

## THE RULE OF LAW, THE DOCTRINE OF LEGITIMATE EXPECTATIONS AND THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

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### **ABSTRACT**

*An important source of the Croatian legal system is found in the Constitutional Court's case law, which has been instrumental in shaping constitutional principles and implementing them in the proceedings of ordinary courts. Relying primarily on previously established constitutional principles, on doctrines legally binding to EU member states and their citizens, and on interpretations of EU law, legal proceedings must, above all, comply with the constitutional principle of the rule of law as one of the highest values of the constitutional order of the Republic of Croatia. All proceedings must include the requirement that legal consequences should be proportionate to legitimate expectations of parties in each individual case. Furthermore, requirements for laws stemming from the principle of the rule of law must not be such as to directly challenge the doctrine of legitimate expectation of individuals having faith in those laws and other individual legal acts. It should be noted that no legitimate expectation of exercising a certain right may arise without sufficient grounds in domestic law, separating mere "hope" and "belief" from a clear basis in a legal act or provision. Accordingly, protection of the doctrine of legitimate expectation can be viewed through the principle of procedural fairness/just proceedings guaranteed by Article 29 of the Constitution, but also as a component of ownership rights guaranteed by Article 48 thereof. The rule of law, as an essential component of every democracy, is thus also achieved through protection of the doctrine of legitimate expectation. This paper discusses the doctrine of legitimate expectation in general, as expressed by the Constitutional Court in its practice, and analyzes the most relevant Constitutional Court decisions pertaining*

*to the protection of the doctrine of legitimate expectation within the standard of fair and just proceedings.*

**Keywords:** *Constitutional court, just proceedings, legitimate expectation, rule of law*

## 1. INTRODUCTION

In scientific literature, and especially in European and domestic case law, increasing attention is given to the application of the doctrine of legitimate expectation, which can be said to be widely accepted today in safeguarding the subjective rights of individuals. The integration of the doctrine of legitimate expectation into the legal framework of the Republic of Croatia in general was prompted by its establishment in the Constitutional Court's case law, and also in the legal system of the European Union as a whole, placing it among the fundamental principles protected by the Constitution and an indispensable tool in upholding the rule of law. This doctrine, and the associated principle of legal certainty, are key elements of the rule of law and of respect for human and civil rights as fundamental constitutional values. Nevertheless, safeguarding legitimate expectations is primarily incumbent upon each individual judicial or state body, tasked with evaluating, in each specific case, the legitimacy of such expectations and the necessity of their protection, which may entail acknowledging corresponding rights<sup>1</sup> or offering compensation for any resulting damage<sup>2</sup>. The Constitutional Court's review (assessment) of laws, bylaws and ordinary court judgments, with the aim of ensuring proper criteria and correct (lawful) decisions, has certainly contributed to guaranteeing this protection. In this regard, there is an emerging need to regulate and incorporate the doctrine of protecting legitimate expectations through domestic legal norms and/or practice, according to expectations and/or restrictions set by the EU legal framework. This paper will describe the content and meaning of the concept of legitimate expectations, and then proceed to demonstrate on the example of specific Constitutional Court decisions if and under what circumstances particular legitimate expectations warrant protection, focusing on enhancing their reasonableness and legal foundation as prerequisites for their existence (acknowledgment) as such.

## 2. THE DOCTRINE OF LEGITIMATE EXPECTATIONS

While the origin of the doctrine of legitimate expectations is attributed to Kant's protection of "legitimate expectations of citizens as requirements underpinning

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<sup>1</sup> Constitutional Court Decision No. U-I-5612/2011 etc. from 23 January 2013.

<sup>2</sup> Supreme Court Decisions No. Rev 1532/2014-3 from 23 January 2018 and Rev 2321/2018-3 from 19 May 2020, related to the Constitutional Court Decision cited above – assessment of the Law on public bailiffs.

relationships of individuals in a community”<sup>3</sup>, it is important to note that its historical predecessor is found in the German principle of *Vertrauensschutz*, denoting protection of trust and directly related to the protection of vested rights.<sup>4</sup> In the first judgments of German administrative courts in the 1950s and 1960s, the principles of good faith and of legal certainty are cited as the basis for the protection of legitimate expectations, while later developments formulated the principle as “autonomous manifestation of the rule of law”.<sup>5</sup> Over time, especially from the late 1960s onwards, the doctrine of legitimate expectations has transcended national jurisdictions and spread to other states’ legal systems. The establishment of this doctrine in the EU legal framework has undoubtedly bolstered its global recognition. Although the Court of the European Union has been citing the doctrine of legitimate expectations since the late 1950s, it was not until twenty years later (in the 1970s) that the principle was established as a fundamental principle of EU law and a cornerstone of individuals’ legal certainty.<sup>6</sup>

The Court of the European Union classifies the doctrine of legitimate expectations as a general principle of law – one whose role comes forth in resolving contentious issues in the absence of specific legal norms.<sup>7</sup> We should note that there are no explicit provisions<sup>8</sup> regulating the doctrine of legitimate expectations and the associated principle of protecting vested rights in the fundamental document of the European Union on human rights, the Charter of Fundamental Rights of the European Union<sup>9</sup>. The Convention on the Protection of Human Rights and Fundamental Freedoms<sup>10</sup> also lacks a provision on the protection of legitimate

<sup>3</sup> Derđa, D., *Zaštita legitimnih očekivanja u upravnom pravu*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 34, No. 1, 2013, p. 84.

<sup>4</sup> De Amboris Vigna, A., Kijowski, D. R., The Principle of Legitimate Expectations and the Protection of Trust in the Polish Administrative Law, *Bialostockie Studia Prawnicze*, Vol. 23, No. 2, 2018, p. 40.

<sup>5</sup> *Ibid.*

<sup>6</sup> Derđa, D., *op. cit.*, note 3, p. 85.

<sup>7</sup> Court of Justice of European Union, *Kratki vodič o EU-u*. General principles of law are unwritten sources of law developed through case-law. A general principle of law which in the EU prevails over secondary laws (ordinances, directives, suggestions, opinions), [<https://op.europa.eu/webpub/com/short-guide-eu/hr/>], Accessed 1 March 2024.

<sup>8</sup> In literature concerning European administrative law, protection of legitimate expectations and vested rights are generally discussed together. See, for example, Schonberg, S., *Legitimate Expectations in Administrative Law*, Oxford University Press, Oxford, 2000. According to Derđa, vested rights are certain authorizations a party has acquired in the past, while legitimate expectations pertain to the right of a party to acquire a certain right in the future, which the law guarantees in the moment of initiating an administrative procedure. See Derđa, *op. cit.*, note 3, p. 96.

<sup>9</sup> The Charter of Fundamental Rights of the European Union, Official Journal C 326, 26 October 2012; Croatian translation: SL C 202, 7 June 2016; hereinafter: Charter.

<sup>10</sup> The Convention on the Protection of Human Rights and Fundamental Freedoms [<https://www.echr.coe.int/web/echr/european-convention-on-human-rights>], Accessed 1 March 2024; hereinafter: Convention.

expectations, but it has been established in practice that under certain circumstances such expectations are to be considered “ownership” protected by Article 1 of Protocol No. 1 to the Convention<sup>11</sup>.

The Constitution of the Republic of Croatia<sup>12</sup> also contains no mention of the legal principle of legitimate expectations, although it could be understood in a broader sense as the principle of legal certainty, synonymous with the rule of law, which, along with predictability, certainty, definiteness and precision of legal norms and certainty of legal and judicial consequences, encompasses the principle of protection of legitimate expectations and the principle of protection of vested rights. The absence of explicit constitutional provisions and differences in interpretation result in a lack of clarity in applying this doctrine, underscoring the vital role of the Constitutional Court<sup>13</sup> in its evolution and application. This role is especially evident in ensuring legal certainty<sup>14</sup>, which is essential for ensuring the rule of law, realized in each specific case through vested rights and legitimate expectations of individuals. In the complete absence of codified rules concerning the protection of the principle of legitimate expectations, which have been raised to constitutional level in Croatia and are among its fundamental values<sup>15</sup>, the pivotal role of the Constitutional Court becomes apparent in establishing standards and guidelines for safeguarding this doctrine through its rulings. It is therefore always necessary to make a detailed analysis of the circumstances of each specific case and

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<sup>11</sup> Omejec, J., *Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava: strasbourgški acquis*, Novi informator, Zagreb, 2013, p. 961.

<sup>12</sup> Constitution of the Republic of Croatia, Official Gazette No. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.

<sup>13</sup> The Constitutional Court has expressed its position on the doctrine of legitimate expectations in a series of its early rulings, for example Constitutional Court Judgment U-I-2921/2003 etc. from 19 November 2008, Official Gazette No 137/08; Judgment No. U-IIIB-1373/2009 from 7 July 2009 Official Gazette No. 88/09; and Decision No. U-III-2646/2007 from 18 June 2008, Official Gazette” No. 104/08.

<sup>14</sup> A state free of uncertainty regarding the content and application of legal norms that constitute the legal order or part thereof.

<sup>15</sup> Constitutional Court Judgment No. U-IIIB-4366/2005 from 5 April 2006: “The highest values of the constitutional order of the Republic of Croatia are the rule of law and respect for human rights. They are the basis for interpreting the Constitution. The obligation to respect said constitutional values inevitably leads to interpreting relevant laws and other regulations in accordance with two important principles that comprise said constitutional values. These are the principle of legal certainty and the associated principle of protecting legitimate expectations of parties in proceedings deciding on their rights and obligations. The Constitutional Court has, in its judgment and decision No. U-I-659/1994 etc. from 15 March 2000 ... highlighted the general content of these two principles, emphasizing that, “in a legal order based on the rule of law, laws must be applicable and equal for all, and legal consequences should be certain for those the law is applied to. The Court also points out that legal consequences must be proportional to legitimate expectations of parties in each specific case where the law directly applies to them.”

decide whether arguments (principled positions) applied thus far can be applied in similar or related cases<sup>16</sup>.

### 3. THE CONTENT AND PROTECTION OF LEGITIMATE EXPECTATIONS

The protection of legitimate expectations is applied in cases when the legal situation (regime) is changed, specifically when the new framework comes into conflict with the potential exercise of individuals' rights. In such cases it is essential to resolve whether the individual can rely on the consistency of the legal system and depend on its continuity and predictability. The concept of legitimate expectations is associated with the concept of vested rights, which represent subjective rights that may not be derogated, restricted or left unprotected<sup>17</sup>. Applying the theory of vested rights ensures the implementation of the principles of fairness, legality, and especially of legal certainty, because the latter sometimes prevents even the legislature from derogating an individual's vested rights or depriving them of protection by enacting new norms.<sup>18</sup> Therefore, vested rights serve as the foundation for anticipating their exercise in the future, so any change in the legal framework aimed at restricting or abolishing them may result in a violation of the interests of individuals who relied on them based on the legal norm.<sup>19</sup>

Furthermore, the rules and conditions for safeguarding legitimate expectations are neither prescribed nor deducible from legal regulations; instead, they are established through case law and evaluated in each specific case. For an expectation to be legitimate, it must be reasonable<sup>20</sup> and founded in law, so an expectation that is unreasonable cannot be legitimate and subject to protection. In assessing whether a legitimate expectation is subject to protection, it is necessary to balance the interest of the individual seeking such protection with the public interest<sup>21</sup> that may be infringed by making a decision in favor of the individual. This implies that private interest will be protected only when its priority over public interest is determined

<sup>16</sup> See overview of Constitutional Court judgments.

<sup>17</sup> Hartley, T. C., *The Foundations of European Union Law: an introduction to the constitutional and administrative law of the European Union*, Oxford University Press, Oxford, 2010, p. 162165, and Craig, P.; Burca de, G., *EU law: text, cases and materials*, Oxford University Press, Oxford, 1998, p. 357-364.

<sup>18</sup> *Pravni leksikon*, Leksikografski zavod Miroslav Krleža, Zagreb, 2007, p. 1526.

<sup>19</sup> Pranevičienė, B.; Mikalauskaitė-Šostakienė, K., *Guarantee of principles of legitimate expectations, legal certainty and legal security in the territorial planning process*, Jurisprudence, Vol. 19, No. 2, 2012, str. 648.

<sup>20</sup> According to the Court of European Union jurisprudence, a reasonable expectation is one that a "reasonable citizen" would have, Đerđa, D., *op. cit.*, note 3, p. 90.

<sup>21</sup> Kolinsky, D., *A Legitimate Expectation of a Successful Challenge?*, Judicial Review, Vol. 17, No. 2, 2012, p. 174-176.

in a specific case.<sup>22</sup> In summary, all the above values must be carefully weighed when deciding whether an individual's expectation is reasonable and lawful, and whether it will be given priority over public interest or if it will eventually encroach on it, or on the interests of third parties. Protection of the concept of legitimate expectations can be interpreted through Article 29 of the Constitution<sup>23</sup>, Article 48 of the Constitution<sup>24</sup>, and Article 1 of Protocol No. 1 to the Convention.

### 3.1. Legitimate Expectations within the Meaning of Article 1 of Protocol No. 1 to the Convention

The concept of "possessions" in the first part of Article 1 of Protocol No. 1 to the Convention is autonomous and encompasses "existing possessions" and assets<sup>25</sup>, including claims, based on which an applicant may argue to have at least a "legitimate expectation". "Possessions" include "*in rem*" and "*in personam*" rights. Thus, Article 1 of Protocol No. 1 to the Convention defines the concept of ownership (its proprietary nature) in a fundamentally different way than domestic legislation

<sup>22</sup> If we consider the interference of the state in ownership rights, it is important to note that the ECHR will protect the right of ownership through the application of three rules. First, that everyone has the right to quiet enjoyment of property. Second, depriving a person of the right to property must fulfill certain prerequisites. Third, the state has the right to control the use of property in accordance with common interest. While determining common interest, national legislation allows some degree of freedom, because it is generally better equipped to do so than international institutes. Nevertheless, the ECHR offers guidelines that the concept should be broadly defined and reasonably founded. Of course, in realizing ownership rights and the common interest of the community, proportionality must be respected. In other words, the ECHR makes it clear that a violation of rights occurs whenever the applicant bears or has borne an individual and excessive burden. In such cases, it needs to be determined whether a balance has been achieved between social interests of the community and the appeal to protect the basic rights of the individual. Gović Penić, I., *Izabrana praksa Europskog suda za ljudska prava i građanski postupci pred hrvatskim sudovima*, Organizator, Zagreb, 2022, p. 1206.

<sup>23</sup> Compare Constitutional Court Judgment No. U-III-2646/2007 from 18 June 2008: "Court proceedings must adhere to the principle of the rule of law as the highest value of the constitutional order of the Republic of Croatia. Their conduct should not only comply with the requirement of lawful proceedings of state authorities, but also respect the legitimate expectations of parties in each specific case. Such expectations certainly include the expectation that the dispute will be resolved by applying legal standards in force at the time of its initiation, which also upholds the principle of just proceedings from Article 29 of the Constitution." .. "Everyone has the right to have an independent ... court established by law fairly ... decide on his rights and obligations..."

<sup>24</sup> The right of ownership is guaranteed.

<sup>25</sup> Every natural or legal person has the right to quiet enjoyment of their possessions. The Convention, and the Protocols accompanying it, do not define what constitutes possessions, but the concept has been elucidated through numerous judgments by the ECHR and the Constitutional Court. According to Article 1 of Protocol No. 1 to the Convention, objects of protection are: economic interests related to a company's business, stocks and shares of companies, intellectual property, claims and debts, contractual rights, future income, legitimate expectations and social security rights *ad personam*, Omejec, J., *op. cit.* note 11, p. 957.

– so possessions within the meaning of the Convention refer to things – movable and immovable, as well as all that constitutes movable and immovable assets (other ownership interests). The term “ownership” has an autonomous meaning, independent of official categorization in the domestic legal system, and is not limited to possession of physical goods: certain other rights and interests representing possessions may also be considered “ownership rights” and thereby “assets”. Through its case-law, the Constitutional Court has introduced an understanding of ownership rights within the meaning of the Convention, so in some circumstances “legitimate expectations” of property (possessions) acquisition may also enjoy protection under Article 1 of Protocol No. 1 to the Convention. Besides not defining the concept of ownership, Article 1 of Protocol No. 1 to the Convention does not establish a right to acquire property, but envisages protection of property that also includes, in some circumstances, “legitimate expectations”.<sup>26</sup> For an “expectation” to be legitimate, it needs to be more concrete than mere hope and it needs to be founded in a legal provision or legal act, such as a court judgment, pertaining to the property interest in question. According to the Constitutional Court’s position, legitimate expectations for realizing a specific claim can only arise if they have a robust foundation in domestic law. “However, a legitimate expectation has no independent existence; it must be attached to a proprietary interest for which there is a sufficient legal basis in national law”.<sup>27</sup>

It follows that a legitimate expectation must be based on a reasonably justified reference to a legal act that has a solid basis and pertains to property rights.<sup>28</sup> Another aspect of the concept of “legitimate expectations” involves a situation where “legitimate interest” alone does not constitute a property interest, but refers to how domestic law would treat a claim concerning what is considered “property”.<sup>29</sup>

<sup>26</sup> This position was also expressed by the ECHR in its judgment *Marija Božić v Croatia*, Application No. 50636/09, from 24 April 2014, paragraph 46.

<sup>27</sup> *Bikić v Croatia*, Application No. 50101/12, Judgment from 29 May 2018, paragraph 46.

<sup>28</sup> The term “legitimate expectations”, in the context of Article 1 of Protocol No. 1 to the Convention, was first established by the ECHR in its judgment *Pine Valley Developments LTD v Ireland* from 29 November 1991, Application No. 12742/87, Series A no. 222, p. 23, and reiterated in judgment *Stretch v United Kingdom* from 24 June 2003, Application No. 44277/98. In both cases applicants were authorized to rely on and refer to the fact that the specific legal act under which they assumed financial obligations would not retroactively be found null and void to their detriment. Thus, in this group of cases, “legitimate expectation” was based on “reasonably justified confidence in a legal act, which had a legitimate legal basis and pertained to property rights.”

<sup>29</sup> The other aspect of the term “legitimate expectations”, in the context of Article 1 of Protocol No. 1 to the Convention, was developed by the ECHR in its judgment *Pressos Compania Naviera S.A. and others v Belgium*, from 20 November 1995, Application No. 17849/91, Series A no. 222, p. 22. This case concerned damage caused by a collision of ships due to the negligence of Belgian sawmillers for which, under Belgian law, the state is responsible. According to domestic Belgian tort law, such claims are actionable from the time of the incident. The ECHR qualified the applications as “claims” falling under

Furthermore, it has been repeatedly pointed out in the constitutional and conventional case-law that applicants have no “legitimate expectation” unless they can be found to have an “active enforceable claim”<sup>30</sup> which has been “sufficiently established”<sup>31</sup>, so a claim can be considered an asset only if it is sufficiently established to be enforceable. By contrast, a conditional claim (one that depends on a future uncertain event) cannot be considered an “asset”. The belief that the current law will be changed in the applicant’s favor may not be considered a form of “legitimate expectation” within the meaning of Article 1 of Protocol No. 1 to the Convention, and neither can a claim that had no chance of succeeding due to foreseeable legislative intervention. Furthermore, in cases where there is a dispute regarding the correct interpretation or application of domestic law, and national courts subsequently dismiss the applicant’s submissions, it cannot be asserted that a “legitimate expectation” exists.<sup>32</sup> Considering all of the above, for the admission of an “asset” consisting of a “legitimate expectation”, the applicant must be able to

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protection of Article 1 of Protocol 1 to the Convention. It further noted that, based on a series of rulings by the Belgian Court of Cassation, the applicants may claim to have a “legitimate expectation” that their applications arising from the aforementioned incident, would be adjudicated in accordance with general tort law or law of damages. In this particular case, the “legitimate expectation” was not a component of property law, nor associated with it, as was determined in cases *Pine Valley Developments Ltd and Stretch*. The ECHR here pointed out that it was understood that “legitimate expectation” does not come into consideration if there is no “claim” within the meaning of Article 1 of Protocol 1 to the Convention (in this particular case, a damage claim). It is therefore evident that the acknowledgment of a legitimate expectation in this case did not inherently confer property rights. Rather, it primarily concerned the treatment of the applicants’ claim — categorized by the ECHR as a “damage claim” — under Belgian domestic law. This encompassed the assurance that established precedents from Belgian national courts, notably the Kopecký judgment, would extend to the damages already incurred by the applicants.

<sup>30</sup> In the case *Nikola Gavella v Croatia*, Application no. 33244/02, Decision from 11 July 2006, the applicant complained that the Constitutional Court’s decision revoking provisions of the Denationalisation Act on pre-emption rights had deprived him of those rights, contrary to Article 1, Protocol No. 1 to the Convention. The ECHR pointed out that, according to the Denationalisation Act, the decision to sell the flat was at the sole discretion of its current owners who could as well have chosen not to sell it. In this sense, the applicant could not enforce his claims against them. The sale of flats was therefore a possible, not a certain event. It follows that the applicant never had enforceable claims against the owners and that, in fact, his claims were conditional from the outset. Therefore, the application was rejected as inadmissible.

<sup>31</sup> In the Grand Chamber’s decision on the admissibility of the application in the case *Gratzinger and Gratzingerova v. Czech Republic*, from 10 July 2002, Application no. 39794/98, in which the applicants did not fulfill one of the major legal requirements for realizing the rights they claimed, the Grand Chamber of the ECHR decided that the application was not sufficiently established within the meaning of Article 1 of Protocol No. 1 to the Convention. Property can encompass “existing possessions” or claims that are sufficiently established to be considered “assets”.

<sup>32</sup> In the case *Radomilja and others v Croatia*, Applications no. 37685/10 and 22768/12, Judgment from 20 March 2018, paragraph 149, the ECHR states: “the Court’s role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention. It is for that reason that the Court has held that, in principle, it cannot be said that an applicant has a sufficiently established claim amounting to an ‘asset’ for the purposes of Article 1 of Protocol No. 1, where there is a dispute as to



claim to have a right that constitutes a sufficiently established substantive proprietary interest under the national law.<sup>33</sup>

#### 4. ON LEGITIMATE EXPECTATIONS AS ASSETS PROTECTED BY THE CONSTITUTION

Apart from ECHR case-law, the doctrine of legitimate expectations has been a part of European law for decades, and this includes the Croatian constitutional framework.<sup>34</sup> In cases of specific constitutional review<sup>35</sup>, the Constitutional Court has adopted an approach of autonomous interpretation of constitutional property rights whose content and scope are determined in accordance with the terms and principles developed in the ECHR case-law<sup>36</sup>, and reiterated its already established position that property, in the sense of Article 48, paragraph 1 of the Constitution, “must be interpreted very broadly”, because it encompasses “practically all proprietary rights”, including economic interests that are inherently related to property, but also to legitimate expectations of parties that their proprietary rights, founded on legal acts, will be respected, and their realization protected. Given that the legal positions of the ECHR (and the Court of the European Union) on legitimate expectations correspond to article 48, paragraph 1 of the Constitution, and are thus applicable within the constitutional framework of the Republic of Croatia, the Constitutional Court has embraced them, whereby the institute of legitimate expectations has become an inherent part of Croatian constitutional law.

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the correct interpretation and application of domestic law and where the question whether or not he or she complied with the statutory requirements is to be determined in judicial proceedings.”

<sup>33</sup> For example, it follows from the ECHR’s Judgment in the case *Bélané Nagy v Hungary*, from 13 December 2016, that if a person was granted, by decision, the right to a disability pension, he or she has obtained “existing ownership” within the meaning of Article 1 of Protocol No. 1 to the Convention. Based on such a decision, the beneficiary had a “legitimate expectation” that she would continue to receive the disability pension as long as her working capacity remained reduced to a certain degree. A “legitimate expectation” has thus become a property right within the meaning of Article 1 of Protocol No. 1 to the Convention.

<sup>34</sup> Advocate general Lenz stated in joined cases *Finsider v Commission*, 1985 E. Comm. Ct. J. Rep. 2857, p. 2865, and the Constitutional Court, more than 25 years ago, in Judgment No. U-I-659/1994 etc. from 15 March 2000, that “in a legal order based on the rule of law, laws must be universal and equal for all, and legal consequences should be certain for those the law will apply to, ... legal consequences must be appropriate to the legitimate expectations of parties in each specific case in which the law is directly applied to them.”; Roberts, Melanie, Public Law Representations and Substantive Legitimate Expectations, *Modern Law Review*, 2001, p. 112-114.

<sup>35</sup> Constitutional Court Judgment No. U-III B-1373/2009 from 7 July 2009, Official Gazette No. 88/09.

<sup>36</sup> The legal position of the ECHR contends that, under certain conditions, legitimate expectations of parties must be recognized as “assets” entitled to protection under Article 1 of Protocol No. 1 to the Convention.

In assessing whether a claim, in the circumstances of a specific case, and under certain conditions, constitutes legitimate expectations deserving recognition as assets under protection of Article 48, paragraph 1 of the Constitution and Article 1 of Protocol No. 1 to the Convention, the Constitutional Court examines whether a specific claim warrants the designation of a “legitimate”, and thereby a legally protected expectation.

#### 4.1. Selected Examples from the Constitutional Court’s Case-Law

##### 4.1.1. Constitutional Court Judgment No. U-IIIB-1373/2009 from 7 July 2009<sup>37</sup>

In the present case, the applicants were issued a building permit and their building right was affirmed by a final decision, but after they began construction, the permit was revoked, under the authority of supervision. This is *de facto* a case of depriving the applicants of their property in the sense of their legitimate expectations that the conditions from their issued, final building permit, which was part of their assets, will be met. Until the decision to revoke the building permit was made on the authority of supervision, the applicants had at least a legitimate expectation that they were authorized to build an object on their land in accordance to the issued building permit, once it became final, and that they acted rationally and responsibly when they took on the burden of financial responsibility, based on their protected building right affirmed by the final decision, with the expectation that these actions would not result in the bank exercising its right to sell their property to third parties.

The Constitutional Court could only conclude that in the instant case, the state’s interference in terms of revoking the building permit under the authority of supervision, constituted a factual deprivation of the applicants’ property. It found that the applicants harbored a “legitimate expectation” that the conditions stipulated in the building permit, based on which they assumed financial obligations, will be met, considering that the expectation stemmed from a reasonably justified confidence in the final administrative act, resting on a robust legal foundation. There is therefore no doubt that their application was sufficiently established, and thus enforceable, which qualifies it as an “asset” in the sense of Article 1 of Protocol No. 1 to the Convention. The Constitutional Court thus concluded that the stated legitimate expectation was in itself constitutive of the applicants’ proprietary interest, and in the instant case the final building permit is an integral part of

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<sup>37</sup> Published at [www.usud.hr](http://www.usud.hr).

the applicants' assets protected under Article 48, paragraph 1 of the Constitution and Article 1 of Protocol No. 1 to the Convention.

#### **4.1.2. Constitutional Court Judgment No. U-III-2624-2007 from 18 June 2008<sup>38</sup>**

The present case concerned a civil proceeding before the Supreme Court in which the applicant's appeal for review was dismissed due to the low value of the subject matter in dispute. The Constitutional Court found that court proceedings must be conducted according to the constitutional principle of the rule of law as the highest value of the constitutional order of the Republic of Croatia (whose application clearly transcends any formalistic interpretation of legal provisions concerning the admissibility of appeals for review). The proceedings should not only conform to the mandate for legality of proceedings of state authorities, but should also incorporate the principle that legal consequences must align with the legitimate expectations of the parties involved in each particular case. Such expectations certainly include the expectation that the dispute will be resolved by applying the legal standards valid at the time of their initiation, thereby fulfilling the principle of just proceedings from Article 29 of the Constitution. In this specific case, the Supreme Court of the Republic of Croatia based its decision on the admissibility of the applicant's appeal on a formalistic rather than a realistic assessment of the value of the subject matter in dispute, thereby infringing upon her right to access this legal remedy as stipulated in Article 29, paragraph 1 of the Constitution.

#### **4.1.3. Constitutional Court Judgment No. U-III-2244/2014 from 6 June 2016<sup>39</sup>**

This case concerned an administrative procedure and dispute concerning the restitution of property confiscated during the Yugoslav communist regime. The Constitutional Court examined whether the annulled final decision on restitution bestowed ownership rights upon the applicants over the disputed co-ownership part, safeguarded by constitutional and conventional guarantees of property rights, in terms of its inviolability as the highest value within the constitutional order of the Republic of Croatia. It was examined whether there were legitimate expectations that would constitute the applicants' ownership on the disputed co-ownership part. The Constitutional Court found that, in the instant case, the applicants had a legitimate expectation that the decision on restitution, through which they obtained ownership in the land registry over the contested co-ownership part, would not be subsequently altered due to their relation to the previous owner. This expectation

<sup>38</sup> Official Gazette<sup>no.</sup> 104/08, the constitutional complaint is accepted.

<sup>39</sup> Official Gazette no. 57/16, the constitutional complaint is accepted.

was based on reasonably justified confidence in a final administrative act backed by a valid legal foundation and underwent a series of legally mandated supervision procedures, and represented a credible statement of their indisputable position, leaving the applicants with neither real nor legal grounds to anticipate a subsequent annulment of that administrative act. The Constitutional Court concluded that the said legitimate expectation is in itself constitutive of the applicants' ownership of the co-ownership part, which therefore has to be recognized. In this specific case, the decision on restitution concerning the disputed co-ownership part became part of the applicants' assets within the scope of the guarantee of Article 48, paragraph 1 of the Constitution and Article 1 of Protocol No. 1 to the Convention. Furthermore, the Court determined that the state had no authority to unilaterally interfere with the applicants' property (in terms of confiscating their co-ownership part that was recognized by a final decision on restitution) by annulling the final decision on restitution, unless it had previously established an interest of the Republic of Croatia in doing so, and secured compensation of the market value to the applicants.

#### **4.1.4. Constitutional Court Judgment No. U-III-2731/2018 from 11 July 2023<sup>40</sup>**

The present case concerned a civil dispute wherein the applicant sought to establish their legal status as the holder of a tenancy right and requested the issuance of a judgment substituting the purchase agreement of the flat in question. The Constitutional Court found that the applicant had no reason to doubt the content of the certificate issued by the competent public authority and signed by an official, and could have reasonably expected the defendant to decide favorably on his request to obtain tenancy rights to this flat. The Constitutional Court concluded that, by rejecting as unfounded the applicant's request for the issuance of a judgment substituting the purchase agreement of the disputed flat, the applicant's property rights were infringed upon. It determined that, in the circumstances of this case, the applicant had a sufficiently established claim<sup>41</sup> constituting an "asset" within the meaning of Article 48, paragraph 1 of the Constitution<sup>42</sup>, while the reasons given by the Supreme Court for applying relevant legal provisions in this case produced consequences incompatible with Article 48, paragraph 1 of the Constitution and Article 1 of Protocol No. 1 to the Convention.

<sup>40</sup> Published at [www.usud.hr](http://www.usud.hr), the constitutional complaint is accepted.

<sup>41</sup> A legitimate expectation does not exist independently of an ownership interest which is itself founded in national law.

<sup>42</sup> It must be determined whether the interference was "legally justified", whether it intended to achieve a legitimate aim, and whether there was a reasonable relationship of proportionality between the means employed and the intended aim.

#### **4.1.5. Constitutional Court Judgment and Decision No. U-III-444/2017 and U-III-554/2018 from 1 April 2020<sup>43</sup>**

The present case concerned a civil proceeding for compensation of damage due to unlawful actions of the Ministry of Privatization in the voucher privatization process. The applicants claimed that the Ministry, in violation of relevant provisions of the Regulation, included privatization shares of unprofitable and insolvent companies in the Voucher bidding program. Based on Article 48, paragraph 1 of the Constitution, the applicants believed their rights, as voucher holders, should be considered assets, i.e. property rights deserving protection, “specifically, the applicants’ right as lawful voucher holders to obtain the right to shares, in full (for all vouchers), of companies that were solvent and profitable at the time of their inclusion in the Program.” They alleged that the arbitrary application of substantive law in the present case prevented them from realizing legitimate expectations that they would be paid the claimed compensation for lost profits. The Constitutional Court decided that, due to the nature of the Ministry’s failure to adhere to the Regulation by including profitable and solvent companies in the Program, the applicants could not have reasonably expected to receive a fair value for privatization shares, disregarding the aforementioned regulations and circumstances of the case. Considering the insufficient legal foundation for the applicants’ claims in substantive law, the Constitutional Court concluded that, under the circumstances of this case, no legitimate expectations protected by law could have arisen to allow the applicants to realize claims for compensation for lost profits.<sup>44</sup>

#### **4.1.6. Constitutional Court Judgment and Decision No. U-III-1744/2023 etc. from 14 November 2023<sup>45</sup>**

The present case concerned constitutional complaints in the procedure of assessing the legality of a general act - the Decision on amendments to the Decision on financial aid for stay-at-home parents. The status of stay-at-home parent and the corresponding financial aid were established by the Decision, reflecting the political will of the representative body of the City of Zagreb to financially support a specific group of individuals. These decisions did not confer legally guaranteed rights, and

<sup>43</sup> Published at [www.usud.hr](http://www.usud.hr), constitutional complaint is dismissed and rejected.

<sup>44</sup> In this context, the Constitutional Court points out that the ECHR, in cases *Łącz v Poland*, Application no. 22665/02, Decision from 23 June 2009; and *Depalle v France*, Application no. 34044/02, paragraph 86, Judgment from 29 March 2010, concluded that individuals who, at the time of obtaining property rights, were aware of legal and factual limitations of such rights, cannot subsequently claim that those limitations were the cause of unlawful or unproportional interference of the state with their property.

<sup>45</sup> Published at [www.usud.hr](http://www.usud.hr), constitutional complaints are dismissed and rejected.

local and regional government bodies were not mandated to regulate the matters covered by these decisions. In other words, financial aid for stay-at-home parents is not a right in the classical sense, but a form of aid that public authorities have the discretion to provide or withdraw, and which is based not on obligation but on solidarity. This is also the key difference between the legal situation of stay-at-home-parents resulting from adopting the disputed Decision, and the ECHR Judgment *Bélané Nagy v. Hungary*. The Constitutional Court reiterates that in a democratic society, provided that the legislative intervention reforming a social system has a legitimate aim, the addressees of legal norms that are being changed or revoked do not have a legitimate right to expect a given legal framework to remain permanently unchanged. That is, the state's discretionary power must not produce consequences deviating from the fundamental constitutional values underlying the constitutional order of the Republic of Croatia, and the same requirement exists for local and regional authorities. The principles of the rule of law dictate that changes in regulations affecting the status of stay-at-home parents and their right to financial aid should be implemented according to the principle of fair balance, with as few consequences as possible for those affected by those changes. A significant fact in the present case is that beneficiaries of compensatory measures provided to stay-at-home parents by the City of Zagreb do not lose their financial aid; rather, they continue to receive financial aid according to the terms and conditions specified by the Decision. The Constitutional Court accepted the lower court's assessment that, by said compensatory measures, the City of Zagreb has achieved a balance between public interest and the protection of legitimate expectations of addressees of the disputed Decision, supporting their return to work.

However, a dissenting opinion by judge Šumanović, dated 21 November 2023<sup>46</sup>, argues that, from the perspective of the Convention, the rights of persons with the stay-at-home parent status, confirmed by individual final and enforceable decisions of competent local authorities, have the legal meaning of tangible existing possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, as correctly assessed in principle by the High Administrative Court, which issued the disputed judgment. Autonomously defined in the Convention and regularly used in the stable case-law of the ECHR, the term "asset" includes income received from the social security system, as well as legitimate expectations. Therefore, holders of the right to the disputed financial aid provided by the stay-at-home parent measure, in line with the known and well-established practices of both Strasbourg and the Croatian Constitutional Court, have a currently enforceable claim that

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<sup>46</sup> The Dissenting opinion is part of the Constitutional Court's Judgment, published alongside it at [www.usud.hr](http://www.usud.hr).

was sufficiently established, so protection of rights thus established reflects the requirement of legal certainty, inherent in the rule of law.

#### **4.1.7. Constitutional Court Decision No. U-I-2921/2003 etc. from 19 November 2008<sup>47</sup>**

The subject of Constitutional Court review were proposals to institute proceedings to review the constitutionality of the ALD<sup>48</sup>. Proponents found the deletion of Article 180 of the ALD from the legal framework unacceptable, reasoning that parties who submitted their complaints before 3 February 1996 had a “legitimate expectation” that their (property) claims would be decided based on Article 180 of the ALD. It must be taken into account that the legislator, starting with 3 February 1996, stopped all court proceedings initiated by complaints lodged in reference to Article 180 of the ALD, because there was no longer a legal basis for deciding on claims for compensation for acts of terror, as this provision was deleted by law. It was established that the legal intervention was justified, because it had a legitimate aim and sought to realize public or common interests of the community. The proponents’ belief that their claims would have been found justified, had Article 180 of the ALD been applied – which would also shift the court decision in their favor, granting them full compensation of material and non-material damage they sought – remains just a belief, which, according to the Constitutional Court’s assessment, cannot be treated as a “legitimate” expectation warranting legal protection within the meaning of Article 1 of Protocol 1 to the Convention. This holds true regardless of the fact that such claims were not resolved by competent courts by the time of their deletion from the legal framework. All the more so because the deletion of Article 180 of the ALD from the legal framework did not delete the applicants’ claims themselves. They were simply integrated into the new legal framework.

#### **4.1.8. Constitutional Court Decision No. U-I-5612/2011 etc. from 23 January 2013<sup>49</sup>**

The subject of Constitutional Court review, based on the proposal of appointed public bailiffs, was the Law on public bailiffs and the Law amending the Law

<sup>47</sup> Official Gazette no. 137/08; rejection of proposals to institute proceedings to review the constitutionality of the Act on liability for damage resulting from acts of terrorism and public demonstrations, Official Gazzeteno. 117/03.

<sup>48</sup> Act on liability for damage resulting from acts of terrorism and public demonstrations, Official Gazette no. 117/03; hereinafter ALD.

<sup>49</sup> Official Gazette no. 13/13; proposals to initiate proceedings to review the constitutionality of the Law on public bailiffs, Official Gazette no. 139/10, 150/11 and 70/12; and the Law amending the Law on public bailiffs, Official Gazette no. 150/11.

on public bailiffs. In the present case, the legislator had the obligation to ensure a balance between common or public interests of the community (introducing a new legislative model abolishing the service of public bailiffs) and protection of rights of individuals – appointed public bailiffs, to whom this same legislator had previously conferred professional status and employment, while also imposing obligations inherent in the position, which required considerable financial investment. This is not only a matter of compensation for the damage suffered. In their case there had been a violation of their legitimate expectations, which were based on valid legal acts of the state, and on the confidence of individuals in state institutions and the law they create. If the legislator had, for any reason, decided to abolish the service of public bailiffs, it was obliged to strike a fair balance between realizing that aim in the public or common interest, and protecting the interests of individuals serving as public bailiffs. Since the legislator did not establish a transitional legislative regime to adequately address the issue of previously appointed public bailiffs following the abolition of that institution, the fair balance between the objective the legislature sought to achieve by its abolishment in the general or public interest, and the protection of the interests of persons appointed as public bailiffs, has been disrupted. This omission also contravenes the principles that laws must adhere to under the rule of law, and directly violates the principle of legitimate expectations of individuals who relied on laws and valid individual legal acts adopted under those laws. The rule of law permeates all articles of the Constitution and implies the duty of state and public authorities to act in a way that ensures their measures are not arbitrary and that the burden of those measures is distributed fairly. This is the only way public confidence in state and public authorities can be preserved – confidence in their commitment to the rule of law and the protection of human rights, and confidence in the law these institutions create. The satisfaction provided by the Constitutional Court serves to preserve that confidence. It does not affect the right of the appointed public bailiff to seek compensation for the damage suffered in court proceedings according to general provisions of the law of obligations.<sup>50</sup>

#### **4.1.9. Constitutional Court Decision No. U-I-4455/2015 from 4 April 2017<sup>51</sup>**

The Constitutional Court assessed proposals to initiate a procedure to review the constitutionality of the Law amending the Law on consumer credit. The proponent believed she had a legitimate expectation that she would collect the principal along with the agreed interest from the consumer, which became impossible due

<sup>50</sup> Supreme Court Decisions Nos. Revd 2668/2020-2 from 23 February 2021, Revd 1232/2021-3 from 7 June 2022, Rev 1532/2014-3 from 23 January 2018 and Rev 2321/2018-3 from 19 May 2020.

<sup>51</sup> Published at [www.usud.hr](http://www.usud.hr).



to legislative intervention. The Constitutional Court examined whether the proponent had a sufficiently established claim arising from Article 48, Paragraph 1 of the Constitution, which could be considered a legitimate expectation. In the specific situation resulting from invalidating the credit agreement based on the (added) Article 19, paragraph 1 of the Law on Consumer Credit, the legislator had the authority to impose a special regime for reimbursing the amount received under such an agreement. Nevertheless, as certain legal and natural persons continued to engage in consumer lending activities without the required authorization – a legal prerequisite for their lawful conduct – any expectations arising from such activities in subsequent court proceedings could not have reasonably led to the full realization and protection of their claims arising from the consumer credit agreements. However, that case concerned a legislative intervention in the area of consumer lending, not in final administrative acts as in the present case. It involved private law agreements with an international character, which, even with the enforceability clause, do not confer acquired rights, and may be challenged by civil law mechanisms. The essence of the above decision lies in recognizing that, in this case, the proponents, acting as creditors or credit intermediaries, were already in illegal territory (not having obtained line ministry approval). Consequently, it was established that they could not have had any legitimate expectations of fully realizing their contractual rights. It follows that subsequent legal nullification of these agreements, which were in the execution phase, could not have resulted in unlawful interference in their property rights as protected by law.

## **5. OVERVIEW OF SOME RELEVANT JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS**

In the further text of the paper, we will present several relevant judgments of the European Court of Human Rights.

On 2 April 2015, the ECHR issued a judgment in the case *Solomun v. Croatia*<sup>52</sup>, affirming a violation of the right to peaceful enjoyment of possessions from Article 1 of Protocol No. 1 to the Convention, because the Supreme Court quashed the final judgment made in the applicant's favor, and the County Court, in a remitted proceeding, ruled against his interests. The ECHR points out that the first and most important requirement of Article 1 of Protocol No. 1 to the Convention is that any interference by a public authority with the peaceful enjoyment of possessions must be lawful. Deprivation of property can only be justified if it is shown to be "in the public interest" and if it meets the requirement of proportionality

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<sup>52</sup> Judgment from 2 April 2015, Application no. 679/11, paragraph 60; the Constitutional Court rejected the constitutional complaint in Decision no. U-III-419/2007 from 29 April 2010.

by striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. To be lawful, interference must have a legitimate aim in realizing a specific public or common interest.

On 20 May 2010, the ECHR ruled in the case *Lelas v. Croatia*<sup>53</sup>, affirming a violation of the right to peaceful enjoyment of possession from Article 1 of Protocol No. 1 to the Convention. The Court found it sufficiently established that the applicant's claims for daily allowance for demining work qualified as "assets" implying protection by Article 1 of Protocol 1 to the Convention. Consequently, the Court determined that the domestic courts' rejection of these complaints undoubtedly constitutes interference with his right to peaceful enjoyment of possessions. In cases where a financial claim is not enforceable, because the limitation period has passed, the ECHR clarified that such claims still qualify as "assets" and therefore constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention.

In its judgment in *Damjanac v. Croatia*<sup>54</sup> on 24 October 2013, the ECHR affirmed a violation of the right to peaceful enjoyment of possessions from Article 1 of Protocol No. 1 to the Convention, pertaining to cessation of the applicant's pension payments. In the judgment, the court states that, if a contracting state has legislation in force regulating the right to payment of a welfare benefit or pension – whether dependent on the prior payment of contributions or not – that legislation must be regarded as generating a proprietary interest for persons who meet its requirements, as per Article 1 of Protocol No.1. Therefore, if the sum of the financial aid or pension is reduced or eliminated, this could constitute interference with possessions that must be justified by common interest.

On 26 June 2018, the ECHR issued a judgment in the case *Čakarević v. Croatia*<sup>55</sup>, affirming a violation of the right to peaceful enjoyment of possessions from Article 1 of Protocol No. 1 to the Convention, because the applicant had been ordered to repay unemployment benefits, which she had received due to the error of competent state bodies. The Court concluded that the applicant had a legitimate expectation that she had the right to the payments received, given that this right was

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<sup>53</sup> Judgment from 20 May 2010, Application no. 5555/08, paragraph 56; the Constitutional Court rejected the constitutional complaint in Decision no. U-III-653/2006 from 10 April 2008.

<sup>54</sup> Judgment from 24 October 2013, Application no. 5294/10, paragraph 85; the Constitutional Court rejected the constitutional complaint in Decision no. U-III-1833/2007 from 11 March 2010.

<sup>55</sup> Judgment from 26 April 2018, Application no. 48921/13; the Constitutional Court rejected the constitutional complaint in Decision no. U-III-4992/2010 from 14 March 2013, while its Decision No. U-III-5442/2012 from 19 December 2012 declared it inadmissible.

confirmed by an administrative decision, that the payments were regularly made by the competent administrative body and that the applicant had not in any way contributed to the administrative body's mistake.

In the case *Bikić v. Croatia*<sup>56</sup>, on 29 May 2018, the ECHR decided there was no violation of Article 1 of Protocol No. 1 to the Convention. The judgment was issued by a five-vote majority. The applicant alleged that her right to peaceful enjoyment of possessions was violated by the refusal of her request to purchase her flat. The ECHR found that the applicant did not fulfill the key legal prerequisite to purchase the flat, i.e. she did not have a tenancy right (she did not acquire a final decision confirming her tenancy) and thus this flat did not constitute her "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, so refusing her request did not violate her right to peaceful enjoyment of ownership. Because she had not fulfilled the key legal prerequisite, it cannot be said she had a legitimate expectation, i.e. an asset in the sense of Article 1 of Protocol No. 1 to the Convention. However, two judges thought the applicant had a legitimate expectation that she would be able to purchase the flat, but the fulfillment of this expectation was thwarted through the fault of the relevant authorities, making it a right safeguarded by Article 1 of Protocol No. 1 to the Convention. It follows that non-fulfillment of the permitted legal requirement, provided its fulfillment was possible, but prevented by the local authorities, should not affect the application of Article 1 of Protocol No. 1 to the Convention due to the absence of legitimate expectations. Instead, the fact of ownership should be presumed whenever the substantive property interest was otherwise sufficiently established according to national law. In such a scenario, legitimate expectation should play a part in examining fair balance as an argument in the applicant's favor against other claims. It would follow that she had a legitimate expectation to realize effective enjoyment of that right, which therefore constituted an "asset", and therefore "ownership" within the meaning of Article 1 of Protocol No. 1 to the Convention.

## 6. CONCLUSION

The principle of protection of legitimate expectations has been present for centuries in many national legal systems, and apart from Convention-based law, it has been an undeniable part of European law for centuries. The Court of the European Union has been citing the doctrine of legitimate expectations since the late 1950s, and some twenty years later (since the late 1970s), it was established as one of the fundamental elements of the legal certainty of individuals. The said

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<sup>56</sup> Judgment from 29 May 2018, Application no. 50101/12; the Constitutional Court rejected the constitutional complaint in Decision no. U-III-2663/2008 from 11 May 2012.

doctrine is, for good reason, gaining relevance in the Croatian legal framework. The application of the protection of legitimate expectations usually occurs in cases where the legal situation (regime) changes, particularly when the new order comes into conflict with the potential realization of individuals' rights. In those cases, it is imperative to resolve the question of whether the individual can rely on the consistency of the legal order, and have confidence in its continuity and predictability. The concept of legitimate expectation builds upon the concept of acquired rights, which represent subjective rights that may not be derogated, restricted or left unprotected. Acquired rights are the basis for the expectation of their future exercise, so a change in the legal regime aimed at their restriction or abolishment may lead to a violation of the interests of individuals who relied on them, based on the legal norm. Furthermore, the rules and conditions for the protection of legitimate expectations are not prescribed and cannot be derived from legal provisions, but are instead developed through the practice of courts in assessing each specific case. For an expectation to be legitimate, it must be reasonable and founded in law, so an expectation that is not reasonable is not legitimate and is not subject to protection. In assessing whether a legitimate expectation is subject to protection, both the interest of the individual seeking that protection, and the public interest that may be harmed by making a decision in the individual's favor, need to be evaluated. It follows that private interest will be protected only when its priority over the public interest is determined in the instant case. So, all the above values must be carefully weighed before deciding whether an individual's expectation is reasonable, founded in law, and whether it will be given priority over public interest or if it will eventually encroach on public interest and/or the interest of third persons. Protection of the concept of legitimate expectations can be viewed in light of Article 29 and Article 48 of the Constitution, and Article 1 of Protocol No. 1 to the Convention. In interpreting the concept of property (ownership) from Article 1 of Protocol No. 1 to the Convention, it is imperative to correctly understand the Constitutional Court's and the ECHR's case-law and the way it applies to specific cases. Accordingly, the above concept includes the protection of claims which can be said to have at least a "legitimate expectation".<sup>57</sup> However, for the legitimate expectations of individuals to be adequately protected, both the legislator (especially when repealing certain legislative solutions) and ordinary courts, whose case-law should be consistent and lawful, must make sure to do so, to prevent legal uncertainty. In upholding the principles outlined above, the Constitutional Court plays a key role, shaping and advancing legal doctrines through its rulings, drawing upon the interpretations provided by the ECHR. These doctrines serve as the cornerstone for legal standards and established values in the

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<sup>57</sup> Gović Penić, I, *op. cit.*, note 19, p. 1204.

practice of ordinary courts, ensuring legal certainty and the associated principle of legitimate expectations of parties involved. We conclude that only a universal and homogenous application of law ensures the generality of legal provisions, equality before the law, and legal certainty in a state governed by the rule of law. The universal application of law promotes the public perception of fairness and justice, and strengthens public trust in the legal system as a whole.

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