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Austerity measures

A number of applicants before the European Court of Human Rights rely on the **European Convention on Human Rights** to challenge measures implemented by States Parties in response to the economic crisis. These applications are usually based on Article 1 (protection of property) of Protocol No. 1 to the Convention, which recognises that a State is entitled "to enforce such laws as it deems necessary … to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties". Other Convention provisions have also been relied on, however.

Protection of property (Article 1 of Protocol No. 1)

Valkov and Others v. Bulgaria

25 October 2011 (judgment)

The applicants, pensioners who had retired between 1979 and 2002, complained of the statutory cap on their retirement pensions which operated whenever the nominal monthly amount of their pensions exceeded the maximum amount specified in the legislation. In particular, they called into question the purpose of the pension cap, arguing that it had been introduced because of the perception that people in Bulgaria would not tolerate very high pensions and not in order to ensure the financial viability of the pension system. The applicants also complained of discrimination both in relation to pensioners whose pensions fell below the cap and in relation to certain high ranking officials whose pensions were exempted from the cap.

The Court held that there had been **no violation of Article 1 of Protocol No. 1** to the Convention, finding that the question of a cap on the maximum amount of pensions was a question for Bulgaria to regulate in its social security policy. The Court first noted that the cap pursued a legitimate aim in the public interest and had obviously resulted in savings for the Bulgarian pension system. Furthermore, the regard for social considerations of the Bulgarian legislature and judiciary had been reasonably justified. According to World Bank and OECD studies, the pension systems of different countries varied and ceilings on public pensions were not a uniquely Bulgarian phenomenon. The Court also stressed that the system to follow in each country was a matter for the national authorities, which were better placed than an international court to evaluate local needs and conditions. Then, examining whether the authorities had drawn a fair balance between the general public interest and the needs of the applicants, the Court observed in particular that, in their case, the bulk of those contributions had been paid under a different economic regime when the pension fund had been an inseparable part of the general State budget. Furthermore, the pension cap had been maintained at a time when the Bulgarian pension system underwent a comprehensive reform as part of the country's transition from a wholly State-owned and centrally planned economy to private property and a market economy. Maintaining the cap could be seen as a transitional measure accompanying the overall transformation of the pension system. In this respect, the Court recalled that it had in the past recognised that States had a wide discretion when passing laws in the context of a change of political or economic regime. In addition, the applicants had had to endure a reasonable reduction and not a total loss of their pension entitlements. The applicants, being top earners among more than two million Bulgarian pensioners, could not be regarded as being made to bear an excessive and disproportionate burden as a result of the pension cap. Moreover, public pension schemes were based on the principle of solidarity between contributors and beneficiaries. Finally, the amount of the cap had gradually changed, with the effect that the maximum amount of pension had increased over the years. The result was that, as a general trend, fewer pensioners were affected by the cap.

In this case the Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 1 of Protocol No. 1**. In this respect, the Court noted in particular that it was not its role to compare the applicants with pensioners such as the President or Vice-President of the Republic, to whom the pension cap did not apply. Rather, that was a policy judgment which was reserved in principle for the national authorities.

See also: **Frimu and Others v. Romania**, decision (partial) on the admissibility of 7 February 2012; **Panfile v. Romania**, decision on the admissibility of 20 March 2012.

Koufaki and ADEDY v. Greece

7 May 2013 (decision on the admissibility)

In 2010 the Greek Government adopted a series of austerity measures, including reductions in the remuneration, benefits, bonuses and retirement pensions of public servants, with a view to reducing public spending and reacting to the economic and financial crisis the country was facing. In July 2010 the applicants took the matter before the Supreme Administrative Court: the first applicant applied to the court to annul her pay-slip; the second applicant – the Public Service Trade Union Confederation – sought judicial review because of the detrimental effect of the measures on the financial situation of its members. On 20 February 2012 the Supreme Administrative Court rejected the applications.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It considered in particular that the reduction of the first applicant's salary from EUR 2,435.83 to EUR 1,885.79 was not such that it risked exposing her to subsistence difficulties incompatible with Article 1 of Protocol No. 1. Regard being had also to the particular climate of economic hardship in which it occurred, the interference in issue could not be considered to have placed an excessive burden on the applicant. As regards the second applicant, the removal of the thirteenth and fourteenth months' pensions had been offset by a one-off bonus. Substitute solutions alone did not make the disputed legislation unjustified. So long as the legislature did not overstep the limits of its margin of appreciation, it was not for the Court to say whether they had chosen the best means of addressing the problem or whether they could have used their power differently.

N.K.M. v. Hungary (no. 66529/11)

14 May 2013 (judgment)

This case concerned a civil servant who complained in particular that the imposition of a 98 per cent tax on part of her severance pay under a legislation entered into force ten weeks before her dismissal had amounted to an unjustified deprivation of property, with no remedy available.

The Court found that there had been a **violation of Article 1 of Protocol No. 1**. Despite the wide discretion that the Hungarian authorities enjoyed in matters of taxation, it held that the means employed had been disproportionate to the legitimate aim pursued of protecting the public purse against excessive severance payments. Nor had the applicant been provided with a transitional period in which to adjust to the new severance scheme. Moreover, in depriving her of an acquired right which served the special social interest of reintegrating the labour market, the Hungarian authorities had exposed the applicant to an excessive individual burden.

Da Conceição Mateus v. Portugal and Santos Januário v. Portugal

8 October 2013 (decision on the admissibility)

These cases concerned the payment of the applicants' public sector pensions, which were reduced in 2012 as a result of cuts to Portuguese government spending.

The applicants complained about the impact that the reduction of their pensions had had on their financial situation and living conditions.
The Court chose to consider the applicants' complaints in the context of Article 1 of Protocol No.1. It found that in cases where a person was legally entitled to the payment of a pension, Article 1 of Protocol 1 allowed a member State to reduce the amount paid out in the pension when this was in the public interest as long as a fair balance had been struck between the general interest of the community and the protection of the person's individual rights. The essential question in these cases was therefore whether a fair balance had been struck. The court noted that, while the applicants' holiday and Christmas payments had been cut, they otherwise continued to receive their basic monthly pension at the normal rate during 2012. Furthermore, the cut to their pension was a temporary measure, and would only last for three years between 2012 and 2014. Therefore the interference with the applicants' right to peaceful enjoyment of their possessions was limited in both time and quantity and Portugal had stayed within its room for manoeuvre ("margin of appreciation") to decide on measures of economic or social policy. In light of the exceptional financial problems which Portugal faced at the time, and given the limited and temporary nature of the reductions in pension payments, the Court found that a fair balance had been struck between the interests of the general community and the rights of the applicants. Accordingly, the applications were found to be manifestly ill-founded and the Court declared them **inadmissible**.

Savickas v. Lithuania and five other applications

15 October 2013 (decision on the admissibility)

This case mainly concerned the length of court proceedings brought by Lithuanian judges whose salaries had been reduced as part of a series of austerity measures. Three of the applicants also complained that under relevant legislation the Lithuanian authorities had no obligation to repay the unpaid part of the salaries in full, and had limited to three years the period in respect of which compensation could be paid. They maintained that they had therefore been deprived of their property.
The Court considered that the Lithuanian authorities had not gone too far in adopting and upholding the temporary reduction of judges' salaries and declared the applicants' complaint under Article 1 of Protocol No. 1 **inadmissible** as being manifestly ill-founded. It observed in particular that the austerity measures had been justified by reference to the existence of the particularly difficult economic and financial situation in Lithuania. Moreover, according to the Lithuanian Constitutional Court, the reduction of public officials' salaries had been required in order to finance education, healthcare, social welfare and other needs of society. Therefore, the European Court was satisfied that in deciding to lower civil servant's salaries the Lithuanian authorities had had the public interest in mind. The Court also found paramount that the reduction in public sector salaries had not singled out the judiciary. On the contrary, the reduction of judges' salaries had been part of a much wider programme of austerity measures affecting salaries in the entire public sector. In any case, the reduction of the judges' salaries had not been disproportionate and had not represented a threat to their livelihood. Finally, whilst observing that the salary reduction rules had not, regrettably, contained a specific provision concerning a limitation in time of the austerity measures, the Court noted that at the time the applications had been submitted to it, the Lithuanian courts and legislation had recognised the measures as having been temporary until the Lithuanian State's economic situation improved in 2003. The applicants had eventually been compensated for their loss of salary by a court decision in accordance with the 2000 Law. Therefore, the Court did not consider that the temporary reduction of judges' salaries had made the applicants bear an excessive burden or had had an impact on their independence or ability to perform their functions as judges.

da Silva Carvalho Rico v. Portugal

1 September 2015 (decision on the admissibility)

This case concerned the reduction of retirement pensions following austerity measures taken in Portugal, in particular the extraordinary solidarity contribution ("CES").

The applicant, a pensioner belonging to the public-sector pension scheme, maintained that these measures had breached her right to protection of property, alleging in particular that the CES was no longer a temporary measure as it had already been applied to her pension in 2013.

The Court declared the application **inadmissible** as being manifestly ill-founded. Given the overall public interests at stake in Portugal at the relevant time and the limited and temporary nature of the application of the CES to the applicant's pension, it found that the measures taken in Portugal had been proportionate to the legitimate aim of achieving medium-term economic recovery. That interference with her property rights had been provided for by law, the CES having been provided for in the 2013 and 2014 State Budget Acts and considered lawful in the Constitutional Court rulings of 2013 and 2014. Furthermore, the application of the CES to pensions provided for in the 2013 and 2014 State Budget Acts, intended to reduce public spending and achieve medium-term economic recovery, had been adopted in an extreme economic situation as a transitory measure. It had therefore clearly been in the public interest within the meaning of Article 1 of Protocol 1. Lastly, the Court considered that the measures implemented with regard to pensions had struck the appropriate balance between the general interest of the community and the protection of the applicant's fundamental rights. Notably, the applicant herself had not suffered a substantial deprivation of income, the cumulative loss amounting to 4.6% of her total annual social security benefits. Moreover, the Constitutional Court had held in 2013 and 2014 that the measures taken had been proportionate and that there were no alternatives which could have pursued the same public aims whilst affecting those entitled to social rights to a limited extent. Bearing in mind a State's room for manoeuvre ("margin of appreciation") to decide on general measures of economic and social policy, it was not for the European Court to decide whether alternative measures could have been envisaged in order to reduce the State budget deficit and overcome the financial crisis.

Mamatas and Others v. Greece

21 July 2016 (judgment)

This case concerned the forcible participation by the applicants, who were private individuals holding Greek State bonds, in the effort to reduce the Greek public debt by exchanging their bonds for other debt instruments of lesser value[1]. The applicants complained in particular that the exchange of their bonds as required under Law No. 4050/2012 on the rules amending State emission or guarantee securities had amounted to a *de facto* expropriation which had deprived them of their property or, in the alternative, an interference with their right to respect for their property. Some applicants also complained that they had suffered discrimination as compared with other creditors, particularly the major creditors holding bonds to a total value of several billion euros.

The Court held that there had been **no violation of Article 1 of Protocol No. 1**. It noted in particular that this forcible participation amounted to an interference with the applicants' right to respect for their property for the purposes of Article 1 of Protocol No. 1. Nevertheless, that interference pursued a public-interest aim, that is to say preserving economic stability and restructuring the national debt, at a time when Greece was engulfed in a serious economic crisis. The Court therefore held that the applicants had not suffered any special or excessive burden, in view, particularly, of the States' wide margin of appreciation in that sphere and of the reduction of the commercial value of the bonds, which had already been affected by the reduced solvency of the State, which would probably have been unable to honour its obligations under the clauses

[1]. In 2012 a new law amended the conditions governing the bonds by dint of Collective Action Clauses enabling bond-holders to conclude a collective agreement with the State, deciding by an enhanced majority. That majority having been obtained thanks, in particular, to the participation of the institutional investors (banks and credit organisations), the new conditions came into force in respect of all bond-holders, including the applicants, despite the latter's refusal. Their bonds were cancelled and replaced by new securities worth 53.5% less in terms of nominal value.

included in the old bonds before the entry into force of the new Law. The Court also considered that the collective action clauses and the restructuring of the public debt had represented an appropriate and necessary means of reducing the public debt and saving the State from bankruptcy, that investing in bonds was never risk-free and that the applicants should have been aware of the vagaries of the financial market and the risk of a possible drop in the value of their bonds, considering the Greek deficit and the country's large debt, even before the 2009 crisis. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** in the applicants' case, finding that the bond exchange procedure had not been discriminatory, in particular because of the difficulty of locating bond-holders on such a volatile market, the difficulty of establishing precise criteria for differentiating between bond-holders, the risk of jeopardising the whole operation, with disastrous consequences for the economy, and the need to act rapidly in order to restructure the debt.

Mockienė v. Lithuania

4 July 2017 (decision on the admissibility)

This case concerned the reduction of welfare benefits during the economic crisis in Lithuania. The applicant, a former officer for the Prisons Department, complained that her service pension had been reduced by 15% when new legislation was in force in Lithuania from January 2010 to December 2013. She further complained that she had been discriminated against because those who received retirement pensions had been entitled to compensation for their reduced benefits whereas she had not.

The Court declared the applicant's complaints **inadmissible** as being manifestly ill-founded. It saw in this case no grounds to find that the Lithuanian authorities had failed to strike a fair balance between the applicant's fundamental rights and the general interest of the community. The Court took into account in particular the serious economic difficulties faced by Lithuania during a time of global financial crisis as well as the limited extent and temporary nature of the reduction in the applicant's pension, which was part of a wider programme of austerity measures. The Court also found that the new legislation introduced in 2010 was not discriminatory. In this respect, it noted in particular that service pensions were discretionary and depended on the State's financial resources whereas retirement pensions were a constitutional obligation on the State and were linked to individuals' social insurance contributions. Those two groups of beneficiaries were not therefore comparable, meaning that any difference in treatment between the two could not amount to discrimination.

P. Plaisier B.V. v. the Netherlands and two other applications

14 November 2017 (decision on the admissibility)

The three applicant companies complained about an additional tax which employers had to pay on salaries above 150,000 euros that was part of budget austerity measures approved during an economic crisis. They submitted that the tax, approved in 2013 but applied to 2012 salaries, was unforeseeable, unfair and discriminatory.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found overall that the decisions taken by the Netherlands had not gone beyond the limit of the discretion allowed to authorities in questions of taxation and had not upset the balance between the general interest and the protection of the companies' individual rights. The Court noted in particular that it had accepted various countries' austerity measures and that the steps taken by the Netherlands had also been part of the country's goal to meet obligations under European Union budget rules.

Aielli and Others and Arboit and Others v. Italy

10 July 2018 (decision on the admissibility)

This case concerned a reform of the uprating of State pension payments for 2012 and 2013 in the context of the budget deficit crisis and its consequences. The applicants, who were all pensioners receiving more than three times the basic minimum pension, complained about the readjustment of their old-age pensions.

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the Italian legislature had been obliged to intervene in a difficult economic context. The Legislative Decree in question had sought to provide for redistribution in favour of lower pensions, while preserving the sustainability of the social security system for future generations. The Italian government's room for manoeuvre had also been restricted on account of the limited resources and the risk that the European Commission might take action for an excessive budget deficit. In conclusion, the Court took the view that the effects of the reform were not so severe that they risked causing the applicants difficulties in meeting living costs to an extent that would be incompatible with Article 1 of Protocol No. 1.

Pending applications

Žegarac v. Serbia (no. 54805/15) and 10 other applications

Applications communicated to the Serbian Government on 9 November 2020

These applications concern in particular the temporary reduction of the applicants' old-age pensions which was introduced as part of general austerity measures to remedy the acute budgetary crisis by the Act on Temporary Regulation of the Payment of Pensions.

The Court gave notice of the applications to the Serbian Government and put questions to the parties under Article 1 (protection of property) of Protocol No. 1 to the Convention in particular.

Right to a fair trial (Article 6 of the Convention)

Adorisio and Others v. the Netherlands

17 March 2015 (decision on the admissibility)

The case concerned the accelerated proceedings allowing bond holders to challenge the lawfulness of the Netherlands Government's expropriation of the assets they held in SNS Reaal, a banking and insurance conglomerate. SNS Reaal had run into trouble as a result of the financial crisis of 2008 and the Government decided to protect the domestic banking industry and customers' savings by nationalising the conglomerate. The applicants complained that the ten day window they had been given to appeal the expropriation following the decision by the Netherlands Government had been too short, that they had not had enough time to study a statement made by the Minister of Finance (received late in the afternoon on the day before the hearing on their case) and that they had only been given access to incomplete versions of two reports concerning the bank and its assets[2].

Having considered the applicants' complaint the Court held that the application was **inadmissible**, finding that the time constraints imposed on the bond holders in the proceedings to decide on the lawfulness of the expropriation had not placed them at an unfair disadvantage and that their restricted access to financial reports concerning the bank and its assets had been necessary. Concerning in particular the ten-day time-limit to lodge an appeal, the Court accepted that the Dutch Government had needed to intervene in SNS Reaal as a matter of urgency in order to prevent serious harm to the national economy. The ten-day window for lodging an appeal had admittedly been very short, but it had not prevented the applicants from bringing an effective appeal. Moreover, once their appeals were pending the applicants had been able to submit further documents and materials until the day before the hearing. At the hearing, they had also been able to submit further arguments, including ones that they had not relied on before. Accordingly the Court could not find that the ten-day time-limit for lodging appeals had been so short as to result in the proceedings being unfair.

[2]. The case did not address the issue of compensation. Compensation proceedings were still pending in the Netherlands.

Right to respect for private life (Article 8 of the Convention)

McDonald v. the United Kingdom

20 May 2014 (judgment)

This case concerned a lady with severely limited mobility who complained about a reduction by a local authority of the amount allocated for her weekly care. The reduction was based on the local authority's decision that her night-time toileting needs could be met by the provision of incontinence pads and absorbant sheets instead of a night-time carer to assist her in using a commode. The applicant alleged that the decision to reduce her care allowance on the basis that she could use incontinence pads at night, even though she was not incontinent, had amounted to an unjustifiable and disproportionate interference with her right to respect for private life, and had exposed her to considerable indignity.

The Court considered that the decision to reduce the amount allocated for the applicant's care had interfered with her right to respect for her private life, insofar as it required her to use incontinence pads when she was not actually incontinent. It held that there had been **a violation of Article 8** of the Convention in respect of the period between 21 November 2008 and 4 November 2009 because the interference with the applicant's rights had not been in accordance with domestic law during this period. However, from 4 November onwards the Court found that the local authority's decision not to provide her with night-time care to aid her toileting needs was in accordance with domestic law. That interference had pursued a legitimate aim, namely the economic well-being of the State and the interests of other care-users. The case therefore turned on whether the interference was "necessary in a democratic society", especially when weighed against the economic well-being of the State. In carrying out that balancing act, the Court bore in mind that States had considerable discretion ("a wide margin of appreciation") in issues involving social, economic and health-care policy, especially when deciding how to allocate scarce resources. It was therefore not for the Court to substitute its own assessment of the merits of the contested measure for that of the competent national authorities. In this regard, the Court found that both the local authority (via regular care reviews) and the national courts (including the Court of Appeal and the Supreme Court) had balanced the applicant's need for care with its social responsibility for the well-being of other care-users in the community at large. Therefore, despite the very distressing situation the applicant was facing, the European Court held that from 4 November 2009 onwards the interference with her right to respect for private life had been both proportionate and justified as "necessary in a democratic society" and rejected this part of her complaint as **inadmissible**.

Prohibition of discrimination (Article 14 of the Convention)

Valkov and Others v. Bulgaria

25 October 2011 (judgment)

See above, under "Protection of property".

Mamatas and Others v. Greece

21 July 2016 (judgment)

See above, under "Protection of property".

Mockienė v. Lithuania

4 July 2017 (decision on the admissibility)

See above, under "Protection of property".

Further reading

See in particular:

- **Proceedings** and **video** of the seminar "Implementing the European Convention on Human Rights in times of economic crisis" held to mark the opening of the Court's judicial year on 25 January 2013
- Council of Europe Steering Committee for Human Rights, **The impact of the economic crisis and austerity measures on human rights in Europe – Feasibility study**, CDDH(2015)R84 Addendum IV, 11 December 2015
- Council of Europe Commissioner for Human Rights **web page** on the thematic work "Economic crisis and human rights"

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