



CHARACTERISTICS OF PROPERTY RIGHTS IN INTERNATIONAL LAW

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ABSTRACT

The paper deals with the protection of property rights as a fundamental human right. I present the system of international legal protection of property rights through the major international conventions and in the community of the European Union. The instruments of property protection are also analysed. The second half of the paper deals with compensation for damage to property, including the specific rules of compensation. I conclude with a related case law.

KEYWORDS Protection of property rights, universal international instruments, fundamental right restriction, compensation

1. Introduction

Numerous universal and regional regulation on property rights available at international level. Regulation has developed at two levels. On one hand, in conventions where the right to property is defined as a fundamental human right the content of the right to property as a fundamental right differs from the concept of property rights in the civil law (Andorkó, 2018). On the other hand, it is regulated in conventions in specific fields where certain types of property right are internationally recognised and protected (e.g. intellectual property rights, trademarks, patents, etc.).

2. Property rights as a fundamental right and their protection

Fundamental rights can be divided into two broad categories. Personal rights, which relate exclusively to individual and where no one or nothing else is involved. These include the right to life and freedom of expression and the right not to be tortured. The other group includes connected rights, which can only

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exist in connection with certain persons or things. The right to property falls into the second group.

Another interesting aspect is the question of whether it is a fundamental human right to own or possess property or not. The degree of socio-economic development has a great influence on the importance and recognition of this right. Only the most developed countries tend to guarantee by law that everyone has access to at least a minimum level of income or property.

Beyond the abstract notion of property rights, it is worth examining the property elements in which the right to property as a fundamental right is manifested.

Firstly, the property needs to promote privacy. This is essentially the core of the property right. States, in their capacity as public authorities, are not entitled to infringe the private property that is necessary for the individual to maintain and improve his or her own life. If we think of Maslow's pyramid scheme, it is essentially the subsistence and security needs at the bottom of the pyramid that fall into this category. What is socially dependent, however, is the extent to which property is necessary to promote privacy. The term 'necessary' is in any case a subjective element, since it is always a function of the minimum level of inviolable private property recognised by the social order. This type of property right is usually in the form of things that can usually be relatively easily substituted (e.g. food, housing, health care, tools of labour). In this case, it is not the possession of property that is the value, but its usage.

The second group includes income and savings from work. This type of property should also be protected, since if a person saves part of his income from work, he is entitled to access it later. In a broader sense, earned income also serves the subsistence of the individual, and only the earner can be entitled to spend it or use the income earned from work. The protection of savings has significant importance if a state has only private pension schemes for older people, or when social care systems rely heavily on self-sufficiency.

The third group includes capital income and capital savings. These forms of property are not directly linked to work, so many consider it an affront to social justice to interpret this type of income as a basic human right. The clear rejectionist positions have been modified somewhat and now only apply when such income exceeds a defined minimum value. However, the development of international law, through the establishment of a system of investment protection, is undoubtedly bringing it more and more within the scope of the rights that should be protected.

Sharing the views expressed in the article by Levente Hörömpöli-Tóth cited above, there is no justification for protecting inheritance as a property element under fundamental rights (Hörömpöli-Tóth, 2002).

The definition of property rights can also be based on judicial practice. The Strasbourg Court, interpreting the provisions of Additional Protocol No 1 to the European Convention on Human Rights, has held that the concept of “property” is not limited to physical objects, so that benefits or rights with a specific property value under the Additional Protocol may also be considered as property (Gasus Dosier- und Fördertechnik GmbH v. The Netherlands, 1995).

In this way, the Strasbourg Court extended the protection of property right to both rights in rem and rights in personam. Accordingly, the Court has included within the concept of “property”, for example, fishing and hunting rights, shares, enforceable claims, patents, goodwill, building permits in principle, rights to claim replacement property, claims for damages, and the rights of members of funded pension schemes. Licences to engage in certain economic activities may also benefit from the protection of Additional Protocol 1 to the Convention (Téglási, 2010, p. 43).

3. Protection of property rights in international law

If property right is considered as fundamental right, it is appropriate to examine the framework within which they are protected under international law. The protection of fundamental rights in the twenty-first century can be best understood in a three-axis coordinate system, one axis is national law, with reference to the constitutions of individual countries, the second axis is Strasbourg human rights practice in the Council of Europe, and the third axis is the mechanism for the protection of fundamental rights under European Union law. At the intersection of these three legal systems is the individual - who is entitled to fundamental rights protection. These three legal systems do not correspond perfectly to each other, but they overlap (intersect) at several points (Szalayné, 2009).

For core human rights, the possibility and conditions for international intervention must be created, and moral obligation is to ensure protection of rights (the protection of life and human dignity) arises at international level. Most elements of property rights are not covered, only those elements that are strictly related to personal rights (e.g. the protection of property left behind in the event of persecution).

Most property rights fall outside the scope of direct protection. They deserve international attention, but not all types of international action are justified. International codification of these property rights can serve as a guideline for

the states. Owners whose rights have been violated may have recourse to certain instruments (for example, the Human Rights Court), which may also involve political pressure. Several exceptions allow states to intervene in property matters, obviating the need for strong unified international action.

Some property rights do not deserve international protection, although they are protected at a national or regional level. In such cases, these are rights that are conferred by a specific cultural or economic context, such as rights connected to property rights derived from capital or large landowners' property.

Lastly, there are property rights which do not have any international legal protection because they conflict with other, more powerful human rights or with the general rules of criminal law. Property rights related to slavery or drugs fall into this category (Hörömpöli-Tóth, 2002).

4. The emergence of the right to property in universal international instruments

The Universal Declaration of Human Rights (UDHR), established under the auspices of the United Nations and adopted in 1948, states that everyone, individually and in community has the right to property and that the arbitrary taking of property is prohibited (UDHR, art. 17). Hungary adopted this convention when it joined the international organisation in 1955.

It is worth mentioning, that the definition property right as a fundamental human right in the Universal Declaration was very novel, as it had not been included in previous Conventions (Kardos, 1998, p. 8).

The Universal Declaration has had a significant influence on the development of international law, but as a UN General Assembly resolution it is not binding. The protection of the right to property also appears later in other human rights conventions adopted by the UN:

- The UN Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to guarantee “equal rights to both spouses to the ownership, acquisition, management, administration, enjoyment and disposition of property, whether or not in fee or in restitution” (CEDAW, art. 16 para. h).
- The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families guarantees migrant workers and members of their families the right to property and provides for appropriate compensation to the State in the event of expropriation (CMW, art. 15).

The importance of property right can be seen in later UN practice. Like when the United States submitted a draft resolution to the 41st session of the General

Assembly. The final resolution avoided defining the exact content of the right to property and stressed that private, community and state property are all capable of achieving development and justice (A/RES/41/132, 1986).

Conventions on property rights have always been closely linked to the protection of property rights and to the declaration that deprivation of property is possible only in the case of sufficient compensation.

Property right is included in all regional human rights conventions, such as Article 21 of the ACHR (1969) and Article 14 of the Banjul Charter (1981), Article 26 of the CIS (1995) and Article 31 of the ArabCHR (2004).

Compared to the UDHR, the Inter-ACHR (1978) is relatively detailed on the right to property. It recognises that everyone has the right to use and enjoy his property, but that such use and enjoyment may be subordinated by law to the interests of society. It makes the expropriation of property subject to appropriate compensation (Orosz & Sonnevend, 2023).

5. European human rights law and the right to property

The European Convention on Human Rights (ECHR) originally did not include a rule on the right to property, as the States Parties could not agree on the draft text. Thus, this fundamental right was formulated in the text of the First Additional Protocol to the ECHR, which was annexed in 1952. The final version, signed on 20 March 1952, was placed in Article 1 of the First Additional Protocol and read as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In Article 1 of the First Additional Protocol, although the text is intended to give international protection to property, it also contains another term. It refers to the importance of respecting possessions or, if you like, peaceful enjoyment, and prohibits the deprivation of possessions; the word "property" is used only in the context of control of property usage (Hörömpöli-Tóth, 2002).

Article 1 of the First Additional Protocol indicates that property may be taken in case of public interest, under conditions defined by law and in accordance with

the general principles of international law and allows the restriction of property for public interest and for the payment of taxes, other public charges and fines.

The text does not include an obligation to pay compensation for the deprivation of property, as the European Court of Human Rights (ECtHR) has finally ruled in its case law. This practice was later incorporated into the Charter of Fundamental Rights of the European Union (Charter).

This formulation of the right to property offers broader protection than property in the technical sense under civil law. These rules of the Convention, which are mainly of a framework nature, have subsequently been fleshed out by the European Court of Human Rights, whose interpretation of the law has led to the development of the Strasbourg case-law.

The protection of the right to property appeared in ECtHR decisions on the protection of fundamental rights prior to the adoption of the Charter of Fundamental Rights of the European Union. Property right was firstly recognised by the ECJ in the Hauer case ([Liselotte Hauer v Land Rheinland-Pfalz, 1979](#)), in which a German vineyard owner introduced a regulation that prohibits planting vineyards on the grounds that are the provision infringed his property.

The next step in the interpretation of the fundamental right to property was the Wachauf case. In this case, the Court summarised its previous practice and introduced the principle of the social function of property. The background to the case was Council Regulation (EC) No 857/84, which had imposed a minimum level of were compensated if they did not produce milk for six months after receiving the aid. If the aid applicant was only a tenant of the land, the aid also required the landlord's consent. On this basis, the aid application of a German farmer, Mr Wachauf, was refused because the owner of the land he had rented withdrew his consent.

In this judgment, the Court of Justice expressis verbis that:

“[...] fundamental rights are not absolute but must be considered in relation to their social function. Consequently, the restrictions may be placed on the exercise of fundamental rights, particularly in the context of common market, provided that such restrictions are in accordance with the general interest objectives pursued by the Community and do not constitute, in relation to the objective pursued, a disproportionate and unjustified interference would jeopardise the very substance of the rights.”²

² „The fundamental rights recognized by the Court are not absolute, but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim

A new element in the reasoning of the judgment is that fundamental rights are not absolute rights and that each fundamental right, including the right to property, must be considered in relation to its social function. These two elements have not yet appeared in previous rulings of the European Court of Justice on the right to property and can be seen as a new stage in the doctrinal development of the institution of property right (Téglási, 2010, p. 43).

The Charter has become a new milestone in the protection of property rights. It was signed in Nice on 7 December 2000. Article 17(1) of the Charter contains a provision on the right to property. It states:

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.”

The protection of intellectual property as a form of right to property is already explicitly mentioned in the Charter, in paragraph 2, in view of its growing importance and secondary as a form of Community law. Intellectual property includes not only literary and artistic property but also, inter alia, patent and trademark rights and neighbouring rights. The safeguards set out in paragraph 1 shall apply *mutatis mutandis* to intellectual property (2007/C 303/02). Hungary provided for the proclamation of the Charter and the related explanations in Article 4 of Act CLXVIII of 2007.

6. Restriction of property rights and compensation

The right of ownership may be restricted in certain cases and under certain conditions, subject to a reasonable amount of compensation.

The wording of Article 1 of the First Additional Protocol and the relevant case-law, in so far as it provides for the possibility of depriving property of its possessions in the public interest or of restricting the use of property in the public interest in a broad sense, are the basis for the ECtHR's analysis of the restriction of property. The ECtHR has traditionally examined the restriction of property according to three formally distinct rules and has established a hierarchy between them:

The first sentence of the first paragraph contains the first rule, which states the requirement of respect for and peaceful enjoyment of property.

The second rule is set out in the second sentence of the first paragraph, which states that the confiscation of property may be justified in the public interest, subject to the conditions laid down by law and the general principles of international law.

The third rule is found in the second paragraph, which recognises that states have the power to regulate the use of property in the public interest in such way to make such laws effective as the states deem necessary and to secure the payment of public charges, taxes and fines ([Sporrong and Lönnroth v. Sweden, 1982](#)).

The distinction between the three rules is, however, a formal one, because the ECtHR focuses on the proportionality requirement. It examines whether, despite the property restriction, the right balance has been struck between the restriction and the public interest objective is pursued. Although the ECtHR can classify the challenged interference as a measure restricting the peaceful enjoyment of property (first rule) or as a restriction on the public interest (third rule), the focus is really on whether the interference imposes an excessive burden on the rightholder. In its more recent case-law, the ECtHR no longer draws formal distinction but refers to the fact that the question of lawfulness of the restriction is decided based on an assessment of proportionality ([Orosz & Sonnevend, 2023](#)).

The Strasbourg Court has developed a five-step test for investigating complaints based on violations of the property right to. The Court examines the followings: 1. Has the interference complained affected the complainant's "property"? 2. Is the interference in accordance with the requirements of national law? 3. Is the interference occurred in accordance with the public interest? 4. Was the interference carried out in accordance with the requirement of a fair balance between the private interest and the public interest in the exercise of fundamental rights? ([Schutte, 2004, p. 35](#))

If the Court finds it proven that the complained state interfered with the "property" of the applicant (first two points), the State will only be exempted from liability if it can prove that during the intervention it respected the criteria set out in the last three points of the five-step test. The burden of proof shifts once the first two points have been verified: the complained state must "exculpate itself" by arguing that it intervened in the exercise of the complainant's property rights in accordance with the rules of national law, in the public interest and respecting the requirement of fair balance ([Téglási, 2010, p. 43](#)).

The principles defined in the international conventions are also reflected in the practice of the Hungarian Constitutional Court. The proportionality test for

property restrictions depends essentially on the specific circumstances of each case. It can be decided on a case-by-case basis what constitutes a proportionate or disproportionate restriction. Since they do not constitute expropriation, the guarantee of value is not a condition for the proportionality requirement, in other words, the absence of compensation cannot entail a violation of the constitutional rule on expropriation. However, the existence of compensation may render an otherwise disproportionate restriction of property proportional.

7. Summary

The protection of property rights under fundamental and international law has become an inescapable legal institution. International conventions provide for this protection in almost identical terms and judicial practice consistently reinforces it. In addition to conventions, international courts and other dispute settlement mechanisms play an important role in the protection of property rights, helping to resolve disputes between individuals and states. The protection of property rights is key to promoting economic development and ensuring social stability. Legal certainty and respect for property rights contribute to sustainable development and peaceful international relations. Therefore, special attention must be paid to the effective and equal protection of property rights in the international arena.

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