LEGITIMATE EXPECTATIONS ACCORDING TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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The principle of the protection of the legitimate expectation (hereinafter also: PPLE) is an independent legal concept that has emerged recently in the jurisprudence of many international and domestic courts and arbitrations, and is under the process of development. One of the peculiarities of this concept is that, it protects expectations, which are not based on substantive rights, in the realm of law, which is basically based on rights and the corresponding obligations it is quite uncommon.

According to Oxford dictionary, the word legitimate means something, that is Conforming to the law or to rules or able to be defended with logic or justification, or valid.[1] The word expectation is a strong belief that something will happen or be the case.[2] As John Rawls explains, "In a well-ordered society individuals acquire claims to a share of the social product by doing certain things encouraged by the existing arrangements. The legitimate expectations that arise are the other side, so to speak, of the principle of fairness and the natural duty of justice. For in the way that one has a duty to uphold just arrangements, and an obligation to do one's part when one has accepted a position in them,

1 https://en.oxforddictionaries.com/definition/legitimate (accessed: 02/02/2019);
2 https://en.oxforddictionaries.com/definition/expectation (accessed: 02/02/2019);

so a person who has complied with the scheme and done his share has a right to be treated accordingly by others. They are bound to meet his legitimate expectations."[3] The legal system and the government as the enforcer of the law is the guarantor that if the legitimate expectation of one party is breached and his claim to his counterpart is lawful, then he will receive relief for his frustrated expectation. As Arnold points out, law can be understood as expectations machinery that simultaneously protects and generates legitimate expectations.[4] – everyone who has a right acquired according to the rules of the legal order, also has the legitimate expectation, that this right will be protected and observed, by use of legitimate force from the state if necessary.

State, which is a sovereign has the judicial, legislative and governmental powers, forms legal order and compulsion mechanisms in a way, to ensure, that rights acquired according to the rules of the legal order are protected and observed. Person can acquire rights through various means. For example by doing certain things envisaged by legislation, entering into contractual relationships, etc. Some rights and obligation are also imposed on the subjects of legal order regardless of their wishes. Counterparts of the right can be the state or other person. However, if the addressee of the right refuses to fulfill its obligation, then the person turns to the judicial system seeking relief for its breached right. Then the courts review his/her claim and if they find that it is well-founded (in other words, domestic legislation recognizes and protects that right) satisfies it. Government on his side is obliged to execute court judgment. In this context, legislation is composed of the statutes, normative or individual administrative acts and any legal act, which is compulsory. In this way, law protects the legitimate expectation of its subjects, that they can enjoy and use their rights, which are protected by legal order. However, what happens when the legislation that has given a person some right is changed or cancelled (hereinafter: the regulatory change) causing this right to be eliminated? Does the person have any means to remedy its disappeared right?

It is generally accepted that every state has a sovereign right to conduct legislative, administrative and judicial powers[5]. In other words, states have the right to regulate when they find it necessary. The right to regulate also includes the right to change a law, any bylaw and administrative acts according to the domestic legislation. When government is acting in good faith pursuing its public interests, government is not liable for any damages that the regulatory changes may cause.[6]

The breach of the right and the case of the regulatory change which causes the disappearance of the right are fundamentally different. When the former is the case, the person has a legitimate expectation that state will assure its restitution. On the other side, when the latter happens and right disappears, state ceases to protect it and generally person cannot expect legitimately that his bygone right will be protected any more. Besides, regulatory changes are mandatory and unilateral, they are the manifestation of states sovereignty and as a rule state cannot be held liable for any losses it may have caused.

However, does the expectation that the right will be protected will always lose its legitimacy with the disappearance of the right? Does the state have unilateral and unlimited sovereign right to create and cancel rights?

It is logical, that if the legal act that granted person some benefit is no longer enforceable or does not exists any more, then the right to enjoy benefit deriving from it ceases to exist as well. However, on the other side, as Mayer and

3 Rawls J., 1999, a Theory of Justice, Revised Edition, published by the belknap press of harvard university press, Cambridge, p. 275.

4 Arnold, S., 2017. Legitimate Expectations in the Realm of Law – Mutual Recognition, Justice as a Virtue and the Legitimacy of Expectations. Moral Philosophy and Politics, 4(2), p. 258.

5 Sornarajah, 2004. p. 357; cited from: United Nations Conference on Trade and Development, 2012. Expropriation, UNCTAD Series on Issues in International Investment Agreements II, UNITED NATIONS PUBLICATION, New York, 2012, p. 81.

6 See: United Nations Conference on Trade and Development, 2012. Expropriation, UNCTAD Series on Issues in International Investment Agreements II, UNITED NATIONS PUBLICATION, New York, p. 80-84.

sanklecha point out, an essential component of the good life is the ability to make and pursue long-term plans.[7] Among many other things, people plan their lives relying on the regulatory environment, believing that it will remain stable and the right acquired according to the law, will not be lost. So, if the regulatory change causes the loss of the rights, then it seems fair and logical, that the state should compensate the frustration of the expectation that the person would have been able to enjoy this right in the future. We do not live in a moment, our lives are process stretched out in time and we should be able to live it in a stable and predictable legal environment.

If we look through the legal literature about the topic, we will see, that most of the authors believe, that if the expectations are legitimate, then states have a prima facie duty to protect them and remedy frustrated ones. However, there are a diversity of opinions over the legitimacy issue. For Alexander Brown, the legitimacy of the expectation is created if "governmental administrative agencies were responsible for creating that expectations, after they had been given or had assumed a role responsibility, competence, or discretion over the relevant policies and measures.[8]" on the other side, for Fergus, theory of legitimate expectations rests inevitably on a set of political-theoretic antecedents[9] and the understanding of legitimacy of expectation can be differently understood and determined by different political and philosophical ideologies.[10] For Moore, rules or policies or practices that are egregiously unjust, that violate basic human rights, or some kind of moral minimum, cannot establish legitimate expectations, but that many laws which represent the agreed practices or policies of certain way of organizing human life and are not objectively unjust can give rise to legitimate expectations.[11]" For Colla, an expectation is legitimate to the extent that the initial law was not likely to change in the light of the conception of justice and fairness of the legal order concerned,[12] however, the degree of the legitimacy of the expectation depends on the passage of time and legal and factual background altogether.[13] This little overview exemplifies that the legitimacy of expectations may be argued on many grounds, however, every author believes, that it is states' obligation to protect them. Most of the mentioned papers, consider, that this obligation is of a moral or political nature. In some very specific cases, international courts or arbitrations go further in their jurisprudence and find that human rights and other considerations of the injured party can make it states' legal obligation, to protect LE during the regulatory changes.

It is also well established in the jurisprudence of the European Court of Human Rights (hereinafter: the court, or ECHR), that if the certain conditions are met, then the European Convention on Human rights (hereinafter: the convention), compel states to protect legitimate expectations of the persons during regulatory changes. Answering questions like, why did it become vital for the court to introduce this concept in its decisions, and when is the expectation considered legitimate according to the court, will help us to conceptualize essential characteristics of the Principle of the Protection of the Legitimate Expectations.

7 Meyer, L., & Sanklecha, P, 2014. How legitimate expectations matter in climate justice. Politics, Philosophy & Economics, 13(4), p. 373; in making such assumption, they rely on the works of Rawls and Williams (see the citation: For different reasons, john rawls and Bernard Williams, among others, think that the fact that human lives extend through time has enormous normative significance. Put negatively, neither believes that the good life is only (if at all) a matter of living in the moment. Rather, for Rawls, a central element of a good life is the ability to make and pursue long-term plans (Rawls, 1999: 358-360), and for Williams, a central element of being an integrated agent is the ability to enter into deep commitments and to structure one's life around them.)

8 Brown A., 2017. A Theory of Legitimate Expectations. The Journal of Political Philosophy, 25(4), p. 444;

9 Green F. 2017, Legitimate Expectations, Legal Transitions, and Wide Reflective Equilibrium. Moral Philosophy and Politics 4.2, p. 187;

10 Green, F. 2017, Legitimate Expectations, Legal Transitions, and Wide Reflective Equilibrium. Moral Philosophy and Politics 4.2, p. 182-192

11 Moore, M., 2017, Legitimate Expectations and Land. Moral Philosophy and Politics 4.2. p. 234;

12 Colla, A. "Elements for a General Theory of Legitimate Expectations." Moral Philosophy and Politics 4.2 (2017), 287

13 Ibid, 190-194

To address the first question, we should bear in mind, that the convention protects many human rights, such as right to life (article 2), prohibition of torture (art. 3), prohibition of slavery and forced labor (art. 4), right to liberty and security (art.5), right to a fair trial (art. 6) and so on. In the cases of those rights the court defines itself what the content of right is. For example, what the torture and inhuman and degrading treatment can be, or what the minimum standards of the fair trial or the right to liberty should be, and the states are obliged to enact their laws, and conduct their actions in such a manner to ensure the protection of those rights. In relation to this kind of rights, states do have certain margin of appreciation, however the court is the final assessor whether or not states' actions satisfy the requirements of the convention. Every governmental act be it administrative, judicial or legislative, if it breaches the protected right will be considered incompatible to the convention. No governmental act can change the content of the protected right, it can either protect or breach the right. Situation is different in the case of property right, protected by the article 1 of protocol no.1 of the convention (hereinafter: the protocol).

The article 1 of the protocol is formulated in the following way: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." however, on the contrary to the other abovementioned rights, the term possession does not have an autonomous meaning. As Judge Wojtyczek stresses in his concurring opinion on the judgment of the case BÉLÁNÉ NAGY v. HUNGARY (Application no. 53080/13), "A possession is a subjective right, defined by domestic law. It exists only if it exists in domestic law and it exists only to the extent that it is recognized in domestic law."[14] In addition, the court always emphasises that it cannot protect the possession if it does not exists in the domestic law. This approach is apparent in the case of Kopecky v. Slovakia (Application No. 44912/98, judgement of GH, 28 September 2004 by grand chamber)[15]. As the chamber explained in this case, "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition."[16] In this case, the domestic court of the first instance (Senica District Court) indicated that the applicant according to the domestic law, he was able to restitute his father's property. This conclusion was not shared by higher instances of the domestic courts. The chamber took into consideration the fact, that there existed different interpretations of the law between domestic courts and thus established, that there existed a "genuine dispute" <between domestic courts, whether the right existed or not> and at least on an arguable grounds the applicant could restitute his father's property. Relying on this argumentation, the court found that applicant's claim was not unsubstantiated or devoid of any prospect of success, and the applicant had a "legitimate expectation" of having his claim satisfied which justified considering it as a possession within the meaning of Article 1 of Protocol No. 1.[17] However, the grand chamber overturned the chamber's reasoning, and emphasized, that it was in the hands of the domestic courts to decide, wheth-

14 CASE OF BÉLÁNÉ NAGY v. HUNGARY, (Application no. 53080/13 Judgement of GC,13/12/2016), Concurring opinion of judge Wojtyczek, para: 6.

15 case of Kopecky v. Slovakia (Application No. 44912/98, judgement of GC, 28/09/2004), merits of the case was the following: the coins of the applicant's grandfather were obtained by the government after finding him guilty for having them, and after he (grandfather) was rehabilitated, applicant requested the coins from government however with no result, domestic courts found that he could generally vindicate the property, however he (the applicant) could not prove were the property was held, which was a mandatory requirement for vindication according to the domestic law.

16 Ibid, para 35.

17 Ibid, para 43.

er or not the applicant satisfied the requirements of the relevant law, while they decided that the applicant did not have the enforceable claim, it could not be considered, that he had a possession within the meaning of the first sentence of Article 1 of Protocol No. 1.[18] GC also stressed out, that the "legitimate expectation" is based on a reasonably justified reliance on a legal act which has a sound legal basis and which bears on property rights, by which person has entitlement to the asset. This category of expectation, may also include enforceable claims, if there exists an established case-law of the national courts, based on which it can be said that the claim will be satisfied and applicant believes that this case-law will continue to apply to their claims as well.[19] The GC also mentioned, that in the cases, where the applicants could not show that they had currently enforceable claim, there could not exist a legitimate expectation, and applicants had mere hopes.[20]

The reasoning of the abovementioned case explicitly shows, that states have the jurisdiction to determine what the possession/asset is, the ECHR has the jurisdiction to check how states treat the property right that is created by themselves. If we take the example of Georgian legislation the content of the property is defined by the civil code in the following way: "property, according to this code, is every object (ნივთი) and intangible interest/ benefit (არამატერიალური ქონებრივი სიკეთე), the possession, usage and disposition (განკარგვა) of which can be performed by natural persons or legal entities and which can be acquired without restrictions, if it is not against law or moral standards (ზნეობრივი ნორმები).[21]" within this framework, Georgia can create infinite legal norms, by which the possession to different items will be of different nature. For example, agricultural land cannot be sold to the foreigner if certain statutory conditions are not met[22], also, the sale and purchase of the weapons should be supervised by the administrative authority, and every purchased item should be registered according to the law[23]. All of these are some form of restriction and control over the possessions; however, the convention does not have the jurisdiction to assess the legality of those control/restriction mechanisms.

What happens if such instruments change (regulatory change takes place) and it has a detrimental effect on the rights and interests of the persons? On one side, the convention protects the possession only as it exists in the domestic legislation, so if the domestic legislation changes the content of the right, then the new composition is under the protection of the convention and the former content of the possession does not enjoy the protection of the convention anymore and the party, who has sustained damages, by losing some property rights due to the regulatory change, will not be able to oblige the government to protect the aspect of his possession that is already terminated. it is also possible and most probable, that the legal act, by which government changes the composition of the possession is legitimate and serves the public, or other common interests well, so that, it will be impossible to challenge the legality and/or constitutionality of the change. This issue was closely examined in the Case of Belane NAGY v. HUNGARY, (*Application no. 53080/13,* Judgement of GC,13/12/2016). Merits of the case were following: the applicant worked from 1975 to 1997 and made contributions to the social-security scheme. By the decision of 16 October 2001, she received disability pension, which was withdrew from 2010, while the methodology of assessing the health impairment in occupational context has changed, and according to the new methodology, applicant was not considered to be a disabled person for the purposes of the social-security scheme. This decision was upheld by the domestic courts as well by the final decision of April 2011.[24] The applicant would have been able to continue receiving the pension, if his health impairment had been assessed as se-

18 Ibid, para 59-60;
19 Ibid, para 47-48;
20 case of Kopecky v. Slovakia (Application No. 44912/98, judgement of GC, 28/09/2004), para 49.
21 საქართველოს სამოქალაქო კოდექსი (Georgian Civil Code), art. 147.
22 საქართველოს ორგანული კანონი „სასოფლო-სამეურნეო დანიშნულების მიწის საკუთრების შესახებ," მუხლი 4 (2)(1).
23 საქართველოს კანონი „იარაღის შესახებ," მუხლი 17;
24 CASE OF BÉLÁNÉ NAGY v. HUNGARY, (Application no. 53080/13) Judgement of GC,13/12/2016, para: 9-16.

vere enough. The applicant requested assessment of her disability in September 2011 too. From January 2012 new law on disability and related benefits entered into force, which changed the list of the contributions, beneficiary should meet, in order to be eligible for disability pension. Also this law envisaged that person was eligible for disability pension, without satisfying new requirements, if they were in receipt of it on 31 December 2011.[25] In February 2012, the applicant submitted another application for pension. This time, her condition was assessed severe enough to grant her a disability pension, however she did not satisfied prerequisites of the new law and was not in receipt of the pension in December 2011.[26] Consequently, she was considered ineligible for the pension. In this case, Applicant ceased to receive disability pension from 2010, however, till the legislative changes in 2012, she had a legitimate expectation that if her disability would have been assessed severe enough to satisfy required degree, she would be entitled to receive the disability pension again.[27] The issue the court had to determine, was whether the expectation persisted to exist after the legislative changes, which rendered the applicant statutorily ineligible for the pension.[28]

On this point, judge Wojtyczek notes in his concurring opinion, that the Convention does not convert no-rights into rights.[29] Moreover, as he stresses, the legal position of a legal subject may combine a subjective right vis-à-vis the administrative authorities with a legitimate expectation vis-à-vis the legislator. … If the interference with a subjective right is of a legislative nature, then the question arises whether the right is protected against the legislator. If there is clearly no protection of a legal subject's right vis-à-vis the legislator in the domestic legal system, then the Court should not convert such a right, protected only vis-à-vis the administrative authorities and the judicial power, into a right offering protection also vis-à-vis the legislative power, unless there are special reasons for doing so."[30] In other words, I believe, that in his discourse, judge Wojtyczek points to the fact, that article 1 of the protocol does not create independent content of the possession, and as the law changed content of the possession (preconditions to receive pension in this case) the court do not have the jurisdiction to check the compatibility of the legislative change to the convention, while there were no special reasons for doing so. However, the chamber found this special reason in the applicants legitimate expectation. As the court suggests, "The change in the law effectively imposed on a certain category of insured persons, including the applicant, a condition which had not been foreseeable during the relevant potential contributory period and which they could not possibly satisfy once the new legislation entered into force – a combination of elements which is ultimately difficult to reconcile with the rule of law."[31] Relying on this discourse, the court held that while she contributed to the mandatory pension scheme and "her contribution was recognized as sufficient at the latest on 1 April 2001 she could reasonably rely on the promise of the law that she would be entitled to disability benefits whenever she satisfied the applicable health-related conditions."[32] Following this reasoning, the court held, that the refusal of the pension for failing to meet the statutory conditions of the new law, constituted the impairment of the applicant's pension rights,[33] and thus, violated her property right.[34]

I believe, this case shows clearly the importance of the Concept of the Protection of the Legitimate expectations for ECHR. When the right (deriving from the law, contract or administrative act) to possession or asset, is abolished, there still remains an expectation that the benefactor of the right will continue to use it. However, the possession does not exists any more and the convention generally cannot protect it. Although,

25 Ibid, para: 18.
26 ibid, para:19-22.
27 Ibid, para: 94.
28 ibid, para: 95.
29 ibid, Concurring opinion of judge Wojtyczek, para: 6.
30 Ibid.
31 CASE OF BÉLÁNÉ NAGY v. HUNGARY, (Application no. 53080/13) Judgement of GC,13/12/2016, para: 99
32 case OF BÉLÁNÉ NAGY v. HUNGARY, (Application no. 53080/13) Judgement of GC,13/12/2016, para: 105.
33 ibid, para: 109.
34 ibid, para:126.

the court admits, that the expectation, that the person would be able to enjoy its already disappeared right, still exists. Then the court checks if this expectation is legitimate and if it is, then offers it protection of the convention. Generally, it is enough for the court to establish, that the "legitimate expectation" is based on a reasonably justified reliance on a legal act which has a sound legal basis and which bears on property rights35, by which person has entitlement to the asset. It is true, that the governments create the content of the rights such as property right, however, when the right is created and bestowed to its subject, then it is not completely in the hands of the government to erase it by changing the legal or administrative act creating it. The cases discussed in this paper below, show us, that while governments are free to stipulate, rearticulate or annul its acts, he has to do so, that legitimate expectation of the usage of the right is not frustrated. In case of right, such as property right, which does not possess absolutely independent essence, and depend on the government to define it, the subject of judicial review, is not the regulatory change which causes the right to disappear, while the court cannot say that new act breaches or do not breaches the right protected by the convention, however, the process by which new act is adopted and imposed on applicant is scrutinized by the court. If the court did not do so, then the states' margin of appreciation regarding the possession would have been so wide, that the efficiency of this human right, protected by convention would diminish dramatically.

This brings us to the next issue of our discourse, namely, when is the expectation legitimate and what are the conditions of its legitimacy, which gives the court jurisdiction, to check the validity of the regulatory change against article 1 of the protocol. Jurisprudence of ECHR explains when the expectation may still be legitimate:

Most common case is when the regulatory change of the law has a retrospective effect, and this deprives persons of their possessions. In the Case Of Pressos Compania Naviera S.A. and Others v. Belgium (Application no. 17849/91, judgment of 20th November 1995), according to the relevant domestic law (adopted in 1967), any ship entering the Scheldt estuary should have had a pilot on board with a license issued by the Belgian or Netherlands authorities. The licensed pilot acted only as an adviser of the captain, who was in full charge of the steering of the ship. Following the acclaimed interpretation of domestic tort law, if the vessel entering the port caused a collision, owner or the charterer of the vessel was liable for the damages incurred, this principle applied, even if the advises of the licensed pilot was the reason for the collision. By this approach, State was not liable for the negligence of pilots. Pilots were liable solely for negligent acts committed without the master's knowledge.[36] This kind of interpretation of the domestic law was changed by the judgment of the court of cassation (1983), by which it held, that, the wording of the relevant laws, could not preclude the owner of the ship to institute proceedings against third parties, who may have incurred liability under other statutory provisions. The court also stressed, that the master of the ship, did not have any authority on the licensed pilot, and the pilots were therefore capable of incurring their own liability and that of the organizer of the pilot service.[37] In response of the court's new case law, the government adopted amendments in the act of 1967 by the act of 1988, by which the responsibility of the organizer of a pilot service was excluded in the cases of the collisions. This act limited the responsibility of the pilots as well. This amendment had a retrospective effect for a period of thirty year from the date of its adoption. Based on this amendment, cases of the 25 applicants (ship owners or charterers), who sought damages for the acts of the pilots were dismissed in the domestic courts.

In this case, the court stated, that according to the Belgian tort law, claims for compensation

35 case of Kopecký v. Slovakia (Application No. 44912/98, judgement of GH, 28 September 2004 by grand chamber), para: 47.

36 CASE OF PRESSOS COMPANIA NAVIERA S.A. AND OTHERS v. BELGIUM (Application no. 17849/91, judgement of 20th November 1995), paras 9-16.

37 Ibid, para 17.

came into existence as soon as the damage occurred. Relying on the interpretation adopted by the Belgian courts after the judgment of 1983, the court deemed that applicants had a "legitimate expectation" that their claims deriving from the accidents occurring before 17 September 1988 (date of adoption of the amendments) would be determined in accordance with the general law of tort.[38] Consequently, the amendments of 1988, which limited the liability of the pilot service organizers retrospectively, frustrated those expectations and this kind of interference amounted to a deprivation of a property within the meaning of the second sentence of the first paragraph of Article 1 (p1-1).[39]

Similarly, in the case of ČakareviĆ v. Croatia (Application no. 48921/13, Judgment 26 April 2018), the applicant received unemployment benefits, from June 1997 based on the decision of the administrative body. The benefits were due until further notice. She received it till March 2001, when the authority terminated applicant's entitlement to unemployment benefits with effects from 10 June 1998. The decision was based on the fact, that according to the legislation, applicant could have received the benefits for the maximum period of twelve months. Consequently, the sum received in excess of that period, was obtained without any legal basis. The administrative body requested back the money applicant had received after the period of 10 June 1998, relying on the provisions of unjust enrichment. The case was tried in administrative and civil courts and finally, enforcement procedures took place against the applicant[40]. The court in this case noted that the applicant received the money based on the final decision of the administrative body,[41] whether the statutory conditions for this decision existed should have been checked solely by the authorities.[42] The court held too, that also administrative decision may be subject to revocation for the future, an expectation that it should not be called into question retrospectively, should usually be recognized as being legitimate, unless other weighty general or third party interest requires different assumption.[43] The court also observed, that the error in giving benefits was solely government's responsibility, the applicant could not have had any information about that error, also authorities failed to correct that error in timely manner.[44] Based on those considerations, the court deemed that applicant had a legitimate expectation that her entitlements to those funds she had received would not be capable of being called into question retrospectively.[45]

The court also finds the breach of the convention in the cases, where the retrospective regulatory changes frustrate expectations about the future. For example, in the case of Strech v. the United Kingdom (Application no. 44277/98; Judgment of 3rd of December, 2003) the applicant received a building lease from the local government for the duration of twenty-two years, with an option to renew it for a further twenty-one years.[46] However, in the end of the lease, government refused to renew contract, while the local government was acting ultra vires in agreeing on renewal terms twenty years ago, as drawing up this kind of covenant was beyond its ambit. This position was upheld by the domestic courts as well.[47] The court considered the fact, that while entering into contractual relations, neither administrative body nor applicant knew that renewal clause was ultra vires, that's why the court concluded, that applicants had at least a legitimate expectation of exercising the option to renew and this may be regarded, for the purposes of Article 1 of Protocol No. 1, as attached to the property rights granted to him.[48]

Likewise, in the CASE OF NoreikienĖ and Noreika v. Lithuania (Application no. 17285/08, Judgment of 24 November 2015), the applicant,

38 Ibid, para 31.
39 Ibid, para 34.
40 case of ČAKAREVIĆ v. CROATIA (Application no. 48921/13, Judgement of 26th April 2018), paras 5-39;
41 case of ČAKAREVIĆ v. CROATIA (Application no. 48921/13, Judgement of 26th April 2018), para 54.
42 Ibid, para 55.
43 Ibid, para 56.
44 Ibid, para 59-63.
45 Ibid, para 64.
46 case of Strech v. the United Kingdom (Application no. 44277/98; Judgment of 3rd of December, 2003), para. 11.
47 Ibid, para. 14, 23.
48 ibid, para 34-35.

under government's authorization was farming a land from 1993, in 1996 he was entitled to buy this land at a nominal price, the purchase took place in 2004. In 2005, the third party sued the applicants and the state for illegal purchase and claimed the purchased land, relying on the fact, that in 1991 he submitted a request for the land restitution according to the law. Domestic courts annulled the administrative decisions and reclaimed the land from the applicant, at a nominal price of the initial purchase agreement.[49] While the court found that the domestic courts' decision was lawful and pursued legitimate aim, the means applied (paying the compensation of the price of the initial purchase agreement, which was drastically lower than the real price of the land) were disproportionate.[50] In this context, the court considered, "that the applicants were also entitled to rely on the fact that the administrative decisions taken between 1993 and 1996 and the land purchase agreement signed in 2004, on the basis of which they had acquired the property, would not be retrospectively invalidated to their detriment. In these circumstances, the "legitimate expectation" was also based on a reasonably justified reliance on administrative decisions which had a sound legal basis and bore on property rights."[51]

In the other line of cases, the court establishes that even the change without retrospective effects that frustrated the expectations that something will happened in the future could cause the breach of the convention. This kind of cases mostly relate to the social policy of the governments. For example, In The Case of Kjartan *Ásmndsson* v. Iceland (Application no. 60669/00, Judgment of 12 October 2004), the applicant was a seaman. He contributed to the Seamen's pension fund for 10 years. By the time he became unfit to work as a seaman (in 1981), according to the relevant law, the degree of disability was measured against person's capacity to perform work as a seaman. By this methodology, his disability was assessed at 100%[52]. In 1992 new law was introduced, by which, the assessment of disability was to be based not on the inability to perform the same work, but work in general. This amendment also applied to the beneficiaries who were in receipt of the pension at the times of changes.[53] Consequently, the applicant's disability was assessed at 25% and he lost the pension completely.[54] Considering these circumstances, the court found that the applicant had an individual legitimate expectation that his disability would continue to be assessed on the basis of his incapacity to perform his previous job.[55] The court also considered other circumstances of the case and found that the frustration of his expectation was disproportionate.[56]

Substantially similar reasoning was developed, In the Case of N.K.M. v. Hungary (application N 66529/11, Judgment of 14 May, 2013). In this case, according to the legal act of 1992, a civil servant, working for at least 20 years was to receive a severance payment, with the amount of his eight months' salary. New tax law, enacted in May 2011, provided, that part of revenues of the certain category of civil servants, which exceeded 3.5 million Hungarian forints (HUF) should have been taxed at 98%.The applicant, which was a civil servant for about thirty years, was dismissed, from July 2011 and his severance according to new tax regime, was in total taxed at about 52%, when the general personal income tax rate amounted 16%.[57] In this case, the court deemed, that the severance payment had already been earned or was definitely payable, which turned it into possession for the purposes of protocol no. 1, article 1. The court underlined,

49 See: CASE OF NOREIKIENĖ AND NOREIKA v. LITHUANIA, Application no. 17285/08, Judgement of 24 November 2015, para: 5-12.
50 ibid, para: 25-30.
51 CASE OF NOREIKIENĖ AND NOREIKA v. LITHUANIA, Application no. 17285/08, Judgement of 24 November 2015, para: 36.
52 CASE OF KJARTAN ÁSMUNDSSON v. ICELAND (Application no. 60669/00), Judgement of 12 October 2004), para: 8.
53 ibid, para: 10.
54 CASE OF KJARTAN ÁSMUNDSSON v. ICELAND (Application no. 60669/00), Judgement of 12 October 2004), para: 12.
55 ibid, para: 44.
56 ibid, para: 45.
57 CASE OF N.K.M. v. HUNGARY (Application no. 66529/11) JUDGMENT 04/11/2013, paras. 5-7, 18.

that In the case of a civil servant, who comes under a specific legal regime and who willingly accepted limitations on some of his fundamental rights and a remuneration unilaterally dictated by law, the statutorily stipulated severance represented a long-term expectation on the side of the civil servant and a commitment on the side of the State as employer. The Court further found, that a statutory scheme that provided for severance (both to civil servants and other employees) encompassed a statutory entitlement. Moreover, this was not a mere *ex gratia* entitlement but an acquired right that was statutorily guaranteed in exchange for the service rendered. In this case, the court also found, that a legislative amendment which removed a legitimate expectation could have amounted in its own right to an interference with "possessions."[58] The court also indicated, that despite the fact, that circumstances, that lead to severance occurred after adoption of new tax regime, this regime had certain retroactive features, since the work severance was granted for, had been done prior to the introduction of the legislation.[59]

The facts of the cases we have discussed above, show the reasons why in each occasion the expectation was considered legitimate. Mainly expectation is legitimate, if the right is abolished retrospectively, however, in the cases of pensions and other social benefits, the protection may also continue to the future relationships as well, the reasons for this might be the fact, that pensions and social benefits schemes is kind of agreement between government and the beneficiary, by which the beneficiary is obliged to meet certain requirements and put some commitments into the scheme, after the beneficiary starts the receiving the benefits, it means that he has completed all the commitments he was required and now it's time for the government to bear its part of the burden, when the legislation changes and makes the burden for the government lighter to the detriment of the beneficiary, it does not sound fair, and also the expectation of the beneficiary that government will continue to bear its burden in good faith is legitimate and worth to protect.

CONCLUSION

In this paper, we tried to analyze the usage and necessity of the concept of legitimate expectation in the jurisprudence of ECHR. We explored, the reasons which caused this concept to be relied on in the human rights law and demonstrated how it works to ensure the protection of the convention. In doing so, we established that this concept is used in relation with the certain kind of rights to ensure better protection for them. Based on the relevant cases, we have also stipulated the conditions for the expectation to be considered legitimate. This study shows clearly, that despite the fact, that expectation is usually attached to the property right (for ECHR), it is not its constituent element unique only to this right. It is a characteristic, that every right possesses and its protection is important to ensure the fairness of the legal system generally. It was also demonstrated, that by protecting it via international law, we put some constraints on the states' sovereign right to regulate, on behalf of the human rights. However, the usage of the PPLE in the international law is wider and there are ample of issues related to it calling for more research. However, this little research tries to contribute in studying and developing this concept in international law.

58 CASE OF N.K.M. v. HUNGARY (Application no. 66529/11) JUDGMENT 04/11/2013, paras. 35-45.

59 ibid, para. 52.

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