority which was duly notified of the judgment must take all necessary measures to comply with it or to transmit it to another competent authority for execution (*Burdov v. Russia (no. 2)*, § 69). A successful litigant may be required to undertake certain procedural steps in order to recover the judgment debt, be it during a voluntary execution of a judgment by the State or during its enforcement by compulsory means (*Shvedov v. Russia*, § 32). Accordingly, it is not unreasonable that the authorities request the applicant to produce additional documents, such as bank details, to allow or speed up the execution of a judgment (*Kosmidis and Kosmidou v. Greece*, § 24). The requirement of the creditor’s cooperation must not, however, go beyond what is strictly necessary and, in any event, does not relieve the authorities of their obligation under the Convention to take timely action of their own motion.

178. For instance, in *Skórits v. Hungary*, §§ 43-44, the Court held that practical steps were required by the authorities to ensure that decisions concerning the return of ownership are enforceable and not hindered by errors in the land register, and found a violation of the right to property since ten years had passed after the decision before the applicant could eventually enter into possession of the land. In *Vitiello v. Italy*, § 37, the Court found a violation of the right to property for non-execution by the national authorities of the domestic court’s demolition order of an abusive building.

179. In *De Luca v. Italy*, §§ 49-56, the applicant’s inability to bring enforcement proceedings against a local authority in receivership to recover a judgment debt for damages amounted to a violation of Article 1 of Protocol No. 1. Hence, even the legal inability of a public authority to pay its debts does not exempt the State from its responsibility under the Convention.

180. In assessing whether a company was to be taken as a “governmental organisation” the company’s legal status under the domestic law is not decisive for the determination of the State’s responsibility for the company’s acts or omissions. Indeed, a company needs to enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention for its acts and omissions. The key criteria used to determine whether the State was responsible for such debts were as follows: the company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial

business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control) (see *Liseytseva and Maslov v. Russia*, §§ 186-188, and the references cited therein) (for further details, see the chapter on State-owned companies below).

181. When the debtor is a private actor, the position is different since the State is not, as a general rule, directly liable for debts of private actors and its obligations under these Convention provisions are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or bankruptcy procedures (*Anokhin v. Russia* (dec.); *Shestakov v. Russia* (dec.); *Krivosnogova v. Russia* (dec.); *Kesyana v. Russia*, § 80).

182. Thus, when the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity may, in certain circumstances, engage the State's responsibility on the ground of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (*Scollo v. Italy*, § 4; *Fuklev v. Ukraine*, § 84). The Court's task in such cases is to examine whether the measures applied by the authorities were adequate and sufficient and whether they acted diligently in order to assist a creditor in the execution of a judgment (*Anokhin v. Russia* (dec.); *Fuklev v. Ukraine*, § 84). More specifically, the State has an obligation under Article 1 of Protocol No. 1 to provide the necessary assistance to a creditor in the enforcement of an award granted by a court (*Kotov v. Russia* [GC], § 90). For instance, in *Fuklev v. Ukraine*, § 92, the Court found that the failure of the bailiffs to act for well over four years or to effectively control the bankruptcy enforcement proceedings constituted a violation of Article 1 of Protocol No. 1. Where the national insolvency legislation considers work-related claims of employees accrued within the year prior to the opening of the insolvency proceedings as priority claims, whereas claims falling outside the one-year reference period have non-priority ranking, the Court has referred to the legislation of ILO and found the arrangement appropriate (*Acar and Others v. Turkey* (dec.), § 34).

183. A failure to enforce a judgment against a private debtor because of the debtor's indigence cannot be held against the State unless and to the extent that it is imputable to the domestic authorities, for example, because of their errors or delay in proceeding with the enforcement (*Omasta v. Slovakia* (dec.); *Vrtar v. Croatia*, § 96).

184. On the other hand, a violation was found in a case where the domestic authorities proceeded with the sale of the applicant's share in the property after he had settled the debt in full, solely in order to recover the costs of the enforcement proceedings (*Mindek v. Croatia*, §§ 79-87) or in a case where a house had been sold in the enforcement proceedings for one-third of its value (*Ljaskaj v. Croatia*, §§ 62-70). Similarly, the sale of a house and the applicant's eviction from it in the context of tax enforcement proceedings where the unpaid tax amounted only to a fraction of the house's value and in the context of lack of communication between the various tax authorities involved in various parts of the proceedings aiming at the execution of the order against the applicant was found to be in violation of Article 1 of Protocol No. 1 (*Rousk v. Sweden*, §§ 119-127).

D. Relationship between Article 1 of Protocol No. 1 and other Articles of the Convention

185. Issues arising in connection with the enjoyment of one's "possessions" may also relate to other Articles of the Convention.

1. Article 2³

186. In *Öneryıldız v. Turkey* [GC], §§ 136-137, where a methane explosion at a rubbish tip resulted in a landslide which engulfed the applicant's house killing his nine close relatives, the Court did not differentiate between the member States' positive obligations under Article 2 and Article 1 of Protocol No. 1 as to the adequacy of preventive and remedial measures.

2. Article 3

187. In *Pančenko v. Latvia* (dec.), where the applicant complained about her socio-economic problems in general, the Court recalled that the Convention does not guarantee socio-economic rights, as such. However, it did not exclude the possibility that when the living conditions of the applicant attained a minimum level of severity this could amount to treatment contrary to Article 3.

188. In the case of *Budina v. Russia* (dec.), where the applicant complained that her pension was too small to enable her to survive, the Court did not exclude the possibility that State responsibility might be engaged under Article 3 in respect of treatment where an applicant, who was wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity. It considered that such complaint was not *per se* incompatible *ratione materiae* with the provisions of the Convention and examined the applicant's economic circumstances, including also the amount of the applicant's State-paid retirement pension, as a whole, under Article 3 to determine whether her situation was such as to fall within the prohibition of degrading treatment. It found this not to be the case.

3. Article 4⁴

189. A choice given to a prisoner between paid work or unpaid work but with remission of sentence did not amount to a breach of Article 4 of the Convention (*Floroiu v. Romania* (dec.), §§ 35-38). Obligatory work performed by a prisoner without being affiliated to the old-age pension system is to be regarded as "work required to be done in the ordinary course of detention" within the meaning of Article 4 § 3 (a) of the Convention (*Stummer v. Austria* [GC], § 132).

190. Likewise, unpaid work carried out by a prisoner can be regarded as "work required to be done in the ordinary course of detention" (*Zhelyazkov v. Bulgaria*, § 36). However, the Court noted the developments in attitudes to unpaid prisoners' work, in particular in the 1987 and 2006 European Prison Rules, which called for the equitable remuneration of the work of prisoners – with the 2006 Rules adding "in all instances" – which reflected an evolving trend. However, the applicant performed the work before the adoption of the 2006 Rules and for a short period of time (*idem.*, § 36).

4. Article 6⁵

191. Domestic proceedings in relation to interferences with or to the protection of the right to property often raise issues under Article 6 paragraph 1. Indeed, the right to property is clearly a right of a pecuniary character, and so decisions by the State concerning expropriation or the regulation of the use of private property or otherwise affecting pecuniary or other property rights have been held to be subject to the right to a fair hearing (*British-American Tobacco Company Ltd v. the Netherlands*, § 67 – patent application; *Raimondo v. Italy*, § 43 – confiscation). Furthermore, the enforcement of judicial decisions constitutes an integral part of the "trial" for the purposes of Article 6 (see the sub-chapter on Enforcement proceedings above).

3. See the [Guide on Article 2 \(Right to life\)](#).

4. See the [Guide on Article 4 \(Prohibition of slavery and forced labour\)](#).

5. See the Guides on Article 6 (Right to a fair trial): the [Civil limb](#) and the [Criminal limb](#).

192. However, most often in cases where civil proceedings concerning a property right lasted for an excessively long time, it is sufficient for the Court to find a breach of Article 6 of the Convention. Where the applicant argues that the length of proceedings by itself amounted to a continuing hindrance with the right to property, the Court has held that it is not necessary to examine the length of proceedings complaint under Article 1 of Protocol No. 1 (*Zanghì v. Italy*, § 23) or that the issue is premature (*Beller v. Poland*, § 74). In the context of “a social lease” (“*bail social*”), the Court found that by failing for several years to take the necessary measures to comply with the decision ordering the re-housing of the applicant, the French authorities had deprived Article 6 § 1 of all useful effect (*Tchokontio Hapi v. France*, § 52).

193. However, in cases concerning inordinately lengthy proceedings, the Court has found that their protracted duration (*Kunić v. Croatia*, § 67; *Machard v. France*, § 15) or other measures contributing to the delays (*Immobiliare Saffi v. Italy* [GC], § 59) also had a direct impact on the applicants’ rights to peaceful enjoyment of their “possessions”. In the latter case, the Court also found that the applicant company was deprived of its right under Article 6 to have its dispute with its tenant decided by a court (*idem.*, § 74).

194. In cases where the Court finds a violation of Article 6 on account of lack of access to court and the applicant complains about the substantive outcome of the case also under Article 1 of Protocol No. 1, the Court usually considers that it cannot speculate as to what the situation would have been if the applicant had had effective access to a court. Hence it is not necessary to rule on the question whether the applicant had a possession within the meaning of Article 1 of Protocol No. 1, and, accordingly, on the complaint based on that Article (*Canea Catholic Church v. Greece*, § 50; *Glod v. Romania*, § 46; *Albina v. Romania*, § 43; *Lungoci v. Romania*, § 48; *Yanakiev v. Bulgaria*, § 82). However, in *Zehentner v. Austria*, § 82, concerning a judicial sale of the applicant’s apartment, the Court found a violation under Article 8 and Article 1 of Protocol No. 1 on account of inadequate procedural safeguards for the applicant who lacked judicial capacity and held that no separate issue arose under Article 6.

195. The adoption of a new retroactive law that regulates the impugned situation while proceedings concerning a proprietary interest of the applicant are pending, may constitute a violation of both Article 6 and Article 1 of Protocol No. 1, when the adoption of the law is not justified by compelling reasons of general interest and poses an excessive burden on the applicant (*Caligiuri and Others v. Italy*, § 33).

196. When an applicant complains about the inability to enforce a final court award in his favour, both State obligations under Article 6 and Article 1 of Protocol No. 1 come into play. When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity may, in certain circumstances, engage the State’s responsibility on the ground of both Article 6 and of Article 1 of Protocol No. 1 (*Fuklev v. Ukraine*, §§ 86 and 92-93; *Anokhin v. Russia* (dec.); *Liseyitseva and Maslov v. Russia*, § 183).

197. The quashing by way of supervisory review of a binding and enforceable judgment awarding compensation to the applicant, in the absence of exceptional compelling circumstances, violates the principle of the finality of judgments and breaches Article 6 § 1 and Article 1 of Protocol No. 1 (*Davydov v. Russia*, §§ 37-39). However, the considerations of “legal certainty” should not discourage the State from correcting particularly egregious errors committed in the administration of justice (*Lenskaya v. Russia*, § 41). These exceptional circumstances arise only where the original proceedings were tainted with such a serious flaw as to render them fundamentally unfair, as in a case where through no fault of the third person who was not a party to the proceedings the domestic court rendered a judgment which directly affected his rights. The quashing of a final decision in such circumstances did not give rise to a breach of the Convention (*Protzenko v. Russia*, §§ 30-34). Similarly, the quashing of a final judgment aimed at remedying a serious miscarriage of justice in criminal proceedings (*Giuran v. Romania*, § 41) was found to strike the correct balance

between the competing interests of finality and justice, or where an applicant had been awarded full restitution of the entire property, despite the fact that several persons were entitled to it (*Vikentijevik v. the former Yugoslav Republic of Macedonia*, § 70).

198. Issues regarding costs arising in judicial proceedings have in some cases been examined by the Court under Article 1 of Protocol No. 1. The “loser pays” rule in the context of civil proceedings cannot in itself be regarded as contrary to Article 1 of Protocol No. 1 (*Klauz v. Croatia*, §§ 82 and 84), as its purpose is to avoid unwarranted litigation and unreasonably high litigation costs by dissuading potential plaintiffs from bringing unfounded actions without bearing the consequences. This view is not altered by the fact that those rules also apply to civil proceedings to which the State is a party (*Cindrić and Bešlić v. Croatia*, § 96). In a case where the applicants claimed compensation for expropriation and won their case in part, but the award they received had to be paid in its entirety to the other party to cover its costs, the Court found a violation. The Court noted that neither the applicants’ conduct nor the procedural activity set in motion could justify court fees so high as to result in a complete lack of compensation for an expropriation. The applicants had thus had to bear an excessive burden (*Perdigão v. Portugal* [GC], § 78; in *Musa Tarhan v. Turkey*, § 86, where the applicant was ordered to pay the litigation costs of the opposing party in expropriation proceedings, which reduced the sum of the compensation substantially, the burden on the applicant was also found to have been excessive). A refusal to reimburse costs borne in respect of a public prosecutor’s unsuccessful civil-law claim in favour of a third party was found to be in breach of Article 6 of the Convention (*Stankiewicz v. Poland*, §§ 65-76).

199. Article 6 under its criminal limb was found to apply in a case where an order was given to have a house demolished which had been built without planning permission, but had been subsequently tolerated by the authorities for thirty years. In particular, the demolition measure was regarded as a “penalty” for the Convention purposes (*Hamer v. Belgium*, § 60).

5. Article 7⁶

200. The confiscation imposed on the applicants for unlawful site development was regarded as a “penalty” within the meaning of Article 7 of the Convention in spite of the fact that no criminal conviction had been handed down against the applicant companies or their representatives. For that purpose, the Court relied on the fact that the confiscation in question was connected to a “criminal offence” based on general legal provisions; that the material illegality of the developments had been established by criminal courts; that the sanction provided for by the Italian law sought mainly to deter, by way of punishment, further breaches of the statutory conditions; that the law classified confiscation for unlawful site development among the criminal sanctions; and, lastly, that the sanction was one of a certain severity (*Sud Fondi srl and Others v. Italy* (dec.)). The same criteria were applied in the case of *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], §§ 212-234, and Article 7 was found to be applicable.

201. In the case of *Sud Fondi srl and Others v. Italy*, the domestic court acquitted the applicant companies’ representatives on the grounds that they had made an inevitable and excusable error in the interpretation of the planning permission granted to them. For the purposes of Article 7, the applicable legislative framework did not enable the accused to know the meaning and scope of the criminal law which was thus deficient. Consequently, the confiscation of the properties ordered by the criminal court had not been prescribed by law for the purposes of Article 7 and amounted to an arbitrary penalty. For the same reason the confiscation breached also Article 1 of Protocol No. 1 (*Sud Fondi srl and Others v. Italy*, §§ 111-118 and 136-142). A similar conclusion was reached in a case where property and buildings were confiscated even though the criminal proceedings against the owner were discontinued for being time-barred (*Varvara v. Italy*, § 72).

6. See the *Guide on Article 7 (No punishment without law)*.

202. In *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], confiscation was automatically applied in cases of unlawful site development, as provided for by Italian legislation. The Court assessed the proportionality of the interference having regard to a number of factors, which included the degree of culpability or negligence on the part of the applicants or, at the very least, the relationship between their conduct and the offence in question. The importance of procedural guarantees was also underlined in that respect, as judicial proceedings concerning the right to the peaceful enjoyment of “possessions” had to afford an individual a reasonable opportunity of putting his or her case to the competent authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by Article 1 of Protocol No. 1 (*idem.*, §§ 301-303).

6. Article 8⁷

203. A number of cases relating both to Article 8 of the Convention and Article 1 of Protocol No. 1 concerns housing. There may be a significant overlap between the concept of “home” and that of “property” under Article 1 of Protocol No. 1, but the existence of a “home” is not dependent on the existence of a right or interest in respect of real property (*Surugiu v. Romania*, § 63). An individual may have a property right over a particular building or land for the purposes of Article 1 of Protocol No. 1, without having sufficient ties with the property for it to constitute his or her “home” within the meaning of Article 8 (*Khamidov v. Russia*, § 128).

204. Interference with an applicant’s right to occupy his own home may breach Article 8. The Court has adopted a broad interpretation of the notion of home (*Gillow v. the United Kingdom*, § 46; *Larkos v. Cyprus* [GC], §§ 30-32; *Akdivar and Others v. Turkey* [GC], § 88). The same may be true with regard to business premises and lawyer’s offices (*Niemietz v. Germany*, §§ 29-33).

205. In *Larkos v. Cyprus* [GC], §§ 30-32, the Court examined the applicant’s complaints about the cancellation of his tenancy agreement concluded with the Cypriot State under Article 8 in conjunction with Article 14 of the Convention. It found that the applicant, a civil servant whose tenancy agreement had many features of a typical lease of property, was discriminated against in comparison with private tenants. In view of these conclusions, it was not necessary to examine separately the complaint under Article 1 of Protocol No. 1.

206. *Karner v. Austria* is an important case about housing rights under Article 14 in conjunction with Article 8 of the Convention. It concerns the succession to a lease, in the context of a homosexual relationship. Reiterating that differences based on sexual orientation required particularly serious reasons by way of justification, the Court found that it also had to be shown that it was necessary to exclude homosexual couples from the scope of the legislation in order to achieve the aim of the protection of the traditional family unit. A violation was found (*ibid.*, §§ 38-42). Similar conclusion was reached in *Kozak v. Poland*, §§ 98-99, in respect of a cohabiting same-sex partner (compare, for the evolution of the case law, *S. v. the United Kingdom*, Commission decision, see “*Lease on property*”).

207. In *Rousk v. Sweden*, §§ 115-127, the judicial sale of the applicant’s house in order to secure the payment of taxes due to the State and the ensuing eviction amounted to a breach of both Article 1 of Protocol No. 1 and Article 8 because the owner’s interests had not been adequately protected. To the contrary, in *Vaskrsić v. Slovenia*, § 87, where the applicant’s house was sold at public auction in order to enforce an initial claim of EUR 124 amounted to a violation of Article 1 of Protocol No. 1 to the Convention. With regard, more generally, to reconciliation of the right to respect for one’s home with the enforced sale of a house for the purposes of paying debts, see *Vrzić v. Croatia*, §§ 63-68.

208. In *Gladysheva v. Russia*, § 93, the Court found a violation of the same provisions on the grounds of the failure by the domestic authorities to assess the proportionality of the impugned measure when evicting a bona fide purchaser from a flat fraudulently acquired by the previous

7. See the Guide on *Article 8 (Right to respect for private and family life)*.

owner. It also specified that the margin of appreciation of the State in housing matters is narrower in respect of the rights under Article 8 compared to those protected under Article 1 of Protocol No. 1, regard being had to the central importance of Article 8 to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community (*Connors v. the United Kingdom*, §§ 81–84; *Orlić v. Croatia*, §§ 63–70). An individualised proportionality assessment is also required in cases of risk of losing of the applicant's home notwithstanding that, under domestic law, his or her right of occupation had come to an end (*Ćosić v. Croatia*, §§ 21–23), and of an imminent loss of one's home consequent on a decision to demolish it on the ground that it had been knowingly constructed in breach of planning regulations (*Ivanova and Cherkezov v. Bulgaria*, § 53).

209. In *Berger-Krall and Others v. Slovenia*, §§ 205–211 and 272–275, the housing reforms following the move to market economy and resulting in the applicants' deprivation of protected tenancies were considered both under Article 8 and Article 1 of Protocol No. 1. The Court held that, although the deprivation of protected tenancies constituted an interference with the right to respect for the home, in the instant case it did not breach Article 8 given that it was proportionate to the legitimate aims pursued. The same considerations led the Court to conclude that neither Article 1 of Protocol No. 1 was violated. Similarly, in *Sorić v. Croatia* (dec.), the Court held that under the housing reforms, the applicant's position as a lessee continued to be strongly protected. However, Article 1 of Protocol No. 1 did not guarantee a right to buy any property, but only peaceful possession of the existing property. In *Galović v. Croatia* ((dec.), § 65), the Court also rejected a claim under Article 8 brought by a former holder of a specially protected tenancy who had been evicted from the dwelling by the owner, since there was other housing available to her.

210. By the same token, in *Zrilić v. Croatia*, § 71, the Court held that the judicial order for the partition of the house which the applicant had jointly owned with her former husband by judicial sale did not breach Article 8 and, therefore, no further verification was needed to find the absence of violation also in respect of Article 1 of Protocol No. 1.

211. In *Cvijetić v. Croatia*, § 51, where the applicant was unable to have her former husband evicted from the flat which constituted her home, a violation of Articles 6 and 8 was found on account of the protracted enforcement proceedings. There was no need for a separate examination of Article 1 of Protocol No. 1.

212. Article 1 of Protocol No. 1 does not guarantee the right to enjoy one's "possessions" in a pleasant environment (see *Flamenbaum and Others v. France*, § 184, which concerned an extension of the airport runway also under Article 8). Furthermore, since the applicants had not established whether and to what extent the extension of the runway had affected the value of their property, the Court found no violation of the rights under the said provision (*ibid.*, §§ 188–190).

213. In cases where the Court has found a violation of Article 8 on the grounds of night-time disturbances caused by a bar (*Udovičić v. Croatia*, § 159), or of the absence of an effective response by the authorities to complaints about serious and repetitive neighbourhood disturbances (*Surugiu v. Romania*, §§ 67–69), it decided that it was not necessary to examine whether in this case there had been a violation of Article 1 of Protocol No. 1.

214. Finally, Article 8 and Article 1 of Protocol No. 1 come into play in cases concerning the destruction of one's dwelling. In *Selçuk and Asker v. Turkey*, § 77, the Court had regard to the deliberate manner in which the applicants' homes had been destroyed by the security forces and found a violation of Articles 3, 8 and of Article 1 of Protocol No. 1. For further details, see the chapter on Tenancies and rent control here below.

7. Article 10

215. In *Handyside v. the United Kingdom*, §§ 59 and 63, the applicant complained about the seizure of the matrix and of hundreds of copies of the Little Red Schoolbook, and their forfeiture and subsequent destruction following the domestic judgment. The Court found that the aim of the seizure was “the protection of morals” as understood by the competent British authorities in the exercise of their power of appreciation. The forfeiture and destruction of the Schoolbook permanently deprived the applicant of the ownership of certain “possessions”. However, these measures were authorised by the second paragraph of Article 1 of Protocol No. 1, interpreted in the light of the principle of law, common to the Contracting States, where under items whose use has been lawfully adjudged illicit and dangerous to the general interest are forfeited with a view to destruction. Therefore, there was no breach of Article 1 of Protocol No.1 or Article 10 of the Convention.

216. In *Öztürk v. Turkey* [GC], § 76, the Court held that the confiscation and destruction of copies of a book published by the applicant publisher was merely an aspect of his conviction for disseminating separatist propaganda (which fell to be considered under Article 10). It was therefore not necessary to consider the confiscation separately under Article 1 of Protocol No. 1.

217. In *Ashby Donald and Others v. France*, § 40, the Court found that when it comes to an interference with the right to freedom of expression, the States enjoy a wider margin of appreciation if the impugned measure is aimed at protecting other rights under the Convention such as the right to peaceful enjoyment of property, in this specific case regarding copyright (*Neij and Sunde Kolmisoppi v. Sweden* (dec.)).

8. Article 11⁸

218. In *Chassagnou and Others v. France* [GC], §§ 85 and 117, concerning the automatic membership of the applicants, owners of landholdings smaller than 20 hectares and opposed to hunting, of approved municipal or inter-municipality hunters’ associations and the transfer of hunting rights over their land to these associations, the Court found a violation of both Article 1 of Protocol No. 1 and Article 11 of the Convention.

9. Article 13

219. For Article 13 of the Convention to come into play, the applicants should have an “arguable” claim. In the affirmative, they should have effective and practical remedies in order to have their claim decided and, if appropriate, to obtain redress for the losses.

220. In *Iatridis v. Greece* [GC], § 65, concerning the authorities’ failure to return the cinema to the applicant, the Court found that there was a difference in the nature of the interests protected by Article 13 of the Convention and Article 1 of Protocol No. 1: the former affords a procedural safeguard, namely the “right to an effective remedy”, whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful enjoyment of possessions. Both a violation of Article 1 of Protocol No. 1 and of Article 13 was found.

221. Similarly, in *Öneriyıldız v. Turkey* [GC], §§ 156-157, the Court found that there was a violation of Article 13 of the Convention as regards the complaint under Article 1 of Protocol No. 1, concerning the effectiveness of the administrative proceedings for compensation for the destruction of household goods as a result of a methane gas explosion in a rubbish tip. Conversely, in *Budayeva and Others v. Russia*, §§ 196-198, where the damage occurred to a large extent as a result of the natural disaster, no violation of Article 1 of Protocol No. 1 and Article 13 in conjunction with that Article was found, considering that the applicants were able to lodge a claim for damages and have it

8. See the Guide on [Article 11 \(Freedom of assembly and association\)](#).

examined by competent courts and that the State has implemented measures through the general scheme of emergency relief.

222. In the framework of restitution of property to previous owners, in *Driza v. Albania*, §§ 115-120, a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 was found on account of the lack of setting up of an adequate restitution scheme, in particular the bodies and the procedure.

223. Finally, in *Chiragov and Others v. Armenia* [GC], §§ 213-215, and *Sargsyan v. Azerbaijan* [GC], §§ 269-274, the lack of availability of a remedy capable of providing redress in respect of the applicants' Convention complaints relating to the loss of their homes and properties during the Armenian-Azerbaijani conflict over Nagorno-Karabakh and offering reasonable prospects of success entailed also a violation of Article 13 of the Convention.

10. Article 14

224. The prohibition of discrimination under Article 14 can only be invoked in connection with one of the other substantive rights protected by the Convention.

225. In cases concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular asset on a discriminatory ground covered by Article 14, the relevant test is whether, but for the discriminatory ground about which the applicant complains, he or she would have had a right, enforceable under domestic law, in respect of the asset in question (*Fabris v. France* [GC], § 52).

226. Although the scope of the State's powers under Article 1 of Protocol No. 1 may in some instances be wide, such powers may not be exercised in a discriminatory manner.

227. The discrimination of illegitimate children was at stake in the ground-breaking case of *Marckx v. Belgium*, § 65. The Court ruled that the applicant as an unmarried mother was discriminated against in disposing freely with her property in comparison with a married mother. No violation of Article 1 of Protocol No. 1 taken alone was found in respect of the mother, and Article 1 of Protocol No. 1 was found to be inapplicable in respect of the daughter.

228. Similarly, in *Mazurek v. France*, § 54, a law reducing the inheritance payable to the child of an adulterous relationship was held to discriminate unjustifiably against such children in the exercise of their property rights, although "protection of the traditional family" was considered a legitimate aim for the State to pursue (*Fabris v. France* [GC], §§ 68-72; with regards to succession rights see also, *Burden v. the United Kingdom* [GC], § 65, for cohabiting sisters; with regards to uprating of pensions for non-residents, *Carson and Others v. the United Kingdom* [GC], § 90; and with regards to an entitlement to a survivor's pension by a religious-wedding widow, *Şerife Yiğit v. Turkey* [GC], § 86).

229. The difference of treatment suffered by the applicant, as a beneficiary of a will drawn up in accordance with the Civil Code by a testator of Muslim faith as compared to a beneficiary of a will drawn up in accordance with the Civil Code by a non-Muslim testator, had no objective and reasonable justification (*Molla Sali v. Greece* [GC], § 161).

230. To the contrary, in *Stummer v. Austria* [GC], §§ 132-136, the refusal to take work performed in prison into account in calculation of pension rights did not entail any violation of Article 14 in conjunction with Article 1 of Protocol No. 1 (see above in this chapter under Article 4).

231. In *Chabauty v. France* [GC], § 47, the inability of small landholders, in contrast to large landholders, to have land removed from the control of approved hunters' association other than on ethical grounds did not entail any violation of Article 14 in conjunction with Article 1 of Protocol No. 1 (compare *Chassagnou and Others v. France* [GC], § 95).

232. The case of *Guberina v. Croatia* concerned a refusal of tax relief for the purchase of a house following the sale of an apartment, with a view to accommodating the needs of a severely

handicapped child, on the ground that the apartment which had been sold met the needs of the family, being sufficiently large and equipped with the necessary infrastructure such as electricity, heating, etc. No consideration was given by the tax authorities to the plight of the family taking care of the child in an apartment without a lift. The applicant complained that the manner of application of the tax legislation to his family's situation amounted to discrimination, having regard to his child's disability. A violation was found essentially on the grounds of the authorities' failure to have regard to wider disability-based considerations and obligations which resulted in the application of an over-restrictive and mechanical approach to the interpretation of tax legislation, to the detriment of the family's concrete situation (*ibid.*, § 98).

233. In *Andrejeva v. Latvia* [GC], § 88, where a distinction was made on the basis of nationality, a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 was found, on account of the Latvian courts' refusal to grant the applicant a retirement pension in respect of her years of employment in the former Soviet Union prior to 1991 on the ground that she did not have Latvian nationality.

234. In *Fábián v. Hungary* [GC], the Court found that there were substantial legal and factual differences between public and private sector employment for institutional and functional reasons, such as the source of their salaries, the fact that the domestic law treated as distinct employment in the public and private sector, that the applicant's public sector profession was difficult to compare with any private sector profession and that it was for the State as his employer to set down the terms of his employment and, as the manager of the pension fund, the conditions for disbursement of pensions (*ibid.*, §§ 131-132; *Panfile v. Romania* (dec.), § 28). In another case, the Court has found that the difference in treatment between pensioners employed in different categories within the public sector was justified (*Gellérthegyi and Others v. Hungary* (dec.), §§ 34-40).

III. Specific issues

A. Tenancies and rent control

235. The Convention and its Protocols do not guarantee a right to accommodation and housing and many cases involving housing rights have been examined under Article 8 of the Convention as regards the protection of the applicants' right to respect for their private or family life (see the sub-chapter on Article 8 above). Under Article 1 of Protocol No. 1, the Convention organs have dealt with a number of cases concerning the balancing of the landlords' rights with rights granted to tenants under national law, fair-trial guarantees of both landlords and tenants and the latter's guarantees against eviction, non-discrimination issues, etc.

236. The first case concerning the balancing of property rights of landlords with those of tenants is *James and Others v. the United Kingdom*. The case concerned the right of tenants under leases for a term of over twenty years to acquire full ownership of the property, further to the enactment of the Leasehold Reform Act. The applicants had been named as trustees of a substantial estate under a will left by a member of the landed aristocracy. Tenants of some of the properties at stake exercised their rights of acquisition under the Leasehold Reform Act, thereby depriving the trustees of their property interest. The trustees complained that the forced transfer of the properties and the amount of compensation they subsequently received violated their rights.

237. The Court found it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, and that it would respect the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation (*James and Others v. the United Kingdom*, § 46). It held that the alleviation of social injustice in housing was a legitimate aim as pursued by the Leasehold Reform

Act, which fell within the legislature's margin of appreciation. As for the proportionality of the measures implemented by the State, the Court found that providing tenants with rights of acquisition in these circumstances was neither unreasonable nor disproportionate, as the statute limited this right to less valuable properties that were perceived by the legislature as representing the most severe cases of hardship (*ibid.*, § 70; for Article 14 of the Convention, § 77).

238. Similarly, in *Mellacher and Others v. Austria*, landlords who owned or had an ownership interest in multiple apartment buildings complained that the introduction of a statutory reduction in rent under the Rent Act violated Article 1 of Protocol No. 1. In evaluating the challenged legislation, the Court recognised the national legislature's wide margin of appreciation in both identifying a problem of public concern and in determining the measures needed to further the social and economic policies adopted to address it, in this case, in the field of housing. The Court found that it was reasonable for the Austrian lawmaker to conclude that social justice required reducing the original rents and that the rent reductions flowing from the statute, although substantial, did not necessarily place a disproportionate burden on landlords (*ibid.*, § 57). Moreover, in the context of rent control, but where the subject of the lease was a premise used by a band, the Court recognised that the cultural and social role of the club was in the public interest; the degree thereof, however, was significantly less marked than in other cases and did not therefore justify such a substantial reduction compared to the free market rental value (*Bradshaw and Others v. Malta*, § 58).

239. Conversely, in a more recent case, *Lindheim and Others v. Norway*, the amendments to the Ground Lease Act granted lessees of land used for permanent or holiday homes the right to extend their leases on the same terms as the previous lease for an unlimited period of time. The lessees requested that their landlords extend their leases on the same terms as the previous lease, with no increase in rent. The Court found that the aim pursued by the legislation namely to protect the interests of leaseholders lacking financial means was legitimate as the lifting of rent controls in 2002 had substantially affected many unprepared tenants by drastically increasing their ground rent. However, with regard to the proportionality of the measures, the Court held that, because the extension of the ground lease contracts imposed on the owners had been for an indefinite period with no possibility of any meaningful increase in rents, the actual value of the land would not be relevant in the assessment of the level of rent in such leases. Furthermore, only the lessees could choose to end the leases and were also free to assign the leases to third parties, and any change in ownership on assignment by the lessee would not affect the level of rent, as the control on the level of rent would remain in force indefinitely. These factors effectively deprived the owners of any enjoyment of their property, including the possibility of disposing of it at a fair market value. Consequently, the Court concluded that the financial and social burden had been imposed on the lessors alone and held that the legislation violated the owners' right to protection of their property (*ibid.*, §§ 128-134).

240. In *Edwards v. Malta*, the Court found a violation on account of the constraints placed on the enjoyment of the applicant owner's rights. His tenement and adjoining field were requisitioned by the Government to provide housing for the homeless. The owner complained that he had been deprived of his property for almost 30 years and that the rent he received in compensation was ridiculously low compared to the market rate. The Court noted that the State's requisition of the property imposed an involuntary landlord-tenant relationship on the owner, who had no influence over the selection of the tenant or over any of the fundamental terms of the tenancy. Furthermore, the level of rent fixed as compensation was not sufficient to meet the owner's legitimate interest in deriving profit from his property. Therefore, the requisition had imposed a disproportionate and excessive burden on the owner, who was compelled to substantially bear the social and financial costs of providing housing for others (*ibid.*, § 78).

241. In *Immobiliare Saffi v. Italy* ([GC], § 56), and numerous follow-up cases, the Court found a violation of Article 1 of Protocol No. 1 on account of the extremely long waiting periods for eviction of tenants (under Article 6 of the Convention, *Edoardo Palumbo v. Italy*, §§ 45-46). In a similar vein,

concerning the lack of appropriate fair-trial guarantees, in *Amato Gauci v. Malta*, § 63, which concerned an owner’s inability to repossess his house on the expiry of a lease and the frustration of his entitlement to receipt of a fair and adequate rent from the property, the Court found a violation of Article 1 of Protocol No. 1.

242. As far as tenants’ guarantees against eviction are concerned, in *Connors v. the United Kingdom*, §§ 81-84, where the gypsy way of life was at stake, and *McCann v. the United Kingdom*, § 53, the Court has laid down the principle under Article 8 of the Convention that any person at risk of losing his home should be able to have the proportionality of the measure determined by an independent tribunal, even if, under domestic law, the right to occupation has come to an end. In *Connors v. the United Kingdom*, § 100, no separate issue was found to arise under Article 1 of Protocol No. 1.

243. In *Ivanova and Cherkezov v. Bulgaria*, the domestic authorities ordered the demolition of the house in which the applicants, an elderly unmarried couple, lived for a number of years, on the sole ground that it was illegal because it had been constructed without a building permit. The Court found that the applicants did not have at their disposal a procedure enabling them to obtain a proper review of the proportionality of the intended demolition of the house in which they lived in the light of their personal circumstances and that there would be a violation of Article 8 if the demolition order were to be enforced without such a review (*ibid.*, §§ 61-62). However, no violation was found under Article 1 of Protocol No. 1, given that the house had been knowingly built without a permit and therefore in flagrant breach of the domestic building regulations (*ibid.*, § 75).

244. The general principle established by the Commission in *Durini v. Italy* that a right to live in a particular property not owned by the applicant does not constitute a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention was followed by the Court in *J.L.S. v. Spain* (dec.), where the applicant, a regular soldier, had obtained the use of military lodgings in Madrid, by signing a special administrative form and not a lease agreement and in several other cases, also concerning the transformation and changing conditions from socialism to market-economy States (*Kozlovs v. Latvia* (dec.), *Kovalenok v. Latvia* (dec.); *H.F. v. Slovakia* (dec.); *Bunjevac v. Slovenia* (dec.)).

245. In a number of cases involving the non-enforcement of final judgments conferring State or social housing rights on applicants, mostly against Russia, the Court has recalled that a “claim” can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable. The Court found that by virtue of enforceable judgments entitling the applicants to an occupancy voucher followed by a so-called “social tenancy agreement” or otherwise upholding their right to housing, they had an established “legitimate expectation” to acquire a pecuniary asset. A violation of Article 1 of Protocol No. 1 was found (*Teteriny v. Russia*, §§ 48-50; *Malinovskiy v. Russia*, §§ 44-46; *Ilyushkin and Others v. Russia*, §§ 49 and 58, *Akimova v. Azerbaijan*, §§ 40-41; *Gerasimov and Others v. Russia*, §§ 182-83; *Kukalo v. Russia*, § 61; *Sypchenko v. Russia*, § 45). Furthermore, in *Olaru and Others v. Moldova*, §§ 54-57, the Court found that the impossibility for local public authorities to comply with final court judgments ordering them to offer social housing to the applicants amounted to a systemic situation.

246. In *Tchokontio Happi v. France*, §§ 59-61, the Court distinguished the facts of the case from the above-mentioned cases of *Teteriny v. Russia* and *Olaru and Others v. Moldova*. Relying on the *Durini v. Italy* (dec.) and *J.L.S. v. Spain* (dec.) line of jurisprudence (see the chapter on the Applicability of Article 1 of Protocol No. 1 – “possessions”), the Court found that the final judgment did not require the authorities to confer ownership of an apartment on the applicant, but rather to make one available to her. It was true that the applicant could acquire ownership of the apartment under certain conditions. However, there was no legal obligation on the authorities to sell it. Accordingly, she had no legitimate expectation to acquire a pecuniary asset and her complaint under Article 1 of Protocol No. 1 was dismissed as incompatible *ratione materiae* (although a violation of Article 6 was found).

247. Furthermore, in several cases the Court has dealt with situations stemming from the system of “the specially protected tenancy” in the former Yugoslavia which had certain specific features in comparison with an ordinary lease. Successor States have adopted different legal solutions generally transforming “the specially protected tenancy” into, to a different degree, protected tenancies. In *Blečić v. Croatia* [GC], § 92, and in *Berger-Krall and Others v. Slovenia*, § 135, the Court did not find it necessary to decide whether “the specially protected tenancy” constituted a “possession” since the cases were disposed of on other grounds.

248. In *Gaćeša v. Croatia* (dec.), the Court held that, because in Croatia the specially protected tenancy had been abolished before Croatia had ratified the Convention, it did not have to determine whether such tenancy itself could be considered a “possession” protected by Article 1 of Protocol No. 1. However, in *Mago and Others v. Bosnia and Herzegovina* the Court held that “the specially protected tenancy” constituted a “possession” because in Bosnia and Herzegovina the holders of such tenancies were as a rule entitled to recover their pre-war flats and then purchase them under very favourable terms. The Court distinguished that case from the *Gaćeša v. Croatia* (dec.) case on the ground that in Croatia holders of the specially protected tenancies had no longer been able to purchase their flats before Croatia’s ratification of the Convention and its Protocols.

249. In the landmark case *Hutten-Czapska v. Poland* [GC], the Court dealt for the first time with a situation from the other side of the coin – the rights of owners to whom property expropriated under the previous regime was restored and who complained about the rent control schemes. The Court has since dealt with other similar cases, such as *Bittó and Others v. Slovakia*, *Statileo v. Croatia*, and *R & L, s.r.o., and Others v. the Czech Republic*. In general, rent control was enacted by the member States after the fall of the previous regime. The tenants of the flats in those properties, who had been granted privileged tenancy rights, were allowed to remain in the flats after the previous regime’s collapse, with the State regulating the amount of rent, usually way below market prices. In all the above mentioned cases, the Court found that the owners had to bear a disproportionate burden and found a violation of Article 1 of Protocol No. 1 (compare, in different economic and social circumstances, *James and Others v. the United Kingdom* and *Mellacher and Others v. Austria*).

250. Similarly, in *Radovici and Stănescu v. Romania*, the owners of apartments offered new leases to the tenants occupying them, who had previously had State tenancies. The tenants declined to sign the leases proposed by the landlords. The landlords then applied for eviction orders, which failed due to the landlords’ failure to comply with legal formalities. An additional consequence was the automatic extension of the tenants’ leases. A violation of Article 1 of Protocol No. 1 was found.

B. Social welfare cases

251. The Commission and the Court have dealt with a number of cases concerning different types of social security/State benefits, including pension rights. For a comprehensive recapitulation of the relevant case-law, see *Béláné Nagy v. Hungary* [GC], §§ 80-89, *Yavaş and Others v. Turkey*, §§ 39-43.

252. Article 1 of Protocol No. 1 does not guarantee any right to a pension of a particular amount (among other authorities *Skórkiewicz v. Poland* (dec.); *Janković v. Croatia* (dec.); *Kuna v. Germany* (dec.); *Lenz v. Germany* (dec.); *Blanco Callejas v. Spain* (dec.); *Kjartan Ásmundsson v. Iceland*, § 39; *Apostolakis v. Greece*, § 36; *Wieczorek v. Poland*, § 57; *Poulain v. France* (dec.); *Maggio and Others v. Italy*, § 55; *Valkov and Others v. Bulgaria*, § 84). Likewise, it does not guarantee a right to an old-age pension as such (*Aunola v. Finland* (dec.); *Da Silva Carvalho Rico v. Portugal* (dec.), § 30).

253. As to the obligation to adhere to an old-age pension scheme, the Court considered in *Ackermann and Fuhrmann v. Germany* (dec.), whether the obligatory contributions imposed an excessive burden on the applicants and declared the case manifestly ill-founded. It had regard to the

fact that the contribution amounted to approximately 19 per cent of their gross income and was paid in equal shares by applicants and their employers.

254. The fact that a social insurance benefit can be reduced or discontinued does not prevent it from being a “possession” within the meaning of Article 1 of Protocol No. 1, at least until it is revoked (*Moskal v. Poland*, § 40; see the chapter on the Applicability of Article 1 of Protocol No. 1 – “possessions”). The Court has accepted the possibility of reductions in social security entitlements in certain circumstances. When deciding whether such measures were proportionate, the Court has taken into account the following factors: the aim of the reduction; the fact that the authorities sought to limit any losses to the social security scheme; that the applicants continued to receive old-age pensions; that they were not discriminated against or at any disadvantage to pensioners under the ordinary scheme; that measures had not been retroactive in effect; and that the length of the applicants’ service had been taken into account for the calculation of their statutory contribution periods (*Yavaş and Others v. Turkey*, §§ 47-50). The fact that a person has entered into and forms part of a State social-security system, albeit a compulsory one, does not necessarily mean that that system cannot be changed, either as to the conditions of eligibility of payment or as to the quantum of the benefit or pension (*Richardson v. the United Kingdom* (dec.), § 17; *Carson and Others v. the United Kingdom* [GC], §§ 85-89).

255. However, where the amount of a benefit is reduced or discontinued, this normally constitutes an interference with “possessions” which requires justification, in the general interest (*Kjartan Ásmundsson v. Iceland*, §§ 39-40; *Rasmussen v. Poland*, § 71; *Moskal v. Poland*, §§ 51 and 64; *Grudić v. Serbia*, § 72; *Hoogendijk v. the Netherlands* (dec.); *Valkov and Others v. Bulgaria*, § 84; *Philippou v. Cyprus*, § 59).

256. For the Court, an important consideration is whether the applicant’s right to derive benefits from the social insurance scheme has been infringed in a manner that resulted in the essence of his or her pension rights being impaired (*Domalewski v. Poland* (dec.); *Kjartan Ásmundsson v. Iceland*, § 39; *Wieczorek v. Poland*, § 57; *Rasmussen v. Poland*, § 75; *Valkov and Others v. Bulgaria*, §§ 91 and 97; *Maggio and Others v. Italy*, § 63; *Stefanetti and Others v. Italy*, § 55). As to the proportionality analysis (*Da Silva Carvalho Rico v. Portugal* (dec.), § 42), the Court observed in general that the deprivation of the entirety of a pension was likely to breach Article 1 of Protocol No. 1 (*Stefanetti and Others v. Italy*, § 59; *Apostolakis v. Greece*, § 41) and that, conversely, the imposition of a reduction which it considers to be reasonable and proportionate would not necessarily do so (*Da Silva Carvalho Rico v. Portugal* (dec.), § 42; *Arras and Others v. Italy*, § 82; *Poulain v. France* (dec.); *Philippou v. Cyprus*, § 68; *Bélané Nagy v. Hungary* [GC], § 117).

257. However, the fair balance test in the context of social insurance carried out by the Court is not based solely on the amount or percentage of the loss suffered in the abstract. The Court examines all the relevant elements against the case-specific background (*Bélané Nagy v. Hungary* [GC], § 117 and *Stefanetti and Others v. Italy*, § 59). The specific factors relevant for assessing the proportionality of an interference in the area of social insurance include the discriminatory nature of any loss of entitlement (*Kjartan Ásmundsson v. Iceland*, § 43); any arbitrariness of a condition (*Klein v. Austria*, § 55); the applicant’s good faith (*Moskal v. Poland*, § 44; *Čakarević v. Croatia*, §§ 60-65).

258. The importance of procedural safeguards in the fair balance assessment in the context of social insurance rights is illustrated by the fact that a violation of Article 1 of Protocol No. 1 was found in a case where a decision awarding a social insurance benefit to the applicant was subsequently reversed on the basis of a reassessment of the applicant’s original file (*Moskal v. Poland*, § 56).

259. In situations of suspension of benefits, the availability of a transitional period when entitled persons could adjust to the new scheme is one of the proportionality factors which operates in favour of the respondent State (*Lakićević and Others v. Montenegro and Serbia*, § 72; *Moskal v. Poland*, § 74, where the applicant was faced, practically from one day to the next, with the total

loss of her early-retirement pension, which constituted her sole source of income, and with poor prospects of being able to adapt to the change).

260. If a decision to suspend or discontinue benefits has retrospective effect, this will be a factor to be weighed in the balance when assessing the proportionality of the interference *Lakićević and Others v. Montenegro and Serbia*, § 71; *Moskal v. Poland*, § 69, for immediate effect. In a case involving a retrospective recalculation of a pension already awarded to the applicant the Court held that “the State’s possible interest in ensuring a uniform application of the Pensions Law should not have brought about the retrospective recalculation of the judicial award already made in the applicant’s favour. Backdating the recalculation with the effect that the sums due were reduced involved an individual and excessive burden for the applicant and was incompatible with Article 1 of Protocol No. 1” (*Bulgakova v. Russia*, § 47). An obligation to pay back any amounts received prior to the decision to discontinue or reduce payment of benefits, if they were not acquired fraudulently, is relevant to the assessment of proportionality (*Iwaszkiewicz v. Poland*, § 60, compare and contrast, *Chroust v. the Czech Republic* (dec.); *Moskal v. Poland*, § 70).

261. The passage of time can have particular significance for the legal existence and character of social insurance benefits. This applies both to amendments to legislation, which may be adopted in response to societal changes and evolving views on the categories of persons who need social assistance, and also to the evolution of individual situations (*Wieczorek v. Poland*, § 67).

262. When payment of a pension was stopped automatically, merely on the basis of the applicant’s criminal conviction, and he was thus deprived of the totality of his acquired rights, the Court found a breach of Article 1 of Protocol No. 1 (*Apostolakis v. Greece*, § 39). Conversely, a 65% reduction of a benefit on the same basis was found to raise no issue, because a three-stage judicial procedure was available under which that reduction could be challenged; all this taking into account the exceptional gravity of the applicant’s offence (*Banfield v. the United Kingdom* (dec.); *Philippou v. Cyprus*, §§ 70, 71 and 74).

263. Furthermore, benefits based on the claimant’s inability to remain in paid employment on grounds of ill-health can also be revoked or reduced, even where they have been paid to the entitled person for a long time. It is in the nature of things that various health conditions which initially make it impossible for persons afflicted with them to work can evolve over time, leading to either deterioration or improvement of the person’s health. It is permissible for States to take measures to reassess the medical condition of persons receiving disability pensions with a view to establishing whether they continue to be unfit to work, provided that such reassessment is in conformity with the law and attended by sufficient procedural guarantees. Had entitlements to disability pensions been maintained in situations where their recipients ceased over time to comply with the applicable legal requirements, it would result in their unjust enrichment. Moreover, it would have been unfair on persons contributing to the social insurance system, in particular those denied benefits because they did not meet the relevant requirements. In more general terms, it would also sanction an improper allocation of public funds, an allocation at variance with the objectives that disability pensions were purported to meet (*Wieczorek v. Poland*, § 67; *Iwaszkiewicz v. Poland*, § 51).

264. The specific issue of the enjoyment of a privileged position *vis-à-vis* pension rights enjoyed in the past by members of the communist elite, political police or armed forces in the post-communist European countries has been examined by the Court on several occasions (*Goretzky v. Germany* (dec.); *Lessing and Reichelt v. Germany* (dec.); *Schwengel v. Germany* (dec.); *Domalewski v. Poland* (dec.); *Janković v. Croatia* (dec.)). Reduction of benefits on account of the role which the recipients had played in the past under the communist system was, in a number of cases, found to be in conformity with Article 1 of Protocol No. 1, in particular as the measures complained of did not impair the actual essence of the rights – reductions did not exceed, on average, 25% to 30%, and the applicants continued to receive more than the average pension in Poland (*Cichopek and Others v. Poland* (dec.), §§ 152 and 156). Where the applicants lost their privileged entitlement to social

insurance benefits as a result of legislation intended to condemn the political role which the communist security services had played in repressing political opposition to the communist regime, the Court declared such cases inadmissible, having regard to the fact that the social insurance benefits had not been affected in a disproportionate or arbitrary manner (*Skórkiewicz v. Poland* (dec.); *Styk v. Poland*, Commission decision; *Bienkowski v. Poland*, Commission decision). In such cases it was accepted that the measures had pursued a legitimate aim, despite the considerable time, almost twenty years, which had elapsed between the collapse of the communist regime and the adoption of the domestic legislation depriving formerly privileged persons of the rights which they had acquired (*Cichopek and Others v. Poland* (dec.), § 118).

265. Reductions of certain social insurance and salary entitlements as a result of the application of various austerity measures were found to comply with Article 1 of Protocol No. 1, the Court having regard to the general context of the measures complained of (economic crisis) and to their scope (the rate of the pension left unchanged, payment reduced for a period of three years; interference therefore limited both in time and scope – *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), §§ 28-29). In a similar case concerning, *inter alia*, cuts in pensions justified by the existence of an exceptional economic crisis without precedent in recent Greek history, the Court found that the proportionality of the measures did not raise issues under Article 1 of Protocol No. 1 (*Koufaki and Adedy v. Greece* (dec.), §§ 46-49; (see the chapter on Austerity measures).

266. The Court accepted the distinction that some Contracting States draw, for pension purposes, between civil servants and private employees (*Matheis v. Germany* (dec.), concerning a survivor's pension); *Ackermann and Fuhrmann v. Germany* (dec.); *Valkov and Others v. Bulgaria*, § 117; *Panfile v. Romania* (dec.), § 28; and more recently, *Giavi v. Greece*, § 52; *Fábián v. Hungary [GC]*, §§ 131-132). The logic behind this approach is to be found in the structural differences between the two systems, which in turn justifies different regulations (*Matheis v. Germany* (dec.), and more generally on the differences between various categories of insured persons, *Carson and Others v. the United Kingdom [GC]*, § 84) (see the sub-chapter on Article 14 for *Fábián v. Hungary [GC]*).

267. The mere fact that new, less advantageous legislation deprives persons entitled to a pension benefit, by dint of retrospective requalification of the conditions attaching to the acquisition of pension rights does not, *per se*, suffice to find a violation. Statutory pension regulations are liable to change and the legislature cannot be prevented from regulating, by means of new retrospective provisions, pension rights derived from the laws in force (*Khoniakina v. Georgia*, §§ 74 and 75; and also *Arras and Others v. Italy*, § 42; *Sukhobokov v. Russia*, § 26, concerning the non-enforcement of a final judgment awarding the arrears in the payment of the applicant's pension under Article 6; *Bakradze and Others v. Georgia* (dec.), § 19).

268. The expectation of a person insured under a health insurance scheme that his or health insurance contract will be maintained or renewed does not constitute a possession (*Ramaer and Van Villingen v. the Netherlands* (dec.), § 81).

269. When it comes to reducing the amount payable, the principles which apply generally in cases concerning Article 1 of Protocol No. 1 are equally relevant when it comes to salaries or welfare benefits (*Stummer v. Austria [GC]*, § 82).

C. Banking cases

270. Article 1 of Protocol No. 1 has been invoked in a number of cases concerning the applicants' claims about the reduction of the value of their savings or the impossibility for them to recover their savings.

271. Savings accounts can considerably depreciate as a result of inflation and economic reforms. In cases relating to the reduction of the value of the applicants' savings, while reiterating that Article 1 of Protocol No. 1 does not encompass the right to acquire property (*Grishchenko v. Russia* (dec.)),

the Court has held that a general obligation on States to maintain the purchasing power of sums deposited with banking or financial institutions by way of a systematic indexation of savings or to compensate for losses caused by inflation cannot be derived from that Article (*Gayduk and Others v. Ukraine* (dec.); *Appolonov v. Russia* (dec.); *Todorov v. Bulgaria* (dec.); *Poltorachenko v. Ukraine*, § 38; *Zbaranskaya v. Ukraine* (dec.); *Sherstyuk v. Ukraine* (dec.); *Boyajyan v. Armenia*, § 54; *Ryabykh v. Russia*, § 63; *Dolneanu v. Moldova*, § 31). Similarly, the Convention does not impose obligations on States as regards their economic policy in dealing with the effects of inflation and other economic phenomena, or requiring them to remedy such situations through legislation or judicial decision (*O.N. v. Bulgaria* (dec.)). In cases in which the applicants contended that owing to the excessive length of court proceedings and the effects of inflation over a protracted period the real value of their claims had been considerably diminished, the State's responsibility was found not to be engaged and the complaints were declared inadmissible (*Köksal v. Turkey* (dec.), § 38; *Grozeva v. Bulgaria* (dec.); *O.N. v. Bulgaria* (dec.)).

272. In a case concerning the reduction of the value of the applicant's shares, and given the wide margin of appreciation enjoyed by the Contracting States in this area, the Court held that the measures taken by the National Bank of Poland were undeniably intended to protect the interests of the bank's customers who had entrusted their assets to the bank, and to avoid the heavy financial losses that the bank's bankruptcy would have entailed for its customers (*Olczak v. Poland* (dec.)).

273. Furthermore, the takeover of a private bank by the State authorities can be regarded as an interference with the right to property of the former shareholders of the bank (*Süzer and Eksen Holding A.Ş. v. Turkey*, §§ 143-144). It is for the Court to determine whether such interference meets the requirement of lawfulness, the pursuit of a legitimate aim and being proportionate to the aim pursued. When the decision to take over the bank is clearly taken as a measure to control the banking sector in the country, the deprivation of property must be deemed as pursuing a legitimate aim and the second paragraph of Article 1 of Protocol No. 1 must apply (*Süzer and Eksen Holding A.Ş. v. Turkey*, §§ 146-147). In order to assess if such interference with the right to property is proportionate to the aim pursued, it is for the Court to determine whether a fair balance has been struck between the demands of the general interest of the community and the protection of fundamental rights of the individuals concerned (*Cingilli Holding A.Ş. and Cingilloğlu v. Turkey*, §§ 49-51).

274. In respect of proceedings relating to a withdrawal of a banking licence, the Court stressed that any interference with the peaceful enjoyment of "possessions" must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (*Capital Bank AD v. Bulgaria*, § 134).

275. The freezing of a bank account is usually considered a measure of control of the use of property (*Raimondo v. Italy*, § 27, as regards the provisional seizure of assets with a view to their forfeiture under proceeds-of-crime legislation; *Luordo v. Italy*, § 67; *Valentin v. Denmark*, §§ 67-72, as regards the stripping of bankrupts of the right to administer and deal with their property; *Trajkovski v. the former Yugoslav Republic of Macedonia* (dec.), as regards the freezing of bank accounts). Due to the applicants' inability to withdraw their savings for more than twenty years and the complexity of the situation, the freezing of the bank accounts was examined under the general rule in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 99 (for further details, see below).

276. In the case of opening of winding-up proceedings against a bank, the freezing of the bank accounts of the managers can be considered lawful and pursuing a legitimate aim as far as it has the purpose to ensure that the managers of a bank which has fallen into insolvency would not dissipate

their assets in anticipation of possible criminal charges or civil claims relating to the way in which they had run the bank before the insolvency (*International Bank for Commerce and Development AD and Others v. Bulgaria*, § 123).

277. The stability of banks and the interests of their depositors and creditors deserve enhanced protection. The national authorities enjoy a broad margin of appreciation in choosing how to deal with such matters (*Capital Bank AD v. Bulgaria*, § 136). In normal circumstances, the freezing of the bank accounts of the managers of the bank, for a strictly limited duration of six months, could be regarded as falling within that margin and therefore as a proportionate measure to the aim pursued (*International Bank for Commerce and Development AD and Others v. Bulgaria*, § 124).

278. Several cases before the Court concerned the “old” foreign-currency savings deposited at the time of the SFRY which were frozen. After their independence, each Successor State to the SFRY found a different legal solution to regulate the savings previously guaranteed by the SFRY (for an overview of the specific circumstances pertaining to different respondent States, see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], §§ 24-52). In that case, the “old” foreign-currency savings had become unavailable owing to such factors as the lack of funds in the relevant banks, the imposition by law of a freezing of the accounts and the failure by national authorities to take measures with a view to enabling deposit holders in the applicants’ situation to dispose of their savings.

279. The Court has held that claims arising out of the foreign-currency savings deposited with a commercial bank before the dissolution of the SFRY amounted to a “possession” within the meaning of Article 1 of Protocol No. 1 (*Suljagić v. Bosnia and Herzegovina*, §§ 34-36), as well as a claim against the Russian Federation in respect of the investment of the savings in State premium loan bonds issued by the former USSR (*Yuriy Lobanov v. Russia*, §§ 32-34) or in bond and certificates issued by the USSR Saving Bank (*Boyajyan v. Armenia*, § 57). Similarly, securities having an economic value can be regarded as “possessions” (*Jasinskij and Others v. Lithuania*, Commission decision).

280. However, as to the frozen foreign currency claims deposited by Latvian applicants with the Bank of Foreign Economic Activities at the time of the USSR, the Court declared the applicants’ complaints inadmissible since the Bank’s actions could not be attributed to Latvia which had never demonstrated any sign of acceptance or acknowledgement of such claims (*Likvidējamā p/s Selga and Vasilevska v. Latvia* (dec.), §§ 94-113).

281. In cases in which legislative measures were aimed at paying the “old” foreign-currency savings in State bonds, the Court, having regard to the need to strike a fair balance between the general interest and the right of property of the applicant, and of all those in the same situation, considered that the means chosen were suited to achieving the legitimate aim pursued (in particular *Trajkovski v. the former Yugoslav Republic of Macedonia* (dec.)).

282. Whatever measures concerning payment of “old” foreign-currency savings a State has decided to adopt, the rule of law and the principle of lawfulness required Contracting Parties to respect and apply, in a foreseeable and consistent manner, the laws they had enacted. The deficient implementation of State legislation on “old” foreign-currency savings resulted in the failure of the respondent State to comply with that obligation (*Suljagić v. Bosnia and Herzegovina*, § 57).

283. In assessing whether a “fair balance” has been struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State’s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner. Whereas some delays may be justified in

exceptional circumstances, the Court found in that particular case that the applicants had been made to wait too long. The authorities of Slovenia and Serbia, notwithstanding their wide margin of appreciation in this area, did not strike a fair balance between the general interest of the community and the property rights of the applicants. A violation of Article 1 of Protocol No. 1 was found in respect of these two respondent States (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], §§ 108 and 124-125).

284. Delays constitute an important factor in assessing the reasonableness of an interference with property rights. Whereas some delays may be justified in view of the occurrence of exceptional circumstances, in other cases the Court has concluded that they could not constitute a good reason for the failure of the State to repay the applicants (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 108).

285. A limit to States' margin of appreciation arises when measures adopted by the national authorities substantially limit the applicant's right to dispose of funds and amount to a control of the use of property. For instance, the Court found that legislative measures were unsatisfactory if they resulted in delays of several months (*Suljagić v. Bosnia and Herzegovina*, § 64).

286. Also, the impossibility of obtaining the execution of a final judgment in an applicant's favour constituted an interference with his or her right to the peaceful enjoyment of "possessions" in the context of the "old" foreign-currency savings (*Jeličić v. Bosnia and Herzegovina*, § 48).

D. Taxation

287. Taxation is in principle an interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1, since it deprives the person concerned of a possession, namely the amount of money which must be paid (*Burden v. the United Kingdom* [GC], § 59; *Špaček, s.r.o., v. the Czech Republic*, § 39).

288. The interference for taxation purposes is generally justified under the second paragraph of this Article, which expressly provides for an exception as regards the payment of taxes or other contributions (*Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, § 59).

289. The issue nonetheless comes under the Court's purview, since the correct application of Article 1 of Protocol No. 1 is subject to its supervision (*Orion-Břeclav, S.R.O. v. the Czech Republic* (dec.)). A financial liability arising out of the raising of taxes may adversely affect the guarantee of ownership if it places an excessive burden on the person concerned or fundamentally interferes with his financial position (*Ferretti v. Italy*, Commission decision; *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of approximately 15,000 individuals v. Sweden*, Commission Decision; *Buffalo S.r.l. in liquidation v. Italy*, § 32).

290. The State is generally allowed a wide margin of appreciation under the Convention when it comes to general measures of economic or social strategy (*Wallishauser v. Austria (no. 2)*, § 65), as well as when framing and implementing policy in the area of taxation ("*Bulves*" *AD v. Bulgaria*, § 63; *Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, § 60; *Stere and Others v. Romania*, § 51). The Court respects the legislature's assessment in such matters unless it is devoid of reasonable foundation (*Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, § 60).

291. It is first and foremost for the national authorities to decide on the type of tax or contributions they wish to levy. Decisions in this area normally involve, in addition, an assessment of political, economic and social problems which the Convention leaves to the competence of the member States, as the domestic authorities are clearly better placed than the Convention organs to assess such problems (*Musa v. Austria*, Commission decision; *Baláž v. Slovakia* (dec.); *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, § 103; *R.Sz. v. Hungary*, §§ 38 and 46). It is also for the domestic legislature to make choices as to what may be classified as taxable income and what

should be the concrete means of enforcement of tax liability (*Cacciato v. Italy* (dec.), § 25; *Guiso and Consiglio v. Italy* (dec.), § 44).

292. Delay in reimbursement of overpaid taxes amounted to a violation (*Buffalo S.r.l. in liquidation v. Italy*, § 39 – the Court considering that delays ranging from five to ten years had a serious impact on the applicant company’s financial situation which could not be compensated by payment of merely simple interest on the amounts due, caused uncertainty for the taxpayer and was additionally compounded by lack of any legal avenues to remedy the situation.

293. Likewise, an inability to obtain the reimbursement of overpaid tax in respect of which the domestic authorities acknowledged that it had been paid in violation of the applicable substantive law gave rise to a violation: both the negation of the applicant company’s claim against the State and the absence of domestic procedures affording a sufficient remedy to ensure the protection of the applicant company’s right to the peaceful enjoyment of its “possessions” upset the fair balance (*S.A. Dangeville v. France*, § 61).

294. A discrepancy between the value of property taken for the purpose of calculating compensation for expropriation and for inheritance tax led the Court to find a violation on grounds of arbitrariness (*Jokela v. Finland*, § 65).

295. The mere fact that tax legislation is of a retroactive character does not, as such, give rise to a violation (e.g. retroactive law to make certain transactions subject to tax (*M.A. and 34 Others v. Finland* (dec.))).

296. Enforcement measures in the context of tax proceedings which were not automatically suspended when a debtor appealed against them were considered acceptable and falling within the State’s wide margin of appreciation, but they must be accompanied by procedural safeguards to ensure that individuals are not put in a position where their appeals are effectively circumscribed and they are unable to protect their interests effectively. One of the important factors here is whether there was some reasonable degree of communication between the public authorities involved, allowing for protection of the taxpayers’ rights (*Rousk v. Sweden*, § 124).

297. The mere fact that the tax rate is very high does not *per se* give rise to a breach; the Court examines the applicant’ tax rate (*R.Sz. v. Hungary*, § 54). Taxation at a considerably higher tax rate than that in force when the revenue in question was generated could arguably be regarded as an unreasonable interference with expectations protected by Article 1 of Protocol No. 1 (*M.A. and 34 Others v. Finland* (dec.))).

298. However, in a case where a dismissed civil servant was obliged to pay tax on her severance pay at an overall rate of 52%, the Court found a violation on the following grounds: this rate had considerably exceeded the rate applied to all other revenues; the applicant had suffered a substantial loss of income as a result of her unemployment; and the tax had been directly deducted by the employer from the severance pay without any individualised assessment of her situation and had been imposed on income related to activities occurring prior to the material tax year (*N.K.M. v. Hungary*, §§ 66-74).

299. Also in the context of tax proceedings, the Court attaches importance to the availability of procedural safeguards in the relevant proceedings (compare *Agosi v. the United Kingdom*, § 55). Fair balance was upset in cases where the national authorities, in the absence of any indication of direct involvement by an individual or entity in fraudulent abuse of a VAT chain of supply, or knowledge thereof, nevertheless penalised the fully compliant recipient of a VAT-taxable supply for the actions or inactions of a supplier over which it had no control and in relation to which it had no means of monitoring or securing compliance (“*Bulves*” *AD v. Bulgaria*, §§ 67-71).

E. Land planning

300. The rights of owners are, with regard to issues of urban or regional planning, essentially evolutive. Urban and regional planning policies are, *par excellence*, spheres in which the State intervenes, particularly through control of property in the general or public interest. In such circumstances, where the community's general interest is pre-eminent, the Court takes the view that the State's margin of appreciation is wider than when exclusively civil rights are at stake (*Gorraiz Lizarraga and Others v. Spain*, § 70; *Mellacher and Others v. Austria*, § 55; *Chapman v. the United Kingdom* [GC], § 104).

301. Under Article 1 of Protocol No. 1, the mere fact that a person owns a piece of land does not, *per se*, confer a right on the owner to build on that land. It is permissible under this provision to impose and maintain various building restrictions.

302. The Court examined a number of cases concerning restrictions imposed on landowners in the context of spatial planning, sometimes lasting for many years (*Skibińscy v. Poland*, § 98; *Skrzyński v. Poland*, § 92; *Rosiński v. Poland*, § 89; *Buczkiwicz v. Poland*, § 77; *Pietrzak v. Poland*, § 115; *Hakan Ari v. Turkey*, § 36; *Rossitto v. Italy*, § 37; *Maioli v. Italy*, § 52; *Hüseyin Kaplan v. Turkey*, § 38; *Ziya Çevik v. Turkey*, § 33). In *Jahn and Others v. Germany* [GC], §§ 100-105, which was a case concerning exceptional circumstances, such restrictions, even when they were imposed on a permanent basis and without any right to obtain compensation, were found to be in compliance with this provision. Applications were declared inadmissible in cases concerning an absolute prohibition on building, accompanied by an inability to claim compensation from the municipality, where the owners had neither manifested an intention to build nor shown that the prohibition had obliged them to alter the use to which the property was put (*Scagliarini v. Italy* (dec.)); or where, in the absence of modification of use, the applicant had waited for a long time before applying for a building permit (*Galtieri v. Italy* (dec.)). In other cases, a violation was found even in the absence of a concrete building project and on the grounds that the legislature had first enacted laws providing for a right to compensation for expropriation, but subsequently repeatedly postponed the entry into force of those laws (*Skibińscy v. Poland*, § 78).

303. The unlawful occupation of privately owned land by the public authorities with a view to implementing development projects, creating a mechanism which enabled the authorities to benefit from an unlawful situation in which the landowner was presented with a *fait accompli*, was found to be in breach of the right to the peaceful enjoyment of "possessions" (*Belvedere Alberghiera S.r.l. v. Italy*, § 59).

304. The Court emphasised that the difficulties in enacting a comprehensive legal framework in the area of urban planning constitute part of the process of transition from a socialist legal order and its property regime to one compatible with the rule of law and the market economy – a process which, by the very nature of things, is fraught with difficulties. However, these difficulties and the enormity of the tasks facing legislators having to deal with all the complex issues involved in such a transition do not exempt the Member States from the obligations stemming from the Convention or its Protocols (*Schirmer v. Poland*, § 38; *Skibińscy v. Poland*, § 96).

F. Confiscation of the proceeds of crime

305. In a number of cases the Court examined under Article 1 of Protocol No. 1 various measures taken for the purposes of combating unlawful enrichment from the proceeds of crime.

306. In such cases, States have a wide margin of appreciation in implementing policies to fight organised crime, including confiscation of unlawfully obtained assets (*Raimondo v. Italy*, § 30; *Riela and Others v. Italy* (dec.); *Arcuri and Others v. Italy* (dec.); *Gogitidze and Others v. Georgia*, § 108).

307. Confiscation of assets which may be either the instruments or the proceeds of crime does not necessarily come within the scope of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (*Handyside v. the United Kingdom*, § 63; *Agosi v. the United Kingdom*, § 51), even though confiscation, by its very nature, deprives a person of ownership.

308. In situations where confiscation measures were implemented independently of a criminal charge because the assets concerned were considered as unlawfully acquired, their lawful origin had not been demonstrated, or they had been the instruments of crime, the Court has habitually treated the confiscation as control of use of property (*Raimondo v. Italy*, § 27; *Riela and Others v. Italy* (dec.); *Sun v. Russia*, § 25; *Arcuri and Others v. Italy* (dec.); *C.M. v. France* (dec.); *Air Canada v. the United Kingdom*, § 34).

309. The same approach was taken in cases concerning confiscation of the proceeds of a criminal offence which followed on from the conviction (*Phillips v. the United Kingdom*, § 51; *Welch v. the United Kingdom*, § 26, under Article 7 of the Convention; *Van Offeren v. Netherlands* (dec.), under Article 6 of the Convention).

310. Where confiscation was imposed independently of a criminal charge against third parties, the Court gave leeway to the authorities to apply confiscation measures not only to persons directly accused of offences but also to their family members and other close relatives who were presumed to possess and manage the ill-gotten property informally on behalf of the suspected offenders, or who otherwise lacked the necessary *bona fide* status (*Raimondo v. Italy*, § 30; *Arcuri and Others v. Italy* (dec.); *Morabito and Others v. Italy* (dec.); *Butler v. the United Kingdom* (dec.); *Webb v. the United Kingdom* (dec.); *Saccoccia v. Austria*, § 88; *Silickienė v. Lithuania*, § 65, where a confiscation measure was imposed on the widow of a corrupt public official).

311. Confiscation in such cases sought to prevent the unlawful use, in a manner dangerous to society, of “possessions” whose lawful origin has not been established. The Court noted the difficulties encountered by the public authorities in the fight against organised crime. Confiscation, which is designed to block these movements of suspect capital, is an effective and necessary weapon in that context. A confiscation order in respect of criminally acquired property operates in the general interest as a deterrent to those considering engaging in criminal activities, and also guarantees that crime does not pay (*Denisova and Moiseyeva v. Russia*, § 58; *Phillips v. the United Kingdom*, § 52; *Dassa Foundation and Others v. Liechtenstein* (dec.), under Articles 6 and 7).

312. Where, in proceedings concerning various forms of confiscation or fiscal repression in respect of assets in which where the public authorities act on a presumption that the assets were acquired unlawfully, Article 6 of the Convention generally does not prevent States from having recourse to presumptions (*Salabiaku v. France*, § 28). The same approach has been used in the context of complaints about presumptions made in this context either under Article 1 of Protocol No. 1 (*Cacucci and Sabatelli v. Italy* (dec.), § 43; *Yildirim v. Italy* (dec.); or under Article 6 (shifting the burden of proof onto the applicant to show that his assets had been lawfully acquired – *Grayson and Barnham v. the United Kingdom*, § 45; *Phillips v. the United Kingdom*, § 43; as well as *Perre v. Italy* (dec.), for the examination of a witness). Use of presumptions, if the party has been given an opportunity to rebut the presumptions, is compatible with the presumption of innocence. Conversely, a violation of Article 6 § 2 was found in a case where a confiscation order was given in respect of goods despite the owner having been acquitted in criminal proceedings of the crime from which the proceeds had allegedly originated (*Geerings v. Netherlands*, §§ 43-51).

313. The Court attached importance to various procedural guarantees available in confiscation proceedings, such as their adversarial nature (*Yildirim v. Italy* (dec.); *Perre v. Italy* (dec.)); advance disclosure of the prosecution case (*Grayson and Barnham v. the United Kingdom*, § 45, for a public hearing); opportunity for the party to adduce documentary and oral evidence (*Butler v. the United Kingdom* (dec.); *Perre v. Italy* (dec.)), possibility of being legally represented by a privately hired lawyer (*Butler v. the United Kingdom* (dec.)); assumption of the criminal character of the assets can

be rebutted by the party (*Geerings v. Netherlands*, § 44); a judge has a discretion not to apply the assumption if he/she considered that applying it would give rise to a serious risk of injustice (*Phillips v. the United Kingdom*, § 43); whether individual assessment of which pieces of property should be confiscated in the light of the facts of the case has been carried out (*Rummi v. Estonia*, § 108; *Silickienė v. Lithuania*, § 68); on the whole, whether the applicant was afforded a reasonable opportunity of putting his arguments before the domestic courts (*Veits v. Estonia*, §§ 72 and 74; *Jokela v. Finland*, § 45); regard being had to a comprehensive view of the proceedings concerned (*Denisova and Moiseyeva v. Russia*, § 59).

G. Restitution of property

314. After the democratic changes in Central and Eastern Europe, many Governments introduced legislation providing for the restitution of property expropriated in the aftermath of the Second World War or dealt with restitution within the existing legal framework.

315. In respect of the taking of property before the ratification of the Convention and its Protocols, the Convention organs have consistently held that deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of “deprivation of a right” (*Malhous v. the Czech Republic* (dec.) [GC]; *Preußische Treuhand GmbH & Co. KG a.A. v. Poland* (dec.), § 57).

316. Furthermore, Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention (*Jantner v. Slovakia*, § 34).

317. Neither does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States’ freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (*Maria Atanasiu and Others v. Romania*, § 136). In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a “legitimate expectation” attracting the protection of Article 1 of Protocol No. 1 (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], §§ 70-74; *Kopecký v. Slovakia* [GC], § 35; *Smiljanić v. Slovenia* (dec.), § 29).

318. Thus, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (*Malhous v. the Czech Republic* (dec.) [GC]; *Kopecký v. Slovakia* [GC], § 35). The belief that a law previously in force would be changed to an applicant’s advantage cannot be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol No. 1. There is a difference between a mere hope of restitution, however understandable that hope may be, and a legitimate expectation, which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], § 73; *Von Maltzan and Others v. Germany* (dec.) [GC], § 112).

319. On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement (*Maria Atanasiu and Others v. Romania*, § 136). The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State’s ratification of Protocol No. 1 (*Von Maltzan and Others v. Germany* (dec.) [GC], § 74; *Kopecký v. Slovakia* [GC], § 35; *Broniowski v. Poland* [GC], § 125).

320. Therefore, as regards the content and scope of the right in question, the Court has observed that that issue must be seen from the perspective of what “possessions” the applicant had on the date of the Protocol’s entry into force and, critically, on the date on which he submitted his complaint to the Convention institutions (*Broniowski v. Poland* [GC], §§ 125 and 132). In that case, the applicant’s entitlement to compensatory property was vested in him by Polish legislation – granting rights to persons repatriated from beyond the Bug River after the Second World War, or their heirs – which remained in force on the date of the entry into force of Protocol No. 1 for Poland.

321. As to the implementation of the undertaken reforms, the rule of law underlying the Convention and the principle of lawfulness in Article 1 of Protocol No. 1 require States not only to respect and apply, in a foreseeable and consistent manner, the laws they have enacted, but also, as a corollary of this duty, to ensure the legal and practical conditions for their implementation (*Broniowski v. Poland* [GC], § 184).

322. A number of cases in the field of the restitution of property concerned the domestic authorities’ failure to enforce the final judicial (or administrative) decisions. A judgment placing the authorities under an obligation to afford compensation, in land or money, in accordance with the domestic legislation on restitution of property rights, provides the applicant with an enforceable claim such as to constitute a “possession” within the meaning of Article 1 of Protocol No. 1 (*Jasiūniene v. Lithuania*, § 44). Therefore, where there is a final court judgment in the claimant’s favour, the concept of “legitimate expectation” can come into play (*Driza v. Albania*, § 102).

323. Similarly, in the pilot judgment *Manushaqe Puto and Others v. Albania*, §§ 110-118, the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention on account of the non-enforcement of a final decision that had awarded the applicants compensation *in lieu* of restitution of their property. Non-enforcement of final decisions, coupled with other shortcomings in the Romanian system of restitution of property, gave rise to a violation of Article 1 of Protocol No. 1 in *Maria Atanasiu and Others v. Romania*, as well as to a pilot judgment procedure (*ibid.*, §§ 215-218).

324. As to the justification a Government may advance for its interference with the applicant’s right to property, the Court has reiterated that a lack of funds cannot justify a failure to enforce a final and binding judgment debt owed by the State (*Driza v. Albania*, § 108; *Prodan v. Moldova*, § 61).

325. Only very exceptionally, for instance in the unique context of German reunification, the Court has accepted that the lack of any compensation did not upset the “fair balance” that has to be struck between the protection of property and the requirements of the general interest (*Jahn and Others v. Germany* [GC], § 117). In general, what Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be “reasonably related” to its value (*Broniowski v. Poland* [GC], § 186).

326. Furthermore, some of the cases brought before the Court concerned failure to respect the *res judicata* effect of a final judgment resulting in the annulment of the applicant’s property title without compensation. In such circumstances, the Court has found that the breach of the principle of legal certainty results in breach of the requirement of lawfulness under Article 1 of Protocol No. 1 (*Parvanov and Others v. Bulgaria*, § 50; *Kehaya and Others v. Bulgaria*, § 76; *Chengelyan and Others v. Bulgaria*, §§ 49-50). The requirement of lawfulness means not only compliance with the relevant provisions of domestic law, but also compatibility with the rule of law. It thus implies that there should be protection from arbitrary action (*Parvanov and Others v. Bulgaria*, § 44).

327. Thus, in view of contradictory holdings of the domestic courts and failure of a domestic court to explain why it departs from the apparent logic of a previous judgment, the deprivation of an applicant’s “possessions” cannot be compatible with the rule of law and free of arbitrariness and cannot thus meet the requirement of lawfulness under Article 1 of Protocol No. 1 (*Parvanov and Others v. Bulgaria*, § 50). Similarly, the Court noted under Article 6 that, in the particular context of

the restitution of nationalised properties in Romania, the lack of legislative coherence and the conflicting case-law on the interpretation of certain aspects of the restitution laws created a general climate of lack of legal certainty (*Tudor Tudor v. Romania*, § 27).

328. Furthermore, the coexistence of two title deeds to the same property and the lack of compensation for the owner unable to enjoy his “possessions” have given rise to the finding of a violation of Article 1 of Protocol No. 1 in many of the Court’s judgments (the first of which was *Străin and Others v. Romania*, §§ 46-47).

329. The Court has also had the opportunity to examine the situation of owners who, having acquired their property in good faith, were subsequently dispossessed because others were acknowledged as the rightful owners (*Toşcuță and Others v. Romania*, § 33).

330. In particular, the sale by the State of a person’s property to a third party acting in good faith, even where it precedes the final judicial confirmation of the other person’s title, amounts to a deprivation of property. Such a deprivation, combined with a total lack of compensation, is contrary to Article 1 of Protocol No. 1 (*Vodă and Bob v. Romania*, § 23). In the case of *Katz v. Romania*, §§ 30-36, the Court found that the violation of Article 1 of Protocol No. 1 revealed a widespread problem caused by faulty legislation on the restitution of nationalised buildings which had been sold by the State to third parties, who had purchased them in good faith, and that even numerous amendments to the law had failed to improve the situation. The Court saw this failure of the State to put its legislation in order not only as an aggravating factor but also as a threat to the future effectiveness of the Convention machinery under Article 46 of the Convention. This remained problematic in *Preda and Others v. Romania*, §§ 146-148, the follow-up judgment to *Maria Atanasiu and Others v. Romania*.

331. In *Pincová and Pinc v. the Czech Republic* the applicants complained of a violation of their ownership rights, submitting that they had acquired the house in good faith in 1967, unaware that the property had previously been confiscated and with no control over the details of the transaction or the purchase price. The Court considered it necessary to ensure that the attenuation of old injuries did not create disproportionate new wrongs. To that end, the legislation should make it possible to take into account the particular circumstances of each case, so that persons who acquired their “possessions” in good faith were not made to bear the burden of responsibility which was rightfully that of the State which once confiscated those “possessions” (*ibid.*, § 58). A violation was found in that case (also *Zvolský and Zvolská v. the Czech Republic*, §§ 72-74). The proportionality of measures which – with the aim to compensate persons from whom property had been arbitrarily taken by the communist regime – had deprived other individuals of property they had purchased from the State was also at stake in *Velikovi and Others v. Bulgaria*, §§ 181 and 190.

332. Finally, excessive length of restitution proceedings has given rise to a breach of Article 6 in a number of cases, for example, against Romania, Slovakia and Slovenia (*Sirc v. Slovenia*, § 182). In such cases, the Court often considered it unnecessary to determine the applicants’ complaints based on Article 1 of Protocol No. 1. However, where the delays took place in proceedings following the recognition of the applicant’s property rights, the Court has found a separate breach of Article 1 of Protocol No. 1, notably because of the state of uncertainty in which the applicants found themselves as to the fate of their property (*Igarienė and Petrauskiene v. Lithuania*, §§ 55 and 58; *Beinarovič and Others v. Lithuania*, §§ 141 and 154). In the case of *Kirilova and Others v. Bulgaria*, §§ 120-121, significant delays occurred in delivering flats offered as compensation for the expropriation of their properties to the applicants.

333. Finally, in *Vasilev and Doycheva v. Bulgaria*, §§ 45-53, concerning the restitution of agricultural land, collectivised by the communist regime, to its owners or their heirs, a violation of Article 1 of Protocol No. 1 and Article 13 was found on account of the domestic authorities’ inertia in completing the various formalities required.

H. State-owned companies

334. In deciding whether a company's acts or omissions are attributable under the Convention to the authority concerned or else to the responsible member State, the Court will have regard to such factors as listed in the case of *Radio France and Others v. France* (dec.), § 26, in the context of Article 34 of the Convention. The Court will notably have to consider whether the company enjoyed sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention for its acts and omissions (*Mykhaylenko and Others v. Ukraine*, § 44; *Shlepin v. Russia*, § 24; *Ljubljanska banka d.d. v. Croatia* (dec.), §§ 51-55; *Liseytsseva and Maslov v. Russia*, § 151). There is nothing in the text of Article 34 to suggest that the term "non-governmental organisation" could be construed so as to exclude only those governmental organisations which could be regarded as a part of the respondent State (*Croatian Chamber of Economy v. Serbia* (dec.), § 38).

335. The so-called "institutional and operational independence" test, to which the Court has referred in many cases, is directly derived from the criteria summed up in *Radio France* decision. In this connection, the Court takes into account a variety of factors, none of which appears to be determinative on its own, in its assessment as to whether a legal entity, notably, a State-owned company is considered as a "governmental organisation" within the meaning of Article 34 of the Convention.

336. The above-mentioned factors include the company's legal status (i.e. public or private law), the rights conferred on the company (i.e. whether the rights given are normally reserved for public authorities), the nature of its activity (i.e. whether it exercises a public function or it is a classical business) and the context in which it is carried out (i.e. monopoly), institutional independence (i.e. the extent of State ownership) and operational independence (i.e. the extent of State supervision and control).

337. When establishing State responsibility for the debts of a State-owned company, further additional factors also appear to be taken into account, such as the role played by the State with respect to the difficult situation in which the company found itself, i.e. insolvency, or whether the State can be assumed to have accepted responsibility for the debts of the company fully or in part (compare, *Liseytsseva and Maslov v. Russia*, §§ 184-192).

338. Accordingly, when such elements are present, the public nature of the debtor company can be confirmed regardless of its formal classification under domestic law. Therefore, where sufficient grounds, in the specific circumstances of the case, make it possible to conclude that the State is liable for the company's debts to the applicants, the Court will conclude that the applicants' complaint is compatible *ratione personae* with the provisions of the Convention.

339. When the State is the majority shareholder of a private company the Court concluded that, despite the company in question being a separate legal entity, it did not enjoy sufficient institutional and operational independence from the State if (i) its assets are to a large extent controlled and managed by the State; (ii) the State had, and exercised, the power to take measures aimed at improving the company's financial situation by various means such as annulling, even if only temporarily, the arrears levied on it by the courts or by fostering investments in the company, and (iii) the Government itself had accepted a certain degree of responsibility for the debts of the company (*Khachatryan v. Armenia*, §§ 51-54).

340. However, when the respondent company with separate legal personality has the ability to own assets that are distinct from the property of its shareholders and has delegated management, the State, like any other shareholder, shall only be liable for debts in the amount invested in the company's shares (*Anokhin v. Russia* (dec.)).

341. In particular, as to the companies under the regime of social ownership, which was widely used in the SFRY, the Court has held that they do not, in general, enjoy “sufficient institutional and operational independence from the State” to absolve the latter from its responsibility under the Convention (*R. Kačapor and Others v. Serbia*, § 98; *Mykhaylenky and Others v. Ukraine*, § 44; *Zastava It Turs v. Serbia* (dec.), §§ 21-23).

342. Furthermore, the Court held that the parameters developed in relation to State-owned companies other than financial institutions, could also apply to cases concerning State-owned banks (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and The Former Yugoslav Republic Of Macedonia* [GC], § 116). Indeed, the key criteria recalled to determine whether the State shall be held responsible for banking debts are the same as the Court identified in its *Radio France* decision.

343. In *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 114, the Court recalled that a State might be responsible for the debts of a State-owned company, even if the company was a separate legal entity, provided that it did not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention (*Mykhaylenky and Others v. Ukraine*, §§ 43-46; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, §§ 17-19; *Yershova v. Russia*, §§ 54-63; *Kotov v. Russia* [GC], §§ 92-107).

344. In addition to the factors mentioned above, the Court took the view that even the additional factors developed in the case-law relating to companies other than financial institutions can apply to cases concerning State-owned banks (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], § 115). The cases in question concerned the question whether the State was directly responsible for the company’s financial difficulties, siphoned the corporate funds to the detriment of the company and its stakeholders, failed to keep an arm’s-length relationship with the company or otherwise acted in abuse of the corporate form (*Anokhin v. Russia* (dec.); *Khachatryan v. Armenia*, §§ 51-55).

345. Finally, it is also worth mentioning the Court’s effort to clarify the legal status of insolvency liquidators. To examine whether the liquidator can be considered to have acted as a State agent, the Court has examined different criteria, such as: i) validation of the liquidator’s appointment (whether validation entails any State responsibility for the way in which the liquidator discharged his duties); ii) supervision and accountability (whether the State holds responsibility for the liquidator’s acts, whereas he was liable before the creditors); iii) objectives (nature of the liquidator’s tasks and interests served, i.e. according to the Court, the mere fact that services might also have been socially useful does not turn the liquidator into a public official acting in the public interest); iv) powers (whether limited to the operational control and management of the insolvent company’s property and whether there is formal delegation of powers by any governmental authority); and v) functions (whether liquidators are involved in the enforcement proceedings and have been given coercive powers) (in particular *Kotov v. Russia* [GC], §§ 92-98 and 99-106), which concerned the inability of the applicant to recover damages from a liquidator appointed to manage the property of a bank declared insolvent by a court).

346. In that case the liquidator, at the relevant time, enjoyed a considerable amount of operational and institutional independence and the State authorities were not empowered to give instructions to him and therefore could not directly interfere with the liquidation process as such, so that it could be concluded that the liquidator had not acted as a State agent (*Kotov v. Russia* [GC], § 107). Consequently, the respondent State was not to be held directly responsible for his wrongful acts.

I. Austerity measures

347. The Court has considered a number of cases where the applicants complained about various aspects of austerity measures, taken by Contracting Parties in response to financial crises. These included reductions of social insurance and salary entitlements as well as tax measures which were often found to comply with Article 1 of Protocol No. 1 requirements. The Court took into account that the measures were taken to offset the consequences of an economic crisis, that the authorities had had the public interest in mind, that a particular measure had been part of a much wider programme, that they had not been disproportionate and had not represented a threat to the applicants' livelihood, and that they were of a temporary nature (*Mockienė v. Lithuania* (dec.), § 48; *Da Silva Carvalho Rico v. Portugal* (dec.), § 46; *Savickas and Others v. Lithuania* (dec.), §§ 92-94; *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), § 29; *Koufaki and Adedy v. Greece* (dec.), §§ 37-49). The Court has recognised that States have a wide discretion when enacting laws in the context of a change of political or economic regime (*Valkov and Others v. Bulgaria*, § 96).

348. Some of the measures accepted by the Court have resulted in a temporary reduction of income for certain segments of the population. In 2010 Romania reduced public-sector wages by 25% for six months in order to balance the State budget (*Mihăieş and Senteş v. Romania* (dec.), § 8). In 2012 Portugal reduced the holiday and Christmas allowances payable to certain categories of public-sector pensioners whose monthly pensions were higher than EUR 600 and suspended them altogether for pensioners whose monthly pensions were higher than EUR 1,100, which in the cases of two applicants led to a reduction of pension payments approaching 11% (*Da Conceição Mateus and Santos Januário v. Portugal* (dec.), § 6).

349. Others have taken the form of a temporary additional income tax. In 2013 Portugal subjected public-sector pensions to a solidarity contribution of 3,5% on a part corresponding to the first EUR 1,800 a month and 16% on the part exceeding it, which in the case before the Court reduced the applicant's pension income by 4,6% (*Da Silva Carvalho Rico v. Portugal* (dec.), § 8).

350. Others measures still have resulted in a permanent or semi-permanent reduction of income for certain segments of the population. In 2010 Romania abolished a number of special pension regimes applicable to particular categories of retired public-sector employees, resulting in the case of five applicants in a diminution of their pensions by approximately 70% (see *Frimu and Others v. Romania* (dec.), § 5).

351. Also in 2010 Greece reduced public-sector pensions and wages with retroactive effect by percentages ranging from 12% to 30%, further reducing them later that year by an additional 8%, and reduced holiday and Christmas allowances for higher-earning public-sector employees (*Koufaki and Adedy v. Greece* (dec.), §§ 20 and 46).

352. In a case concerning the temporary reduction of judges' salaries, the Court had regard to the fact that the measures complained of formed part of a wide programme of austerity measures affecting salaries throughout the public sector, that the reduction concerned an increase granted two years earlier, and that ultimately the persons concerned had been compensated for this reduction (*Savickas and Others v. Lithuania* (dec.), § 93).

353. In a case concerning taxation of severance pay at an overall rate of 52%, however, the Court found that the means employed had been disproportionate to the legitimate aim pursued. This was so despite the wide discretion that the State enjoyed in matters of taxation and even assuming that the measure served the interest of the State budget at a time of economic hardship. The Court took into account that the rate had considerably exceeded the rate applied to all other revenues; that the applicant had suffered a substantial loss of income as a result of her unemployment; and the tax had been directly deducted by the employer from the severance pay without any individualised assessment of her situation and had been imposed on the income related to activities occurring prior to the material tax year (*N.K.M. v. Hungary*, §§ 66-74).

354. In another case concerning imposition of taxes on high income, the Court found overall that the decisions taken by the State had not gone beyond the limit of the discretion allowed to authorities in questions of taxation and had not upset the balance between the general interest and the protection of the companies' individual rights. The Court noted that the steps taken by the State had also been part of the country's goal to meet obligations under European Union budget rules (*P. Plaisier B.V. v. the Netherlands* (dec.), §§ 77-97).

355. Finally, in a case concerning the forcible participation by the applicants in the effort to reduce the public debt by exchanging their bonds for other debt instruments of lesser value, the Court did not find a violation of Article 1 of Protocol No. 1. It noted that the interference pursued a public-interest aim of preserving economic stability and restructuring the national debt at a time of a serious economic crisis. The Court held that the applicants had not suffered any special or excessive burden, in view, particularly, of the States' wide margin of appreciation in that sphere and of the reduction of the commercial value of the bonds, which had already been affected by the reduced solvency of the State, which would probably have been unable to honour its obligations under the clauses included in the old bonds. The Court also considered that the collective action clauses and the restructuring of the public debt had represented an appropriate and necessary means of reducing the public debt and saving the State from bankruptcy, that investing in bonds was never risk-free and that the applicants should have been aware of the vagaries of the financial market and the risk of a possible drop in the value of their bonds (*Mamatas and Others v. Greece*, §§ 22 and 48-51).

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356. The case *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], §§ 155-156, concerned an aircraft leased by the applicant company to a Yugoslav company which was impounded in 1993 by the Irish authorities under a Community Regulation giving effect to UN sanctions against the Federal Republic of Yugoslavia. The Court found that the protection of fundamental rights by EC law could have been considered to be, and to have been at the relevant time, "equivalent" to that of the Convention system (the so-called "Bosphorus presumption or the principle of equivalent protection"⁹). Consequently, a presumption arose that Ireland did not depart from the requirements of the Convention when it implemented legal obligations flowing from its membership of the EC. The Court took note of the nature of the interference, of the general interest pursued by the impoundment and by the sanctions regime and of the ruling of the ECJ, a ruling with which the Supreme Court was obliged to and did comply. It considered it clear that there was no dysfunction of the mechanisms of control of the observance of Convention rights. Therefore, it could not be said that the protection of Bosphorus Airways' Convention rights was manifestly deficient. No violation of Article 1 of Protocol No. 1 was found.

357. As to pecuniary claims, in the case of *Avotiņš v. Latvia* [GC], §§ 104 and 109-111, which concerned the enforcement in Latvia of a judgment delivered in 2004 in Cyprus with regard to the repayment of a debt under Article 6 of the Convention and where no violation was found, the Court has recognised that the mechanism provided for by European Union law for supervising observance of fundamental rights, in so far as its full potential has been deployed, also affords protection comparable to that for which the Convention provides (the second condition of the Bosphorus presumption, the first condition being the absence of any margin of manoeuvre on the part of the domestic authorities, as set out in *Michaud v. France*, §§ 114-116).

358. Furthermore, in *Heracles S.A. General Cement Company v. Greece* ((dec.) §§ 63-70), the Court found that the domestic court's judgment, further to the decision of the European Commission, ordering the repayment of unlawfully acquired State aids, together with accrued interest over

9. See the *Guide on Article 1 (Obligation to respect human rights)*.

14 years, was not disproportionate and declared the complaints under Article 1 of Protocol No. 1 and Article 6 inadmissible.

359. Finally, in a recent case, a company fishing for immature mussels (mussel seed) complained that the Irish Government had caused it financial losses by the way it had complied with European Union environmental legislation. The Government temporarily prohibited mussel seed fishing in 2008 in the harbour where the company operated after the Court of Justice of the European Union (“the CJEU”) found Ireland had failed to fulfil its obligations under two EU environmental directives. The company thus had no mature mussels to sell in 2010, causing a loss of profit. The Court observed that the protection of the environment and compliance with the respondent State’s obligations under EU law were both legitimate objectives. As a commercial operator the company should have been aware that the need for the State to comply with EU rules was likely to impact its business.

360. In particular, the Court took the view that the Bosphorus presumption did not apply in the circumstances of the present case as the respondent State was not wholly deprived of a margin of manoeuvre in its duty to comply with the CJEU’s judgment and the secondary legislation implementing the directive. The Court left open the question whether a judgment of the CJEU in infringement proceedings could in other circumstances be regarded as leaving no margin of manoeuvre (*O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, §§ 110-112).

361. Overall, the Court found that the company had not suffered a disproportionate burden due to the Government’s actions and that Ireland had ensured a fair balance between the general interests of the community and the protection of individual rights. There had therefore been no violation of the company’s property rights under Article 1 of Protocol No. 1 was found.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the ‘Language versions’ tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

—A—

- Acar and Others v. Turkey* (dec.), nos. 26878/07 32446/07, 12 December 2017
Ackermann and Fuhrmann v. Germany (dec.), no. 71477/01, 8 September 2013
AGOSI v. the United Kingdom, 24 October 1986, Series A no. 108
Agrotexim and Others v. Greece, 24 October 1995, Series A no. 330-A
Air Canada v. the United Kingdom, 5 May 1995, Series A no. 316-A
Airey v. Ireland, 9 October 1979, series A no. 32, p. 14
Aka v. Turkey, 23 September 1998, *Reports of Judgments and Decisions* 1998-VI
Akdivar and Others v. Turkey, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV
Akimova v. Azerbaijan, no. 19853/03, 27 September 2007
Akkus v. Turkey, 9 July 1997, *Reports* 1997-V
Alatulkkila and Others v. Finland, no. 33538/96, 28 July 2005
Albergas and Arlauskas v. Lithuania, no. 17978/05, 27 May 2014
Albina v. Romania, no. 57808/00, 28 April 2005
Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC], no. 60642/08, ECHR 2014
Allan Jacobsson v. Sweden (no. 1), 25 October 1989, Series A no. 163
Allianz-Slovenska-Poistovna, A.S., and Others v. Slovakia (dec.), no. 19276/05, 9 November 2010

Almeida Garrett, Mascarenhas Falcão and Others v. Portugal, nos. 29813/96 and 30229/96, ECHR 2000-I
Amato Gauci v. Malta, no. 47045/06, 15 September 2009
Ambruosi v. Italy, no. 31227/96, 19 October 2000
Andrejeva v. Latvia [GC], no. 55707/00, ECHR 2009
Anheuser-Busch Inc. v. Portugal [GC], no. 73049/01, ECHR 2007-I
Ankarcrona v. Sweden (dec.), no. 35178/97, ECHR 2000-VI
Anokhin v. Russia (dec.), no. 25867/02, 31 May 2007
Ansay and Others v. Turkey (dec.), no. 49908/99, 2 March 2006
Apap Bologna v. Malta, no. 46931/12, 30 August 2016
Apostolakis v. Greece, no. 39574/07, 22 October 2009
Appolonov v. Russia (dec.), no. 67578/01, 29 August 2002
Arcuri and Others v. Italy (dec.), no. 52024/99, ECHR 2001-VII
Arras and Others v. Italy, no. 17972/07, 14 February 2012
Ashby Donald and Others v. France, no. 36769/08, 10 January 2013
Athanasiou and Others v. Greece, no. 2531/02, 9 February 2006
Aunola v. Finland (dec.), no. 30517/96, 15 March 2001
Aygun v. Turkey, no. 35658/06, 14 June 2011
Azas v. Greece, no. 50824/99, 19 September 2002
Azienda Agricola Silverfunghi S.a.s. and Others v. Italy, nos. 48357/07 and 3 others, 24 June 2014

—B—

Bäck v. Finland, no. 37598/97, ECHR 2004-VIII
Bahia Nova S.A. v. Spain (dec.), no. 50924/99, 12 December 2000
Bakradze and Others v. Georgia (dec.), nos. 1700/08 and 2 others, 8 January 2013
Baláž v. Slovakia (dec.), no. 60243/00, 16 September 2003
Banfield v. the United Kingdom (dec.), no. 6223/04, ECHR 2005-XI
Barcza and Others v. Hungary, no. 50811/10, 11 October 2016
Bata v. Czech Republic (dec.), no. 43775/05, 24 June 2008
Bečvář and Bečvářová v. the Czech Republic, no. 58358/00, 14 December 2004
Beinarovič and Others v. Lithuania, nos. 170520/10 and 2 others, 12 June 2018
Béláné Nagy v. Hungary [GC], no. 53080/13, 13 December 2016
Beller v. Poland, no. 51837/99, 1 February 2005
Bellet, Huertas and Vialatte v. France (dec.), nos. 40832/98 and 2 others, 27 April 1999
Belvedere Alberghiera S.r.l. v. Italy, no. 31524/96, ECHR 2000-VI
Berger-Krall and Others v. Slovenia, no. 14717/04, 12 June 2014
Beyeler v. Italy [GC], no. 33202/96, ECHR 2000-I
Bienkowski v. Poland (dec.), no. 33889/96, 9 September 1998
Bimer S.A. v. Moldova, no. 15084/03, 10 July 2007
Bistrović v. Croatia, no. 25774/05, 31 May 2007
Bittó and Others v. Slovakia, no. 30255/09, 28 January 2014
Blanco Callejas v. Spain (dec.), no. 64100/00, 18 June 2002
Blečić v. Croatia [GC], no. 59532/00, ECHR 2006-III
Blumberga v. Latvia no. 70930/01, 14 October 2008
Bock and Palade v. Romania, no. 21740/02, 15 February 2007
Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], no. 45036/98, ECHR 2005-VI
Bowler International Unit v. France, no. 1946/06, 23 July 2009
Boyajyan v. Armenia, no. 38003/04, 22 March 2011
Bradshaw and Others v. Malta, no. 37121/15, 23 October 2018

Bramelid and Malmström v. Sweden, no. 8588/79 and 8589/79, Commission decision of 12 October 1982, DR 9, pp. 64 and 82
British-American Tobacco Company Ltd v. the Netherlands, 20 November 1995, Series A no. 331
Broniowski v. Poland [GC], no. 31443/96, ECHR 2004-V
Brosset-Triboulet and Others v. France [GC], no. 34078/02, 29 March 2010
Brumărescu v. Romania [GC], no. 28342/95, ECHR 1999-VII
Bruncrona v. Finland, no. 41673/98, 16 November 2004
Bucheň v. the Czech Republic, no. 36541/97, 26 November 2002
Buczkwicz v. Poland, no. 10446/03, 26 February 2008
Budayeva and Others v. Russia, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, ECHR 2008 (extracts)
Budina v. Russia (dec.), no. 45603/05, 18 June 2009
Buffalo S.r.l. in liquidation v. Italy, no. 38746/97, 3 July 2003
Buffalo SRL v. Italy, no. 44436/98, 27 February 2001
Bulgakova v. Russia, no. 69524/01, 18 January 2007
“Bulves” AD v. Bulgaria, no. 3991/03, 22 January 2009
Bunjevac v. Slovenia (dec.), no. 48775/09, 19 January 2006
Burden v. the United Kingdom [GC], no. 13378/05, ECHR 2008
Burdov v. Russia, no. 59498/00, ECHR 2002-III
Burdov v. Russia (no. 2), no. 33509/04, ECHR 2009
Butler v. the United Kingdom (dec.), no. 41661/98, ECHR 2002-VI
Buzescu v. Romania, no. 61302/00, 24 May 2005

—C—

C.M. v. France (dec.), no. 28078/95, ECHR 2001-VII
Cacciato v. Italy (dec.) no. 60633/16, 16 January 2018
Čakarević v. Croatia, no. 48921/13, 26 April 2018
Cacucci and Sabatelli v. Italy (dec.), no. 29797/09, 17 June 2014
Caligiuri and Others v. Italy, nos. 657/10 and 3 others, 9 September 2014
Canea Catholic Church v. Greece, 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII
Capital Bank AD v. Bulgaria, no. 49429/99, ECHR 2005-XII (extracts)
Carson and Others v. the United Kingdom [GC], no. 42184/05, ECHR 2010
CDI Holding Aktiengesellschaft and Others v. Slovakia (dec.), no. 37398/97, 18 October 2001
Ceni v. Italy, no. 25376/06, 4 February 2014
Centro Europa 7 S.R.L. and di Stefano v. Italy [GC], no. 38433/09, ECHR 2012
Chabauty v. France [GC], no. 57412/08, 4 October 2012
Chapman v. the United Kingdom [GC], no. 27238/95, ECHR 2001-I
Chassagnou and Others v. France [GC], nos. 25088/94 and 2 others, ECHR 1999-III
Chengelyan and Others v. Bulgaria, no. 47405/07, 21 April 2016
Chiragov and Others v. Armenia [GC], no. 13216/05, ECHR 2015
Chroust v. the Czech Republic (dec.), no. 4295/03, ECHR 2006-XV
Cichopek and Others v. Poland (dec.), nos. 15189/10 and 1,627 others, 14 May 2013
Cindrić and Bešlić v. Croatia, no. 72152/13, 6 September 2016
Cingilli Holding A.Ş. and Cingilloğlu v. Turkey, nos. 31833/06 and 37538/06, 21 July 2015
Company S. and T. v. Sweden, no. 11189/84, Commission decision of 11 December 1986, DR 50, p. 138
Connors v. the United Kingdom, no. 66746/01, 27 May 2004
Cooperativa Agricola Slobozia-Hanesei v. Moldova, no. 39745/02, 3 April 2007
Cooperativa La Laurentina v. Italy, no. 23529/94, 2 August 2001
Croatian Chamber of Economy v. Serbia (dec.), no. 819/08, 25 April 2017

Cvijetić v. Croatia, no. 71549/01, 26 February 2004
Czajkowska and Others v. Poland, no. 16651/05, 13 July 2010

—D—

Da Conceição Mateus and Santos Januário v. Portugal (dec.), nos. 62235/12 and 57725/12, 8 October 2013
Da Silva Carvalho Rico v. Portugal (dec.), no. 13341/14, 1 September 2015
Dabić v. the former Yugoslav Republic of Macedonia (dec.), no. 59995/00, 3 October 2001
Damayev v. Russia, no. 36150/04, 29 May 2012
Dassa Foundation and Others v. Liechtenstein (dec.), no. 696/05, 10 July 2007
Davydov v. Russia, no. 18967/07, 30 October 2014
De Luca v. Italy, no. 43870/04, 24 September 2013
Debelianovi v. Bulgaria, no. 61951/00, 29 March 2007
Denev v. Sweden (dec.), no. 12570/86, 18 January 1989
Denisov v. Ukraine [GC], no. 76639/11, 25 September 2018
Denisova and Moiseyeva v. Russia, no. 16903/03, 1 April 2010
Depalle v. France [GC], no. 34044/02, ECHR 2010
Des Fours Walderode v. the Czech Republic (dec.), no. 40057/98, ECHR 2004–V
Di Marco v. Italy, no. 32521/05, 26 April 2011
Dimitrov and Hamanov v. Bulgaria, nos. 48059/06 and 2708/09, 10 May 2011
Dimitrovi v. Bulgaria, no. 12655/09, 3 March 2015
Dobrowolski and Others v. Poland, nos. 45651/11 and 10 others, 13 March 2018
Doğan and Others v. Turkey, nos. 8803/02 and 14 others, ECHR 2004–VI (extracts)
Đokić v. Bosnia and Herzegovina, no. 6518/04, 27 May 2010
Dolneanu v. Moldova, no. 17211/03, 13 November 2007
Domalewski v. Poland (dec.), no. 34610/97, ECHR 1999–V
Döring v. Germany (dec.), no. 37595/97, ECHR 1999–VIII
Draon v. France [GC], no. 1513/03, 6 October 2005
Driza v. Albania, no. 33771/02, ECHR 2007–V (extracts)
Družstevni Záložna Pria and Others v. the Czech Republic, no. 72034/01, 31 July 2008
Durini v. Italy, no. 19217/91, 12 January 2014

—E—

East West Alliance Limited v. Ukraine, no. 19336/04, 23 January 2014
Edoardo Palumbo v. Italy, no. 15919/89, 30 November 2000
Edwards v. Malta, no. 17647/04, 24 October 2006
Efstathiou and Michailidis & Co. Motel Amerika v. Greece, no. 55794/00, ECHR 2003–IX
Elsanova v. Russia (dec.), no. 57952/00, 15 November 2005
Eskelinen v. Finland (dec.), no. 7274/02, 3 February 2004

—F—

Fábián v. Hungary [GC], no. 78117/13, 5 September 2017
Fabris c. France [GC], no. 16574/08, ECHR 2013 (extracts)
Fakas v. Ukraine (dec.), no. 4519/11, 3 June 2014
Fener Rum Erkek Lisesi Vakfı v. Turkey, no. 34478/97, 9 January 2007
Ferretti v. Italy, no. 25083/94, Commission decision of 26 February 1997

Flamenbaum and Others c. France, nos. 3675/04 and 23264/04, 13 December 2012
Floroiu v. Romania (dec.), no. 15303/10, 12 March 2013
Former King of Greece and Others v. Greece [GC], no. 25701/94, ECHR 2000-XII
Fredin v. Sweden (no. 1), 18 February 1991, Series A no. 192
Freitag v. Germany, no. 71440/01, 19 July 2007
Frendo Randon and Others v. Malta, no. 2226/10, 22 November 2011
Frimu and Others v. Romania (dec.), nos. 45312/11 and 4 others, 7 February 2012
Fuklev v. Ukraine, no. 71186/01, 7 June 2005

—G—

G. v. Austria, no. 10094/82, Commission decision of 14 May 1984, DR 38
G.I.E.M. S.R.L. and Others v. Italy (merits) [GC], nos. 1828/06 and 2 others, 28 June 2018
G.J. v. Luxembourg, no. 21156/93, 26 October 2000
Gaćeša v. Croatia (dec.), no. 43389/02, 1 April 2008
Galtieri v. Italy (dec.), no. 72864/01, 24 January 2006
Gashi v. Croatia, no. 32457/05, 13 December 2007
Gasus Dosier- und Fördertechnik GmbH v. the Netherlands, 23 February 1995, Series A no. 306-B
Gayduk and Others v. Ukraine (dec.), nos. 45526/99 and 20 others, ECHR 2002-VI (extracts)
Gaygusuz v. Austria, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV
Geerings v. Netherlands, no. 30810/03, 1 March 2007
Gellérthegyi and Others v. Hungary (dec.) nos. 78135/13 429/14, 6 March 2018
Gerasimov and Others v. Russia, nos. 29920/05 and 10 others, 1 July 2014
Giavi v. Greece, no. 25816/09, 3 October 2013
Gillow v. the United Kingdom, 24 November 1986, Series A no. 109
Giuran v. Romania, no. 24360/04, ECHR 2011 (extracts)
Gladysheva v. Russia, no. 7097/10, 6 December 2011
Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria, no. 14134/02, 11 October 2007
Glod v. Romania, no. 41134/98, 16 September 2003
Gogitidze and Others v. Georgia, no. 36862/05, 12 May 2015
Goretzky v. Germany (dec.), no. 52447/99, 6 April 2000
Gorraiz Lizarraga and Others v. Spain, no. 62543/00, ECHR 2004-III
Gratzinger and Gratzingerova v. the Czech Republic (dec.), no. 39794/98, ECHR 2002-VII
Grayson and Barnham v. the United Kingdom, nos. 19955/05 and 15085/06, 23 September 2008
Greek Federation of Customs Officers, Gialouris and Others v. Greece, no. 24581/94, Commission decision of 6 April 1995, DR 81-B, p. 123
Grishchenko v. Russia (dec.), no. 75907/01, 8 July 2004
Grozeva v. Bulgaria (dec.), no. 52788/99, 3 November 2005
Grudić v. Serbia, no. 31925/08, 17 April 2012
Guberina v. Croatia, no. 23682/13, 22 March 2016
Gubiyev v. Russia, no. 29309/03, 19 July 2011
Guiso and Consiglio v. Italy (dec.), no. 50821/06, 16 January 2018
Guiso-Gallisay v. Italy (just satisfaction) [GC], no. 58858/00, 22 December 2009
Gustafsson v. Sweden [GC], judgment of 25 April 1996, *Reports* 1996-II, p. 658

—H—

H.F. v. Slovakia (dec.), no. 54797/00, 9 December 2003
Hakan Ari v. Turkey, no. 13331/07, 11 January 2011
Hamer v. Belgium, no. 21861/03, ECHR 2007-V (extracts)

Handyside v. the United Kingdom, 7 December 1976, Series A no. 24
Hatton and Others v. the United Kingdom [GC], no. 36022/97, ECHR 2003-VIII
Haupt v. Austria (dec.), no. 55537/10, 2 May 2017
Hentrich v. France, 22 September 1994, Series A no. 296-A
Herrmann v. Germany [GC], no. 9300/07, 26 June 2012
Honecker and Others v. Germany (dec.), nos. 53991/00 and 54999/00, ECHR 2001-XII
Hornsby v. Greece, 19 March 1997, *Reports of Judgments and Decisions* 1997-II
Hunguest Zrt v. Hungary, no. 66209/10, 30 August 2016
Hüseyin Kaplan v. Turkey, no. 24508/09, 1 October 2013
Hutten-Czapska v. Poland, no. 35014/97, 22 February 2005

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Ian Edgar (Liverpool) Ltd v. the United Kingdom (dec.), no. 37683/97, ECHR 2000-I
Iatridis v. Greece [GC], no. 31107/96, ECHR 1999-II
Igarienė and Petrauskienė v. Lithuania, no. 26892/05, 21 July 2009
Ilyushkin and Others v. Russia, nos. 5734/08 and 28 others, 17 April 2012
Immobiliare Saffi v. Italy, [GC], no. 22774/93, ECHR 1999-V
International Bank for Commerce and Development AD and Others v. Bulgaria, no. 7031/05, 2 June 2016
Interoliva ABEE v. Greece, no. 58642/00, 10 July 2003
Ireland v. the United Kingdom, 18 January 1978, Series A no. 25
Ivanov v. Ukraine, no. 15007/02, 7 December 2006
Ivanova and Cherkezov v. Bulgaria, no. 46577/15, 21 April 2016
Iwaszkiewicz v. Poland, no. 30614/06, 26 July 2011

— J —

J.A. Pye (Oxford) Ltd v. the United Kingdom, no. 44302/02, 15 November 2005
J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC], no. 44302/02, ECHR 2007-III
J.L.S. v. Spain (dec.), no. 41917/98, ECHR 1999-V
J.S. and A.S. v. Poland, no. 40732/98, 24 May 2005
Jahn and Others v. Germany [GC], nos. 46720/99 and 2 others, ECHR 2005-VI
Jahn and Thurm v. Germany (dec.), no. 46720/99, 25 April 2002
James and Others v. United Kingdom, 21 February 1986, Series A no. 98
Janković v. Croatia (dec.), no. 43440/98, ECHR 2000-X
Jantner v. Slovakia, no. 39050/97, 4 March 2003
Jasinskij and Others v. Lithuania, no. 38985/97, Commission decision of 9 September 1998
Jasiūniene v. Lithuania, no. 41510/98, 6 March 2003
Jeličić v. Bosnia and Herzegovina, no. 41183/02, ECHR 2006-XII
Jokela v. Finland, no. 28856/95, ECHR 2002-IV

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Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.S. v. Turkey, no. 19965/06, 16 April 2019
Karachalios v. Greece (dec.), no. 67810/14, 24 January 2017
Karner v. Austria, no. 40016/98, ECHR 2003-IX
Katkaridis and Others v. Greece, 15 November 1996, *Reports of Judgments and Decisions* 1996-V

Katte Klitsche de la Grange v. Italy, 27 October 1994, Series A no. 293-B
Katz v. Romania, no. 29739/03, 20 January 2009
Keegan v. Ireland, 26 May 1994, Series A no. 290
Kehaya and Others v. Bulgaria, nos. 47797/99 and 68698/01, 12 January 2006
Keriman Tekin and Others v. Turkey, no. 22035/10, 15 November 2016
Kerimova and Others v. Russia, nos. 17170/04 and 5 others, 3 May 2011
Kesyan v. Russia, no. 36496/02, 19 October 2006
Khachatryan v. Armenia, no. 31761/04, 1 December 2009
Khodorkovskiy and Lebedev v. Russia, nos. 11082/06 and 13772/05, 25 July 2013
Khoniakina v. Georgia, no. 17767/08, 19 June 2012
Kirilova and Others v. Bulgaria, nos. 42908/98 and 3 others, 9 June 2005
Kjartan Ásmundsson v. Iceland, no. 60669/00, ECHR 2004-IX
Klauz v. Croatia, no. 28963/10, 18 July 2013
Klein v. Austria, no. 57028/00, 3 March 2011
Kleine Staarman v. the Netherlands, no. 10503/83, Commission decision of 16 May 1985, DR 42, p. 162
Köksal v. Turkey (dec.), no. 30253/06, 26 November 2013
Kolesnyk v. Ukraine (dec.), no. 57116/10, 3 June 2014
Könyv-Tár Kft and Others v. Hungary, no. 21623/13, 16 October 2018
Konstantin Markin v. Russia [GC], no. 30078/06, ECHR 2012 (extracts)
Konstantin Stefanov v. Bulgaria, no. 35399/05, 27 October 2015
Kopecký v. Slovakia [GC], no. 44912/98, ECHR 2004-IX
Kosmas and Others v. Greece, no. 20086/13, 29 June 2017, §§ 68-71
Kosmidis and Kosmidou v. Greece, no. 32141/04, 8 November 2007
Kotov v. Russia [GC], no. 54522/00, 3 April 2012
Koua Poirrez v. France, no. 40892/98, ECHR 2003-X
Koufaki and Adedy v. Greece (dec.), nos. 57665/12, 57657/12, 7 May 2013
Kovalenok v. Latvia (dec.), no. 54264/00, 15 February 2001
Kozak v. Poland, no. 13102/02, 2 March 2010
Kozacioğlu v. Turkey [GC], no. 2334/03, 19 February 2009
Kozlovs v. Latvia (dec.), no. 50835/00, 23 November 2000
Kranz v. Poland (dec.), no. 6214/02, 10 September 2002
Krivosogova v. Russia (dec.), no. 74694/01, 1 April 2004
Kroon and Others v. the Netherlands, 27 October 1994, Series A no. 297-C
Krstić v. Serbia, no. 45394/06, 10 December 2013, § 83
Kuchař and Štis v. the Czech Republic (dec.), no. 37527/97, 21 October 1998
Kukalo v. Russia, no. 63995/00, 3 November 2005
Kuna v. Germany (dec.), no. 52449/99, ECHR 2001-V (extracts)
Kunić v. Croatia, no. 22344/02, 11 January 2007
Kurşun v. Turkey, no. 22677/10, 30 October 2018
Kutlu and Others v. Turkey, no. 51861/11, 13 December 2016, § 58
Kyrtatos v. Greece, no. 41666/98, ECHR 2003-VI (extracts)



Łącz v. Poland (dec.), no. 22665/02, 23 June 2009
Lakićević and Others v. Montenegro and Serbia, nos. 27458/06 and 3 others, 13 December 2011
Larkos v. Cyprus [GC], no. 29515/95, ECHR 1999-I
Lavrechov v. the Czech Republic, no. 57404/08, ECHR 2013
Lederer v. Germany (dec.), no. 6213/03, ECHR 2006-VI
Lenskaya v. Russia, no. 28730/03, 29 January 2009

Lenz v. Germany (dec.), no. 40862/98, ECHR 2001-X
Lenzing AG v. the United Kingdom, no. 38817/97, Commission decision of 9 September 1998
Lessing and Reichelt v. Germany (dec.) nos. 49646/10 and 3365/11, 16 October 2012
Levänen and Others v. Finland (dec.), no. 34600/03, 11 April 2006
Likvidējamā p/s Selga and Vasilevska v. Latvia (dec.), nos. 17126/02 and 24991/02, 1 October 2013
Lindheim and Others v. Norway, nos. 13221/08 and 2139/10, 12 June 2012
Liseytsseva and Maslov v. Russia, nos. 39483/05 and 40527/10, 9 October 2014
Lisnyy and Others v. Ukraine and Russia (dec.), nos. 5355/14 and 2 others, 5 July 2016
Lithgow and Others v. the United Kingdom, 8 July 1986, Series A no. 102
Lizanets v. Ukraine, no. 6725/03, 31 May 2007
Ljaskaj v. Croatia, no. 58630/11, 20 December 2016
Ljubljanska banka d.d. v. Croatia (dec.), no. 29003/07, 12 May 2015
Lo Tufo v. Italy, no. 64663/01, ECHR 2005-III
Lungoci v. Romania, no. 62710/00, 26 January 2006
Luordo v. Italy, no. 32190/96, ECHR 2003-IX

—M—

M.A. and 34 Others v. Finland (dec.), no. 27793/95, June 2003
Machard v. France, no. 42928/02, 25 April 2006
Maggio and Others v. Italy, nos. 46286/09 and 4 others, 31 May 2011
Mago and Others v. Bosnia and Herzegovina, nos. 12959/05 and 5 others, 3 May 2012
Maioli v. Italy, no. 18290/02, 12 July 2011
Malama v. Greece, no. 43622/98, ECHR 2001-II
Malhous v. the Czech Republic (dec.) [GC], no. 33071/96, ECHR 2000-XII
Malik v. the United Kingdom, no. 23780/08, 13 March 2012
Malinovskiy v. Russia, no. 41302/02, ECHR 2005-VII (extracts)
Von Maltzan and Others v. Germany (dec.) [GC], nos. 71916/01 and 2 others, ECHR 2005-V
Mamatas and Others v. Greece, nos. 63066/14 and 2 others, 21 July 2016
Manushaqe Puto and Others v. Albania, nos. 604/07 and 3 others, 31 July 2012
Marckx v. Belgium, 13 June 1979, Series A no. 31
Maria Atanasiu and Others v. Romania, nos. 30767/05 and 33800/06, 12 October 2010
Marija Božić v. Croatia, no. 50636/09, 24 April 2014
Marini v. Albania, no. 3738/02; 18 December 2007
Matheis v. Germany (dec.), no. 73711/01, 1 February 2005
Matheus v. France, no. 62740/00, 31 March 2005
Matos e Silva, Lda., and Others v. Portugal, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV
Maurice v. France [GC], no. 11810/03, ECHR 2005-IX
Mauriello v. Italy (dec.), no. 14862/07, 13 September 2016
Mazurek v. France, no. 34406/97, ECHR 2000-II
McCann v. the United Kingdom, no. 19009/04, ECHR 2008
Megadat.com SRL v. Moldova, no. 21151/04, ECHR 2008
Mellacher and Others v. Austria, 19 December 1989, Series A no. 169
Melnychuk v. Ukraine (dec.), no. 28743/03, ECHR 2005-IX
Meltex Ltd and Movsesyan v. Armenia, no. 32283/04, 17 June 2008
Metaxas v. Greece, no. 8415/02, 27 May 2004
Microintelect OOD v. Bulgaria, no. 34129/03, 4 March 2014
Milhau v. France, no. 4944/11, 10 July 2014
Mindek v. Croatia, no. 6169/13, 30 August 2016
Mockienė v. Lithuania (dec.), no. 75916/13, 4 July 2017

Molla Sali v. Greece [GC], no. 20452/14, 19 December 2018
Morabito and Others v. Italy (dec.), 58572/00, 7 June 2005
Moskal v. Poland, no. 10373/05, 15 September 2009
Müller v. Austria, no. 5849/72, Commission decision of 1 October 1975, Decisions and Reports (DR) 3
Musa v. Austria, no. 40477/98, Commission decision of 10 September 1998
Musa Tarhan v. Turkey, no. 12055/17, 23 October 2018
Mykhaylenko and Others v. Ukraine, nos. 35091/02 and 9 others, ECHR 2004-XII

—N—

N.K.M. v Hungary, no. 66529/11, 14 May 2013
National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom, 23 October 1997, *Reports of Judgments and Decisions* 1997-VII
Neij and Sunde Kolmisoppi v. Sweden (dec.), no. 40397/12, 19 February 2013
Nerva and Others v. the United Kingdom, no. 42295/98, ECHR 2002-VIII
Niemietz v. Germany, 16 December 1992, Series A no. 251-B
Novoseletskiy v. Ukraine, no. 47148/99, ECHR 2005-II (extracts)

—O—

O’Sullivan McCarthy Mussel Development Ltd v. Ireland, no. 44460/16, 7 June 2018
OAD Neftyanaya Kompaniya Yukos v. Russia, no. 14902/04, 20 September 2011
O.N. v. Bulgaria (dec.), no. 35221/97, 6 April 2000
Olaru and Others v. Moldova, nos. 476/07 and 3 others, 28 July 2009
Olbertz v. Germany (dec.), no. 37592/97, ECHR 1999-V
Olczak v. Poland (dec.), no. 30417/96, ECHR 2002-X (extracts)
OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France, nos. 42219/98 and 54563/00, 27 May 2004
Omasta v. Slovakia (dec.), no. 40221/98, 10 December 2002
Öneryıldız v. Turkey [GC], no. 48939/99, ECHR 2004-XII
Orion-Břeclav, S.R.O. v. the Czech Republic (dec.), no. 43783/98, 13 January 2004
Orlić v. Croatia, no. 48833/07, 21 June 2011
Osmanyan and Amiraghyan v. Armenia, no. 71306/11, 11 October 2018
Ouzounoglou v. Greece, no. 32730/03, 24 November 2005
Öztürk v. Turkey [GC], no. 22479/93, ECHR 1999-VI

—P—

P. Plaisier B.V. v. the Netherlands (dec.), nos. 46184/16 and two others, 14 November 2017
Păduraru v. Romania, no. 63252/00, ECHR 2005-XII (extracts)
Paeffgen GmbH v. Germany (dec.), nos. 25379/04 and 3 others, 18 September 2007
Pančenko v. Latvia (dec.), no. 40772/98, 28 October 1999
Panchenko v. Ukraine, no. 10911/05, 10 December 2010
Panfile v. Romania (dec.), 13902/11, 20 March 2012
Papachelas v. Greece [GC], no. 31423/96, ECHR 1999-II
Papamichalopoulos v. Greece, 24 June 1993, Series A no. 260-B
Paplauskienė v. Lithuania, no. 31102/06, 14 October 2014
Parrillo v. Italy [GC], no. 46470/11, ECHR 2015
Parvanov and Others v. Bulgaria, no. 74787/01, 7 January 2010

Pasteli and Others v. Moldova, nos. 9898/02 and 3 others, 15 June 2004
Paulet v. the United Kingdom, no. 6219/08, 13 May 2014
Perdigão v. Portugal [GC], no. 24768/06, 16 November 2010
Perre v. Italy (dec.), no. 32387/96, 21 September 1999
Phillips v. the United Kingdom, no. 41087/98, ECHR 2001-VII
Philippou v. Cyprus, no. 71148/10, 14 June 2016
Phocas v. France, 23 April 1996, *Reports of Judgments and Decisions* 1996-II
Pialopoulos and Others v. Greece, no. 37095/97, 15 February 2001
Pietrzak v. Poland, no. 38185/02, 8 January 2008
Pincová and Pinc v. the Czech Republic, no. 36548/97, ECHR 2002-VIII
Pine Valley Developments Ltd and Others v. Ireland, 29 November 1991, Series A no. 222
Pištorová v. the Czech Republic, no. 73578/01, 26 October 2004
Platakou v. Greece, no. 38460/97, ECHR 2001-I
Plechanow v. Poland, no. 22279/04, 7 July 2009
Poltorachenko v. Ukraine, no. 77317/01, 18 January 2005
Poulain v. France (dec.), no. 52273/08, 8 February 2011
Preda and Others v. Romania, nos. 9584/02 and 7 others, 29 April 2014
Pressos Compania Naviera S.A. and Others v. Belgium, 20 November 1995, Series A no. 332
Preußische Treuhand GmbH & Co. KG a.A. v. Poland (dec.), no. 47550/06, 7 October 2008
Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, ECHR 2001-VIII
Prodan v. Moldova, no. 49806/99, ECHR 2004-III (extracts)
Prokopovich v. Russia, no. 58255/00, ECHR 2004-XI (extracts)
Protsenko v. Russia, no. 13151/04, 31 July 2008
Pyrantienė v. Lithuania, no. 45092/07, 12 November 2013

—R—

R. Kačapor and Others v. Serbia, nos. 2269/06 and 5 others 15 January 2008
R & L, s.r.o., and Others v. the Czech Republic, nos. 37926/05 and 4 others, 3 July 2014
R.Sz. v. Hungary, no. 41838/11, 2 July 2013
Radio France and Others v. France (dec.), no. 53984/00, ECHR 2003-X (extracts)
Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, 20 March 2018
Radovici and Stănescu v. Romania, nos. 68479/01 and 2 others, ECHR 2006-XIII (extracts)
Raimondo v. Italy, 22 February 1994, Series A no. 281-A
Ramaer and Van Villingen v. the Netherlands (dec.), no. 34880/12, 23 October 2012
Rasmussen v. Poland, no. 38886/05, 28 April 2009
Reisner v. Turkey, no. 46815/09, 21 July 2015
Richardson v. the United Kingdom (dec.), no. 26252/08, 10 May 2012
Riela and Others v. Italy (dec.), no. 52439/99, 4 September 2001
Rosenzweig and Bonded Warehouses Ltd. v. Poland, no. 51728/99, 28 July 2005
Rosiński v. Poland, no. 17373/02, 17 July 2007
Rossitto v. Italy, no. 7977/03, 26 May 2009
Rousk v. Sweden, no. 27183/04, 25 July 2013
Rudzińska v. Poland (dec.), no. 45223/99, ECHR 1999-VI
Ruiz Mateos v. the United Kingdom, no. 13021/87, Commission decision of 8 September 1988, Decisions and Reports (DR) 57
Rummi v. Estonia, no. 63362/09, 15 January 2015
*Rustavi 2 Broadcasting Company Ltd and Others v. Georgia**, no. 16812/17, 18 July 2019
Ryabykh v. Russia, no. 52854/99, ECHR 2003-IX
Rysovsky v. Ukraine, no. 29979/04, 20 October 2011

—S—

S. v. the United Kingdom (dec.), no. 11716/85, 14 May 1986
S.A. Dangeville v. France, no. 36677/97, ECHR 2002-III
S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania, no. 27227/08, 15 December 2015
Saccoccia v. Austria, no. 69917/01, 18 December 2008
Saghinadze and Others v. Georgia, no. 18768/05, 27 May 2010
Salabiaku v. France, 7 October 1988, Series A no. 141-A
Saliba v. Malta, no. 4251/02, 8 November 2005
Sargsyan v. Azerbaijan [GC], no. 40167/06, ECHR 2015
Savickas and Others v. Lithuania (dec.), nos. 66365/09 and 5 others, 15 October 2013
Scagliarini v. Italy (dec.), no. 56449/07, 3 March 2015
SCEA Ferme de Fresnoy v. France (dec.), no. 61093/00, ECHR 2005-XIII (extracts)
SC Editura Orizonturi SRL v. Romania, no. 15872/03, 13 May 2008
Schembri and Others v. Malta, no. 42583/06, 10 November 2009
Schirmer v. Poland, no. 68880/01, 21 September 2004
Schwengel v. Germany (dec.), no. 52442/99, 2 March 2000
Scollo v. Italy, 28 September 1995, Series A no. 315-C
Selçuk and Asker v. Turkey, 24 April 1998, *Reports of Judgments and Decisions* 1998-II
Şerife Yiğit v. Turkey [GC], no. 3976/05, 2 November 2010
Sherstyuk v. Ukraine (dec.); no. 37658/03, 18 September 2006
Shestakov v. Russia (dec.), no. 48757/99, 18 June 2002
Shesti Mai Engineering OOD and Others v. Bulgaria, no. 17854/04, 20 September 2011
Shlepkov v. Russia, no. 3046/03, 1 February 2007
Shvedov v. Russia, no. 69306/01, 20 October 2005
SIA AKKA/LAA v. Latvia, no. 562/05, 12 July 2016
Sildedzis v. Poland, no. 45214/99, 24 May 2005
Silickienė v. Lithuania, no. 20496/02, 10 April 2012
Simonyan v. Armenia, no. 18275/08, 7 April 2016
Sirc v. Slovenia, no. 44580/98, 8 April 2008
Skibiński v. Poland, no. 52589/99, 14 November 2006
Skórits v. Hungary, no. 58171/09, 16 September 2014
Skórkiewicz v. Poland (dec.), no. 39860/98, 1 June 1999
Skowroński v. Poland (dec.), no. 52595/99, 28 June 2001
Skrzyński v. Poland, no. 38672/02, 6 September 2007
Slivenko and Others v. Latvia (dec.) [GC], no. 48321/99, ECHR 2002-II (extracts)
Smiljanić v. Slovenia (dec.), no. 481/04, 2 June 2006
Smith Kline and French Laboratories Ltd v. the Netherlands (dec.), no. 12633/87, 4 October 1990
Sorić v. Croatia (dec.), no. 43447/98, 16 March 2000
Sovtransavto Holding v. Ukraine, no. 48553/99, ECHR 2002-VII
Špaček, s.r.o., v. the Czech Republic, no. 26449/95, 9 November 1999
Sporrong and Lönnroth v. Sweden, 23 September 1982, Series A no. 52
Stankiewicz v. Poland, no. 46917/99, ECHR 2006-VI
Statileo v. Croatia, no. 12027/10, 10 July 2014
Stec and Others v. the United Kingdom (dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X
Stefanetti and Others v. Italy, nos. 21838/10 and 7 others, 15 April 2014
Stere and Others v. Romania, no. 25632/02, 23 February 2006
Străin and Others v. Romania, no. 57001/00, ECHR 2005-VII
Stran Greek Refineries and Stratis Andreadis v. Greece, 9 December 1994, Series A no. 301-B
Streltsov and other “Novocherkassk military pensioners” cases v. Russia, nos. 8549/06 and 86 others, 29 July 2010
Stretch v. the United Kingdom, no. 44277/98, 24 June 2003

Stummer v. Austria [GC], no. 37452/02, ECHR 2011
Sud Fondi srl and Others v. Italy (dec.), no. 75909/01, 30 August 2007
Sud Fondi srl and Others v. Italy, no. 75909/01, 20 January 2009
Sukhanov and Ilchenko v. Ukraine, nos. 68385/10 and 71378/10, 26 June 2014
Sukhobokov v. Russia, no. 75470/01, 13 April 2006
Suljagić v. Bosnia and Herzegovina, no. 27912/02, 3 November 2009
Sun v. Russia, no. 31004/02, 5 February 2009
Surugiu v. Romania, no. 48995/99, 20 April 2004
Süzer and Eksen Holding A.Ş. v. Turkey, no. 6334/05, 23 October 2012
Sypchenko v. Russia, no. 38368/04, 1 March 2007

—T—

Taşkaya v. Turkey, no. 14004/06, 13 February 2018
Tchokontio Happi v. France, no. 65829/12, 9 April 2015
Teteriny v. Russia, no. 11931/03, 30 June 2005
The Holy Monasteries v. Greece, 9 December 1994, Series A no. 301-A, pp. 34-35
Todorov v. Bulgaria (dec.), no. 65850/01, 13 May 2008
Tormala v. Finland (dec.), no. 41258/98, 16 March 2004
Toşcuţă and Others v. Romania, no. 36900/03, 25 November 2008
Trajkovski v. the former Yugoslav Republic of Macedonia (dec.), no. 53320/99, ECHR 2002-IV
Tre Traktörer Aktiebolag v. Sweden, 7 July 1989, Series A no. 159
Tudor Tudor v. Romania, no. 21911/03, 24 March 2009

—U—

Udovičić v. Croatia, no. 27310/09, 24 April 2014
Ukraine-Tyumen v. Ukraine, no. 22603/02, 22 November 2007
Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria, no. 3503/08, 13 October 2015
Urbárska Obec Trenčianske Biskupice v. Slovakia, no. 74258/01, 27 November 2007
Uzan and Others v. Turkey, no. 19620/05 and 3 others, 5 March 2019

—V—

Valentin v. Denmark, no. 26461/06, 26 March 2009
Valkov and Others v. Bulgaria, nos. 2033/04 and 8 others, 25 October 2011
Van den Bouwhuijsen and Schuring v. the Netherlands (dec.), no. 44658/98, 16 December 2003
Van Marle and Others v. the Netherlands, 26 June 1986, Series A no. 101
Van Offeren v. Netherlands (dec.), no. 19581/04, 5 July 2005
Varvara v. Italy, no. 17475/09, 29 October 2013
Vasilescu v. Romania, 22 May 1998, *Reports of Judgments and Decisions* 1998-III
Vasilev and Doycheva v. Bulgaria, no. 14966/04, 31 May 2012
Vaskrsić v. Slovenia, no. 31371/12, 25 April 2017
Vassallo v. Malta, no. 57862/09, 11 October 2011
Vedernikova v. Russia, no. 25580/02, 12 July 2007
Veits v. Estonia, no. 12951/11, 15 January 2015
Vékony v. Hungary, no. 65681/13, 13 January 2015
Velikovi and Others v. Bulgaria, nos. 43278/98 and 8 others, 15 March 2007
Velosa Barreto v. Portugal, 21 November 1995, Series A no. 334

Veselá and Loyka v. Slovakia (dec.), no. 54811/00, 13 December 2005
Vijatović v. Croatia, no. 50200/13, 16 February 2016
Vikentijevik v. the former Yugoslav Republic of Macedonia, no. 50179/07, 6 February 2014
Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, ECHR 2007-II
Vistiņš and Perepjolkins v. Latvia [GC], no. 71243/01, 25 October 2012
Vitiello v. Italy, no. 77962/01, 23 March 2006
Vladimirov v. Bulgaria (dec.), no. 58043/10, 25 September 2018
Vodă and Bob v. Romania, no. 7976/02, 7 February 2008
Vrtar v. Croatia, no. 39380/13, 7 January 2016
Vulakh and Others v. Russia, no. 33468/03, 10 January 2012

—W—

Wallishauser v. Austria (no. 2), no. 14497/06, 20 June 2013
Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of approximately 15,000 individuals v. Sweden, no. 13013/87, Commission decision of 14 December 1988, DR 58, p.186
Webb v. the United Kingdom (dec.), no. 56054/00, 10 February 2004
Welch v. the United Kingdom, 9 February 1995, Series A no. 307-A
Wendenburg and Others v. Germany (dec.), no. 71630/01, ECHR 2003-II (extracts)
Werra Naturstein GmbH & Co Kg v. Germany, no. 32377/12, 19 January 2017
Wessels-Bergervoet v. the Netherlands (dec.), no. 34462/97, 3 October 2000
Wieczorek v. Poland, no. 18176/05, 8 December 2009
Wysowska v. Poland, no. 12792/13, 23 January 2018

—Y—

Yanakiev v. Bulgaria, no. 40476/98, 10 August 2006
Yaroslavtsev v. Russia, no. 42138/02, 2 December 2004
Yavaş and Others v. Turkey, no. 36366/06, 5 March 2019
Yershova v. Russia, no. 1387/04, 8 April 2010
Yetiş and Others v. Turkey, no. 40349/05, 6 July 2010
Yildirim v. Italy (dec.), no. 38602/02, ECHR 2003-IV
Yuriy Lobanov v. Russia, no. 15578/03, 2 December 2010
Yuriy Nikolayevich Ivanov v. Ukraine, no. 40450/04, 15 October 2009

—Z—

Z.A.N.T.E. – Marathonisi A.E. v. Greece, no. 14216/03, 6 December 2007
Zammit and Vassallo v. Malta, no. 43675/16, 28 May 2019
Zamoyski-Brisson v. Poland (dec.), no. 19875/13, 5 September 2017
Zanghì v. Italy, 19 February 1991, Series A no. 194-C
Zastava It Turs v. Serbia (dec.), no. 24922/12, 9 April 2013
Zbaranskaya v. Ukraine, no. 43496/02, 11 October 2005
Zehentner v. Austria, no. 20082/02, 16 July 2009
Zeïbek v. Greece, no. 46368/06, 9 July 2009
Zelenchuk and Tsytsyura v. Ukraine, no. 846/16, 1075/16, 22 May 2018
Zhelyazkov v. Bulgaria, no. 11332/04, 9 October 2012
Zhidov and Others v. Russia, nos. 54490/10 and 3 others, 16 October 2018

Zhigalev v. Russia, no. 54891/00, 6 July 2006

Zielinski and Pradal and Gonzalez and Others v. France [GC], nos. 24846/94 and 9 others, ECHR 1999-VII

Ziya Çevik v. Turkey, no. 19145/08, 21 June 2011

Zolotas v. Greece (no. 2), no. 66610/09, ECHR 2013 (extracts)

Zouboulidis v. Greece (no. 2), no. 36963/06, 25 June 2009

Zrilić v. Croatia, no. 46726/11, 3 October 2013

Zvolský and Zvolská v. the Czech Republic, no. 46129/99, ECHR 2002-IX