

## THE SCOPE OF APPLICATION OF PROTOCOL NO. 1 – THE CONCEPT OF THE RIGHT TO PROPERTY

Khanimana Gafarova\*, Turkan Ahmadova\*\*

### Abstract

*The main aim of this study is to understand the concept of property and to identify its types. The study examines the scholarly debates on the recognition of the right to property as a human right. The article also includes the application of the 'autonomous meaning' envisaged in Article 1 of Protocol No. 1, that is, how the right to property is regulated not only by domestic laws but also by the ECHR. The right to property has moved beyond a simple framework to become a more complex legal concept. According to this approach, the concept of property is defined within the framework of the Convention's own aims and principles. The research revealed that the concept of property encompasses not only physical assets but also other interests and rights. Using the comparative analysis method, similarities concerning the protection of property rights have been identified between international courts and arbitration tribunals. The study concludes by discussing three rule principles established by the ECHR. These rules regulate the limits of state interference with property and maintain the balance between the interests of the state and those of individuals. Consequently, the protection of property has been resolved by a case-law approach that covers not only its factual existence but also an individual's legitimate expectations.*

**Keywords:** *property, autonomous approach, legitimate expectation, protection of property, interference with property rights, human rights, illegality, European Convention on Human Rights.*

### 1. Introduction

Both natural and legal persons are subjects of the right to property. This right allows every person to use their property without any hindrance. Article 1 of Protocol No. 1 to the European Convention on Human Rights governs the protection of the right to property [6].

Some jurists contend that the right to own property is a fundamental right, while others claim the opposite. Property rights, in their opinion, cannot be regarded as fundamental rights since they are relative rights rather than unalienable [21].

Everyone has the right to the peaceful enjoyment of his possessions, and no one shall be deprived of his possessions except in the public interest and subject to the payment of just compensation. However, the same article also provides that in certain cases, the state may interfere with property for reasons of public safety, provided that just compensation is paid.

The Court has also put forward its own approach to property rights, known as the “autonomous meaning”. This concept does not concern how property rights are regulated by domestic laws, but how the ECHR interprets them [1, 10].

In the judicial practices of various countries, issues concerning property have been extensively commented upon. The autonomous concept of property rights ensures the same level of and fair protection for property rights, regardless of the different approaches of States to this right and how it is defined by those States. The legal status of property is not limited by national laws; the final decision must be made by the ECHR.

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\* PhD in law, Lecturer at the Department of Private International law and European law, Faculty of law Baku State University, email: xanim84.84@mail.ru

\*\* Master of Laws, Baku State University, specializing in European Law, email: turkan-ahmed@mail.ru

The concept of autonomous property is of particular importance in certain situations. Even if a state does not recognise a certain asset as property, it may be considered property by the ECHR, provided that the individual has an economic interest and a material advantage in the property, that is, they are able to derive income from it [1, 10].

In the *Sporrong and Lönnroth* case, the court for the first time applied three rules. These three rules included the peaceful enjoyment of property, the confiscation of property, and the state's restriction of the use of property through lawful measures without its direct confiscation. This structure was necessary in terms of which rule the court should apply. The most important of these rules, and the one that serves as the basis for the others, is the rule on the peaceful use of property. The second rule provides that the state may completely restrict a person's property rights, which violates the principle of justice. The final rule, however, provides for the restriction of property use under certain conditions. This rule can be considered relatively lawful.

These three rules ensure that any interference with property is carried out lawfully, that state interventions are related to the public interest and security, and that the principles of fairness and proportionality are upheld [1, 8].

The concept of property rights has recently given rise to certain problems due to conflicts. Any interference with individuals' property, the requirement for fair compensation to ensure the protection of their rights, and the defence of individuals' rights by other means are reflected in the case-law of the ECHR.

## *II. The General Scope of Application of Protocol No. 1, article 1*

The protection of property is considered from various aspects by human rights and international investment law. According to the human rights approach, the right to property is inviolable; the state should not interfere with property, and if it does, such interference must be carried out fairly and in accordance with the law. International investment law, however, approaches the protection of property from an economic perspective. If a state expropriates property, it must provide compensation for the loss. However, alongside these differences, they have common features, and this does not deny their interrelationship. Judicial practice reflects this connection. Investment arbitrations and human rights courts occasionally depend on one another's rulings [21].

According to case law, houses and land on which people live have been regarded as property, even where it is possible to derive an economic income from them. In other words, they can be considered property only if they are capable of being put to actual use [18].

The socio-economic nature of property rights means that they are tied to things like economic activity, human welfare, and how people use their property. As such, it is not regarded as an unalienable right and may be subject to state restrictions under specific conditions. For instance, the government may step in to protect property.

The concept of property also applies to intellectual property [17]. Thus, intellectual property rights, such as copyrights, licences and trademarks, are also protected by the article 1 of Protocol 1 [9].

It has been controversial for lawyers to view property rights as human rights. Some legal experts agreed with this notion. Property rights are human rights, according to their proponents, because they are necessary for people's autonomy more especially, their freedom to make their own decisions. Economic proponents contend that in order to guarantee a minimal standard of living and end poverty, property rights are essential. It can be understood from this that if a person owns property, they can use it freely for their

own purposes, derive an income from it, and provide for their livelihood. Furthermore, growing crops on their property, renting it out, and so on, allows them to make economic use of their property, which is essential for reducing poverty. On the other hand, opponents made the opposite argument. They contend that it is challenging to comprehend the right to property as an essential, or unalienable, human right. Basic rights cannot be violated. Everyone has the right to life, for instance, and this right cannot be restricted in any way. The state may, however, impose restrictions on the right to property because it is a relative one. Furthermore, because it causes inequality and social stratification, some people believe that the right to own property is not fundamental. As a result, while the poor have few opportunities, the upper classes can own more property [21].

The right to property is one of the fundamental rights of human freedom. The development of the individual is directly linked to the right to property. This means that a person can use their property for their own purposes, derive income from it, secure their own well-being, and so on [4].

Although property rights are rooted in land ownership, international courts have broadened their definition, and property is now understood to encompass not only land but also licenses, legal expectations, patents, copyrights, and other assets. Previously thought to belong exclusively to individuals, property has now been enlarged by international law to include legal entities.

The legal force of article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms extends to natural and legal persons. No person or organization may be prohibited from using property, meaning they can sell, donate, lease, etc. their property in any way they wish. No one's property may be taken away illegally.

The state is responsible for protecting the property of individuals and companies, fund, organizations, institutions [23].

In the most famous *Sporrong and Lönnroth v. Sweden* case, the court took a special approach. It highlighted three ways in which property rights are protected by the state. The first of these rules expresses one of the most important principles. This principle shows that people have the right to freely and without any restrictions the movable or immovable property they own. The second of the three rules mentioned emphasizes that property owned by people can be taken away in some cases, that is, the state can intervene in this as an exceptional case. The state may regulate the rights of people to use any property owned by them, more broadly speaking, to sell, rent, carry out construction operations on it, etc. This expresses the essence of the third rule. The first two rules mentioned do not express a general norm, unlike the first rule, that is, they determine the use of movable or immovable property in exceptional cases without any outside interference. Also, these rules should be explained in the view of the 1st instruction, which is specified in paragraph 1 of the first paragraph and establishes uniform norms for all.

There are some ambiguities in relation to the rights provided for in article 1 of Protocol No. 1, which are not fully resolved by the three principles established in the case in question. The person who owns the movable or immovable property is the main cause of the first ambiguities. This relative certainty was easily resolved by the court.

According to article 1, paragraph 1, of Protocol No. 1, without exception, every person or all entities that have rights and duties before the law, or participants in legal relations, more broadly speaking, companies, foundations, enterprises, institutions, etc.,

may freely use the property in their possession. It is also clear from this that the property rights of entities that are not natural persons are also recognized by the court.

Ownership rights must be understood independently, i.e. whether an object is property or not is not determined solely on the basis of domestic law. If a natural or legal person has estate and this property is recognised as property under internal law, then the ECtHR also accepts it as property and this entitlement is protected by Article 1 of Protocol No. 1 [1, 10].

The notion of property that already exists, that is, is already in actual use by a person, has also been expanded to include objects built without official state permission, and documents declared invalid by state or local laws. However, these situations are not considered estate in all cases.

The court is not competent to determine whether a person has property, i.e. the court does not interfere in this. However, it was particularly emphasized by the court that the concept of estate is not limited to national laws, but is also interpreted within the framework of the European Convention on Human Rights.

### *III. The Autonomous Concept of "Property" under the ECHR*

In regards to the idea of property rights, the court has created its own independent concept. A "autonomous approach" to the idea of property rights should be understood in terms of how the ECHR evaluates this right rather than how domestic laws govern it. This idea has broadened the definition of property that Protocol 1's Article 1 protects. Intellectual property rights, licenses, and other rights and interests are also considered property in this context, in addition to physical, material assets.

Licences granted by the state or competent authorities to carry out commercial activities are also considered property. The revocation of these licences is regarded as an interference with the right to property [14].

The clarification of the concept of ownership is very important. There is a case of *Marckx v. Belgium* in this regard. In the case, the main idea that had to be emphasized was that every person who owns movable or immovable property should be able to easily use his property.

Article 1 of Protocol 1 protects the right to property, but this does not mean that a right to property arises. Only in two cases can a future right be regarded as property. Once a right to a benefit that has already been obtained and a right to an enforceable assertion exist, they are regarded as property.

In the Strasbourg case law, one of the decisions and precedents of the ECHR, the concept of property was considered in a broader aspect. As such, this concept encompasses not only the pre-existing legally existing property of people and the duties associated with it, but also their legitimate expectations that these rights will be realized in the future [1, 9].

Also the concepts of legal claim and justified expectation have been given detailed consideration by the court. Where doubts arise as to whether article 1 of Protocol No. 1 applies to a person's legitimate and economic interest in property, the Strasbourg Court gives the final decision.

Landowners are actually using the contested land because the state and other appropriate authorities have long failed to step in and intervene. As a result of this protracted inaction, the ECHR now protects the right to property. [10] At the same time, national legislation provides that the state may confiscate property, provided it pays

compensation to the aggrieved person. However, the state must be regarded as having a property interest because it grants the person such an opportunity.

Similarly in Azerbaijan, if any plot of land is required for state needs, the state acquires it by reaching an agreement with the property owner and paying appropriate compensation; in the absence of such agreement, it is acquired compulsorily. In both cases, compensation is mandatory. The purpose of this is to protect the rights of the property owner [5].

The ECHR applies national laws during the interference, provided they do not conflict with the aims of article 1 of Protocol 1; however, where a conflict exists, the Court disregards this and applies its own independent approach. [7]. Examples from similar cases show that, although structures built without official permission are not recognised as property, the ECHR may, in certain circumstances, treat them as such. In doing so, the court considers how the individual uses the property, derives income from it, and so on.

In certain cases, the competent authority may revoke an individual's rights. Although social positives, licenses, subsidies, etc. may fall under this category of rights, the property status remains unchanged. The primary objective here is to ensure the principles of fairness and transparency [13]. The case law established that the court assessed the applicant's rights to the painting as a property interest, and therefore, compensation was paid to the person for their long-term possession of the work. Although the local authorities considered the contract for the acquisition of the painting to be legally invalid, the fact that he possessed the painting in fact resulted in the protection of his property rights [14].

Peaceful enjoyment of property is understood to mean the comfortable and tranquil use of the asset. This means that for the state to recognise property, the owner must make actual use of it and derive benefit from it; in other words, the ownership must not be merely formal. In the context of the ECHR, positive obligations are also imposed on the state. The protection of property rights should not be understood solely as the state's non-interference with individuals' property; the state must also take several security measures to protect property. For example, if harmful or explosive substances are discovered near the property, the state must render them harmless. Another example is that if there is a risk of a natural disaster in the territory owned the state must take preventative measures.

Interference with property rights manifests itself in two ways. The first principle is that the state completely expropriates property, but this must be carried out in a manner that is consistent with human rights and fair. The second approach is for the state to allow property owners to use their property within a certain framework of rules. If an intervention departs from these two rules, then the general approach is applied, which brings to the fore the principle of a fair balance between the interests of the state and of individuals.

#### *IV. Types of Interests Protected as "Property"*

In the case, the appellants were able to maintain their rights to own property over the disputed land for almost a century and to derive income from it by using it for various purposes. Thus, the theory of ownership here is not limited to official documents but also requires the existence of an actual economic interest.

The state may restrict a person's property rights in the public interest [16]. One of the main issues that the ECtHR should highlight is that the existence of the right to property should not be based solely on official documents on paper. In other words,

issues related to the actual situation, such as how the person uses the premises, how much income he receives, and how it is valued by the state, should be addressed.

In accordance with article 1 of Protocol 1, the concepts of property and possessions are distinguished from one another, and each is commented on in detail. Movable or immovable property, income derived from commercial activities by a company or any person, the right to pursue a profession in accordance with one's qualifications or skills, the right to a lawful appeal to a court, etc., are rights protected by article 1 of Protocol No. 1 [2, 6].

The ECHR has held that the financial rights acquired by a person through their professional activity, more specifically through their long-term labour and skill, are akin to the right to property. This means that these rights also fall within the category of property protected by article 1 of Protocol 1. It is reasonably argued that through the work they have established and their continuous efforts, individuals have created a stable client base, which is their source of income. In other words, without their hard work, such a base could not have been created automatically [12].

In the case of *Sporrong and Lönnroth v. Sweden*, the court applied three rules. The case concerned strategically important and high-value properties in central Stockholm. The authorities, having determined that these properties were of significance for planning purposes, issued authorisations for the compulsory purchase of a particular property for the benefit of the state and imposed restrictions on the use of the property. In that case, a forfeiture order was applied to the property for 23 years, and a ban was placed on any construction works on the property for 25 years. The use of other property was also restricted for a period of 12 years, and any construction works were prohibited by the state. Furthermore, confiscation orders were also applied to this property for an 8-year period, which jeopardised its property rights. The sale of these properties on the property market was considerably hampered during the period when the restrictions and permits were in place, as the free sale of the properties was restricted. However, after a certain period, the state lifted these restrictive measures. The individuals whose rights were violated applied to the European Court of Human Rights for their rights to be restored, but received no compensation in return [2, 7].

According to ECHR approach, company shares may be considered property as they grant the owner rights such as receiving profits in the form of dividends, participating in the company's decisions, and so on [15].

As a solution to the problem, the court posed the following question: Has the right to property been violated, or is there an interference with property?

The Swedish government argued that the permits applied to the property, which are considered a risk of future state expropriation, are also part of the state's planning policy, that is to say, they are not specifically aimed at harming property owners' property. The primary objective here is the development of the city. Ultimately, the government notes that the owners' right to use their property is partially restricted, yet it remains with them. This is because the owners could have used their property freely. The court disagreed with these views. It advanced the reasoning that although the owners were legally the proprietors of their property, their rights to use that property were completely restricted. Thus, they could not sell, gift, or let their property. The court concluded that their property rights remained merely a formality.

The court conducted a detailed examination of the second rule and it was established that the complainants' property had not been seized, and that there was no risk of it being seized in the future, i.e., no risk of confiscation. The owners' rights to freely use their

property, sell it to another person, donate it, or otherwise dispose of the property were retained by law. Consequently, all the confiscations and prohibitions that were applied did not make the processes mentioned above impossible, but simply more difficult [2, 8].

The revocation of property rights by law or by a decision of another state authority does not limit the concept of property as it existed prior to such revocation. Intangible rights, such as copyright, patents, licences, etc., must enable the rights holder to obtain a profit in order to be considered property. Patent rights, industrial designs, trade marks, copyright and related rights, internet addresses, and licences granted by a state or competent authority for the use of property are also included in the court's concept of property [22, 89].

The protection of the environment is also a matter of public interest, and the state may interfere with property rights to ensure the safety of the environment [8].

The only fact is that existing property is protected by article 1 of Protocol 1; in other words, if a person currently has no property but hopes to acquire some in the future, it is not protected by article 1 of Protocol 1.

The state may make incorrect decisions regarding property. Nevertheless, if it rectifies these mistakes, this is considered to be in the public interest. In this way, justice is restored and individuals are prevented from obtaining an unfair advantage [11].

If property exists subject to certain conditions and is extinguished upon the failure to fulfil those conditions, it is not considered as existing property. Consequently, it does not fall under the protection of article 1 of Protocol 1.

If a person claims that their property rights have been violated, they must prove that this right, as defined by domestic laws, is legally theirs.

If a problem arises regarding the existence of the applicant's property, the court determines whether the person currently has legal ownership of the property. For example, the applicant inherits from their father. However, their relationship to the father has not yet been proven. Therefore, the inheritance is revoked, and the person is not, in fact, the owner of the property.

Land, water, oil, gas, minerals, forests, etc. are under the jurisdiction of the state and no one's property rights should be infringed upon. There are 3 types of property in the Republic of Azerbaijan: State-owned land, property owned by citizens or legal entities, and property owned by several persons. Under the legislation of the Republic of Azerbaijan, unjust enrichment, compensation for damages, the demand for repayment of a debt, and inheritance rights are considered property rights, as they have economic value [3].

Furthermore, if the existence of property inherited by the applicant from their spouse has been proven before the national courts, and the applicant's spouse notarially confirms that they will bequeath that property and has it officially registered in the property register, the right of ownership is recognised. Article 1 of Protocol No. 1 does not safeguard a person's reasonable hope of obtaining property. However, the article protects it in certain situations. In other words, in accordance with the ECHR's methodology, property must be deemed to exist if there are legitimate aspirations to acquire it although it does not.

The *Pine Valley Developments Ltd. and Others v. Italy* case established the legal notion of legitimate expectation, or a person's well-founded aspirations to purchase real estate. The state may legally grant permits for development or construction projects in a specific area, the court ruled, giving rise to legitimate expectations. Based on the state's official legislation, the applicants think they can develop the land and build specific structures. Buying land based on this state planning permission must be regarded as a

legitimate expectation since it creates in those people a legitimate expectation of property rights. The planning authority was unable to revoke the project planning permission because it was legally sound and stable. Because of this, it needs to be regarded as a part of property rights. Therefore, such issues need to be precise and well-founded in order to be accepted as legitimate [19].

#### *V. Conclusion*

The essence of the concept of property as formulated by the ECHR is that the concept of property in a broad sense covers both physical assets and intangible rights, as well as legitimate expectations associated with property. The three main principles established by the Court regulate the legality of state interference with property rights and require a fair balance between public interests and the rights of individuals.

A particularly significant contribution of the ECHR's jurisprudence is the development of the autonomous concept of property, which ensures that the protection of property rights does not depend solely on how domestic legal systems define or classify property. This autonomous interpretation has played a decisive role in expanding the scope of protection to include not only traditional forms of ownership such as land and movable property, but also licences, intellectual property rights, company shares, and legitimate expectations arising from state conduct. The landmark case of *Sporrong and Lönnroth v. Sweden* laid the foundation for this three-rule framework, which remains the cornerstone of the Court's analysis in property-related disputes to this day.

The study also demonstrates that the protection of property rights under Article 1 of Protocol No. 1 is closely intertwined with broader principles of human rights law, including the principles of legality, proportionality, and the public interest. Any interference by the state with an individual's property must meet these criteria to be considered compatible with the Convention. Where a state fails to maintain a fair balance between its own interests and those of the individual, the Court consistently finds a violation. This approach reflects the ECHR's commitment to ensuring that property rights remain meaningful and enforceable in practice, rather than merely formal entitlements recognised on paper.

Furthermore, the comparative analysis conducted in this study reveals important convergences between the approach of the ECHR and international investment arbitration tribunals in their treatment of property rights. Both systems prioritise the protection of investors' and individuals' economic interests, recognise the concept of legitimate expectations, and demand adequate compensation in cases of expropriation. These parallels underscore the universality of the values underpinning property rights protection and suggest an emerging global consensus on the standards that states must observe when regulating or interfering with property.

Thus, the protection of property rights is not limited to the existence of legal documents; it is also based on a dynamic and evolving approach to case law that protects the economic interests and legitimate expectations of individuals. The findings of this research confirm that the ECHR's interpretation of property under Protocol No. 1 has evolved into a sophisticated and nuanced framework that adapts to the complexities of modern economic life, offering robust protection to individuals and legal entities alike against arbitrary or disproportionate state interference.

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