THE RELATION BETWEEN ART. 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND ART. 1 OF PROTOCOL NO. 1 TO THE CONVENTION

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Abstract:
Article 6 of the European Convention on Human Rights (1950) (ECHR) guarantees the right to a fair and public hearing, within a reasonable time, by an independent and impartial tribunal established by law, in the determination of an individual's civil rights and obligations or of any criminal charge against him (or her). The European Court of Human Rights (EctHR), located in Strasbourg, decides on the application of Article 6 in the domestic jurisdictions of each Council of Europe Member State. Article 1 of the First Protocol to the European Convention on Human Rights states that every person is entitled to 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.

Key words: *European Convention on Human Rights; Article 6 of the Convention; The First Protocol to the European Convention on Human Rights; Article 1 of the First Protocol.*

1. The right to a fair trial

A. A. Introduction

Article 6 of the Convention enshrines "the right which, by its affirmation, ensures the connection between human rights and the rule of law"[1], namely the right to a fair trial, as it follows:

1. Everyone is entitled to a fair and public trial, within a reasonable period of time necessary for their cause, by an independent and impartial court of justice, established by law, which will decide, either on the infringement of their civil rights and obligations or on the validity of any criminal charge against them. The court order must be pronounced publicly, but the access of the press and public in the courtroom may be prohibited throughout the whole trial, or only during a part of it, in the interest of morality, public order or national security, in a democratic society when interests of juveniles or the protection of parties' privacy require it, or if strictly required by the court when, under special circumstances, publicity would be likely to prejudice the interests of justice.

2. Any person accused of a crime is presumed innocent until her guilt is legally established.

3. Every accused has the following rights:

a. to be informed as soon as possible in a language that he understands and in a detailed way, on the nature and cause of the accusation brought against him;

b. to have the necessary time and facilities to prepare his defence;

c. to defend himself or be assisted by a counsel of his choice and, if he has no necessary means to pay for an attorney, to be assisted, without charge, by a public defender when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the citation and examination of defence witnesses, under the same conditions as witnesses against him;

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[1] Raluca Miga Beşteliu, Catrinel Brumar, *"International Protection of Human Rights. Course Notes"*, Pro Universitaria Publishing House, Bucharest, 2006, p.115.

e. to be assisted, without charge, by an interpreter if he does not understand or speak the language used in court".

As mentioned above, paragraph 1 is enlightening to this approach, because in the following, we will refer, in particular, to this paragraph.

Some doctrinaires of the field believe that "the protection of freedom would be meaningless if it was not entrusted to an independent justice, guarantee of a fair trial"[2].

Article 6 of the Convention "has its origins in the texts of article 10 and article 11, paragraph 1 of the Universal Declaration of Human Rights"[3], adopted by the UN General Assembly on December 10th, 1948. According to art. 10 of the Declaration, "everyone is entitled in full equality, to be heard in a fair and public hearing, by an independent and impartial court of justice which will decide either on the infringement of their civil rights and obligations, or on the validity of any criminal charge against them", and according to art. 11, par. 1 "any person charged with a crime is presumed innocent until her guilt is proven, equally, in a public trial, in which all guarantees for her defence were ensured". We find similar provisions also in the UN International Covenant on Civil and Political

rights of 1966[4], in the Inter-American Convention on Human Rights[5] and even in the African Charter of Rights and Peoples[6].

Article 6 of the Convention enshrines a fundamental principle, namely the superiority of law in a democratic society. The article does nothing else than to help ensuring a proper administration of justice, which means that a narrow interpretation of its provisions is incompatible with the object and purpose pursued. As an argument, we quote the opinion of judges of the European Court of Human Rights (ECHR) in the case Delcourt v. Belgium, according to which: "In a democratic society, in the meaning of the Convention, the right to a good administration of justice plays such an important role that a restrictive interpretation of art. 6, paragraph (1) would not fall within the scope and purpose of that provision"[7].

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[2] Frédéric Sudre, *"European and International Law of Human Rights"*, Polirom, Publishing House, Bucharest, 2006, p. 249.

[3] According to Corneliu Bîrsan, *"European Convention on Human Rights. Comments on articles. Vol I. Rights and Liberties"*, All Beck Publishing House, Bucharest, 2005, p. 395

[4] Article 14: "All persons are equal before the tribunals and courts of justice".

[5] Signed at San José (Costa Rica) on November 22nd, 1969. Article 8: "1. Any person has the right to make her case heard with the desired guarantees within a reasonable period of time, by a judge or a competent, independent and impartial court, established in advance, by law, which will decide the merits of any criminal charges brought to her, or establish rights and obligations in civil matters and in employment, taxation, or any other field. 2. Any person accused of a crime is presumed innocent until guilt is proven in accordance with the law. The accused is entitled in full equality, at least to the following guarantees: a) the right to be assisted, without charge, by a translator or interpreter if he can not understand or speak the language used in court, b) the prior notification, in detail, on charges against him, c) providing for the accused time and facilities to prepare his defense; d) the right to be assisted by a lawyer of his choice and to communicate with him freely and without witnesses; e) the right to be assisted by a lawyer provided by the State if the accused does not defend himself or fails to appoint an attorney within the time established by law; he can not derogate from this right, f) the defense right to examine witnesses at the hearing and obtain the participation, as witnesses or experts, of other persons; g) the defendant's right not to be compelled to testify against himself or to plead guilty, h) the right to go to a higher court. 3. Confessions of the accused shall be valid only if made without coercion of any kind. 4. The defendant acquitted by a final decision, can not be prosecuted again for the same offense. 5. Criminal trials are public, unless it is necessary to protect the interests of justice" (http://www.cidh.org/Basicos/French/c.convention htm).

[6] Adopted at Nairobi on June 27th, 1981. Article 7 para. 1, letters a) - d): "Any person has the right to make her case heard. This right shall include: a) the right to go to any competent national jurisdictions with any act that breaches fundamental rights which are recognized and guaranteed by conventions, laws, regulations and customs in force; b) the right to presumption of innocence until guilt is established by a competent jurisdiction, c) the right to defense, including that of being assisted by a chosen defender; d) the right to be trialed within a reasonable time by an impartial tribunal (http://www.aidh.org/Biblio/Txt_Afr/instr_81 htm).

[7] Taken from Nuala Mole, Catarina Harby, *"The right to a fair trial. Guidance on implementation of Article 6 of the European Convention on Human Rights"*, published in the Republic of Moldova, 2003, p. 6. (http://www.bice md/UserFiles/File/publicatii/Manuale/manual3.pdf).

To a close examination of the article, we see that it refers to two aspects, for which we can say that it is divided into two pillars, namely: the general right to a fair trial in civil and criminal matters (par. (1)) and guarantees specific to the right to a fair trial in criminal matters (par. (2) and (3)).

Article 6 guarantees every person, natural or legal[8], the right to a fair trial in civil and criminal matters. The right established by this article, is a "procedural right"[9]. By establishing this right, the Convention does not seek anything else than to protect all personal and property rights of a legal subject within internal procedures, by ensuring a fair trial. From the point of view of States Parties to the Convention, this right appears as a "substantive right, with specific penalties"[10] for its breach, namely the international liability of states concerned.

We observe from the study of specialized literature (quoted in the bibliographic sources), that the provision under which an "independent and impartial court of justice, established by law, shall decide (...) either on the infringement of civil rights and obligations, or on the validity of any criminal charge against any person" is not without critics. In this regard, we note that "authors of the Convention did not want that procedural guarantees contained in its text to be applicable to all judicial proceedings, but only to those of civil or criminal nature. I think that this option is at least strange"[11]. This assertion is based, on the one hand on ECHR jurisprudence which has extended, according to the doctrine, the scope of art. 6, and thus, many areas remain outside the protection offered by the Convention and, on the other hand, on fundamental laws of the States Parties to the Convention, enshrining the right to a fair trial, and which do not distinguish by the case nature "and do not exclude from the protection scope, certain procedures"[12]. Criticism goes further, considering that the principle of ensuring effective guarantee of rights, principle stated in the preamble of the Convention, "undergoes a significant prejudice"[13].

B. The scope of art. 6, paragraph (1)

Under the Convention, art. 6 applies only to disputes "concerning civil rights and obligations and criminal charges"[14]. Given the fact that nowadays, 47[15] countries are States Parties to the European Convention on Human Rights, naturally, there are just as many systems defining the civil or criminal nature of a procedure. The ECHR considered that these concepts can not be interpreted simply by reference to internal law of the state defendant. In this situation, for a uniform interpretation and a proper application of art. 6, paragraph (1), the Strasbourg Court has defined "the concepts of civil rights and obligations and of criminal charge"[16].

a. The concept of civil rights and obligations

This notion is not defined in art. 6, par. (1), which "does not determine the substance of civil rights and obligations in the legal order of States"[17] Parties to the Convention.

According to ECHR, in order for art. 6, par. (1), to be invoked before it, under civil aspect, the following conditions must be met[18]:

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[8] This article shall apply to both natural and legal persons. This stems from the opening words of the paragraph *("any person"*); the text does not mention what persons it refers to.

[9] Corneliu Bîrsan, *op.cit.*, p. 393.

[10] *Idem,* p. 394.

[11] Radu Chiriță, *"European Convention on Human Rights. Comments and explanations"*, vol. I, CH Beck Publishing House, Bucharest, 2007, p.237.

[12] *Idem.*

[13] *Idem.*

[14] Frédéric Sudre *op. cit.*, p. 250.

[15] www.coe.int

[16] Radu Chiriță*, op. cit.,* p. 239.

[17] Corneliu Bîrsan, *op.cit.*, p. 400.

- the existence of a contestation on a right that can be claimed through an action in court, in the national system. However, according to the Court, even if a person has, internally, some claims that may give rise to legal action, sometimes it is not enough only to take into account the material nature of the civil right in question, as defined by national law, in order to consider applicable the provisions of art. 6, par. (1). At the same time, there should not exist "procedural barriers" (such as, for example the immunity of a State from jurisdiction).

- the contestation must be real and serious;

- the outcome of the procedure must be direct and determined by the existence of the right.

More broadly, however, we can say that art. 6, par. (1) shall apply, under civil aspect, in situations where it refers to a "contestation" with patrimonial object and is based on the alleging infringement of patrimonial rights.

Resorting again to the doctrine, which, in turn, is based on the analysis of ECHR jurisprudence, we can identify a number of situations which, by extension, are subject to the provisions of art. 6, par. (1). Thus, we mention:

- the disciplinary litigation;

- the social litigation. The social security rights are civil rights within the meaning of art. 6, par. (1).

- the administrative decisions regarding the exercise of the property right.

- the civil litigation. In those cases, art. 6, par. (1) is applicable when the dispute is related strictly to patrimonial issues (e.g. the payment of salaries or other indemnities).

- the exercise or restraining of ownership. We mention, for example, the situation where a town planning permit is refused, leading thus to the impossibility of building;

- tax matters. We take into account those disputes which have as object the enforcement of taxes. We consider that such disputes have a patrimonial character, because they affect the plaintiff's right to property;

- the unfair competition, etc.

It is clear that disputes that have as object the following are not covered by art. 6, par. (1):

- the procedures described by the ECHR as "administrative and discretionary involving the exercise of prerogatives of public power"[19].

- the control of the authority power to verify the legality of foreigners' situation, for procedures of granting political asylum;

- the officials involved in the exercise of public power;

- the electoral disputes.

b. The notion of criminal charge

Within the meaning of the Convention, the term of "charge" is independent of national law. In the Deweer v. Belgium[20] case, ECHR noted that the term of "charge" should be understood in its material, and not formal acceptation. The notion of "charge" is defined as "the official notification, emanating from a competent authority, of the accusation of having committed a criminal offence, or as having a significant impact on the situation of the suspect".

To determine whether a person is accused of committing a crime, the Court has established in its jurisprudence, the following three criteria[21]:

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[18] Taken from Corneliu Bîrsan, *op.cit.*, p. 401.

[19] Frédéric Sudre, *op. cit.* p. 254.

[20] In this case, the prosecutor had ordered the provisional closure of the applicant's butchery, on grounds of a report demonstrating his breach of an order establishing the price of beef and pork. The acceptance of the proposed transaction by the trader in a friendly settlement cancelled the public action, as required under Belgian law. This did not prevent the ECHR to consider that the applicant had been the object of a criminal charge. (Nuala Mole, Catarina Harby, *op. cit.*).

[21] Corneliu Bîrsan, *op.cit.*, p. 444.

- its qualification as a crime under national law;
- the nature of the crime;
- the nature and degree of seriousness of the penalty that will be applied to its author.

These criteria are alternative and not cumulative.

According to Professor Corneliu Bîrsan, "in order for art. 6, par. (1) to be applied to "a criminal charge" is sufficient that "the offence in cause is, by nature, criminal, by reference to the Convention provisions, or to expose the perpetrator to a penalty that can be qualified as criminal penalty; this does not hinder the adoption of a cumulative approach, if the separate analysis of each criterion does not allow to reach a clear conclusion, regarding the existence of a "criminal charge".

In the scope of art. 6, par. (1), we have the following conditions:

- the order to arrest a person for a criminal offence;
- the formal notification of a person on prosecutions taken against her;
- the requirement of evidence, addressed to a person, by a competent investigation authority on customs offences and the freezing of the bank account of the interested person;
- the appointment of a defender, by a person, after an investigation has been initiated against her, based on a police report.

The procedures for:

- temporary detention,
- extradition,
- a convicted inclusion in a particular category of inmates,
- the reintegration into employment, of a person released on parole or the extension of the detention period due to subsequent discovery, of a relapse status, are outside the scope of art. 6, par. (1).

2. Property protection

A. General aspects

Article 1 of the additional Protocol no. 1 to the Convention[22] enshrines the protection of ownership, as it follows:

"Any natural or legal person is entitled to peaceful enjoyment of possessions. No one shall be deprived of their possessions, except for a cause of public interest and under the conditions provided by law and general principles of international law. The preceding provisions shall not affect the right of states to enforce such laws that they deem necessary to regulate the use of property in accordance with the general interest or to secure the payment of taxes or of other contributions or fines".

The right to property is qualified in the doctrine, as civil right, by content and as economic right, by purpose[23].

Article 1 of the Protocol has its origins in the Universal Declaration of Human Rights, which, at art. 17 provides the following: "Everyone has the right to property, both alone and in association with others", no one shall be deprived, arbitrarily, of their property". Provisions relating to ownership can be found in art. 5, letter d), section V[24] of the UN International Convention on the Elimination of

[22] Called hereinafter, Protocol.

[23] Corneliu Bîrsan, *"The right to property in the ECHR. Jurisprudence applications"*, Journal of Public Law, no. 4 / 2004, p. 103

[24] "States Parties commit to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law, irrespectively of race, color, national or ethnic origin, in order to use the following rights: (...) other civil rights, in particular: (...) the right to property of any person, both alone and in association"

(http://www.onuinfo ro/documente_fundamentale/instrumente_internationale/conventie_eliminare_discriminare_rasiala/).

All Forms of Racial Discrimination of 1965, but also in art. 47[25] of the International Covenant on Civil and Political Rights of 1966.

The Protocol envisages the establishment of international control of how national authorities of States Parties to the Convention shall ensure the enforcement of the right to property.

Any "natural or legal person or group of individuals who claim and demonstrate a breach of the right to property on certain assets (they are holders of this right), within the meaning of the Convention "benefit" from the provisions of art. 1 of the Protocol, under art. 34 of the Convention. An action brought before the Court, by the right holder can be continued by his heirs"[26].

In a careful study of art. 1 of the Protocol, we observe that it contains three rules, interdependent, namely: the general principle of the need to respect property rights, the deprivation of property is possible, but only under certain conditions, and the control over the use of property. The article has its own structure, namely: the respect for property, the causes of deprivation of property and the regulation of property limits.

It should be mentioned even from the beginning that the right to peaceful enjoyment of property implies the protection of the right to property, namely the protection of an existing right and not of a right to property, i.e. the right to acquire in the future, a right to property is not guaranteed. However, in theory it is noted that between "these two concepts lies the concept of legitimate expectation that defines the situation where it is not about an existing property, but not even of a virtuality; under certain legal provisions or court orders, a private person may, legitimately, hope that she will acquire a right over an asset"[27].

The fact that the provisions of the Protocol consider only the already existing right to property and not also the future one is criticized in the doctrine. In this respect, we consider the view expressed by Radu Chiriţă[28]: "(...) the incidence of art. 1 of the Protocol undergoes an extremely important and unfortunate limitation (...). Thus, the Convention protects only the right to property of an asset. (...) The presentation, in parallel, of two examples in this direction (...) is enlightening and has as object the jurisprudence of the Court regarding the existence of property in case of nationalized or confiscated property by the communist power. In the first case, (…) the former owners of nationalized buildings (...) brought actions for recovery against the State, demanding for nationalization to be held invalid. After having obtained final court orders, these were cancelled by the Supreme Court, following the exercising of appeals for annulment, on grounds that courts had no jurisdiction to rule on such claim actions, which were outside the scope of court powers. The Court established, in such cases, that it had no jurisdiction to rule on nationalization, because it occurred before the ratification of the Convention by the Romanian state. Instead, the Court found that, after the ratification moment, applicants were recognized the right to property on the building, by a final decision of a court, so that they were, for a while, owners over a good that was in their patrimony. In the other type of cases, applicants have also promoted, action claims, but they were rejected by courts, on grounds that they had no jurisdiction to rule on such claim actions, leaving the remit of the judiciary power. In the latter case, the Court dismissed the complaints as inadmissible, on grounds that people were never holders of a current right to property, after the moment of ratification of the Convention, by Romania. Unlike the first case, in this second case, plaintiffs could not prove that, after the Convention ratification, they were holders of a right on the building, right that they subsequently lost. Consequently, because art. 1 of Protocol no. 1 does not guarantee the right to obtain ownership of an asset, but the respect of existing rights over an asset, in order for a complaint

[25] No provision of the Covenant can affect "the inherent right of all peoples to enjoy and fully and freely use the natural wealth and resources".

[26] Corneliu Bîrsan, op. cit., p. 1007.

[27] Raluca Miga Beşteliu, Catrinel Brumar, *"International Protection of Human Rights. Course Notes"*, Universul Juridic Publishing House, Bucharest, 2006, p.150

[28] *Op. cit.*, pp. 352-356.

to be admissible, the plaintiff must prove to the Court that at one point, after the Convention ratification, the right to property was recognized to him and, as a result of a state action, this right has been affected".

B. The scope of the right to property

a. The concept of "asset"

ECHR judge has given to the concept of "asset", one "independent coverage area"[29] that extends considerably the scope of the right to property.

From the study of doctrine, we keep in mind that the broad concept of property refers to "certain rights and interests constituting assets"[30]. By way of example, we mention that, besides tangible property, the protection granted by art. 1 of the Protocol also envisages the following:

- assets with patrimonial value, including intangible assets (e.g. clients, social parties, rights to inherited assets etc.);
- economic resources and incomes that people have from all their economic activities (e.g., houses built on communal land of the state);
- the established customary right to fish on a lake;
- the right to raise a real estate project;
- the right to exploit a stone quarry;
- the right of usufruct etc.

"Examining various aspects of the concept of "asset" within the meaning of article 1 of the Protocol, it results that this article protects rights on existing assets or on property values, representing at least one legitimate hope for obtaining the asset. On the contrary, the hope of seeing recognized a property right that you are unable to effectively exercise, can not be considered an asset in the sense of this text, and the solution is valid in the case of the conditional claim that is lost for not accomplishing the condition"[31] .

In conclusion, it is important to remember that, within the meaning provided by the ECHR, the notion of "asset" refers to "any interest of a private person that has economic value"[32].

b. Ownership limits (deprivation of property)

From the writing of article 1 of the Protocol, it is clear, unequivocal, that ownership is not an absolute right. Deprivation of property, as already noted, is possible only if certain conditions are met. These conditions apply regardless of how national law calls the deprivation of property: "expropriation, nationalization, deprivation of fact, deprivation of essential prerogatives of ownership"[33].

The necessary conditions for the presence of a lawful deprivation of property are divided into two categories, namely:

- those provided expressly in art. 1 of the Protocol (par. (1) and (2) of art. 1 contain, on the one hand, provisions on deprivation of property, and the property case settlement, on the other hand) and
- those judicially inferred.

To be consistent with the Protocol, the deprivation of property must pursue a purpose of public utility and take place under conditions stipulated by law and general principles of international

[29] Frédéric Sudre, *op. cit.* pag. 376.
[30] *Idem.*
[31] Cristina Nicoleta Ghiță, *"Applicability of Article 1 of Protocol no. 1 of the ECHR"*, in THEMIS, Magazine of the National Institute of Magistrates, no. 3 / 2005, p. 100-101.
[32] Radu Chiriță, *op. cit.,* vol. II, p. 352.
[33] Raluca Miga Beşteliu, Catrinel Brumar, *op. cit.*, 2007, p. 150.

law. In other words, the deprivation of property must be done in the following conditions: it must be provided by law, it must be of public utility and consistent with international law.

The deprivation of property must be provided by law. Making reference to the law requires, first, that the internal law defines, with "sufficient precision, terms and ways of property deprivation"[34].

Again, as in the previous section, we note that the concept of "law" has a special meaning in the context of the Convention. ECHR is, also in this case, the one providing a specific definition of the "law". First, we point out, as shown in the doctrine and jurisprudence of the field, that there must be a distinction between formal and material aspects involved in "the European concept of law"[35]. Under the formal aspect, the ECHR points out that the term "law" refers both to "the right of legislative origin and to the jurisprudential right"[36]. Regarding the material aspect, ECHR said that "in order for a law to exist, within the meaning of the Convention, its formal existence is not enough; the rule must meet two conditions: availability and predictability"[37].

The deprivation of property must be of public utility. According to ECHR, the notion of "public utility" means "any legitimate policy of social, economic or other nature"[38] and, in particular, a policy of "social justice"[39] that can respond to the public utility.

Next, we present some cases of ECHR that are considered by the court in Strasbourg of public utility. In our approach, we resort to the Romanian doctrine, namely, the already mentioned work written by Professor dr. Dr. Corneliu Bîrsan[40]. So, we mention:

- the expropriation of land by national authorities, several years ago, which aimed at securing housing for refugees from Minor Asia, as a result of statutory changes in population, provided in the Treaty of Lausanne, of 1923, was a measure which corresponded to a legitimate purpose, representing, in this view, a cause of public utility, because at that time, receiving refugees was a economic and social matter";

- "auctioning the applicant's goods constitute an interference with his right of respecting property, but it pursues a legitimate purpose, of public utility, namely to pay the bank debt, borrowed by the applicant";

- the control of the art market "by a state through a protection policy of cultural and artistic heritage of the country is a legitimate purpose, as national authorities have certain discretionary power in determining the concept of "general community interest";

- "the obligation of the person who bought the building from the State, whose return to the former owner was ordered, under legal provisions pursuant to remedy abuses committed by the former totalitarian authorities of the State pursues a legitimate purpose, namely to mitigate the patrimonial consequences of these abuses".

The deprivation of property must be consistent with international law. Referring to international law brings in discussion, in particular, "the issue whether art. 1 extends to nationals, the requirement under international law, for prompt, adequate and effective compensation to foreigners deprived of their property"[41]. This issue occurred in the context where, "in case of deprivation of property that occurs as result of the implementation of a social reform, there may be serious reasons to distinguish, in terms of compensation, between nationals and foreigners (...). If it is true that any expropriation must always correspond to a public utility, there may be differences between national

[34] Frédéric Sudre *op. cit.*, p. 380.
[35] Radu Chiriță*, op. cit.,* vol. II, p. 8.
[36] *Idem.*
[37] *Idem*, p.10.
[38] Frédéric Sudre *op. cit.*, p. 380.
[39] *Idem.*
[40] Corneliu Bîrsan, *"European Convention on Human Rights. Comments on articles. Vol. I. Rights and Liberties"*, op. cit., pp. 1024-1027.
[41] Frédéric Sudre *op. cit.*, p. 380.

and foreign; national authorities might consider that there are legitimate reasons to ask nationals to bear, in order to fulfil a general interest, a greater sacrifice than foreigners. This distinction has its origins in a traditional conception, specific to international law, under which nationals can not claim, in a situation of purely internal interest, such as the disposition of a deprivation of property, that they have a right of international origin, i.e. a right that finds its source in an international treaty"[42].

At the end of the presentation of art. 1 of Protocol no. 1 to the Convention, we conclude that there is, however a condition to limit the right to property, namely the proportionality between purpose and means of achievement. There are cases in which the deprivation of property is made in compliance with all requirements, including the providing of compensation to the owner. Nevertheless, the Court sanctioned a state when it took into account, for determining the compensation value for the expropriation of land, only the intrinsic value of the land, without taking into account the damage caused, by depriving that person from the revenue obtained from that agricultural area. Allowance must occur within a reasonable time. It must not be only pecuniary, but may also consist of other compensatory measures.

3. "The connection" ("relation") between art. 6 of the European Convention on Human Rights and art. 1 of Protocol no. 1 to the Convention

As stated above, any provision of legislative, administrative or judicial nature or a court order can affect the right to property. The question is: "shall provisions of art. 1 of the Protocol also apply to relations between individuals?"[43] The answer to this question is provided by the Strasbourg Court. In this regard, ECHR provides that "disputes between individuals on the right to property may create problems regarding the right to a fair trial, within the meaning of art. 6 of the Convention, but not also regarding the compliance with art. 1 of the Protocol"[44]. In this respect, it is stated that "the ruling of a dispute between individuals, by a court, on grounds of rules in force does not engage the state liability in the content of this text"[45]. Thus, "in relations between individuals (...) achieving ownership should not come solely from a private person; the involvement of public power must be, at least mediated, if it is not direct and immediate. However, when an individual puts into question the breach, by a public authority, of the right to property, not only the infringement of provisions of article 1 of the Protocol is invoked, but also those of art. 6 of the Convention"[46].

4. The fair remedying for breach of art. 6, par. (1) of the European Convention on Human Rights and of art. 1 of Protocol no. 1 to the Convention.

Under article 41 of the Convention, "if the Court finds that there was an infringement of the Convention or of its Protocols, and if the internal law of the High Contracting Party concerned allows only imperfectly erasing the consequences of such breach, the Court grants to the injured party a fair compensation, if it is the case".

In other words, in the situation where the state is guilty of breaching any provision of the Convention or its Protocols, and implicitly of items analyzed by us, at the request of the applicant, ECHR compels the State to "measures to ensure compensation for damage suffered by the plaintiff, by violating his rights"[47].

It is important the fact that the Strasbourg Court "can not order the annulment of court orders or administrative acts"[48], but can compel the State to remedy the material and moral damage suffered.

According to the Court's jurisprudence, as shown in literature[49], the provisions of article 41 have been subject to a "strict interpretation considering that it only allows the European court to

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[42] Corneliu Bîrsan, *"European Convention on Human Rights. Comments on articles. Vol. I. Rights and Liberties"*, op. cit., pp. 1028.

[43] *Idem.*

[44] *Idem,* p. 1006.

[45] *Idem.*

[46] *Idem.*

[47] Radu Chiriță*, op. cit.,* vol. II, *p*. 323.

[48] *Idem.*

condemn the State defendant to pay to the injured party, a cash allowance to compensate the damage suffered"[50]. However, there is an exception from this narrow interpretation, in cases of breach of art. 1 of Protocol no. 1 to the Convention. In these cases, the Court, under the principle of restitutio in integrum, pronounced injunctions against the respondent States, ordering them to return the goods to the injured parties". But even in these situations that represent the exception, ECHR did not establish for the convicted state, an unique obligation, to return the asset in kind, but only an alternative obligation, either the restitution in kind or the compensation payment for fair satisfaction; the choice is left solely to the state, which can execute the decision, being released therefore (...) from obligation (…), at free choice"[51].

The allowance for fair satisfaction granted pursuant to art. 41 of the Convention, covers the damage suffered by the injured party (...) and the moratory interests for not fulfilling, in time, the obligation to pay sums awarded as damages for the pecuniary and moral prejudice and for procedural costs"[52].

In conclusion, the right provided in art. 6 of the Convention is a procedural right, while the right guaranteed by Art. 1 of Protocol no. 1 to the Convention is a civil right, through its content, and an economic right, through its purpose. By guaranteeing the right to a fair trial, the Convention seeks to protect all personal and patrimonial rights of a subject of law in internal proceedings. The right to peaceful enjoyment of property involves the protection of the right to property, namely the protection of an existing right and not of a right to property. In case of breach of rights guaranteed, the international liability of States concerned is engaged.

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[49] Corneliu-Liviu Popescu, *"The Enforcement character in Romanian law, of orders of the European Court of Human Rights and Conventions for amicably resolve cases"* in Romanian Pandects, no. 1 / 2003.

[50] Corneliu-Liviu Popescu, *"The Enforcement character in Romanian law….", op. cit., p.197.*

[51] *Idem.*

[52] *Idem, p. 197-198.*