

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

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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*, 1978, § 154; *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], 2012, § 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], 2005, § 156, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

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 day. 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 decisions.

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*, 1978, § 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], 2012, § 89).

3. Article 1 of Protocol No. 1 guarantees the right to property. In *Marckx v. Belgium*, 1979, §§ 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 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 (*Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 63; *Öneryıldız v. Turkey* [GC], 2004, § 124; *Broniowski v. Poland* [GC], 2004, § 129; *Beyeler v. Italy* [GC], 2000, § 100; *Iatridis v. Greece* [GC], 1999, § 54; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 171; *Fabris v. France* [GC], 2013, §§ 49 and 51; *Parrillo v. Italy* [GC], 2015, § 211; *Béláné Nagy v. Hungary* [GC], 2016, § 76; *Elif Kizil v. Turkey*, 2020, § 61).

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], 2010, § 68, in respect of a revocable and precarious right to occupancy of a public property on account of a lapse of time; *Öneryıldız v. Turkey* [GC], 2004, § 129, in respect of the applicant's proprietary interest in his unauthorised dwelling; *The J. Paul Getty Trust and Others v. Italy*, 2024, § 264, in respect of inviting the applicant, in its capacity as a current possessor of the cultural item, to participate in domestic proceedings). 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*, 2017, §§ 68-71; see also *Arnavutkoy Greek Orthodox Taksiarhis Church Foundation v. Türkiye*, 2022, §§ 45-46, concerning the property of a religious foundation for which the applicant had no proper title but which was mentioned in its founding document; and *The J. Paul Getty Trust and Others v. Italy*, 2024, § 265, in respect of the length of time that passed conferring on the applicant a proprietary interest that was sufficiently established and weighty to amount to a "possession" of the art work). 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*, 2016, § 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*, 1995, § 31). For example, illegal constructions can in certain circumstances, be regarded as "possessions" (*Öneryıldız v. Turkey* [GC], 2004, § 127; *Depalle v. France* [GC], 2010, § 85, see the preceding paragraph; *Brosset-Triboulet and Others v. France* [GC], 2010, § 71; *Keriman Tekin and Others v. Turkey*, 2016, §§ 42-46), especially if the domestic law accepts that they are objects of the right to property (*Ivanova and Cherkezov v. Bulgaria*, 2016, § 68). Thus, the recognition of a proprietary interest by domestic courts is highly relevant in the Court's assessment (*Broniowski v. Poland* [GC], 2004, §§ 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 75; *Krstić v. Serbia*, 2013, § 83; *Čakarević v. Croatia*, 2018, § 52; *Moskal v. Poland*, 2009, § 40; *Grobelny v. Poland*, 2020, § 58). For instance, in *Beyeler v. Italy* [GC], 2000, §§ 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). Similarly, the Court has also held that a procurement contract may constitute a "possession" within the meaning of the Protocol, even if the contract was subsequently annulled (*Kurban v. Turkey*, 2020, §§ 64-65; *UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, §§ 173-174).

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, copyrights and patents (*Melnychuk v. Ukraine* (dec.), 2005; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, §§ 72, 76 and 78; *Tokel v. Turkey*, 2021, § 56; *AsDAC v. the Republic of Moldova*, 2020, § 24; *Korotyuk v. Ukraine*, 2023, § 33), or licences to use property in a particular way (such as licences to serve alcoholic beverages or fishing rights, *Tre Traktörer Aktiebolag v. Sweden*, 1989, § 53; *Alatulkkila and Others v. Finland*, 2005, § 66; *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 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.), 2007).

b. Protected "possessions"

10. Article 1 of Protocol No. 1 applies only to a person's existing "possessions" (*Marckx v. Belgium*, 1979, § 50; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 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*, 1995, § 31; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, § 61; *Von Maltzan and Others v. Germany* (dec.) [GC], 2005, § 74 (c); *Kopecký v. Slovakia* [GC], 2004, § 35 (c); *Katona and Závarský v. Slovakia*, § 52).

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], 2001, §§ 82-83; *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, § 69; *Kopecký v. Slovakia* [GC], 2004, § 35(c); *Malhous v. the Czech*

Republic (dec.) [GC], 2000; *Nerva and Others v. the United Kingdom*, 2002, § 43; *Stretch v. the United Kingdom*, 2003, § 32; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 172) (see below in the specific context of restitution of expropriated property).

13. 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 (*Kopecký v. Slovakia* [GC], 2004, § 50; and *Çiftçiler Joint Stock Company and Others v. Turkey* (dec.), 2020, § 82, in the context of once lawfully expropriated property that, after a considerable lapse of time, was no longer used in the public interest; *UAB AmberCore DC and UAB Arcus Novus v. Lithuania*, 2023, §§ 130-131, for a refusal on national security grounds to issue the applicant companies with a permit to build a data centre).

14. 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*, 2004, § 38; *Des Fours Walderode v. the Czech Republic* (dec.), 2004; *Zhigalev v. Russia*, 2006, § 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.), 2018, § 28).

15. 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], 2007, § 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.), 2018, §§ 51-52).

16. 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], 2018, §§ 128-132).

17. Similarly, as to the confiscation of lawfully acquired jewellery belonging to the applicant's wife and the imposition of a fine due to a failure to declare the jewellery to customs authorities while transiting through the country, the Court held that it was not in a position to call into question the Constitutional Court's finding that the bracelets were in the applicant's "possession". It thus accepted the applicant's victim status (*Yaylalı v. Serbia*, 2024, §§ 31-33).

i. Legitimate expectations

18. 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*, 1995, § 31; *a contrario* *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, § 73).

19. 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], 2004, §§ 49-50; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 173; *Saghinadze and Others v. Georgia*, 2010, § 103; *Ceni v. Italy*, 2014, § 39; *Béláné Nagy v. Hungary* [GC], 2016, § 75; *Valverde Digon v. Spain*, 2023, § 49).

20. 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*, 1991, § 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*, 2003, § 35, in respect of exercising the option to renew a long-term lease; and *Ceni v. Italy*, 2014, § 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], 2004, § 47).

21. Another aspect of the notion of "legitimate expectation" is illustrated in *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, § 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], 2005, § 70; *Maurice v. France* [GC], 2005, §§ 67-69; see also *N.M. and Others v. France*, 2022, §§ 49-50).

22. Similarly, in *Uzan and Others v. Turkey*, 2019, § 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. The case of *Jarre v. France*, 2024, §§ 48-49, also concerned inheritance rights and, in particular, the immediate effects of a Constitutional Council decision repealing a statutory provision whereby individuals entitled to inheritance in France, but denied that right in a succession governed by foreign law, had been permitted to claim a portion of the estate located in France by way of compensation. The Court found that the applicants fulfilled the four statutory conditions when their father died and also when they lodged their claim so that they had a legitimate expectation amounting to "possessions".

23. Furthermore, even though in the case of *Aliyeva and Others v. Azerbaijan*, 2021, §§ 109-111, the Supreme Court had departed from its findings in similar cases of expropriation for State needs, the Court held that the applicants´ claim that they were entitled to statutory additional compensation had been sufficiently established by a clearly identifiable line of Supreme Court case-law. Thus, despite the existing contradictions in the domestic courts' approach, the applicants´ claim amounted to a "legitimate expectation" sufficiently established in domestic law as to constitute a "possession" (contrast *ibid*., §§ 118-120).

24. 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], 2007, § 65; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 173; *Béláné Nagy v. Hungary* [GC], 2016, § 75; *Karachalios v. Greece* (dec.), 2017, § 46; *Radomilja and Others v. Croatia* [GC], 2018, § 149). Neither do subsequent legislative amendments of the relevant provision demonstrate, in and of themselves, that the previous legal regulation had been flawed (*Galakvoščius v. Lithuania* (dec.), 2020, §§ 42 and 59-60). That case concerned the authorities' refusal to refund the applicant the deposit which he had paid in order to stand as a candidate in municipal elections.

25. 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.), 2008, § 77), or on a programmatic statement in a statute, referring to a future statute which ultimately was not adopted (*Zamoyski-Brisson v. Poland* (dec.), 2017, § 78) or in relation to the applicants' claim for financial aid, as the relevant national law clearly made the "right" to obtain financial aid conditional on the availability of sufficient emergency funds, without providing for any rules on the amounts to be granted and the distribution

of the emergency fund's limited financial resources (*Traina Berto and Alfonsetti v. Italy* (dec.), 2022, §§ 45-46). Similarly, no legitimate expectation arises in relation to State aid unlawfully distributed to private individuals *via* a building society (*BCR Banca pentru locuințe S.A. v. Romania* (dec.), 2024, §§ 127-139). There is also no legitimate expectation of a deduction of VAT previously paid by an applicant company to its suppliers when the applicant company had knowledge of their failure to comply with their VAT-related obligations and had the means to enforce the suppliers' compliance, regardless of whether or not the applicant company fully complied with its own VAT-related obligations (*Immoreks Makedonija Doo Skopje v. North Macedonia* (dec.), 2024, §§ 32-35 and 41). Moreover, when domestic law expressly provided that the applicable preferential electricity tariff was to be determined on the basis of the date on which the provisional status of a preferential producer of renewable energy was granted, and not on the basis of the date of the application, producers of solar energy could only claim a legitimate expectation to rely on the tariff being fixed and immune from amendment or revision once this status has been granted. Therefore, there was no legitimate expectation for the applicant company to obtain the tariff as applicable on the date of the lodging of its application or, in other words, that the tariff would remain unchanged during the examination of the application (*Geo Solar Doo Delchevo v. North Macedonia* (dec.), 2025, §§ 52-54).

26. Lastly, the Court found that there was no legitimate expectation for the applicant to be awarded a sum of money for the costs of legal representation, despite what he considered to be the explicit provisions of domestic law, because his claim was not supported by domestic case-law. The Court noted that the well-established practice of the Constitutional Court consisted of jointly awarding a single fixed fee in the event of a joinder of appeals when all applicants were represented by the same lawyer (*Kalkan v. Türkiye* (dec.), 2025, §§ 30-34).

27. 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 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], 2002, § 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], 2005, § 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.), 2012, § 17).

28. 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], 2004, §§ 50 and 52; (*Draon v. France* [GC], 2005, § 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], 2004, § 52; *J.S. and A.S. v. Poland*, 2005, § 51).

29. 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], 2004, (see the following chapter on Claims and judgment debts) may not fall short of a sufficiently established, substantive proprietary interest under the national law (*Béláné Nagy v. Hungary* [GC], 2016, § 79).

c. Different types of "possessions" and other proprietary interests

i. Claims and judgment debts

30. 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], 2004, § 52; *Plechanow v. Poland*, 2009, § 83; *Vilho Eskelinen and Others v. Finland* [GC], 2007, § 94; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 65; *Haupt v. Austria* (dec.), 2017, § 47; *Radomilja and Others v. Croatia* [GC], 2018, § 142; *Grbac v. Croatia*, 2021, § 86). Where that has been done, the concept of "legitimate expectation" can come into play (*Draon v. France* [GC], 2005, § 65).

31. 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 (*Kopecký v. Slovakia* [GC], 2004, § 48).

32. 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*, 1997, § 69).

33. 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 (*Kopecký v. Slovakia* [GC], 2004, § 35; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], 2001, § 83; *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, § 69).

34. A judgment debt which is sufficiently established to be enforceable constitutes a "possession" (*Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, § 59; *Burdov v. Russia*, 2002, § 40; *Gerasimov and Others v. Russia*, 2014, § 179; *Yuriy Nikolayevich Ivanov v. Ukraine*, 2009, § 45; *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, 2010, § 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".

35. Payment orders for legal fees were also found to constitute a sufficiently established and enforceable claim as to qualify as a financial interest capable of falling within the concept of "property" (*Diaco and Lenchi v. Italy*, 2025, §§ 50-54; contrast *Kalkan v. Türkiye* (dec.), 2025, §§ 30-34, where the Court considered that the applicant had no legitimate expectation to be awarded a sum of money for the costs of legal representation because his claim was not supported by domestic case-law).

36. 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*, 2009, §§ 45-46). Inheritance and succession claims concerning difference in treatment have been considered as "possessions" (*Marckx v. Belgium*, 1979, §§ 52-55; *Fabris v. France* [GC], 2013, §§ 52-55).

ii. Company shares, other financial instruments and other business assets

37. 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.), 2002, § 60; *Sovtransavto Holding v. Ukraine*, 2002, § 91; *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, § 77; *Sebeleva and Others v. Russia*, 2022, § 39). 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, 1986; *Reisner v. Turkey*, 2015, § 45; *Marini v. Albania*, 2007, § 165). In *Pintar and Others v. Slovenia*, 2021, § 91, the Court found that Article 1 of Protocol No. 1 applied to the cancellation of the applicants' shares even assuming that the Government's objection concerning their questionable economic value was valid. Finally, in *Finanziaria d'Investimento Fininvest S.P.A. and Berlusconi v. Italy*, 2026, the Court held that the agreement granting the applicant company the right to acquire certain equity interests constituted "possessions" for the purposes of that Article (*ibid.*, § 271).

38. However, as a matter of general principle, shareholders cannot be seen as victims of acts and measures affecting their companies (*Agrotexim and Others v. Greece*, 1995, §§ 65-66; *Olczak v. Poland* (dec.), 2002, § 57); *Lekić v. Slovenia* [GC], 2018, § 111; *Albert and Others v. Hungary* [GC], 2020, § 124; *Papachela and AMAZON S.A. v. Greece*, 2020, § 37), save in exceptional circumstances. xxHowever, in *Albert and Others v. Hungary* [GC], 2020, § 134, the Court confirmed that acts affecting the rights of the shareholders are distinct from measures or proceedings affecting the company in that both the nature of such acts and their alleged effect impact the shareholders' legal rights both directly and personally and go beyond merely disturbing their interests in the company by upsetting their position in the company's governance structure (*Olczak v. Poland* (dec.), 2002, § 58; *Albert and Others v. Hungary* [GC], 2020, §§ 131-133, mentioning a number of cases where the Court implicitly accepted the applicant shareholder's victim status; see also *Project-Trade d.o.o. v. Croatia*, 2020, §§ 44-45).

39. The Court identified two situations which constitute an exception to the general principle, which would exclude the victim status of shareholders when the measure is considered to affect the company (*Albert and Others v. Hungary* [GC], 2020, § 124; *Papachela and AMAZON S.A. v. Greece*, 2020, § 37). In these situations, the Court may decide to pierce the corporate veil "from within" in the parlance of the International Court of Justice ("ICJ") (*Lekić v. Slovenia* [GC], 2018, § 111; *Albert and Others v. Hungary* [GC], 2020, § 138). In other words, it may decide that a shareholder may claim to be a victim under Article 34 of the Convention as a result of actions aimed at the property of a company.

40. The first exception is the situation where the company and its shareholders are so closely identified with each other that it is considered artificial to distinguish between the two (*KIPS DOO and Drekalović v. Montenegro*, 2018, § 87; *Fine Doo and Canoski and Others v. North Macedonia* (dec.), 2022, § 30). This can be seen in cases brought by shareholders of small or family-owned or family/run companies or cooperatives, notably where a sole owner of a company complains about the measures taken in respect of his/her company (*Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, 2007, § 40; *Papachela and AMAZON S.A. v. Greece*, 2020, § 37), or where all shareholders of a small cooperative had applied to the Court as applicants, or where one shareholder in a family-owned firm had lodged an application under the Convention, whilst the remaining shareholders at least had not objected to that. In this respect, the Court underlined in *Ankarcrona v. Sweden* (dec.), 2000, that the reason for accepting victim status in such cases was that there had been no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of infringement of Convention rights or to the most appropriate way of reacting to such an infringement (*Albert and Others v. Hungary* [GC], 2020, §§ 136-137). Conversely, the Court found in *Erol Aksoy v. Türkiye**, 2026, §§ 104-110, that the non-enforcement of judgments of the Supreme Administrative Court - annulling decisions related to the valuation, tender invitation and subsequent sale of a television channel and radio station owned by joint-stock companies, in which the applicant held shares - did not directly affect the applicant's shareholder rights. It noted that the applicant did not lodge the application on behalf of the joint stock companies concerned and that his direct shareholding was either minimal or not disclosed. The applicant could therefore not be regarded as the sole or exceptionally significant owner and shareholder of the entities. Furthermore, the mere fact

that the domestic courts considered the applicant as a legitimate plaintiff did not, in itself, confer victim status under the Convention (§ 112).

41. The second type of situation in which the Court may disregard the company's distinct legal personality and allow its shareholders to bring complaints about a measure affecting the company, concerns the existence of 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*, 1995, § 66; *Lekić v. Slovenia* [GC], 2018, § 111; *CDI Holding Aktiengesellschaft and Others v. Slovakia* (dec.), 2001, § 4; *Meltex Ltd and Movsesyan v. Armenia*, 2008, § 66; *Veselá and Loyka v. Slovakia* (dec.), 2005; *G.J. v. Luxembourg*, 2000, § 24; *Feldman and Slovyanskyy Bank v. Ukraine*, 2017, §§ 28-29; *Vladimirova v. Russia*, 2018, §§ 40-41). In cases falling within this group, the mere existence of measures of outside supervision or control in respect of the company at issue was generally viewed as an important factor, but not the only one (*Albert and Others v. Hungary* [GC], 2020, §§ 124, 138-139 and 143).

42. The burden is on the shareholders to demonstrate either that an official who had been tasked with looking after the company's interests had been unable or unwilling to raise the grievances in issue either at the domestic or Strasbourg level (*Agrotexim and Others v. Greece*, 1995**,** § 70; *Veselá and Loyka v. Slovakia* (dec.), 2005; *Albert and Others v. Hungary* [GC], 2020, § 144). Alternatively, the shareholder would have to show that the Convention complaint had concerned a matter, such as the removal of a regular manager and the appointment of a trustee, in respect of which there had been a difference of opinion between the trustee and the shareholders, or concerned various actions of the trustee affecting the interests of the shareholders (*Credit and Industrial Bank v. the Czech Republic*, 2003, § 51; *Camberrow MM5 AD v. Bulgaria* (dec.), 2004; *Capital Bank AD v. Bulgaria*, 2005; *International Bank for Commerce and Development AD and Others v. Bulgaria*, 2016, §§ 90-92; *G. J. v. Luxembourg*, §§ 23-24; *Feldman and Slovyanskyy Bank v. Ukraine*, 2017, §§ 28-29). In each case, the matter had been such that its potential impact could have had a serious effect on the shareholders' situation, directly (*S.p.r.l. ANCA and Others v. Belgium* (dec.), 1984) or indirectly (*G. J. v. Luxembourg*, § 24). Sharholders ought to give weighty and convincing reasons demonstrating that it is practically or effectively impossible for the company to apply to the Convention institutions through the organs set up under its articles of association and that they should therefore be allowed to proceed with the complaint on the company's behalf (*Albert and Others v. Hungary* [GC], 2020, §§ 144-145).

43. Applying these general principles, the Court held in *Albert and Others v. Hungary* [GC], 2020, that shareholders who allegedly lost control over their banks when the State placed them under supervision following the financial crisis could not be considered victims of the impugned acts against the companies. Firstly, while the reform had considerably impacted the banks and their statutory bodies, its effect on the rights of the applicant shareholders had been incidental and indirect. There had been no artificial dilution of their voting power or the outright cancellation of shares. The size of the applicants' individual shareholdings did not allow them to control any of the banks and their influence as a group, not consolidated by any agreement, had been fragmented and weak (*ibid.*, §§ 154-155). Secondly, the public banks, having numerous shareholders and a fully delegated management, were not found to be "so closely identified with" the applicants. The exact percentage of shares that the applicants may have owned in the two banks was not dispositive (*ibid.*, § 157). Lastly, there had been no exceptional circumstances precluding the banks from applying to the Court in their own names: the banks had remained operational; the applicants, who had collectively held voting majorities could have directed the banks to bring legal proceedings on their behalf; the reform and the supervising authorities' decisions had been open to judicial review; and there was no evidence of any undue pressure on the banks in this respect (*ibid.*, §§ 159-164).

44. The Court also held that its findings did not appear to be at variance with the standard that has emerged in the regulatory context of many of the Council of Europe member States, that of accepting fairly severe intrusive measures in respect of banks and assimilated institutions, as insufficient

regulation of this sector was seen as capable of resulting in serious systemic risks for the respective economies (*Albert and Others v. Hungary* [GC], 2020, § 167).However, there is a limit to how far member States may go when attempting to regulate the banking sector (see, for example *Project-Trade d.o.o. v. Croatia*, 2020, under "Banking cases").

45. In *Lekić v. Slovenia* [GC], 2018, § 111, the Court clarified that the general principles established in *Agrotexim and Others*, 1995, 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" (also *Albert and Others v. Hungary* [GC], 2020, § 138). However, 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 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*, 2013, § 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], 2014, §§ 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 (*Lekić v. Slovenia* [GC], 2018, § 111).

46. 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*, 2016, § 90; see also *Pintar and Others v. Slovenia*, 2021, § 92). In *Freire Lopes v. Portugal* (dec.), 2023, § 78, the Court held that the bank's agreement to buy the applicant's shares at a certain price was akin to a bond (financial instrument).

47. 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.), 2004.

48. Finally, in *Pannon Plakát Kft and Others v. Hungary*, 2022, §§ 42 and 44, the Court found that roadside advertising hoardings were to be considered an inflexible and non-variable type of asset, unsuitable for any other type of business activity. The removal of these hoardings - further to legislation – meant that the applicant companies lost market opportunities, a loss profit opportunity, which could translate into a decrease in the equity value of their shares.

iii. Professional clientele

49. 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.), 2006; *Buzescu v. Romania*, 2005, § 81; *Wendenburg and Others v. Germany* (dec.), 2003; *Olbertz v. Germany* (dec.), 1999; *Döring v. Germany* (dec.), 1999; *Iatridis v. Greece* [GC], 1999, § 54; *Van Marle and Others v. the Netherlands*, 1986, § 41; *Malik v. the United Kingdom*, 2012, § 89; *Rola v. Slovenia*, 2019, § 71; for a comprehensive overview of the case-law, see *Könyv-Tár Kft and Others v. Hungary*, 2018, §§ 31-32).

iv. Licences

50. 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 (*Bülent Akçay v. Türkiye*, 2026, § 61; *NIT S.R.L. v. the Republic of Moldova*, 2022, § 235; *Malik v. the United Kingdom*, 2012, § 90 ;*Megadat.com SRL v. Moldova*, 2008, §§ 62-63; *Bimer S.A. v. Moldova*, 2007, § 49; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, 2005, § 49; *Capital Bank AD v. Bulgaria*, 2005, § 130; *Tre Traktörer Aktiebolag v. Sweden*, 1989, § 53; *Vékony v. Hungary*, 2015, § 29; *Fredin v. Sweden (no. 1)*, 1991, § 40).

51. 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*, 2005, § 130).

52. 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*, 2018, § 89).

53. 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], 2012, § 177).

54. Finally, in *Eólica de S. Julião, Lda v. Portugal* (dec.), 2024, §§ 94-95, the Court found that the licence for the operation of wind turbines was made conditional on presentation of a noise impact study, which had not been done. Given that that condition was not fulfilled by the applicant company, it therefore did not have a "possession" within the meaning of Article 1 of Protocol No. 1.

v. Future income

55. Article 1 of Protocol No. 1 does not create a right to acquire property (*Denisov v. Ukraine* [GC], 2018, § 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.), 2000; *Wendenburg and Others v. Germany* (dec.), 2003; *Levänen and Others v. Finland* (dec.), 2006; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 64; *Denisov v. Ukraine* [GC], 2018, § 137; *Juszczyszyn v. Poland*, 2022, § 344; *Gyulumyan and Others v. Armenia* (dec.), 2023, § 101).

56. 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, 1995). Likewise, when domestic law and case-law do not grant a right to a fixed and unchangeable amount to be paid as a reasonable return or as a return on investment, the subsidies to be received as of the entry into force of the new regulations do not have a sufficient basis in national law to qualify as "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention (*Energyworks Cartagena S.L. v. Spain* (dec.), 2024, §§ 46-48).

vi. Intellectual property

57. Article 1 of Protocol No. 1 applies to intellectual property as such (*Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 72).

58. 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], 2007, § 78) and *a fortiori* to trade marks (*Kamoy Radyo Televizyon Yayincilik ve Organizasyon A.S. v. Turkey*, 2019, § 37), patents (*Smith Kline and French Laboratories Ltd v. the Netherlands* (dec.), 1990; *Lenzing AG v. the United Kingdom*, Commission decision, 1998; *Tokel v. Turkey*, 2021, § 56*)*, and copyright (*Melnychuk v. Ukraine* (dec.), 2005. Copyright holders are protected by Article 1 of Protocol No. 1 (*Neij and Sunde Kolmisoppi v. Sweden* (dec.), 2013; *SIA AKKA/LAA v. Latvia*, 2016, § 41). A right to publish a translation of a novel

falls within the scope of this provision (*SC Editura Orizonturi SRL v. Romania*, 2008, § 70; *Safarov v. Azerbaijan*, 2022, § 30; *Korotyuk v. Ukraine*, 2023, § 33), 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*, 2016, § 55).

vii. Lease on property and housing rights

59. 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*, 2003, §§ 32-35; *Bruncrona v. Finland*, 2004, § 79; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 140). In *Di Marco v. Italy*, 2011, §§ 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.

60. However, 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*, 2015, § 60) since according to the domestic judgment, the applicant was to enjoy the right to use a flat, not the right to acquire one.

61. In the field of housing, often, a key question is whether Article 1 of Protocol No. 1 is applicable.

62. In the Commission case of *S. v. the United Kingdom* (dec.), 1986, 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.

63. As to the existence of "possessions", the Commission decision in *Durini v. Italy*, 2014, 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 ancestors' 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.

64. In the context of internally displaced persons ("IDP"), the Court has considered that, even in the absence of a registered property title, the applicant's continued possession of a cottage for more than 10 years - given its good-faith character as well as the authorities' manifest tolerance and adoption of various legal acts confirming the rights of IDPs in the housing sector and establishing solid guarantees for their protection - amounted to a "possession" for the purposes of Article 1 of Protocol No. 1 (*Saghinadze and Others v. Georgia*, 2010, §§ 104-108).

65. In *Hamer v. Belgium*, 2007, § 76, the impugned building, constructed without a planning permit, had been in existence for twenty-seven years before the domestic authorities recorded the offence. The authorities continued to tolerate it for ten more years before ordering its demolition. The Court considered that the applicant's proprietary interest in the enjoyment of her holiday home, for which the applicant and previously her father had paid taxes, had been sufficiently established and weighty as to amount to a substantive interest and therefore to a "possession".

66. Similarly, in *Keriman Tekin and Others v. Turkey*, 2016, §§ 40-43, the Court considered that a house constructed without a permit amounted to a "possession", given that the applicant enjoyed it for a certain time without having been bothered about its illegality.

67. In *Elif Kizil v. Turkey*, 2020, §§ 67-69, the Court noted that the applicant had validly acquired the title to property which was entered into the land register. In spite of its subsequent transfer to the public treasury, her title was never formally cancelled and she continued to enjoy its possession for a further 28 years and to pay taxes. Given the authorities' tolerance for such a long time, the applicant's proprietary rights amounted to a "possession".

68. In *Valle Pierimpiè Società Agricola S.P.A. v. Italy*, 2014, §§ 47-51, concerning a fishing production facility situated in a lagoon in the province of Venice, the applicant company had possessed formal title to the property, as recorded by a notary and entered in the property registers. It could find its legitimate expectation on the practice, dating back to the 15th century, of granting individuals title to the fishing valleys and tolerating their continued occupation and use of them. The applicant had been paying property tax on Valle Pierimpiè, had been occupying the site and had been acting as the owner without the authorities ever having taken action. The site was the base for the company's activity, the profit the company derived from it was its main source of income and, until the property had been incorporated into the public maritime domain, the company had had a legitimate expectation of being able to continue carrying on that activity. The Court therefore held that these circumstances conferred on the applicant company a title to a substantive interest protected by Article 1 of Protocol No. 1.

69. Furthermore, in *Chiragov and Others v. Armenia* [GC], 2015, the Court held that the "right of use" of residential houses and land – both temporary and indefinite – constitutes a "possession" because it is a strong and protected right which represents a substantive economic interest (§ 147). This is particularly relevant in the post-Soviet context, where title to a plot of land underneath a building is not automatically attached to the title to the building itself (*Maharramov v. Azerbaijan*, 2017, § 53). Under the Soviet legal system, citizens had a right to own residential houses, but there was no private ownership of land, which instead was considered State property (*Chiragov and Others v. Armenia* [GC], 2015, § 146; see also *Tkachenko v. Russia*, 2018, § 7, where the underlying and the adjacent land belonged to the municipality). Accordingly, the "right of use" was the only title to land that an individual could acquire. Property reforms were subsequently undertaken but, in certain situations, uncertainties remain as to the existence of the applicants' property rights.

70. In the absence of proper title, applicants need to provide other kinds of documentary evidence to support their proprietary interest in the land. For instance, in *Maharramov v. Azerbaijan*, 2017, the applicant was able to prove the "right of use" of the land on which his shop was built by showing that he had paid a property tax for the plot of land underneath the building. The Court held that the applicant was at least a "lawful user" of the land in question by virtue of his ownership of the immovable property situated there, with a possibility of transferring the land into his ownership in the future (§ 54). By contrast, in *Arsimikov and Arsemikov v. Russia*, 2020, the applicants could not establish a claim to the corresponding land because they had failed to produce any evidence in support of their claim (§ 49) (see also "Destruction of property in situations of international or internal armed conflict").

71. Furthermore, housing assistance for civil servants also constitutes a "possession" as long as one is eligible for such allowance (*Nechayeva v. Russia*, 2020, §§ 40-41), even if the exact amount was contested. The Court considered that the reduction of the amount of the allowance not provided for under Russian law, for budgetary reasons, was unlawful. It also held that the applicant could not have validly accepted a lower amount, given that such a possibility was not provided by law (*ibid.*, § 48).

72. Finally, in *Brazauskienė v. Lithuania* (dec.), 2024, §§ 122-127 and 135, the Court held that Article 1 of Protocol No.1 did not apply to the refusal of the continued free use of an official residence to a former President's widow when the Constitutional Court had annulled the relevant legal provisions and legislative intervention.

viii. Social security benefits/pensions

73. 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, 1975, p. 49). Otherwise the applicant did not, at any given moment, have an identifiable and claimable share in the fund (*G. v. Austria*, 1984, Commission decision, p. 86; *Kleine Staarman v. the Netherlands*, Commission decision, 1985, p. 166).

74. 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*, 2002, § 46; *Koua Poirrez v. France*, 2003, § 37; *Wessels-Bergervoet v. the Netherlands* (dec.), 2000; *Van den Bouwhuijsen and Schuring v. the Netherlands* (dec.), 2003).

75. 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], 2005, §§ 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 (for further clarification, see *Beeler v. Switzerland* [GC], 2022, §§ 50 65, both within the ambit of Article 1 of Protocol No. 1 and of Article 8 of the Convention).

76. 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], 2005, § 51; *Moskal v. Poland*, 2009, § 39; *Andrejeva v. Latvia* [GC], 2009, § 77).

77. 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*, 2014, § 36; *Kolesnyk v. Ukraine* (dec.), 2014, §§ 89 and 91; *Fakas v. Ukraine* (dec.), 2014, §§ 34, 37-43, 48; *Fedulov v. Russia*, 2019, § 66). 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], 2005, § 54).

78. 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], 2010, § 64).

79. Where the person concerned does not satisfy (*Bellet, Huertas and Vialatte v. France* (dec.) 1999, § 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*, 2009, § 71; *P.C. v. Ireland*, 2022, §§ 46-47), where the conditions had changed before the applicant became eligible for a specific benefit (*Richardson v. the United Kingdom* (dec.),

2012, § 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], 2016, § 86; see also *Brazauskienė v. Lithuania* (dec.), 2024, §§ 107-112, in respect of the refusal to pay a State annuity to a former President's widow). 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*, 2018, §§ 54-65).

80. In *Gaygusuz v. Austria*, 1996, § 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*, 2011, § 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*, 2004, § 39; *Apostolakis v. Greece*, 2009, §§ 28 and 35; *Bellet, Huertas and Vialatte v. France* (dec.), 1999; *Skórkiewicz v. Poland* (dec.), 1999). For further details, see the chapter on Social welfare cases below.

81. In *Fedulov v. Russia*, 2019, §§ 70-72, the Court has also held that the eligibility of a disabled person for free medication (cancer drugs) amounted to a "legitimate expectation" so that Article 1 of Protocol No. 1 was applicable. Conversely, in *Arjocu v. Romania* (dec.), 2025, §§ 70-82, the applicant failed to meet the conditions set out by domestic law to generate an actual claim to full reimbursement of the costs incurred for the medical treatment abroad (namely, prior authorisation, except in cases of *force majeure*). Article 1 of Protocol No. 1 was not applicable.

82. In *P.C. v. Ireland*, 2022, § 50, the Court held that the pension payments that were withheld from the applicant, while he was statutorily disqualified from receiving a pension given his imprisonment, cannot be regarded as "possessions" and Article 1 of Protocol No. 1 was not applicable.

83. Finally, in *Petrescu and Others v. Romania* (dec.), 2023, §§ 69-72, in the context of a complaint about divergent case law, the applicants submitted that the allegedly wrongful interpretation of the law by the domestic courts had deprived them of their right to be recognised as having worked in special conditions because it had important consequences as regards their seniority and pension rights. The Court held, similarly to the latter case, that the applicants did not have a "possession" and that Article 1 of Protocol No. 1 was not applicable.

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

84. 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*, 2011, § 293). In *Damayev v. Russia*, 2012, §§ 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*, 2004, § 37; *Elsanova v. Russia* (dec.), 2005). 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], 2015, §§ 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], 2015, § 183; *Lisnyy and Others v. Ukraine and Russia* (dec.), 2016, §§ 26-27) (see also the sub-chapter on Lease on property and housing rights above).

85. In the case of *Doğan and Others v. Turkey*, 2004, 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).

86. 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

87. 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], 2015, § 215).

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

1. "Three rules" approach

88. 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.

89. 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*, 1982, § 61; *Iatridis v. Greece* [GC], 1999, § 55; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, § 52; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 62; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 98; *Immobiliare Saffi v. Italy* [GC], 1999, § 44; *Broniowski v. Poland* [GC], 2004, § 134; and *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 93).

90. 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], 2000, § 50; *Bruncrona v. Finland*, 2004, § 65; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 62) (for further details, see the sub-chapters on Deprivation of property, Control of use or General rule).

91. 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], 2000, §§ 108-114).

92. 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 an 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, can the facts of the case be interpreted by the Court in the light of the general principle of respect for the peaceful enjoyment of "possessions"?

93. 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 or a legitimate aim, 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*, 2016, §§ 25-26; *Vijatović v. Croatia*, 2016, § 58; *Gubiyev v. Russia*, 2011, § 83; *Dimitrovi v. Bulgaria*, 2015, §§ 52-56; and *Bock and Palade v. Romania*, 2007, §§ 58-65; *Kasilov v. Russia*, 2021, § 52) (for further details, see the sub-chapters on the Principle of lawfulness and Public or general interest).

94. 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*, 2008, § 67, and *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, 2015, § 43) (for further details, see the sub-chapter on Proportionality and related issues (fair balance, compensation, margin of appreciation)).

95. 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.

96. 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.

97. Similar measures may be qualified differently by the Court (e.g. in *Sporrong and Lönnroth v. Sweden*, 1982, §§ 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*, 1996, § 52; *Iatridis v. Greece* [GC], 1999, § 55; *Katte Klitsche de la Grange v. Italy*, 1994, § 40; *Pialopoulos and Others v. Greece*, 2001, § 53. Likewise, in *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, § 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*, 1994, the Court examined the same kind of measure under the first rule of Article 1 of Protocol No. 1.

98. 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*, 2010, §§ 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; *Matos e Silva, Lda., and Others v. Portugal*, 1996, § 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; *The J. Paul Getty Trust and Others v. Italy*, 2024, § 278 – the recovery of an unlawfully exported cultural object through a measure that, although adopted within criminal proceedings, had civil effects; and *Seksimp Group SRL v. the Republic of Moldova*, 2025, §§ 56-57, – the enforcement of an order to pay compensation resulting in the sale of the applicant company's property, all without its knowledge, and the lack of assessment of the proportionality of the compensation by the domestic courts). 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*, 2002, §§ 61-65).

99. 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*, 1996, §§ 84-85).

100. 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*, 1993, § 46) or expressly leaves the question open (*Lavrechov v. the Czech Republic*, 2013, § 43; *Denisova and Moiseyeva v. Russia*, 2010, § 55; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, 2015, §§ 39-40).

101. 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).

102. 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, 1988, pp. 268 and 275; *Gustafsson v. Sweden* [GC], 1996, § 60; *Skowroński v. Poland* (dec.), 2001; *Kranz v. Poland* (dec.), 2002; *Eskelinen v. Finland* (dec.), 2004; *Tormala v. Finland* (dec.), 2004; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, 2019, § 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, 1998), 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], 2012, § 117).

103. 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], 2007, § 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 (*Bilyavska v. Ukraine*, 2025, § 39) or a person has been arbitrarily and unjustly deprived of property in favour of another (*Bramelid and Malmström v. Sweden*, Commission decision, 1982, pp. 82-83; *Dabić v. the former Yugoslav Republic of Macedonia* (dec.), 2001; *Vulakh and Others v. Russia*, 2012, § 44).

104. 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*, 2014, §§ 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*, 2011, §§ 52-59). Similarly, in *Zhidov and Others v. Russia*, 2018, §§ 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*, 2016, §§ 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

105. 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.

106. In *The Holy Monasteries v. Greece*, 1994, §§ 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".

107. 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 ", it has to be ascertained whether that situation amounted to a *de facto* expropriation (among other authorities, *Sporrong and Lönnroth v. Sweden*, 1982, § 63; *Vasilescu v. Romania*, 1998, § 51; *Schembri and Others v. Malta*, 2009, § 29; *Brumărescu v. Romania* [GC], 1999, § 76; *Depalle v. France* [GC], 2010, § 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*, 2016, § 83).

108. 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*, 1993, §§ 44-46). Similarly, in *Sarica and Dilaver v. Turkey*, 2021, § 43, where the applicants´ land had been incorporated into a military zone, the practice of *de facto* expropriation; enabled the Turkish authorities to occupy immovable property and change its intended use irreversibly, so that it eventually came to be considered as State property without any kind of formal declaratory act transferring ownership (see also *Yavuz Özden v. Turkey*, 2021, §§ 79- 80).

109. 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*, 1998, §§ 51-54).

110. 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*, 2000, § 54). In *Bagirova and Others v. Azerbaijan*, 2023, §§ 46 and 53, the Court held that the domestic procedure for the expropriation of privately-owned property was not followed. Furthermore, the loss of 40 per cent and 100 per cent of the value of the 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*, 2011, § 39). A similar conclusion was drawn in respect of an unlawful demolition of a building (*Zammit and Vassallo v. Malta*, 2019, § 54).

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

112. Finally, the case of *Bazhenov and Others v. Russia and Ukraine*, 2026, concerned the Russian authorities' cancellation of the applicants' titles to plots of land in Sevastopol, Crimea between 2015-2017. The plots had originally been transferred into private ownership by the Ukrainian authorities. The Russian authorities reclaimed them as public property on the basis that they were forest lands and as such should have never been privatised.

113. Considering the first, third and fourth applicants' decision to "waive all claims against Ukraine" and the existence of a well-developed body of case-law concerning the complaints in question, the relevant parts of applications against Ukraine under Article 1 of Protocol No. 1 by these applicants were struck out of the list of cases pursuant to Article 37 § 1 (a) of the Convention (§§ 38-43).

114. As to the admissible complaints against Russia under Article 1 of Protocol No. 1, the Court held that the cancellation of the applicants' titles constituted a deprivation of possessions (§ 80). It further held that the disputed decisions were based primarily on Russian law and that breaches of Ukrainian law were invoked solely as a pretext to justify these decisions (§§ 81-84). The decisions could also not be justified under IHL as they were in contravention of the prohibition of confiscation in Article 46 of the Hague Regulations which does not allow for any exceptions (§ 85). Relying on *Ukraine v. Russia (re Crimea)* [GC], 2024, § 1145, the Court concluded that the disputed decision of the Russian "courts"

were not "in accordance with the law" within the meaning of Article 1 of Protocol No. 1 to the Convention.

b. Control of use

115. 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*, 1989, § 55; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, 2005, § 49*; Bimer S.A. v. Moldova*, 2007, §§ 49 and 51; *Megadat.com SRL v. Moldova*, 2008, § 65; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 186; *NIT S.R.L. v. the Republic of Moldova*, 2022, § 247; *Pařízek v. the Czech Republic*, 2023, § 41; *Bülent Akçay v. Türkiye*, 2026, § 61); road-advertising activity (*Pannon Plakát Kft and Others v. Hungary*, 2022 § 46); introducing a State monopoly on the school books market (*Könyv-Tár Kft and Others v. Hungary*, 2018, §§ 43 and 59); rent control systems (*Mellacher and Others v. Austria*, 1989, § 44; *Hutten-Czapska v. Poland* [GC], 2005, § 160; *Anthony Aquilina v. Malta*, 2014, § 54; *Bittó and Others v. Slovakia*, 2014, § 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], 1999, § 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*, 2012, § 75-78); loss of certain exclusive rights over land (*Chassagnou and Others v. France* [GC], 1999, § 74 – obligation to tolerate hunting on the applicants' land; *Herrmann v. Germany* [GC], 2012, § 72); refusal to issue official registration of a car (*Yaroslavtsev v. Russia*, 2004, § 32; *Sildedzis v. Poland*, 2005, § 45); the freezing of bank accounts (*Uzan and Others v. Turkey*, 2019, § 194; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 66; *Anti-Corruption Foundation (FBK) and Others v. Russia*, 2025, §§ 90-96) or of company's assets (*M.S.L., TOV v. Ukraine,* 2025, § 88); imposition of positive obligations on land owner (e.g., obligatory reafforestation – *Denev v. Sweden*, Commission decision, 1989; or restrictions concerning replanting and harvesting timber following the incorporation of the applicants' land into a newly established natural reserve under the EU Habitats Directive – *Vendrame and Others v. Italy,* 2026); imposition of a legal qualification as forest land, with the attendant obligations imposed on the owner (*Ansay and Others v. Turkey* (dec.), 2006), or the capping of retail prices for certain essential fuels (*BK1 and Others v. Hungary* (dec.), 2025, § 35).

116. Demolition of buildings which have been unlawfully constructed is usually regarded as control of use of property (*Ivanova and Cherkezov v. Bulgaria*, 2016, § 69). In *Saliba v. Malta*, 2005, § 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*, 2007, §§ 59-60). Similarly, in *Sud Fondi srl and Others v. Italy* (dec.), 2007, the Court held that Article 7 applied to the confiscation of unlawfully developed land resulting in subsequent demolition of the buildings already erected.

117. Forfeiture and confiscation are generally 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*, 1986, § 51; *Raimondo v. Italy*, 1994, § 29; *Honecker and Others v. Germany* (dec.), 2001; *Riela and Others v. Italy* (dec.), 2001; *Imeri v. Croatia*, 2021, § 66; see also *Macovei v. Romania*, 2026, §§ 82-83, under Article 7, concerning confiscation orders as ancillary regulatory measures which derived their legal character from the administrative sanctions to which they were attached rather than penalties).Therefore, the Court's constant approach is that a confiscation measure constitutes control of use of property (*Air Canada v. the United Kingdom*, 1995, § 34; *Silickienė v. Lithuania*, 2012, § 62; *Aktiva DOO v. Serbia*, 2021, § 78;

Prenča v. Serbia, 2025, § 75). In *S.A. Bio d'Ardennes v. Belgium*, 2019, §§ 47-49, the compulsory slaughter of numerous animals infected with brucellosis because of several breaches of animal health regulations amounted to a control of use.

118. However, where the confiscation of an instrument of crime concerns the property of third parties and amounts to a permanent measure, the Court has analysed such interferences as a deprivation of possessions (*Andonoski v. the former Yugoslav Republic of Macedonia*, 2015, § 36, the permanent confiscation of a car used by a third party to smuggle migrants; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, § 48, the permanent confiscation of a company's lorry used by a third party for drug trafficking; *Yaşar v. Romania*, 2019, § 49, the permanent confiscation of the applicant's vessel used by third person for illegal fishing). In *Aktiva DOO v. Serbia*, 2021, § 78, the Court decided to leave open the question of which rule was applicable and found that the confiscation of goods imported by the applicant company, legally but in breach of recording regulations, was disproportionate.

119. 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.), 2001).

120. Furthermore, where the applicant's server was retained for about seven and a half months for the purposes of a criminal investigation against third parties and had previously been used by him for professional activities, the Court found that the domestic authorities had failed to strike the requisite fair balance between the legitimate aim pursued (prevention of disorder or crime and the protection of the rights of others) and the applicant's property rights (*Pendov v. Bulgaria*, 2020, §§ 44-51 and 63). The Court also noted that the authorities could have copied the relevant information and returned the server to the applicant, which was of importance for his professional activity.

121. In addition, the obligation to pay court fees – and the corresponding regulations – is covered by the second paragraph of Article 1 of Protocol No. 1. Charging litigants court fees pursues various aims, including financing the judicial system and increasing public revenue (*Perdigão v. Portugal* [GC], 2010, § 61). However, in several cases which followed *Perdigão*, the Court has examined a court order to defray the costs of the other party as an interference with the right to the peaceful enjoyment of possessions which falls within the general rule set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. In *Cindrić and Bešlić v. Croatia*, 2016, § 92, it further distinguished between costs related to the court system as such, and costs incurred by the winning party and due under the "loser pays" rule, indicating that only the former were to be included in the notion of "contributions" within the meaning of the second paragraph of Article 1 of Protocol No. 1. (*National Movement Ekoglasnost v. Bulgaria*, 2020, §§ 69-71) (see also under "Article 6").

122. Finally, in *Saarivuoma Sami Village v. Norway*, 2026, the Court has found that the inability of a Swedish Sámi village to exercise reindeer grazing rights for about fifty years, by virtue of the application of legislation by the Norwegian authorities, amounted to a control of use of property (*ibid.*, § 56)[1].

c. General rule

123. 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).

[1] For further details, see the Case-law Guide on Minority rights

124. In *Sporrong and Lönnroth v. Sweden*, 1982, §§ 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.

125. In *Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, §§ 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. Similarly, in *BTS Holding, a.s. v. Slovakia*, 2022, §§ 64 and 71, the Court examined the refusal to enforce a final and binding arbitration award by the International Chamber of Commerce under the general rule. It considered that the grounds relied on by the domestic courts were not given and/or fell outside the legal framework for denying enforcement of a foreign arbitration award allowed by the provisions of domestic law and the New York Convention on the recognition and enforcement of foreign arbitral awards and found a violation of Article 1 or Protocol No. 1 to the Convention.

126. The case *Loizidou v. Turkey*, 1996, §§ 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.

127. Measures such as land consolidation proceedings (*Prötsch v. Austria*, 1996, § 42), town-planning policy (*Phocas v. France*, 1996, § 52), administrative eviction (*Iatridis v. Greece* [GC], 1999, § 55), approval of land-use plan (*Katte Klitsche de la Grange v. Italy*, 1994, § 40), and a planning measure – a building freeze – on the applicant's property (*Pialopoulos and Others v. Greece*, 2001, § 56) were examined under the general principle. An alleged violation of the right of property resulting from an annulment of the applicant's procurement contract, which the Court found could not be classified in a precise category, was similarly examined in the light of the general rule (*Kurban v. Turkey*, 2020, §§ 74-75).

128. *Zaklan v. Croatia*, 2021, § 90, concerned attempts by the applicant to recover foreign currency seized by the Yugoslav authorities in 1991 in Croatia when that State was still part of the former Socialist Federal Republic of Yugoslavia. The Court observed that the applicant's prolonged inability to recover the money (more than thirty years) should be examined in the light of the general principle (compare with confiscation and forfeiture under Control of use at b) above).

129. In *The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 273-277, the Court was satisfied that a confiscation order, adopted in respect of a cultural item located abroad although not enforced yet, limited the applicant Trust's capacity to fully dispose of the item and, accordingly, considered that its mere issuance amounted to an interference with that applicant's proprietary interests protected by Article 1 of Protocol No. 1. It found that the general rule was applicable.

2. Principle of lawfulness

130. 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], 2012, § 95; *Béláné Nagy v. Hungary* [GC], 2016, § 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.

131. 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 (*Lekić v. Slovenia*, 2018, § 94; *Iatridis v. Greece* [GC], 1999, § 58; *Former King of Greece and Others v. Greece* [GC], 2000, § 79; *Broniowski v. Poland* [GC], 2004, § 147; *Kurban v. Turkey*, 2020, § 76).

132. 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 freedom from or guarantees against arbitrariness (*East West Alliance Limited v. Ukraine*, 2014, § 167; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, 2015, § 37; *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 96; *Yel and Others v. Turkey*, 2021, § 89). 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*, 1999, § 54; *Bežanić and Baškarad v. Croatia*, 2022, § 62; for further details on taxation matters see the subchapter on Taxation below). 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], 2018, § 153; *N.M. and Others v. France,* 2022, § 59).

133. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (*Lekić v. Slovenia*, 2018, § 95; *Beyeler v. Italy* [GC], 2000, § 109; *Hentrich v. France*, 1994, § 42; *Lithgow and Others v. the United Kingdom*, 1986, § 110; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 103; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], 2012, § 187; *Hutten-Czapska v. Poland* [GC], 2005, § 163; *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, §§ 96-97; *Imeri v. Croatia*, 2021, § 69; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 67; *Godlevskaya v. Russia*, 2021, §§ 50 and 61-63; *Taganrog LRO and Others v. Russia*, 2022, §§ 281-282). The Court may also consider it appropriate not to address the issue of the lawfulness of an impugned measure, even when the domestic authorities failed to rule on it, when the applicant, although legally represented, did not raise this issue before those authorities and even when, before the Court, the applicants only made a passing reference without providing any arguments as to the precision or foreseeability of the statutory provisions (*Yaylalı v. Serbia*, 2024, §§ 44-45).

134. 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*, 1999, §§ 57-60).

135. Another requirement flowing from the expression "provided for by law" is foreseeability. The relevant law must be formulated with sufficient precision to enable citizens to regulate their conduct by foreseeing, to a degree that is reasonable under the circumstances, the consequences which a given action may entail. Such consequences need not be foreseeable with absolute certainty since excessive rigidity is undesirable (*Centro Europa 7 S.r.1. and Di Stefano v. Italy* [GC], 2012, § 141). Accordingly, many laws are more or less vague and their interpretation and application are questions of practice (*ibid.*, § 141). The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (*ibid*., § 142).

136. The Court further clarified in *The J. Paul Getty Trust and Others v. Italy*, 2024, § 306, that, in Article 1 of Protocol No. 1 cases, the foreseeability of the legal basis allowing for measures of interference must be assessed with reference to the moment when the interference at stake took

place, that is the moment of the issuance of the contested measure. This stance was confirmed in *Episcopo and Bassani v. Italy*, 2024, §§ 154-156, where the Court assessed the degree of foreseeability of a confiscation order of the applicant's assets, considered to be the direct proceeds of crime, which order was made despite the discontinuation of the proceedings due to the expiry of the statute of limitation. The Court found that, at the material time, the established case-law considered that the measure of confiscation could not be applied after an offence had ceased to be punishable and that it was only later that the Court of Cassation started to recognise that the measure of confiscation could, in fact, be applied in such a situation and, even then, the issue was subject to divergent case-law for several years.

137. 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], 2018, § 97).

138. Further, *Alperin v. Ukraine*, 2024, § 78, concerned the decision to forfeit the applicant's bail owing to the fact that the applicant had breached his bail conditions. The Court found that the principle of lawfulness was satisfied even if the forfeiture was based on a provision formulated in broad terms and could thus create an impression of a lack of clarity when the domestic court appeared to have eliminated all possible uncertainty by carrying out a thorough analysis of the circumstances and providing substantial reasoning for its decision.

139. The Court may find that the requirement of foreseeability is not met if the application or interpretation of legislation has been unexpected, overly broad, or bordering on the arbitrary. For instance, in *Lelas v. Croatia*, 2010, the applicant, a serviceman employed by the Ministry of Defense, had complained about a delay in the payment of a special allowance to which he was entitled and asked his commanding officer why the allowance had not been paid. The commanding officer enquired with his superior, who contacted the General Staff of the Croatian Armed Forces, and eventually informed the applicant that his claims for allowances were not disputed and that they would be paid once funds were available. Since the allowances continued to be unpaid, the applicant started judicial proceedings. The domestic court dismissed his complaint as statute barred. It argued that only the head of the Central Finance Department of the Ministry of Defense could have acknowledged the debt, thereby interrupting the statutory limitation period. However, the domestic court failed to indicate any legal provision that could be construed as the basis for its finding. Consequently, the manner in which the domestic court had interpreted and applied the relevant domestic law was not foreseeable for the applicant, who could reasonably have expected that his commanding officer's statements to the effect that his claims were not in dispute and that payment was to follow once funds had been allocated, constituted acknowledgement of the debt capable of interrupting the running of the statutory limitation period (*ibid.*, §§ 77-78).

140. In *Anti-Corruption Foundation (FBK) and Others v. Russia*, 2025, §§ 90-96, the Court found that the interpretation and application of domestic law by the national courts failed to afford the requisite safeguards against arbitrariness because the orders to freeze the applicants' bank accounts were issued and extended in disregard of express statutory requirements of individualised justification and periodic review of necessity. The Court found that the review fell short of the level of scrutiny required to prevent the arbitrary application of coercive measures affecting property rights, thereby depriving the applicants of the minimum level of legal protection required to ensure the foreseeability of the measures.

141. In *Nešić v. Montenegro*, 2020, §§ 52-53, the Court found that the applicant's dispossession and the State's failure to pay compensation were not in accordance with the law because the legislative framework regarding expropriation of coastal land lacked clarity. It was unclear what expropriation

actually meant in that context. Although the applicant had lost title to his two plots of land situated on the seashore *ex lege*, it appeared that formal expropriation had still not yet taken place, and further procedures was necessary to formalise the State's title, as well as to determine the compensation. The relevant domestic law provided no details as to when, and if at all, the formal expropriation of land was obligatory. It even seemed possible under the law that no formal expropriation would occur at all, in which case the applicant would not receive any compensation which ran counter to other laws.

142. The Court reached a similar conclusion in the context of restitution proceedings in *Naskov and Others v. North Macedonia*, 2023, §§ 77-78, where it held that the quashing of the final 2002 restitution order, as a result of the proceedings that were initiated for administrative enforcement, frustrated the applicants' reliance on a binding decision and deprived them of an opportunity to gain possession of the property that they had legitimately expected to receive. The Court concluded that the interference with the applicants' property interests was in breach of the principle of lawfulness and could not be considered foreseeable in accordance with the Convention principles.

143. Conversely, in *Petruzzo and Others v. Italy*, 2025, §§ 155-57, two groups of applicants complained about the confiscation of their land and buildings after the authorities had considered that the property constituted an unlawful site development. The Court held that the first group of applicants could have foreseen that the land was subject, at the very least, to the construction restrictions imposed on areas not intended for development ("white zones"), given that it was indicated in all the acts of the municipal authorities. Moreover, the Court of Cassation had made it clear in its judgment that the applicants' conduct had been in breach of that land-use regime, a fact the applicants had not disputed. In the Court's view, the Court of Cassation's assertion did not appear arbitrary. The division and sale of a building with a small portion of land, and the successive construction of buildings for residential or tourism purposes, seemed difficult to reconcile with the construction restrictions in "white zones" and the absence of a land-use plan. As regards the argument that the offence was unforeseeable in the light of the municipal permits, the Court pointed to the domestic courts' finding that the building permits had not been complied with. The provisions establishing the offence of unlawful site development were therefore sufficiently foreseeable.

144. The requirement of foreseeability is often intertwined with the requirements of an absence of arbitrariness and procedural safeguards. Thus, a legal norm is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities. 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], 2018, § 95; *Jokela v. Finland*, 2002, § 45; *Capital Bank AD v. Bulgaria*, 2005, § 134; and *Stolyarova v. Russia*, 2015, § 43; *Project-Trade d.o.o. v. Croatia*, 2020, § 82; *Dănoiu and Others v. Romania*, 2022, §§ 69-72; *Çatak and Others v. Türkiye*, 2024, §§ 122-125).

145. In *Markus v. Latvia*, 2020, § 75, the Court held that a confiscation punishment was unlawful because the impugned domestic regulation lacked clarity and foreseeability, did not afford the necessary procedural safeguards, and provided no protection against arbitrariness. The case concerned an ancillary penalty of confiscation of property. However, the domestic court did not specify the property to be confiscated, and instead applied the measure to all properties owned by the applicant. Moreover, there was uncertainty and divergent case-law concerning the trial court's ability to determine the extent of the confiscation. The Court held that, where regulation leaves such uncertainty concerning the trial court's competence, it cannot be regarded as foreseeable and does not provide protection against arbitrariness. It may also seriously impede a person's ability to present his or her case effectively before the court. Moreover, the compulsory nature of the confiscation punishment had deprived the applicants concerned of any possibility to argue their cases and of any

prospects of success. Lastly, the exact scope of the punishment being determined at the pre-trial stage of the proceedings, by a decision that is designed to serve a different purpose, cannot be regarded as affording the individual a reasonable opportunity of putting his or her case to the competent authorities (*ibid.*, § 73). Conversely, in *Păcurar v. Romania*, 2025, §§ 173-179 and 199-200, concerning the confiscation of assets belonging to the applicant (a high-ranking police chief), which were deemed by the court in civil proceedings to be unexplained, the Court found that the legal framework on integrity in the exercise of public office provided for sufficient safeguards so as to ensure the proportionality of the measure.

146. In *Kemal Bayram v. Turkey*, 2021, §§ 52-73, the applicant complained about his loss of ownership of two plots of land that he had bought in 1977, which in 1986 were re-registered as belonging to the Treasury as a result of the reorganisation of the land register in 1985. The applicant, who resided in Germany at the time the plots were re-registered as belonging to the Treasury, complained that he was unable to challenge that measure as he had not been informed of it. He had come to hear of the measure in 2004 when the limitation period to challenge the registration had expired. The Court found that the State had not achieved a fair balance between the competing interests in that case.

147. 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*, 1994, § 49; *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, § 112; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], 1999, § 57; *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, 2014, § 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*, 2011, § 60, *Arras and Others v. Italy*, 2012, § 81; *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, 2014, § 104; *Tokel v. Turkey*, 2021, § 76). 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*, 2005, §§ 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*, 1989, § 50; *Bäck v. Finland*, 2004, § 68).

148. 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], 2005, §§ 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*, 2019, § 40). On the contrary, no retrospective deprivation of possessions was found in a case where the new legal framework on the remuneration system of electric companies included specific safeguards preventing the reimbursement of subsidies received prior to its adoption (*Energyworks Cartagena S.L. v. Spain* (dec.), 2024, § 44).

149. Furthermore, in *Associations of Communally-owned Forestry Proprietors Porceni Pleșa and Piciorul Bătrân Banciu v. Romania*, 2023, §§ 76-77, the Court dealt with a prolonged failure by the domestic authorities to adopt and publish the methodological standards necessary for granting compensation to which the applicants were entitled. The case concerned two associations of forestry proprietors who complained that, in spite of a legally recognised right, they had not received compensation for the fact that they were unable to make use of their forests, since the forests in question had been designated as protected natural areas for the purposes of the European Natura 2000 network. The Court noted that to date, more than a decade after the European Commission's decision in favour of granting State aid to individuals or legal entities which owned forestry land within

the designated Natura 2000 areas, the draft decision defining the methodology for granting State compensatory measures had still not been published and no payment had been made to the applicant associations. Although they were subject to the legal ban on using their forests, as a result of the classification of the relevant forestry land as protected natural areas, the applicant associations had, at their own expense, complied with the obligation to maintain them. The Court found that the impugned interference was not lawful and did not pursue a legitimate aim.

150. However, in *Basyuk and Others v. Ukraine*, 2025, §§ 43-44, in the circumstances of an armed conflict, the Court found that the domestics courts' reliance on the conclusion of the Ukrainian Chamber of Commerce and Industry as evidence to confirm *force majeure* could not be seen as a breach of the lawfulness requirement. The case concerned the domestic court's refusal, particularly on grounds of *force majeure*, to grant the applicants' claims regarding salary and various dismissal-related payments due to them by their former employer, a State entity, after it had ceased to operate on account of the military activity in the territories where they had been employed. To reach its conclusion, the Court noted, in the first place, that the domestic courts were facing a new situation that was not directly foreseen in the legislation and emphasised the need to interpret how the relevant existing legal provisions applied in a new situation. Secondly, the Court held that there existed a strong indication of a settled practice to the effect that civil law concepts such as *force majeure* applied in respect of labour relations.

151. 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*, 2000, § 56; see the chapter on Enforcement proceedings below).

152. Finally, the Court has also held that where manifestly conflicting decisions, and in particular those from the Supreme Court, interfere with the right to peaceful enjoyment of possessions and no reasonable explanation is given for the divergence, such interferences cannot be considered lawful for the purposes of Article 1 of Protocol No. 1 to the Convention because they lead to inconsistent case-law which lacks the required precision to enable individuals to foresee the consequences of their actions (*Aliyeva and Others v. Azerbaijan*, 2021, §§ 130-135).

3. Public or general interest

153. 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 113; (*Lekić v. Slovenia* [GC], 2018, § 105).

154. 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*, 1986, § 45; *Grozdanić and Gršković-Grozdanić v. Croatia*, 2021, §§ 102-103; see also *Maria Azzopardi v. Malta*, 2022, §§ 53 and 60 for the provision of residential homes in the context of the State's economic and planning policies); combating the effects of a foreign-currency loan crisis particularly in the context of preventing mass homelessness (*Béla Németh v. Hungary*, 2020, §§ 42-45); nationalisation of specific industries (*Lithgow and Others v. the United Kingdom*, 1986, §§ 9 and 109); regulation of the energy sector (*Salento Energy S.r.l. and Nuovo Sole S.r.l. v. Italy* (dec.), 2024, § 37); adoption of land and city development plans (*Sporrong and Lönnroth v. Sweden*, 1982, § 69); *Cooperativa La Laurentina v. Italy*, 2001, § 94; securing land in connection with the implementation of the local land development plan (*Skibińscy v. Poland*, 2006, § 86); prevention of tax evasion (*Hentrich v. France*, 1994, § 39); securing payment of a tax debt (*Rustamkhanli v. Azerbaijan*, 2024, § 58; *Radobuljac v. Croatia (no. 2)*, 2025, § 47); road traffic safety (*Pannon Plakát Kft and Others v. Hungary,* 2022, § 48); measures to combat drug trafficking and smuggling (*Butler v. the United Kingdom* (dec.), 2002); protection of cultural heritage against unlawful exportation from the country of origin or ensuring its recovery and return therein (*The J. Paul Getty Trust and Others v. Italy*, 2024, § 342); protection of the interests of the victims of the crime (*Šeiko v. Lithuania*, 2020,

§ 31); measures to restrict the consumption of alcohol (*Tre Traktörer AB v. Sweden*, 1989, § 62); protection of morals (*Handyside v. the United Kingdom*, 1976, § 62); control of legitimate origin of cars brought into circulation (*Sildedzis v. Poland*, 2005, § 50); confiscation of monies acquired unlawfully (*Honecker and Others v. Germany* (dec.), 2001; the prevention of collusive practices and the protection of the public purse and promotion of fair competition (*Kurban v. Turkey*, 2020, § 78); transition from a socialist to a free-market economy (*Lekić v. Slovenia* [GC], 2018, §§ 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*, 2015, § 64). However, in view of the contractual relationship between the applicants and the debtor which was of a purely business-law nature, the Court did not retain the protection of consumers as a legitimate aim in the circumstances of the case (*Katona and Závarský v. Slovakia*, 2023, § 59).

155. 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], 2018, § 295; *Bahia Nova S.A. v. Spain* (dec.), 2000; *Chapman v. the United Kingdom* [GC], 2001, § 82; *Associations of Communally-owned Forestry Proprietors Porceni Pleșa and Piciorul Bătrân Banciu v. Romania*, 2023, § 77: *Vendrame and Others v. Italy,* 2026, § 66; see also *Sàrl Couttolenc Frères v. France*, 2023, § 62, for equitable and sustainable development of mountain areas). In the case of *Hamer v. Belgium*, 2007, § 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*, 2003, § 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*, 2019, § 70).

156. *S.A. Bio d'Ardennes v. Belgium*, 2019, §§ 55-57, concerned the compulsory slaughter of numerous animals infected with brucellosis and the Court underlined the importance for States of preventing animal diseases and the margin of appreciation left to them in that regard.

157. 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*, 2014, § 57; *Pyrantienė v. Lithuania*, 2013, §§ 44-48; *Bečvář and Bečvářová v. the Czech Republic*, 2004, § 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*, 2009, § 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.), 2013, § 144) has also been found to pursue the public interest.

158. Respecting the principle of legal certainty, in its *res iudicata* application, may, as a general rule, be considered to be in the public interest (*Grobelny v. Poland*, 2020, § 66,).

159. 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*, 2014, § 57; *Velosa Barreto v. Portugal*, 1995, § 25; *Hutten-Czapska v. Poland* [GC], 2005, § 178; *Amato Gauci v. Malta*, 2009, § 55; *Kasmi v. Albania*, 2020, § 76). In the field of housing, the obligation to pay the standing heating charge imposed on the applicants, whose flats were disconnected from the district heating system, was considered to pursue the legitimate aim of ensuring a safe, secure and efficient heat supply (*Strezovski and Others v. North Macedonia*, 2020, § 75).

160. 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], 2000, § 112; *SCEA Ferme de Fresnoy v. France* (dec.), 2005; *Debelianovi v. Bulgaria*, 2007, § 54; *Kozacioğlu v. Turkey* [GC], 2009, § 54).

161. 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], 2000, § 87; *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 113).

162. 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 113; *Papachela and AMAZON S.A. v. Greece*, 2020, § 56). Furthermore, the notion of "public interest" is necessarily extensive (*Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 106; *R.Sz. v. Hungary*, 2013, § 44; *Grudić v. Serbia*, 2012, § 75). The Court normally shows deference to the Contracting States' arguments that 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*, 2000, § 28; *Marija Božić v. Croatia*, 2014, § 58).

163. 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*, 2011, § 91); the adoption of policies to protect the public purse (*N.K.M. v. Hungary*, 2013, §§ 49 and 61); or to reallocate funds (*Savickas and Others v. Lithuania* (dec.), 2013); or in the context of austerity measures prompted by a major economic crisis (*Koufaki and Adedy v. Greece* (dec.), 2013, §§ 37 and 39; and *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), 2013, § 22; *Da Silva Carvalho Rico v. Portugal* (dec.), 2015, § 37).

164. 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*, 2002, §§ 47 and 53-58 – failure to pay back overpaid tax; *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, 2005, § 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*, 2011, § 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*, 2008, § 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)

165. 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], 2000, § 107; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 108).

166. 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], 2004, § 151).

167. 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*, 1982, § 69; *Brumărescu v. Romania* [GC], 1999, § 78; *Saliba v. Malta*, 2005, § 36; *Bistrović v. Croatia*, 2007, § 34).

168. 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], 1999, § 58; *Beyeler v. Italy* [GC], 2000, § 107).

169. 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).

170. 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.

171. 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.

172. For instance, in the context of public procurement, the Court held that the margin of appreciation of Contracting States is substantially broader , when the issues involve an assessment of candidates for public procurement and as regards the policy choices as to the mandatory or discretionary exclusion of candidates (*Kurban v. Turkey*, 2020, §§ 81 and 86). The Court further extended this finding to cases concerning the choices facing the Contracting States with regard to the obligations imposed on participants in public procurement procedures and the consequences of failures to fulfil those obligations (*UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, § 214).

173. Another example is the case of *The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 407-408, where the Court noted a wide margin of discretion as to what is "in accordance with the general interest", particularly where cultural heritage issues are concerned, the strong consensus in international and European law with regard to the need to protect cultural objects from unlawful exportation and to return them to their country of origin, the applicant's negligent conduct, as well as

the very exceptional legal vacuum in which the domestic authorities found themselves to hold there had been no violation of Article 1 of Protocol No. 1 to the Convention.

174. In *Alperin v. Ukraine*, 2024, §§ 86-87, concerning the partial forfeiture of the applicant's bail owing to the fact that the applicant had breached his bail conditions, the Court observed that the domestic courts made a thorough assessment and provided sufficient reasons for its decision, having weighed the breach found against the relevant background and having limited the forfeiture to half

175. 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*, 2007, § 46; *Novoseletskiy v. Ukraine*, 2005, § 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], 2000, § 114; *Bistrović v. Croatia*, 2007, § 35).

176. 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

177. 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], 2018, § 302; *Yildirim v. Italy* (dec.), 2003; *AGOSI v. the United Kingdom*, 1986, §§ 55 and 58-60; *Air Canada v. the United Kingdom*, 1995, § 46; *Arcuri and Others v. Italy* (dec.), 2001; *Riela and Others v. Italy* (dec.), 2001; *Kemal Bayram v. Turkey*, 2021, § 54; *Shorazova v. Malta*, 2022, § 302; *Arnavutkoy Greek Orthodox Taksiarhis Church Foundation v. Türkiye*, 2022, §§ 50-56). These procedural guarantees are inherent in the principle of lawfulness *Lekić v. Slovenia* [GC], 2018, § 95) (see the sub-chapter on the principle of lawfulness above).

178. In ascertaining whether this condition has been satisfied, the Court must take a comprehensive view of the applicable procedures (*AGOSI v. the United Kingdom*, 1986, § 55; *Bowler International Unit v. France*, 2009, §§ 44-45; *Jokela v. Finland*, 2002, § 45; *Denisova and Moiseyeva v. Russia*, 2010, § 59; *Microintelect OOD v. Bulgaria*, 2014, § 44). Furthermore, even in situations where no individual procedural deficiencies in themselves affect decisively the proportionality of a forfeiture measure, the Court must take into account their cumulative effect. If, taken together, the relevant factors result in uncertainty and imprecision, they may render a forfeiture disproportionate to the legitimate aim pursued (*Todorov and Others v. Bulgaria*, 2021, § 211).

179. 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*, 1994, § 49; *Könyv-Tár Kft and Others v. Hungary*, 2018, § 59; *Uzan and Others v. Turkey*, 2019, § 215; and *Amerisoc Center S.R.L. v. Luxembourg*, 2024, § 61). The Court checks whether the procedure applied provided the applicant a fair possibility of defending his or her interests (*Bäck v. Finland*, 2004, § 63). For instance, 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 (*Družstevni Záložna Pria and Others v. the Czech Republic*, 2008, §§ 94-95) or on account of a domestic court's order to pay compensation resulting in the sale of the applicant company's property, all without its knowledge (*Seksimp Group SRL v. the Republic of Moldova*, 2025, §§ 56-59). The fact of whether major arguments advanced by the applicants were carefully examined by the authorities is also relevant (*Megadat.com SRL v. Moldova*, 2008, § 74; *Novoseletskiy v. Ukraine*, 2005, § 111; *Bistrović v. Croatia*, 2007, § 37). In this respect, the mandatory nature of the confiscation which left no discretion to the domestic authorities to assess the proportionality of the measure, deprived the applicant of any reasonable opportunity to challenge it effectively (*Yaylalı v. Serbia*, 2024, §§ 56-58).

Furthermore, the operation of unchallengeable presumptions of benefit resulting from expropriation (*Papachelas v. Greece* [GC], 1999, §§ 53-54), and presumptions used in the context of calculating compensation for expropriation (*Katikaridis and Others v. Greece*, 1996, § 49; *Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, 2003, § 33) were held against the Governments.).

180. When an individual's property is subject to expropriation, there must be a procedure which ensures an overall assessment of the consequences of the expropriation, including the granting of compensation in relation to the value of the expropriated property, the determination of the holders of the right to compensation and any other issue relating to the expropriation, as well as the costs of the proceedings (*Alfa Glass Anonymi Emboriki Etairia Yalopinakon v. Greece*, 2021, § 36; *Pálka and Others v. the Czech Republic*, 2022, §§ 62-50). In the latter case, the Court found that while it could not be said that a system of compensation using tables and rates issued by the administration was as such problematic, the Czech legislation in force at the relevant time did not provide for "a procedure ensuring an overall assessment of the consequences of the expropriation". Furthermore, in *Yavuz Özden v. Turkey*, 2021, §§ 78-87, where the applicant´s plot of land had been zoned as a military security zone, the legal framework put in place did not provide for a mechanism adequately respecting the applicant´s rights and no compensation has been paid. Likewise, *Drozdyk and Mikula v. Ukraine*, 2024, §§ 49-52 concerned the invalidation of the applicants' titles to plots of land which they had used and owned for years on the basis that the lands fell within railway exclusion zones and thus should never have been transferred into private property. The Court found that it had imposed on them a disproportionate burden on the account that the applicants were not offered any compensation for the land reclaimed from them.

181. 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*, 2008, § 74; *Petruzzo and Others v. Italy,* 2025, §§ 166-167). 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*, 2014, §§ 68-69; see also *Rustamkhanli v. Azerbaijan*, 2024, § 64, in respect of the freezing of a publishing house's bank accounts by tax authorities, without a proportionality assessment). Similarly, an automatic, general and inflexible protective measure of uncertain duration can result in a violation (*Uzan and Others v. Turkey*, 2019, § 193).

182. The length of time it took to challenge the measures restricting the applicant's rights are also taken into consideration. In *Luordo v. Italy*, 2003, § 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*, 2019, § 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. In *Kasilov v. Russia*, 2021, § 52, the Court concluded that, in the absence of a legitimate aim, retention of a bail payment for eleven months even after the applicant was placed in detention, constituted a violation of Article 1 of Protocol No. 1. Finally, *Vujović and Lipa D.O.O. v. Montenegro (no. 2)*, 2025, §§ 108-10, concerned the repeated refusal of the Court of Appeal to comply with the Constitutional Court's rulings with regard to the wrongful opening of lengthy insolvency proceedings in respect of the applicant company. The Court found that the applicants were not afforded a reasonable opportunity of putting their claims to the domestic authorities to effectively challenge the impugned interference. The delay had a direct impact on the applicants' Article 1 of Protocol No. 1 rights, as most of their property had been sold in the meantime.

b. Choice of measures

183. 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*, 1986, § 51; *Koufaki and Adedy v. Greece* (dec.), 2013, § 48).

184. 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*, 2011, §§ 651-654; *Vaskrsić v. Slovenia*, 2017, § 83).

185. 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*, 2018, § 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).

186. Furthermore, in *UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, § 232, the Court held – in the context of the COVID-19 pandemic – that the absence of financial sanctions on the public entity responsible for ensuring compliance with public procurement law was not, in itself, sufficient to render the interference with the applicant' companies' property rights disproportionate.

187. Finally, in *BK1 and Others v. Hungary* (dec.), 2025, § 49, the Court observed that the legislature reviewed the measure (capping of fuel prices during a state of danger decreed in relation to the COVID-19 pandemic and later to the war in Ukraine on several occasions) and ultimately lifted the cap on prices once it considered that the said measure no longer pursued the legitimate aim for which it had been introduced. Given those circumstances, it was not for the Court to decide whether or not the measure was successful or whether better alternative measures could have been adopted in order to reduce inflation and overcome the economic crisis at the time in question – those matters falling within the State's margin of appreciation.

c. Substantive issues relevant for the fair balance test

188. 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*, 2002, §§ 51-53; *Interoliva ABEE v. Greece*, 2003, §§ 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*, 2005, § 30; *Bistrović v. Croatia*, 2007, §§ 42-44). 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], 1999, §§ 53-54).

189. The imposition of a mandatory fine equivalent to the value of the imported goods for the breach of customs regulations, precluding domestic courts from conducting any balancing exercise between

the interests at stake and individual circumstances, has also lead to a violation of Article 1 of Protocol No. 1 (*Krayeva v. Ukraine*, 2022, §§ 29-32).

190. 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*, 2000, § 54; *Broniowski v. Poland* [GC], 2004, §§ 151 and 185; *Barcza and Others v. Hungary*, 2016, § 47; *Frendo Randon and Others v. Malta*, 2011, § 55; *Hunguest Zrt v. Hungary*, 2016, §§ 25 and 27; *Zelenchuk and Tsytsyura v. Ukraine*, 2018, §§ 91 and 106).

191. 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*, *Skibińscy v. Poland*, 2006, §§ 93-95); whether the interference was prohibitive or oppressive (*Allianz-Slovenska-Poistovna, A.S., and Others v. Slovakia* (dec.), 2010; *Konstantin Stefanov v. Bulgaria*, 2015, § 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)*, 2009, §§ 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*, 2002, §§ 62 and 65 – violation on account of the former being established as much higher than the latter).

192. Temporary character of measures complained of is normally to the advantage of the State (*Da Conceição Mateus and Santos Januário v. Portugal* (dec.), 2013, § 29; *Savickas and Others v. Lithuania* (dec.), 2013, § 92).

193. 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*, 2009, § 69; *Paplauskienė v. Lithuania*, 2014, § 49), in an appropriate manner and with the utmost consistency (*Beyeler v. Italy* [GC], 2000, § 120; *Romeva v. North Macedonia*, 2019, § 58; *Grobelny v. Poland*, 2020, § 68; *Belova v. Russia*, 2020, § 37; *Seregin and Others v. Russia*, 2021, § 94; *Gavrilova and Others v. Russia*, 2021, § 74; *Semenov v. Russia*, 2021, § 59; *Casarin v. Italy*, 2021, § 68; *Muharrem Güneş and Others v. Turkey*, 2020, § 74), 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*, 2007, § 40; *Gladysheva v. Russia*, 2011, § 80; *Pyrantienė v. Lithuania*, 2013, § 70; *Moskal v. Poland*, 2009, § 73; *Albergas and Arlauskas v. Lithuania*, 2014, § 74; *S.C. Antares Transport S.A. and S.C. Transroby S.R.L. v. Romania*, 2015, § 48; *Seregin and Others v. Russia*, 2021, § 94; *Gavrilova and Others v. Russia*, 2021, § 74; and *Semenov v. Russia*, 2021, § 59). The authorities should be able to correct their mistakes, but not in a situation where the individual concerned is required to bear an excessive burden (*Belova v. Russia*, 2020, § 37; *Kurban v. Turkey*, 2020, § 82; *Muharrem Güneş and Others v. Turkey*, 2020, § 74).

194. In *Belova v. Russia*, 2020, §§ 40-45, the Court determined that it is hardly open to the State to claim that it did not know that its property had been lost due to mismanagement, but that an acquirer of property should carefully investigate its origin in order to avoid possible confiscation claims. The Court thus found no violation of Article 1 of Protocol 1 in a situation where the applicant could have discovered that the property she was buying was the subject of a dispute and where the State had legitimate and significant public interests in the contested property for the purposes of hosting the Olympics and protecting nature.

195. The three complementary cases of *Seregin and Others v. Russia*, 2021, *Gavrilova and Others v. Russia*, 2021, and *Semenov v. Russia,* 2021, concerned the general issue of reconciling the transfer of properties to good faith buyers in circumstances where the buyers, who had not been at fault, were

forced to bear the consequences of a situation that had been solely attributable to the domestic system or to the authorities' errors or omissions, and in the absence of any form of compensation for the deprivation of their properties. More specifically, the issue arose in the context of the annulment of private property deeds in favour of municipalities on the ground that the initial property transfers – in the form of privatisations – had been unlawful (*Seregin and Others v. Russia*, 2021, § 4); the retroactive annulment of title deeds over plots of land classified as "forestry resources" due to the authorities' errors (*Gavrilova and Others v. Russia*, 2021, § 1); and the annulment of the applicant's title to a plot of land in favour of the municipality at the request of the public prosecutor (*Semenov v. Russia*, 2021, § 1). In each case, the Court found that the required fair balance between the requirements of the public interest and the need to protect the applicants' right to property had been upset so that there had been a violation of Article 1 of Protocol No. 1 (*Seregin and Others v. Russia*, 2021, § 111; *Gavrilova and Others v. Russia*, 2021, § 87; *Semenov v. Russia*, 2021, § 72; see also *Lidiya Nikitina v. Russia*, 2022, §§ 47-50, which concerned the authorities' refusal to register the property after the death of the original owner further to inadequate and delayed coordination between various local and federal authorities).

196. The case *Kanevska v. Ukraine* (dec.), 2020, §§ 46-52, concerned a property dispute between private parties over a flat. The applicant was the *bona fide* purchaser of the flat, which, however, had been sold several times without the initial owner's knowledge or consent. A criminal case was opened in respect of fraud. The domestic courts eventually found in favour of the initial owner of the flat. The Court noted that the domestic courts in essence had to balance conflicting private interests over the disputed property. Because no arbitrariness or manifest unreasonableness was apparent in the domestic courts' ruling, the Court considered that the fact that the domestic courts eventually found in favour of the initial owner of the flat did not as such engage the responsibility of the State under Article 1 of Protocol No. 1. The State did not have an obligation to put in place a regulatory framework which would prevent *any* fraudulent act at all during the registration of real-property transactions: rather the State's obligation included a requirement to put in place a regulatory framework which would provide for remedial measures when fraud did occur. Since the applicant had at her disposal legal remedies to protect her rights at the domestic level, there was no violation of Article 1 of Protocol No. 1.

197. The case *Korshunova v. Russia*, 2022, §§ 36-42, concerned the confiscation without compensation and the sale of a flat owned by the applicant. The flat was considered to have been bought with the proceeds of crime for which the applicant's husband was convicted and for the benefit of the civil parties. The applicant, whose good faith had not been questioned by the domestic authorities, complained about the order for sale. Underlining the requirement for the domestic authorities to balance the respective interests of the victim/civil party, on the one hand, and those of the buyer, on the other, the Court found a violation of Article 1 of Protocol No. 1.

198. Furthermore, the case *Sak and Giebułtowicz v. Poland* (dec.), 2023, §§ 66-67, concerned the applicant's obligation to refund to the State, under the doctrine of "unjust enrichment", compensation which had been miscalculated a decade earlier by the State. The Court considered that the public authorities did not commit a manifest error of judgment in regulating property transactions between natural persons and the State, with the aim of protecting the latter from unjustified losses, especially in the wider context of the transformation of the country's system from a totalitarian regime. Moreover, the ruling of the domestic court in respect of the applicants, who had made an unjust gain from their last transaction, was not marked by any arbitrariness).

199. Finally, in the case of sanctions, the Court has noted that, in order to be proportionate, the severity of a sanction should correspond to the gravity of the offence it is intended to punish rather than to the gravity of any presumed infringement which has not actually been established (*Imeri v. Croatia*, 2021, § 71).

d. Issues concerning the applicant

200. 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*, 1997, § 109; *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, 2004, §§ 69 and 71). Similarly, in *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], 2018, § 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 (see also *The J. Paul Getty Trust and Others v. Italy*, 2024, § 408). 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.), 2018, §§ 49-50). In *UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, § 223, the Court observed that the domestic courts had thoroughly assessed the overall conduct of the applicant companies, in the extraordinary situation created by the public health crisis of Covid-19, which companies had acted in bad faith and had sought to take advantage of the public health emergency in order to make an excessive profit.

201. In certain cases the applicant's personal vulnerability is also taken into consideration, as in *Pyrantienė v. Lithuania*, 2013, § 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*, 2018, §§ 82-90; see also *Casarin v. Italy*, 2021**,** § 74).

202. 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*, 1994, § 47; *R.Sz. v. Hungary*, 2013, § 60).

203. 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)*, 1989, §§ 60-61; *Z.A.N.T.E. – Marathonisi A.E. v. Greece*, 2007, § 53; and *Depalle v. France* [GC], 2010, § 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)*; 1991, §§ 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 *Łącz v. Poland* (dec.), 2009, 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.), 2016).

204. The automatic, general and inflexible nature of the interferences with an applicant's possessions, without any regular individual scrutiny, may also be taken into account by the Court. In *Uzan and Others v. Turkey*, 2019, § 212, concerning the preventive attachment of assets belonging to managers or relatives of executives of an insolvent bank, the Court noted the absence of evidence to suggest that the applicants could have been personally implicated in any fraud. Similarly, in *Yaylalı v. Serbia*, 2024, § 57, in respect of a mandatory confiscation of the applicant's gold jewellery given his failure to declare it, the automatic nature of the measure deprived the applicant of any reasonable opportunity to put his case to the relevant authorities.

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

205. 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*, 1994, § 71; *Platakou v. Greece*, 2001, § 55). However, the importance of compensation varies in the Court's assessment depending on the rules at stake.

206. The taking of property under the second sentence of the first paragraph of Article 1 of Protocol No. 1, 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 only in exceptional circumstances (*Former King of Greece and Others v. Greece* (just satisfaction) [GC], 2002, § 89; see also *Katona and Závarský v. Slovakia*, 2023, § 63, and *Drozdyk and Mikula v. Ukraine*, 2024, § 52). However, in a situation where a measure controlling the use of property is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved (*Depalle v. France* [GC], 2010, § 91).

Similar considerations apply when the general clause is at stake (*Sporrong and Lönnroth v. Sweden*, 1982, § 69; see at the end of this sub-chapter).

207. In respect of the deprivation of property, 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*, 1986, § 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*, 1986, § 122).

208. While it is true that in many cases of lawful expropriation only full compensation can be regarded as reasonably related to the value of the property, that rule is not without its exceptions (*Former King of Greece and Others v. Greece* (just satisfaction) [GC], 2002, § 78; *Scordino v. Italy (no. 1)* [GC], 2006, § 96). The provision does therefore not, 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*, 1986, § 54; *Papachelas v. Greece* [GC], 1999, § 48; *The Holy Monasteries v. Greece*, 1994, §§ 70-71; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, § 54; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, 2007, § 115; *Pálka and Others v. the Czech Republic*, 2022, § 49; *Maria Azzopardi v. Malta*, 2022, § 54).

209. 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*, 2002, § 53, *Gashi v. Croatia*, 2007, § 41; *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 111; *Guiso-Gallisay v. Italy* (just satisfaction) [GC], 2009, § 103; *Moreno Diaz Peña and Others v. Portugal*, 2015, § 76). Any other approach could open the door to a degree of uncertainty or even arbitrariness (*Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 111).

210. 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*, 2017, § 46; *Azas v. Greece*, 2002, §§ 52–53; *Athanasiou and Others v. Greece*, 2006, § 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*, 2018, § 70).

211. Unreasonable delay in payment of compensation is another relevant factor (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, 2000, § 54; *Czajkowska and Others v. Poland*, 2010, § 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*, 2009, § 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*, 2001, § 51).

212. 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*, 1997, § 29; *Aka v. Turkey*, 1998, § 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*, 2010, § 62).

213. The applicant's personal and social situation should be taken into account in determining the compensation (*Pyrantienė v. Lithuania*, 2013, § 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).

214. 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*, 2010, § 52).

215. In certain situations a refusal to grant special indemnities can amount to a violation of Article 1 of Protocol No. 1 (*Azas v. Greece*, 2002, §§ 52-53; *Athanasiou and Others v. Greece*, 2006, § 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*, 2007, §§ 40-42; *Ouzounoglou v. Greece*, 2005, § 30).

216. 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*, 1986, §§ 121-122; see also *Maria Azzopardi v. Malta,* 2022, § 55). Similarly, in *James and Others v. the United Kingdom*, 1986, §§ 68-69, the issue was whether, in the context of leasehold-reform legislation, the conditions empowering long-term leasehold tenants to acquire their property struck a fair balance. The Court found that they did, holding that the context was one of social and economic reform in which the burden borne by the freeholders was not unreasonable, even though the amounts received by the interested parties were less than the full market value of the property. Furthermore, in *Maria Azzopardi v. Malta,* 2022, §§ 63 and 65-68, where the expropriation of the land was aimed at providing residential homes in the context of the State's economic and planning policies, the Court accepted that the domestic decisions designating the land as agricultural for compensation purposes were not without reasonable foundation, and attached weight to the existence of procedural and other safeguards.

217. *A fortiori*, less than full compensation may also be considered necessary where property is taken for the purposes of "such fundamental changes of a country's constitutional system as the transition from monarchy to republic" (*Former King of Greece and Others v. Greece* [GC], 2000, § 87). The State has a wide margin of appreciation when enacting laws in the context of a change of political and economic regime (*Kopecký v. Slovakia* [GC], 2004, § 35). This principle was reaffirmed in *Broniowski v. Poland* [GC], 2004, § 182, in the context of the country's transition towards a democratic regime. The Court has specified that rules regulating ownership relations within the country "involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole" could involve decisions restricting compensation for the taking or restitution of property to a level below its market value (*Scordino v. Italy (no. 1)* [GC], 2006, § 98).

218. The Court has also reiterated these principles regarding the enactment of laws in "the exceptional context of German reunification" (*Von Maltzan and Others v. Germany* (dec.) [GC], 2005, § 77 and 111-12) and 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], 2005, §§ 113 and 117). In the latter case, the unique nature of the general political and legal context of German reunification had justified a total lack of compensation. A distinction was drawn between the case of *Jahn and Others*, 2005, and *Vistiņš and Perepjolkins*: the latter was not a case where a manifestly unjust situation that emerged in the process of denationalisation had to be remedied by the legislature *ex post facto* within a relatively short time in order to restore social justice. The lack of sufficient compensation was therefore found not to be justified in *Vistiņš and Perepjolkins v. Latvia*, 2012, §§ 123, 127-130).

219. In addition, in cases where property was taken unlawfully, compensation should still have a compensatory role as opposed to a punitive or dissuasive one vis-à-vis the respondent State (*Guiso-Gallisay v. Italy* (just satisfaction) [GC], 2009, § 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).

220. Furthermore, where a measure controlling the use of property is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved but is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1 (*Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, 2008, §§ 44 and 45; *Andrzej Ruciński v. Poland*, 2023 § 84). In *Depalle v. France* [GC], 2010, § 91, where the applicants occupied houses built on land falling within the category of maritime public property, the Court held, having regard to the rules governing public property, and considering that the applicant could not have been unaware of the principle that no compensation was payable, clearly stated in every decision, that the lack of compensation could not be regarded as a measure disproportionate to the control of the use of the applicant's property, carried out in pursuit of the general interest.

221. In *S.A. Bio d'Ardennes v. Belgium*, 2019, §§ 47-49 and 51, where the compulsory slaughter of numerous animals infected with brucellosis amounted to a control of use, the Court held that the applicant company had not had to bear an individual and excessive burden on account of the refusal to compensate it for the slaughter of its cattle.

222. Finally, for interferences with the applicants' rights which were analysed under the general clause of Article 1 of Protocol No. 1, the Court has adopted a somehow similar approach to that concerning "the control of use" category of cases (*Katte Klitsche de la Grange v. Italy*, 1994, §§ 42 and 47-48; *Pialopoulos and Others v. Greece*, 2001, §§ 57-61). In the case of *Sporrong and Lönnroth v. Sweden*, 1982, § 69, the Court found that the applicants bore an individual and excessive burden

which could have been rendered legitimate only if they had had the possibility of seeking a reduction of the time-limits or of claiming compensation.

C. Positive obligations on member States

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

224. 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], 2004, § 143; *Sovtransavto Holding v. Ukraine*, 2002, § 96; *Keegan v. Ireland*, 1994, § 49; *Kroon and Others v. the Netherlands*, 1994, § 31; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 100; *Likvidējamā p/s Selga and Vasiļevska v. Latvia* (dec.), 2013, §§ 94-113).

225. 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], 2004, § 134; *Dabić v. Croatia*, 2021, § 51), even in cases involving litigation between private individuals or companies (*Sovtransavto Holding v. Ukraine*, 2002, § 96; *Antonopoulou v. Greece* (dec.), 2021, § 55; *Bilyavska v. Ukraine*, 2025, § 39).

226. In the case of *Öneryıldız v. Turkey* [GC], 2004, §§ 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*, 2018, § 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.

227. 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*, 2008, § 175, for natural hazards beyond human control; *Kurşun v. Turkey*, 2018, § 121, for property damage resulting from a dangerous activity but not involving injury/deaths; *Tishkina v. Bulgaria*, 2026, § 92, for irreparable structural damage to a house, caused by private individuals engaged in illegal coal mining). In the latter case, it is worth noting that the authorities' response was analysed following the three-step approach defined in *Cannavacciuolo and Others v. Italy*, § 395 (albeit under Article 2 of the Convention concerning the pollution caused by illegal dumping, burying and/or uncontrolled abandonment of hazardous, special and urban waste in "Terra dei Fuochi"). The Court examined whether the domestic authorities had: (a) conducted a comprehensive assessment of the phenomenon, identifying affected areas as well as the nature and

extent of the damage; (b) took meaningful steps to mitigate identified risks, especially in the applicant's district; and (c) implemented effective measures to combat the conduct underlying the illegal mining phenomenon (*Tishkina v. Bulgaria*, 2026, § 77).

228. 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.), 2018, §§ 37 and 39-41).

229. A distinction must also be made between the State´s positive obligations as regards the duty to investigate property destruction, on the one hand, and loss of life, on the other. In particular, the Court has held that the obligation to investigate is less exacting for less serious crimes, such as those involving property, than for more serious violent crimes and especially those which would fall within the scope of Articles 2 and 3 of the Convention. In cases involving less serious crimes the State will only fail to fulfil its positive obligation in that respect where flagrant and serious deficiencies in the criminal investigation or prosecution can be identified (*Blumberga v. Latvia*, 2008, § 67; *Abukauskai v. Lithuania*, 2020, § 56; *Adzhigitova and Others v. Russia*, 2021, § 255; *Gherardi Martiri v. San Marino*, 2022, § 107).

230. In *Blumberga*, 2008, the Court held that the interference with the applicant's property rights was not carried out in a manner that could have put her life or health in danger (*ibid.*, §§ 68-73), whereas in *Abukauskai*, 2020, the domestic authorities considered that the damage to the applicants´ property had been undertaken "in a dangerous manner" but the applicants failed to allege, throughout the domestic proceedings and in their initial submissions to the Court, that they had suffered any injuries, or that their life or health had been at risk because of the dangerous nature of the arson attack (*ibid.*, §§ 58-61). In neither of these two cases, the Court found it established that there were had been any flagrant and serious deficiencies in the criminal investigations. It further recalled that the State would only fail to fulfil its positive obligations under Article 1 of Protocol No. 1 if the lack of prospects of success of civil proceedings is the direct consequence of exceptionally serious and flagrant deficiencies in the conduct of criminal proceedings arising out of the same set of facts (*Blumberga v. Latvia*, 2008, § 68).

231. Conversely, in *Korotyuk v. Ukraine*, 2023, §§ 36-37 and 55-56, a case concerning intellectual property rights, the Court found that that the State had failed to fulfil its positive obligation in respect of the applicant's property on account of flagrant and serious deficiencies that characterised the criminal investigation. Similarly, the Court found a violation in *Nikolay Kostadinov v. Bulgaria*, §§ 72-75, on account of the State's failure to protect a shareholder from a fraudulent takeover of his company, its shares and assets, by a private party since it had, in particular, failed to investigate serious suspicions that the criminal offences were carried out by a criminal group and failed therefore to establish the circumstances of those offences.

232. In *Antonopoulou v. Greece* (dec.), 2021, the applicant had taken out a mortgage in Swiss francs in order to benefit from a favourable exchange rate. A clause in the contract provided that monthly repayment of the loan was to be made on the basis of the exchange rate at the time of repayment and not at the time the loan was taken. The applicant was later unable to repay the loan because the strengthening of the Swiss franc against the euro, as a result of a global financial crisis, had increased the loan amount by about 60%. The applicant argued unsuccessfully before the domestic courts that the repayment clause was abusive. The Court noted that domestic law offered the applicant adequate remedies to assert her rights relating to the enjoyment of property, including the possibility of bringing an action for annulment of her obligations under the contract before the civil courts and the possibility of seeking renegotiation or even termination of the contract on the basis of the Civil Code (*ibid*., § 82). Furthermore, the applicant could have asked the bank at any time to convert the currency of the loan into euros or could have insured herself against the risk of the increase in monthly repayments (*ibid*.). The Court concluded that the legal framework put in place by the State provided the applicant with a

mechanism enabling her to ensure respect for her rights guaranteed to her by Article 1 of Protocol No. 1, and that the State had therefore fulfilled its positive obligations under this Article (*ibid*., § 84).

233. In *Ioannides v. Cyprus*, 2025, §§ 78 and 101-104, in an exceptional situation where the respondent State lacked effective control over certain sectors of the buffer zone where the applicant's house was located, the Court held that the State had limited jurisdiction entailing only positive obligations to take diplomatic, economic, judicial or other measures within its power and in accordance with international law.

234. In *Bilyavska v. Ukraine*, 2025, §§ 44-48, the applicant unsuccessfully took an eviction action against her adult children and their families, whose behaviour had made it impossible for her to live in a house she owned. The Court found it difficult to accept that the domestic courts had complied with their positive duty to adjudicate private property disputes in a manner that would not be arbitrary or manifestly unreasonable.

235. 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 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], 2004, § 144; *Keegan v. Ireland*, 1994, § 49; *Hatton and Others v. the United Kingdom* [GC], 2003, §§ 98; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 101; *Kotov v. Russia* [GC], 2012, § 110; *Saraç and Others v. Turkey*, 2021, § 71).

236. 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], 2014, § 101; *Kotov v. Russia [GC]*, 2012, § 102; *Broniowski v. Poland* [GC], 2004, § 146; *Szkórits v. Hungary*, 2014, §§ 37-38).

237. This was also the case in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 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. A violation was found in respect of Slovenia and Serbia. The Court took the same approach as in *Zaklan v. Croatia*, 2021, §§ 85 and 91, which concerned the confiscation of foreign currency by former Yugoslav authorities and where the Court decided that the violation was attributable to Croatia which took over the administrative-offence proceedings against the applicant after declaring independence.

238. 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], 2000, § 120; *Megadat.com SRL v. Moldova*, 2008, § 72; *Rysovskyy v. Ukraine*, 2011, § 71; *Moskal v. Poland*, 2009, § 72; *Maria Mihalache v. Romania*, 2020, § 70; *Muharrem Güneş and Others v. Turkey*, 2020, § 74; *Đorđević v. Serbia*, 2025, § 91). 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*, 2018, § 140; *Muharrem Güneş and Others v. Turkey*, 2020, § 75; *Kosmatska v. Ukraine,* 2025, § 43). In the context of the cancellation of a property title given in error, the principle of good governance may also require the payment of adequate compensation to the long-term good faith holder of the title, or other appropriate redress (*Muharrem Güneş and Others v. Turkey*, 2020, §§ 75-81; *Kosmatska v. Ukraine,* 2025, § 43).

1. Horizontal effect – interferences by private persons

239. 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.

240. 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)*, 2013, § 39; *Saraç and Others v. Turkey*, 2021, § 70). 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*, 2002, § 96; *Saraç and Others v. Turkey*, 2021, § 72; *Kanevska v. Ukraine* (dec.), 2020, § 45).

241. 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], 2012, § 111; *Anokhin v. Russia* (dec.), 2007).

242. 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 (*Kotov v. Russia* [GC], 2012, § 113; *Blumberga v. Latvia*, 2008, § 67; *Papachela and AMAZON S.A. v. Greece*, 2020, § 54; *Saraç and Others v. Turkey*, 2021, § 73; *Dabić v. Croatia*, 2021, § 52; *Kanevska v. Ukraine* (dec.), 2020, § 45; see also *Sharabidze and Others v. Georgia*, 2026, §§ 29-30). This includes, where appropriate, the right to claim damages in respect of any loss sustained (*Kotov v. Russia* [GC], 2012, § 113; *Blumberga v. Latvia*, 2008, § 67; *Dabić v. Croatia*, 2021, § 52, *Gherardi Martiri v. San Marino*, 2022, § 105). 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], 2012, § 113; *Saraç and Others v. Turkey*, 2021, § 73, *Gherardi Martiri v. San Marino,* 2022, § 106).

243. For instance, in *Zolotas v. Greece (no. 2)*, 2013, 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.

244. The Court has also held that States have an obligation to protect the property rights of individuals as against claims made by religious orders when those claims result in the imposition of a disproportionate burden on the individuals. Thus, in *Liamberi and Others v. Greece*, 2020, §§ 86-88, the Court found that granting a monastery automatic and absolute rights to the property of a deceased monk, when such a grant excluded from consideration the importance of protecting individual interests in the property, constituted a violation of Article 1 of Protocol No. 1. In this case, the relevant elements consisted of the carrying out of numerous acts of possession by the ancestors of the applicants over several decades (including the payment of property and local taxes and inheritance taxes), in the absence of any acts of possession carried out by the monastery or of the registration of its claims over the disputed property (*ibid.*).

245. Finally, in *Dabić v. Croatia*, 2021, §§ 53-59 the damage to the applicant's house and its plundering occurred in the context of the return of refugees and displaced persons where specific obligations might arise for the State to prevent the destruction or looting of contested or abandoned property. The Court found that the responsibility for loss resulting from damage to and the looting of the applicant's house was on, not only with the direct perpetrator but, on the State, which had initially also seized the property. Given that the domestic courts had held that the State was not liable for such loss and dismissed the applicant's action for compensation, the State has not discharged its positive obligations under Article 1 of Protocol No. 1 to the Convention.

2. Remedial measures

246. 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*, 2002, § 45; *Zehentner v. Austria*, 2009, § 73) and in cases between private parties only.

247. 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], 2012, § 114; *Sovtransavto Holding v. Ukraine*, 2002, § 96; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 83; *Freitag v. Germany*, 2007, § 54; *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, § 79; *Plechanow v. Poland*, 2009, § 100; *Ukraine-Tyumen v. Ukraine*, 2007, § 51; *Antonopoulou v. Greece* (dec.), 2021, § 57; *Nikolay Kostadinov v. Bulgaria*, § 54). 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*, 2018, §§ 123-124).

248. 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*, 2009, § 100). For example, in *Dabić v. Croatia*, 2021, § 55, the Court held that when the authorities seize property, they also take on a duty of care in respect of it and are liable for the damage and/or loss of such property. In such cases the actual damage sustained should not be more extensive than that which is inevitable, if it is to be compatible with Article 1 of Protocol No. 1. In consequence, when seizing property, the authorities must not only take the reasonable measures necessary for its preservation, but domestic legislation must also provide for the possibility of taking proceedings against the State for compensation for any damage resulting from the failure to keep the property in relatively good condition.

249. 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*, 2005, § 112); payment of compensation for expropriation (*Almeida Garrett, Mascarenhas Falcão and Others*

v. Portugal, 2000, §§ 109-111); enforcement of court orders for the eviction of tenants and the repossession of dwellings (*Immobiliare Saffi v. Italy* [GC], 1999, §§ 43-59; *Matheus v. France*, 2005, §§ 69-71; *Lo Tufo v. Italy*, 2005, § 53; *Prodan v. Moldova*, 2004, § 61), and also as regards compensation for the living conditions in a harki reception camp (*Tamazount and others v. France*, 2024, § 164). State responsibility was also invoked in *Papachela and AMAZON S.A. v. Greece*, 2020, §§ 57-58 and 62-64, in which the Greek Government failed to evict migrants and others who had taken over a hotel belonging to the applicants despite a court order to the contrary.

3. Enforcement proceedings

250. 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*, 2005, § 91).

251. 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.), 2007; *Liseytseva and Maslov v. Russia*, 2014, § 183).

252. 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.), 2007; *Burdov v. Russia*, 2002, §§ 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)*, 2009, § 69).

253. 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*, 1997, § 40; *Burdov v. Russia*, 2002, § 34).

254. An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (*Immobiliare Saffi v. Italy* [GC], 1999, § 63; *Hornsby v. Greece*, *Hornsby*, 1997, § 40; *De Luca v. Italy*, 2013, § 66; *Burdov v. Russia (no. 2)*, 2009, § 65). For instance, in the context of State-owned companies, a delay of less than one year in the payment of a monetary judicial award is in principle compatible with the Convention, longer delay being *prima facie* unreasonable (*Kuzhelev and Others v. Russia*, 2019, §§ 109-110). Similarly, in *Diaco and Lenchi v. Italy*, 2025, §§ 77 and 84, the Court also found problematic the authorities' non-execution of orders to pay legal-aid fees to the applicants, both lawyers, for more than a year. With regard to Article 6 of the Convention, special diligence was required in the payment of legal-aid fees to lawyers, not only because of the fundamental role of lawyers in a democratic society, but also because of the essential role of legal aid in access to justice and the effectiveness of the rights guaranteed by the Convention.

255. 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], 1999, § 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)*, 2009, § 70; *Süzer and Eksen Holding A.Ş. v. Turkey*, 2012, § 116).

256. A person who has obtained a final judgment against the State cannot be expected to bring separate enforcement proceedings (*Metaxas v. Greece*, 2004, § 19, and *Lizanets v. Ukraine*, 2007, § 43; *Yuriy Nikolayevich Ivanov v. Ukraine*, 2009, § 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)*, 2009, § 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*, 2005, § 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*, 2007, § 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.

257. For instance, in *Szkórits v. Hungary*, 2014, §§ 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*, 2006, § 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.

258. In the context of the restitution of property, the Court ordered the State to take all necessary measures to ensure the enforcement of the decision in the applicants' favour within a time-limit, including the removal of a church from their land (*Orlović and Others v. Bosnia and Herzegovina*, 2019, §§ 68-71; see the chapter on the Restitution of Property below).

259. In *De Luca v. Italy*, 2013, §§ 49-56, the applicant's inability to bring enforcement proceedings against a local authority 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.

260. 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) (*Liseytseva and Maslov v. Russia*, 2014, §§ 186-188, and the references cited therein) (for further details, see the chapter on State-owned companies below).

261. 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.), 2007; *Shestakov v. Russia* (dec.), 2002; *Krivonogova v. Russia* (dec.), 2004; *Kesyan v. Russia*, 2006, § 80).

262. 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*, 1995, § 4; *Fuklev v. Ukraine*, 2005, § 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.), 2007; *Fuklev v. Ukraine*, 2005, § 84).

263. 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], 2012, § 90; *Fomenko and Others v. Russia* (dec.), 2019, § 171). For instance, in *Fuklev v. Ukraine*, 2005, § 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. In *Fomenko and Others v. Russia* (dec.), 2019, §§ 181-195, where the delays in the enforcement were up to twelve years, the Court considered – given the complexity of the enforcement proceedings, the number of claimants, the overall amount of the debt to be recovered, the debtor company's attitude and the available information on the bailiffs' activities – that the global effect of the measures employed by the bailiffs was compatible with the requirements imposed on the State by both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. 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.), 2017, § 34).

264. 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.), 2002; *Vrtar v. Croatia*, 2016, § 96).

265. 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*, 2016, §§ 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*, 2016, §§ 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*, 2013, §§ 119-127).

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

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

1. Article 2[2]

267. In *Öneryıldız v. Turkey* [GC], 2004, §§ 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.

268. In *Georgia v. Russia (II)* [GC], 2021, §§ 174, 214, 220, the Court concluded that from the time the Russian Federation had exercised "effective control", within the meaning of the Court's case-law, over the territories of South Ossetia and the "buffer zone" after the active conduct of hostilities had ceased, the Russian Federation was also responsible for the actions of the South Ossetian forces, including an array of irregular militias, in those territories, without it being necessary to provide proof of "detailed control" of each of those actions. The Court had sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there had been an administrative practice contrary to Articles 2 and Article 1 of Protocol No. 1 as regards the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia and in the "buffer zone".

2. Article 3

269. In *Pančenko v. Latvia* (dec.), 1999, 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.

270. In the case of *Budina v. Russia* (dec.), 2009, 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.

271. In addition to finding a violation of Article 1 of Protocol 1 in conjunction with Article 2 (see above), the Court in *Georgia v. Russia (II)* [GC], 2021, § 220, concluded - having regard to the seriousness of the abuses committed which could be classified as "inhuman and degrading treatment" owing to the feelings of anguish and distress suffered by the victims who, furthermore, had been targeted as an ethnic group - that this administrative practice was also contrary to Article 3 of the Convention.

3. Article 4[3]

272. A choice given to a prisoner between paid work and unpaid work but with remission of sentence did not amount to a breach of Article 4 of the Convention (*Floroiu v. Romania* (dec.), 2013, §§ 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], 2011, § 132).

273. 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*, 2012, § 36). However, the Court noted the developments in attitudes to unpaid prisoners' work, in particular in the 1987 and 2006 European

2. See the Guide on Article 2 - Right to life.
3. See the Guide on Article 4 - Prohibition of slavery and forced labour.

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 (*ibid.*, § 36).

4. Article 6[4]

274. 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*, 1995, § 67 – patent application; *Raimondo v. Italy*, 1994, § 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).

275. 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*, 1991, § 23) or that the issue is premature (*Beller v. Poland*, 2005, § 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 Happi v. France*, 2015, § 52).

276. However, in cases concerning inordinately lengthy proceedings, the Court has found that their protracted duration (*Kunić v. Croatia*, 2007, § 67*; Machard v. France*, 2006, § 15) or other measures contributing to the delays (*Immobiliare Saffi v. Italy* [GC], 1999, § 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 (*ibid.*, § 74).

277. 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*, 1997, § 50; *Glod v. Romania*, 2003, § 46; *Albina v. Romania*, 2005, § 43; *Lungoci v. Romania*, 2006, § 48; *Yanakiev v. Bulgaria*, 2006, § 82). However, in *Zehentner v. Austria*, 2009, § 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.

278. 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*, 2014, § 33).

279. 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

4. See the Guides on Article 6 - Right to a fair trial: the Civil limb and the Criminal limb.

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*, 2005, §§ 86 and §§ 92-93; *Anokhin v. Russia* (dec.), 2007; *Liseytseva and Maslov v. Russia*, 2014, § 183).

280. 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*, 2014, §§ 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*, 2009, § 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 (*Protsenko v. Russia*, 2008, §§ 30-34). Similarly, the quashing of a final judgment aimed at remedying a serious miscarriage of justice in criminal proceedings (*Giuran v. Romania*, 2011, § 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*, 2014, § 70).

281. 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*, 2013, §§ 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*, 2016, §§ 96 and 107-109, for the relevant case-law criteria when assessing whether the imposition of court fees had imposed an excessive burden on the applicant; *Bursać and Others v. Croatia*, 2022, §§ 81, 95 and 100-101, in the specific context of war crimes).

282. 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], 2010, § 78). In *Musa Tarhan v. Turkey*, 2018, § 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. Likewise, in *National Movement Ekoglasnost v. Bulgaria*, 2020, § 83, the domestic court's decision to award costs for the lawyer's fees of the opposing party, without providing sufficient and relevant reasons so as to ensure that those fees were actually fair and justified as required by domestic law, amounted to a failure to properly balance the various interests at stake and hence constituted a violation of Article 1 of Protocol No. 1. A refusal to reimburse costs borne in respect of a public prosecutor's unsuccessful civil-law claim in favour of a third party was also found to be in breach of Article 6 of the Convention (*Stankiewicz v. Poland*, 2006, §§ 65-76). In *Čolić v. Croatia*, 2021, §§ 67-69, despite the applicant´s success in obtaining damages against a private individual who had physically assaulted him, he was ordered to pay the defendant's costs amounting to more than his damages award. The Court found that the interference was not proportionate (compare *Derbuc and Svečak v. Croatia* (dec.), 2022, §§ 36-39, where the reimbursement of costs was ordered in respect of private parties and was not considered to be disproportionate either under Article 6 or Article 1 of Protocol No. 1). In *Mandev and Others*, 2024, §§ 129-138, concerning excessive court fees for lodging appeals and cassation appeals against forfeiture orders against them, the Court again found the level of court fees – significantly exceeding the domestic average annual income – to be disproportionate for the

purposes of Article 1 of Protocol No. 1. The Court also took due account of the fact that these fees were paid in forfeiture proceedings and that the applicants were facing, as a procedural adversary, a State body with extensive investigative powers.

283. Furthermore, the Court has also held that a rule that a participant in proceedings before the court has to bear its own costs, unless the court decides otherwise, could not be regarded as incompatible *per se* with Article 6 § 1. However, the effects of the application of the rule in question must be compatible with Article 6 § 1 (*Dragan Kovačević v. Croatia*, 2022, § 69; in respect of constitutional-court proceedings brought by a vulnerable individual).

284. In addition, in a case where the enforcement of an order to pay compensation resulted in the sale of the applicant company's property, all without its knowledge, and where the domestic courts made no attempt to analyse the applicant company's arguments despite their being specific, relevant and important for the outcome of the case, the Court concluded that the State had failed to fulfil its duty to set up a proper forum for the applicant company to assert its rights effectively. It found both a violation of Article 6 and of Article 1 of Protocol No. 1 of the Convention (*Seksimp Group SRL v. the Republic of Moldova*, 2025, §§ 47-48 and 58-59; see also *Vujović and Lipa D.O.O. v. Montenegro (no. 2)*, 2025, § 110, concerning the repeated refusal of the Court of Appeal to comply with the Constitutional Court's rulings with regard to the wrongful opening of lengthy insolvency proceedings).

285. Finally, 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*, 2007, § 60).

5. Article 7[5]

286. 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.), 2007). The same criteria were applied in the case of *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], 2018, §§ 212-234, and Article 7 was found to be applicable.

287. In the case of *Sud Fondi srl and Others v. Italy*, 2009, 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*, 2009, §§ 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*, 2013, § 72).

288. In *G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], 2018, 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

5. See the Guide on Article 7 - No punishment without law.

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 (*ibid.*, §§ 301-303).

289. Furthermore, in *Petruzzo and Others v. Italy,* 2025, §§ 74-77, a case concerning the confiscation of land and buildings considered by the authorities as an unlawful site development, the Court considered the impugned measure to be a "punishment" for the purposes of Article 7 of the Convention. Moreover, the Court found a violation of Article 7 in respect of the second group of applicants who had bought the flats comprising one of the buildings. The Court ruled that a penalty had been imposed on them even though they had not been parties to the criminal proceedings and had never been formally charged with any offence. The Court held, in particular, that a penalty must be based on a prior finding of liability, made in the course of criminal proceedings which respected the right of the defence: a finding of liability *a posteriori*, after the confiscation had been ordered and in the course of enforcement proceedings initiated by the applicants, did not suffice (*ibid.,* §§ 127-37).

290. Conversely, in *Tartamella and Others v. Italy*, 2025, §§ 130-37, the confiscation orders concerning the first three applicants' assets, of a value equivalent to the proceeds from offences committed by their family members, on the basis that they were at the offenders' disposal, were not considered as a "penalty": the measure was designed not to have an impact on the third party's actual economic situation and it was not found to be aimed at punishing them but rather at targeting all the assets of the actual offenders (compare to *G.I.E.M. S.r.l. and Others v. Italy* [GC], § 272). The Court reached the same conclusion in respect of the seizure order concerning the assets held by the fourth applicant, with a view to their subsequent confiscation (*Tartamella and Others v. Italy*, 2025, §§ 140-42).

291. Finally, in *Ulemek v. Serbia* (dec.), 2021, the applicant was convicted of a number of serious crimes. He was later required, in accordance with the 2008 law on Seizure and Confiscation of the Proceeds from Crime, to forfeit his house, which he had bought using illicit funds in 1998. The domestic courts reasoned that the forfeiture of criminal assets was neither a criminal sanction nor penal in nature so that the prohibition of retroactive of criminal law was not applicable. The Court recalled that the "lawfulness" requirement could not normally be construed as preventing the legislature from controlling the use of property or otherwise interfering with pecuniary rights via new retrospective provisions regulating continuing factual situations or legal relations anew. Therefore, the forfeiture of the applicant's property was in full conformity with the "lawfulness" requirement contained in Article 1 of Protocol No. 1 (*ibid*., § 64). The Court also concluded that the forfeiture order against the applicant did not amount to a "penalty" within the meaning of Article 7 § 1, second sentence, of the Convention, and that Article 7 was therefore not applicable in the case (*ibid*., §§ 56-57).

6. Article 8[6]

292. 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*, 2004, § 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*, 2007, § 128).

6. See the Guide on Article 8 - Right to respect for private and family life.

293. 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*, 1986, § 46*; Larkos v. Cyprus* [GC], 1999, §§ 30-32; *Akdivar and Others v. Turkey* [GC], 1996, § 88). The same may be true with regard to business premises and lawyer's offices (*Niemietz v. Germany*, 1992, §§ 29-33).

294. In *Larkos v. Cyprus* [GC], 1999, §§ 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.

295. *Karner v. Austria*, 2003, 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*, 2010, §§ 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, 1986, see "Lease on property").

296. In *Rousk v. Sweden*, 2013, §§ 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. Whereas in *Vaskrsić v. Slovenia*, 2017, § 87, the sale of the applicant's house 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*, 2016, §§ 63-68.

297. In *Gladysheva v. Russia*, 2011, § 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 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*, 2004, §§ 81–84; *Orlić v. Croatia*, 2011, §§ 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*, 2009, §§ 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*, 2016, § 53).

298. In *Berger-Krall and Others v. Slovenia*, 2014, §§ 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.), 2000, 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.), 2013, § 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. In *Grozdanić and Gršković-Grozdanić v. Croatia*, 2021, §§ 109 and 115-120, the Court held that the domestic court´s decision to invalidate the sale contract based on a purely procedural reversal of case-law, not altering the substantive-law conditions for termination of specially-protected tenancy, was not unforeseeable and that requiring tenants to demonstrate their intention to continue using the flats awarded to them by bringing relevant proceedings against third persons occupying the flats was not disproportionate, particularly during a time of war with high numbers of displaced people.

299. By the same token, in *Zrilić v. Croatia*, 2013, § 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.

300. In *Cvijetić v. Croatia*, 2004, § 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.

301. 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*, 2012, § 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). Conversely, in a case where a building was constructed in such close proximity to the flat of the applicant, an elderly person, that it lost access to natural light, ventilation and direct sunlight, resulting in a significant decrease in the market value of the applicant's flat, the Court found a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1 (*Đorđević v. Serbia*, 2025, §§ 93-94). Regarding the former provision, the Court held that the domestic courts have failed to assess the effect of the new building's proximity on the quality of the applicant's daily life (*ibid.*, §§ 62-71).

302. 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*, 2014, § 159), or of the absence of an effective response by the authorities to complaints about serious and repetitive neighbourhood disturbances (*Surugiu v. Romania*, 2004, §§ 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.

303. 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*, 1998, § 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.

304. Furthermore, the case of *Ukraine and the Netherlands v. Russia* [GC], 2025, concerned a systemic campaign of large-scale destruction, looting and expropriation without compensation of property belonging to civilians and private enterprises, from 11 May 2014 to 16 September 2022, in areas of Ukraine occupied by the separatists and the Russian armed forces. The Court had sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there had been an administrative practice in violation of the first paragraph of Article 1 of Protocol No. 1 and, from 24 February 2022, in so far as this practice concerned the destruction and looting of homes and personal possessions, also in breach of Article 8 of the Convention (*ibid.*, § 1127, in relation to Article 8, and §§ 1452-53, regarding Article 1 of Protocol No. 1).

305. More specifically, the Court initially excluded acts relating to the destruction of property belonging to State authorities or State-owned monopoly enterprises from its assessment on the

grounds that the Ukrainian Government did not argue that these legal entities qualify as non-governmental organisations which, alongside individuals and groups of individuals, can be the only bearers of rights under the Convention (*Ukraine and the Netherlands v. Russia* [GC], 2025, §§ 1440-42). Subsequently, having regard to the deliberate and opportunistic manner in which the private properties were destroyed or confiscated, sometimes under the political cover of plundering available economic resources or protection against "anti-Russian activity", the Court concluded that there was no legal basis for the impugned measures. (*ibid.*, §§ 1452-53). Indeed, although international humanitarian law permits, under strict conditions, the appropriation of certain property by an occupying power, the Court reiterated that any measures adopted in pursuance of international humanitarian law must be the subject of specific provisions by the occupying power that satisfy the "quality of law" requirement inherent in the notion of "lawfulness". In respect of the expropriation of property carried out based on formal documents adopted by the *de facto* authorities of the "Donetsk People's Republic" and "Lugansk People's Republic" and by the Russian military administration in occupied territory, the Court noted that the respondent Government failed to provide any evidence of these formal documents and failed to provide any submissions regarding the validity of any such measures as a matter of international humanitarian law (*ibid.*, § 1448).

306. Finally, the case of *Beeler v. Switzerland* [GC], 2022, §§ 50-74 and 93-116, concerned the discriminatory treatment of a widower, providing full-time care for his children, by terminating his survivor's pension when the youngest child reached adulthood, whereas widows continued to receive one. The Court underlined that, in the vast majority of cases where it has ruled on alleged discrimination in the sphere of entitlement to social welfare benefits, it has concentrated its analysis on Article 1 of Protocol No. 1 rather than Article 8. Relying on *Béláné Nagy v. Hungary* [GC] (§§ 74-70 and 86-89), the Court found that its case-law had sufficient stability to provide a clear definition of the threshold required for the applicability of Article 1 of Protocol No. 1.

307. The Court stated that the situation has been less clear under Article 8 in the sphere of welfare benefits and clarified the applicable principles. In the present case, the Court found, in the first place, that the pension in issue sought to promote family life by enabling a surviving parent to look after children without having to work, and, secondly, that the receipt of the pension had necessarily affected the way in which the applicant's family life had been organised throughout the relevant period. The facts of the case fell therefore within the ambit of Article 8, rendering Article 14 of the Convention applicable. The Court went on to find a violation of Article 14 in conjunction with Article 8 of the Convention.

7. Article 10

308. In *Handyside v. the United Kingdom*, 1976, §§ 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.

309. In *Öztürk v. Turkey* [GC], 1999, § 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.

310. In *Ashby Donald and Others v. France*, 2013, § 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.), 2013).

8. Article 11[7]

311. In *Chassagnou and Others v. France* [GC], 1999, §§ 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

312. 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.

313. In *Iatridis v. Greece* [GC], 1999, § 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.

314. Similarly, in *Öneryıldız v. Turkey* [GC], 2004, §§ 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*, 2008, §§ 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 examined by competent courts and that the State has implemented measures through the general scheme of emergency relief.

315. As to rent control cases, the Court has found constitutional redress proceedings to have been ineffective in the case of *Marshall and Others v. Malta*, 2020, §§ 71-81, which concerned the capping of rent levels on commercial properties, given the failure to order eviction or to award higher future rents, and concluded as to a violation of Article 13 in conjunction with Article 1 of Protocol No. 1. In *Cauchi v. Malta*, 2021, §§ 52-55 and 58-64, the applicant instituted constitutional redress proceedings claiming that a domestic ordinance, which granted tenants the right to retain possession of the premises under a lease, effectively imposed on her, the owner, a unilateral lease relationship for an indefinite period without enabling her to obtain a fair and adequate rent. The Court found that the applicant was made to bear a disproportionate burden and that the redress provided by the domestic court did not offer sufficient relief to her, amounting thereby to a violation of Article 13 of the Convention alone and in conjunction with Article 1 of Protocol No. 1.

316. In the framework of restitution of property to previous owners, in *Driza v. Albania*, 2007, §§ 115-120, a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 was found on

7. See the Guide on Article 11 - Freedom of assembly and association.

account of the lack of setting up of an adequate restitution scheme, in particular the bodies and the procedure.

317. Furthermore in *Chiragov and Others v. Armenia* [GC], 2015, §§ 213-215, and *Sargsyan v. Azerbaijan* [GC], 2015, §§ 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.

318. Finally, *M.S.L., TOV v. Ukraine*, 2025, §§ 90-111, concerned the freezing of assets imposed on the applicant company under the domestic sanctions regime to address national security concerns. The Court held that the interference with the applicant company's possessions was not accompanied by sufficient procedural guarantees against arbitrariness and was thus not lawful. It highlighted the lack of an opportunity to obtain effective remedies for the complaints in practice (*ibid.*, §§ 117-121).

10. Article 14

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

320. In cases under Article 14 in conjunction with Article 1 of Protocol No. 1, the Court examines whether the applicants had been in a relevantly similar or analogous position to the group of persons to which they compared themselves. However, not every difference in treatment would amount to a violation of Article 14: States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of the margin will vary according to the circumstances, the subject matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy, for example (*Špoljar and Dječji Vrtić Pčelice v. Croatia* (dec.), 2020, §§ 33-36).

321. 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. Where 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], 2013, § 52; see also *Šaltinytė v. Lithuania*, 2021, § 59, for social security payments).

322. The discrimination of illegitimate children was at stake in the ground-breaking case of *Marckx v. Belgium*, 1979, § 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.

323. Similarly, in *Mazurek v. France*, 2000, § 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], 2013 , §§ 68-72; with regards to succession rights see also, *Burden v. the United Kingdom* [GC], 2008, § 65, for cohabiting sisters; with regards to uprating of pensions for non-residents, *Carson and Others v. the United Kingdom* [GC], 2010, § 90; and with regards to an entitlement to a survivor's pension by a religious-wedding widow, *Şerife Yiğit v. Turkey* [GC], 2010, § 86).

324. 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], 2018, § 161).

325. To the contrary, in *Stummer v. Austria* [GC], 2011, §§ 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). Furthermore, in *P.C. v. Ireland*, §§ 53-54 and 93, legislation excluded the receipt by the applicant of an old-age pension whilst in prison. While the Court found that Article 14 in conjunction with Article 1 of Protocol No. 1 was applicable (see above the subchapter "Social welfare benefits/pensions" for the Court's findings as to the admissibility of the applicant's complaints under Article 1 of Protocol No. 1 alone), the Court held that there had been no violation of those provisions.

326. In *Chabauty v. France* [GC], 2012, § 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], 1999, § 95).

327. The case of *Guberina v. Croatia*, 2016, 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).

328. The case of *J.D. and A v. the United Kingdom*, 2019, §§ 97 and 101-105, concerned the complaint of the applicants, both living in adapted homes, that new rules on housing benefit in the social housing sector (known as "the bedroom tax") discriminated against them because of their particular situations: the first applicant cared for a disabled daughter while the second was a victim of domestic violence and housed under a "Sanctuary Scheme". The measure led to a reduction in rental subsidy if occupants had more bedrooms than they were entitled to, with the aim of incentivising them to move to a smaller house. The Court underlined that, outside the context of transitional measures designed to correct historic inequalities, given the need to prevent discrimination against people with disabilities and foster their full participation and integration in society, the margin of appreciation the States enjoy in establishing different legal treatment for people with disabilities was considerably reduced. It held that, where the alleged discrimination was on the basis of disability and gender, and did not result from a transitional measure carried out in good faith in order to correct an inequality, very weighty reasons would be required to justify the impugned measure. The Court concluded that Discretionary Housing Payments (DHPs), which can make up shortfalls in rent, allowed it to find that the difference in treatment in the first applicant's case was justified. However, that was not the case for the second applicant: she was part of another scheme whose aim was to allow victims of domestic violence to remain in their homes and the DHPs could not resolve the conflict between that aim and the aim of the bedroom tax, which was to incentivise her to move.

329. In *Andrejeva v. Latvia* [GC], 2009, § 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 by the authorities of the former Soviet Union on Latvian territory prior to 1991, on the ground that she did not have Latvian nationality. Subsequently, in *Savickis and Others v. Latvia* [GC], 2022, §§ 189-220, where the applicants were similarly "permanently resident non-citizens", their years of service in other Soviet Republics outside Latvia during the Soviet era were not taken into account for the calculation of their pensions. Following *Andrejeva v. Latvia* [GC], 2009, the applicants unsuccessfully applied to have their pensions re-calculated. In 2011 the Latvian Constitutional Court

declared the impugned rule compatible with the Constitution and the Convention, drawing a clear distinction between *Andrejeva* and the applicants. While Ms Andrejeva had resided in the territory of Latvia over the disputed periods, the applicants had worked outside, and before establishing any legal ties with, Latvia. In the specific context of the restoration of the State's independence after decades of unlawful occupation and annexation, the Court accepted the reasons justifying the difference in treatment based on nationality which had to be "very weighty" and found no violation of Article 14 in conjunction with Article 1 of Protocol No. 1, thus reaching a different conclusion from that of the *Andrejeva* case. The Court used several factors to determine the appropriate scope of the margin of appreciation, as well as the significance of personal choice concerning legal status or citizenship in matters regarding financial benefits.

330. In *Fábián v. Hungary* [GC], 2017, 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.), 2012, § 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.), 2018, §§ 34-40).

331. In *Popović and Others v. Serbia*, 2020, §§ 75-76 and 78, the Court held that the difference in the provision of disability benefits between civilian and military beneficiaries was objectively and reasonably justified by the way in which the two groups had sustained their injuries, without examining first whether they were in "analogous or relevantly similar situations". In particular, the relevant difference in treatment had been a consequence of the moral debt that States might feel obliged to honour in response to the service provided by their war veterans. Having suffered their injuries during military service, the war veterans had been exposed to a higher level of risk whilst engaged in the performance of State-imposed duties. Their injuries would also, because of the said risk, be otherwise difficult to insure and it would likewise be onerous, if at all possible, for them to obtain redress for the injuries caused to them by means of litigation. The civilians, by contrast, had sustained their injuries in situations unrelated to the performance of such duties, mostly involving accidents or illnesses or the actions of third parties.

332. In *Špoljar and Dječji Vrtić Pčelice v. Croatia* (dec.), 2020, §§ 38-46, the Court considered the applicants complaint, about not receiving the same amount of subsidies as public kindergartens, to be manifestly ill-founded since the private and public kindergartens were not in an analogous or relevantly similar position. Public kindergartens, as establishments of local governments, primarily aimed at satisfying a community's needs in respect of preschool education whereas private kindergartens were privately run establishments which, while also providing preschool education, were oriented towards making a certain income for their services.

333. In *Jurčić v. Croatia*, 2021, §§ 55 and 77-85, the applicant entered into an employment contract ten days after she had undergone in vitro fertilisation (IVF). When she subsequently went on sick leave, on account of pregnancy-related complications, the relevant domestic authority re-examined her health insurance status, finding that, by signing the contract shortly after IVF, the applicant had only sought to obtain pecuniary advantages related to employment status so that her employment was therefore fictitious: her application to be registered as an insured employee, along with her request for salary compensation due to sick leave, was accordingly rejected. The Court held that the refusal to employ or recognise the applicant's employment-related benefit based on her pregnancy amounted to direct discrimination on grounds of sex, which could not be justified by the financial interests of the State.

334. In *Šaltinytė v. Lithuania*, 2021, the applicant, a single mother of a minor, was refused a housing subsidy available to "young families" of low income when buying their first home, as she was over the upper age-limit prescribed by the law. The Court considered that a public policy aimed at encouraging young people to have more children in order to offset the decrease of the population caused by emigration and low birth rate was regarded as pursuing a legitimate aim in the public interest (*ibid*., § 74). Bearing in mind its subsidiary role, the Court held that the State did not overstep its wide margin of appreciation when deciding to provide additional housing assistance to those families in which the spouses or the single parent were not older than thirty-five years of age. It also noted that it was important that the legal regulation, even if it was aimed at encouraging people to have children at a younger age, should nonetheless adequately reflect the actual demographic situation in the country (*ibid.*, §§ 77-82).

335. Furthermore, the case of *Anderlecht Christian Assembly of Jehovah's Witnesses and Others v. Belgium*, 2022, §§ 36-40 and 50-55, concerned several congregations of Jehovah's Witnesses. They alleged that they had been the victims of discrimination on account of the fact that a new legislation in the Brussels region made exemption from property tax contingent on belonging to a "recognised religion", a category that did not include them. The case was examined under Article 14 in conjunction with Article 9 and Article 1 of Protocol No. 1. The Court held that the impact of the impugned law on the operation of the applicant associations as religious communities was sufficient to fall within the ambit of both Article 9 and Article 1 of Protocol No. 1. Given that a tax exemption was contingent on prior recognition as a "recognised religion" which was governed by rules that did not afford sufficient safeguards against discrimination, a violation was found.

336. Finally, *Advisory Opinion P16-2021-002*, 2022, §§ 88-111, concerned the exercise of hunting rights on private property and the difference in treatment between landowner associations based on their creation in domestic environmental law. The Court gave guidance to the requesting *Conseil d'État* on the criteria by which to assess the legitimate aim, legality and proportionality of the relevant measure.

III. Specific issues

A. Tenancies and rent control

337. 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.

338. The first case concerning the balancing of property rights of landlords with those of tenants is *James and Others v. the United Kingdom*, 1986. 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.

339. 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*, 1986, § 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).

340. Similarly, in *Mellacher and Others v. Austria*, 1989, 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 that in other cases and did not therefore justify such a substantial reduction compared to the free market rental value (*Bradshaw and Others v. Malta*, 2018, § 58).

341. Conversely, in a more recent case, *Lindheim and Others v. Norway*, 2012, 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).

342. In *The Karibu Foundation v. Norway*, 2022, §§ 75-94, the Court further distinguished this principle. In response to the Court's judgment in *Lindheim and Others v. Norway*, the Norwegian Parliament adopted amendments to the Ground Lease Act 1996 (as amended in 2004) giving lessors the right to require an adjustment of the annual rent. The applicant sought to raise the ground lease rent for the residents of certain apartments. The lessees had opposed the claim, referring to the indexed "rent ceiling" in the above Act, an amount that their ground rents at the time had already surpassed and argued that the case differed from that of *Lindheim and Others*. The Court found that the concrete assessment it had made in *Lindheim and Others* was not directly applicable, in so far as the present case concerned the application of legislation adopted after that judgment. It was also evident that the legislature had sought to implement fully the Court's findings and had thoroughly reviewed the Convention requirements when finalising the legislation. Moreover, the Convention

requirements thereafter had undergone extensive judicial review (three levels) both in general but in the light of the applicant organisation's specific circumstances.

343. In *Edwards v. Malta*, 2006, 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).

344. In *Immobiliare Saffi v. Italy* [GC], 1999, § 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*, 2000, §§ 45-46).

345. In a similar vein, concerning the lack of appropriate fair-trial guarantees, in *Amato Gauci v. Malta*, 2009, § 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.

346. As far as tenants' guarantees against eviction are concerned, in *Connors v. the United Kingdom*, 2004, §§ 81-84, where the gypsy way of life was at stake, and *McCann v. the United Kingdom*, 2008, § 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*, 2004, § 100, no separate issue was found to arise under Article 1 of Protocol No. 1.

347. In *Ivanova and Cherkezov v. Bulgaria*, 2016, 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).

348. *Baykin and Others v. Russia*, 2020, concerned a domestic court's order for the demolition of a house (and the eviction of its occupants) located near an underground pipeline, finding it an unlawful building because the safe distance of 100 m between the building and the pipeline had not been observed. The Court found a violation on account of the lack of a clear and foreseeable legal basis for such interference (*ibid.*, §§ 70-74) On the contrary, in *Alif Ahmadov and Others v. Azerbaijan*, 2023, §§ 36-46, the Court declared the applicants' complaint inadmissible *ratione materiae*: the domestic courts had established that unauthorised constructions could not be the subject of property rights and the circumstances of the case, considered as a whole, did not confer on the applicants a substantive interest protected by Article 1 of Protocol No. 1.

349. Furthermore, the general principle established by the Commission in *Durini v. Italy,* 2014, 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.), 1999, 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.), 2000, *Kovalenok v. Latvia* (dec.), 2001; *H.F. v. Slovakia* (dec.), 2003; *Bunjevac v. Slovenia* (dec.), 2006).

350. 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*, 2005, §§ 48-50; *Malinovskiy v. Russia*, 2005, §§ 44-46; *Ilyushkin and Others v. Russia*, 2012, §§ 49 and 58, *Akimova v. Azerbaijan*, 2007, §§ 40-41; *Gerasimov and Others v. Russia*, 2014, §§ 182-83; *Kukalo v. Russia*, 2005, § 61; *Sypchenko v. Russia*, 2007, § 45). Furthermore, in *Olaru and Others v. Moldova*, 2009, §§ 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.

351. In *Tchokontio Happi v. France*, 2015, §§ 59-61, the Court distinguished the facts of the case from the above-mentioned cases of *Teteriny v. Russia*, 2005, and *Olaru and Others v. Moldova*, 2009. Relying on the *Durini v. Italy* (dec.), 2014, and *J.L.S. v. Spain* (dec.), 1999, 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).

352. 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], 2006, § 92, and in *Berger-Krall and Others v. Slovenia,* 2014, § 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.

353. In *Gaćeša v. Croatia* (dec.), 2008, 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*, 2012, 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.) 2008, 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.

354. In the landmark case *Hutten-Czapska v. Poland* [GC], 2005, 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*, 2014, *Statileo v. Croatia*, 2014, and *R & L, s.r.o., and Others v. the Czech Republic*, 2014. 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*, 1986, and *Mellacher and Others v. Austria*, 1989). In a mirror case to *R & L, s.r.o., and Others v. the Czech Republic*, 2014, the Court therefore held that, the order of the domestic court that the applicant, a private tenant, should pay increased rent for the occupation of a flat initially rented under the State rent-control scheme, did not amount to a violation of Article 1 of Protocol No. 1 (see also *Pařízek v. the Czech Republic*, 2023, §§ 51-60).

355. Similarly, in *Radovici and Stănescu v. Romania*, 2006, 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.

356. In *Kasmi v. Albania*, 2020, §§ 76, 79 and 85, the applicant started civil proceedings to evict tenants from a former nationalised property which had been restored to his family. The domestic courts found that three (out of four) tenants were "legally homeless" and enjoyed special protection. Taking into consideration the social and economic circumstances of the State at the relevant time, the Court accepted that providing housing to a vulnerable part of the society, such as retirees, and to less affluent members of the population served a legitimate aim. As to the proportionality analysis, a violation was found on account of the tenancy agreements imposed by law, the lack of adequate mechanisms safeguarding the applicant's right to terminate such agreements, the low amount of rent fixed by law and the long period of uncertainty in which the applicant found himself.

357. In *Wyszyński v. Poland*, 2022, §§ 36 and 40-41, where the tenant, who had occupied the flat without a valid legal title, remained in the applicant's flat for more than four and a half years following the eviction order, the Court found a violation considering that the requirements imposed on a litigant by the domestic courts, as concerns the criteria to assess liability and the burden of proof, amounted to an excessive burden, which, essentially, deprived the applicant of the right to be redressed for the damage he had suffered.

358. In *Bilyavska v. Ukraine*, 2025, §§ 44-48, the applicant brought an eviction action against her adult children and their families, on account of their behavior which had made it impossible for her to live in the house she owned. The Court found a violation of Article 1 of Protocol No. 1 based on the domestic courts' failure to adjudicate the dispute in a manner that would not be arbitrary or manifestly unreasonable. The domestic courts had essentially validated a very heavy burden on the applicant, despite her undisputed ownership rights and the evidence she submitted regarding her housing needs as well as the behaviour of the defendants. They did so without any attempt to assess the balance between the interests at stake.

359. Finally, one aspect of housing – a State-imposed standing charge payable to private heating suppliers even by owners of flats disconnected from a district heating system which supplies their residential buildings – was at stake in *Strezovski and Others v. North Macedonia*, 2020, §§ 82-88. The Court found a violation on account of the lack of any objective assessment of indirect use of heating in each individual case and of the domestic courts' failure to strike the requisite fair balance between the competing interests involved by applying sufficient procedural safeguards.

B. Social welfare cases

360. 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], 2016, §§ 80-89, *Yavaş and Others v. Turkey*, 2019, §§ 39-43.

361. As a general observation, the Court has held that, in principle, it cannot substitute itself for the national authorities in assessing or reviewing the level of financial benefits available under a social assistance scheme (*Larioshina v. Russia* (dec.), 2002; *Šeiko v. Lithuania*, 2020, § 32).

362. As to pension rights, Article 1 of Protocol No. 1 does not guarantee as such any right to a pension of a particular amount (among other authorities *Skórkiewicz v. Poland* (dec.), 1999; *Janković v. Croatia* (dec.), 2000; *Kuna v. Germany* (dec.), 2001; *Lenz v. Germany* (dec.), 2001; *Blanco Callejas v. Spain* (dec.), 2002; *Kjartan Ásmundsson v. Iceland*, 2004, § 39; *Apostolakis v. Greece*, 2009, § 36; *Wieczorek v. Poland*, 2009, § 57; *Poulain v. France* (dec.), 2011; *Maggio and Others v. Italy*, 2011, § 55; *Valkov and Others v. Bulgaria*, 2011, § 84), any right to a pension in respect of activities carried out in a State other than the respondent State, and, indeed, any right to a pension at all (*Aunola v. Finland* (dec.), 2001; *Da Silva Carvalho Rico v. Portugal* (dec.), 2015, § 30). If, however, a State does decide to create a pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention (*Stec and Others v. the United Kingdom* [GC], 2006, § 53, *Andrejeva v. Latvia* [GC], 2009, § 77; *Savickis and Others v. Latvia* [GC], 2002, § 180).

363. As to the obligation to adhere to an old-age pension scheme, the Court considered in *Ackermann and Fuhrmann v. Germany* (dec.), 2013, 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.

364. 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*, 2009, § 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 loses 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*, 2019, §§ 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.), 2012, § 17; *Carson and Others v. the United Kingdom* [GC], 2010, §§ 85-89).

365. 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*, 2004, §§ 39-40; *Rasmussen v. Poland*, 2009, § 71; *Moskal v. Poland*, 2009, §§ 51 and 64; *Grudić v. Serbia*, 2012, § 72; *Hoogendijk v. the Netherlands* (dec.), 2005; *Valkov and Others v. Bulgaria*, 2011, § 84; *Philippou v. Cyprus*, 2016, § 59).

366. 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.), 1999; *Kjartan Ásmundsson v. Iceland*, 2004, § 39; *Wieczorek v. Poland*, 2009, § 57; *Rasmussen v. Poland*, 2009, § 75; *Valkov and Others v. Bulgaria*, 2011, §§ 91 and 97; *Maggio and Others v. Italy*, 2011, § 63; *Stefanetti and Others v. Italy*, 2014, § 55). As to the proportionality analysis (*Da Silva Carvalho Rico v. Portugal* (dec.), 2015, § 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*, 2014, § 59; *Apostolakis v. Greece*, 2009, § 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.), 2015, § 42; *Arras and Others v. Italy*, 2012, § 82; *Poulain v. France* (dec.), 2011; *Philippou v. Cyprus*, 2016, § 68; *Béláné Nagy v. Hungary* [GC], 2016, § 117).

367. 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 (*Béláné Nagy v. Hungary* [GC], 2016, § 117 and *Stefanetti and Others v. Italy*, 2014, § 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*, 2004, § 43); any arbitrariness of a condition (*Klein v. Austria*, 2011, § 55); the applicant's good faith (*Moskal v. Poland*, 2009, § 44; *Čakarević v. Croatia*, 2018, §§ 60-65; *Casarin v. Italy*, 2021, § 74) the applicant´s conviction resulting in the recovery of damages by attaching her old-age pension on a monthly basis and the fact that she was not devoid of all means of subsistence (*Šeiko v. Lithuania*, 2020, §§ 32-35).

368. 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*, 2009, § 56).

369. 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*, 2011, § 72; *Moskal v. Poland*, 2009, § 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).

370. 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*, 2011, § 71; *Moskal v. Poland,* 2009, § 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*, 2007, § 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*, 2011, § 60, compare and contrast, *Chroust v. the Czech Republic* (dec.), 2006; *Moskal v. Poland*, 2009, § 70). In *Romeva v. North Macedonia*, 2019, §§ 78 and 88, the applicant was retroactively divested of the retirement pension that she had been receiving for seven years, with a request to pay back the amounts received, on account of the Fund's error in the original assessment of the applicant's eligibility for a pension. Finding a violation, the Court requested the Government to refrain from enforcing the outstanding repayment.

371. 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*, 2009, § 67).

372. 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*, 2009, § 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.), 2005; *Philippou v. Cyprus*, 2016, §§ 70, 71 and 74).

373. 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.), 2000; *Lessing and Reichelt v. Germany* (dec.), 2012; *Schwengel v. Germany* (dec.), 2000; *Domalewski v. Poland* (dec.), 1999; *Janković v. Croatia* (dec.), 2000). 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.), 2013, §§ 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.), 1999; *Styk v. Poland*, Commission decision; *Bienkowski v. Poland*, Commission decision, 1998). 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.), 2013, § 118).

374. 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*, 2009, § 67; *Iwaszkiewicz v. Poland*, 2011, § 51).

375. However, the discontinuation of a disability pension, as a result of an incorrect assessment of the applicant's fitness for work and the subsequent failure to provide a legal solution - preventing the applicant from receiving compensation (on the basis of the res judicata principle), despite the existence of relevant and sufficient reasons to depart from the incorrect finding to secure respect for social justice and fairness - were deemed to have placed a disproportionate burden on the applicant (*Grobelny v. Poland*, 2020, §§ 67-71).

376. As to different types of social welfare benefits, in *Krajnc v. Slovenia*, 2017, §§ 49-51 – where the replacement of the applicant's waiting period allowance with a much lower disability allowance further to a legislative reform was at stake – the Court considered that the applicant found himself in a particularly precarious situation and that he had to bear the disproportionate burden of losing a significant portion of the disability benefit. In *Fedulov v. Russia*, 2019, §§ 76-79, concerning the eligibility of a disabled person for free medication, the Court found that the situation was not prompted by any change in legislation. The applicant fulfilled all the criteria for receiving the benefit in question, its uninterrupted enjoyment being critical to the applicant's life, and the State authorities'

refusal, based on the lack of funds, was ultimately difficult to reconcile with the rule of law. This conclusion made it unnecessary to make a proportionality assessment.

377. 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.), 2013, §§ 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.), 2013, §§ 46-49; (see the chapter on Austerity measures).

378. The Court accepted the distinction that some Contracting States draw, for pension purposes, between civil servants and private employees (*Matheis v. Germany* (dec.), 2005, concerning a survivor's pension); *Ackermann and Fuhrmann v. Germany* (dec.), 2013; *Valkov and Others v. Bulgaria*, 2011, § 117; *Panfile v. Romania* (dec.), 2012, § 28; and more recently, *Giavi v. Greece*, 2013, § 52; *Fábián v. Hungary* [GC], 2017, §§ 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.), 2005, and more generally on the differences between various categories of insured persons, *Carson and Others v. the United Kingdom* [GC], 2010, § 84) (see the sub-chapter on Article 14 for *Fábián v. Hungary* [GC], 2017).

379. 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*, 2012, §§ 74 and 75; and also *Arras and Others v. Italy*, 2012, § 42; *Sukhobokov v. Russia*, 2006, § 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.), 2013, § 19).

380. 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.), 2012, § 81).

381. 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 (*Savickas and Others v. Lithuania* (dec.), 2013, § 91; *Stummer v. Austria* [GC], 2011, § 82).

382. Furthermore, in *Valverde Digon v. Spain*, 2023, §§ 76-81 and *Domenech Aradilla and Rodríguez González v. Spain*, 2023, §§ 107-112, the Court held that the refusal by domestic authorities to grant a survivor's pension to the applicants due to the unforeseeable retrospective application of a new eligibility requirement breached Article 1 of Protocol No. 1 to the Convention.

383. Finally, in *Bernotas v. Lithuania*, 2024, §§ 104-113 the Court found that there was no violation of Article 1 of Protocol No. 1 where the applicant had an obligation to reimburse social security authorities for the pension concerning lost working capacity paid to a person whom the applicant had accidentally injured in a hunting accident. The Court was satisfied that the proceedings, viewed as a whole, afforded to the applicant a reasonable opportunity of putting his case to the appropriate authorities with a view to their establishing a fair balance between the conflicting interests at stake. Several elements were considered in the proportionality assessment.

C. Banking cases

384. 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.

385. 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.), 2004), 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.), 2002; *Appolonov v. Russia* (dec.), 2002; *Todorov v. Bulgaria* (dec.), 2008; *Poltorachenko v. Ukraine*, 2005, § 38; *Zbaranskaya v. Ukraine* (dec.), 2005; *Sherstyuk v. Ukraine* (dec.), 2006; *Boyajyan v. Armenia*, 2011, § 54; *Ryabykh v. Russia*, 2003, § 63; *Dolneanu v. Moldova*, 2007, § 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.), 2000). 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.), 2013, § 38; *Grozeva v. Bulgaria* (dec.), 2005; *O.N. v. Bulgaria* (dec.), 2000).

386. 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.), 2002).

387. 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*, 2012, §§ 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*, 2012, §§ 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 (*Cıngıllı Holding A.Ş. and Cıngıllıoğlu v. Turkey*, 2015, §§ 49-51).

388. However, the latter case of *Cıngıllı Holding A.Ş. and Cıngıllıoğlu v. Turkey*, 2015, § 50, concerned the transfer and the sale of Demirbank (at the time Turkey's fifth largest private bank) by a decision of the Banking Regulation and Supervision Board. The Court found a violation of Article 1 of Protocol No. 1 for the breach of the legality principle, and it did not therefore go on to examine the proportionality of the interference. In its subsequent just-satisfaction judgment, it held that domestic law, as amended, enabled appropriate reparation after the Court has found a violation of Article 1 of Protocol No. 1 and proceeded to the partial strike out of the case (*ibid.*, § 53).

389. In *Project-Trade d.o.o. v. Croatia*, 2020, the Court found a violation of Article 1 of Protocol No. 1 when the Government adopted a decision on the recovery and restructuring of Croatia Bank that revoked and cancelled all shares held by the bank's shareholders. The applicant, a joint-stock company that held 1251 shares in Croatia Bank, argued that the interference with its possessions was not

accompanied by sufficient procedural guarantees against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1. The Court agreed with the applicant, finding a violation of Article 1 of Protocol No. 1 on account of the breach of the State's procedural obligations under that Article (*Project-Trade d.o.o. v. Croatia*, 2020, §§ 80-88, and 110).

390. 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*, 2005, § 134; see also *Project-Trade d.o.o. v. Croatia*, 2020, § 82; *Sharabidze and Others v. Georgia*, 2026, § 29).

391. The freezing of a bank account is usually considered a measure of control of the use of property (*Raimondo v. Italy*, 1994, § 27, as regards the provisional seizure of assets with a view to their forfeiture under proceeds-of-crime legislation; *Luordo v. Italy*, 2003, § 67; *Valentin v. Denmark*, 2009, §§ 67-72, as regards the stripping of bankrupts of the right to administer and deal with their property; *Karahasanoğlu v. Turkey*, 2021, §§ 144 and 150-153, as regards the temporary injunctions freezing the assets of the applicant - a former executive and director of two previously public banks - for a lengthy period of time and the relevant factors for assessing the restrictions; *Trajkovski v. the former Yugoslav Republic of Macedonia* (dec.), 2001, as regards the freezing of bank accounts; *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, 2021, § 66, as regards the freezing of bank accounts of a human rights defender and his non-governmental organisation). 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]), 2014, § 99 (for further details, see below).

392. 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*, 2016, § 123).

393. 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*, 2005, § 136; *Karahasanoğlu v. Turkey*, 2021, § 150). 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*, 2016, § 124).

394. 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], 2014, §§ 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.

395. 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*, 2009, §§ 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*, 2010, §§ 32-34) or in bond and certificates issued by the USSR Saving Bank (*Boyajyan v. Armenia*, 2011, § 57). Similarly, securities having an economic value can be regarded as "possessions" (*Jasinskij and Others v. Lithuania*, Commission decision, 1998).

396. 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 Vasiļevska v. Latvia* (dec.), 2013, §§ 94-113).

397. 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.), 2002).

398. 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*, 2009, § 57).

399. 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], 2014, §§ 108 and 124-125).

400. 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], 2014, § 108).

401. 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*, 2009, § 64).

402. 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,* 2006, § 48).

403. Furthermore, the case *Landika v. Slovenia*, 2026, concerned the applicants' inability to recover "old" foreign-currency savings deposited with Ljubljana Bank (Sarajevo branch), and subsequently, converted into privatisation certificates, and transferred to a privatisation account administered by the authorities of Bosnia and Herzegovina, under the repayment scheme enacted after the Court's judgment in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014. The Court found the factual and legal circumstances of that case to be different from those in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, in which the relevant claims had not been transferred to a privatisation account administered by Bosnia and Herzegovina. In addition, in view of the Slovenian Constitutional Court's reasoning, there was no reason to conclude that the principle of lawfulness was breached (§§ 119-20 and 122). The Court further held that the respondent State had acted in the public interest of protecting its banking system and national economy (§ 123).
404. The Court considered that the respondent State's responsibility for the inability of the applicants to access their "old" foreign-currency savings could not be determined solely on the basis that the Constitutional Court of Bosnia and Herzegovina had excluded the State's liability for such savings, or that the legislation in Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina expressly excluded them from the domestic repayment scheme at a later stage. In accordance with its approach in the judgment *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, the Court considered this question in the light of the entire situation and the manner in which all the relevant events unfolded (§ 126). It found that the Respondent State could not be liable for the "old" foreign-currency savings after the transfer of the related claims to privatisation accounts administered by Bosnia and Herzegovina, and therefore could not be responsible for the applicants' inability to freely dispose of such savings (§§ 127-32).

405. Finally, the case *Pintar and Others v. Slovenia*, 2021, concerned the extraordinary measures taken by the Bank of Slovenia in 2013-14 in respect of several major Slovenian banks resulting in the cancellation of all shares or subordinated bonds held by the applicants (for applicability, see above under "Company shares and financial instruments"), without any compensation. The Court found a violation of Article 1 of Protocol No. 1 given the lack of any reasonable opportunity to challenge the measures and/or seek compensation for cancelled shares and bonds. The interference with the applicants´ possessions was not therefore accompanied by sufficient procedural guarantees against arbitrariness and was thus not lawful. Furthermore, the provision of an effective remedy had been bound up with complex questions regarding respect for various principles under EU law, also in the context of a preliminary ruling by the CJEU (*ibid*., §§ 101 and 109-111).

D. Taxation

406. 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], 2008, § 59; *Špaček, s.r.o., v. the Czech Republic*, 1999, § 39; *Bežanić and Baškarad v. Croatia*, 2022, § 60).

407. 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 Dosier- und Fördertechnik GmbH v. the Netherlands*, 1995, § 59; *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, § 43). Customs duties or charges for imported goods must be regarded as falling within the realm of taxation, a matter which forms part of the hard core of public-authority prerogatives, *Krayeva v. Ukraine*, 2022, § 28).

408. 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.), 2004).

409. When speaking of "law" in the field of taxation, Article 1 of Protocol No. 1 alludes to the same concept to be found elsewhere in the Convention, a concept which comprises statutory law as well as

case-law. It implies qualitative requirements, notably those of accessibility and foreseeability (*Špaček, s.r.o., v. the Czech Republic*, 1999, § 54).

410. An instance of interference, including one resulting from a measure to secure payment of taxes, 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. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including the second paragraph: there must be a reasonable relationship of proportionality between the means employed and the aims pursued (*"Bulves" AD v. Bulgaria*, 2009, § 62; *Waldner v. France,* 2023, § 42). Consequently, 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, 1997; *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of approximately 15,000 individuals v. Sweden*, Commission Decision, 1988; *Buffalo S.r.l. in liquidation v. Italy*, 2003, § 32; *Iofil AE v. Greece* (dec.), 2021, § 34).

411. 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)*, 2013, § 65; as well as when framing and implementing policy in the area of taxation (*"Bulves" AD v. Bulgaria*, 2009, § 63; *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 1995, § 60; *Stere and Others v. Romania*, 2006, § 51; *Locascia and Others v. Italy*, 2023, § 157). The Court respects the legislature's assessment in such matters unless it is devoid of reasonable foundation (*Gasus Dosier-und Fördertechnik GmbH v. the Netherlands*, 1995, § 60).

412. Furthermore, the Court's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (*Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, § 50; *Bežanić and Baškarad v. Croatia*, 2022, § 64).

413. 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, 1998; *Baláž v. Slovakia* (dec.), 2003; *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, 2014, § 103; *R.Sz. v. Hungary*, 2013, §§ 38 and 46; *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, § 45). 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.), 2018, § 25; *Guiso and Consiglio v. Italy* (dec.), 2018, § 44). Specifically, in a complex sphere such as the imposition of value added taxation (VAT), the respondent State should be afforded a particularly wide margin of appreciation (*Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, § 51).

414. In addition, the Court´s power to review compliance with domestic law is limited. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention. This principle is particularly relevant in a case which involves a highly specialised and technical area of law (*Iofil AE v. Greece* (dec.), 2021, § 42; see also *S.C. Zorina International S.R.L. v. Romania*, 2023, §§ 52 55, where the domestic courts reviewed sanctions imposed by the tax authority for failure to issue receipts for merchandise sold).

415. Delay in reimbursement of overpaid taxes amounted to a violation (*Buffalo S.r.l. in liquidation v. Italy*, 2003, § 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.

416. 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*, 2002, § 61).

417. 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*, 2002, § 65).

418. 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.), 2003).

419. 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*, 2013, § 124).

420. 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*, 2013, § 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.), 2003).

421. 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*, 2013, §§ 66-74). Conversely, the Court found that up to 30% VAT on the customs value of a shipment could not, from the quantitative standpoint, be considered exorbitant. Thus, the levying of VAT on the applicant organisation's imports of religious literature did not upset the balance to be struck between the protection of the applicant's rights and the public interest in securing taxes (*Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, §§ 53 and 55).

422. In a case concerning the interpretation of national law by domestic courts in respect of the imposition of tax on the applicant company for a transaction in which it sold some securities (held in a subsidiary company) before repurchasing them, the Court considered that a fair balance between the public interest of collecting taxes and the applicant company´s right to the peaceful enjoyment of its property had been struck. The Court noted in particular that the sale/repurchase of securities had taken place on different business days and not on the same day, national law allowing for an exception in such a case (*Iofil AE v. Greece* (dec.), 2021, §§ 43-48).

423. In *Radobuljac v. Croatia (no. 2)*, 2025, §§ 43-46 and 54-55, having regard to the broad margin of appreciation accorded to the States in the field of taxation, the Court ruled that the refusal to offset the applicant's tax debt against his enforceable claims, arising from a legal relationship unrelated to

taxation, was neither arbitrary nor manifestly unreasonable. This measure did not place an excessive individual burden on the applicant, particularly given that the sums imposed did not undermine his financial situation or professional activities.

424. 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*, 1986, § 55). In that respect, the Court found the freezing of a company's bank accounts by tax authorities for an indefinite period of time, without any possibility of its review at regular intervals, to be in breach of Article 1 of Protocol No. 1 (*Rustamkhanli v. Azerbaijan*, 2024, § 65). Furthermore, the 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*, 2009, §§ 67-71).

E. Land planning

425. 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*, 2004, § 70; *Mellacher and Others v. Austria*, 1989, § 55; *Chapman v. the United Kingdom* [GC], 2001, § 104).

426. 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*, 2006, § 98; *Skrzyński v. Poland*, 2007, § 92; *Rosiński v. Poland*, 2007, § 89; *Buczkiewicz v. Poland*, 2008, § 77; *Pietrzak v. Poland*, 2008, § 115; *Hakan Arı v. Turkey*, 2011, § 36; *Rossitto v. Italy*, 2009, § 37; *Maioli v. Italy*, 2011, § 52; *Hüseyin Kaplan v. Turkey*, 2013, § 38; *Ziya Çevik v. Turkey*, 2011, § 33). In *Jahn and Others v. Germany* [GC], 2005, §§ 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.), 2015); 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.), 2006). 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*, 2006, § 78).

427. 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*, 2000, § 59).

428. 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*, 2004, § 38; *Skibińscy v. Poland*, 2006, § 96).

429. In *Graham and Others v. Finland* (dec.), 2026, the Court accepted that the expropriation of the applicants' land for urban development pursued a legitimate public interest (*ibid.*, §§ 35-41) and examined whether the compensation struck a fair balance between the demands of the general interest and the protection of the applicants' property rights. It found that the domestic authorities had taken into account all relevant factors in assessing the amount of compensation, including the location of the land, the applicable local land-use master plan, the likelihood of future detailed planning, and comparable land transactions (*ibid.*, § 43). Furthermore, the compensation awarded was not unreasonable and there was no indication that the authorities had acquired the land without a genuine intention of pursuing the planned urban development or had sought to deprive the applicants of any future increase in the land's value. The application was declared manifestly ill-founded (*ibid.*, §§ 40 and 44-47).

F. Confiscation of the proceeds of crime

430. 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. In such cases, States have a wide margin of appreciation in implementing policies to fight crime, including confiscation of property that is presumed to be of unlawful origin (*Raimondo v. Italy*, 1994, § 30; *Riela and Others v. Italy* (dec.), 2001; *Arcuri and Others v. Italy* (dec.), 2001; *Gogitidze and Others v. Georgia*, 2015, § 108; property purchased with illicit funds (*Ulemek v. Serbia* (dec.), 2021), proceeds of a criminal offence (*productum sceleris*) (*Phillips v. the United Kingdom*, 2001; *Silickienė v. Lithuania*, 2012; *Gogitidze and Others v. Georgia,* 2015), property that was the object of the offence (*objectum sceleris*) (*Agosi v. the United Kingdom,* 1986; *Sun v. Russia*, 2009; *Ismayilov v. Russia*, 2018), or property that had served, or had been intended to serve, for the commission of the crime (*instrumentum sceleris*) (*Andonoski v. the former Yugoslav Republic of Macedonia,* 2015; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017; *S.C. Service Benz Com S.R.L. v. Romania*, 2017; *Butler v. the United Kingdom* (dec.), 2002; *Markus v. Latvia*, 2020, § 69, and *Todorov and Others v. Bulgaria*, 2021, §§ 189-199, for the recapitulation of different situations).

431. Depending on the legal framework in member States, such confiscation may take place in criminal proceedings usually conditioned by a conviction or outside criminal proceedings when certain conditions are fulfilled. Another special procedure is the one in which the property of the perpetrator or other persons is confiscated based on a mere presumption that it derives from crime. This is usually called extended confiscation, considered as an ancillary and auxiliary form of ordinary confiscation. Furthermore, Italy has in place preventive confiscation measures of an administrative character, in particular to combat organised crime. Finally, certain jurisdictions, such as the United Kingdom, also have a civil-law approach to confiscation: this model of confiscation is not based on the perpetrator's guilt, but on the origin of the property.

432. The Court observed in *Gogitidze and Others v. Georgia*, 2015, § 105, that common European and even universal legal standards can be said to exist which encourage, in the first place, the confiscation of property linked to serious criminal offences such as corruption, money laundering, drug offences and so on, without the prior existence of a criminal conviction. Secondly, the onus of proving the lawful origin of the property presumed to have been wrongfully acquired may legitimately be shifted onto the respondents in such non-criminal proceedings for confiscation, including civil proceedings *in rem*. Thirdly, confiscation measures may be applied, not only to the direct proceeds of crime but also to property, including any incomes and other indirect benefits, obtained by converting or transforming the direct proceeds of crime or intermingling them with other, possibly lawful, assets. Finally, confiscation measures may be applied, not only to persons directly suspected of criminal offences, but

also to any third parties with ownership rights without the requisite *bona fide* with a view to disguising their wrongful role in amassing the wealth in question.

433. In *Păcurar v. Romania*, 2025, § 200, concerning a non-conviction based confiscation of assets belonging to the applicant, a high-ranking police chief, on the basis of the legal framework on integrity in the exercise of public office, the Court underlined that that the proceedings, which were based on a procedure which was in line with the relevant international standards, did not upset the requisite fair balance between the protection of the right of property and the requirements of the general interest (for further details see above the chapter on Principle of lawfulness).

434. In the context of transnational crime, the Court acknowledged in *Shorazova v. Malta*, 2022, § 111, which concerned the freezing order on the applicant's property in Malta, based upon a request in connection with an ongoing investigation in Kazakhstan into allegations of fraud/money laundering on the part of the applicant and her husband, the importance of the United Nations Convention Against Transnational Organised Crime for effectively combatting organised crime. At the same time, the Court stressed that mutual legal assistance under that Convention should be carried out in compliance with international human rights standards. Thus, domestic courts have an obligation of review where there is a serious and substantiated complaint about a manifest deficiency in the protection of a European Convention right (*mutatis mutandis*, *Avotiņš v. Latvia* [GC], 2016, § 116).

435. In this connection, even where a measure had been ordered in the context of a request for international mutual legal assistance issued by another State, the national authorities have the obligation to apply the principles of Article 1 of Protocol No. 1 in substance, and to do so with regard to the particular characteristics and mechanisms of international mutual legal assistance (*Amerisoc Center S.R.L. v. Luxembourg*, 2024, § 55). In that case, which concerned the seizure of the applicant company's bank assets in Luxembourg, following an international request for assistance issued by Peruvian authorities, the Court found that the national courts had not afforded the applicant company a reasonable opportunity to put its case through adversarial proceedings, considering that this situation had resulted, in first place, from the law on international mutual legal assistance, which did not provide that information about the seizure order had to be communicated to the relevant bank client and, secondly, from the national court's decision not to examine the applicant's arguments. This conclusion was strengthened by the fact that the issue at hand was not examined by the Peruvian authorities either (*ibid.*, §§ 58-59). Thus, in the absence of a remedy by which to challenge the seizure of the applicant company's assets in an effective manner, the Court found that the measure was disproportionate to the legitimate aim pursued (*ibid.*, § 61).

436. Forfeiture measures may be acceptable if effected in accordance with the general interest in ensuring that the use of the property in question did not procure an advantage for a person convicted of a criminal charge to the detriment of the community (*Ulemek v. Serbia* (dec.), 2021, § 66).

437. The Court has also noted that States have a legitimate interest and also a duty, by virtue of various international treaties, to implement measures to detect and monitor the movement of cash across their borders, since large amounts of cash may be used for money laundering, drug trafficking, financing terrorism or organised crime, tax evasion or the commission of other serious financial offences. Confiscation measures taken when individuals fail to declare cash when crossing borders therefore conform to the general interests of the community (*Karapetyan v. Georgia*, 2020, § 34).

438. The Court treats confiscation mainly as a control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1, (*Handyside v. the United Kingdom*, 1976, § 63; *Agosi v. the United Kingdom*, 1986, § 51; *Karapetyan v. Georgia*, 2020, § 32; *Aktiva DOO v. Serbia*, 2021, § 78; *Aksüngür and Others v. Serbia*, 2025, § 94), even though confiscation, by its very nature, deprives a person of ownership.

439. Indeed, the second paragraph of Article 1 of Protocol No. 1 *inter alia* allows the Contracting States to control the use of property to secure the payment of penalties. Thus, in cases concerning the

confiscation of the proceeds of a criminal offence which followed on the conviction, the Court has habitually treated the confiscation as a control of use of property (*Phillips v. the United Kingdom*, 2001, § 51; see also *Welch v. the United Kingdom*, 1995, § 26, under Article 7 of the Convention; *Van Offeren v. Netherlands* (dec.), 2005, under Article 6 of the Convention). The second paragraph of Article 1 of Protocol No. 1 has to be construed in the light of the general principle set out in the first sentence of the first paragraph which requires that there exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised (*Phillips v. the United Kingdom*, 2001, §§ 51-52; *Balsamo v. San Marino*, 2019, § 81).

440. The same approach was taken 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 (*Raimondo v. Italy*, 1994, § 27; *Riela and Others v. Italy* (dec.), 2001; *Sun v. Russia*, 2009, § 25; *Arcuri and Others v. Italy* (dec.), 2001; *C.M. v. France* (dec.), 2001; *Air Canada v. the United Kingdom*, 1995, § 34; *Gogitidze and Others v. Georgia*, 2015, §§ 94 and 97, concerning a confiscation applied in civil proceedings; *Balsamo v. San Marino*, 2019, § 81, concerning money laundering proceedings; *Ulemek v. Serbia* (dec.), 2021, §§ 62-68, concerning subsequent proceedings instituted under a law on seizure and confiscation of the proceeds from crime which was not considered to be criminal in nature; *Aksüngür and Others v. Serbia*, 2025, § 94, concerning the confiscation of the entire or substantial part of the applicant's cash carried across the border without a customs declaration; and *Prenča v. Serbia*, 2025, § 75, concerning the confiscation of undeclared cash that the applicant attempted to carry across the State border in breach of the relevant regulations).

441. Furthermore, the Court has also treated confiscation as a control of the use of property where the applicant's property was confiscated as a criminal punishment regardless of the manner of its acquisition and of any relation to the offence (*Markus v. Latvia*, 2020, §§ 69-70; for further details see above the chapter on Principle of lawfulness).

442. Exceptionally, the Court has analysed the interference as a deprivation of possessions where the confiscation of an instrument of crime concerns the property of third parties and amounts to a permanent measure (see also above the chapter on Control of use; *Andonoski v. the former Yugoslav Republic of Macedonia*, 2015, § 36; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, § 48; *Yaşar v. Romania*, 2019, § 49).

443. Sometimes, the Court abstained from determining whether the interference at issue was a deprivation of possessions or a control of use because it considered it unnecessary to do so. Instead, it proceeded directly to examining whether there was a violation of the principles of legality, legitimate aim, and proportionality (*Denisova and Moiseyeva v. Russia*, 2010, § 55; *Aktiva DOO v. Serbia*, 2021, §§ 78 and 82; *Melandri v. San Marino*, 2024, § 67; *Isaia and Others v. Italy**, 2025, § 42).

444. In a number of cases the Court has applied the proportionality test under Article 1 of Protocol No. 1 to different procedures for the forfeiture of property linked to the alleged commission of various serious offences. As regards property presumed to have been acquired either in full or in part with the proceeds of drug-trafficking offences (*Webb v. the United Kingdom* (dec.), 2004; *Butler v. the United Kingdom* (dec.), 2002) or by criminal organisations involved in drug-trafficking (*Arcuri and Others v. Italy* (dec.), 2001; *Morabito and Others v. Italy* (dec.), 2005) or from other illicit mafia-type activities (*Raimondo v. Italy*, 1994, § 30), the Court accepted that the confiscation measures were proportionate, even in the absence of a conviction establishing the guilt of the accused (*Balsamo v. San Marino*, 2019, § 90).

445. Where confiscation was imposed independently of a criminal charge against third parties, the Court accepted that the authorities may 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*, 1994, § 30; *Arcuri and Others v. Italy* (dec.), 2001; *Morabito and Others v. Italy* (dec.), 2005; *Butler v. the United Kingdom* (dec.), 2002; *Webb v. the United Kingdom* (dec.), 2004; *Saccoccia v. Austria*, 2008, § 88; *Silickienė v. Lithuania*, 2012, § 65, where a confiscation measure was imposed on the widow of a corrupt public official; *Balsamo v. San Marino*, 2019, §§ 89 and 93, where a confiscation measure was imposed also on the children on account of their father's previous criminal record; *Zaghini v. San Marino*, 2023, §§ 17 and 65, where the applicant was a son of a man found guilty of money laundering).

446. In *Yusifli and Others v. Azerbaijan* (dec.), 2022, §§ 88-93, the applicants were acquaintances or relatives of the former Minister of Health. The Court found that their complaints, about the confiscation of proceeds of crime concerning various properties allegedly embezzled from the State by a former Minister of Health and which had been transferred in the applicants' names or the names of companies of which the applicants were nominally sole owners, were manifestly ill-founded.

447. In *Tartamella and Others v. Italy*, 2025, § 207, where the applicants' assets, of a value equivalent to the proceeds from offences committed by their family members, were seized and confiscated on the basis that they were at the offenders' disposal, the Court found a violation of Article 1 of Protocol No. 1 in respect of the first two applicants. The Court held that the domestic courts' failed to show, in a reasonable manner and on the basis of objective elements, that the first two applicants were sham owners of the confiscated assets and that these belonged, in reality, to the offenders (*ibid.*, §§ 200-206). Conversely, the national courts were found to have adequately investigated the behaviour of the third and fourth applicants and of the offenders in relation to the assets at issue and to have pointed at specific elements indicating that they were at the offenders' disposal (*ibid.*, §§ 208-10 and §§ 213-15).

448. Confiscation in such cases is sought to prevent the unlawful use of "possessions" whose lawful origin has not been established, especially if they are being used in a manner dangerous to society. 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 ensures that crime does not pay (*Denisova and Moiseyeva v. Russia*, 2010, § 58; *Phillips v. the United Kingdom*, 2001, § 52; *Dassa Foundation and Others v. Liechtenstein* (dec.), 2007, under Articles 6 and 7).

449. Nevertheless, in *Radelić v. Croatia*, §§ 55-63, where the proceeds of crime acquired by a company which went bankrupt and ceased to exist, were confiscated from its director and sole shareholder who was found guilty of the criminal offence of business fraud with the intent of acquiring illegal gain for the company's benefit, the Court found that the measure was unlawful. The Penal Code did not provide for confiscation of the proceeds of crime from the perpetrator if acquired for the benefit of another person (natural or legal). The imposition of the confiscation measure was therefore not foreseeable under domestic law and inconsistent with the nature of the offence of which he was convicted.

450. In *Anti-Corruption Foundation (FBK) and Others v. Russia*, 2025, §§ 104-107, the Court found that the seizure and continued retention of a sum of money from one individual applicant during searches without any judicial decision authorising it – as required by domestic law–, was not "in accordance with the law". The Court found that the failure of the authorities to either return the property to its lawful owner or to obtain a formal seizure, which would have allowed the domestic courts to assess the specific factual grounds indicating that the sum in question constituted the proceeds of crime, rendered their actions arbitrary and inconsistent with the principles of legal certainty and the rule of law.

451. In *Aksüngür and Others v. Serbia*, 2025, § 103, concerning the confiscation of sums of cash that the applicants had failed to declare when crossing Serbia's borders, the Court left the issue of

lawfulness open and proceeded to examine the proportionality of the interference. The Court pointed to the narrow review carried out by the domestic courts and found the legislative framework to be too broad. Moreover, the domestic courts, including the Constitutional Court, failed to dispel interpretational doubt as to the applicable provision of domestic law, to conduct a meaningful analysis as to what sanctions had been necessary in each case and to ensure the requisite fair balance between the competing interests (*ibid.,* §§ 107-123; see also *Imeri v. Croatia*, 2021, in the chapter below on the Law of the European Union).

452. Similarly, *Prenča v. Serbia,* 2025, §§ 80-82, concerned a fine and confiscation of undeclared cash that the applicant attempted to carry across the State border in excess of the statutory export limit applicable to Serbian residents. The Court decided – despite the legal framework which remained imprecise in its key elements in relation to the leeway allowed for imposition of full or partial confiscation – to leave open the issue of "lawfulness" of the interference. It decided instead to take them into account, as well as the consequences that they entailed from the point of view of compliance with Article 1 of Protocol No. 1, as material considerations in determining whether the national authorities, when applying the contested measure, struck a fair balance between the interests involved. The Court went on to rule that the legal framework, coupled with the insufficient review carried out by the domestic courts and the lack of procedural guarantees, could not ensure the requisite fair balance between the requirements of the general interest and the protection of the applicant's right to peaceful enjoyment of his property under that Article (*ibid.*, §§ 99-104).

453. Article 6 of the Convention generally does not prevent States from having recourse to presumptions. In proceedings concerning various forms of confiscation or fiscal repression the public authorities may act on the presumption that the assets were acquired unlawfully (*Salabiaku v. France*, 1988, § 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.), 2014, § 43; *Yildrim v. Italy* (dec.), 2003; 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*, 2008, § 45; *Phillips v. the United Kingdom*, 2001, § 43; *Perre v. Italy* (dec.), 1999, 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*, 2007, §§ 43-51).

454. The Court also found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a preponderance of evidence which suggested that the respondents' lawful incomes could not have sufficed for them to acquire the property in question. Whenever a confiscation order was the result of civil proceedings *in rem* which related to the proceeds of crime derived from serious offences, the Court did not require proof "beyond reasonable doubt" of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test under Article 1 of Protocol No. 1 (*Balsamo v. San Marino*, 2019, § 91; see also *Melandri v. San Marino*, 2024, § 72). On the contrary, the Court found that the national courts did not convincingly prove a causal link between, on the one hand, the predicate offences/any other criminal conduct and the assets subject to confiscation, on the other, when they solely relied on the presumption that any asset not shown to have had a lawful origin constituted the proceeds of crime and on the difference they established between the applicants' income from lawful sources and their expenditure (*Mandev and Others v. Bulgaria*, 2024, § 100; see also *Todorov and Others v. Bulgaria*, 2021).

455. In *Isaia and Others v. Italy**, 2025, §§ 89-90, the Court found that the domestic courts not only failed to establish any link between the first applicant's criminal activities and the confiscated assets but also to substantiate in a reasoned manner that the first applicant should be presumed to have

been committing, on a habitual basis, criminal offences capable of producing unlawful income (*ibid.*, §§ 82-83). The Court went on to rule that the shortcomings in the national courts' decisions were serious and manifestly incompatible with the limitations and safeguards established under domestic legislation and case-law concluding that the requisite fair balance between the legitimate aims in the public interest pursued by the measure in question and the applicants' individual rights was not struck (*ibid.*, §§ 91-92).

456. The Court attached importance to various procedural guarantees available in confiscation proceedings, such as their adversarial nature (*Yildirim v. Italy* (dec.), 2003; *Perre v. Italy* (dec.), 199); advance disclosure of the prosecution case (*Grayson and Barnham v. the United Kingdom*, 2008, § 45); opportunity for the party to adduce documentary and oral evidence (*Butler v. the United Kingdom* (dec.), 2002; *Perre v. Italy* (dec.), 1999), possibility of being legally represented by a privately hired lawyer (*Butler v. the United Kingdom* (dec.), 2002); assumption of the criminal character of the assets can be rebutted by the party (*Geerings v. Netherlands*, 2007, § 44); a judge having the 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*, 2001, § 43); whether an 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*, 2015, § 108; *Silickienė v. Lithuania*, 2012, § 68); whether third-party purchasers had the opportunity to take part in the proceedings that had led to the confiscation of their property (*Petruzzo and Others v. Italy,* 2025, §§ 175-77); on the whole, whether the applicant was afforded a reasonable opportunity of putting his arguments before the domestic courts (*Veits v. Estonia*, 2015, §§ 72 and 74; *Jokela v. Finland*, 2002, § 45; *Balsamo v. San Marino*, 2019, § 93; *Melandri v. San Marino*, 2024, § 72; *Prenča v. Serbia,* 2025, § 98; *M.S.L., TOV v. Ukraine,* 2025, § 109), regard being had to a comprehensive view of the proceedings concerned (*Denisova and Moiseyeva v. Russia*, 2010, § 59).

457. Finally, in addition to the general procedural obligations under Article 1 of Protocol No. 1 (*G.I.E.M. S.R.L. and Others v. Italy* (merits) [GC], 2018, § 302), certain factors are relevant to determine the proportionality of a confiscation measure: notably its duration, although this is not definitive (*OOO Avrora Maloetazhnoe Stroitelstvo v. Russia*, 2020, § 69; *Stołkowski v. Poland*, 2021, §§ 73-77; *İpek Société à responsabilité limitée v. Turkey*, 2022, §§ 92-94); the necessity to maintain it having regard to the course of criminal proceedings as well as its consequences for the interested party (*Lachikhina v. Russia*, 2017, § 59); the combined effect of a confiscation order issued by the criminal courts regarding the proceeds or profits of a criminal offence, and a judgment by the Court of Auditors ordering the applicant to compensate the damage caused to the public authorities by the same offence (*Florio and Bassignana v. Italy**, 2026, §§ 76-87); the significant time elapsed since the commission of the predicate offenses on which the confiscation was based (*Isaia and Others v. Italy**, 2025, §§ 80-81) as well as the temporal connection between the confiscated assets and the offences allegedly generating the unlawful income (*ibid.*, §§ 85-88); the behaviour of the applicant and the interfering State authorities (*Forminster Enterprises Limited v. the Czech Republic*, 2008, § 75); and the availability of an effective remedy, including access to courts, by which an applicant can challenge the (continuing) seizure (*Benet Czech, spol. s r.o. v. the Czech Republic*, 2010, § 49).

G. Restitution of property

458. 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.

459. 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], 2000; *Preußische Treuhand GmbH & Co. KG a.A. v. Poland* (dec.), 2008, § 57).

460. 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*, 2003, § 34).

461. 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*, 2010, § 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], 2002, §§ 70-74; *Kopecký v. Slovakia* [GC], 2004, § 35; *Smiljanić v. Slovenia* (dec.), 2006, § 29).

462. 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], 2000; *Kopecký v. Slovakia* [GC], 2004, § 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], 2002, § 73; *Von Maltzan and Others v. Germany* (dec.) [GC], 2005, § 112).

463. 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*, 2010, § 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], 2005, § 74; *Kopecký v. Slovakia* [GC], 2004, § 35; *Broniowski v. Poland* [GC], 2004, § 125).

464. 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], 2004, §§ 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.

465. 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], 2004, § 184).

466. 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*, 2003, § 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*, 2007, § 102).

467. 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*, 2010, as well as to a pilot judgment procedure (*ibid.*, §§ 215-218). Similarly, in the pilot judgment *Manushaqe Puto and Others v. Albania*, 2012, §§ 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. In *Beshiri and Others v. Albania* (dec.), 2020, the Court reviewed the new domestic scheme/remedy introduced in Albania in response to that pilot judgment. Noting the State´s wide margin of appreciation as regards the choice of forms of redress for breaches of property rights (*ibid.*, § 188), the Court found the new remedy to be effective having regard to the following considerations: a) appropriateness of the form of redress (*ibid.*, § 188); b) adequacy of the compensation (*ibid.*, §§ 189-203); and c) accessibility and efficiency of the remedy (*ibid.*, §§ 204-214). As to the adequacy of the compensation, the Court acknowledged the exceptionally difficult and complex situation and concluded that the minimum threshold for the amount of compensation of 10% of the current value of the original property could be considered reasonable in the specific context of Albania (*ibid.*, §§ 194-196). At the same time it acknowledged that its assessment of the new remedy may be subject to review in the future depending on whether the remedies continued to comply with the Convention requirements in practice (*ibid.*, § 222).

468. The case *Orlović and Others v. Bosnia and Herzegovina*, 2019, §§ 55, 57 and 61, concerned the non-enforcement of domestic decisions, granting the applicants the right to have the entirety of their land returned, including the portion of land where a church had been built after their deportation. The Court found a violation and ordered the State to take all necessary measures to ensure the enforcement of the decision in the applicants' favour, including the removal of the church from their land (*ibid.*, §§ 68-71).

469. 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*, 2007, § 108; *Prodan v. Moldova*, 2004, § 61).

470. 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], 2005, § 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], 2004, § 186). This applies also to compensatory entitlements granted by legislation. The Court accepted the reduction of the level of compensation for appropriated land, enacted by amending the subordinate legislation during pending domestic administrative proceedings, as long as such reduction serves the general interest of protecting the public purse and the awarded compensation did not appear to be unreasonably low (*Serbian Orthodox Church v. Croatia*, 2020, §§ 62, 65-68).

471. 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*, 2010, § 50*; Kehaya and Others v. Bulgaria*, 2006, § 76; *Chengelyan and Others v. Bulgaria*, 2016, §§ 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*, 2010, § 44).

472. 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*, 2010, § 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*, 2009, § 27).

473. 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*, 2005, §§ 46-47 This approach was confirmed more recently in *Dickmann and Gion v. Romania*, 2017, §§ 103-04), where the Court has also considered it necessary to ensure that the attenuation of "old injuries" sustained as a result of infringements of property rights by the communist regime should not create disproportionate new wrongs (*ibid.*, § 96).

474. 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 (*Toşcuţă and Others v. Romania*, 2008, § 33).

475. 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*, 2008, § 23). In the case of *Katz v. Romania*, 2009, §§ 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*, 2014, §§ 146-148, the follow-up judgment to *Maria Atanasiu and Others v. Romania*, 2010, as underlined also in *Ana Ionescu and Others v. Romania*, 2019, §29. The latter case of *Văleanu and Others v. Romania*, 2022, § 262 reaffirmed these rulings, requiring the Respondent State to take further general measures to address continuing structural problems in a mechanism of restitution.

476. In *Pincová and Pinc v. the Czech Republic*, 2002, 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*, 2002, §§ 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*, 2007, §§ 181 and 190.

477. Conversely, in *Wiegandová v. the Czech Republic*, 2024, §§ 60-65, the Court held that there was no breach of Article 1 of Protocol No.1 where a flat owned by the applicant had been encumbered by

virtue of an *ex lege* unpaid easement created – free of charge and without any time-limits – by property restitution legislation in favour of a housing cooperative. The applicant, who acquired the flat by way of inheritance from the person to whom the flat had been returned in restitution in 1991, could only sell the flat but not use it or rent it freely. The Court noted that Member States benefitted from a wide margin of appreciation in regulating complex property issues during transition from a communist regime to a democratic public order protecting private property. The Court found it particularly significant, for purposes of its proportionality analysis, that the Constitutional Court had considered the permanent existence of the easement to be instrumental preserving property rights acquired in exchange for pecuniary contributions by *bona fide* private individuals (the cooperative and its members).

478. In *Naskov and Others v. North Macedonia*, 2023, §§ 72-78, the Court found a violation of Article 1 of Protocol No. 1 on the basis that the interference in the applicants' property interests breached the principle of lawfulness. The domestic authorities quashed *motu proprio* a final restitution order conferring on the applicants a title to a plot of land, owing to the legal and factual impossibility of enforcing the order on account of private parties having constructed structures on the land in the meantime.

479. In addition, 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*, 2008, § 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,* 2009, §§ 55 and 58; *Beinarovič and Others v. Lithuania*, 2018, §§ 141 and 154). In the case of *Kirilova and Others v. Bulgaria*, 2005, §§ 120-121, significant delays occurred in delivering flats offered as compensation for the expropriation of their properties to the applicants.

480. In *Vasilev and Doycheva v. Bulgaria*, 2012, §§ 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.

481. Finally, the case *Nikolaou and Others v. Cyprus*, 2026, concerned the domestic authorities' refusal to return to the applicants 3,974 square metres of expropriated land which remained unused for over thirty years. The Court underlined that, under domestic law, former owners could seek restitution where expropriated property was no longer required for the public purpose for which it had been acquired. The Court found that the Government had failed to demonstrate any continuing public interest justifying the retention of the land. In view of the prolonged non-use of the property and the absence of a sufficient public interest justification, the continued refusal to return it failed to strike the requisite fair balance and amounted to a violation of Article 1 of Protocol No. 1 of the Convention (*ibid.*, §§ 53-57).

H. State-owned companies

482. 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.), 2003, § 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 (*Mykhaylenky and Others v. Ukraine*, 2004, § 44; *Shlepkin v. Russia*, 2007, § 24; *Ljubljanska banka d.d. v. Croatia* (dec.), 2015, §§ 51-55; *Liseytseva and Maslov v. Russia*, 2014, § 151; *Kuzhelev and Others v. Russia*, 2019, §§ 93-100 and 117).

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.), 2017, § 38).

483. 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, 2003. 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.

484. The key criteria to determine whether the State was indeed responsible for such debts are 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) (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 114; *Fomenko and Others v. Russia* (dec.), 2019, § 172; *Tokel v. Turkey*, 2021, § 58).

485. 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, *Liseytseva and Maslov v. Russia*, 2014, §§ 184-192).

486. 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. For instance, in *Tokel v. Turkey*, 2021, the Court noted that Çaykur, a State-owned enterprise specialising in the production of tea, was a legal entity subject to provisions of private law, the liability of which was limited to its capital. It operated in the tea market together with private tea companies, without any monopoly, and was subject to the jurisdiction of the ordinary courts. Nevertheless, Çaykur's entire capital had always been owned by the State. It was categorised as a public economic institution, a type of State-owned enterprise which, by definition, carried out public services and benefited from concessions for the products it produced. The Court considered that, notwithstanding its formal classification under domestic law, in view of the legislation in force at the material time, Çaykur's independence was limited by the existence of strong institutional and operational links with the State. Therefore, the State authorities' supervision and control over Çaykur's investment plans was a decisive consideration in the case (*Tokel v. Turkey*, 2021, §§ 58-64).

487. 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*, 2009, §§ 51-54).

488. 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.), 2007).

489. 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*, 2008, § 98; *Mykhaylenky and Others v. Ukraine*, 2004, § 44; *Zastava It Turs v. Serbia* (dec.), 2013, §§ 21-23).

490. 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], 2014, § 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, 2003.

491. In *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* [GC], 2014, § 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*, 2004, §§ 43-46; *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, 2007, §§ 17-19; *Yershova v. Russia*, 2010, §§ 54-63; *Kotov v. Russia* [GC], 2012, §§ 92-107).

492. 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], 2014, § 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.), 2007; *Khachatryan v. Armenia*, 2009, §§ 51-55).

493. 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], 2012, §§ 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).

494. 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], 2012, § 107). Consequently, the respondent State was not to be held directly responsible for his wrongful acts.

I. Austerity measures

495. 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.), 2017, § 48; *Da Silva Carvalho Rico v. Portugal* (dec.), 2015, § 46; *Savickas and Others v. Lithuania* (dec.), 2013, §§ 92-94; *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), 2013, § 29; *Koufaki and Adedy v. Greece* (dec.), 2013, §§ 37-49; *Žegarac and Others v. Serbia* (dec.), 2023, § 103). 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*, 2011, § 96).

496. 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.), 2011, § 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.), 2013, § 6).

497. 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.), 2015, § 8).

498. Other 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% (*Frimu and Others v. Romania* (dec.), 2012, § 5).

499. 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.), 2013, §§ 20 and 46).

500. 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.), 2013, § 93)

501. Furthermore, in *Kubát and Others v. the Czech Republic*, 2023, §§ 89-92 and 95-96, the salaries of judges were reduced for the period 2011-14, in line with amendments to the Salaries Act. These legislative amendments were later found to be unconstitutional by the Constitutional Court which decided to give *pro futuro* effect to its decision. Considering that the exceptional circumstances might justify the delivery of a repealing judgment with *ex nunc/pro future* effect constituted a different matter from that of a reduction of judges' salaries, the Court found no violation as regards the refusal of retroactive payment of the difference in judges' salaries during the financial crisis. However, it observed that the level of judges' remuneration should be fixed so as to shield them from pressures

aimed at influencing their decisions and, more generally, their behaviour, and that a failure to ensure that judges are paid the judicial benefits to which they are entitled by law constitutes a circumstance liable to impede the exercise of their judicial functions with the necessary dedication.

502. 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*, 2013, §§ 66-74).

503. 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.), 2017, §§ 77-97).

504. 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*, 2016, §§ 22 and 48-51; see also *Freire Lopes v. Portugal* (dec.), 2023, §§ 88-90).

505. Furthermore, the case *BK1 and Others v. Hungary* (dec.), 2025, concerned the capping of fuel prices during a state of danger decreed in relation to the COVID-19 pandemic and later to the war in Ukraine. The Court first held that the impugned measure constituted a clear interference with the applicants' economic freedom and their right to the peaceful enjoyment of their possessions (*ibid.*, § 36). However, it was introduced as a temporary response to rapidly rising fuel prices and inflation in the respondent State amid a pandemic and a war in a neighbouring country, prescribed by law and pursued a legitimate aim in the public interest (*ibid.*, §§ 40-42). Moreover, the measure was found to be temporary, targeted, and accompanied by compensatory mechanisms (*ibid.*, §§ 45-48). Consequently, the Court considered that it was not manifestly devoid of reasonable foundation, and that the applicants were found not to have demonstrated that they had borne a disproportionate or excessive burden as a result. The complaint was declared manifestly ill-founded (*ibid.*, §§ 51-52).

506. Finally, in *Scheffer and Others v. Slovakia* (dec.), 2025, §§ 81-84, the applicant companies, operating various businesses, complained about measures taken against the spreading of Covid-19 during the pandemic and the impact of these measures on their business interests. The Court found that the contested measures had a basis in domestic law and served the general interest of protecting public health. In addition, some of the applicants had received substantial compensation from one or two aid schemes and others had not taken advantage of the opportunity to claim such support or had

received support in relation to periods other than the specific period under consideration. The Court found that the applicants did not suffer an excessive individual burden (§§ 94-97).

J. Law of the European Union

507. The case *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, §§ 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[8]"). 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.

508. As to pecuniary claims, in the case of *Avotiņš v. Latvia* [GC], 2016, §§ 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*, 2012, §§ 114-116).

509. Furthermore, in *Heracles S.A. General Cement Company v. Greece* (dec.), 2016, §§ 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 14 years, was not disproportionate and declared the complaints under Article 1 of Protocol No. 1 and Article 6 inadmissible.

510. In *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, 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.

511. 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

8. See the Guide on Article 1 - Obligation to respect human rights.

proceedings could in other circumstances be regarded as leaving no margin of manoeuvre (*O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, §§ 110-112).

512. 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.

513. In *Imeri v. Croatia*, 2021, § 72, the Court took note of the relevant European Union law in adjudicating a case concerning the confiscation of money that the applicant had failed to declare when crossing the border between Slovenia and Croatia. In particular, the Court considered the case-law of the Court of Justice of the European Union, according to which a 2005 regulation (concerning the control of cash entering or leaving the Community, the 2005 Cash Control Regulation) did not seek to penalise possible fraudulent or unlawful activities but solely a breach of the obligation to declare. The Court also considered the preamble of the 2018 Cash Control Regulation that repealed and replaced the 2005 Regulation, which explicitly stated that penalties for non-compliance with the obligation to declare or disclose cash when crossing a border should not take into account the potential criminal activity associated with the cash.

514. In *Aksüngür and Others v. Serbia*, 2025, § 113, concerning the confiscation of the applicant's cash carried across the border without a customs declaration, the Court noted that the decisions to confiscate the entire amounts of undeclared cash (or a significant portion thereof) also appeared to be at odds with the requirement, existing in many Contracting States and EU law, that the severity of a penalty, even in order to be lawful, must not be disproportionate to the offence in question.

515. Finally, in *Spasov v. Romania*, 2023, §§ 113-119, the owner and captain of a vessel registered in Bulgaria, was fishing for turbot in Romania's exclusive economic zone (EEZ) when his vessel was boarded. He was prosecuted on the grounds that he did not hold a Romanian fishing licence and that he had used nets that were prohibited by the Romanian legislation. As the facts had occurred after the accession of both countries to the European Union, the applicant relied on the Common Fisheries Policy. However, in a final judgment of 2 October 2013 the Court of Appeal held that Community vessels were still subject to Romanian legislation enacted on the basis of the United Nations Convention on the Law of the Sea, and that the national rules dealing specifically with turbot fishing were not contrary to European Union law. The applicant complained that the Court of Appeal had not sought a ruling from the CJEU (on the interpretation of the rules of the Common Fisheries Policy) and that it had given a decision which was arbitrary in the light of those rules. The Court noted that the pecuniary penalties imposed by the Court of Appeal on the applicant were based on a particular domestic provision and were imposed in addition to his conviction for illegal fishing. However, since the Court had found that the applicant's conviction was the result of a manifest error of law, the above-mentioned domestic provision could not serve as a legal basis for the additional pecuniary penalties imposed on the applicant.

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.

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