

BOOK REVIEWS

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Dragoljub Popović, *Protecting Property in European Human Rights Law*, Eleven International Publishing, Utrecht 2009, p. 158

The author of the book is the Serbian judge at the European Court of Human Rights (ECHR) who used to be a professor of law and a legal practitioner before coming to Strasbourg to serve as a judge. His topic in this book is the system of protection of property as one of the human rights granted by the European Convention on Human Rights (Convention). The provisions on the protection of property are actually laid down by the First Additional Protocol to the Convention, which was adopted in 1952, only sixteen months after the adoption of the Convention main text.

There are human rights lawyers who do not consider the property to be among the most important human rights. Therefore it is worth noting at the very beginning what was rightly remarked by the author of the preface to this book, Vojin Dimitrijević, Director of the Belgrade Center for Human Rights and a Member of the International Law Institute. He stressed the fact that the transition countries “had to solve many problems inherited from the times of communist rule, when private property was not only denied as a human right but even considered to be the source of all social evils”. The protection of property as a human right, as the author showed in this book, played a significant role in overcoming the authoritarian past.

The book consists of three parts. Part One (pp. 1–65) explains the “Mechanism of protecting property” under the Convention. Part Two (pp. 65–123) exposes on the “Developments” of that mechanism and Part Three (pp. 123–149) is consecrated to its “Prospects”.

The functioning of the mechanism of protecting property is explained by the author in three chapters, which treat its emergence, characteristic features and the State interference with property. The author in-

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sists on the autonomous character of the concept of property in the European Law of Human Rights. That concept can be understood only if one is to research and follow the case-law of the ECHR.

The State can interfere with property in various ways and the author of the book took account of all of them in Chapter 3 of the book, which concludes Part One. The State interference with property has its typical form, being the deprivation of property, or in other words expropriation. It usually consists of a formal act, but the ECHR jurisprudence has also dealt with other patterns of this concept, namely the so called *de facto* expropriation, as well as the indirect one, which exists in some member states of the Convention. The author also exposed on the conditions required for a State interference with property. Among these the lawfulness, the legitimate aim and the striking of fair balance between various interests are to be found.

Part One deals with concepts and legal institutions, which have already been subject to comments and research in manuals on human rights for years. They can be described as “classic” notions of the relevant legal literature and doctrine.

On the contrary, Part Two of the book treats what the author calls developments of the protection of property as a human right, which makes this part probably the most interesting one in the whole volume.

In three chapters the author exposes in this part on restitution cases, pilot judgments and bank deposits. None of these topics were on the agenda at the time of drafting the First Additional Protocol to the Convention, back in the 1950-ies. They concern new problems that have emerged throughout the years of implementation of the Convention. The problems are mostly connected with transition countries, but they are also to be found elsewhere. Dealing with such problems, as performed by the ECHR practice, have led to the introduction of some new techniques and legal institutions. Among these are the pilot judgments. Their origin is in the area of the protection of property, but they have spread to other sectors of protection of human rights under the Convention.

For readers in Serbia the chapters on restitution cases and bank deposits will certainly be the most interesting of all. It is well known that Serbia is one of the few countries in Europe that have not managed to overcome the heritage of the previous regime by adopting legislation on restitution. The problem is still waiting for a proper solution in Serbian law and the readers of this book will therefore find valuable information on the ECHR case-law on the subject. The relevant case-law could at the same time serve as a source of inspiration for drafting Serbian new legislation in this field, which must be made effective. It is to be underlined that Serbia does not only need legislation on restitution of property, but rather the enforcement of such legislation in practice.

As far as the bank accounts and frozen assets are at stake the author tackled some specific topics, concerning Successor-States of former Yugoslavia. This is also a problem which remains open in the international law. The Successor-States of former Yugoslavia have to reach an agreement on many points, which they have failed to achieve so far. It may therefore affect the efforts of ex-Yugoslav republics in approaching the EU.

Finally, Part Three of the book is the shortest of the three, but it is worth attention for various reasons. Firstly, it shows how the protecting mechanism advanced in the course of developments of the ECHR jurisprudence. Secondly, it addresses certain dilemmas and challenges currently showing up in the field and being of great interest, and thirdly it provides conclusions to the whole book.

The author is of opinion that two main approaches emerged in the ECHR practice as far as the protection of property is concerned. The first is the rise of positive obligations. Originally the Convention system of protection of human rights was laid down on the existence of a negative obligation of a State. The State was not to interfere with the enjoyment of human rights in general and among these also not to interfere with property. From that concept the ECHR turned to the concept of positive obligation, which was developed in its case-law. The State is nowadays considered not only to be upon obligation not to interfere with property of an individual, but also “to secure the effective exercise of the rights” guaranteed under the Convention system. In the field of the protection of property this implies the physical protection of property, but the obligation to recover as well. Procedural guarantees under Article 6 of the Convention have also reference in the area of property protection. These guarantees have emerged in the course of most recent developments of the ECHR jurisprudence. The author says that obligation is now incumbent upon the State – Party to the Convention “to introduce remedies within the national legal system that would enable effective protection of property”.

Exposing on dilemmas and challenges in the protection of property the author tackled concepts of continuing violations and of social rights. The author is in favour of recognising the effect of continuing violations of human rights in the protection of property. In spite of his taking sides at this point with one trend in the case-law of the ECHR, he also exposed the opposite opinion, which is also rooted in somewhat contradictory jurisprudence of the Court of Strasbourg.

The social rights are not recognised in the Convention system and the author remains sceptical in respect of their future within the ECHR practice, because they are not envisaged by the provisions of the Convention and its additional protocols. Unless the texts were to face changes and substantial amendments the social rights could not be protected. The

amendments of the Convention and the additional protocols in this regard are however not likely to occur.

The author's conclusions are drawn along the lines of developments of the protection of property exposed in the text of the book. The author is of opinion that the system of protection of property has reached a fair amount of stability, although it can still be subject to changes and further developments. He stresses the fact that the protection of property, which had been set up in the years of the Cold War, served in the times of transition as "a specific tool aiming at restitution and redressing breaches of human rights, which had occurred in the past".

One of the author's main conclusions is that the system of protection of property in the European Human Rights Law had originally been designed "to follow a liberal pattern of preventing the State to interfere with individuals' possessions". The jurisprudence of the ECHR has transformed the original pattern so that the State is nowadays perceived as "a body having positive obligations towards individuals in respect of property and its protection". At this point it should be noted that the author of the book had started his career as academic teaching Legal History at the Belgrade University Faculty of Law. His conclusions show his sensibility towards that discipline in the sense that his main efforts went in the direction to research and display to readers how the system of property protection developed in the ECHR jurisprudence.

The book provides a table of cases cited in the text, as well as a bibliography, consisting of numerous volumes and articles, covering discussions among academics and practitioners of the topics the book is concerned with. Therefore it can be used both as a scientific contribution and a practitioner's manual.