

# COMPANIES AS APPLICANTS BEFORE THE ECtHR: ANALYSIS OF JUDGMENTS OF THE ECtHR AGAINST THE COUNTRIES OF THE WESTERN BALKANS REGARDING THE VIOLATION OF ARTICLE 1 PROTOCOL 1

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**Summary:** *This paper focuses on the judgments of the European Court of Human Rights (ECtHR, the Court) concerning countries in the Western Balkans region, where companies have been the applicants and where the ECtHR found violations of Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR, the Convention). Considering that in recent years there has been a noticeable increase in cases involving companies as applicants before the ECtHR, it is of particular importance to examine this trend. Moreover, due to the fact that companies appearing before the ECtHR usually complain of violation of the right to property, which is a basic human right, and its violation can have serious implications on the business climate in the countries of the Western Balkans. Analyzing the specific judgments of the ECtHR will provide significant insights into the effectiveness of the legal protection of the property rights of companies in the region. In this context, the analysis of the specific judgments of the ECtHR aims to show the most frequent and repeated violations of the right to protection of property of the companies operating in the region. By examining the Court's reasoning, policymakers and stakeholders can identify areas where legal frameworks and practices need improvement, ultimately helping to enhance the investment climate and promote business development in the Western Balkans.*

**Key words:** *companies, human rights, ECtHR, property rights*

## 1. INTRODUCTION

The European Court of Human Rights (ECtHR, the Court) is a key body for the protection of basic human rights and freedoms. Considering that this paper focuses on companies, firstly it is important to note that according to the Court it seems indisputable that companies as subjects

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in law can seek the protection of their human rights before this Court.<sup>3</sup> However, there is still a debate whether companies can be the bearers of human rights. More frequently, companies are categorized as violators of rights rather than as victims of such violations. The same is perhaps justified considering that such a view stems from many international human rights instruments that grant human rights exclusively to individuals, such as Article 1(2) of the American Convention on Human Rights (ACHR)<sup>4</sup> or Article 2(1) of the International Covenant on Civil and Political Rights (MCPPP)<sup>5</sup>. Unlike the above mentioned conventions, the European Convention on Human Rights (ECHR or Convention) is clear in confirming that the companies enjoy the rights provided for in the Convention.<sup>6</sup> This especially if we take into account Article 1 of Protocol no. 1, which guarantees the right to peaceful enjoyment of property, where it is clearly stated that any natural or legal person can claim its protection.<sup>7</sup> Actually is the only article which, according to its own text, is applicable to legal persons.<sup>8</sup>

Companies often encounter difficulties in safeguarding their property rights, making the Court's decisions crucial for maintaining legal certainty. However, it is essential to emphasize that a judgment can only have practical significance if the execution process is successfully carried out.<sup>9</sup> This paper focuses on the analysis of judgments of the Court, issued in the last 15 years, which refer to the countries of the Western Balkans region,<sup>10</sup> in which companies appear as applicants and where the ECtHR *inter alia* found violations of Article 1 of Protocol 1 of the Convention. Through a detailed analysis of the ECtHR cases, the aim of this research is to provide a deeper understanding of how the legal protection of property rights of companies takes place in an international context.

For this purpose, part two of this paper will provide a brief overview of the Court and the Convention, focusing on Article 1 of Protocol no. 1 and its applicability. In part three, the position of the ECtHR on the issue of corporate human rights will be analyzed. Further, part four will present brief summaries of the Court's relevant case law, focusing on the judgments against the States that are the subject of analysis in this paper. Part five aims at a comparative review of the selected case law, the number of judgments that are the subject of research by country, the type of violation of Article 1 Protocol no. 1; whether there are repeated violations by countries; whether the same violation of this right can be found in several countries or is related to a specific country; at

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3 "Practical Guide on Admissibility Criteria", European Court of Human Rights, accessed September 1, 2024, [https://www.echr.coe.int/documents/d/echr/Admissibility\\_guide\\_ENG](https://www.echr.coe.int/documents/d/echr/Admissibility_guide_ENG).

4 Organization of American States. 1969. "American Convention on Human Rights." *Treaty Series*, No. 36. San Jose: Organization of American States, Article 1(2), <https://www.refworld.org/legal/agreements/oas/1969/en/20081>

5 United Nations (General Assembly). 1966. "International Covenant on Civil and Political Rights." *Treaty Series* 999 (December): 171, Art. 2(1), <https://www.refworld.org/legal/agreements/unga/1966/en/17703>

6 Andreas Kulick, "Corporate Human Rights?," *European Journal of International Law* 32, no. 2 (May 1, 2021): 537–70, <https://doi.org/10.1093/ejil/chab040>.

7 Council of Europe. 1950. "Convention for the Protection of Human Rights and Fundamental Freedoms." *Council of Europe Treaty Series* 005. Strasbourg: Council of Europe. , [https://www.echr.coe.int/documents/d/echr/Convention\\_ENG](https://www.echr.coe.int/documents/d/echr/Convention_ENG).

8 Winfried H. van den Muijsenbergh and Sam Rezai, "Corporations and the European Convention on Human Rights," *Global Business & Development Law Journal* 25, no. 1 (January 1, 2012): 43–68.

9 "The supervision process - department for the execution of judgments", accessed December 08, 2024, <https://www.coe.int/en/web/execution/the-supervision-process>.

10 The Western Balkans is a designation used most commonly by the European Union for a region that includes Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, and Serbia.

which stage is the process of their execution, etc. Finally, the conclusions drawn from the above will be presented.

## 2. PROTECTION OF PROPERTY RIGHTS BEFORE THE ECtHR

The Court is a judicial institution of the Council of Europe, founded in 1959 which protects the rights guaranteed by the Convention.<sup>11</sup> The Convention was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953. It is considered to be the first instrument to enter into force which protects certain rights set out in the Universal Declaration of Human Rights and which made them binding.<sup>12</sup> The Convention's binding character is stated in its first article which states that all member States of the Council of Europe „shall“ secure the rights and freedoms defined in the Convention to everyone within their jurisdiction.<sup>13</sup>

Since 1998 the Court has sat as a full-time court and applicants can directly apply to it for protecting their Conventional rights.<sup>14</sup> Before that, the Court operated in conjunction with the European Commission of Human Rights. At that time the applicants had to lodge their application with the Commission which would decide on the application's admissibility and, if deemed necessary, refer the application to the Court.<sup>15</sup> In recent years, with a body of case law surpassing that of any other regional or international human rights instrument, the Court has significantly influenced national policies, laws, and living conditions across wider Europe. As a result, it is widely regarded as one of the most effective international treaty bodies for the protection of human rights. .<sup>16</sup>

When it comes to the Article 1 of Protocol No. 1 of the Convention, it is essential to highlight that whether 'property' constitutes a human right remains a subject of ongoing debate across multiple disciplines, including law, philosophy, and economics.<sup>17</sup> Notably, the right to property was not included in the initial draft of the Convention. It was only after a compromise in 1951 that this right was incorporated into the First Protocol.<sup>18</sup>

According to the current text of the Convention, Article 1 of Protocol no. 1 guarantees the right to property and protects natural or legal persons from arbitrary state interference in their property rights.<sup>19</sup> Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers only deprivation of "possessions" and subjects it to certain conditions. The third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, *inter alia*,

11 "The Court in Brief", European Court of Human Rights, accessed August 1, 2024, [https://www.echr.coe.int/documents/d/echr/Court\\_in\\_brief\\_ENG](https://www.echr.coe.int/documents/d/echr/Court_in_brief_ENG).

12 European Convention on Human Rights, *supra* note 7, .

13 *Ibid.* art. 1.

14 "The European Court of Human Rights," Council of Europe Office in Georgia, accessed August 6, 2024, <https://www.coe.int/en/web/tbilisi/europeancourttohumanrights>.

15 Van den Muijsenbergh and Sam Rezai, "Corporations and the European Convention on Human Rights", 56.

16 Andreas Føllesdal, Birgit Peters, and Geir Ulfstein, *Constituting Europe* (Cambridge University Press, 2013), 47.

17 Douglas Maxwell, *The Human Right to Property* (Bloomsbury Publishing, 2022), 42.

18 *Ibid.*, 64.

19 European Convention on Human Rights, *supra* note 7, Art. 1 Protocol no.1.

to control the use of property in accordance with the general interest<sup>20</sup>. In that sense, Article 1 of Protocol no. 1 imposes both negative and positive obligations towards the state in terms of protection of the right to enjoy property. In particular, any interference must be in accordance with the public interest, must be carried out in a manner that respects the rule of law and must be proportionate to its objective.

However, the existence of a possession is a preliminary step to demonstrating that Article 1 of Protocol No 1 is engaged. In most instances, the existence of a possession will be agreed upon between the parties, or the ECtHR will examine the Member State's domestic law to determine whether a possession exists. In doing so, the ECtHR broadly recognizes its subsidiary role and that national authorities are better placed to determine what is a possession. However, the ECtHR has significantly expanded the concept of 'possession' through an independent 'autonomous' approach. According to the Court's case law, the 'possessions' covered by Article 1 of Protocol No 1, are exceedingly broad, from immovable real property to intangible rights such as contracts, claims and social security benefits.<sup>21</sup> Indeed, the autonomous interpretation of what constitutes a 'possession' means that Article 1 of Protocol No 1 has the ability to influence a broad range of decisions concerning 'possessions'. Public authorities, policymakers, and Parliament must remain constantly vigilant to prevent unintentional violations of their human rights obligations. This means that every private right with some economic value is protected or regulated in some way by Article 1 of Protocol no. 1.<sup>22</sup> The fact that the domestic laws of a State do not recognize a particular interest as a "property right" does not necessarily prevent the interest in question, in some circumstances (see *Depalle v. France* §68)<sup>23</sup>, from being regarded as a "possession" within the meaning of Article 1 of Protocol No. 1.<sup>24</sup>

The protection of property rights before the Court represents a dynamic and evolving aspect of legal doctrine, illustrating the complex balance between individual rights and state interests. Through its rich jurisprudence on this subject, the Court plays an important role in the protection of property rights. Its decisions not only ensure that the states adhere to their obligations under the Convention, but also contribute to the development of a robust framework that respects both individual rights and broader societal needs.

However, the effectiveness of conventional rights and the judgments of the Court to a large extent depends on national implementation. It is well known that the full execution of judgments helps strengthen the effectiveness of the judgments of the Court and has the effect of reducing the number of requests submitted to it.<sup>25</sup> When national authorities fully comply with court rulings, this will not only ensure the execution of the international obligation, but will further encourage public confidence in state institutions.

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<sup>20</sup> "Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights Protection of Property," accessed August 16, 2024, [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_1\\_protocol\\_1\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_1_protocol_1_eng).

<sup>21</sup> Maxwell, *The Human Right to Property*, 131.

<sup>22</sup> *Ibid.*, 142

<sup>23</sup> *Depalle v. France*, Application no. 34044/02, ECtHR, (2010), <https://hudoc.echr.coe.int/fre?i=001-97978>.

<sup>24</sup> Guide on Article 1 of Protocol No. 1, *supra* note 20.

<sup>25</sup> Anne Van Aaken and Iulia Motoc, *European Convention on Human Rights and General International Law* (Oxford: Oxford University Press, 2018), 45-46

### 3. COMPANIES AS APPLICANTS BEFORE THE ECTHR

When considering victims of human rights violations, the focus often falls on individuals rather than legal entities like companies, particularly in the context of property rights.<sup>26</sup> However, this narrow approach overlooks the significant impact that property rights violations can have on businesses, which play a crucial role in economic stability and societal development in the countries. By acknowledging that legal entities can also suffer from these violations, we can foster a more comprehensive approach to human rights advocacy that addresses the needs of all stakeholders. In that sense, mutual respect of rights is important, by the company towards third parties and *vice versa*.

Similarly to natural persons, a corporation, as a legal entity, has the capacity to initiate and respond to lawsuits, own property, enter into contracts, and perform other similar legal actions. However, some of the rights are inapplicable to corporate entities (for example, the right to marry, the right against forced servitude, the right to bodily integrity).<sup>27</sup> It is a well-established fact that the Convention provides broad rights to corporations, but granting human rights to companies does not take away individual rights; rather, it improves their awareness of the importance of protecting human rights.<sup>28</sup>

More precisely, Article 34 of the Convention clearly instructs the Court to accept applications from “any person, non-governmental organization or group of individuals claiming to be the victim of a violation” of the rights enumerated in it.<sup>29</sup> Corporations are included within the scope of the term „*non-governmental organization*.” However, the wording has changed through the years. The initial version of the Convention referred to „any natural or corporate person,” which was later modified to „corporate body” before ultimately adopting the term „non-governmental organization.”<sup>30</sup> Despite these changes, there was nothing to suggest that it was intended to exclude corporations from the protection of the Convention.<sup>31</sup> This evolution reflects an ongoing recognition of the role that corporations play in the landscape of human rights.

The right to individual appeal to the Court is the cornerstone of the Convention system. After exhausting all national remedies, entrepreneurs who believe their rights have been violated by a State Party to the Convention can appeal to the Court. They submit applications to the Court seeking to restore their rights at the national level in accordance with the principle of subsidiarity.<sup>32</sup> The Court’s first case involving a corporate claimant took place in 1978 when it ruled on

<sup>26</sup> Maxwell, *The Human Right to Property*, 45.

<sup>27</sup> Turkuler Isiksel, “Corporate Human Rights Claims under the ECHR,” *The Georgetown Journal of Law & Public Policy*, Volume 17 Issue S (2019): 988, <https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2019/12/17-S-Isiksel.pdf>.

<sup>28</sup> Aleksandra Višekruna, “Protection of Rights of Companies before the European Court of Human Rights,” *EU and Comparative Law Issues and Challenges Series (ECLIC)* 1 (2018):113, <https://doi.org/10.25234/ecl/6524>.

<sup>29</sup> European Convention on Human Rights, *supra* note 11, Art. 34

<sup>30</sup> Marius Emberland, *Companies before the European Court of Human Rights*, (Oxford: University of Oxford, 2004), 4-5.

<sup>31</sup> Van den Muijsenbergh and Sam Rezai, “Corporations and the European Convention on Human Rights”, 62.

<sup>32</sup> Lyudmyla Deshko, “Application of Legal Entities to the European Court of Human Rights: A Significant Disadvantage as the Condition of Admissibility,” *Croatian International Relations Review* 24, no. 83 (October 1, 2018): 84–103, <https://doi.org/10.2478/cirr-2018-0015>.

a dispute between a private media corporation and the United Kingdom in the case of *Sunday Times v. United Kingdom*.<sup>33</sup>

If we consider the Court's practice, it can be noted that the first case involving a company as the applicant under Article 1 of Protocol No. 1 was that of *Lithgow and Others v. United Kingdom*<sup>34</sup>, where several companies and shareholders challenged the nationalization of their industries by the UK government. The case dealt with the compensation issues related to the nationalization process, and the Court ruled on the adequacy of the compensation under Article 1 of Protocol No. 1. This case is a landmark for corporate applicants in the context of property rights under the Convention.

In any case, any natural or legal person complaining of an interference with their 'possessions' must show that such a right exists or existed, or that they have a legitimate expectation of its existence. Where there is a dispute as to whether an applicant has a possession under Article 1 of Protocol No 1, the Court is required to determine whether the article is engaged.<sup>35</sup> The ECtHR is competent for applications submitted by individuals (natural and legal persons) or states, in which a violation of the ECHR is highlighted, as long as the violation allegedly directly and significantly affected the applicant.<sup>36</sup>

Seeing this through the prism of the Court's case law (see *Agrotexim and Others v. Greece*, 1995, §§ 64-71 and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, §§ 9.), we can notice that the Court considered that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings. When it comes to cases brought by shareholders of a company, the Court has found it crucial to draw a distinction between the complaints brought by shareholders about measures affecting their rights as shareholders and those about acts affecting the companies in which they hold shares. In the former group, shareholders themselves may be considered victims within the meaning of Article 34 of the Convention (see *Project-Trade d.o.o. v. Croatia*, 2020, §§ 44-47). In the latter group, the general principle is that the shareholders of companies cannot be seen as victims of acts and measures affecting their companies. In this connection, the disregarding of a company's legal personality can be justified only in "exceptional circumstances", in particular where it is clearly established that the company cannot bring the case to the Court in its own name.<sup>37</sup> However, the ECtHR has held that the corporate veil can be pierced in the interest of creditors within narrowly defined instances of fraud (see *Khodorkovskiy v Russia*).<sup>38</sup>

Finally, it should be noted that the companies that are victims of violations before the Court have the right to, among other remedies, fair compensation. The term 'just satisfaction', as outlined in Article 41, in most instances refers to monetary compensation awarded to victim of human rights violations. However, in certain cases, it make the form of a purely 'declaratory' award, where the Court determines that acknowledging the violation of the applicant's rights constitutes sufficient

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<sup>33</sup> In this case, the ECtHR found that there was a violation of the right to freedom of expression and a violation of Article 10 of the Convention. *Sunday Times v. United Kingdom*, Application no. 6538/74, ECtHR, (1979), <https://hudoc.echr.coe.int/?i=001-206159https://hudoc.echr.coe.int/eng?i=001-57584>.

<sup>34</sup> *Lithgow and Others v. United Kingdom*, Application nos. 9006/80, 9262/81, 9263/81, etc, ECtHR, (1986), <https://hudoc.echr.coe.int/eng?i=001-57526>.

<sup>35</sup> Maxwell, *The Human Right to Property*, 78.

<sup>36</sup> "Practical Guide on Admissibility Criteria," *supra* note 3

<sup>37</sup> *Ibid.*

<sup>38</sup> Maxwell, *The Human Right to Property*, 123.

just satisfaction. Article 41 on just satisfaction does not differentiate between the victims who are states and those who are individuals. Even when it comes to the non-pecuniary compensation, the Court's case law demonstrates that the non-pecuniary compensation may also be granted to companies (see *Comingsoll SA v Portugal* (2001) 31 EHRR 31, [32]).<sup>39</sup>

## 4. RELEVANT COURT'S JUDGMENTS AGAINST THE COUNTRIES OF THE WESTERN BALKAN

### 4.1. Judgment against Albania

During the relevant period the Court delivered 1 judgment against Albania, where the Court found *inter alia* the violation of Article 1 Protocol 1 of the Convention and which resulted from an application submitted by a company. The case *Valio Shipping Company v. Albania*<sup>40</sup>, was submitted by a Greek company, complaining on account of the non-enforcement of the final decision in its favour. The applicant based its complaints pm Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention. When assessing the case, the Court referred to its previously well-established case law (see *Valio Shipping Company v. Albania*, §28), where, among other things, the Court held that a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable. The inability of the applicant to obtain the execution of the domestic judgments led to the interference of his right to peaceful enjoyment of his property, in accordance with the first paragraph of Article 1 of Protocol no. 1. By disregarding the judgments, the national authorities prevented the applicant from receiving the money he could reasonably have expected to receive. Accordingly, the Court concluded that there was a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 of the Convention.

### 4.2. Judgments against Bosnia and Herzegovina

In the relevant cases of *Panorama Ltd and Miličić v. Bosnia and Herzegovina*<sup>41</sup> and *TB Inžinjering d.o.o. v. Bosnia and Herzegovina*,<sup>42</sup> applicants (companies registered in Bosna and Herzegovina), complained of the non-enforcement of a domestic decision given in their favour and relied, expressly or in substance, on Article 6 § 1 of the Convention and on Article 1 of Protocol No. 1. The Court, therefore, considered that the decision in question constitutes "possessions" within

<sup>39</sup> *Ibid.*,130.

<sup>40</sup> *Valio Shipping Company v. Albania*, Application no. 34230/07, ECHR, (2015), <https://hudoc.echr.coe.int/?i=001-157520>

<sup>41</sup> *Panorama Ltd and Miličić v. Bosnia and Herzegovina*, Applications nos. 69997/10 and 74793/11, (2017), <https://hudoc.echr.coe.int/?i=001-175670>

<sup>42</sup> *TB Inžinjering d.o.o. v. Bosnia and Herzegovina*, Application no. 8181/21, ECHR, (2022), <https://hudoc.echr.coe.int/eng?i=001-217415>

the meaning of Article 1 of Protocol No. 1. The Court referred to the leading cases (*see Panorama Ltd and Miličić v. Bosnia and Herzegovina* §28 and *TB Inžinjering d.o.o. v. Bosnia and Herzegovina* §9), where a violation in respect of issues similar to those in the concerned cases had also be founded. The Court reiterated that the impossibility of obtaining the execution of a final judgment in the applicant's favour constitutes an interference with his or her right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1. Having regard to its case-law on the subject, the Court considered that in the instant cases, the authorities did not make all necessary efforts to enforce, fully and in due time, the decision in the applicants' favour. Therefore, the Court decided that there was a breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

### 4.3. Judgments against Croatia

For the purposes of this research, two applications submitted by the companies registered in Croatia were selected. In both cases, the Court delivered judgments finding, among other things, a violation of Article 1 of Protocol No. 1 of the Convention. In *Project-Trade d.o.o. v. Croatia*<sup>43</sup> and *Scott Bader d.o.o. v. Croatia*<sup>44</sup>, the applicant companies were shareholders in a privately-owned bank. Following the government decision on the bank's restructuring and recovery, all shares in the bank were revoked and cancelled, including those of the applicants. Despite efforts to appeal the decision, the companies' challenges were unsuccessful. The Court examined the case *Project-Trade d.o.o. v. Croatia* under Article 34, and after confirmed its findings in *Scott Bader d.o.o. v. Croatia*. The Court assessed whether the applicant could be considered a victim of a violation of their property rights under Article 1 of Protocol No. 1. The Court emphasized the need to differentiate between the claims made by shareholders regarding their individual rights and those related to the broader interests of the company itself. For the applicant company to qualify as a victim, the measures must directly impact its legal rights rather than merely affect its position within the company's governance structure. In this case, the Court found that the government's action had a direct and personal impact on the applicant's property rights. The loss of shares constituted a clear violation beyond a simple interference with the company's governance. Thus, the Court upheld the applicant company's victim status, recognizing its legitimate claim of rights violation. Therefore, the Court ruled that Article 1 of Protocol No. 1 had been breached.

### 4.4. Judgment against Montenegro

In the judgment *Kips doo and Drekalović v. Montenegro*<sup>45</sup>, the applicants complained *inter alia* of the right to peaceful enjoyment of property (Article 1 of Protocol No. 1 to the Convention), due to the unjustified refusal of the state to issue a building permit to the applicant company. The

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<sup>43</sup> *Project-Trade d.o.o. v. Croatia*, Application no. 1920/14, ECHR, (2021), <https://hudoc.echr.coe.int/?i=001-206159>

<sup>44</sup> *Scott Bader d.o.o. v. Croatia*, Application nos. 46998/15 and 2 others, ECHR, (2021), <https://hudoc.echr.coe.int/?i=001-213723>

<sup>45</sup> *Kips doo and Drekalović v. Montenegro*, Application no. 28766/06, ECHR, (2020), <https://hudoc.echr.coe.int/eng?i=001-196886>

second applicant was the first applicant's founder, executive director, and the owner of 99.2698 % of its shares. In this case it is specific that the Court examined whether application was compatible with the Convention *ratione personae* in respect of the second applicant and stated that the shareholders of a company could not claim to be the victims of alleged violations of the company's rights, except in exceptional circumstances, for example, where the company could not seek protection of its rights on its own. In this specific case, the Court noted that the second applicant owned more than 99% of the first applicant. Consequently, there was no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the reality of violations of the rights protected under the Convention and its Protocols or concerning the most appropriate way of reacting to such violations. Having regard to the absence of competing interests which could create difficulties, and in the light of the circumstances of the case as a whole, the Court considered that the applicants were so closely identified with each other that it would be artificial to make a distinction between them in this context, and that even though the party to the domestic proceedings was the first applicant only, the second applicant can also reasonably claim to be a victim within the meaning of Article 34 of the Convention. The Government's objection in this regard was therefore dismissed, and *inter alia* violation of Article 1 of Protocol No. 1 was found.

#### 4.5. Judgments against North Macedonia

During the relevant period the Court delivered 4 judgments against North Macedonia, where the Court found *inter alia* the violation of Article 1 Protocol 1 of the Convention. The selected cases were submitted by companies registered in North Macedonia and one Slovenian company based in Ljubljana.

In the judgment in the case *Euromak Metal DOO v. North Macedonia*<sup>46</sup> the Court established a violation of Article 1 of Protocol no. 1 because the company applicant was deprived of the right to be exempt from the Value Added Tax (VAT) it paid for the purchased goods despite its full compliance with VAT obligations and was unjustifiably ordered to pay VAT for the purchased goods from which it had been previously legally exempted, together with interest. This was done because its suppliers failed to fulfill their VAT reporting obligations. The fact that the applicant company did not settle its obligations towards the state arising from the disputed decisions issued by the tax authorities, which were confirmed by the administrative courts, considering that its bank account was blocked according to those decisions and that company eventually ceased to exist, had no influence on the Court's finding that the tax calculation affected the ownership rights of the applicant company.

In *Jakimovski and Kari transport v. North Macedonia*<sup>47</sup>, the Court found a violation of the property rights of the applicants due to confiscation of their truck during the customs infringement procedure. ECtHR determined that Jakimovski, as the founder of the applicant legal entity, was fined for offense and the transported goods were confiscated, and the truck he was in was also confiscated the customs offense committed. The Court found a violation of the Convention

<sup>46</sup> *Euromak Metal DOO v. North Macedonia*, Application.no. 68039/14, ECHR, (2018) <https://hudoc.echr.coe.int/eng?i=001-183555>.

<sup>47</sup> *Jakimovski and Kari transport v. North Macedonia*, Application.no. 51599/11, ECHR, (2019) <https://hudoc.echr.coe.int/eng?i=001-198462>.

because although the measure to confiscate the truck was foreseen according to the domestic legal provisions, however, the fine and confiscation of the disputed goods that he was transporting were sufficient to achieve the desired effect of prevention and protection from future similar behaviors. According to the Court, the confiscation of the truck had the effect of an additional sanction for the prevention of similar offenses, was disproportionate and did not correspond to the seriousness of the customs offense which imposed an excessive burden on the applicants. The Court found the absence of balancing the general interest, that is, the interest of the community on the one hand and the individual rights of the applicants on the other.

A violation of the right to property was also established in the case of *Avto Atom DOO Kochani v. North Macedonia*<sup>48</sup>, where the applicant company's complaints were that the domestic authorities deprived it of the right to deduct the VAT it paid for the goods received, due to an error made by its supplier. Namely, after a tax audit, the Public Revenue Administration issued a tax ruling imposing an additional VAT liability on the applicant company, made on the basis of invoices issued by the supplier, who was not registered for VAT purposes. The court noted that what was in dispute between the parties in this case was whether the appellant company had exercised due diligence in its business dealings, particularly with the supplier. It was known that the applicant company believed in the invoices from the supplier, which contained all the necessary data, including the tax number and stated VAT. Finally, the disallowance of the VAT deduction of the applicant company, according to the Court, was not justified due to the need for security for the collection of taxes, which is why it found a violation of Article 1 of Protocol no. 1.

In the case of *Radika provozi LLC Ljubljana v. North Macedonia*<sup>49</sup>, the complaint allegations of the appellant company refer to a violation of Article 1 of Protocol no. 1 of the ECHR because she did not receive compensation in the further litigation procedure for damages due to the temporary seizure of the vehicle, after the misdemeanor procedure against her was stopped due to the expiration of the absolute statute of limitations. The ECtHR concluded with the verdict that there is a violation in the assessment of the proportionality of the measure for temporary confiscation of the vehicle in the context of the civil procedure for compensation of damage. The ECtHR also took into account the fact that the vehicle was the primary means of work of the petitioner's company, as an argument that potentially played a key role in the assessment of the proportionality of the temporary confiscation measure, which was not subject to an appropriate assessment by the domestic courts. Such an omission by the domestic courts was not in accordance with the obligation of the domestic courts, which had to apply the tripartite test (whether the measure was legal, whether it had a legitimate purpose and whether it was proportionate) and to assess whether the temporary confiscation of the vehicle did not cause greater damage to the company seeker of necessarily necessary. Therefore, the ECtHR concluded that the domestic courts did not ensure a fair balance between the interests concerned and did not provide adequate protection of the property rights of the applicant company.

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<sup>48</sup> *Avto Atom DOO Kochani v. North Macedonia*, Application no.21954/16, ECtHR, (2020) <https://hudoc.echr.coe.int/eng?i=001-202529>.

<sup>49</sup> *Radika provozi DOO Ljubljana v. North Macedonia*, Application no.52003/18, (2023) <https://hudoc.echr.coe.int/eng?i=001-223645>.

## 4.6. Judgments against Serbia

During the relevant period the Court delivered 8 judgments against Serbia, where the Court found *inter alia* the violation of Article 1 Protocol 1 of the Convention. The selected cases were submitted by companies registered in Serbia. In *Majs Eksport-Import v. Serbia* (A.no.35327/09)<sup>50</sup>, *DOO Brojler Donje Sinkovce v. Serbia* (A.no. 48499/08)<sup>51</sup>, *EVT Company v. Serbia* (A.no.8024/08)<sup>52</sup>, *M.B. - Mak Čačak DOO and Others v. Serbia* (A.nos.67856/14, 69282/14 and 70253/14)<sup>53</sup>, *Mives DOO v. Serbia* (A.no.48966/09)<sup>54</sup>, *Tehnogradnja DOO v. Serbia* (A.nos.35081/10 and 68117/13)<sup>55</sup>, *Koka Hybro Komerc DOO Brojler v. Serbia* (A.no. 59341/09)<sup>56</sup>, the applicants complained *inter alia* about the respondent State's failure to enforce final judgments rendered in their favour against the debtor. They relied on Articles 6 and Article 1 of Protocol No. 1 of the Convention. In determining whether the applicants' claim could be considered property under Article 1 of Protocol No. 1, the Court referred to its well-established case law. It emphasized that the debt had been clearly defined by an enforceable domestic decision, and the claim against the debtor remained unsettled. The final judgment confirmed that the debtor owed the applicant a specific sum of money, including interest to be calculated from a specified date, along with any applicable social contributions. Therefore, the applicant's claim was sufficiently precise and established to qualify as a possession under Article 1 of Protocol No. 1.

We will further focus on the case *Aktiva DOO v. Serbia* (A.no 23079/11)<sup>57</sup>, where the applicant company also complained *inter alia* on the basis of Article 1 of Protocol No. 1, albeit for reasons distinct from those in the previously discussed case. The Court found a violation of Article 1 of Protocol No. 1, concluding that the State's confiscation of the applicant company's goods (specifically iron intended for use in reinforced concrete) was disproportionate. The Court observed that misdemeanor proceedings against the applicant company had been terminated due to the expiration of the statutory limitation period, with no finding of guilt. Despite this, the company's goods were seized and subsequently sold to a third-party company. This action was based on findings from parallel administrative proceedings, which alleged that the company had traded the goods without proper record-keeping, even though the goods in question had been lawfully imported. Furthermore, the Court observed that, aside from the misdemeanor proceedings—which resulted in acquittals for both the company and its managing director—the authorities did not initiate any criminal proceedings. Moreover, there was no evidence to suggest that the confiscation was intended to compensate for any pecuniary damage caused by the alleged regulatory non-compliance. Instead, the measure appeared to be punitive and aimed at deterrence. Given these circumstances, the Court

50 *Majs Eksport-Import v. Serbia*, Application no.35327/09, ECHR, (2013) <https://hudoc.echr.coe.int/?i=001-127617>.

51 *DOO Brojler Donje Sinkovce v. Serbia*, Application no.48499/08, ECHR, (2013), <https://hudoc.echr.coe.int/?i=001-138564>.

52 *EVT Company v. Serbia*, Application no.8024/08, ECHR, (2007), <https://hudoc.echr.coe.int/?i=001-81207>

53 *M.B. - Mak Čačak DOO and Others v. Serbia*, Application no. 67856/14, 69282/14 and 70253/14, ECHR, (2016), <https://hudoc.echr.coe.int/?i=001-166776>.

54 *Mives DOO v. Serbia*, Application no. 48966/09, ECHR, (2017), <https://hudoc.echr.coe.int/?i=001-170040>

55 *Tehnogradnja DOO v. Serbia*, Applications nos.35081/10 and 68117/13, ECHR, (2017), <https://hudoc.echr.coe.int/?i=001-172071>.

56 *Koka Hybro Komerc DOO Brojler v. Serbia*, Application no. 48966/09, ECHR, (2017), <https://hudoc.echr.coe.int/?i=001-170040>.

57 *Aktiva DOO v. Serbia*, Application no. 23079/11, ECHR, (2021), <https://hudoc.echr.coe.int/?i=001-207413>.

concluded that the confiscation placed an excessive burden on the applicant company, making it disproportionate. Therefore, it found a violation of Article 1 of Protocol No. 1.

## 5. COMPARATIVE OVERVIEW

In the cases *Valio Shipping Company v. Albania*, *Panorama Ltd and Miličić v. Bosnia and Herzegovina*, *TB Inžinjeri d.o.o. v. Bosnia and Herzegovina*, *Majs Eksport-Import v. Serbia*, *DOO Brojler Donje Sinkovce v. Serbia*, *EVT Company v. Serbia*, *M.B. - Mak Čačak DOO and Others v. Serbia*, *Mives DOO v. Serbia*, *Tehnogradnja DOO v. Serbia*, the Court found violations of the applicants' property rights due to the non-enforcement of domestic judgments. According to the domestic final judgments, companies (applicants) were entitled to receive a material benefit, which was not fulfilled. In these cases the Court took similar approach and criticized the authorities for failing to make the necessary efforts to fulfil their legal obligations, highlighting a systemic issue with judicial enforcement in the country. Obviously in Bosnia and Herzegovina and Serbia repeated cases can be observed with the same violation. From the aspect of execution, all cases, except *TB Inžinjeri d.o.o. v. Bosnia and Herzegovina*<sup>58</sup> which is still pending, were closed with the final resolution.<sup>59</sup> However, the ongoing case of *TB Inžinjeri d.o.o.* illustrates that the issue persists, calling for continued attention to safeguard the rights of affected companies.

In the cases *Aktiva DOO v. Serbia*, *Jakimovski and Kari transport v. North Macedonia* and *Radika prevozi DOO Ljubljana v. North Macedonia*, the Court found violations of the applicant companies' property rights due to disproportionate confiscation of goods. The Court emphasized that the authorities' actions imposed excessive burdens on the applicants, raising serious concerns about the reliability of the legal system in protecting property rights. However, the process of execution of *Aktiva DOO v. Serbia*, *Jakimovski and Kari transport v. North Macedonia* is closed<sup>60</sup>, but the case *Radika prevozi DOO Ljubljana v. North Macedonia* is still pending execution.<sup>61</sup>

In the cases of *Project-Trade d.o.o. v. Croatia* and *Scott Bader d.o.o. v. Croatia* the Court found violations stemming from the government's revocation of shares owned by the applicant companies, directly affecting their property rights. This situation emphasized that such governmental actions could result in significant harm to individual investors, reinforcing the notion that lawful protection of property is essential. The process of execution of these judgments is still pending<sup>62</sup>.

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<sup>58</sup> As a repetitive case, for the execution process it is placed in the group *Martinovic v. Bosnia and Herzegovina*, accessed 10 August 2024, <https://hudoc.exec.coe.int/eng/?i=004-50415>.

<sup>59</sup> Resolution CM/ResDH(2020)300, <https://hudoc.exec.coe.int/?i=001-207080>; Resolution CM/ResDH(2019)172, <https://hudoc.exec.coe.int/?i=001-196005>; Resolution CM/ResDH(2018)92, <https://hudoc.exec.coe.int/eng/?i=001-182028>; Resolution CM/ResDH(2012)136, <https://hudoc.exec.coe.int/?i=001-113998>; accessed 10 August 2024

<sup>60</sup> Resolution CM/ResDH(2023)132, accessed August 10, 2024, <https://hudoc.exec.coe.int/?i=001-225498> and Resolution CM/ResDH(2023)429, accessed August 10, 2024, <https://hudoc.exec.coe.int/?i=001-230764>.

<sup>61</sup> 1483rd meeting (December 2023) (DH) Action Plan (20/09/2023), [https://hudoc.exec.coe.int/?i=DH-DD\(2023\)1139E](https://hudoc.exec.coe.int/?i=DH-DD(2023)1139E).

<sup>62</sup> Regarding the fact that there was repetitive violation, in the process of execution both cases are under supervision in a group, where *Project-Trade d.o.o.* is a leading case <https://hudoc.exec.coe.int/?i=004-57449>.

Montenegro's situation was highlighted in the case of *Kips doo and Drekalović v. Montenegro*, where the Court identified multiple violations, including unjustified interference from the authorities in refusing to issue a building permit for a shopping centre, which resulted in the applicant's loss of profits. Unjust refusals to issue necessary permits compounded the applicants' difficulties, illustrating how inefficiencies can lead to violations of both property and procedural rights. The process of execution has been concluded with a final resolution<sup>63</sup>.

The Court issued several judgments against North Macedonia, *Euromak Metal DOO v. North Macedonia and Avto Atom DOO Kochani v. North Macedonia*, which revealed violations of property rights due to tax disputes. The Court criticized the authorities for taking disproportionate measures, emphasizing that these actions failed to strike a fair balance between public interests and individual rights. These cases underscored the severe consequences of overreach by tax authorities and highlighted the importance of proportionality in enforcement actions. Both cases have been concluded with final resolutions<sup>64</sup>.

The analysis of ECtHR judgments against Western Balkan countries reveals a consistent pattern of property rights violations under Article 1 of Protocol No. 1. Although many judgments have been enforced, ongoing proceedings emphasize the need for continued careful observation and reforms to safeguard corporate rights.

## 6. CONCLUSION

Article 1 of Protocol 1 of the Convention plays a key role in the legal protection of the property rights of business entities, confirming their equal status with natural persons in seeking justice through the Strasbourg Court. The analysis of the judgments of the ECtHR reveal significant implications for the legal systems of the countries of the Western Balkans, emphasizing the systemic challenges and the need for effective mechanisms for the protection of property rights. Continued dialogue between these nations is essential to identify key issues and jointly develop strategies for improvement.

Additionally, ECtHR case law provides national judges with a source of legal reasoning and interpretation that can be examined and compared with reasoning in their own country. This can help them make decisions in the cases they handle. It is not only helpful in the decision-making process itself, but can also have an impact on national social and legal debates.<sup>65</sup> Therefore, the Member States must prioritize educating their courts about the case law of the ECtHR, as there is often a significant lack of such information. In that path the Council of Europe could play an active role in this area as well. It is also essential that translations of key judgments are made available in the respective languages of the countries involved,<sup>66</sup> especially for cases that have far-reaching

63 Resolution CM/ResDH(2020)274, accessed 10 August 2024, <https://hudoc.exec.coe.int/eng?i=001-206939>

64 Resolution CM/ResDH(2019)193, <https://hudoc.exec.coe.int/?i=001-196057> and Résolution CM/ResDH(2021)17, <https://hudoc.exec.coe.int/?i=001-208190>

65 Spyridon Flogaitis et al., *The European Court of Human Rights and Its Discontents* (Edward Elgar Publishing, 2013), 97.

66 TranslationanddisseminationofECHRjudgments-departmentfortheexecutionofjudgments,accessed08December2024, <https://www.coe.int/en/web/execution/-/translation-and-dissemination-of-the-judgments-and-decisions-of-the-echr>

implications for the legal system.<sup>67</sup> It is worth noting that human rights are a frequent focus of various training programs, and Member States have the opportunity to seek expertise on specific issues through the Council of Europe, ensuring support and guidance in this area. In this context, Member States should take concrete steps to capitalize on the opportunities available to them and prevent repeated violations identified by the ECtHR. They should prioritize enforcement by adopting new legislation or implementing other measures to ensure that similar issues do not arise again.

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<sup>67</sup> Ulrike Deutsch, Rüdiger Wolfrum, and Springerlink (Online Service, *The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2009).

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