



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 13341/14
Maria Alfredina Da SILVA CARVALHO RICO
against Portugal

The European Court of Human Rights (First Section), sitting on 1 September 2015 as a Chamber composed of:

András Sajó, *President*,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 February 2014,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Maria Alfredina da Silva Carvalho Rico, is a Portuguese national, who was born in 1942 and lives in Porto. She was represented before the Court by Mr J. J. Ferreira Alves, a lawyer practising in Matosinhos.

A. The circumstances of the case

1. The applicant is a pensioner eligible to receive social-security benefits under the public-sector pension scheme. In 2009 she was granted a retirement pension which amounted to 1,980.72 euros (EUR) gross per month.

2. In April 2011 Portugal requested financial assistance from the European Union (EU), the euro area Member States and the International

Monetary Fund (IMF). An Economic Adjustment Programme was negotiated in May 2011 between the Portuguese authorities and officials from the European Commission, the European Central Bank (ECB) and the IMF including a joint financing package of EUR 78,000,000,000 (EUR 26,000,000,000 from the European Financial Stabilisation Mechanism, EUR 26,000,000,000 from the European Financial Stability Facility and EUR 26,000,000,000 from the IMF). The programme was agreed and formally adopted on 17 May 2011 at a Eurogroup/ECOFIN meeting in Brussels, where the Portuguese Government signed a Memorandum of Understanding on Specific Economic Policy Conditionality (the “M.o.U.”) with the EU, the ECB and the IMF and thereafter two related documents: the Technical Memorandum of Understanding and the Loan Agreement.

The M.o.U. set out the economic and social policies, including tax and social-security measures, that Portugal should implement for the duration of the programme (2011-2014) in order to improve its financial situation and receive financial support from the EU. It stipulated, *inter alia*, that Portugal would:

“... 1.11 Reduce pensions above EUR 1,500 according to the progressive rates applied to the wages of the public sector as of January 2011, with the aim of yielding savings of at least EUR 445 million.”

3. On 31 December 2012 the Official Journal (*Diário da República*) published Law no. 66-B/2012 on the State budget (*Lei do Orçamento de Estado para 2013*, hereinafter “the 2013 State Budget Act”), which was designed to continue the implementation of the M.o.U. initiated by Law no. 64-B/2011 of 30 December 2011 on the 2012 State Budget. Pursuant to section 78 of the 2013 State Budget Act, the scope of application of the existing extraordinary solidarity contribution (*contribuição extraordinária de solidariedade*, hereinafter “the CES”) was extended in order to include pensioners receiving a gross amount of EUR 1,350. This provision was to apply in 2013 and only during that year.

4. The applicant’s pension was subsequently taxed at 3.5% on a part corresponding to EUR 1,800 and 16% on the part exceeding it. The excess was EUR 180.72. The total amount deducted because of the CES thus amounted to EUR 91.92.

5. With the entry into force of the 2013 State Budget Act, the applicant’s pension was reduced accordingly, resulting in a cumulative loss of EUR 1,286.88 in 2013. This loss amounted to 4.6% of the applicant’s total annual social security benefits.

6. On 31 December 2013, the Official Journal published the 2014 State Budget Act (Law no. 83-C/2013), which reintroduced the CES for 2014 with the same threshold and rates as the ones applied under the 2013 State Budget Act. Consequently, the CES was again applied to the applicant’s pension as provided for in section 76 of the 2014 State Budget Act.

7. On 14 March 2014 a law amending the 2014 State Budget Act entered into force (Law no. 13/2014). Pursuant to the amendments to section 76, the scope of application of the CES was extended to pensions of a gross amount of EUR 1,000, while the rates applied to larger pensions were increased. The rates applied to the applicant's pension remained unchanged.

8. In 2014 the applicant sustained a cumulative loss of EUR 1,286.88, amounting to 4.6% of her total annual pension payment.

9. In June 2014 Portugal exited the three-year Economic Adjustment Programme and is currently under post-programme surveillance until at least 75% of the financial assistance received has been repaid.

B. Relevant domestic law and practice

1. The Constitution of the Portuguese Republic:

Article 13 Principle of Equality

"1. All citizens have the same social dignity and are equal before the law."

Article 63 Social security and solidarity

"1. Everyone is entitled to social security."

2. The extraordinary solidarity contribution

10. The extraordinary solidarity contribution, introduced in Portugal by section 162 of Law no. 55-A/2010 of 31 December 2010 on the 2011 State Budget (*Lei do Orçamento de Estado para 2011*), reads as follows:

"Pensions, grants and any other benefits of a similar nature paid to a single person, whose monthly amount is above EUR 5,000, are subject to an extraordinary contribution at a 10% rate applicable to the amount exceeding that value."

11. When the 2012 State Budget Act (Law no. 64-B/2011 of 30 December 2011) entered into force, the CES was increased to 25% on the part of pensions which exceeded EUR 5,030.64 and 50% on the part that exceeded EUR 7,545.96.

12. With the entry into force of the 2013 State Budget Act (Law no. 66-B/2012 of 31 December 2012) the CES was again reconfigured. Accordingly, section 78 of the 2013 State Budget Act was to be applied to pensions between EUR 1,350 and EUR 1,800 at a 3.5% rate. With regard to pensions between EUR 1,800 and EUR 3,750, the CES was set at 3.5% on the first EUR 1,800.01, and at 16% on the part exceeding that amount. As to pensions exceeding EUR 3,750, the CES was payable at 10%. As a budgetary measure provided for in the 2013 State Budget Act, the CES was only to be applied in 2013.

13. On 1 January 2014 the CES was reintroduced in Portugal through the enactment of the 2014 State Budget Act (Law no. 83-C/2013 of 31 December 2013). Pursuant to section 76, its scope of application remained the same as the one provided for in the 2013 State Budget Act. According to the 2014 Budget Act, the CES was an exceptional and temporary measure applicable in 2014.

14. Following the tenth EC/ECB/IMF review mission to Portugal in February 2014, the Portuguese Government amended the 2014 State Budget Act including, *inter alia*, the scope of application of the CES through the adoption of Law no. 13/2014 of 14 March. Pursuant to the amendment, the CES became applicable to pensions of EUR 1,000 and above.

15. The 2015 State Budget Act (Law no. 82-B/2014 of 31 December 2014) provided for a new reconfiguration of the CES by raising the threshold at which it applies, which is currently set at EUR 4,611 at a 15% rate. Pensions exceeding EUR 7,127 are currently taxed at a 40% rate (section 79).

3. *The Constitutional Court's rulings on the extraordinary solidarity contribution*

16. On 2 January 2013 the President of the Portuguese Republic challenged the constitutionality of section 78 of the 2013 State Budget Act before the Constitutional Court on the grounds that its provisions were in breach of the principle of equality, the principle of proportionality and the principle of protection of legitimate expectations (*princípio da confiança*).

17. In a ruling of 22 April 2013 the Constitutional Court considered that section 78 of the 2013 State Budget Act was not disproportionate or excessive, bearing in mind its exceptional and transitory nature. In the court's opinion, the CES was, therefore, not unconstitutional.

18. The Constitutional Court's decision contained in particular the following considerations:

“75. ... Imposing an obligation on pensioners to contribute to the financing of the social-security system in order to reduce the need for public financial allocation, within a framework of distinct and articulated fiscal consolidation measures which also include tax increases and other cuts in public expenditure, is based on a coherent reasoning in line with a strategy still within the margin of the “free policy prerogative” of the legislature.

...

78. ... The CES was solely designed, in conjunction with other measures, to overcome the situation of economic and financial crisis which has temporarily also required, within the framework of the basic options open to the executive and legislature, an urgent strengthening of the financing of the social-security system at the expense of its beneficiaries.

[Background factors are as follows:] ... a decrease in revenues accruing to the social-security system; the dramatic increase in unemployment; the reduction of wages; new

migration trends; an increase in expenditure on support given to those in unemployment and poverty, and the consequent need for the State to finance the social-security system thereby aggravating the public deficit. As a result, the legislature, exceptionally and in an emergency situation, chose to extend to pensioners the payment of contributions into the social-security system from which they are directly or indirectly beneficiaries for the present tax year only.

Compliance with the underlying principles of the democratic rule of law must be evaluated, therefore, in light of the exceptional and temporary nature of this measure and its purpose of meeting the public deficit targets demanded by the Economic and Financial Assistance Programme.

79. ... However, given the constraints that surrounded the implementation of the CES, not only do the expectations of continued financial stability appear to be diminished, there is also a particular, relevant and defensible public interest that justifies an exceptional and temporary discontinuation of the State's normal conduct.

The public interest needs to be safeguarded, as has already been stated in the course of the balancing exercise carried out in earlier cases with regard to the principle of legitimate expectations, is of crucial importance and urgent which gives it a clear prevalence, even though the depth of the sacrifice caused to the private sector by the new contribution should not be ignored.

...

There is not, therefore, any evidence in this whole context of an infringement of the principle of protection of legitimate expectations.

80. Neither does it seem that the principle of proportionality could be considered to have been breached in any of the aspects of adequacy or necessity or due measure.

...

In the current case, it is clear that the imposition of this extraordinary tax on pensioners as a means of reducing, exceptionally and temporarily, expenditure on payment of pensions in order to obtain additional financing for the social-security system, is an appropriate measure for the purposes set out by the legislature.

As to whether, in order to achieve this goal, the means chosen are actually necessary or required owing to the possible existence of other more suitable or effective means which could achieve the same result in a less burdensome way for those affected, analysis of the evidence shows that there are no other alternatives which could maintain a consistency with the system in which these measures are established, and which could attain public interest objectives to the same degree, and which could affect the holders of these legal expectations to a lesser degree.

Accordingly, the measure complies with the principle of necessity.

...

83. ... In the light of the above, the court holds that section 78 is not unconstitutional."

19. In March 2014, Law no. 13/2014 amending section 76 of the 2014 State Budget Act was challenged before the Constitutional Court by a group of members of the Portuguese Parliament within the framework of an *ex post facto* review, on the grounds, *inter alia*, that the CES was no longer temporary and exceptional on account of its re-introduction in 2014. In

particular, the group of members of the Portuguese Parliament challenged the amendments made to section 76 of the 2014 State Budget Act. On 30 July 2014 the Constitutional Court found that the relevant provision was not unconstitutional. In its ruling the court took into account that it had already weighed up the constitutionality of the CES in previous rulings and considered that the reconfiguration of the measure remained within the limits outlined by the constitutional-law principle of legal certainty. The Constitutional Court further considered that the CES was an exceptional and transitory measure imposed through a budgetary law and had been designed to respond to an economic and financial emergency in Portugal. As to the proportionality of the reconfigured CES, the court ruled that there had been no breach of this principle and that there were no reasons to depart from its previous ruling on the appropriateness of and need for a CES.

20. The Constitutional Court's decision contained in particular the following considerations:

"4. ... The court is aware that ... considerations with regard to the generic nature of the CES have been raised, and also considerations in relation to its scope and extension; thus the measure must be analysed in the light of the fundamental right to social security, from which a constitutional right to a pension results. However, according to the applicants, it is the differences *vis-à-vis* the solution previously analysed by this court in 2013, in particular the extension of the measure, that justify a separate ruling to the one then adopted.

...

10. ... Thus, one cannot fail to recognise that, in the way in which it was normatively brought about – that is, a budgetary measure designed to be in force for the year 2014 – the CES has, indeed, an exceptional and temporary nature which is directly related to the immediate objectives pursued by the legislature of achieving a balanced budget and sustainability of public finances. Therefore, it is with regard to the CES in and of itself, as normatively set, and with regard to its own nature without taking into account the different nature of any potential subsequent and functionally substitute measure, that the ruling about its temporariness should be made.

We can thus conclude that it is permissible for the Constitutional Court, following its previous case-law, to consider that section 76 of Law no. 83-C /2013, as amended by Law no. 13/2014, still establishes a transitory or temporary measure, which should be taken into account in the weighting underlying the assessment of constitutionality.

...

14. ... In fact, as recognised in Ruling no. 187/2013, legitimate expectations of the State are not as consistently present with regard to an extraordinary and transitory measure, thus justifying an exceptional and temporary discontinuation of the State's conduct. Given the exceptionality of the facts that increased the need for assistance – the financial and economic emergency that has reduced transfers from the State budget to the social protection system – the lower the expectations of those who were affected by it appear to be.

...

17. There are no reasons to depart in the present case from the ruling delivered by the court on the adequacy and necessity of the CES as part of a balanced budget

programme. Indeed, this is highlighted by the conflict – established on the basis of the principle of proportionality – between the measure under scrutiny and the objective pursued. It is clear that, in general, the extension of the threshold of the CES is not an inappropriate means of achieving a balanced budget...

And the same can be said with regard to the necessity or enforceability of the option chosen – the second test of proportionality – since, in the light of the aim pursued and of the potential alternative solutions, it cannot be considered that the extension of the scope of application of the CES is not the least burdensome measure for those adversely affected by the achievement of that goal.

...

19. ... And with regard to the contribution affecting pensions between EUR 1,350 and EUR 4,650, the previous regime remains unchanged.

...

22. ... Indeed, various reasons indicate that the reconfiguration of the CES by Law no. 13/2014 of 14 March is still within the limits of reasonableness.

Firstly, the CES still maintains the characteristics of exceptionality and transience that in 2011 marked its entry into the tax universe. ... In an absolutely exceptional financial situation including a fiscal imbalance that led to international and European commitments, the CES constitutes an exceptional measure which, in conjunction with other measures, aims to overcome the seriousness of that situation.

...

For all these reasons, it is acceptable that the monthly contribution required of the beneficiaries of social security affected by the expansion of the scope of application of the CES, owing to its temporariness of the norms supporting it and the objectives it seeks to pursue, does not amount to a particularly excessive and unreasonable sacrifice which would involve a violation of the principle of proportionality, constitutionally objectionable.”

4. The case-law of the Constitutional Court in respect of the concept of “proviso of the possible” – some references

21. In a series of rulings, the Constitutional Court established the legal principles applicable to cases in which restrictions on social rights could be allowed within a constitutional framework with a particular reference to the concept of “proviso of the possible” (*reserva do possível*, known in German as the *Vorbehalt des Möglichen*).

a. Ruling no. 599/04 of 12 October 2004

“6. ...

It should be noted that, within the scope of economic, social and cultural rights, the responsibility of the legislature is to ensure that social benefits integrate those rights, within the budgetary constraints, the economic and financial plans and the social conditions of the country.

As Gomes Canotilho has said, the fulfilment of economic, social and cultural rights are made within a “proviso of the possible”, as these rights depend on “economic resources”.

b. Ruling no. 862/13 of 19 December 2013

“24. Thus, the legislature is not prohibited from changing the way it brings about the right to a pension as it may change or even reduce its amount by taking into account the evolving economic or social circumstances. However, the legislature is prohibited from eliminating the provision of “retirement, old-age, invalidity or survivor’s pensions” or even their essential scope.

Indeed, the right to a pension is particularly dependent on State financial resources and is, accordingly, more vulnerable to the “pressure of circumstances” in particular in the most critical times of economic uncertainty. That particular vulnerability is justified not only by the fact that the right to a pension allocates immediate financial resources, but also because of the particular structure of the law. The right to a pension is subject to a medium and long term time frame within which the economic circumstances of the State may change radically.

On the other hand, in addition to their prolonged duration, pensions are still particularly dependent on the “proviso of the possible”, simply because they are part of the inter-generational social contract.

c. Ruling no.575/2014 of 14 August 2014

“18. Under these constraints, the legislature has leeway to outline the specific or final scope of the right to a pension subject to the relevant constitutional limits.

...

The right to a pension is indeed particularly dependent on State financial resources and is, accordingly, more vulnerable to the “pressure of circumstances”, in particular in the most critical times of economic uncertainty. That particular vulnerability is justified not only by the fact that the right to a pension allocates immediate financial resources, but also because of the particular structure of the law. The right to a pension relies on a medium and long term time frame during which the economic circumstances of the State may change radically.

On the other hand, in addition to its prolonged duration, pensions are still particularly dependent on this “proviso of the possible”, simply because it is part of the inter-generational social contract.”

...

However, it is important to reaffirm that the legislature, in confirming the right to a pension is, at any moment, in time legally bound by constitutional rules and principles. Thus, despite a clear recognition that the legislature is free to change the conditions of, and the rights to enjoyment of, and the calculation of pensions, even in the most demanding way, it has to respect the existing constitutional limits, namely those which derive from the rule of law. Thereby, the changes that the legislature intends to pursue must have reasonable grounds – in particular the financial sustainability of the system – and cannot affect either the social minimum or the principles of equality and human dignity or the protection of legitimate expectations.”

C. EU assessment of the 2011 economic situation in Portugal

22. The relevant information with regard to the EU assessment of the 2011 economic situation in Portugal can be found in the case of *Da*

Conceição Mateus and Santos Januário v. Portugal (dec.), nos. 62235/12 and 57725/12, § 11, 8 October 2013.

D. The relevant EU reviews of Portugal's economic adjustment programme

23. As part of the economic adjustment programme, the EU and the IMF organised regular review missions to Portugal in order to monitor the implementation of the M.o.U. signed between Portugal and the European Commission, the European Central Bank and the International Monetary Fund on 17 May 2011, and to assess the results of the reforms prepared by the Portuguese Government.

24. The relevant excerpts of the EU mission reports conducted in 2013 and 2014 read as follows:

1. The Economic Adjustment Programme for Portugal - Eighth and Ninth Review (November 2013)

“13. Social Security recorded a positive cash balance in the first eight months of the year. ... Nevertheless, the overall collection of social contributions is in line with projections due to the over-performance of the ‘extraordinary solidarity contribution’ (CES) on pensions, the better macroeconomic environment and increased collection efficiency.

...

27. The fiscal consolidation is predominantly based on the savings measures identified in the framework of the public expenditure review (PER). ... The PER aimed at identifying savings and the potential for streamlining processes in the public administration ... The savings identified include permanent expenditure-reducing measures amounting to EUR 3.1 billion (1.8 percent of GDP) in 2014. ... The ‘extraordinary solidarity contribution’ introduced in 2013, worth 0.3 percent of GDP, will be maintained. However, this measure will be adapted to take into account the cumulative impact of other pension reforms.

2. The Economic Adjustment Programme for Portugal - Tenth Review (February 2014).

“29. The fiscal plans for 2014 received a setback on 19 December 2013, when the Constitutional Court ruled the provision aimed at aligning the rules of the public-sector pension scheme with the general pension scheme as unconstitutional. This measure was foreseen to yield EUR 321 million (0.2 percent of GDP) in net terms (after accounting for losses in PIT revenue and for the non-accumulation of this measure with the ‘extraordinary solidarity contribution’ on pensions, (CES). The Government has proposed to fill this gap by redesigning two measures: (i) an increase in the CES including through the lowering of the threshold below which pensions are exempted and of the thresholds from which the highest contribution rates apply ... The changes to the CES will be implemented via a Supplementary Budget. ...”

COMPLAINT

25. The applicant complained that the levying of the CES on part of her pension in 2014 had given rise to a violation of Article 1 of Protocol No. 1 to the Convention and Articles 13 and 14 of the Convention. In particular, she alleged that the CES was no longer a temporary measure because of its re-introduction in 2014.

26. The Court is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Tătar and Tătar v. Romania* (dec.), no. 67021/01, § 47, 5 July 2007; and *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 54, 17 September 2009). In the present case, it considers it appropriate to examine the applicant's complaint from the standpoint of Article 1 of Protocol No. 1 alone.

THE LAW

27. The applicant relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State 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.”

28. She alleged a breach of her right to protection of property owing to the application of the CES to her monthly pension in 2014, which amounted to an annual loss of EUR 1,286.88. She further alleged that the CES had acquired a permanent nature with its reapplication in 2014.

29. At the outset, the Court considers that following the Constitutional Court's decisions of 2013 and 2014, which authorised the implementation of the extraordinary solidarity contribution, there were no further effective domestic remedies available to the applicant within the meaning of Article 35 § 1 of the Convention.

30. All the principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to pensions. In particular, Article 1 of Protocol No. 1 does not create a right to acquire property (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70). Nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 19,

ECHR 2004-IX). Indeed, the right to an old-age pension or any social benefit in a particular amount is not included as such among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001).

31. Article 1 of Protocol No. 1 places no restriction on the Contracting State's freedom to decide whether or not to have any form of social-security scheme in place, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has legislation in force which provides for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, ECHR 2009, with further references, in particular to *Stec and Others v. the United Kingdom* (dec.), nos. 65731/01 and 65900/01, ECHR 2005-X and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010). The reduction or the discontinuance of a pension may therefore constitute an interference with possessions that needs to be justified (see *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011, with further references in particular to *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009, and *Panfile v. Romania* (dec.), no. 13902/11, § 15, 20 March 2012).

32. In the present case, the applicant was legally entitled to receive a retirement pension of a gross amount of EUR 1,980.72 per month, which she received as usual from 2009 until 2013 when her pension was for the first time subject to the CES. With the entry into force of the 2013 and 2014 State Budget Acts, the annual reduction in the applicant's pension amounted to EUR 1,286.88 in 2013 and to EUR 1,286.88 in 2014 (4.6% of her previous pension rights, see paragraphs 4-5 and 8 above). Accordingly, in respect of her pension the applicant had a proprietary interest falling within the ambit of Article 1 of Protocol No. 1.

33. Furthermore, the Court considers that an annual reduction of EUR 1,286.88 from the applicant's pension is a decrease which may affect her standard of living. Therefore, the Court concludes that there has been an interference with the right of the applicant to peaceful enjoyment of her possessions as protected by the first sentence of Article 1.

34. To be compatible with Article 1 of Protocol No. 1, a measure of interference must fulfil three basic conditions: it must be carried out "subject to the conditions provided for by law" (see *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), cited above, § 20), which excludes any arbitrary action on the part of the national authorities; it must be "in the public interest"; and must strike a fair balance between the owner's rights

and the interests of the community (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012).

A. Lawfulness of the interference

35. In the applicant's case, the Court notes that the CES was provided for by the 2014 State Budget Act. Furthermore, the Court refers to the reasoning of the Constitutional Court in its rulings of 2013 and 2014 in which it considered that the CES, in general, was not unconstitutional and thus fulfilled the requirement of lawfulness.

36. The Court therefore concludes that the interference with the applicant's property rights was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

B. Public interest

37. Any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 147-48, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 163-164, ECHR 2006-VIII). In this connection, a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic and social policy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest" on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports of Judgments and Decisions* 1997-VII, and *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI). This margin is even wider when the issues involve an assessment of the priorities as to the allocation of limited State resources (see *Pentiacova and Others v. Moldova* (dec.), no. 14462/03, ECHR 2005-I; *Huc v. Romania and Germany* (dec.), no. 7269/05, § 64, 1 December 2009; and *Koufakis and Adedy v. Greece* (dec.), nos. 57665/12 and 57657/12, § 31, 7 May 2013).

38. However, the margin of appreciation enjoyed by States in these particular fields is not unlimited. The Court must be satisfied that a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, the Court must ascertain whether by reason of the State interference the person concerned had to bear a

disproportionate and excessive burden (see *Hutten-Czapska*, cited above, § 167; *Koufakis and Adedy*, cited above, § 42).

39. In the present case, the Court notes that the introduction of the CES and the reapplication in 2012, 2013 and 2014, provided for in the respective State Budget Acts, was intended to reduce public spending and was part of a broader programme designed by the national authorities and their EU and IMF counterparts to allow Portugal to secure the necessary short-term liquidity for the State budget with a view to achieving medium-term economic recovery (see paragraphs 10-15 above).

40. As it recently did in similar circumstances relating to austerity measures adopted in Portugal (see *Da Conceição Mateus and Santos Januário v. Portugal*, cited above, § 26), the Court considers that the application of the CES to pensions provided for in the 2014 State Budget Act was clearly in the public interest within the meaning of Article 1 of Protocol No. 1 and was adopted in an extreme economic situation, as a transitory measure.

C. Proportionality

41. The Court must now assess whether a fair balance has been struck between the demands of the general interest of the community and the requirements of protection of the applicant's fundamental rights.

42. In the assessment of the proportionality of the measures taken by the State in respect of pension rights, an important consideration is whether the applicant's right to derive benefits from the social insurance scheme in question has been infringed in a manner which resulted in the impairment of the essence of this right. The nature of the benefit taken away – in particular, whether it originated in a special advantageous pension scheme available only to certain groups of persons – may also be taken into account. The assessment would vary depending on the particular circumstances of the case and the applicant's personal situation; while a total deprivation of entitlements resulting in the loss of means of subsistence would in principle amount to a violation of the right to property, the imposition of a reasonable and commensurate reduction would not (see *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Schwengel v. Germany* (dec.), no. 52442/99, 2 March 2000; *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, §§ 62-63, 13 December 2011; *Apostolakis v. Greece*, no. 39574/07, §§ 41-42, 22 October 2009 ; *Kjartan Ásmundsson*, cited above, § 45; *Valkov and Others*, cited above, § 97 ; *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 63, 31 May 2011; and *Frimu and 4 other applications v. Romania* (dec.), no. 45312/11, §§ 42-48, 7 February 2012). In all these cases, the reductions were general measures intended to undo special privileges or to bring a special pension regime into a general one.

43. The Court notes the Portuguese Constitutional Court's conclusion in its rulings of 2013 and 2014 that the CES was a proportional measure, in particular given its extraordinary and temporary nature (see paragraphs 17-20 above).

44. In this connection, in examining whether the appropriate balance was struck, the Court takes cognisance of the fact that the CES, and other austerity measures, were adopted against the background of an actual and unexpected budgetary crisis in Portugal. In this regard it further notes that the Portuguese Constitutional Court has delivered different rulings on the issue of social rights (see paragraph 21 above) in which it grounded its decisions on the principle of the "proviso of the possible" (*reserva do possível*, known in German as the *Vorbehalt des Möglichen*), according to which a State cannot be forced to comply with its obligations in the framework of social rights if it does not possess the economic means to do so. In this context, the budgetary constraints on the implementation of social rights can be accepted as long as they are proportionate to the public aim pursued (see paragraphs 37-38 and 41-42 above) and do not reduce social rights' claims to purely symbolic sums (*mutatis mutandis*, *Vistiņš and Perepjolkins*, cited above, 129, 25 October 2012). The international recognition of the country's economic situation indicates that the present budgetary constraints constitute an imperative, which however did not reduce possessions originating in a statutory social right's claims to a level that deprives the right of its substance (see for cases of total deprivation of a social pension, *Kjartan Ásmundsson*, cited above § 44 and *Moskal v. Poland*, no. 10373/05, § 74, 15 September 2009, and for cases of "wholly insufficient" social pension, *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002; *Kutepov and Anikeyenko v. Russia* (dec.), no. 68029/01, § 62, 25 October 2005; *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009, and *Huc*, cited above, § 59, 1 December 2009).

45. The Court then notes that the CES reduced the applicant's annual pension by EUR 1,286.88 (4.6% of her total annual social security benefits) in 2013 and in 2014, which amounted to a cumulative loss of EUR 2,573.56 in the two years combined. In addition, the CES was only applicable to her pension for a period of two years (2013-2014), on a year-by-year basis. The interference by section 76 of the 2014 State Budget Act with the applicant's right to peaceful enjoyment of her possessions was therefore limited both in time and in quantitative terms. The Court takes further note that the Portuguese Constitutional Court, in its analysis of the CES, considered that there were no other alternatives which could pursue the same public aims affecting the holders of social rights to a lesser degree (see paragraph 18 above). Moreover, since the legislature remained within the limits of its margin of appreciation, it is not for the Court to decide whether better alternative measures could have been envisaged in order to reduce the State budget deficit and overcome the financial crisis (see *Da Conceição Mateus*

and Santos Januário, cited above, § 28). Thus, as regards the personal burden which the applicant sustained on account of the impugned measure in force in 2014, the Court notes that she did not suffer a substantial deprivation of income.

D. Conclusion

46. In the light of the aforementioned, and observing the overall public interests at stake in the respondent State at the material time, and given the limited extent and the temporary effect of the application of the CES to the applicant's pension, the Court finds that the impugned measure was proportional.

47. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible under Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 September 2015.

André Wampach
Deputy Registrar

András Sajó
President