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The ECHR's Protection of Property Rights against
Inflation vs. the EC Price Stability Principle

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The overall direction and coordination of the 2005-2006 European Forum was carried out by Professor Rick van der Ploeg, EUI. It was a joint undertaking of the RSCAS, the Department of Economics (with professors Anindya Banerjee, Giancarlo Corsetti, Omar Licandro, Salvador Ortigueira) and the Department of History and Civilization (with professor Giovanni Federico).

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Abstract

Recently, the ECHR has been called to render judgments in cases concerning the loss of purchasing power of currencies, due to high inflation rates. The Court had to decide if the right to property as set forth by the European Convention on Human Rights in Art. 1 of the First Protocol was applicable at least in the case of hyperinflation.

The many applications to the ECHR demonstrate how citizens perceive the stability of a currency as a fundamental principle. This research aims at investigating how the need for stability is considered within the European Community, and what are the benefits of the “price stability principle” which is at the core of the European Monetary Union.

Keywords

fundamental/human rights, property, inflation, EMU, price stability

Le Prince ne peut alterer le pied de monnoyes au prejudice des sujets, attendu qu'il est sujet au droit des gens. (J. Bodin, Les six livres de la Republique, 1576)

Without a stable currency there can be no lasting economic prosperity and political stability. (H. Tietmeyer, 4 October 1993)

I. Introduction

The aim of this study is to investigate what are the benefits of the 'price stability principle' endorsed by the EC treaty for the citizens of the Euroarea.

The idea behind this work came after a thorough study of the latest jurisprudence of the European Court of Human Rights (ECHR).

Recently, the ECHR has been called to render judgments in cases concerning the loss of purchasing power of currencies, due to high inflation rates. The Court had to decide if the right to property as set forth by the European Convention on Human Rights in Art. 1 of the First Protocol included movable property in the form of pecuniary credits and sums deposited on bank accounts, and if the right to property was applicable at least in the case of hyperinflation.

The many applications on this issue to the ECHR demonstrate that the stability of a currency is perceived as fundamental by the citizen. In this research, we would like to investigate how this need for stability is considered within the European Community, and what are the benefits of the price stability principle which is at the core of the European Monetary Union.

This paper is structured in three sections. First, we will describe in brief the phenomenon of inflation. Secondly, we will analyse the ECHR case-law on the right to property (Art. 1, Protocol 1), and how the Court took inflation into account. Finally, we will investigate how inflation is considered in the European Community framework.

II. Inflation

Inflation is the loss of purchasing power of a currency in the domestic market and it is measured on the price increase of a set of goods and services which are included in a basket. According to the monetarist theory, inflation may be caused by an excess of money issued by the central bank, which is not absorbed by the economy of the country.

Hyperinflation could be defined as a period in which a currency suffers a sudden, abnormal and continuous depreciation, and no signs of equilibrium are observable. Although the threshold is arbitrary, economists usually refer to hyperinflation in cases in which the monthly inflation rate is higher than 50 percent.

In the case of hyperinflation, money may lose its role as a medium of exchange, and its store of value and unit of account functions. Nobody would accept money in exchange of goods if its value were to rapidly 'evaporate', nobody would be motivated to save money, and nobody would have confidence in money as a unit of account if its inherent value were to continuously fade.

Some economists consider the effects of a moderate rate of inflation positive for economy and growth: in fact, it can become an incentive to invest savings, rather than accumulating them and having their purchasing power eroded. Obviously, when a certain threshold is exceeded, the phenomenon is regarded as negative, because inflationary expectations and an increasing uncertainty may discourage investment and savings.

Also social equality is affected, as wealth moves from citizens on a fixed income—such as pensioners—to citizens relying on wages and profits, which can be adjusted to inflation. Similarly, it shifts wealth from fixed amounts lenders to borrowers, and from landlords to tenants. This will distort economic decisions, since relative prices will not be reflecting production output. In cases of hyperinflation, people realize that their own national currency is not a good way to store value. Instead, they buy commodities to avoid as much as possible further depreciation of their income, giving up the purchase of goods perceived as voluptuary.

By allowing inflation to grow, a State can improve its financial position and at the same time it can afford to boost expenditure. Inflation reduces the relative value of previous State borrowing, increasing at the same time tax revenues. Due to the so-called fiscal drag, taxpayers move into higher tax brackets, as the nominal value of their income increases for the adjustments to the cost of leaving. Taxation on the same actual purchasing power is therefore increased.

Some economists have defined ‘inflation tax’, or *de facto* tax rise, the hidden effects of inflation on a non-indexed progressive tax. In effect, the government gains to the detriment of citizens, whose purchasing power is being eroded.

III. ECHR Right to Property and (Hyper)Inflation

A. A Brief Introduction to the ECHR Right to Property

The European Convention on Human Rights does not define property, leaving it to the interpretation of Convention organs. The use of the English word ‘possessions’ and of the French word ‘*biens*’ under Art. 1 of the First Protocol, demonstrates the drafters’ intention to adopt the broadest meaning possible.

The Strasbourg case-law shows that the concept of ownership, as set forth under the First Protocol of the European Convention, is not static, and that its meaning is autonomous and independent from the formal classification given by national laws.

Following the English and French comprehensive notions of property—comprising both ownership and proprietary rights on interests and objects, ranging from land and chattels, to debts, bank deposits, shares, patents and copyrights—the Court also included, among others, human genetic material and body parts, radio-wave frequencies and the goodwill of a business or a profession.

The case-law established that the concept of property also covers private law assets such as monetary claims based on contract, tort or unjust enrichment, as well as all kinds of monetary compensation claims against public authorities (including pensions and welfare benefit claims). In other words, practically any individual interest which has acquired an economic value.

Since *Sporrong and Lönnroth v. Sweden*¹ the ECHR has subdivided Art. 1 of the First Protocol defining three different categories of interference with property rights: deprivation of property (set forth in the second sentence of the first paragraph of Art. 1, Protocol 1), control on the use of property (set forth in the second paragraph of Art. 1, Protocol 1), and interference with substance of property (set forth in the first sentence of the first paragraph of Art. 1, Protocol 1).

Deprivation of property (or taking) occurs when all the rights of the owner are extinguished by operation of law or by the exercise of a legal power, the result being a dispossession, a transfer or a destruction of property. The Court has sometimes extended the concept to *de facto* deprivations, resulting in impediments to make use or enjoy the property without formal expropriation.

1 *Sporrong and Lönnroth v. Sweden*, n. 7151/75 and 7152/75, Judgment of 23 September 1982, Series A n. 52, para. 61.

Control on the use of property includes any legislative or administrative measure to regulate its use or disposal: a limitation without deprivation.

Even if Art. 1 of the First Protocol clearly mentions only two types of interference, the ECHR jurisprudence has developed a third category—interference with the substance of property—which occurs when the right to property is not transferred to public authorities, limited or controlled, but it still loses part of its substance. This general rule guarantees the right to the peaceful enjoyment of property.

In order to be legitimate, these three types of interference must comply with the principles of lawfulness and public interest.

Firstly, for satisfying the legality requirement, a State's interference with the right to property must be grounded on a proper legal basis, sufficiently accessible, certain and precise. Interferences with property are hence only admissible if permitted by national law. However, the ECHR does not usually judge if the national law has been correctly applied, limiting itself to evaluate whether the requisites (accessibility, preciseness, clarity, and foreseeability) are met.

Secondly, public authorities' interference with property is legitimate only when performed in the public interest. This is to prevent public authorities from abusing their powers and from adopting arbitrary measures. However, the concept of public interest behind a State's activity is very broad, and the Convention did not limit its discretionary margin of appreciation.

Thirdly, the interference with property must be enforced with appropriate, necessary, and proportioned means, reaching a fair balance between the public interest and the limitation to the individual right of property. Proportionality means that limitations to property must have the least possible impact. The fair balance principle protects against the arbitrary and disproportionate effects of an otherwise formally valid national law or legal power.

A State's failure to meet any of these requirements (lawfulness, legitimate aim and proportionality) results in a violation of Art. 1 of the First Protocol. Other legitimacy conditions are applicable only in the case of deprivation of property: payment of a reasonable compensation and compliance with general principles of international law.

Art. 1 of the First Protocol protects only existing and actual property, and neither guarantees a right to acquire property nor covers mere expectations without any legitimate base.

The only positive obligation arising from Art. 1 of the First Protocol for the State is to preserve a legal system of private ownership in which property rights can be enforced, but there is little jurisprudence to establish when the State is obliged to act.

Do individuals have a right to property over cash and bank deposits? Is inflation a cause of interference with the right to property? Which kind of interference could be entailed by inflation? Does hyperinflation entail a form of taking? How far can governments and central banks go when regulating the nominal value of a currency, and when devaluing it, even if—formally—they do so in the public interest? Can a State be held responsible for individuals' losses caused by inflation? To what extent can a State be deemed responsible for not having provided individuals with a legal technique to counterbalance inflation?

The ECHR has declared that monetary claims arising from private law relations, or stemming from public law towards the State, constitute possession if they are sufficiently established to be enforceable, and are to be protected from any interference with their peaceful enjoyment. The Court has also acknowledged that—for the purposes of Article 1 of the First Protocol—possession can be exerted over sums of money (savings) deposited with a private investment company or with other financial institutions.²

2 See, among others, *Sukhorubchenko v. Russia*, n. 60315/01, Judgment of 10 February 2005

We described inflation as a *de facto* taxation. In certain cases, the Court considered taxation as a deprivation of property or as a form of control on its use.³ The main difference between taxation and takings is the burden they impose. While taxation is formally equal on all the members of the society, takings are suffered by single subjects (Çoban, 2004: 95). In the case of hyperinflation too, when the owner is left with no reasonable economic use or value of his assets, then the action of the monetary authority may be construed as a taking.

Having regard to the effects of inflation, it is necessary to underline how inflation imposes a greater burden on those who rely on a fixed income as their only means of subsistence (such as pensioners and small savers), than on those who have a variable income and the possibility to keep pace with inflation. This distorting redistributive effects of inflation could be deemed to be contrary to the principle of substantial equality (unequal treatment of unequal cases in proportion to their inequality). The effects of an inflationary policy are discriminatory, even if not in a formal sense, because they impose a greater burden on the weaker classes. However, it will be on the aggrieved party to demonstrate that the interference with the enjoyment of his possessions is discriminatory. The unfair effects of inflation on pensioners have been recognised in *Fedorenko v. Ukraine* by the Court, which however motivated its decision mainly on moral grounds.

Over a certain threshold, inflation could also be deemed to be against the public interest, as it does not enhance social justice and the economic environment, but it imposes an enormous economic burden on citizens. Equality and justice require that every person should be provided with the minimum of private property necessary for a decent life. And, even if the State has a wide margin of appreciation in determining what is in the public interest, in some cases the Court has already found the national authorities' judgment manifestly without reasonable foundation.⁴ However, it is understandable that the Court abstained from judging an inflationary policy against the public interest.

A different approach should be used when considering the requisites of lawfulness and proportionality. In fact, inflation often derives from a central bank's failure to achieve the set by law objective of price stability. And in that case, inflation could even reach a level over which it is against the general interest.

Bearing in mind the criteria set by the European Convention, it is our opinion that, in certain cases, hyperinflation should be considered against the law. Article 1 of the First Protocol sets forth that, in order to be legitimate, the interference with property should fall within the law. Nowadays, in industrialised countries, inflation targeting or price stability targeting are the primary objectives of central banks' monetary policy. When this objective is declared by law, sometimes even at constitutional level (like in Germany), a central bank failing to keep inflation under control may be considered not abiding to the law (that is, of course, if the objective could be achieved through a different monetary policy or behaviour, and when no extraordinary events affected the economy).

Inflation could also be seen as a State's failure to protect property and to fulfil its positive obligation to preserve a legal system of private ownership. So far, however, the ECHR has maintained that the State is not obliged to act in order to prevent loss of value arising from market factors, nor to protect the currency from the effects of inflation.

Finally, bearing in mind that Art. 1 of the First Protocol protects only existing, actual, property and does not guarantee a right to acquire it, it is our opinion that the citizens' expectation on the stability of the currency has legitimate grounds, at least when inflation targeting is declared by law.

3 See *Hentrich v. France*, n. 13616/88, Judgment of 22 September 1994.

4 See *James and Others v. UK*, Judgment of 21 February 1986, Series A n. 98, § 46.

B. The ECHR Case-law on Property Rights and Inflation

Since the relationship between the right to property and inflation is the subject of this paper, we will now analyse in detail how the Court treated inflation in its case-law. For what concerns Art. 1 of the First Protocol the ECHR has considered inflation in five different ways.

A) The Court has not acknowledged hyperinflation as a *per se* form of taking breaching Art. 1 of the First Protocol. However, the loss of purchasing power due to inflation was taken into account when declaring a taking of property illegitimate because no compensation (or insufficient or unfair compensation) was awarded. The Court hence considered inflation when judging on the violation of the second sentence of the first paragraph of Article 1, Protocol 1, which governs expropriation. In fact, takings not adequately compensated are generally treated as a disproportionate interference with the right to property.⁵ Even if States can adopt a wide range of evaluation methods in calculating compensation, they cannot impose a disproportionate burden on the private owner. Hence, unreasonable delays in the determination of compensation – or delays in its payment during an inflationary period – affect the requirement of proportionality.

The cases *Akkuş v. Turkey* and *Aka v. Turkey*,⁶ for example, concerned the amount of compensation due for the expropriation Turkey carried out on plots of land belonging to the applicants. Mrs. Akkuş and Mr. Aka applied for increased compensation before domestic courts. Domestic courts awarded them additional compensation and provided for the application of statutory interest rate in case of delay in payment. In both cases, the additional compensation was paid by Turkey more than a year after the final judgment.

In the Akkuş case, the scope of the dispute was determined by the Commission's decision on admissibility, and solely concerned the damage caused by authorities' delay in paying the additional compensation that was due. The Court found that abnormally lengthy delays in the payment of compensation led to increased financial losses for the person whose land had been expropriated, especially when considering the high monetary depreciation. The late payment—combined with inflation—rendered the compensation inadequate and resulted in an additional loss which disrupted the balance between the protection of the right to property and the general interest.⁷ Besides, the Court noted that in Turkey the rate of interest payable on debts owed to the State (84% per annum) encouraged debtors to pay promptly, while individual creditors of the State risked a substantial loss if the State delayed its payment.

Mr Aka's application concerned the insufficiency of the statutory interests for delay applied by domestic courts (30% per annum) to counterbalance the actual rate of inflation (attaining 70% in a year). He pointed out that the delays in payment, combined with the high monetary depreciation, had generated an unjustified imbalance between his personal interests and the public interest. The Court found that the application of insufficient statutory interests to compensate the high monetary depreciation resulted in unfair loss for the applicant. This loss, added to the expropriation of land, disrupted the fair balance that should have been maintained between the protection of the right to property and the general interest.

5 *Lithgow and Others v. the United Kingdom*, nn. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, Judgment of 8 July 1986, Series A n. 102

6 *Akkuş v. Turkey*, n. 19263/92, Judgment of 9 July 1997, Reports 1997-IV and *Aka v. Turkey*, n. 19639/92, Judgment of 23 September 1998, Reports 1998-VI. See also, *Lithgow and Others v. the United Kingdom*, nn. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, Judgment of 8 July 1986, Series A n. 102, and *S. and Others v. the United Kingdom*, n. 13135/87, Judgment of 4 July 1988. In *Lithgow* (para. 147), para. 147, the Court held that the UK was reasonably entitled to take within its margin of appreciation a decision excluding any allowance for inflation, and that in any case the UK provided sufficient protection against the effect of inflation. More recently, see *Kirilova and Others v. Bulgaria*, nn. 42908/98, 44038/98, 44816/98 and 7319/02, Judgment of 9 June 2005.

7 See, however, the dissenting opinion of Judge Thór Vilhjálmsson, joined by Judge Mifsud Bonnici.

In both cases, the Court established that the situation unquestionably fell within the second sentence of the first paragraph of Article 1 of Protocol 1 on deprivations: abnormally lengthy delays in the payment of compensation for expropriation, as well as delays on related administrative or judicial proceedings, combined with the effects of inflation impose a disproportionate burden on the private owner.

The Court is aware that national authorities—in the general interest—tend to limit the amount of interest payable on debts due by the State. It acknowledged, however, that Turkey had taken advantage from the high inflationary situation. By delaying to comply with its obligation, Turkey actually diminished the actual value of its debt.

The applicants were hence entitled to the reimbursement of the difference between the amounts paid by Turkey and the purchasing power these amounts would have had if they had been paid timely. After the *Akkuş* and *Aka* judgments, many similar cases against Turkey have been decided by the Court.

A completely different situation arises when considering the effects of inflation on taxation. As we have seen, the value of an asset may be increased by mere inflationary factors. Taxation on what would seem a capital gain has never been considered a form of confiscation and any attempts by taxpayers in this sense have failed.

In particular, in *X v. Federal Republic of Germany*,⁸ the applicant complained about the levy of a tax on the interests earned on his savings account during the year 1974, when the rate of inflation was much higher than the interests paid by the savings institution. The applicant maintained that he was thereby improperly required to pay the income tax with part of his capital while inflation was continuously eroding it. He maintained that his right to property was being violated, but the Commission declared the complaint manifestly ill-founded: it is embedded in the sovereign power of every State to promulgate laws imposing taxation as a means of financing public expenditure; moreover, a State is not under a positive obligation to adopt a measure for the systematic indexation of savings deposited with banking or financial institutions.

B) The Court has evaluated the effects of inflation also in the light of the general rule set forth in the first sentence of Art. 1, Protocol 1: inflation may result in such substantial losses to be considered an unjustified interference with the peaceful enjoyment of property.

Interesting in this respect is the case *Solodiyuk v. Russia*⁹ on the recurrent payment delays of monthly pensions, resulting in a loss of value due to inflation. The Court recalled that a claim concerning a pension can constitute ‘possession’ only if it is established by a final and enforceable court judgment. Then it declared that the delays in payment of the applicants’ pensions did not involve a total deprivation of property. However, as a result of very high inflation, they resulted in a substantial loss in terms of value. The statutory pensions rise, even if linked to the average salary rise established by the Government, was not adequate to protect its purchasing value against a rapidly growing inflation. Moreover, the interference was manifestly unlawful because it breached the national law which required pension payments to be made within the month in which they were due. Hence, late payment of pensions imposed on the applicant an individual and excessive burden, an open violation of the first sentence of Art. 1, Protocol 1.

In such a relationship between individuals and public authorities, public authorities can impose or change the terms unilaterally, leaving individuals in a weak position. In this case, the main concern of the Court was the inequity of the burden caused by inflation on a category—the pensioners—unable to protect the purchasing power of their retirement benefits. Pensions, being their sole or main income, were insufficient to guarantee for a dignified life standard.

8 *X v. Federal Republic of Germany*, n. 8724/79, Decision of 6 March 1980, 20 DR 226, 1980.

9 *Solodiyuk v. Russia*, n. 67099/01, 12 July 2005.

The Court treated pensions as debts of value, which require the debtor to pay an economic value measured at a specific date rather than a fixed pecuniary sum. Debts of value should therefore be readjusted, taking inflation into account.

We cannot underestimate the importance of this decision, especially in a period of rapidly aging societies, where the dangers faced by pension systems are a major concern in many industrialised countries.

In *Fedorenko v. Ukraine*,¹⁰ an individual sold his property to the Ukrainian State for a sum expressed in Hryvna (UAH). A clause of the contract stated: 'if the exchange rate of the Hryvna depreciates, the overall sum to be paid cannot be less than the equivalent of USD 17,000'. The State delayed the execution of the contract, and on the date of payment paid the applicant a sum in Hryvna which was worth only USD 10,457.50.

The applicant requested the enforcement of the dollar value clause before the domestic courts, which invalidated it because only the Hryvna was attributed legal tender status for national transactions.

The applicant complained that he was deprived of the benefit of a contractual safeguard against inflation, which was to be achieved by linking the value of his property to a hard currency.

The Court firstly recalled that, according to the established case-law, possessions can be existing possessions or assets, including claims, in respect to which the applicant can argue that he has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. Considering that the applicant did enter into the agreement because he was properly safeguarded against the depreciation of his credit, the Court considered the legitimate expectation of benefiting from the dollar value clause to be grounded. For the purposes of Article 1 of the First Protocol, this could have been regarded as attached to the property rights arising from the contract.

The dollar value clause had the specific purpose of safeguarding the value of the consideration involved in the agreement, especially during the economic turmoil experienced at that time by Ukraine. Besides, the fixing of contract prices in stable, hard currencies was a widespread practice. The Court ruled that the applicant's legitimate expectations under the contract were hence frustrated, and that the applicant's right suffered serious detriment. Moreover, the applicant did not even receive adequate compensation for the adverse effects of inflation caused by the State's late payment.

The Court, therefore, declared that the interference with the applicant's right was disproportionate. In this case, the fair balance test on Art. 1 as a whole was applied, without making a distinction among the different types of interference with property rights.

By refusing to question the notion of legal tender as it was applied in the domestic order (which invalidated the clause), the Court implicitly acknowledged the monetary sovereignty of the State. However, there are doubts that the legal tender status of a national currency is incompatible with a dollar value clause. Legal tender defines the medium through which the debtor has to perform his obligation, but nothing is said on the criterion to be followed when determining the amount to be paid (Mann, 1982:275). The principle of nominalism in itself does not invalidate value clauses, nor does it have the strength of mandatory law when not otherwise stated (Proctor, 2005:317).¹¹ Furthermore, the strict application of the nominalistic principle may affect private law relationships when the parties cannot protect themselves through revaluation clauses.

Since the statutory rate that was applied was much lower than the actual rate of inflation and since no other legal techniques for the protection of the applicant's credit from inflation were available, the Court found the interference with the right to property to be disproportionate. For the Court, the application of the nominalistic principle (never expressly mentioned) in conditions of high inflation

10 *Fedorenko v. Ukraine* n. 25921/02, Judgment of 2 June 2006.

11 According to the principle of nominalism, a debtor is obliged to pay the nominal amount of a debt, regardless of any changes in the purchasing power or the external value of the currency in which the debt is denominated.

may give rise to unjust losses for one of the parties to a contract. The nominalistic principle is hence not immune from the Court's scrutiny, and it can be subject to the fair balance test to verify if the burden it imposes on individuals is excessive.

If the laws of a State do not allow for the correction of the impact of inflation, because revaluation clauses are not allowed or because the statutory interest rate is far below the inflation rate, the State should be held responsible for violation of Art. 1, Protocol 1.

C) The Court has also considered the losses caused by inflation when judging that a violation of both Art. 1 of the First Protocol and Art. 6 of the Convention has occurred.

In particular, the Court ascertained the violation of Art. 6 and Art. 1, Protocol 1 when the State failed to execute, or to comply with, an enforceable judgment in the applicant's favour, thus preventing him from receiving the money to which he was entitled and making him bear the effects of inflation. The State is also responsible for procedural delays breaching Art. 6, which in an inflationary environment may cause losses.¹² However, a State cannot be held responsible for courts' decisions regarding civil disputes not taking into account inflation and resulting in an unjust enrichment of one of the parties.

In *O.N. v. Bulgaria*¹³ the Court rejected the application. The applicant alleged that the domestic courts did not consider the effects of inflation, therefore seriously affecting the purchasing value of the sum awarded. The applicant substantially claimed that the responsibility of the State under Art. 1 of the First Protocol was engaged, because domestic legislation and judicial practice disregarded inflation to such an extent that they caused a *de facto* deprivation of property. The Court ruled that Art. 1 of the First Protocol 'does not give rise to any positive obligation for the State to maintain the value not only of deposits, but also of claims or any other asset'. The right to property does not require States to apply a default interest rate compatible with inflation to private claims. The Convention cannot interfere with State's domestic policy and cannot impose on States an obligation to deal with the effects of inflation and other economic phenomena. The ECHR admitted, however, that the domestic courts' judgment left the applicant to bear disproportioned consequences of inflation to the benefit of the other party. This notwithstanding, the Court stated that imposing on the State the positive obligation to remedy such situations through legislation or judicial decision would be no less than imposing an obligation to guarantee the value of possessions despite inflation or other economic phenomena.

The Court distinguished this case, concerning a contractual relationship between individuals, and not involving an authoritative act of the State, from the *Aka* and *Akkuş* cases.¹⁴ According to established case law, a State cannot be held responsible under Art. 1 of the First Protocol for the losses resulting exclusively from contractual relationships between private individuals unless public authorities are involved in the occurrence of such losses.¹⁵ The latter two cases, instead, concerned an obligation of the State to compensate the applicants for expropriation of property: authorities' failure to pay the compensation timely and without adjusting the sum to the inflation rate violated Art. 1 of the First Protocol.

12 See *Fedotov v. Russia*, n. 5140/02, Judgment of 25 October 2005; *Virgil Ionescu v. Roumanie*, n. 53037/99, Judgment of 28 June 2005; *Tunc v. Turkey*, n. 54040/00, Judgment of 24 May 2005; *Wasserman v. Russia*, n. 15021/02, Judgment of 18 November 2004; *Tregubenko v. Ukraine*, n. 61333/00, Judgment of 2 November 2004; *Mancheva v. Bulgaria*, n. 39609/98, Judgment of 30 September 2004; *Zhovner v. Ukraine*, n. 56848/00, Judgment of 29 June 2004; *Burdov v. Russia*, n. 59498/00, Judgment of 7 May 2002, ECHR 2002-III; see also *Angelov v. Bulgaria*, n. 44076/98, Judgment of 22 April 2004, but only under the general rule set forth in the first sentence of Art.1, Protocol 1.

13 *O.N. v. Bulgaria*, n. 35221/97, Decision of 6 April 2000.

14 For a distinction between facts resulting of an exercise of governmental authority and facts concerning solely a relationship of a contractual nature between individuals, see also *Dobberstein v. Germany*, n. 25045/94, Judgment of 12 April 1996.

15 See *Gustafsson v. Sweden*, n. 15573/89, 25 April 1996, Reports 1996-II.

A distinction could also be drawn with the more recent *Fedorenko* case, in which, since a legal technique to protect the value of the applicant's credit was unavailable, the rebuttal of the dollar value clause was considered a disproportionate interference with the right to property. While in *Fedorenko v. Ukraine* it emerges that the State has a duty to make a legal protection technique available to private parties to protect their contractual credits from inflation, in *O.N. v. Bulgaria* the Court underlined that the right to property does not imply that the State should counterbalance inflation providing a statutory interest rate.

It has to be emphasised that the ECHR does not have the power to deal with errors of fact or law committed by national courts, unless there is an infringement of rights and freedoms protected by the Convention. In *O.N. v. Bulgaria*, the domestic court's refusal to take inflation into account, awarding a sum inadequate to the real value may be unjust, but it is not a violation of the right to property under the Convention. It can therefore be said the Court did not treat the domestic court's failure to respect the *restitutio in integrum* principle as an interference with the right to property.

D) In some cases which could have had a great impact on the economy of a State, the ECHR declared the application for violation of the right to property inadmissible.

The *Rudzinska v. Poland* case¹⁶ regarded a savings account specifically designed to assist holders in the acquisition of an apartment or a house and opened in a publicly owned institution. The State guaranteed that a special rate of interest was going to be applied to the deposited sums and that they would be revalued to maintain the purchasing power. At a later stage, however, the State did not fulfil its obligation and the applicant's savings decreased to a negligible amount. The applicant hence claimed that she had been deprived of her own property.

Initially the Court asserted that, having the applicant the option of withdrawing her savings, there was no deprivation in the sense of Art. 1, Protocol 1. The Court then declared that States were under no obligation of guaranteeing the purchasing power of sums deposited with financial institutions. This especially when, in the domestic order, revaluation clauses between private parties cannot be validly applied to sums deposited with financial institutions. It is worthwhile noting that the issue concerned approximately five million citizens and that a reassessment by the State Treasury of the housing awards for all the concerned people would not have been economically feasible. The Court declared the application inadmissible.

In *Gayduk v. Ukraine*,¹⁷ the Court did not consider the right to the indexation of savings guaranteed by Art. 1 of the First Protocol. The case concerned the erosion caused by inflation of the applicants' savings account. The depreciation was worsened by the introduction of a new currency at an unfavourable conversion rate. In order to dull the effects of inflation combined with the mentioned monetary reform, a law was passed establishing a system for indexing the savings and for repaying them progressively. The repayment scheme would have been based on the conditions set forth by subsequent regulations. These regulations were intended to specify the categories of account holders entitled to receive compensation the following year (only account holders aged 80 or over). The applicants contended that the State had undertaken an obligation to maintain the actual value of their savings and to pay them compensation. Still, by granting compensation only to certain categories of account holders, the State had unilaterally, and in a discriminatory way, breached their rights. Not pursuing a legitimate aim, such a conduct constituted a disproportionate interference with the right to property.

The Court pointed out that the applicants' claim concerned two separate sums: those concerning the savings account, whatever their real current value, and the sums to be paid by the State under the indexation scheme. For what concerns the applicants' initial deposits, the Court found that they

16 *Rudzinska v. Poland*, n. 45223/97, Decision of 7 September 1999, ECHR 1999-VI. See also *Maria Kuczynska v. Poland*, n. 25696/94, Judgment of 10 September 1997.

17 *Gayduk v. Ukraine*, n. 45526/99 et al., Decision of 2 July 2002.

undoubtedly constituted possession within the meaning of Article 1, Protocol 1. In that respect, since the applicants had the option of withdrawing the sums together with statutory interest whenever they wished to do so, no violation of their right to property was found. As far as the compensation amounts are concerned, the Court affirmed that they did not consist of ‘existing possessions’ belonging to the applicants. Stressing that Art. 1 of the First Protocol does not guarantee any right to acquire the ownership of property, the Court declared that the State had no obligation to protect savings against inflation through indexation.

The case *Appolonov v. Russia*¹⁸ arose from similar circumstances, but it presented the peculiarity that the Law on Revaluation and Protection of the Savings of Citizens of the Russian Federation protected the value of personal savings deposited on a bank against inflation. Savings were to be converted by Law into special State bonds, which guaranteed a purchasing power equivalent to that of the national currency on a specific date. Conversion would have been carried out, though, only after the approval of the relevant subordinate legislation. The domestic courts ruled that, being said legislation still pending, the State did not have an enforceable obligation to compensate the losses caused by inflation. Under the same rationale, the ECHR declared the application inadmissible. The State’s failure to promptly carry out the full-scale revaluation envisaged in the Savings Act could not be deemed a violation of the applicant’s rights under Article 1, Protocol 1 of the Convention.

In an analogous case, *Ryabykh v. Russia*,¹⁹ the applicant claimed that the value of her personal savings had slumped as a consequence of economic reforms, and that the State had not revalued the amounts deposited, as it should have pursuant to the Law on Revaluation and Protection of the Savings of Citizens. The applicant claimed that her rights under Art. 1 of the First Protocol and Art. 6 had been breached by the State’s refusal to refund the financial losses she had suffered as a result of inflation, and by the fact that the compensation she was awarded by a domestic court had been set aside under the supervisory review procedure.

It has to be stressed that, in this case, most of the domestic courts involved rejected the argument that the Savings Act reimbursement scheme could not be implemented since no special secondary legislation had been passed. On the contrary, the courts acknowledged that the Savings Act guaranteed the deposits, considering them part of the State’s domestic debt, and that the State had failed to introduce the necessary rules in time to enable the debt repayment. The State was hence held liable under Russia’s civil law. Nevertheless, the ECHR did not overrule the *Appolonov* jurisprudence, reaffirming that Art. 1 of the First Protocol did not oblige the State to maintain the purchasing power of sums deposited with financial institutions. Nor did it consider that the Savings Act, as interpreted by the domestic courts, set for the State an enforceable obligation to compensate losses caused by inflation. The Court only found a violation of Art. 6 in that the final judgment was quashed on supervisory review.

From the combined analysis of the above mentioned cases, it can be derived that the ECHR is still reluctant to abandon the traditional approach according to which monetary sovereignty rests with national governments rather than individuals.

E) The Court has considered inflation when calculating just satisfaction pursuant to Art. 41 in a number of cases. We are not going to investigate here what methods are applied by the ECHR to take inflation into account when awarding pecuniary damages for just satisfaction. However, it should be recalled that, to avoid the effects of inflation, the Court usually determines its awards in an international–stable–currency.

Analysing the ECHR jurisprudence, we have identified two tendencies. On the one hand, the ECHR case-law on the right to property and inflation shows a tendency to limit a State’s monetary

18 *Appolonov v. Russia*, n. 67578/01, Decision of 29 August 2002.

19 *Ryabykh v. Russia*, n. 52854/99, Judgment of 24 July 2003.

sovereignty when the fundamental rights of individuals are detrimentally and disproportionately affected. In this view, the power of a State to regulate the value of the currency without pondering the socio-economic consequences of its decisions is no longer an absolute right. On the other hand, the number of applications on the negative effects of inflation before the ECHR demonstrates the citizens' growing awareness of the importance of monetary stability. A stable currency is at the base of individual freedom, democracy, and economic and social order, a value that European citizens too often tend to take for granted.

IV. Some Lessons for the European Citizens

The above mentioned ECHR pronouncements regard mainly Eastern European countries which became members of the European Convention on Human Rights after the collapse of socialism. The transition to a market-oriented economy generated economic turmoil.

When dealing with the effects of inflation, the Court has shown its respect for these States' monetary sovereignty. Even in the case of laws on savings revaluation, the Court did not establish an enforceable obligation for the State. What would the Court's position be if a law declared that the primary objective of a central bank is the achievement of price stability?

Whether and to what extent individuals enjoy a legal protection from the measures carried out by central banks has seldom been investigated. In principle, sovereign activities (like those of central banks) have to be subject to judicial control. However, when a central bank fails to safeguard price stability, demonstrating a violation of the law becomes particularly difficult, even when this objective is assigned by the Constitution. Monetary policy is, in fact, one of the fields in which it is necessary to grant sufficient discretionary power to central banks. Judicial censure of a central bank's conduct for breach of basic rights (such as the right to property) will therefore occur only in the case of clear misconduct.

Along with the protection provided by the ECHR, the European Community provides human rights protection as well. Art. 295 EC declares that the Treaty shall in no way prejudice the rules governing the system of property ownership in Member States, while Art. 17 of the European Charter of Fundamental Rights recognizes the right to property. However, in the European Community framework, the most efficient way to protect the right to property from inflation is the firm application of the price stability principle.

Under the German and French influence, the Maastricht Treaty assigned the ECB the primary objective of maintaining price stability. At that time Germany was the only EC Member State to have a constitutional guarantee for monetary stability. Before being amended to the new provisions of the EC Treaty, Art. 88 of the German Basic Law (*Grundgesetz*, dated 23 May 1949) contained a constitutional mandate to the Federal Government to establish a 'note-issuing and currency bank' in the form of a federal Bank. The term 'currency bank' was interpreted as entailing that the tasks of the Bank were to supply the economy with funds and to safeguard the value of money: Art. 88 GG ensured stability and made the Bundesbank the guardian of the currency.²⁰

In 1957 the Act on the Bundesbank (*Bundesbankgesetz*) laid down the principle of 'currency stability'. According to Section 3, 'the Deutsche Bundesbank shall regulate the amount of money in circulation and of credit supplied to the economy with the aim of *safeguarding the currency* [...]'. To the majority, this objective entitled the Bundesbank to safeguard price stability (with a priority on other economic objectives like balanced trade, steady and adequate economic growth).

These provisions were intended to preserve the Deutsche Mark's purchasing power from high inflation and to avoid the return of hyperinflation which had plagued Germany twice (1922-1923 and 1945-1948).

²⁰ See BverwGE (*Entscheidungen des Bundesverwaltungsgerichts*/ Ruling of the Federal Administrative Court) 41, p. 349.

Price stability was therefore placed at the core of the European Monetary Union (Art. 105 EC and Art. 2 ESCB Statute) at Maastricht's intergovernmental conference. Consequently the German Constitution was amended to further promote price stability as Germany's primary commitment. In its famous 'Brunner' decision (89 BverfGE 155 (1993)), the German Constitutional Court rejected the argument that the Maastricht Treaty established a too vague commitment to monetary stability. Moreover, analysing the several provisions on stability of the Treaty (and among them the convergence criteria), the German Court doubted that any relaxation of the stability criteria would be possible. The ECB's independence and its primary objective of price stability were the constitutional precondition for the transfer of monetary sovereignty to the European Community. The European Monetary Union conceived as a community of stability (*Stabilitätsgemeinschaft*) became the basis and the object of the German Act of Accession (see BVerfG, NJW 1998, pp. 1934 et seq.).

Price stability, however, was not defined by the EC Treaty. The quantitative definition of the target falls within the ECB's competences. The ECB's Governing Council defined 'price stability' as a year-on-year increase in the Harmonised Index of Consumer Prices for the Euroarea under 2%. In the pursuit of price stability, the ECB has also clarified that it aims to maintain inflation rates below, but close to, 2% over the medium term. The announcement of a quantitative target is believed to be a powerful tool for anchoring inflation expectations, providing a device for co-ordinating price and wage setting behaviours and thus for facilitating the conduct of monetary policy by the central bank.

The absence of any formal definition of price stability in the Treaty of Maastricht gives the ECB discretionary powers both to define and to pursue the objective. This, together with the great independence granted to the ECB by the EC Treaty, makes it even more difficult to evaluate the ECB's performance and to hold the bank accountable for its monetary policy.

Whether the price stability principle may be construed as an enforceable obligation and the ECB, as the legal entity in charge of the monetary policy of the Community, may one day be held judicially responsible for decisions taken in contrast with price stability, could be seen as a mere philosophical exercise. However, even if the ECB's responsibility may result only in terms of political accountability, European citizens should not forget the benefits of this principle.

In liberalism, monetary stability has been defined as a value which is at the base of democracy and of most economic rights. Only in conditions of stability a currency can accomplish its functions of means of exchange, unit of account and store of value. Maintaining stable prices on a sustained basis is a crucial pre-condition for increasing welfare and the economy growth potential, together with high levels of employment.

Fundamentally, price stability preserves the integrity and purchasing power of the currency. When people have confidence that the purchasing power of their currency will be stable and predictable, they can hold money for transactions and other purposes, without having to worry that inflation will diminish the real value of their money balances. Equally important, stable prices allow people to rely on the currency as a measure of value when making long-term contracts, engaging in long-term planning, or borrowing and lending for long periods.

Price stability improves the transparency of the price mechanism. People can appreciate changes in relative prices, without being confused by changes in the overall price level. This allows businesses and consumers to adopt more reasoned and informed consumption and investment decisions. Resources can then be allocated more effectively and the productive potential of the economy will increase.

In price stability conditions, long-term interest rates are likely to be moderate. In fact, interest rates tend to move along with changes in perceived inflation, as lenders are driven to ask compensation for the risks of loss in the purchasing power of their principal associated with holding nominal assets. Whereas if prices are stable, savers and lenders are prepared to accept lower interest rates on their savings.

Confidence in the stability of prices is also an incentive to investments. In fact, inflation increases uncertainty among investors. In a high-inflation environment, businesses and individuals divert

resources from productive uses in order to hedge against inflation: people have an incentive to accumulate commodities since they retain their value better than money or than financial assets. Besides, inflation is usually associated with capital flight.

Furthermore, price stability reduces distortions caused by inflation on progressive and nominal income-oriented fiscal systems (what we described before as the so-called bracket creep phenomenon or fiscal drag).

On top of that, the sociological impact of inflation cannot be underestimated. By decreasing economic growth, inflation reduces the opportunities for lower income classes to improve their standard of living. These classes, in fact, are not in a position to counterbalance inflation effects. Furthermore, inflation exacerbates income disparities.

The interrelationships between economy, state and society cannot be forgotten. There is a synergy between, on the one hand, democracy and the rule of law, and on the other hand between free competition and a stable currency. Notwithstanding the fact that nowadays the rule of law and the human right to property minimise the risks of open expropriation, wealth transfer comes in the concealed form of inflation. By preventing the arbitrary redistribution of wealth and income from creditors to debtors arising from inflation, price stability contributes to social and political stability.

V. Conclusion

Property protects both the use value and the exchange value of things. Any act or regulation of a State affecting either the use or the exchange value of a thing should have a legal basis, should be justified by the public interest and should be proportioned to the respect of individual rights. Inflationary policies hit the weakest classes, as these have no tools to counterbalance inflation. The loss of purchasing power interferes with the basic right to a decent life standard, impeding the more disadvantaged from realising their plans and from fulfilling themselves as autonomous persons. Therefore, there are also moral reasons to justify the protection of the right to property against the loss of purchasing power of a currency.

The ECHR is far from interpreting the right to property to the extent of including the right to a stable purchasing power of sums deposited on bank accounts. However, the increasing number of applications on this issue before the ECHR shows that citizens perceive a need for stability. In the European Community framework this need is fulfilled by endorsing the 'price stability principle' as the primary objective of the ECB's monetary policy. For the first time a Treaty, establishing an international organisation with supranational character, acknowledges this principle at a primary law level.

When the reference to price stability as one of the Union's objectives was omitted from the Constitution Treaty draft, the ECB reacted firmly. The ECB stated that price stability is not a mere technical task for central bankers, but indeed a constitutional principle, the core of a market economy and of a free society, a precondition for a true democracy.²¹ Consequently, the reference to the price stability principle was reintroduced in Art. I.3 of the Constitutional Treaty .

Even if the price stability principle has been elevated to a 'constitutional level', it seems too early to say if Europe is moving towards the emergence of a new fundamental right to 'good currency', as it was perceived in the Middle Ages, or to the definition of a positive right actionable by individuals. This notwithstanding, the benefits of price stability in the European framework must not be underestimated.

21 ECB Opinion on the Draft Treaty establishing a Constitution for Europe, 19 September 2003 (CON/2003/20), O.J. C 229, 25.9.2003, p. 7.

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