



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

## SECOND SECTION

### DECISION

Applications nos. 62235/12 and 57725/12  
António Augusto DA CONCEIÇÃO MATEUS against Portugal  
and Lino Jesus SANTOS JANUÁRIO against Portugal

The European Court of Human Rights (Second Section), sitting on 8 October 2013 as a Chamber composed of:

Guido Raimondi, *President*,  
Peer Lorenzen,  
Dragoljub Popović,  
András Sajó,  
Nebojša Vučinić,  
Paulo Pinto de Albuquerque,  
Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to the above applications lodged on 10 September 2012 and 27 August 2012 respectively,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant in the first case, Mr António Augusto da Conceição Mateus, is a Portuguese national, who was born in 1939 and lives in Aveiras de Baixo.

2. The applicant in the second case, Mr Lino Jesus Santos Januário, is a Portuguese national, who was born in 1940 and lives in Almeirim.

### A. The circumstances of the case

3. Both applicants are pensioners eligible to receive social security benefits under the public sector pension scheme which was in force until 1<sup>st</sup> January 2006. These benefits include holiday and Christmas subsidies (*subsídio de férias* and *subsídio de Natal*), which correspond to a

13<sup>th</sup> and 14<sup>th</sup> full month of pension and are normally paid, respectively, in July and December of each year.

4. 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 78 billion euro (EUR) (EUR 26 billion from the European Financial Stabilisation Mechanism, EUR 26 billion from the European Financial Stability Facility and about EUR 26 billion from the IMF). The agreement on the programme was formally adopted on 17 May 2011 at the Eurogroup/ECOFIN meeting in Brussels, where the Portuguese Government signed a Memorandum of Understanding on Specific Economic Policy Conditionality (MoU) with the EU, the ECB and the IMF and thereafter two related documents: the Technical Memorandum of Understanding and the Loan Agreement.

The MoU set out the economic and social policies, including tax and social security measures, that Portugal should implement for the duration of the programme (2011-14) in order to improve its financial situation and receive financial support from the EU.

The MoU 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.

1.12 Suspend applications of pension indexation rules and freeze pensions, except for [the] lowest pensions, in 2012.”

5. On 30 December 2011, the Official Journal (*Diário da República*) published Law no. 64-B/2011 on the State budget (*Lei do Orçamento de Estado para 2012*, hereinafter “the 2012 State Budget Act”), which was largely designed to implement the MoU.

6. Pursuant to section 25 of the 2012 State Budget Act, the holiday and Christmas subsidies or equivalent benefits to be paid to the categories of public-sector scheme pensioners to which the applicants belonged (*aposentados* and *reformados*) would be reduced. These provisions would apply for the duration of the Economic and Financial Assistance Programme. Pensioners receiving between EUR 600 and EUR 1,100 would see a reduction in their holiday and Christmas subsidies calculated on the basis of the following formula:  $1,320 - (1.2 \times \text{monthly pension})$ . These reductions would be applicable as of 2012.

7. With the entry into force of the 2012 State Budget Act, the first applicant, whose monthly pension amounted to EUR 722.87, saw a EUR 551.20 reduction in both his holiday and Christmas subsidies, for a cumulative loss of EUR 1,102.40 in 2012. The second applicant, whose monthly pension amounted to EUR 910.92, saw a EUR 684.02 reduction,

for a cumulative loss of 1,368.04 EUR in 2012. These cumulative losses amounted to 10.8% and 10.7% of the applicants' respective total annual pension payments, including the holiday and Christmas subsidies.

8. On 19 January 2012, a group of members of the Portuguese Parliament challenged the constitutionality of sections 21 and 25 of the 2012 State Budget Act before the Constitutional Court, on the ground that those provisions violated the principle of equality as well as the right to social security. Section 21 concerned similar cuts for other categories of people.

9. In a decision of 5 July 2012 the Constitutional Court considered that the reduction of the payment of the holiday and Christmas subsidies to both categories of pensioners of the public sector pension scheme, as provided by section 25 of the 2012 State Budget Act, breached the principle of "proportional equality" and was therefore unconstitutional. However, given that the 2012 Budget was already at an advanced stage of implementation and that it would therefore be impossible for Portugal to design alternative measures in order to meet its budgetary objectives and secure financial support from its lenders, which was of "an exceptionally important public interest", the Constitutional Court decided that its own decision should not take effect in 2012. In practical terms, this meant that the cuts could be implemented in 2012.

10. On an unknown date, the first applicant lodged a complaint before the Constitutional Court challenging the constitutionality of the reduction of his holiday and Christmas subsidies. On 3 April 2013, the Constitutional Court sent a letter to the first applicant referring to its decision of 5 July 2012.

## 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 282

#### Effects of declaration of unconstitutionality or illegality

1. A declaration of unconstitutionality or illegality with generally binding force shall take effect as of the moment at which the rule declared unconstitutional or illegal came into force, and shall cause the revalidation of any other rule that it may have revoked.

2. However, in the case of unconstitutionality or illegality due to breach of a subsequent constitutional or legal rule, such declaration shall only take effect when the latter comes into force.

4. When required for the purposes of legal certainty, reasons of fairness or an exceptionally important public interest, the grounds for which shall be given, the Constitutional Court may rule that the scope of the effects of the [finding of] unconstitutionality or illegality shall be more restricted than those provided for in (1) and (2) above.”

## 2. 2012 State Budget Act (Law no 64-B/2011)

### Section 25

#### Suspension of holiday and Christmas subsidies or equivalents for *aposentados* and *reformados*

“1. For the term of the EFAP, as an exceptional measure for budgetary stability, the payment of holiday and Christmas subsidies or any other benefits corresponding to the 13<sup>th</sup> and 14<sup>th</sup> months paid by the CGA, I.P., the National Centre for Pensions and, directly or through pension funds held by any public entity, regardless of the nature and degree of independence or autonomy ..., to *aposentados*, *reformados*, pre-pensioners or similar whose pension is higher than EUR 1,100 is suspended.

2. Pensioners whose monthly pension is equal to or higher than EUR 600 and does not exceed the value of EUR 1,100 are subject to a reduction in the above-mentioned subsidies or benefits corresponding to an amount calculated on the basis of the following terms: subsidies / benefits =  $1,320 - 1.2 \times \text{monthly pension}$ .

...

6. The rules laid down in this article are imperative and exceptional in nature, prevail over any other standards, special or exceptional, and otherwise on collective regulation of work and employment contracts, and cannot be removed or modified ...”.

## 3. Report of the Ministry of Finance on the State Budget for 2012 - relevant excerpts

“The deficit reduction will be performed mainly through the reduction of expenditure (significantly more than 2/3), the remainder being provided by increased revenue. The decrease in the financing needs of the public sector will significantly contribute to alleviating the financing needs of the economy as a whole.”

...

“The amount of benefits (which represent about 33% of the total expenditure in 2010) will be reduced by 1.2% of GDP. The share of the reduction of holiday and Christmas allowances for pensioners will be ... equivalent to 0.7% of GDP.”

...

“For the duration of the Economic and Financial Assistance Program the payment of holiday and Christmas subsidies or any benefits corresponding to the 13<sup>th</sup> and 14<sup>th</sup> months with regard to pensions above EUR 1,000 is suspended. For pensions whose value is higher than the minimum wage (EUR 485) but less than EUR 1,000, these subsidies are subject to a progressive reduction ....”

*4. Decision of the Constitutional Court of 5 July 2012 (No. 353/2012) – relevant excerpts*

“... The effectiveness of the measures adopted in order to achieve a result [which is in the] undeniable and significant general interest remains the justification for the differential treatment of those who receive salaries and pensions from the State budget.

Indeed, it can be argued that the option chosen will prove to be particularly effective, given that it is certain to contribute to short-term deficit reduction. It is therefore consistent with a strategy of action whose definition lies within the margin of the ‘free policy prerogative’ of the legislator [*livre conformação política do legislador*].

Accordingly, it may be concluded that some differentiation between those who receive money out of public funds and those who are active in the private sector is certainly admissible, any reduction of income targeting solely the former not being unjustifiably discriminatory in the current economic and financial context.

However, the legislator’s freedom in cutting the salaries and pensions of people who receive money from public funds, with a view to achieving budgetary balance, even in the context of a severe economic and financial crisis, can obviously not be unlimited. The difference in the degree of sacrifice imposed on those who are affected by this measure and those who are not must be subject to limits.

In fact, from a legal perspective, equality of treatment must always be interpreted as proportional equality. Therefore, inequality justified by different situations is not exempt from a test of proportionality. The extent of the inequality of treatment must be proportionate to the reasons that justify that treatment, and cannot be excessive.

As stated in this Court’s rulings nos. 39/88 and 96/2005 ...: equality of treatment does not mean, however, egalitarianism. It does, rather, mean proportional equality of treatment. It requires that situations which are substantially the same be treated in the same way whereas situations which are substantially different be granted a different but proportionate treatment.

Accordingly, on the basis of the proportional equality test, we need to assess whether the amounts whose payment has been suspended pursuant to sections 21 and 25 of Law no. 64-B/2011, 30 December (the 2012 State Budget Act), are not “manifestly” [*num “critério de evidência”*] excessively differentiating compared to the reasons justifying a reduction of income imposed solely on citizens who receive money out of public funds.

To this end, it is necessary to individuate and assess the sacrifices imposed by the provisions under scrutiny on those receiving remuneration or pensions out of public funds.

According to these provisions, public sector employees and pensioners receiving a gross amount between EUR 600 and EUR 1,000 will see a reduction in their annual income which will be gradually increased to 14.3%. In a context where lack of sufficient income is already a cause of distress, any additional reduction in income of this kind, progressively extended to up to 14.3% of the annual income [of those affected], is excessively burdensome.

Pensioners and others who receive gross amounts between EUR 1,100 and EUR 1,500 will see a 14.3% reduction in their annual income which, in this context, is considerable compared to those with the same level of income or higher who are not affected by any reduction. Regarding higher pensions, it must be stressed that for those which are twelve times higher than the social support index, there will be a reduction of 25% of the excess amount and for those which are eighteen times higher, the reduction will be equal to 50%.

For those receiving gross amounts above EUR 1,500, the reduction will also be equal to 14.3% of their annual income. Given that the Constitutional Court, in its ruling no. 396/2011, in a similar context relating to the salary reduction [of civil servants] provided by section 19 of Law no. 55-A/2010 of 31 December and ranging between 3.5% and 10% of their annual income, considered that the limited duration and extent of such

reductions were still within the limits of an admissible additional effort, the addition of a new reduction, now amounting to 14.3% of the annual income [of those affected], which is more than three times higher, on average, than the initial reductions, [must be considered to] reach a percentage value so high that it manifestly falls outside those limits.

These measures will last for three years (2012-14) and will produce, throughout this period, continued and cumulative effects ..., which, together with the pay-freeze of public-sector salaries and pensions in 2010, 2011 and 2012, which will continue during the following years as provided in the memoranda of the EFAP, and combined with the phenomenon of inflation, will imply a reduction in real wages and pensions equivalent to the inflation rates recorded over that entire period.

No equivalent effort is required of most of the other citizens who earn income from other sources, regardless of the amounts [they receive].

The difference in treatment is so sharp and significant that the effectiveness of the measure adopted in order to reduce public deficit to the levels agreed in the memoranda of understanding does not justify [it], especially since alternative solutions for reducing the deficit could be envisaged either on the expenditure side (e.g. measures established in the memoranda of understanding) or on the revenue side (e.g. through more comprehensive measures which would have the same effect as the reduction of income).

Such solutions would be effective enough to achieve [the aims in] the general interest and would not overburden those taxpayers who receive income or social benefits out of public funds.

Hence, it is evident that the difference in treatment of people receiving income and pensions out of public funds [and that of other citizens] is excessive [and does not pass the test of] proportional equality.

Although it is recognized that we are in a very serious economic and financial situation, in which it is important to achieve the public deficit objectives set out in the memoranda of understanding in order to ensure the financial subsistence of the State, these objectives should be achieved through measures of expenditure reduction and/or of revenue increase which do not lead to a distribution of effort which is excessively differentiated.

Moreover, the greater the effort imposed on citizens in order to satisfy general interests, the higher the demands for equality and justice in the distribution of those efforts should be.

The situation described above and the need to address it through effective measures shall not be a reason for waiving the legislator's duty to respect the fundamental rights and principles which are the basis of the rule of law, including parameters such as the principle of proportional equality. Certainly, the Constitution cannot ignore economic and financial realities, especially in a situation that can be considered seriously difficult. However, it has a specific normative autonomy to prevent economic and financial objectives prevailing without limits over parameters such as equality, which the Constitution defends and should enforce.

Therefore, it should be concluded that the provisions establishing the suspension of payment of holiday and Christmas subsidies or any other payments corresponding to the 13<sup>th</sup> and 14<sup>th</sup> months, whether for people who receive a salary from public bodies or people who receive retirement pensions [*pensões de reforma ou aposentação*] from the public sector retirement scheme via the State social security system, during the years 2012-14, violate the principle of equality in the distribution of public burden enshrined in Article 13 of the Constitution.

For this reason, the provisions contained in sections 21 and 25 of Law no. 64-B/2011, of 30 December (the 2012 State Budget Act) should be declared unconstitutional without the need to assess whether they violate the other constitutional parameters invoked by the applicants.

...

As stated above, the measures suspending wages and pensions have been adopted in the context of economic and financial policies intended to reduce the public deficit in the short

term in order to comply with the budget-deficit limits (4.5% of GDP in 2012) imposed in the above-mentioned memoranda, which are a condition for receiving the loans agreed with the European Union and the International Monetary Fund.

In the current context of severe emergency, it is essential for the Portuguese State to continue to have access to external financing. Respecting those budgetary limits is therefore an objective of an exceptional public interest.

Bearing in mind that the execution of the 2012 Budget is already well underway, the consequences of a declaration of unconstitutionality could inevitably determine the failure of that objective, and therefore endanger the subsistence of the agreed financing and consequently the solvency of the State. Indeed, the net savings in public expenditure obtained through the suspension of the payment of holiday and Christmas subsidies or equivalent ... play a relevant role in the State budget as well as in the financial measures put in place to achieve the above-mentioned objective; it would hardly be possible in the remaining period, [that is, by] the end of the year to design and implement alternative measures that would produce effects in 2012 in order to achieve those budgetary objectives.

We are therefore faced with a situation in which a [matter of] exceptionally important public interest requires that the Constitutional Court restrict the effects of the declaration of unconstitutionality, as permitted by Article 282 § 4 of the Constitution, which will therefore not apply to the suspension of the payment of Christmas and holiday subsidies or any equivalent payments with regard to 2012.

...

On these grounds:

a) The provisions of sections 21 and 25 of Law no. 64-B/2011 of 30 December (the 2012 State Budget Act) are declared unconstitutional, with general binding effect, on the ground that they violate the principle of equality enshrined in Article 13 of the Constitution of the Portuguese Republic,

b) Under Article 282 § 4 of the Constitution of the Portuguese Republic, this decision of unconstitutionality does not apply to the suspension of payment of Christmas and holiday subsidies or any holiday bonuses or any equivalent payments with regard to 2012.

### C. EU assessment of the 2011 economic situation in Portugal

11. The European Commission staff working paper accompanying the Recommendation for a Council recommendation on the National Reform Programme 2011 of Portugal and delivering a Council Opinion on the updated stability programme of Portugal, 2011-2014, issued in June 2011 (SEC(2011) 730 final), described the Portuguese economic situation and the main features of the economic adjustment programme in the following terms:

#### “1. Introduction

In 2010, Portugal’s GDP grew a rate [sic] of 1.3%. This positive growth rate was, however, largely due to exceptional factors that boosted exports and private consumption. The latter particularly benefited from anticipatory effects of the VAT increase in July 2010 and January 2011. Notwithstanding the significant growth contribution of external trade, Portugal lost 0.9% in export market share in 2010. Price and cost developments clearly indicated that Portugal was not gaining competitiveness at a sufficiently fast rate to redress its current account deficit, which was high at 10% of GDP last year. Similarly, fairly robust private consumption benefitted from temporary factors, such as relatively low inflation due to falling energy prices.

Moreover, at the end of last year, expectations of increases in indirect taxes led to some front-loading of expenditure. The weak overall economy and the steep increase in unemployment spilled into large government deficits, which exceeded 10% of GDP in 2009 and 9% in 2010, up from 3.5% in 2008.

Portugal has seen unemployment consistently grow during the recession, peaking at 11.2 %. The young (22.4 % in 2010) and the older generations (7.7 %) are more exposed to unemployment than the EU average. The long-term unemployed currently represents more than 55% of the total unemployed. This is likely to have a detrimental impact on the general skills level of the unemployed and reveals deep structural problems in the Portuguese labour market. In line with joblessness, employment continued to weaken, with the employment rate reaching the lowest level in a decade (70.5 % in 2010), while still being above the EU average (68.6 %).

Recently, unfavourable developments in public finances and a bleak outlook for economic growth led to a deterioration of confidence and rising pressures in sovereign bond markets. In parallel, the banking sector, which is heavily dependent on external financing, became increasingly cut off from market funding and resorted extensively to funding from the Eurosystem. The government stepped down after failure to achieve parliamentary approval for the Stability Programme in late March. In the wake of consecutive downgrades of Portuguese sovereign bonds, interest rates reached levels that were no longer compatible with long-term fiscal sustainability. As a result, Portugal requested international financial assistance from the European Union and the International Monetary Fund (IMF) on 7 April. Negotiations between the Portuguese authorities and a joint mission of the Commission, the IMF and the ECB led on 3 May to an agreement on an Economic Adjustment Programme for the period 2011-14.

## 2. Main features of the economic adjustment programme [footnotes excluded]

On 17 May, the ECOFIN Council adopted the formal Decision allowing for financial assistance to Portugal. The Programme includes external financing from the European Union, the euro-area Member States and IMF of up to EUR 78 billion and a commitment by Portugal to adopt far-reaching and frontloaded reforms in several areas.

The fiscal objectives of the Programme are ambitious but realistic. The government deficit is expected to attain 5.9 % of GDP in 2011, 4.5% of GDP in 2012 and 3.0% in 2013, in line with the Excessive Deficit Procedure requirements. Government debt is expected to peak at around 108% in 2013 and start declining thereafter. Consolidation efforts are frontloaded, broad-based and supported by a wide range of measures to reduce expenditure and increase revenue.

On the expenditure side, the measures include, inter alia, wage moderation in the public sector, lower transfers to local and regional administrations and SOEs, pensions' adjustment and lower capital expenditure. On the revenue side, some of the measures include the broadening the corporate and personal income tax bases by reducing tax deductions and special regimes, the convergence of personal income tax deductions applied to pensions and labour income, changes in property taxation, broadening of VAT bases by reducing exemptions and rearranging the goods subject to intermediate and reduced rates. Fiscal consolidation will be supported by flanking measures aimed at strengthening the fiscal framework improving all stages of the



budgetary process including monitoring and control to contain fiscal risks. In addition, Portugal will reap efficiency gains from a substantial reorganisation of its public administration at central, regional and local level.

Following the recommendations on the Memorandum of Understanding on Specific Economic Policy Conditionality, Portugal will publish a fiscal strategy document for the general government by end-August 2011 and annually thereafter in April for the Stability Programme. The document will specify 4-year medium-term economic and fiscal forecasts and 4-year costs of new policy decisions. Budgets will include a reconciliation of revisions to the 4 year fiscal forecasts attributable to policy decisions and parameter revisions e.g. policy decisions, changes in the macroeconomic environment).

Structural reforms cover a wide range of areas including the labour market, housing market, education, energy, transport, business environment, judicial system, services and healthcare. The approach to structural reforms is very frontloaded. Already in 2011, Portugal is expected to implement a first batch of measures aimed at strengthening labour market functioning by limiting severance payments and making working time arrangements more flexible. Portugal will continue action to tackle low education attainment and early school leaving and to improve the quality of secondary education and vocational education and training, with a view to increase efficiency in the education sector, raise the quality of human capital and facilitate labour market matching. In the energy sector and other network industries, Portugal will adopt measures to deepen the markets and promote competition and flexibility. For achieving renewable energy targets, non-cost barriers have to be removed. Portugal will ensure that plans to boost energy efficiency are implemented in a cost-efficient way. Additional measures to promote competition and adjustment will be implemented in other areas, such as services housing markets, judicial system and business environment conditions.

Bank liquidity remains under pressure, even if the Portuguese banking system has weathered the crisis relatively well so far. On the back of the Programme, Banco de Portugal will monitor carefully the liquidity situation of the banking system and intervene if necessary. In particular, government guaranteed bonds may be issued for an amount up to EUR 35 billion. During the Programme period, the banking sector will adopt a strategy of balanced and orderly deleveraging so as to eliminate its funding imbalances on a permanent basis. Furthermore, the bank solvency support mechanism will be endowed with resources of up to EUR 12 billion. At the same time, banks are requested to further strengthen their capital buffers by raising their Tier 1 capital ratio to 10% by end of 2012.

Of the total Programme envelope of EUR 78 billion, EUR 52 billion will be paid by the EU (split equally between contributions from the European Financial Stabilisation Mechanism and the European Financial Stability Facility) with the IMF will cover the remaining EUR 26 billion. The Programme amount includes EUR 12 billion reserved for potential banking sector recapitalisation needs, whereas privatisation receipts are expected to reduce the financing needs over the Programme period by around EUR 5 billion. Portugal is expected to be able to continue rolling-over part of its existing stock of short-term debt and to return to the long term debt market in the second half of 2013. The Programme also provides for a financing buffer to provide for unexpected deviations from the Commission's baseline financing scenario.”

## COMPLAINTS

12. Without invoking any particular provision of the Convention, the applicants complained about the impact of the reduction of their holiday and Christmas subsidies on their financial situation and living conditions.

13. The Court is master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, judgment of 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 applicants' complaints from the standpoint of Article 1 of Protocol No. 1.

## THE LAW

14. Pursuant to Rule 42 § 1 of the Rules of Court, the Court decides to join the applications given their similar factual and legal background.

15. The applicants relied, in substance, 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.”

16. They alleged a breach of their right to the protection of property due to the reduction of their holiday and Christmas subsidies for 2012, which amounted to a total loss of EUR 1,102.40, in the case of the first applicant, and a total loss of EUR 1,368.04, in the case of the second applicant.

17. At the outset, the Court considers that following the Constitutional Court's decision of 5 July 2012, which authorized the implementation of section 25 of the 2012 State Budget Law in 2012 and which had *erga omnes* effect, there were no more effective domestic remedies available to the applicants within the meaning of Article 35 § 1 of the Convention.

18. All the principles which apply generally in cases concerning Article 1 of Protocol No. 1 are equally relevant when it comes to pensions. This provision does not guarantee a right to become the owner of property. By the same logic, it cannot be interpreted as securing a right to a pension of a particular amount (see *Skorkiewicz v. Poland* (dec.) no. 39860/98, 1<sup>st</sup> June 1999). Article 1 of Protocol No. 1 places no restriction on the

Contracting State's freedom to decide whether or not to have in place any form of social-security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a pension – 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, with further references, in particular to *Stec v. the United Kingdom* (dec.), nos. 65731/01 and 65900/01, ECHR 2005-X and to *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; 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).

19. In the present case, both applicants were legally entitled to receive holiday and Christmas subsidies in 2012, which they received as usual in July and November 2012, although with a reduction amounting to 10.8% of the total annual pension benefits in the case of the first applicant and to 10.7% in the case of the second applicant. Accordingly, in respect of their holiday and Christmas subsidies both applicants had a proprietary interest falling within the ambit of Article 1 of Protocol No. 1.

20. Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: indeed, the second sentence of the first paragraph of that Article authorises the deprivation of possessions “subject to the conditions provided for by law”. Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000–XII; and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V).

21. In the applicants' case, the Court notes that although the relevant domestic statutory provisions were declared unconstitutional, on the basis that no equivalent effort was required of citizens employed in the private sector, a decision to allow the cuts for 2012 was nevertheless adopted by the Constitutional Court on the basis of Article 282 § 4 of the Portuguese Constitution, which allows the effects of a finding of unconstitutionality to be restricted in exceptional circumstances. The cuts were therefore allowed by the Constitutional Court in accordance with domestic law within the meaning of Article 1 of Protocol No. 1.

22. The Court stresses that any interference with the enjoyment of the right of property must also pursue a legitimate aim in the public interest (see *Broniowski*, cited above, §§ 147-48, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 163-64, ECHR 2006-VIII). In this respect, a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or 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 appreciate 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* 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, 4 January 2005; *Huc v. Romania and Germany* (dec.), no. 7269/05, § 64, 1 December 2009; and *Koufaki and Adedy v. Greece* (dec.), nos. 57665/12 and 57657/12, § 31, 7 May 2013).

23. 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; *Koufaki and Adedy*, cited above, § 42).

24. 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 resulting in the impairment of the essence of his right. The nature of the benefit taken away – in particular, whether it has 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 of 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 special pension regimes into the general one.

25. In the present case, the Court notes that the cuts in the holiday and Christmas subsidies provided for in the 2012 State Budget Act were intended to reduce public spending and were 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 to the State budget with a view to achieving medium-term economic recovery (see paragraphs 4 and 11 above). The very fact that a programme of such magnitude had to be put in place shows that the economic crisis which was asphyxiating the Portuguese economy at the material time and its effect on the State budget balance were exceptional in nature, as the Constitutional Court indeed recognised in its decision of 5 July 2012.

26. As it recently did in similar circumstances relating to austerity measures adopted in Greece (see *Koufaki and Adedy*, cited above, § 41), the Court considers that the cuts in social security benefits provided by the 2012 State Budget Act were clearly in the public interest within the meaning of Article 1 of Protocol No. 1. Like in Greece, these measures were adopted in an extreme economic situation, but unlike in Greece, they were transitory.

27. 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 the protection of the applicants' individual fundamental rights.

28. In this respect, the Courts notes that while it reduced the applicants' 13<sup>th</sup> and 14<sup>th</sup> month subsidies by EUR 1,102.40 and EUR 1,368.04 respectively (10.8% and 10.7% of their previous pension rights, see paragraph 7 above), section 25 of the State Budget Act left unchanged the rate of their basic pension, which they continued to receive for the full twelve months of 2012. In addition, these cuts were only applicable for a period of three years (2012-14). The interference of the 2012 State Budget Act with the applicants' right to the peaceful enjoyment of their possessions was therefore limited both in time and in quantitative terms (less than 11% of their total social security benefits). In these circumstances, it was not disproportionate to reduce the State budget deficit on the expenditure side, by cutting salaries and pensions paid in the public sector, when no equivalent cuts were made in the private sector (see *Koufaki and Adedy*, cited above, §§ 43-47). Moreover, since the legislator remained within the limits of its margin of appreciation and previous measures involving "remuneratory reductions" contained in the State Budget Act for 2011 had proved to be insufficient, it is not for the Court to decide whether better

alternative measures could have been envisaged in order to reduce the State budget deficit (see *Koufaki and Adedy*, cited above, § 48).

29. In the light of the exceptional economic and financial crisis faced by Portugal at the material time and given the limited extent and the temporary effect of the reduction of their holiday and Christmas subsidies, the Court considers that the applicants did not bear a disproportionate and excessive burden.

30. Therefore, the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to join the applications;

*Declares* the applications inadmissible.

Stanley Naismith  
Registrar

Guido Raimondi  
President