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Public interest as a concept that determines the scope of property rights protection – case – law of the European Court of Human Rights on austerity measures

Interes publiczny jako koncepcja determinująca zakres ochrony praw własności – na przykładzie orzecznictwa Europejskiego Trybunału Praw Człowieka w sprawach dotyczących działań oszczędnościowych

Abstract: During times of systemic political and economic transformation, crises and pandemics, public authorities tend to prioritise the "public interest" over potential individual interests when implementing different types of policies. In the European legal area, the restriction of rights and freedoms is subject to limitations resulting from the European Convention on Human Rights. The extent to which States may invoke the public interest in order to implement specific social and economic policies has been repeatedly examined by the ECtHR, but special attention should be paid to austerity measures – government policies designed to reduce budget deficits during times of economic hardship. The article examines how the Court considered the individual applications resulting from austerity measures and concludes that in these cases, the Court defined "public interest" for the first time solely from the perspective of the economic interests of the respondent governments. Although this conclusion may seem pessimistic for human rights, the Court's approach undoubtedly reflects the need to introduce certain necessary government policies despite their deeply interfering character. It closely aligns with the original concept of property rights enshrined in the Convention, that of

a "social conception of property" which enables the pursuit of social policies in the general interest. The article concludes that the Court's rulings could be reasoned more persuasively in order to convince to their righteousness broad target audience – not only governments, but also other individuals and societies.

Keywords: European Convention on Human Rights, European Court of Human Rights, austerity measures, public interest, protection of property rights

Abstrakt: W czasach systemowych transformacji politycznych i gospodarczych, kryzysów i pandemii, władze publiczne, wdrażając różnego rodzaju polityki, mają tendencję do przedkładania „interesu publicznego" nad potencjalne interesy jednostki. W europejskim obszarze prawnym ograniczenie praw i wolności podlega ograniczeniom wynikającym z Europejskiej Konwencji Praw Człowieka. Zakres, w jakim państwa mogą powoływać się na interes publiczny w celu wdrażania określonych polityk społecznych i gospodarczych, był wielokrotnie badany przez ETPC, ale szczególną uwagę należy zwrócić na środki oszczędnościowe – politykę rządową mającą na celu redukcję deficytu budżetowego w okresach trudności gospodarczych. Artykuł analizuje, jak Trybunał rozpatrywał poszczególne skargi wynikające z działań oszczędnościowych i stwierdza, że w tych sprawach Trybunał po raz pierwszy zdefiniował „interes publiczny" wyłącznie z perspektywy interesów ekonomicznych pozwanych rządów. Chociaż wniosek ten może wydawać się pesymistyczny z punktu widzenia praw człowieka, niewątpliwie odzwierciedla on potrzebę wprowadzenia określonych polityk rządowych. Jest on ściśle powiązany z pierwotną koncepcją prawa własności zawartą w Konwencji, czyli "społeczną koncepcją własności", która umożliwia realizację polityk społecznych w interesie ogólnym. Artykuł podkreśla, że decyzje Trybunału wymagają bardziej przekonującego uzasadnienia poprzez odwołanie do koncepcji własności przyjętej w Konwencji.

Słowa kluczowe: Europejska Konwencja Praw Człowieka, Europejski Trybunał Praw Człowieka, środki oszczędnościowe, interes publiczny, ochrona prawa własności

1. Introduction: The term "public interest" and the European Convention on Human Rights

In the general social and legal debates, appeals to the public interest in law are commonplace, though they are typically made without clarifying how the public interest should be understood and how it can be identified.[1] The appeals have intensified in connection with the economic crisis in the 2000s, the COVID-19 pandemic and the aggression against Ukraine. These events necessitated the implementation of legislative instruments, which often interfered quite strongly with certain individual rights and freedoms, citing the need to pursue a generally defined public interest.

The concept of public interest has been introduced into the European Convention on Human Rights (ECHR or "the Convention") in several ways and has become one of the three elements of the classic triad by which the European Court of Human Rights (ECtHR or "the Court") assesses interference with the rights and freedoms of individuals: the condition of legality, public interest and proportionality. And although the concept has not been precisely defined in the text of the Convention, it has been broadly interpreted by the Court and as will be demonstrated below, has a direct impact on the rulings.[2]

First of all, Articles 8–11 of the Convention enumerate different "legitimate purposes" which may justify a State's interference in the rights and freedoms of entitled persons: public safety, protection of the rights and freedoms of others, protection of reputation of others, protection of health or morals, national security, prevention of disorder or crime, protection of public order, economic well-being of the country, territorial integrity, preventing the disclosure of information received in confidence and maintenance of the "authority and impartiality of the judiciary". The possible exceptions to rights and freedoms guaranteed in Articles 8–11 are difficult to categorise since they are capable of operating in a variety of ways depending on context. Due to the constant development of the Court's jurisprudence, it would currently be very difficult to draw sharp boundaries and divide the aims into two classic categories: those which concern "public interests", that is, the general interests of the state and

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1 E.R. Boot, *The Public Interest: Clarifying a Legal Concept*, "Ratio Juris" 2024, no. 37, p. 110.

2 A. McHarg, *Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights*, "The Modern Law Review" 1999, vol. 62 no. 5, p. 684.

society, and those which concern "private interests", in the sense that they are capable of benefiting distinct groups or individuals.[3]

A very good example for this lack of a clear division is the Court's attitude in cases concerning medically assisted procreation. There, the Court defined the public interest allowing States to restrict available artificial procreation techniques by referring to the legitimate aim of the "protection of the rights of others" – defined as the children that would be born as a result of medically assisted procreation and the women in potentially vulnerable situations (entering into surrogacy arrangements for financial reasons).[4] According to the classic division into public and private interests, the need to protect those groups would be classified as private interests because they embrace a distinct group of individuals. However, in cases on medically assisted procreation the Court embraces the interests of those groups with the notion of the public interest.[5] Therefore, although the notion of "public interest" is not explicitly mentioned in Articles 8–11 of the Convention, the various specific "legitimate aims" can be regarded as identical to the public interest, seen as a general statement of how to justify situations when the protection of individuals' interests or choices is overridden by considerations of collective utility.[6]

Secondly, the need to protect the public interest is reflected in Article 15 as a premise for suspending the rights guaranteed in the Convention in "time of war or other public emergency threatening the life of the nation", provided that it is "strictly required by the exigencies of the situation".[7] Here, again, although

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[3] This kind of division has been proposed e.g. by Steven Greer (S. Greer, *The Exceptions to Articles 8 to 11 of the European Convention on Human Rights*, Council of Europe Publishing, Strasbourg 1997, p. 18.

[4] Here, the Court argues to convince its audience of the decision by analysing the socially unfavourable phenomena which may occur. The interests of the two groups of individuals are treated as the designator of the legitimate public interest. See judgment of the European Court of Human Rights of 3 November 2011, 57813/00, *H.S. and Others v. Austria*, paras 66, 101, 104, 105 and 113, LEX 1001122; judgment of the European Court of Human Rights of 26 June 2014, 65192/11, *Mennesson v. France*, para. 72, LEX 1624604; judgment of the European Court of Human Rights of 24 January 2017, 25358/12, *Paradisso and Campanelli v. Italy*, para. 163, LEX 2192506.

[5] A. Mężykowska, A. Młynarska-Sobaczewska, *Persuasion and Legal Reasoning in ECtHR Rulings: Balancing Impossible Demands*, Routledge, London 2023, p. 89 ff.

[6] A. McHarg, *Reconciling Human Rights*…, p. 671–72 and 674–78.

[7] "Article 15 – Derogation in time of emergency:
1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary

the underlying justification is clearly the "public" or "national" interest, the text does not make this explicit.

Thirdly, the term "public interest"is used explicitly to justify interference with two rights: peaceful enjoyment of possessions (Article 1 of Protocol No. 1) and liberty of movement and freedom to choose residence (Article 2(1) and (4) of Protocol No. 4). According to Article 1 of Protocol No. 1,[8] the deprivation of property is conditional on a demonstration of a "public interest" and other conditions provided for by law and by the general principles of international law. Controlling the use of property is conditional upon proof of the existence of a "general interest". In turn, Article 2(3) of Protocol No. 4[9] introduces the possibility of limiting the freedom of movement in order to protect such interests as "national security", "maintenance of order public", "prevention of crime", "protection of health and morals" and "protection of the rights and freedoms of others". The notion of "public interest" is introduced in Article 2(4), and its test applies only to restrictions on the rights to freedom of movement and freedom to choose one's residence, set out in Article 2(1) of Protocol No. 4 and applying "in particular areas" within a State's territory[10]

General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

[8] "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."

[9] "Article 2 of Protocol No. 4 – Freedom of movement:
1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

[10] Explanatory Report to Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, Strasbourg, 16 November 1963, § 18; Guide on Article 2 of Protocol No. 4 to the European Convention on Human Rights, Freedom of Movement, p. 50, https://ks.echr.coe.int/web/echr-ks/article-2-protocol-4 [access: 22.09.2025].

As it is demonstrated above, the types of "general good" that permit a State to interfere with the rights and freedoms protected by the Convention are directly indicated, relative to the Convention as a whole – except for the provision which protects property rights and, to a very limited extent, freedom of movement – where the generic notions of "public" and "general" interests are used. The general nature of such terms and the fact that they do not exist in many legal systems or do not have fixed or clear meaning therein[11] has facilitated the Court's work in interpreting them in an autonomous manner, i.e. not directly in reference to similar concepts used in national legal systems.[12]

The fact that the provision on peaceful enjoyment of possessions (Article 1 of Protocol No. 1) refers to "public" and "general" interests without indicating any defendable reasoning how to differentiate between the clauses is assessed as one of the inconsistencies in the language of the Protocol.[13] And although in *James and Other v. UK*, the Court made it clear that there is no real distinction between the interests and that they should be interpreted broadly, the case law of the ECtHR demonstrates that these terms are used by the Court quite consistently, i.e. the term "public interest" is used in cases concerning deprivation of property,[14] while in cases concerning the control of the use of property, the term "general interest" is used.[15] At the same time, as already said, it would be difficult to identify any differences in the meaning of these terms and the Court when summarising its jurisprudence or making general observations, treats these terms interchangeably by writing about "public (or general) interest".[16]

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[11] T. Allen, *Property and the Human Rights Act 1998*, Hart Publishing, Oxford 2005, p. 29. In Polish law, one of the most important general clauses is the 'public interest' clause, which is constitutional in nature, but similar clauses such as 'social interest' and 'socially justified interest' are also applied. See, A. Żurawik, *„Interes publiczny", „Interes społeczny" i „Interes społecznie uzasadniony". Próba dookreślenia pojęcia* ["Public interest", "Social interest" and "Social justified interest". An attempt to define the concept more precisely], „Ruch Prawniczy, ekonomiczny i socjologiczny" 2013, vol. 75, no. 2, p. 57.

[12] Judgment of the European Court of Human Rights of 21 February 1986, 8793/79, *James and Others v. the United Kingdom*, para. 45, LEX 81009, par. 42.

[13] T. Allen., *Property…*, p. 29.

[14] Judgment of the European Court of Human Rights of 30 June 2005, 46720/99, 72203/01 and 72552/01, *Jahn and Others v. Germany*, paras 88 and 91–92, LEX 154350; judgment of the European Court of Human Rights of 27 November 2007, 74258/01, *Urbárska Obec Trenčianske Biskupice v. Slovakia*, paras 104, 112–15, 120, LEX 318977.

[15] Judgment of the European Court of Human Rights of 19 June 2006, 35014/97, *Hutten-Czapska v. Poland*, 164–65, 224–25, LEX 182154; judgment of the European Court of Human Rights of 2 November 2006, 68479/01, 71351/01 and 71352/01, *Radovici and Stanescu v. Rumania*, paras 73, 75 and 88, LEX 266611; judgment of the European Court of Human Rights of 24 June 2008, 303/04, *Borenstein v. Poland*, point 3, p. 10.

[16] Judgment of the European Court of Human Rights of 22 June 2004, 31443/96, *Broniowski v. Poland*, paras 147–48; judgment of the European Court of Human Rights of 19 June 2006, 35014/97, *Hutten-Czapska v. Poland*, paras 163–64.

The list of legitimate purposes for deprivation of property or any other interference with this right identified by the Court to date is not exhaustive, in the meaning that it may include various new purposes. The Court has already found that it will respect the legislature's decision as to what is "in the public interest", unless that judgment is manifestly without reasonable foundation.[17] The following purposes have been found by the Court to fall within the notion of public interest under the meaning of this provision:[18] eliminating social injustice in the housing sector[19] (although the Court emphasised that the financial burden of transforming and reforming a country's housing supply should not be placed on one particular social group, regardless of how important the interests of other groups or the community as a whole may be[20]); combating the effects of a foreign-currency loan crisis, particularly in the context of preventing mass homelessness;[21] nationalising specific industries;[22] adopting land and city development plans;[23] securing land in order to implement a local land development plan;[24] preventing tax evasion;[25] implementing measures to restrict the consumption of alcohol;[26]

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[17] Judgment of the European Court of Human Rights of 13 December 2016, 53080/13, *Béláné Nagy v. Hungary*, para. 113.

[18] Guide on Article 1 of Protocol No. 1 – Protection of Property, 27 ff, https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc [access: 22.09.2025].

[19] Judgment of the European Court of Human Rights of 21 February 1986, 8793/79, *James and Others v. the United Kingdom*, para. 45, LEX 81009; judgment of the European Court of Human Rights of 21 January 2021, 43326/13, *Grozdanić and Gršković-Grozdanić v. Croatia*, paras 102–03 and 113, LEX 3113324.

[20] Judgment of the European Court of Human Rights of 19 June 2006, 35014/97, *Hutten-Czapska v. Poland*, para. 225.

[21] Judgment of the European Court of Human Rights of 17 December 2020, 73303/14, *Béla Németh v. Hungary*, paras 42–45, LEX 3093842.

[22] Judgment of the European Court of Human Rights of 8 July 1986, 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81, *Lithgow and Others v. the United Kingdom*, paras 9 and 109, LEX 81013.

[23] Judgment of the European Court of Human Rights of 23 September 1982, 7151/75 and 7152/75, *Sporrong and Lönnroth v. Sweden*, para. 69, LEX 80830; judgment of the European Court of Human Rights of 2 August 2001, 23529/94, *Cooperativa La Laurentina v. Italy*, para. 94, LEX 863179.

[24] Judgment of the European Court of Human Rights of 14 November 2006, 52589/99, *Skibińscy v. Poland*, para. 86, LEX 199003.

[25] Judgment of the European Court of Human Rights of 3 July 1997, 13616/88, *Hentrich v. France*, para. 39, LEX 79631.

[26] Judgment of the European Court of Human Rights of 7 July 1989, 10873/84, *Tre Traktörer AB v. Sweden*, para. 62, LEX 81085.

transitioning from a socialist to a free-market economy;[27] protecting the environment;[28] and enacting laws which expropriate property.[29]

In considering applications related to property rights, the Court has stated that the notion of "public interest" must necessarily be extensive.[30] The Court usually demonstrates deference to the Contracting States' arguments that the interference under examination was in the public interest, and its review in this regard is generally lenient. Therefore, an applicant's argument that a given measure actually served a different purpose to that relied upon by the defendant government in a given case, or that the measure did not serve any public purpose, is unlikely to be successful. In some cases, the Court also found that the interference served a purpose other than the public interest claimed by the government during the proceedings, or identified the real purpose itself.[31] Due to this deference to the appraisal of domestic authorities, instances where the Court found no public interest justifying the interference are rare and tend to concern individual cases rather than systemic situations.[32]

The Convention's status as a living instrument means that the concept of public interest evolves and changes.

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[27] Judgment of the European Court of Human Rights of 11 December 2018, 36480/07, *Lekić v. Slovenia*, paras 103 and 105.

[28] Judgment of the European Court of Human Rights of 12 December 2000, 50924/99, *Bahia Nova S.A. v. Spain*, LEX 524232; judgment of the European Court of Human Rights of 18 January 2001, 27238/95, *Chapman v. the United Kingdom*, para. 82, LEX 76533.

[29] Judgment of the European Court of Human Rights of 23 November 2000, 25701/94, *Former King of Greece and Others v. Greece*, para. 87, LEX 76700; judgment of the European Court of Human Rights of 25 March 2014, 71243/01, *Vistiņš and Perepjolkins v. Latvia*, para. 106, LEX 1438946.

[30] Judgment of the European Court of Human Rights of 25 March 2014, 71243/01,*Vistiņš and Perepjolkins v. Latvia*, para. 106; judgment of the European Court of Human Rights of 2 July 2013, 41838/11, *R.Sz. v. Hungary*, para. 44, LEX 1327053; judgment of the European Court of Human Rights of 17 April 2012, 31925/08, *Grudić v. Serbia*, para. 75, LEX 1147983.

[31] Judgment of the European Court of Human Rights of 19 October 2000, 31227/96, *Ambruosi v. Italy*, para. 28, LEX 76724; judgment of the European Court of Human Rights of 24 April 2014, 50636/09, *Marija Božić v. Croatia*, para. 58, LEX 1451493.

[32] Judgment of the European Court of Human Rights of 16 April 2002, 36677/97, *S.A. Dangeville v. France*, paras 47 and 53–58, LEX 75646; judgment of the European Court of Human Rights 28 July 2005, 51728/99, *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, LEX 154907.

2. The meaning of the term "public interest" in ECtHR case law on the protection of property rights during times of crisis

Interference with property rights is not unique; it occurs as often as interference with other rights guaranteed under the ECHR. On the other hand, States undoubtedly often become more active in times of political and economic transformations and economic crises, as evidenced in the jurisprudence of the ECtHR. Economic crises happen cyclically and always have a number of negative consequences in many areas of the State's functioning. The main effects of the austerity measures and intervention policies implemented by the State, either on its own initiative or as a result of agreements with international institutions, have already been described and analysed in the context of both the disruption to market economy mechanisms and the negative impacts on society.[33] From a human rights perspective, the issue is primarily about rising unemployment and growing social inequalities, including the deterioration of the lives of vulnerable groups such as prisoners, migrants, asylum seekers and ethnic minorities,[34] or even the collapse of the welfare state.[35]

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[33] J.R. Cuadrado-Roura, R. Martin, A. Rodríguez-Pose, *The Economic Crisis in Europe: Urban and Regional Consequences*, "Cambridge Journal of Regions, Economy and Society" 2016, vol. 9, no. 1, p. 3–11, https://doi.org/10.1093/cjres/rsv036; R.C. Altman, *Globalization in Retreat: Further Geopolitical Consequences of the Financial Crisis*, "Foreign Affairs" 2009, vol. 88, no. 2, p. 2–7; D. Koufopoulos, *Austerity Measures at the European Court of Human Rights: Can the Court Establish a Minimum of Welfare Provisions?*, European Public Law 2019, vol. 25, no. 4, p. 535–558.

[34] The descriptor "vulnerable" was used in relation to those groups by Dien Spielman (D. Spielman, *Dialogue between Judges 2013: Implementing the European Convention on Human Rights in Times of Economic Crisis*, Council of Europe, Strasbourg 2013, p. 5, https://www.echr.coe.int/documents/d/echr/Dialogue_2013_ENG [access: 22.09.2025]); S. Charitakis, *Austerity Measures in Greece and the Rights of Persons with Disabilities*, "Cyprus Human Rights Law Review" 2013, vol. 2, no. 2, p. 258–271.

[35] *Protecting Fundamental Rights during the Economic Crisis*, European Union Agency for Fundamental Rights, December 2010, https://fra.europa.eu/sites/default/files/fra_uploads/1423-FRA-Working-paper-FR-during-crisis-Dec10_EN.pdf [access: 22.09.2025]; *The European Union as a Community of Values: Safeguarding Fundamental Rights in Times of Crisis*, European Union Agency for Fundamental Rights, 2013, https://fra.europa.eu/sites/default/files/fra-2013-safeguarding-fundamental-rights-in-crisis_en.pdf [access 22.09.2025]; *The Impact of the Economic Crisis and Austerity Measures on Human Rights in Europe*, Steering Committee for Human Rights, Strasbourg 2015, https://rm.coe.int/1680658602 [access: 22.09.2025]; N. Bruun, K. Lorcher, *The Economic Crisis and Its Effects on Fundamental Social and Collective Labour Rights*, "Cyprus Human Rights Law Review" 2013, vol. 2, no. 2, p. 167–194. For sources arguing in favour of expanding the ECHR protection for the most vulnerable and marginalised groups in face of extraordinary situations like economic crises or pandemics, see F. Tulkens, *The Contribution of the European Convention on Human Rights to the Poverty Issue in Times of Crisis*, "Cyprus Human Rights Review" 2013, no. 2, p. 122 ff.; S. Ganty, *Socioeconomic Precariousness in Times of COVID-19: A Human Rights Quandary under the ECHR*, "Polish Yearbook of International Law" 2020, vol. 40, p. 164 ff.

When it comes to respecting individual rights, states' actions tend to focus on two key areas. Firstly, the authorities provide support to specific groups of individuals, particularly those requiring special protection. In such cases, the issue is not interference with the right to property, but rather the granting of specific benefits to certain individuals. Secondly, when pursuing economic goals such as ensuring the sustainability of public finances, the authorities often interfere with the property rights of certain groups or entities by limiting their benefits or increasing their public burdens. Such activities have prompted complaints to the ECtHR, which alleged a violation of the right to property under Art. 1 of Protocol No. 1 to the ECHR. The Court assessed the compliance of states' countermeasures for the effects of the economic crisis in three main areas, although this list is not exhaustive.[36]

Firstly, the Court received complaints about reduced public-sector wages and benefits which reduced public spending. Complaints were also made about the introduction of additional tax burdens. Finally, there were complaints about state interference in applicants' real estate assets as part of interventions in the banking system and financial markets.

The first group of complaints, concerning reductions in wages and benefits of public-sector jobs, alleged infringement of property rights in circumstances such as the following:[37]

- *Koufaki and Adedy v. Greece*, concerning the reduction of public-sector wages in 2010 by 12% to 30%, with retroactive effect, further reductions by an additional 8% later that year and the reduction of holiday and Christmas allowances for higher-earning public-sector employees[38]
- *Da Conceição Mateus and Santos Januário v. Portugal*, concerning the reduction in 2012 of holiday and Christmas allowances payable to certain categories of public-sector pensioners with monthly pensions higher than EUR 600 and the complete suspension of these allowances for pensioners with monthly pensions higher than EUR 1,100,

[36] A. Dimopoulos, A. Sotiris, *A Comparative Examination of Human Rights in the Age of Austerity in the UK and Greece: The Need for an Integrated Approach in European Human Rights Law*, "Cyprus Human Rights Law Review" 2013, vol. 2, no. 2, p. 195–225.

[37] The adoption of measures, being the source of the complaint in one of the first cases concerning austerity measures – *Savickas v. Lithuania* – was related to the existence of the "particularly difficult economic and financial situation in Lithuania" in 1999. The measures consisted in the temporary reduction of judges' salaries (judgment of the European Court of Human Rights of 15 October 2013, 66365/09, *Savickas and Others v. Lithuania and 5 Other Applications*, LEX 1383387).

[38] Judgment of the European Court of Human Rights of 7 May 2013, 57665/12 and 57657/12, *Koufaki and Adedy v. Greece*, LEX 1314272.

leading to an almost 11% reduction in pension payments for the two applicants[39]

- *Valkov and Others v. Bulgaria*, concerning the introduction of maximum amount of pensions[40]
- *Mockienè v. Lithuania*, concerning the reduction of public servants' pensions[41]
- *Aielli and Others* and *Arboit and Others v. Italy*, concerning the recalculation of retirement benefits which reduced them for some beneficiaries entitled to them[42]
- *Frimu and Others v. Romania*, concerning the abolishment of a number of special pension regimes applicable to particular categories of retired public-sector employees in 2010, which resulted in a 70% reduction in the pensions of the five applicants[43]
- *Mihăieş and Senteş v. Romania*, concerning a 25% reduction in public-sector wages for six months in 2010, which was done to balance the state budget.[44]

The Court resolved all the cases by ruling that there had been no violation of the applicants' rights. Contrary to the applicants' submissions, it found that the States' actions constituted interference with the right to the peaceful enjoyment of possessions, rather than a deprivation of property, which was justified by public concerns.[45] The Court based its approval of state actions on two fundamental assumptions. Firstly, it recognised that the authorities of some countries operated in exceptional, extreme economic conditions and were acting in the public interest and in this context, it was essential to establish

[39] Judgment of the European Court of Human Rights of 8 October 2013, 62235/12 and 57725/12, *Da Conceiçă Mateus and Santos Januário v. Portugal*, LEX 1383186.

[40] Judgment of the European Court of Human Rights of 25 October 2011, 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, *Valkov and Others v. Bulgaria*, LEX 1001014.

[41] Judgment of the European Court of Human Rights of 4 July 2017, 75916/13, *Mockienè v. Lithuania*, LEX 2327845.

[42] Judgment of the European Court of Human Rights of 10 July 2018, 27166/18 and 27167/18, *Aielli and Others v. Italy* and *Arboit and Others v. Italy*, LEX 2602720.

[43] Judgment of the European Court of Human Rights of 7 February 2012, 45312/11, *Frimu and Others v. Romania and 4 Others*, para. 5, LEX 1117626. The case was examined under Article 6 in regard to the fairness of the court proceedings and the alleged unequal treatment. Therefore, the applications are not discussed further.

[44] Judgment of the European Court of Human Rights of 6 December 2011, 44232/11 and 44605/11, *Mihăieş and Senteş v. Romania*, para. 8, LEX 1101154.

[45] E.g. judgment of the European Court of Human Rights of 7 May 2013, 57665/12 and 57657/12, *Koufaki and Adedy v. Greece*, para. 34.

which values are encompassed by the concept of the public interest and therefore require protection. As established by jurisprudence, the notion is very broad. The Court, particularly in decisions relating to restitution cases, has repeatedly found that states have considerable discretion in this area because the balance of expenditure and income is subject to political, economic and social considerations. Therefore, the Court accepts States' decisions as long as they are not clearly unreasonable.[46]

In the rulings issued in connection with State's austerity measures, this public interest was defined in a variety of ways. In *Valkov and Others*, the Court pointed out that the maximum amount of pensions was fixed as part of an overall reform of the social security system, which in turn was part of the process of transitioning from a centrally planned economy to private ownership and a market economy.[47] The general interest, thus defined as necessary, was the economic transformation.

Interestingly, in *Koufaki and Others*, the complainants argued that the notion of public interest cannot be equated with the interests of the State treasury, that is, eliminating the budget deficit and ensuring the sustainability of public finances.[48] The Court did not share this opinion. It considered that the contested measures were justified by an exceptional financial crisis that was unprecedented in the modern history of Greece. The crisis threatened the State's creditworthiness and solvency, and it posed a serious threat to the nation's economy.[49] The actions taken were part of structural reforms and had precisely defined goals and timetables. Moreover, not only were the efforts to save the domestic economy carried out in the national public interest, but they were also consistent with the objectives of other EU Member States to ensure budgetary discipline and to preserve the stability of the Euro area.[50] The need to save the Greek economy and protect the stability of the Euro area has thus become a public interest.

In *Conceição Mateus and Januário v. Portugal*, the objective of the measures was to "provide the State budget with the necessary short-term liquidity" with

[46] E.g. ibidem, para. 39. For a discussion of the Court's case law on reprivatisation, in which it used the conditionality for exceptional situations, see section 3 of the article.

[47] Judgment of the European Court of Human Rights of 25 October 2011, 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, *Valkov and Others v. Bulgaria*, para. 96.

[48] Judgment of the European Court of Human Rights of 7 May 2013, 57665/12 and 57657/12, *Koufaki and Adedy v. Greece*, para. 23.

[49] Ibidem, para. 37.

[50] Ibidem, para. 38.

a view to "achieving medium-term economic recovery".[51] The Court noted that the cuts were intended to reduce public spending and were part of a broader programme designed by the national authorities and their EU and International Monetary Fund counterparts. The Court described the economic situation in Portugal as "extreme".[52]

In *Aielli and Others* and *Arboit and Others v. Italy*, an extremely difficult economic situation led Italy to take actions in order to guarantee a "balanced budget" and to "maintain control over public expenditure".[53] The Court accepted the objective of "protecting a minimum level of social benefits" and "guaranteeing the viability of the social security system for future generations".[54] Therefore, the possibility of paying social benefits to future generations was considered to prevail over the current interests of the complainants. Similarly, in *Mihăieş and Senteş v. Romania*, protecting the public interest was defined as the need to ensure a balanced budget during an economic crisis.[55]

All the aforementioned objectives, which the Court accepted as being in the public interest, were indicated by the governments or expressed in the decisions of domestic courts. In the majority of these cases, the domestic courts expressed their opinions during the domestic proceedings; in none of the rulings did the Court decide to question these objectives.

The second element on which the Court based its argument in these cases was the interpretation of the principle of proportionality of interference. The actions of the States were not assessed as interfering with the core of the applicants' rights or significantly affecting their livelihood – despite such drastic cuts to wages as those seen in Greece, for instance. Furthermore, the Court consistently sought arguments in favour of classifying the austerity measures as temporary and limited.[56] Another element supporting this argument was

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[51] Judgment of the European Court of Human Rights of 8 October 2013, 62235/12 and 57725/12, *Conceição Mateus and Januário v. Portugal*, para. 25, LEX 1383186.

[52] Ibidem, paras 25–26.

[53] Judgment of the European Court of Human Rights of 10 July 2018, 27166/18 and 27167/18, *Aielli and Others v. Italy* and *Arboit and Others v. Italy*, para. 28.

[54] Ibidem, paras 29 and 31.

[55] Judgment of the European Court of Human Rights of 6 December 2011, 44232/11 and 44605/11, *Mihăieş and Senteş v. Romania*, para. 18.

[56] Some of the measures accepted by the Court have resulted in a temporary reduction of income for certain segments of the population, e.g. in *Mihăieş and Senteş v. Romania* or *Da Conceição Mateus and Santos Januário v. Portugal*; others still have resulted in a permanent or semi-permanent reduction of income for certain segments of the population, e.g. in judgment of the European Court of Human Rights of 7 February 2012, 45312/11, *Frimu and Others v. Romania*, para. 5, and judgment of the European Court of Human Rights of 7 May 2013, 57665/12 and 57657/12, *Koufaki and Adedy v. Greece*.

that the measures were introduced for entire groups of beneficiaries and were not discriminatory.[57]

In terms of interpreting the term "public interest", another group of ECtHR rulings worth discussing is those which concern the introduction of various additional tax burdens. Although the cases concerned tax issues, the Court decided to examine some of them under the first paragraph of Article 1 of Protocol No. 1, subject to the specific rule concerning the payment of taxes contained in Article 1 *in fine*.[58] Consequently, the Court primarily referred to the "public interest" rather than the "general interest" in these cases.

The case *N.M.K. v. Hungary*[59] concerned the unexpectedly high rate of tax which the applicant was assessed on a severance payment for being dismissed after thirty years' service in the public sector. In the applicant's case the overall tax burden amounted to 52% on the entirety of the severance, approximately triple the general personal income tax. The Court, while determining what is in the public interest, stated that the "sense of social justice of the population", in combination with the interest to "protect the public purse and to distribute the public burden" satisfied the Convention requirement of a legitimate aim.[60] In the ruling, the Court additionally pointed to other elements defining the public objectives relevant to the case, such as protecting the public purse against excessive severances,[61] the interest of the State budget at a time of economic hardship[62] and the need to introduce sanctions against abuse by senior officials who were in a position to influence the rate of their severance.[63] Although the Court generally accepted the existence of societal goals that were realised

[57] E.g. judgment of the European Court of Human Rights of 8 October 2013, 62235/12 and 57725/12, *Conceição Mateus and Januário v. Portugal*, paras 26 and 29; judgment of the European Court of Human Rights of 7 May 2013, 57665/12 and 57657/12, *Koufaki and Adedy v. Greece*, para. 41.

[58] Judgment of the European Court of Human Rights of 14 May 2013, 66529/11, *N.K.M. v. Hungary*, para. 45, LEX 1314327.

[59] Ibidem.

[60] Ibidem, para. 59.

[61] Ibidem, para. 59.

[62] Ibidem, para. 72.

[63] Ibidem, para. 69. It is argued that the Court's inclusion of different public purposes and the lack of their convincing application allows the judgment to be interpreted in several ways. Cf. K. Zidar Al-Mutairi, *Some Thoughts on the ECtHR's Scrutiny of the Special Tax on Civil Servants' Severance Pay: The Case of N.K.M. v. Hungary*, "Cyprus Human Rights Review" 2013, vol. 2, no. 2, p. 235–236 and 239. See also the blog comments referred to therein: D. Hart, *Strasbourg Rules that Excessive Tax Rates Offend A1P1*, https://ukhumanrightsblog.com/2013/05/16/strasbourg-rules-that-excessive-tax-rates-offend-a1p1/ [access: 22.09.2025]; I. Leijten, *N.K.M. v. Hungary: Heavy Tax Burden Makes Strasbourg Step In*, https://strasbourgobservers.com/2013/06/10/n-k-m-v-hungary-heavy-tax-burden-makes-strasbourg-step-in/ [access: 22.09.2025].

through the fiscal policy, it expressed serious doubts about the relevance of the government's considerations and assessed the case from the point of view of the fulfilment of the requirements of non-discrimination and proportionality.[64] The Court concluded that the specific measure in question, as applied to the applicant – even if meant to serve social justice – could not be justified by the legitimate public interest specified by the government, as it was not reasonably proportionate to the intended aim.[65]

In *Maria Alfredina da Silva Carvalho Rico v. Portugal*, additional financial burdens took the form of a temporary additional income tax: a solidary contribution.[66] The Court underscored that the additional income tax applied in 2012, 2013 and 2014 was intended to reduce public spending (as in *Da Conceição Mateus and Santos Januário v. Portugal*) and was part of a broader programme designed by the national authorities and their EU and IMF counterparts to allow Portugal to secure the necessary short-term liquidity for the State budget with a view to achieving medium-term economic recovery. Thus, the Court accepted that securing the necessary short-term liquidity of the State budget constituted a public interest within the meaning of Article 1 of Protocol No. 1. Finally, the Court found that observing the overall public interests at stake in the respondent State at the material time – including the assessment of the Portuguese Constitutional Court, which considered that there were no other alternatives which could have pursued the same public aims while affecting the holders of social rights to a lesser degree – and given the limited extent and temporary effect of the tax on the applicant's pension, the impugned measure was proportional.[67]

The case *P. Plaisier B.V. v. Netherlands and 2 Other Applications*[68] concerned the retroactive increase of the applicants' tax burden following the introduction of a "crisis levy" on wages higher than EUR 150,000 per annum and on especially generous "golden handshakes". The applicant companies complained that they had been subjected to a tax with retroactive effect, that the tax surcharge placed on high wages had been imposed without regard for possible individual hardship and that the measures were discriminatory due to the fact that they

[64] Judgment of the European Court of Human Rights of 14 May 2013, 66529/11, *N.K.M. v. Hungary*, para. 59.

[65] Ibidem, para. 75.

[66] Judgment of the European Court of Human Rights of 1 September 2015, 13341/14, *Da Silva Carvalho Rico v. Portugal*, para. 12, LEX 1794013.

[67] Ibidem, paras 45–46.

[68] Judgment of the European Court of Human Rights of 9 March 2017, 46184/16, *P. Plaisier B.V. v. Netherlands and 2 Other Applications*, LEX 2405307.

had targeted an unaccountably small group of employers.[69] The Court decided to examine the complaints as concerning "securing the payment of taxes", which falls under the rule in the second paragraph of Article 1 of Protocol No. 1 and which allows States to control the use of property. That paragraph explicitly reserves the right of Contracting States to pass such laws as they may deem necessary to secure the payment of taxes. The applicant companies did not contest that the measures served the "general interest". Their complaints focussed on the measures' proportionality.[70] Although the Court did not specify the purpose underlying the concept of "general interest" when determining whether the intervention pursued it, the meaning of this concept can be inferred from all the considerations set out in the ruling. Firstly, in assessing the issue of retroactive imposition of burdens, the Court pointed out that retrospective tax legislation is not prohibited as such by Article 1 of Protocol No. 1, and that the public interest may override the interest of the individual in knowing their tax liabilities in advance, provided that there are specific and compelling reasons for this.[71] The explanation of the retroactive introduction of the additional tax accepted by the Court was not, as it itself pointed out, "merely budgetary" interests. The Court stated that – as with Greece, Portugal and other EU Member States – the Netherlands was concerned with meeting its obligations under European Union law without delay, in circumstances aggravated by a financial and economic crisis of a magnitude seldom seen in peacetime.[72] As to measures taken by Contracting States to combat the financial crisis, the Court noted that retrospectivity was also a feature of the reduction of public-sector wages at issue in *Koufaki and Adedy* and the reduction of nominal value of bonds complained of in *Mamatas and Others* (see below).

The third main group of ECtHR rulings on austerity measures relates to complaints about States interfering with applicants' property values through interventions in the banking system and financial markets. The three most important cases should be analysed here. *Dennis Grainger v. the United Kingdom* concerned the terms of the State's takeover of Northern Rock Bank.[73] In neither

[69] For more on the circumstances of introducing domestic austerity measures in the Netherlands, see J.J. Sluysmans, W. Bosma, M. Timmer, N. van Triet, *The Rule of Law: Protection of Property*, in: M. Haentjens (ed.), *Research Handbook on Crisis Management in the Banking Sector*, Edward Elgar Publishing, Cheltenham 2015, p. 379–399.

[70] Judgment of the European Court of Human Rights of 9 March 2017, 46184/16, *P. Plaisier B.V. v. Netherlands and 2 Other Applications*, para. 66.

[71] Ibidem, para. 84.

[72] Ibidem, para. 88.

[73] Judgment of the European Court of Human Rights of 10 July 2012, 34940/10, *Grainger and Others v. the United Kingdom*, LEX 1213137.

the domestic nor ECtHR proceedings did the parties contest that the nationalisation of the bank was in the public interest.[74] The Court accepted this and considered the case only with regard to the applicants' sole challenge: that the Compensation Scheme failed to strike the fair balance required by Article 1 of Protocol No. 1. Therefore, the Court did not consider the meaning of the term "public interest" when deciding whether the intervention pursued a legitimate aim, but only when deliberating on the proportionality of the contested measure. There, the Court stated that the nationalisation served the aim of protecting the financial sector in the United Kingdom, which was seen as a key sector of the economy.[75] The Court developed the meaning of the notion and stated that as part of this policy, the UK authorities aimed to maintain depositor confidence in the safety of placing money with banks.[76] It was accepted that the authorities' aim in nationalising the bank was to protect the UK's financial sector from the consequences of its ultimate liquidation. It was primarily about protecting private deposits. There was also an additional aim, entirely accepted by the Court, which was to avoid encouraging the management boards of other financial institutions from taking bad business decisions on the assumption that the State would provide a safety net.[77] The applicants had challenged the legislation under the assumption that Northern Rock's former shareholders should not be entitled to take the value which had been created by the Bank of England's loan, which was initially granted to the bank. The Court accepted that that public goal was far from being "manifestly without reasonable foundation". It considered that it was clearly founded on the policy of avoiding "moral hazard", which is at the heart of the adopted legislation. In the Court's view, it was entirely legitimate for the State authorities to decide that, had the Northern Rock shareholders been permitted to benefit from the value which had been created and maintained only thanks to State support, it would have encouraged the managers and shareholders of other banks to seek and rely on similar support, to the detriment of the United Kingdom's economy.[78] Thus, the Court stated that there was no violation of Article 1 of Protocol No. 1. As is clearly visible, the Court's entire argumentation on the economic situation – the need to ensure the stability of the financial system – was additionally reinforced by referring to the argument that the policy aimed to avoid the morally ambiguous situation of managers

[74] Ibidem, para. 38.
[75] Ibidem, para. 40.
[76] Ibidem, para. 42.
[77] Ibidem.
[78] Ibidem, paras 42–43.

and shareholders of other banks seeking to benefit from State support in future, which would be to the detriment of the British economy.

The second application worth pointing out is that concerning the actions of the Dutch authorities in expropriating the shareholders and subordinate bondholders of SNS Reaal, in the case *Adorisio and Others v. the Netherlands*.[79] The Dutch capital group was taken over by the State in 2013. The government's decision was upheld by the Dutch courts. Since investors had to be compensated for the expropriation under the applicable regulations, the Minister of Finance offered compensation, specifying the value of individual property securities at EUR 0. The subject of the proceedings before the Court (there were several complaints) was both the questioned fairness of the domestic proceedings and the allegation of infringement of the right to property through expropriation without compensation.[80] The latter charge was dismissed, though proceedings are still pending in the Netherlands to determine the amount of any compensation. The first decision was not issued until February 2021, while the subsequent one was issued in 2023.[81]

The subject of the Court's decision was the allegation of unfairness of the proceedings under Article 6 of the Convention. The applicants complained under that provision that the 10-day time limit for appealing to the Administrative Jurisdiction Division had been too short; that they had had insufficient time to study the Minister of Finance's statement of defence; and that they had been given access to incomplete versions of the audit firms' reports.[82] The argumentation of the Court was based on the assumption that there was an extraordinary situation, although – and this should be emphasised – the public/general interest is not a condition for limiting the guarantees under Art. 6 of the Convention. The Court made clear that the government's action and the follow-up to legal proceedings had to be very swift in order to prevent serious harm to the national economy and to protect the stability of the Dutch financial system as a whole. The Court cited the decision of the domestic authorities, which declared that

[79] Judgment of the European Court of Human Rights of 17 March 2015, 47315/13, 48490/13 and 49016/13, *Adorisio and Others v. Netherlands*, LEX 1661894.

[80] Ibidem, paras 45 and 100.

[81] *Expropriated SNS Reaal Bondholders Secure Compensation from Dutch State*, https://www.jonesday.com/en/practices/experience/2021/02/expropriated-sns-reaal-bondholders-secure-compensation-from-dutch-state [access: 22.09.2025]. Further compensation was paid in subsequent years – see *Dutch Cabinet Pays Out €900 Million to Expropriated SNS Reaal Investors*, https://nltimes.nl/2024/04/11/dutch-cabinet-pays-eu900-million-expropriated-sns-reaal-investors [access: 22.09.2025].

[82] Judgment of the European Court of Human Rights of 17 March 2015, 47315/13, 48490/13 and 49016/13, *Adorisio and Others v. Netherlands*, para. 45.

"there is an exceptionally great public interest in obtaining judgment without delay in this case".[83] Further, the Court, in considering the applicants' allegation that they had been given redacted copies of the audit firms' reports, accepted that the government had done so in order to prevent the disclosure of information that, if made public, might have harmed the financial interests of SNS Reaal and hence the Netherlands.[84]

The ECtHR extensively cited in its decision the rulings of domestic courts and national administrative authorities. Thus, it can be assumed that the Court agreed with the conclusions of the Dutch organs that protecting the public interest in this case meant issuing a judgment confirming the legality of the expropriation as soon as possible, in order to reverse a serious and immediate threat to the stability of the entire domestic financial system. Therefore, the protection of domestic financial stability was a higher priority than the individual interests of the applicants, in terms of the fairness of the proceedings.[85]

The third important case was *Mamatas and Others v. Greece*.[86] The applications to the Court were filed by 6,320 Greeks holding Greek state bonds with values ranging from EUR 10,000 to 1.5 million. Between 2009 and 2011, when Greece was forced to seek assistance from the European Union and the IMF in connection with the economic crisis, the country decided, in line with the IMF's recommendations, to introduce exceptional budgetary discipline measures, which also affected individual investors (including the applicants). In 2012, old government bonds were exchanged for new financial instruments with a nominal value less than 50% of the original ones. Before the Court, the applicants – who did not agree to the exchange – alleged that such a state of affairs violated their right to peaceful enjoyment of property under Article 1 of Protocol No. 1 to the Convention.

The Court did not find a violation of that provision in this case. It found that the interference was justified in view of the exceptional situation of the economic crisis which Greece had been dealing with since 2009. Again, as in the cases discussed above, "maintenance of economic stability" and "restructuring of public debt" were indicated as protected public interests justifying the interference.[87] The Court further specified the values to be protected when

[83] Ibidem, paras 20 and 92.

[84] Ibidem, para. 105.

[85] Judgment of the Administrative Jurisdiction Division of 25 February 2013, 47315/13, *Adorisio and Others v. Netherlands*, , para. 20.

[86] Judgment of the European Court of Human Rights of 21 July 2016, 63066/14, 64297/14 and 66106/14, *Mamatas and Others v. Greece*, LEX 2071875.

[87] Ibidem, para. 103.

carrying out the proportionality test. It stressed that the actions undertaken by the Greek authorities constituted an appropriate, necessary measure to prevent the cessation of payments by the respondent State[88] and were taken within the framework of European regulations aimed at ensuring financial stability in the Euro zone.[89]

The Court concluded that the measures taken in the face of the extraordinary situation of an extremely severe economic crisis had struck a balance between the demands of the public interest (understood as saving the economy and restoring the State's fiscal stability) and the requirements of the applicants' individual interest. In view of the wide discretion enjoyed by the States in this regard, the contested exchange was not disproportionate.

3. Extending the meaning of the "public interest" – what are the limits?

For years the Court has not accepted solely economic or financial arguments from a government to avoid meeting their obligations under the Convention.[90] It can be concluded that the ECtHR has always held that insufficient resources of a State will normally not justify a failure to secure rights and freedoms provided by the Convention. This way of reasoning was firstly partially disrupted in the Court's case law on the so-called restitution cases. With the fall of communist rule in the early 1990, the countries of Central and Eastern Europe entered a period of transformation and of building new liberal democratic institutions. The transformation they carried out was much more multi-faceted and profound than other cases of transition from authoritarian to democratic systems[91] and had no precedent in the history of Western Europe.[92] Economic and social policy, as well as the legal system underlying the functioning of the states, were completely changed. Contrary to many other

[88] Ibidem, para. 113.

[89] Ibidem, para. 115.

[90] F.F. Tulkens, *The Contribution…*, p. 124. This position in supported by the Court's case law, e.g. judgment of the European Court of Human Rights of 7 May 2002, 59498/00, *Burdov v. Russia*, para. 35, LEX 75629; judgment of the European Court of Human Rights of 18 June 2013, 48609/06, *Nencheva and Others v. Bulgaria*, LEX 1322277.

[91] L. Garlicki, *L' application de l' article 1er du Protocol No 1 de la Convention Européenne des Droits de l'Homme dans l'Europe Central et Oriental: problems de transition*, in: H. Vandenberghe (ed.), *Propriété et droits de l'homme / Property and Human Rights*, Die Keure & Bruylant, Brugge 2006, p. 131.

[92] Ibidem, p. 159.

countries that underwent a period of transformation to a liberal democratic system (e.g. Latin American countries), those of Central and Eastern Europe introduced legal solutions aimed at returning or redistributing accumulated property that had been taken over by communist authorities primarily through nationalisation and mass expropriations. However, these processes of return and redistribution were underfinanced and carried out by ineffective and often still unreformed administrations and judiciaries. Therefore, they generated many legal problems, which became the source of complaints to the ECtHR.

In these cases the Court had to clarify the scope of protection of property in "extraordinary situations", taking into account the States' financial capabilities.[93] It took a general approach that in cases which involve difficult questions regarding the conditions of transition from a totalitarian regime to democracy and rule of law, States should enjoy a wide margin of appreciation for their decisions.[94] Because of their direct knowledge of their own society and its needs, the national authorities are in principle better placed than the international court to decide what is "in the public interest" on social or economic grounds,[95] and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation".[96] The Court also stated that a certain "threshold of hardship" must be crossed for the Court to find a breach of the applicants' rights under Article 1 Protocol No. 1.[97] It further decided that a State's modest financial capacity or other organisational and administrative obstacles cannot be the sole reason for its failure to fulfil its obligations or to implement

[93] W. Sadurski, *Partnering with Strasbourg: Constitutionalisation of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments*, "Human Rights Law Review 2009", vol. 9, no. 3, p. 401; L. Damsa, *The Transformation of Property Regimes and Transitional Justice in Central Eastern Europe*: *In Search of a Theory*, Springer, Berlin 2016, p. 85; M. Karadjova, *Property Restitution in Eastern Europe: Domestic and International Human Rights Law Responses*, "Review of Central and East European Law" 2004, vol. 29, no. 3, p. 326.

[94] Judgment of the European Court of Human Rights of 23 November 2000, 24701/94, *The Former King of Greece and Others v. Greece*, para. 87; judgment of the European Court of Human Rights of 12 November 2002, 46129/99, *Zvolsky i Zvolska v. The Czech Republic*, para. 67, LEX 423685; judgment of the European Court of Human Rights of 30 June 2005, 46720/99, 72203/01 and 72552/01, *Jahn and Others v. Germany*, para. 91; judgment of the European Court of Human Rights 20 July 2006, 30431/03, *Vajagić v. Croatia*, LEX 187314 ("wide margin of appreciation nationalisation implementing social policies").

[95] Judgment of the European Court of Human Rights of 12 November 2002, 46129/99, *Zvolsky i Zvolska v. The Czech Republic*.

[96] Judgment of the European Court of Human Rights of 23 November 2000, 24701/94, *The Former King of Greece and Others v. Greece*, para. 87; judgment of the European Court of Human Rights of 21 February 1986, 8793/79, *James and Others v. the United Kingdom*, para. 46.

[97] Judgment of the European Court of Human Rights of 15 March 2007, 43278/98, 4537/99 and 48380/99, *Velikovi and Others*, para. 192, LEX 248707.

final decisions of national authorities granting compensation or other forms of recompense to individuals.[98] The Court reached such conclusions on several occasions, despite the governments' arguments that enforcing the applicant's financial claims – and those of other persons in a similar situation – would be an excessive burden on the State and could even lead to the collapse of the economic system.[99]

At the same time, however, the Court accepted a wide margin of appreciation for States when taking necessary decisions by recognising that States cannot be held liable for the economic consequences of the transition. It did not consider the actions of States interfering with the property rights of the applicants and aiming to maintain a balanced budget and to correct the overly optimistic assumptions of the initial reforms to be in violation of the guarantees of the Convention.[100] The Court also accepted that States have the right to amend legislation adopted by previous authorities, including the right to modify benefits. Public authorities are entitled to make mistakes and correct them, particularly during the initial stages of a transformation.

The standard of compensation interpreted from Article 1 of Protocol No. 1, according to which States are obliged to compensate an applicant in an amount that is "reasonable" in relation to the damages suffered, allowed for the specific nature of reprivatisation to be taken into account when determining the compensation for interference with property rights. Consequently, the context of reprivatisation has so far been the only one in which the Court has ruled, in *Jahn and Others v. Germany*, that it is possible not to pay any compensation for seized property, due to the special nature of the transformation process.[101] The Court assessed the unification of the two German States as a special situation entitling Germany to a particularly wide margin of appreciation, despite the

[98] Judgment of the European Court of Human Rights of 7 January 2010, 69855/01, *Lyubomir Popov v. Bulgaria*, para. 130, LEX 534250; judgment of the European Court of Human Rights of 9 December 2008, 75951/01, *Viasu v. Romania*, para. 71, LEX 468558; judgment of the European Court of Human Rights of 13 November 2007, 38222/02, *Ramadhi and 5 Others v. Albania*, para. 82, LEX 318721; judgment of the European Court of Human Rights of 15 May 2011, 10810/05, *Driza v. Albania*, para. 108, LEX 736642.

[99] Judgment of the European Court of Human Rights of 31 October 2006, 41183/02, *Jeličić v. Bosnia and Herzegovina*, para. 42, LEX 195931.

[100] L. Garlicki, *L'application de l'article 1er…*, p. 155–56.

[101] Judgment of the European Court of Human Rights of 30 June 2005, 46720/99, 72203/01 and 72552/01, *Jahn and Others v. Germany*, para. 116. It is worth noting that the Court's ruling has been criticised in the literature for accepting actions that are contrary to the principle of legal certainty – see U. Deutsch, *Expropriation without Compensation – the European Court of Human Rights Sanctions German Legislation Expropriating the Heirs of "New Farmers"*, "German Law Journal" 2015, vol. 6, no. 10, p. 1380.

already wide margin of appreciation that States may enjoy when enacting legislation during the transition to a new political and economic system.[102] The Court also allowed for some reduction of the State's existing obligations, but only in situations of a State's systemic inability (due to the lack of resources) to implement the existing regulations.[103]

In cases concerning austerity measures, the Court expanded this way of reasoning. For the first time the Court based its argumentation on the need to protect the public/general interest, defined exclusively from the perspective of economic stability.[104] It seems that the Court decided to fully accept the values that States invoke as needing the protection of austerity measures. Among the values that make up this interest, it indicated carrying out an economic transformation (*Volkov and Others*); preserving the State's creditworthiness and solvency (*Koufaki and Others*); implementing objectives along with other EU Member States to ensure budgetary discipline and preserve the stability of the Euro area (*Koufaki and Others*); providing the necessary short-term liquidity for the State budget, with a view to achieving medium-term economic recovery (*Conceição Mateus and Januário*, *Maria Alfredina da Silva Carvalho Rico v. Portugal*); maintaining control over public expenditure, protecting a minimum level of social benefits and guaranteeing the viability of the social security system for future generations (*Aielli and Others* and *Arboit and Others*); protecting the public purse against excessive severances, performing general budgetary purposes during economic hardship and introducing sanctions to protect against senior officials' abuse in setting severance rates (*N.M.K v. Hungary*); meeting obligations under European Union law without delay (*P. Plaisier B.V. v. Netherlands and 2 Other Applications*); protecting the financial sector as a key industry and

[102] Judgment of the European Court of Human Rights of 2 March 2005, 71916/01, 71917/01 and 10260/02, *Von Maltzan and Others, Margarete von Zitzewitz and Others and Man Ferrostaal and Alfred Topfer Stiftung v. Germany*, paras 74, 77 and 110, LEX 147231; judgment of the European Court of Human Rights of 30 June 2005, 46720/99, 72203/01 and 72552/01, *Jahn and Others v. Germany*, para. 113.

[103] In *Broniowski v. Poland*, the Court accepted the introduction of a revised compensation model in place of the old one, which was assessed as ineffective, and the reduction of State liabilities incurred before the date of being bound by Protocol No. 1 to 20% of the value of lost property. See judgment of the European Court of Human Rights of 22 June 2004, 31443/96, *Broniowski v. Poland*, paras 39–42. In subsequent rulings in cases against Romania, the Court clearly suggested to the respondent government its acceptance for a similar move; however, the Romanian government did not follow the Court's suggestion, referring to the argument that a reduction in the amount of compensation due would lead to a wave of new complaints to the Court.

[104] Some authors conclude that the rulings discussed herein, especially those relating to the issue of lowering wages and benefits for employees in the public sector, prove that the protection of European human rights against austerity measures is currently lacking – see A. Dimopoulos, A. Sotiris, *A Comparative Examination*…, p. 222.

maintaining depositor confidence (*Dennis Grainger v. the United Kingdom*); and preventing serious harm to the national economy and protecting the stability of the financial system (*Adorisio and Others v. the Netherlands*).

The unprecedented crisis prompted the Court to confer an exceptionally wide margin of appreciation on national legislatures as regards their definition of the public interest that they aimed to protect. In these matters, the general or public interests have been defined solely in relation to the financial situation and the national economy. Only in *N.K.M. v. Hungary* did the Court express doubt as to the introduction of draconic taxes, stating that the applicant could not have been responsible for the fiscal problems which the State intended to remedy *de facto* at her costs.[105] That case raises a legitimate question: What prompted the Court to accept the governments' justifications in other cases? After all, it would be entirely impossible to attribute any responsibility to the remaining applicants for the financial situation in which their governments found themselves during and after the crisis. Furthermore, why was the situation more dramatic in some countries, such as Italy and Portugal, than in others? If not for the governments contributing to the poor state of the nation's finances, at least some of them, could the situation have been different? These questions remain untouched and unanswered in the rulings under discussion, though it must also be acknowledged that they are not questions that the Court could answer.

From the standpoint of legal reasoning, understood as a method in which the Court justifies its decisions and persuades its audience to its rulings, it may seem inadequate that the Court has so readily resorted to arguments presented by national authorities to explain the objectives encompassed by the concept of 'public interest'. It has to be pointed out that each court has its own concept of this audience, which depends on historical, cultural and social factors.[106] When it comes to the rulings of the ECtHR, the audience embraces not only the applicant and the respondent government, but also the governments of other countries and other attentive observers and addressees of its decisions, such as European societies at large and the particularly influential human rights NGOs (often appearing in cases before the ECtHR as third parties). Legal argumentation based substantially on the reasoning and justification provided for by the respondent government might not be convincing to the individuals who contest it and to societies deeply affected by the austerity measures. Due to the fact that the Court

[105] Judgment of the European Court of Human Rights of 14 May 2013, 66529/11, *N.K.M. v. Hungary*, para. 59.

[106] E. Feteris, H. Kloosterhuis, *Law and Argumentation Theory: Theoretical Approaches to Legal Justification*, "SSRN Electronic Journal" 2013, p. 8.

restrained its argumentation in austerity cases to that presented by respondent governments, its decisions may be perceived as not providing any protection against such measures. One of the reasons presented in the literature proving this understanding is the Court's acceptance of "asymmetrical priority of public interest to avoid state default, as advanced by national authorities".[107] From this angle, the Court's reasoning may be assessed as not meeting the expectations of European individuals, and thus proving to be a source of frustration for many.

However, the Court's decisions can be viewed in a different perspective brought to the light and clarified in the *Travaux Préparatoires* to the Convention. The provision on property rights, that was originally written by Henri Rolin, a Belgian socialist, received a great deal of attention during the preparatory works and it was the subject of heated debate. The form and content of the provision were discussed for over a year, during which time as many as seven drafts were proposed.[108] The concept of property introduced to the Convention at that time was intended not to hinder States in pursuing economic and political policies and to reflect the social conception of property, under which it may be used for the public good in accordance with the law.[109] Many doubts concerning the scope of the provision were dispelled during the debate on the drafts, which was held in the Parliamentary Assembly. Responding to Alice Brown's question as to whether he could guarantee that the article did not infringe on the right of states to nationalise or impose taxes necessary to ensure needed social policies, rapporteur Maxwell-Fyfe clearly indicated that states would continue to be free to pursue social policies in the general interest, while the protection afforded by the Convention would not cover any arbitrary confiscations or expropriations.[110] Thus, originally, the way in which Article 1 of Protocol No. 1 was formulated, was intended to discourage complaints alleging infringements with property rights, in particular those resulting from structural and systemic policies. It appears that the introduction of generic terms of "public" and "general" interest was meant to contribute to that aim. Although some of the commentators

[107] A. Dimopoulos, A. Sotiris, *A Comparative Examination…*, p. 222.

[108] Memorandum by the Secretariat-General, *Note on the amendments to the Convention on Human Rights proposed by the Consultative Assembly about which the Committee of Ministers was not able to reach unanimous agreement, 14 November 1950*, in: *Travaux Préparatoires*, vol. 7, p. 136. (Doc.CM (50) 90, A 3034).

[109] D. Maxwell-Fyfe, *Report of 24 August 1950 on the Draft Convention for the Protection of Human Rights and Fundamental Freedoms*, in: *Travaux Préparatoires*, vol. 6, p. 60–62 (Doc. Consultative Assembly, No. 93, 24 August 1950, p. 980–87).

[110] Second Session of the Consultative Assembly (7–28 August 1950), Sixteenth Sitting (25 August, morning), (b) *Report of the Sitting (Reports of the Consultative Assembly, second session. Part III, Sixteenth Sitting)*, in: *Travaux Préparatoires*, vol. 6, p. 138–40; p. 884–919.

argue, that with time "the case-law has given the P 1(1) a scope and structure that is largely independent of original intentions of the parties to the Protocol'[111], it can be stated that the Court reflected the elements of the original concept of the right precisely in its jurisprudence on austerity measures (and previously e.g. on restitution cases).

These roots of the understanding of the concept of "property rights" seem to have been overlooked by the applicants, who tend to forget that the protection offered by the Convention in regard to property rights is not absolute, and certain interferences by the State are permitted if they serve the public interest and are proportionate. According to the Court's jurisprudence an even wider margin of appreciation can be granted to States if they are pursuing a systemic political transition from an authoritarian to a democratic regime, involving economic as well as social and legal changes. And the same applies to other kinds of measures taken by States in extraordinary situations, not necessarily ones that involve any societal or political changes, but those that are aimed at preserving States' financial stability. It can be stated that it is the States' reasoned need to "implement social policies in general interest" that sets the limits of the property rights under the Convention in situations where States interfere with individuals' proprietary interests in pursuit of necessary policies. Only against this background can the Court's reasoning for its decisions on austerity measures be better understood and convince the general public.

If the Court were to refer to the limits set by the States' policies within which property rights are protected by the Convention, as well as to the reasons that legitimised the interference, it would be much more persuasive in convincing its target audience – not only governments, but also other individuals and societies – of the righteousness of its decisions. This would require a change in the way decisions are justified, but it would certainly increase the Court's legitimacy by making its decisions more understandable.

Conclusions

The case law of the ECtHR on the effects of economic crises shows that the Court accepts States introducing measures that deeply interfere with ownership rights in systemic situations necessitating introduction of extraordinary state's policies. These are situations that affect the whole of society, not just

[111] T. Allen, *Property…*, p. 37.

selected groups. The measures can be justified by a broadly understood public interest, even if this is defined solely in terms of ensuring the financial stability of the State. Some of those measures were introduced by States with the cooperation of the IMF or the EU, largely as a result of their earlier – often ineffective or even corruptive – economic policies. Without undermining the uniqueness of the crisis of the late 2000s, it is difficult not to perceive the fact that some countries were hit by it more than others. Thus, undoubtedly, their previous policy at least contributed to an "exceptional situation", during which they were ultimately allowed by the ECtHR to apply exceptional measures. It should be noted that the Court did not respond to this argument in any way. At the same time, it cannot be overlooked that the situation of accepting new, exceptional circumstances inevitably leads to a trap of "uniqueness", which could lead in future to the Court struggling to balance the public interest with private interests. From the point of view of the need to respect the rights of individuals, the concept of the "possible collapse of a country's financial sector" may at some point seem too broad when not combined with other arguments.

It cannot be excluded that in future the Court will be confronted with applications concerning other kinds of systemic restrictions. Recent years have shown that the economic and social situation in the world is far from stable. The COVID-19 pandemic, Russia's aggression against Ukraine and the energy crisis mean that the ECtHR will not be able to "ignore" arguments raised in disputes by States when individuals decide to question further "austerity", "remedy" or "supportive" measures. Perhaps, we have to accept the conclusion of Judge Tulkens, who stated – writing during the financial crisis that started in 2008 – that "the crisis today is perhaps no longer a crisis but rather the sign of a transition or shift".[112] The acceptance of this observation means that the concept of the public interest may be broad. And although it may sound like a pessimistic conclusion for the future protection of individual rights under the ECHR system, if we are to assume that the public interest refers to interests which all members of the public have in common, to the interests that are important for collective existence and to the broadly defined collective welfare,[113] this model requires strongly persuasive methods of argumentation, which must seek first to define collective goals and then to determine the means and scope of restriction. This task lies with the public authorities and the Court and can be associated with

[112] F.F. Tulkens, *The Contribution…*, p. 123.

[113] A. McHarg, *Reconciling Human Rights…*, p. 677. For more on the difficulty of defining the scope of public interest, see J. Bell, *Policy Arguments in Judicial Decisions*, Oxford University Press, Oxford 1983, p. 130.

the basic assumptions of the concept of property right, under which it may be used for the public good in accordance with the law.

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