

## Protection of the right to property in the case law of the European court of human rights

### Захист права власності у прецедентній практиці Європейського суду з прав людини

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Written by:

**Maikut Khrystyna**<sup>219</sup><https://orcid.org/0000-0002-2196-4023>**Andrusiv Uliana**<sup>220</sup><https://orcid.org/0000-0003-2300-5114>**Yurkevych Yuri**<sup>221</sup><https://orcid.org/0000-0002-4097-9925>**Dutko Alona**<sup>222</sup><https://orcid.org/0000-0001-5622-1046>**Zaiats Olha**<sup>223</sup><https://orcid.org/0000-0003-2872-5567>

#### Abstract

The contribution describes the peculiarities of the protection of the right to property in the case law of the European Court of Human Rights. It has been found that, given the peculiarities of the legal nature of the right to property, it requires state regulation and may be subject to restriction and interference. Attention is drawn to the predication of any potential interference with the right to property on a general principle, according to which everyone has the right to peacefully enjoy their property.

The article further clarifies the forms of interference with the ownership of individuals and legal entities by the state, such as expropriation of property and control over use of property. The triple normative regulation of property relations is investigated, and the elements of the relevant structure were covered in detail.

The contents of the three-component test, in particular, its elements, such as the legality of interference with the right to property, the legitimacy of the purpose of such interference,

#### Анотація

У роботі розкрито особливості здійснення захисту права власності в практиці Європейського суду з прав людини. З'ясовано, що, виходячи з особливостей правової природи права власності, воно вимагає регулювання з боку держави та може підлягати обмеженню та втручанню. Звернено увагу на обумовленість можливого втручання у право власності загальним принципом, відповідно до якого кожен має право на мирне володіння своїм майном.

З'ясовано форми втручання у власність фізичних та юридичних осіб з боку держави, такі як позбавлення власності та контроль за користуванням майном. Досліджено трійсте нормативне регулювання відносин власності, детально охарактеризовано елементи відповідної структури.

На підставі аналізу рішень ЄСПЛ розкрито зміст трискладового тесту, зокрема, таких елементів як законність втручання у право власності, легітимність мети такого втручання та справедлива рівновага між інтересами захисту права власності та загальними

<sup>219</sup> Ph.D., Associate Professor, Associate Professor of the Civil Law Disciplines Department, Law Faculty, Lviv State University of Internal Affairs, Lviv, Ukraine.

<sup>220</sup> Ph.D., Associate Professor, Associate Professor of the Civil Law Disciplines Department, Law Faculty, Lviv State University of Internal Affairs, Lviv, Ukraine.

<sup>221</sup> Doctor of Law, Associate Professor, Head of the Civil Law Disciplines Department, Law Faculty, Lviv State University of Internal Affairs, Lviv, Ukraine.

<sup>222</sup> Ph.D., Associate Professor, Associate Professor of the Civil Law Disciplines Department, Law Faculty, Lviv State University of Internal Affairs, Lviv, Ukraine.

<sup>223</sup> Ph.D., Associate Professor of the Civil Law Disciplines Department, Law Faculty, Lviv State University of Internal Affairs, Lviv, Ukraine.

and a fair balance between the interests of protection of the right to property and public interests, are expounded with reference to the awards of the European Court of Human Rights. Particular attention was paid to legality provisions. The contribution further dwells on the conceptual and categorical framework of the terms “general interest” and “public interest.” The authors complete their scientific inquiry with appropriate generalisations and a summary.

**Key words:** European Court of Human Rights, interference with the ownership right, lawfulness of interference, legitimate purpose of interference, proportionality of interference, control over the use of property, public (common) interest.

## Introduction

The emergence of rule of law and social and democratic state is closely linked to the implementation of a proper system of legal protection of such fundamental human rights as the right to property. The right to property is a universal value, a fundamental right guaranteed by the state, the exercise of which is instrumental in meeting the needs of the individual and ensuring the proper conditions and standard of living. Effective guarantees of the exercise of the right to property and its reliable and effective protection constitute important attributes of rule of law, which acquires a new relevance against the backdrop of European integration processes and with a view to existing political, economic and social problems in modern society.

The right of property is protected at the highest supranational level under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention operates as an instrument of protection of the right to property: 1) at the national level – as part of relevant international obligations of the state; 2) at the international level – as a form of collective redress implementable through a conventional jurisdictional institution – the European Court of Human Rights (hereinafter, the “ECHR”).

The clarification of the provisions of the Convention and Protocol No. 1, and their practical implementation are based on the interpretations provided by the European Court of Human Rights in its resolutions, which are *ipso facto* binding on law-making and law enforcement, specifically in the interpretation suggested by the ECHR.

інтересами. Особливу увагу приділено вимогам щодо законності. розкрито понятійно-категоріальний апарат таких термінів як «загальний інтерес», «інтереси суспільства». На основі здійсненого наукового пошуку авторами зроблено узагальнення та підведено підсумки.

**Ключові слова:** Європейський суд з прав людини, втручання у право власності, межі допустимого втручання, законність втручання, легітимна мета втручання, пропорційність втручання, контроль за використанням майна, суспільні (загальні) інтереси.

In general, the awards of the ECHR operate as a sort of blueprint for courts, as they indicate what criteria and circumstances are to be evaluated and the manner, in which they are to be evaluated. However, the final outcome of the resolution of a specific dispute (whether to meet or reject the claim) pertains to the discretion of a national court. Therefore, the question remains as to what criteria should be evaluated by national courts in order to conclude on the admissibility and legality of state interference with the right to property in terms of its compliance with Article 1 of Protocol No. 1.

## Methodology

In the course of this study, general and special legal methods of scientific inquiry were used in combination. The dialectical method contributed to the exploration of property relations in the practice of the ECHR. This method was also used to analyse such dialectical categories as legality, public interest, and proportionality. The comparative method was used to correlate such categories as “general interest” and “public interest.”

For the processing and use of empirical material and the case law of the ECHR, a formal legal method was applied, which made it possible to describe the content of forms of interference with the right to property of individuals and legal entities by the state. The hermeneutical method enabled the exploration of the content of the provisions of the Convention and Protocol No. 1 thereto. Methods of analysis and synthesis were

used to determine the constituent elements of the three-component test.

Ultimately, the logical method enabled us to come up with closing statements and appropriate generalisations. This method also ensured the consistency of our opinions, concepts and conclusions expressed.

## Results and Discussion

Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms states as follows: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The 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” (*Protocol No. 1, Convention for the Protection of Human Rights and Fundamental Freedoms, 1952*).

The content of this regulation implies that it is aimed at the protection of the rights of “every person,” that is, any individual, regardless of whether such person is the national of the state whose actions they contest. Furthermore, an individual may rely on the protection of their rights of property irrespective of whether they have acquired such rights as an individual or in connection with the exercise of public authority. For instance, in the case *Former King of Greece and Others v. Greece*, the applicant was the former King of Greece, who sought protection of property received from the state during his reign (*ECHR, Case Former King of Greece and Others v. Greece, 2000*).

In addition, Article 1 of Protocol No. 1 is the only conventional regulation that directly provides for the protection of the property of legal entities. It is important to note that not every legal entity may apply to the ECHR. Thus, a legal entity that holds that its rights under the Convention and Protocols thereto were violated may file a petition if it is a non-governmental organisation within the meaning of Article 34 of the Convention. It was on this basis that the ECHR declined to consider the application submitted by the State Holding Company Luganskvugillya, concluding that “the applicant company ... was registered as a corporation, owned and managed

by the State, which participated in the exercise of governmental powers in the area of management of coal industry, having a public-service role in that activity of the State (*ECHR, Decision by State Holding Company LUGANSKVUGILLYA against Ukraine, 2009*).

Turning to the content of the article under study, we should pay close attention to its three-fold regulatory structure. The first rule, of a general nature, proclaims the principle of peaceful enjoyment of property; the second rule relates to cases of expropriation of property and predicates this to specific conditions. The third rule recognises that States have the right, in particular, to control the use of property, in line with general interest, by introducing laws they deem necessary to achieve such a purpose (Fuley, 2015).

For the state, the principle of peaceful enjoyment of property means not only the obligation to refrain from any actions that may lead to interference with the right of a person to peaceful enjoyment of property, but also to the existence of certain affirmative actions that are necessary and constitute preconditions for such peaceful enjoyment of property resulting from the fact that the state is under an obligation to guarantee to everyone under its jurisdiction the rights and freedoms set out in Section I of the Convention (Novikov, 2016).

The principle of inviolability of the right to property is considered to be the basic principle of legal regulation of property relations both at national and international levels, in which special attention is paid to lawfulness and legality, observance of the principles of “fair balance” in the case of interference with the right to property, the availability of fair compensation. At the same time, this principle is upheld by a number of other safeguards provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms. Such safeguards include, in particular, the right to a fair trial (Article 6), the right to an effective remedy (Article 13), the prohibition of discrimination (Article 14), and the prohibition of abuse of rights (Article 17) (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). The essence of these safeguards consists not so much in the fact that a breach of conventional obligations triggers the response of all member states, but in the fact that the response to such breach is based on a shared will and shared values.

Given the peculiarities of the legal nature of the right to property, it requires state regulation and may be subject to restriction and interference. In analysing the case law of the ECHR, it may be inferred that any act by the state aimed at depriving, restricting or impairing a person's right to own, use and dispose of their property within the limits stipulated in the Convention constitutes interference with the right to property. Consistent with the provisions of Article 1 of Protocol No. 1, there are two forms of interference with the right to property of individuals and legal entities by the state: expropriation of property and control over the use of property.

On most occasions, interference with the right to property of individuals and legal entities is made by public authorities, in particular, executive bodies, occasionally – by legislative and judicial authorities, by enacting regulations or passing court judgements, whereas Article 1 of Protocol No. 1 excludes any unjustified interference by public authorities (Fuley, 2017). Thus, in its judgment in the case *Budchenko v. Ukraine*, the ECHR admitted that there had been an interference with the applicant's right under Article 1 of Protocol No. 1 to the Convention resulting from the fact that no mechanism was in place for the implementation of a legislative provision, which granted the applicant an exemption from payment for electricity and natural gas consumed, which was of material interest under Article 1 of Protocol No. 1 (ECHR, Case *Budchenko v. Ukraine*, 2014).

Moreover, in exceptional cases there is an encroachment of one state upon the property (assets) of another state, as jurisdiction is not restricted to the national territories of the member states to the Convention. The responsibility of the state applies equally to cases where any action or omission results in certain consequences outside its territory.

The Court has repeatedly considered cases, the subject of which involved the state's extraterritorial jurisdiction in exercising its powers abroad. The first case where the Court ruled on just satisfaction in interstate cases was the case *Cyprus v. Turkey* (ECHR, Case *Cyprus v. Turkey*, 2001). In the case *Xenides-Aestis v. Turkey*, the ECHR ordered Turkey to pay plaintiff a compensation for their inability to use the property remaining in the occupied territory of Northern Cyprus (ECHR, Case *Xenides-Aestis v. Turkey*, 2005). In many respects, this case is similar to the case *Loizidou v. Turkey* (ECHR,

Case *Loizidou v. Turkey*, 1996) and *Demades v. Turkey* (ECHR, Case *Demades v. Turkey*, 2003). The ruling of the ECHR in the case *Papamichalopoulos and Others v. Greece* (ECHR, Case *Papamichalopoulos and Others v. Greece*, 1995) was progressive in nature, as the Court concluded that the *de facto* expropriation of land constituted a continuing violation of Article 1 of Protocol No. 1 to the Convention.

In its case law, the ECHR has developed three main criteria that shall be assessed in order to determine whether a particular measure of interference with the right to property meets the principle of legitimate and admissible interference with the guarantees of Article 1 of Protocol No. 1. We speak here of the *limits of permissible interference*, namely: a) the existence of legal grounds (legality of interference); b) the existence of a "public interest" to apply restrictions (legitimate purpose of interference); c) ensuring a fair balance (proportion) between the public interest and the need to respect the fundamental rights of the individual (proportionality of interference). Thus, the provisions of legality constitute common standards for all articles of the Convention.

The interpretation of legality in line with the European approach to the rule of law and the case law of the ECHR is significantly different from the principle of legality prevailing in the domestic literature; therefore, in considering the legality and principle of legality, one should proceed not from the national interpretation of this principle, but from the understanding of this term by the ECHR, which the latter came to by using an autonomous interpretation of concepts such as "law," "in compliance with law," and "established by law." The word "autonomous" is understood to refer to concepts denoted by appropriate terms that may be interpreted by the Court irrespective of their meaning in national law (Hudyma, 2016).

In its report, the Venice Commission considers legality, in the sense of supremacy of law, as a structural element of the rule of law, emphasising that provisions of law should be complied with consistently (Venice Commission Report, 2011). As a criterion for interference with the right to property of a person, legality means that such interference shall be made within and on the basis of law, in compliance with the principle of rule of law, which includes freedom from arbitrariness. Thus, Paragraph 50 of the judgment in the case *Shchokin v. Ukraine* stipulates that the requirement of Article 1 of Protocol No. 1 to the

Convention is that any interference by public authorities with the peaceful enjoyment of property shall be lawful, and that the expropriation of property is only possible “subject to the conditions provided for by law” (*ECHR, Case Shchokin v. Ukraine, 2010*). The phrase “subject to the conditions provided for by law” first implies that the measure in question have a basis in national law (*ECHR, Case Poltoratskiy v. Ukraine, 2003*).

Interference shall not merely be based on domestic law, but law itself shall meet certain quality standards. The category of “quality of law” includes a variety of attributes that reflect its essence and specific nature, namely: accessibility, clarity, predictability and a sufficiently clear determination of discretionary powers delegated to the authorities and the manner, in which such discretionary powers are exercised.

Therefore, the law shall meet these requirements. Firstly, *law shall be adequately accessible*. Accessibility means that such law shall be made known to everyone whose behaviour, rights and obligations it regulates. Such accessibility, in turn, operates as a guide to legal behaviour and its consequences. The availability of law is always linked to its official promulgation, when a person is provided the opportunity to become aware of the provisions contained therein and to develop orientation as to what legal provision is applicable in specific circumstances.

In elucidating the substance of this category, the ECHR assumes that “law” shall be appropriately accessible: any citizen shall be able to obtain adequate information on the circumstances of the application of the legal provisions in a particular case (*ECHR, Case Poltoratskiy v. Ukraine, 2003*). Secondly, *law shall meet the quality requirement, that is, be clear and predictable*.

Consistent with the long-lasting case law of the ECHR, law shall be worded with sufficient clarity (precision) to enable a person to regulate their behaviour. In the case *Steel and Others v. the United Kingdom*, the ECHR noted that all rights, whether written or unwritten, shall be sufficiently clear so that a person, where reasonably necessary, could reasonably anticipate, whether independently or with an appropriate legal assistance, the consequences of any action taken by such person (*ECHR, Case Steel and Others v. the United Kingdom, 1998*).

The interpretation and application of national law constitutes the prerogative of the national

authorities. However, the Court is required to ensure that the manner, in which national law is interpreted and applied, results in the consequences that are consistent with the principles of the Convention in terms of their interpretation in the light of the Court’s case-law (award in *Case ECHR of Serkov v. Ukraine, 2011*).

It should be noted that whenever the ECHR finds that national law does not meet the requirements of “quality of law,” it will find a violation without analysing compliance with other laws and without resorting to the analysis of other criteria for the legality of interference with the right to property.

The second element of the three-component test, compliance with which is verified by the ECHR, is the legitimate purpose of interference.

Thus, interference with the right to property is permissible only to the extent it is made in order to safeguard public interest. The ECHR does not provide a definition of public interest or an exhaustive list of public interests, for which the state may restrict the right to property, and only suggests a general approach, noting that the concept of “public interest” has to be interpreted in necessarily broad terms, thereby giving states the right to exercise a “considerable freedom (extent) of discretion.” Thus, the ECHR has repeatedly stated in its judgements that the concept of “public interest” is necessarily subject to a broad interpretation. Therefore, the wide extent of discretion afforded to legislators for social and economic policies and based on sound reasoning is deemed natural.

The Court makes a distinction between the public (general) interest and the interest of the state, pointing to the possibility of differences and even contradictions between the two. The government may take unpopular decisions, but they have to be sufficiently substantiated and reflect the real needs of social development, i.e. meet the criteria of proportionality and be a proper means of addressing a specific problem (Novikov, 2016).

Considering the understanding of society’s problems, national authorities are in a better position to assess “public interest” than any supranational body. Therefore, it is the responsibility of the national authorities to initially assess the existence of a problem of public interest and justify interference with the right to property. Thus, in the research area covered by the Convention’s safeguards, the

national authorities are given certain discretionary powers.

The ECHR recognises that proper application of law itself is clearly a “public interest” (*ECHR, Case Tregubenko v. Ukraine, 2004*).

In its decisions, the ECHR emphasises that, despite the fact that states are given wide discretion when resolving on whether to interfere with the right to property of individuals and legal entities subject to a legitimate purpose in public interest, failure to strike a fair balance between the exigencies of public interest and the need to respect the fundamental rights of the person who is affected by such interference in one way or another will be considered a violation of Article 1 of Protocol No. 1. The search for such fair balance runs throughout the Convention.

Such fair balance seems important and necessary for the state to ensure preconditions for exercising a democratic regime of government, since it is precisely such levers and counterbalances to the state’s power that protect the property owner from the unjustified influence of the state on their rights.

The Court has repeatedly emphasised that the issue of proportionality, the importance of which is difficult to overestimate, is key to determining such fair balance between the interests of the state and those of the individual. The principle of proportionality is a general, universal principle of law that mandates a commensurate restriction of human rights and freedoms for the attainment of public ends. The principle of proportionality is closely linked to the rule of law. The rule of law is the foundation, on which the principle of proportionality is based. Instead, the principle of proportionality is both a precondition for the implementation of the rule of law and its necessary consequence (Pogrebnyak, 2008).

Such balance should not be construed as a necessity to necessarily achieve “social justice” in each particular case. The state shall ensure a reasonable proportion between the means used and the purpose to be achieved; otherwise such measure should be abolished.

When analysing the appropriateness of an interference with the right to property, the ECHR takes into account the following factors: (a) the proportionality of the measures taken by the state to the objective to be achieved; b) whether the person is subjected to excessive burden as a result of the actions by the state; c) whether the

means used by the state are unjustified or unfounded (Syusyel, 2015).

It is worth noting that the issue of the proportionality of the constraints to the purpose stated is estimative in nature and is determined in each case with reference to the actual circumstances at hand. In assessing proportionality, it should be determined whether it is possible to achieve a legitimate objective through measures that would be less burdensome on the rights and freedoms of the person affected. From this, it may be derived that the restrictions should not be excessive or greater than is necessary to achieve such objective (Maidanyk, 2015). In deciding whether this requirement was met, the Court recognises that the state enjoys a wide extent of discretion both in the choice of method of action and in determining whether the consequences of taking relevant measures are justified with regard to the general interest in achieving the objective of the law in question. However, the Court cannot fail to exercise its powers of review and shall determine whether the necessary balance was maintained in a manner compatible with the applicant’s right to “peaceful enjoyment of [their] property” within the meaning of the first sentence of Article 1 of Protocol No. 1 (see judgement in *Case ECHR of Ukraine-Tyumen v. Ukraine, 2007*).

Therefore, the principle of proportionality allows for the possibility of encumbrance of the subjective right of a person by the authorities not in the form of any restrictions whatsoever, but only such restrictions, which do not constitute a significant individual burden, to the extent that such influence transforms the title of the owner or a different legal right into a benefit that is disadvantageous to its holder. The principle of proportionality allows for the restrictions that do not interfere with the exercise of legal civil law and enables it to be exercised in alignment with public interest and the rights of other persons (Michurin, 2009).

One of the important components of compliance with the principle of proportionality in the interference with the right to peaceful enjoyment of property is the provision of fair and justified compensation, despite the fact that the provisions of Article 1 of Protocol No. 1 do not contain a clear requirement to that effect. Expropriation of property without an appropriate compensation is only possible in exceptional cases. The Court considers that the compensation shall be reasonably related to the value of the property and not necessarily correspond to the market value of the forfeited property.

Another form of interference with the right to property of individuals and legal entities by the state, which is provided by the provisions of Article 1 of Protocol No. 1, is the control over the use of property. For the purposes of the Convention, the control of the use of property means all measures that may in any way partially affect the content of the right to property. However, when defining “regulatory measures” or “control measures” with reference to the use of property, the essential difficulties consist in establishing the difference between expropriation of property and a purely regulatory impact on property relations (Fuley, Hembach, 2011).

Article 1 of Protocol No. 1 indicates the existence of two types of control over the use of property:

1) control over the use of property in line with general interests; 2) control over the use of property to secure the payment of taxes or other dues or penalties.

Each of these types of control is applied by the state solely on a temporarily basis, i.e. in order to achieve a specific intermediate result and in alignment with the requirements of the legality of interference.

In its conventional sense, control over the use of property does not involve the transfer of property or the right to such property, but concerns the sovereign powers of the state to regulate property relations. In such circumstances, the owner retains their property, but may be restricted from using it.

Neither Protocol No. 1 to the Convention, nor the Court provides a definition of general or public interest. The Court refers to the conformity of any measures aimed at restricting the peaceful enjoyment of property to general interest. The boundary between general interest and public interest is rather conditional. There is no clear indication of the need to invoke general or public interest to determine the legality of interference with the peaceful enjoyment of property (Romanyuk, Maistrenko, 2014).

If we rely on an immediate understanding of the phrase “general interest,” this requirement may be described as more abstract in understanding the limits of state interference with the right to property compared to expropriation. Control is therefore a more accessible method of interfering with property rights, both in general and, in part, in the form of the use of property by persons. Control over the use of property supports the

state’s proper discharge of its fiscal function in general interest.

For the purposes of determination of the relationship between “general interest” and “public interest,” it should be noted that, in its judgement in *James and Others v. The United Kingdom* dated February 21, 1986, the Court stated that even if there were a difference between the concepts of “interests of society” and “general interests” in Article 1 of Protocol No. 1, in terms of that specific case, there was no fundamental difference between both terms (*ECHR, Case James and Others v. the United Kingdom, 1986*).

As the Court has repeatedly emphasised, the existence of “public interests,” their objectives and the extent of interference (control over) with the exercise of the right of private owners required to achieve such objectives are determined by each state individually. The Court proceeds from the fact that the purpose of such interest exists and it has the right to investigate it for compliance with the results achieved and the reasonableness (proportionality) of interference with the right to property of owners.

The issue of the proportionality of measures taken by the state to control the use of property of private owners has repeatedly been the subject of consideration of the ECHR. For example, the Court has considered several cases, in which homeowners complained about the state’s control over the use of their property, alleging that such homeowners could not enforce the evictions of the occupiers who rented relevant premises. The Court made different resolutions in each of such cases: in the case *Spadea and Scalabrino v. Italy*, the Court found that the applicants had not been able to prove their need to live in the dwelling in question, which was rented by needy elderly women at the time. Those women appealed to the municipal authorities to provide them with another accommodation, which would be cheaper to rent. This case involved no violation of Article 1 of Protocol No. 1 (*ECHR, Case Spadea and Scalabrino v. Italy, 1995*). However, in another case, *Scollo v. Italy*, a violation of this provision occurred insofar as the applicant had supported his disability and the need for them and their family to reside in relevant premises with documentary evidence (*ECHR, Case Scollo v. Italy, 1995*).

In cases involving Ukraine, the issue of existence of fair and proportionate control over property is most often raised in connection with

consideration of disputes related to pension benefits. As a relevant example, the case *Velikoda v. Ukraine* may be quoted, in which the applicant with a special status of category one liquidator of the aftermath of the Chernobyl disaster and a third group disability appealed to the ECHR and complained about the decrease of the level of her pension benefits on the basis of new changes to applicable legislation.

One of the defining elements in regulating social relations in the social area is respecting the principle of proportionality between social protection of citizens and the financial capacity of the state, as well as guaranteeing the right of everyone to a sufficient standard of living. Therefore, changes to the mechanism for accrual of certain types of social benefits and assistance are constitutionally permissible to the limits, beyond which the very essence of the content of the right to social protection is called into question.

In the said case, the national courts considered the applicant's complaint concerning the reduction of her pension benefits and concluded that the amount of her pension payments had been reduced after the amendments to relevant legislation. The Court found that such reduction of the applicant's pension had apparently been due to considerations of economic policies and financial difficulties faced by the state. In the absence of any evidence to the contrary and recognising that the defendant state has a wide extent of discretion in striking a balance between the rights at issue and its economic policies, the Court did not consider that such reduction was disproportionate to the legitimate objective pursued or placed an undue burden on the applicant. The Court ruled that the application were to be declared inadmissible as being manifestly ill-founded pursuant to Sub-paragraph "a" of Paragraph 3 and Paragraph 4 of Article 35 of the Convention (*ECHR, Decision Velikoda v. Ukraine, 2014*).

It is worth noting that the ECHR had experience of the consideration of cases where both the unlawful control and expropriation of property were found simultaneously. Thus, in the case *Seryavin and Others v. Ukraine*, the applicants, citing Article 1 of Protocol No. 1, complained that, by entering into an investment contract for the reconstruction of the attic and the construction of attic floor in the applicants' building without their consent, the local authorities illegally interfered with their right to own the attic of the building and illegally expropriated the applicants' shares in the attic as

a result of a district council's resolution on the transfer of relevant premises to investors. In support of their arguments, the applicants, *inter alia*, provided a number of resolutions adopted by national courts in other unrelated cases, where the courts found similar unilateral actions by the authorities associated with the reconstruction of ancillary premises in apartment buildings without the consent of apartment owners to be unlawful.

Following the consideration of the said application, the Court held that, as a result of the execution of the investment contract for the reconstruction of the attic premises without the applicants' consent by the government, a violation of Article 1 of Protocol No. 1 to the Convention occurred (i.e. an unlawful control over property), as well as a violation of Article 1 of Protocol No. 1 to the Convention as a result of the expropriation of such attic premises from the applicants (*ECHR, Case Seryavin and Others v. Ukraine, 2011*).

Article 1 of Protocol No. 1 also raises the issue of taxation. The Court had to admit that taxation is the prerogative of the state and is of a public law nature. At the same time, tax collection and related relations constitute an interference with the right to peaceful enjoyment of property. In doing so, the Court recognises that states have the right to adopt any fiscal law they deem appropriate if the measures taken do not amount to unlawful confiscation. In determining whether that requirement is fulfilled, the Court recognises that states have a wide extent of discretion in the development and implementation of fiscal policies, and that the Court will respect the lawmakers' judgement in such matters except where it is devoid of any reasonable basis (*ECHR, Case National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom, 1997*).

Therefore, states have discretionary powers to control the use of property by enacting laws that, in particular, entitle financial institutions to determine the taxable amounts claimed by the payer. The ability to tax property that is actually owned by the debtor, but is nominally the property of a third party is used to strengthen the position of creditors in the process of its implementation and is consistent with Article 1 of Protocol No. 1 to the Convention (Dudash, 2014). Control over the use of property may be exercised through the regulation of lease relations, regulation of international business transactions, etc.

In the course of inquiry into the issue of the legality of the control over the use of right to property, the judgement of the ECHR in the case *Shchokin v. Ukraine* dated October 10, 2010 merits special consideration. The applicant alleged, *inter alia*, that his property rights had been violated as a result of the unlawful imposition of additional income tax obligations on the applicant by public authorities. In spite of the fact that public authorities are given a wide extent of discretion in imposing taxes, the Court found that a violation of Article 1 of Protocol No. 1 occurred.

Thus, the Court held that the lack of the necessary clarity and precision in national law, which gave room to different interpretations of such an important financial matter, violated the “quality of law” requirement of the Convention and did not provide an adequate protection against arbitrary interference with the applicant’s property matters by public authorities. Moreover, due to ambiguity in the interpretation of taxpayers’ rights and obligations, the national authorities “opted for the less favourable interpretation of the domestic law which resulted in the increase in the applicant’s income tax liability” (*ECHR, Case Shchokin v. Ukraine, 2010*).

However, in some cases, despite the fact that the case concerned tax matters, the Court applied the first rule of Article 1 of Protocol No. 1 to the interference complained of by the applicant. For instance, the case *Intersplav v. Ukraine* concerned the denial of the tax authorities to grant consent to the refund of VAT on products dispatched for export, which, in the applicant’s view, constituted an interference with the peaceful enjoyment of its property, and such interference was disproportionate and led to significant losses in the applicant’s business. The applicant successfully appealed against such systematic denials to court, but VAT compensation to the applicant was systematically delayed. Such delays were caused by a situation, where the public authorities did not confirm relevant amounts without actually denying the amount of VAT compensation due to the applicant. In such circumstances, the Court found a violation of the first provision of Article 1 of Protocol No. 1 (*ECHR, Case Intersplav v. Ukraine, 2007*).

Therefore, the right to property may not be restricted for any purpose other than public (general) interests. However, the provisions of Article 1 of Protocol No. 1, as well as the case law of the ECHR, grants states a wide extent of

discretion to determine what is in public (general) interest and, as a rule, it is sufficient for the state concerned to support such interference with the right to property with the existence of a positive economic effect. This may be explained by the international nature of the Court and the Convention, which do not aim to create a uniform regime of property regulation across the member states and do not require the states to pursue similar social and economic policies (Fuley, Hembach, 2011).

## Conclusions

On the basis of the conducted research, we have drawn the below conclusions. Given the specific attributes of the legal nature of the right to property, there is a need to ensure its effective legal regulation by the state. However, in certain circumstances, such right may be subject to restriction and interference.

In order to determine the legality and permissibility of such interference with the right to property, it is necessary to consistently evaluate the presence/absence of such criteria as legality, legitimate purpose, and proportionality. As a criterion for interference with the right to property of any person, legality implies that such interference may only be made within and on the basis of law, in compliance with the principle of rule of law, which includes freedom from arbitrariness. Interference may not be based solely on domestic law, but such law itself shall meet certain quality requirements, specifically: be adequately accessible, clear, and predictable. In case an inconsistency between national law and quality of law requirements is identified, a violation is acknowledged without resorting to the analysis of other criteria of the legality of interference with the right to property.

Interference with the right to property is permissible insofar as it has a legitimate purpose and is made in order to meet public interest. However, it is the correct application of law in itself that, undoubtedly, serves public interest. Therefore, responsibility for the initial assessment of the existence of a problem of public concern and substantiation of any interference with the right to property rests with the national authorities.

Although states have a wide extent of discretion in resolving whether to interfere with the right to property of individuals and legal entities for a legitimate purpose of public interest, failure to ensure a fair balance (proportion) between the exigencies of public interest and the need to

respect the fundamental rights of the person who is affected by such interference in one way or another (proportionality of interference) for the sake of attainment of public ends will be considered a violation. One of the important components of adhering to the principle of proportionality in the interference with the right to peaceful enjoyment of property is the provision of fair and reasonable compensation, which must be reasonably related to the value of the property and not necessarily consistent with the market value of the forfeited property.

In its conventional sense, control over the use of property, as a form of interference with the right to property, does not involve the transfer of property or the right to such property, but concerns the sovereign powers of the state to regulate property relations in line with general interests or to secure the payment of taxes or other dues or penalties.

Each of these types of control is applied by the state solely on a temporarily basis, i.e. in order to achieve a specific intermediate result and in alignment with the requirements of the legality of the relevant interference.

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