



### Protocol No. 1

#### Protection of property (Article 1)

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This article lays down a general rule followed by two specific rules to protect the right to property.

**General rule: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions”.**

“**Possessions**” includes shares, patents, licences, leases and welfare benefits.

“**Peaceful enjoyment**” includes the right of access to the property. There can be positive obligations on the state to protect enjoyment of property rights.

#### **First specific rule: Deprivation of property**

Deprivation is only permitted if it is:

- ▶ lawful;
- ▶ in the public interest;
- ▶ in accordance with the general principles of international law;
- ▶ reasonably proportionate (“fair balance” test).

States have a wide discretion over what is “in the public interest”.

The “**fair balance** test” applied by the Court is less stringent than the test of “necessary in a democratic society” found in Convention Articles 8 to 11. It requires the State to show it has struck a fair balance between the person’s right and the public interest.

## **Second specific rule: Control of property**

Under **paragraph 2**, States may “**control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties**”.

The control must be:

- ▶ lawful;
- ▶ in the general interest or to secure the payment of taxes or penalties;
- ▶ respecting a “fair balance”.

The discretion of the State under this rule is even wider than under the first rule: the laws the State may enforce to control use of property are those “it deems necessary” for that purpose.

## **Duties of public officials**

Public officials need to ensure:

- ▶ they have a legal basis for their action;
- ▶ it pursues a public interest;
- ▶ it strikes a fair balance between the individual and the general interest.

## Right to education (Article 2)

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**“No person shall be denied the right to education”**, which is in practice a right to access to such education as the State has undertaken to provide, and as regulated by that State.

Education that is provided, whether public or private, must respect parents’ religious and philosophical convictions. But so long as the curriculum and tuition are objective and pluralistic, the fact that it may conflict with some parents’ convictions is not a breach.

## Right to free elections (Article 3)

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Rather than asserting rights, this Article puts an obligation on the States to “**hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the electorate in the choice of the legislature**”. But the Court has derived from this obligation a **right to vote** and a **right to stand for election**.

The Article does not require any particular electoral system and the States have a wide discretion in how they regulate elections. The principle of universal suffrage, however, is very strong and States will be strictly required to justify the loss of the vote by individuals or categories of persons, for example, prisoners.



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