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**La CEDU sulle ingerenze sul diritto di proprietà in tempo di crisi economica**
**(CEDU, sez. I, sent. 13 novembre 2025, ric. nn. 77396/14 e altri)**

Con la decisione in commento la Corte Edu si è pronunciata sui ricorsi presentati da alcuni cittadini ciprioti, i quali lamentavano di avevano subito un'ingerenza arbitraria e ingiustificata nel loro diritto di proprietà da parte dello Stato, che aveva ridotto per legge l'ammontare delle loro pensioni o dei loro stipendi.

La Corte ha rammentato che ogni interferenza dell'autorità pubblica sul pacifico godimento dei beni deve fondarsi su previsioni normative valide, sufficientemente precise e prevedibili nella loro applicazione; perseguire uno scopo legittimo «nell'interesse pubblico»; essere ragionevolmente proporzionata allo scopo che si intende realizzare.

Nel caso di specie, le misure contestate erano state adottate con legge e con una finalità riconducibile all'ampia nozione di «interesse pubblico», quella di limitare la spesa pubblica in un periodo di difficoltà finanziaria. Quanto al requisito della proporzionalità, alla luce dell'entità minima della riduzione, del periodo di tempo limitato in cui la normativa aveva operato e dell'ampio margine di discrezionalità da riconoscersi allo Stato, la Corte non ha reputato di poter ravvisare un illegittimo squilibrio tra le esigenze di interesse generale della collettività e quelle di tutela dei diritti fondamentali individuali dei ricorrenti.

La Corte pertanto ha ritenuto non vi fosse stata alcuna violazione dell'articolo 1 del Protocollo n. 1 alla Convenzione.

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

FIRST SECTION

**CASE OF XXX AND OTHERS V. CYPRUS**

*(Application nos. 77396/14 and 4 others)*

JUDGMENT

STRASBOURG

13 November 2025

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of XXX and Others v. Cyprus,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Ivana Jelić, *President*,
Erik Wennerström,
Georgios A. Serghides,
Frédéric Krenc,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant, *judges,*
and Ilse Freiwirth, *Section Registrar,*
Having regard to:
the applications (nos. 77396/14, 45039/20, 45089/20, 45101/20 and 45899/20) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four hundred and fifty Cypriot nationals, on the various dates indicated in the appended table;
the decision to give notice to the Cypriot Government ("the Government") of the complaints concerning Article 6 § 1 in respect of applications nos. 45039/20, 45089/20, 45101/20 and 45899/20, Article 1 of Protocol No. 1 in respect of all applications, and Article 1 of Protocol No. 12 in respect of application no. 77396/14, and to declare the remainder of the applications inadmissible;
the parties' observations;
Having deliberated in private on 13 May and 7 October 2025,
Delivers the following judgment, which was adopted on that last date:

## INTRODUCTION

1. The applications concern interferences by the State with the pensions and salaries of officials and employees in the civil service at a time of economic crisis. They mainly raise issues under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

## THE FACTS

THE CIRCUMSTANCES OF THE CASES

2. A list of the applicants is set out in the Appendix.

3. The Government were represented by their Agent, Mr G. L. Savvides, Attorney General of the Republic of Cyprus.

4. The facts of the cases, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

A. Application no. 77396/14

*1. Events leading up to the deductions of salaries and pensions*

5. On 31 August 2011 the Cypriot Parliament passed the Law on Extraordinary Contribution of Officials, Employees and Pensioners of the Civil Service and the Wider Public Sector of 2011 ("Law no. 112 (I)/2011") (*Ο περί Έκτακτης Εισφοράς Αξιωματούχων, Εργοδοτουμένων και Συνταξιούχων*

*της Κρατικής Υπηρεσίας και του Ευρύτερου Δημόσιου Τομέα Νόμος του 2011*). Under this law, a tiered effective percentage would be deducted from the pensions and gross income of officials and employees in the civil service (except for employees on an hourly wage) and the wider public sector each month, as a special contribution to the budget of the Republic. The Law initially provided for deductions from salaries over 1,500 euros (EUR) per month. It provided as follows: a 1.5 % deduction from a salary on the scale of EUR 1,501-2,500, 2.5 % from a salary on the scale of EUR 2,501-3,500, 3% from a salary on the scale of EUR 3,501-4,500 and 3.5% from a salary of EUR 4,501 and above. No deduction was made from salaries below EUR 1,500.

6. Law no. 112(I)/2011 entered into force on 1 September 2011 for an initial period of twenty-four months. The law was subsequently amended by amending Laws nos. 193(I)/2011 and 184(I)/2012, extending its validity to 31 December 2016. While there were small amendments to the percentage of extraordinary contribution taken from each of the abovementioned salary scales, the figure never exceeded 3.5%.

7. With the entry of into force of Law no. 112 (I)/2011, the Government began deducting the relevant percentage of special contribution from the applicants' gross salaries.

8. The extraordinary contribution for the salary scales can be summarised as follows:

| Monthly gross salary / pension amount in EUR | % extraordinary contribution from 1.9.2011 Law 112(I)/2011 | % extraordinary contribution from 1.1.2012 Law 193(I)/2011 | % extraordinary contribution from 1.1.2013 (Law 184(I)/2012) | % extraordinary contribution from 1.1.2014 (Law 184(I)/2012) |
|---|---|---|---|---|
| 1,000 - 1,500 | 0.0% | 0.0% | 0.0% | 0.0% |
| 1,501 – 2,500 | 1.5% | 0.0% | 0.0% | 2.5% |
| 2,501 – 3,500 | 2.5% | 2.5% | 2.5% | 3% |
| 3,501 – 4,500 | 3.0% | 3% | 3% | 3.5% |
| Over 4,500 | 3.5% | 3.5% | 3.5% | 3.5% |

*2. Domestic proceedings*

(a) The applicants' claim before the domestic courts

9. The applicants asked the Supreme Court to review the constitutionality of Law no. 112(I)/2011 (the case numbers are given in the appendix). They argued that the deductions under the Law from their monthly salaries as an extraordinary contribution to the State budget were unlawful and void because they were contrary to, *inter alia*, Articles 23 (protection of property), 24 (equality in taxation) and 28 (principle of equality) of the Constitution as well as in violation of Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention. Specifically, the applicants argued that their salary constituted a proprietary right which was protected by Article 23 of the Constitution. In this connection they argued that none of the conditions provided for in Article 23 § 3 had been satisfied so as to allow an interference with their constitutionally protected right.

(b) The Supreme Court judgment: Charalambous and Others v. the Republic of Cyprus, nos. 1480/2011 and others, 11 June 2014

10. The cases were heard together by the plenary of the Supreme Court comprising twelve judges (Judges D.H, M.N., G.E., S.N., C.P., A.P., P.P, L.P., D.M., M.C., A.L., and K.S.).

11. The Supreme Court gave judgment on 11 June 2014, dismissing the applications by a majority of nine to three (one judge, M.N., gave a separate concurring opinion and three judges, S.N., L.P., A.L. dissented). It held that the applicants had failed to convince the court that the provisions of Law no. 112(I)/2011 were unconstitutional.

*(i) The majority judgment*

(α) Circumstances leading to the adoption of Law no. 112(I)/2011

12. In its judgment the Supreme Court set out the background to the enactment of Law no. 112(I)/2011, referring to documents showing, *inter alia,* the excessive public budget deficit; the continual downgrading of Cyprus' credit rating by the international credit rating agencies, rendering it impossible for Cyprus to borrow money on the international markets; the need to reorganise public expenditure and to exit from the deficit; the need to redistribute resources; and the need to secure micro-economic stability, taking into account the adverse consequences of the worldwide crisis. The Supreme Court also referred to, *inter alia*, the preamble of Law no. 112(I)/2011 (see paragraph 60 below).

(β) The right to equality

13. The Supreme Court then reviewed the applicants' discrimination complaint under Articles 24 and 28 of the Constitution. It recognised, *inter alia*, that public sector personnel costs, which exceeded two billion euros annually, were the largest expense in the public sector. The court observed that in a severe financial crisis the State had discretion to implement extraordinary measures, provided they were constitutional, in order to stabilise public finances, especially in relation to people employed in the public sector who were paid from public accounts that had an excessive shortfall. The court stressed that the State had gradually adopted other measures and within a period of four months an extraordinary contribution was also being deducted from the pay of private sector workers (see paragraph 64 below). Beyond that, certain provisions of Law no. 112(I)/2011 which were considered as prone to create inequality between public and private sector workers were amended by amending Law no. 193(I)/2011, which led to equalisation between the sectors. The court also ruled that the measures did not treat low-wage earners or pensioners unfairly, as the contributions were based on a person's financial means. The measures were reasonable and proportionate, balancing the public interest with individual rights in the face of the adverse economic situation at the time.

(γ) The right to property

14. The court then examined the applicants' complaint that their right to property had been violated. The court held at the outset that Law no. 112(I)/2011 was not a tax law.

15. It then stressed that the right protected under Article 23 § 1 of the Constitution was not absolute but was subject to limitations which were set out in the remaining passages of the Article, and which had to be lawful. Under domestic case-law, the provisions of Article 23 did not affect the power of the State to enact laws necessary to secure payment of taxes or other contributions to public expenditure.

16. The court referred to the Supreme Court's judgment in *Demetriades and others v. Council of Ministers and others* (1996) 3 C.L.R. 85 and reiterated that terms restricting the use of property that left the core of the right to own property intact did not constitute a deprivation of the right but a limitation on it. Restrictions could result in a deprivation only when they rendered the property unusable.

17. The respondent government claimed that the deduction from the applicants' salaries did not fall within Article 23 § 3, as that referred solely to interference with land rights. The court disagreed. It held that, on the contrary, Article 23 covered both movable and immovable property.
18. The respondent government further argued that the deduction of an extraordinary contribution from the applicants' salaries and pensions could be justified based on Article 23 § 3 and for reasons of public benefit. The court again disagreed. It clarified that the deduction could not be linked to the public benefit because Article 23 § 3 connected the promotion of the public benefit to the imposition of terms, conditions, or limitations to property for reasons of town and country planning or the development and use of property, none of which applied in the present case.
19. The court noted that, as regards the right to one's salary, Article 23 aimed to protect that right from arbitrary executive regulation of the core of the right, or arbitrary and substantial reductions from salaries.
20. The court accepted that the applicants' salaries constituted a proprietary right and held that any interference with them therefore fell within the scope of Article 23 of the Constitution.
21. The court then observed - with reference to this Court's case-law - that the right to one's salary did not extend to a right to receive a salary of a particular amount. In the light of this, the court considered that the question it had to answer was whether or not a small deduction imposed in the form of a special contribution ranging between 1.5% and 3.5% of the applicants' gross monthly salary constituted an arbitrary interference with the right which led either to rendering the right devoid of any effectiveness (*αδρανοποίηση δικαιώματος*) or to a substantial limitation of the right, requiring the payment of compensation.
22. The court replied to the above question in the negative. It considered that the relatively small deduction from the applicants' salaries had not affected the core of their right to receive their salary. The court found that the core of the right remained intact and that it was not negated, and therefore there was no deprivation contrary to Article 23 of the Constitution. According to the court, a person was only entitled to compensation under Article 23 § 3 of the Constitution when the economic value of the property was 'substantially' limited. The court did not consider the reduction ranging between 1.5% to 3.5% such a substantial reduction in salary as to constitute a sufficient limitation of the right.
23. The court then observed that the same applied with regard to Article 1 of Protocol No. 1 to the Convention. It noted that Article 1 of Protocol No. 1 was not as limiting as Article 23 of the Constitution, as it provided for the right of a State to enforce such laws as it found necessary to control the use of property in "the general interest" or "to secure the payment of taxes or other contributions or penalties". The court subsequently observed that in the case before it the State was in a precarious position because of the worldwide financial crisis and needed to take measures to reduce the budgetary deficit, rescue its economy and consequently the social structure, and thus to serve the public interest. The court therefore concluded that the imposition of a relatively small special contribution had been justified under Article 1 of Protocol No. 1 and Article 24 of the Constitution (requiring citizens to pay taxes) and that it did not violate the provisions of Article 23 of the Constitution.
24. The court lastly rejected the applicants' arguments that, *inter alia*, there had been no attempt to justify the deductions on the grounds of the public interest and that there had been a lack of proper enquiry.

*(ii) Concurring opinion of judge M.N.*

25. In his concurring opinion, Judge M.N. observed that as regards the right to property there was a substantial difference between Article 1 of Protocol No. 1 of the Convention and Article 23 of the Constitution, in that under the provisions of the Convention property rights might be restricted for public benefit or the public interest, while Article 23 of the Constitution contained no such provision. The third paragraph of Article 23 provided that the exercise of the constitutional right to property could be subject, by law, to restrictions or limitations which were absolutely necessary in the interests of public safety or public health or public morals, or town and country planning or the development and use of any property for the promotion of the public benefit or for the protection of the rights of others. Judge M.N. held that the "promotion of public benefit" in the third paragraph concerned only the development and use of property and did not concern "restrictions or limitations" which might be applied when exercising that right. Consequently, he considered that the case had to be examined under Article 23 of the Constitution rather than Article 1 of Protocol No. 1, given that the former provided more protection.

26. Judge M.N. considered that Law no. 112(I)/2011 was not unconstitutional because the applicants had not shown that they had a property right. He considered that a civil servant's gross salary was a contractual right. However, there was no case-law to the effect that the current or future salary of a civil servant, unlike salary owing for past service, was protected under the Constitution. He therefore held that there had been no breach of Article 23 of the Constitution.

*(iii) Dissenting opinion of judges S.N., L.P. and A.L.*

27. In his dissenting opinion, with which Judges L.P. and A.L. concurred, Judge S.N. found the interference with the applicants' property rights unconstitutional.

28. The dissenting judges agreed with the majority that the right to one's salary was a proprietary right protected under Article 23 of the Constitution.

29. They went on to find that the deduction of the special contribution was not merely a restriction of the applicants' property rights – which would in any event have been prohibited - but was a deprivation of that part of their property for as long as the law remained in force.

30. Specifically, they observed that while Article 1 of Protocol No. 1 allowed for an interference with property on public interest grounds, no such provision or exception existed in Article 23 of the Constitution. That provision gave more protection to property rights since restrictions on or interference with those rights was only possible for the express and specific reasons in the Article. The provisions of Law no. 112(I)/2011 restricting the applicants' property and depriving them of it was contrary to Article 23 of the Constitution since deductions from salaries did not fall under any of the exceptions provided in that article. That Law was therefore unconstitutional.

31. The government had supported their argument by reference to various documents discussing the dire economic situation in Cyprus. They asserted that the State had interfered with the applicants' property rights for reasons of public benefit/interest, but the minority judges observed that that argument had not been included or referred to in Law no. 112(I)/2011. Nowhere in the law or its preamble had it appeared that the law had been passed to bring the state into line with recommendations from the European Union. Nor did the law refer to the public interest or benefit. The government could not invoke the public interest or benefit in any event as it was not referred to in Article 23 of the Constitution.

32. The minority also found that the monthly deductions had been made without proper inquiry as to each person's earning capacity (εισοδηματική ικανότητα) and there was no proper reasoning in support of the deductions.

33. On the issue of equality, the minority considered, *inter alia,* that the Law targeted a specific class of persons in society, namely public officials, for the imposition of financial burdens, and their treatment had therefore been unequal.

B. Applications nos. 45039/20, 45089/20, 45101/20 and 45899/20

*1. The adoption of Law no. 168(I)/2012*

34. On 6 December 2012, the Parliament passed the Law on the Reduction in Emoluments and Pensions of Officials, Employees and Pensioners of the Public Sector and of the broader Public Sector of 2012. Pursuant to this law, an effective percentage would be deducted monthly from the income or pensions of officials, employees, and pensioners in the public sector and the broader public sector. The amounts deducted from each employee were deposited in the fixed fund of the State (*Πάγειο Ταμείο της Δημοκρατίας*). Initially, an effective percentage to be deducted monthly ranged from 0% (for those on a low salary or pension) to 12.5% (for those on a high salary or pension). The reduction in salaries and pensions would be deducted from income tax and would not be taken into account for the calculation of pension benefits.

35. The relevant reductions of Law no. 168(I)/2012 applied as of 1 December 2012 and the law had no expiry date. It was subsequently amended on three occasions and the reductions were eventually discontinued for everyone as of 1 January 2023. With the entry into force of Law no. 168(I)/2012 the Government began to deduct the relevant percentage from the applicants' gross income and pension. The percentage deducted from the income or pension of officials, employees and pensioners of the public sector and the broader public sector, as adjusted over time, was as follows:

| Monthly gross salary / pension amount in EUR | %[1] from 1.12.12 | %[2] from 1.6.13 | %[3] from 1.12.14 | %[4] from 1.7.18 to 31.12.18 |
|---|---|---|---|---|
| 0 – 1,000 | 0.0 | 0.8 | 3.8 | 1.8 |
| 1,000 – 1,500 | 6.5 | 7.3 | 10.3 | 8.3 |
| 1,500 – 2,000 | 8.5 | 9.3 | 12.3 | 10.3 |
| 2,000 – 3,000 | 9.5 | 10.5 | 13.5 | 13.5 |
| 3,000 – 4,000 | 11.5 | 13.0 | 16.0 | 16.0 |
| Over 4,000 | 12.5 | 14.5 | 17.5 | 17.5 |

*2. Domestic proceedings*

(a) First instance judicial review proceedings

36. In the years between 2012-2016, the applicants – and many others who have not come to this Court – challenged the reduction of their salaries or pensions arguing that Law no. 168(I)/2012 had been unconstitutional as it contravened Article 23 of the Constitution (the recourse number of each

case is set out in the appendix). They further argued that the reduction of their salaries or pensions breached Article 1 of Protocol No. 1.

37. The Administrative Court hearing the applicants' complaints at first instance delivered two separate judgments.

38. The first (*Avgousti and others v. The Republic of Cyprus,* recourse no. 898/2013 and others, 27 November 2018) concerned challenges to the reduction of the applicants' pensions and was delivered by the president of the Administrative Court alone. The court found that the reduction of pensions constituted a restriction to the right to property. With reference to the findings of the majority in *Charalambous and Others* (see paragraph 18 above), the court reiterated that reasons of the public benefit, such as the consolidation of public finances, did not fall under the exceptions provided for in Article 23 § 3 of the Constitution. The court further found that the right to receive a pension was a proprietary right and that restrictions to a property right were only permitted for the purposes set out in Article 23 § 3 of the Constitution. When a permissible interference resulted in a material curtailment of the right, then compensation was payable. The court therefore reasoned that what should have been decided first had not been whether the restriction materially curtailed the right, but whether the restriction was permissible under Article 23 § 3, and only if that was the case should the court have examined the extent of the restriction. The court subsequently considered that neither the Attorney General's Explanatory Report accompanying the proposal for the Bill nor the preamble to the law relied on any of the permissible grounds for interference as set out in Article 23 § 3 of the Constitution. The consolidation of the State economy constituted a public interest ground which was one of the exceptions provided for in Article 1 of Protocol No. 1 but not in Article 23 § 3 of the Constitution, as was also found in *Maria Koutselini-Ioanidou and others v. The Republic of Cyprus,* cases nos. 740/2011 and others ((2014) 3 A.A.D. 361) (see paragraph 68 below). As such, the court held that section 3 of Law no. 168(I)/2012 was unconstitutional and in breach of Article 23 of the Constitution.

39. The second judgment (*Nicolaide and others v. The Republic of Cyprus,* nos. 98/2013 and others, 29 March 2019) of the plenary of the Administrative Court concerned challenges to the reduction of salaries. The court gave reasons similar to those of the first judgment. It held that the right to a salary fell within the scope of Article 23 and therefore interferences could only be legitimate if they fell within the provisions of its paragraph 3. Since the reductions in salaries had been justified by reasons of the public interest which were not among the exceptions in Article 23 § 3, the provision in Law no. 168(I)/2012 for the deduction of a monthly percentage from those salaries had been unconstitutional.

(b) Appeal proceedings: *The Republic of Cyprus v. Avgousti and others*, nos. 177/2018 and others, 10 April 2020

40. The State appealed against the judgments issued by the Administrative Court on 27 November 2018 and 29 March 2019 respectively (see paragraphs 38 and 39 above).

41. The Supreme Court joined the appeals, which were examined by the plenary under the case name *Avgousti and others v. The Republic of Cyprus*, nos. 177/2018 and others. On 10 April 2020 the Supreme Court by a majority of nine (M.N., T.E., C.P., P.P., M.C., K.S., T.P.M., C.M. and Y.Y.) to four judges (S.N., A.S.P., L.P., A.L.), accepted the appeals lodged by the State and declared that the reduction of salaries and pensions under Law no. 168(I)/2012 had been constitutional.

*(i) The judgment of the majority*

42. At the outset, the majority referred to the difficult economic conditions and extreme financial crisis Cyprus had faced, and because of which it had passed legislation to curb public expenditure, including Law no. 168(I)/2012.

43. The court observed that the crux of the case lays in the Government's argument that the first-instance court had erroneously considered that it had first to examine whether the restriction had been permissible under Article 23 § 3 of the Constitution and only subsequently to examine the extent of the restriction. The Government suggested that the first-instance court had first to have examined whether Article 23 § 1 guaranteed a salary of a particular amount and could only then go on to examine whether the restriction had been made on one of the permissible grounds in Article 23 § 3.

44. The court agreed with the Government that it first had to decide on the scope of the right protected by Article 23 § 1 because the first-instance court had failed to address that issue. It found the first paragraph of Article 23 to be the same as the first rule of Article 1 of Protocol No. 1 as both provisions acknowledged the right to the peaceful enjoyment of property. The court then considered, with reference to *Charalambous* (cited above), that while a salary constituted a property right and therefore any interference with that right needed to fall under the provisions of Article 23, nonetheless the right to one's salary did not extend to that salary being of a particular amount and as a result under certain conditions, in times of economic crisis, changing that amount was not prohibited as long as it did not result in the loss of a person's means of subsistence. The court observed that the plenary in *Charalambous* had not examined how the facts of the case were affected by Article 23 § 3 – since the right to property did not safeguard the right to a particular amount of income – but had rather examined the case as whole, and particularly whether a fair balance had been struck between competing interests. Since the core of the right remained intact, the court in *Charalambous* had held that the reduction of salaries fell within the accepted ambit of, and did not violate, Article 23.

45. The court subsequently found that no distinction could be made between salaries and pensions as both constituted property rights protected under the constitution. As with salaries, Article 23 § 1 did not guarantee a pension of a certain amount. The court considered that in the more recent case of *Koutselini-Ioannidou* (cited above) (see paragraph 68 below) the Supreme Court plenary had decided that the "suspension" of the pension essentially meant that the applicants in that case lost their right to a pension for as long as they continued to occupy a public post. Moreover, the court in *Koutselini-Ioannidou* had held that there was no difference between those applicants who had not received any pension while they still occupied a public post and those who had lost part of their pension, the reason being that in both cases there had been an impermissible restriction or deprivation of the applicants' property rights without an adequate justification based on reasons of public interest. The court further considered that the crux of *Koutselini-Ioannidou* was the impermissible permanent restriction or deprivation of the right to property, which could not be justified under Article 23 § 3 (*επρόκειτο περί επιβολής στέρησης ή περιορισμού, του δικαιώματος ιδιοκτησίας στο διηνεκές, που δεν εδικαιολογείτο από το Άρθρο 23.3*). The court therefore held that unlike *Koutselini-Ioannidou*, which concerned the permanent partial or full deprivation of pensions, the case under consideration was different as it concerned the reduction of pensions or salaries in a restricted, effective, and rational manner for a limited period.

46. However, the court found the case at hand to be similar to *Charalambous* (cited above) and considered itself bound by the precedent set by that case instead of *Koutselini-Ioannidou* (cited above). As with *Charalambous*, the court reiterated that the state had been under extreme financial strain. The court concluded as follows:

"...[we] take into consideration the fact that the reduction in salaries and pensions was made in an effective and proportionately equal manner so that the reduction was related to income and was zero or very low in a low income bracket. [We also take] seriously into account the emergency background to the measure. It is also important in our opinion that the reductions diminished from 2019 onwards, and came to an end in 2023.

...

In light of the above, we consider that the reductions made under Law no. 168(I)/2012 [and subsequent amending laws] do not affect the core of the right to a salary and pension, nor do they endanger the [applicants'] living standards, and they too ... have not argued that they have. As a result, under the circumstances, [the reductions] do not constitute a deprivation of property or a breach of property rights within the meaning of Article 23 of the Constitution."

*(ii) Concurring opinion of judge Y.Y.*

47. Judge Y.Y. agreed with the majority as to the outcome, but on the basis of different reasoning. His view was that Article 23 § 1 protected the right to movable and immovable property. Reading Article 23 § 2, it was evident that the right to property was not an absolute right. Article 23 § 3 set out the permissible grounds for interfering with the said right. He reiterated that the term "development and use of any property to the promotion of public benefit" had been broad enough to cover movable and immovable property and he therefore disagreed with the *Charalambous* judgment (cited above) which limited the term to town-planning purposes.

48. As regards the core of the right, he saw the same concept in existing domestic case-law (*Demetriades and others v. Council of Ministers and others* (1996) 3 C.L.R. 85) where the Supreme Court had clarified that terms which restricted the use of property but left the core of the right intact constituted a restriction but not a deprivation. According to Judge Y.Y. this highlighted the difference between a restriction - which did not affect the essence of the right – and a deprivation. The judge was further of the view that the facts in *Charalambous* did not give rise to an issue of deprivation of property but rather to an issue of the restriction of property rights under terms provided for by law. However, the court in *Demetriades and others* had not explained how the right to a salary was safeguarded as it ought to have been through the application of Article 23 § 3 or how the reservations of that paragraph had applied.

49. The judge further observed that the majority in the appeal had attempted to formulate a more direct approach to the application of constitutional provisions to the circumstances of the cases before the court. However, the case-law showed that the same principles applied to the recognition of the right to movable and to immovable property. He also observed that there was no case-law differentiating between the two or deciding that only the core of immovable property was protected, and that the right to immovable property was also fully protected under paragraph 3 of Article 23 of the Constitution. If necessary, immovable property could be made subject to terms or conditions or restrictions for one or more of the reasons provided for in paragraph 3 of Article 23. Judge Y.Y. therefore found no reason why the right to salaries and pensions, would not enjoy the same

protection as any other immovable property under paragraphs 2 and 3 of the Article 23 of the Constitution.

50. Turning to the reduction of salaries and pensions under Law no. 168(I)/2012, the judge considered that the reductions had undoubtedly been necessary for the promotion of the public interest, which was one of the reasons for which the right to property could be restricted under Article 23 § 3. The majority of the court reached the same conclusion, albeit by reference to Article 1 of Protocol No. 1. They found the reductions were in accordance with the principle of proportionality, because of, *inter alia,* the effective nature of the reductions and the fact that they had not put the dignity of the applicants at risk of their being unable to afford reasonable living standards, something which would have been more probable in the event of the sovereign bankruptcy of Cyprus.

*(iii) Dissenting opinions*

(*α*) Judges S.N. and A.S.P.

51. Judge S.N. delivered the minority judgment, with which judge A.S.P. agreed. He noted that Law no. 168(I)/2012 made no reference to Article 23 of the Constitution or to any of the lawful restrictions on the right to property in it. The preamble merely made a general comment on the dire economic crisis faced by the State at the time. There was therefore no justification for reductions from salaries and pensions.

52. They repeated, as per *Charalambous* (cited above), that Article 23 of the Constitution provided greater protection for the right to property than Article 1 of Protocol No. 1 as the Constitution did not allow restrictions on the right to property in the public interest. The State was therefore not allowed to restrict the right to a property on the grounds of the public interest given that there was no such exception in Article 23 of the Constitution.

53. The minority of judges disagreed with the majority's view that Article 23 protected solely the core of the right to property. According to them Article 23 should be read in its entirety so as to understand the hierarchy of its provisions. The right to, *inter alia,* acquire, own, and enjoy property came first and was coupled with a demand that it be respected under the first paragraph (Article 23 § 1). This was followed by the proviso that it was prohibited, in an absolute manner - "no deprivation or restriction shall be made" – to deprive, restrict or limit the right except as provided by Article 23 (Article 23 § 2). Then followed the permissible restrictions which could be made only when "absolutely necessary" (Article 23 § 3, first sentence). Next, when a term or restriction materially decreased the economic value of property, that loss of value should be compensated for (Article 23 § 3, second sentence). The minority considered that the idea of the core of the right under the circumstances created a paradox as it meant that the whole of the right to a salary was not at all protected, or had been inadequately protected. At the same time, if one were to accept that the reduction of one's salary was permitted under Article 23 of the Constitution, then the person affected should receive compensation, but this would be an issue to be decided by the civil courts. However, the legislator had not intended to provide compensation as the aim had been to take part of the salary for as long as required by the law, without offering compensation.

54. They further considered, *inter alia,* that the case-law of the European Court of Human Rights to which the majority made reference (for example *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 et 57657/12, 7 May 2013) had not been relevant as the Court in those cases had relied

on the principle of "public benefit" under Article 1 of Protocol No. 1, which did not form part of Article 23 of the Constitution.

55. They lastly considered that safer guidance could be drawn from *Koutselini-Ioannidou* (cited above), where the court had made a detailed analysis of Article 23 of the Constitution. This judgment was delivered after that in *Charalambous* (cited above). The minority also disagreed that *Koutselini-Ioannidou* could be distinguished from *Charalambous* because it did not concern pensions. The judges took the view that both cases concerned a proprietary right, whether that was a salary or pension, part of which had been taken from the applicants without the intention of returning it.

(β) Judge L.P.

56. Judge L.P. commented as follows on the interpretation and application of Article 23:

"There are a number of cases dealing with the interpretation of Article 23 of the Constitution. The following is derived from binding case-law:

1. Article 23 safeguards the right to property, whether movable or immovable.

2. Limitations, terms, or restrictions can only be imposed in accordance with and for the reasons provided for in paragraph 3 [of Article 23].

3. A deprivation of property may only take place by expropriation as provided for in paragraph 4 [of Article 23].

4. Restrictions will result in a deprivation only when they render property unusable.

5. Conditions which restrict the use of property but leave the core of the right to property untouched constitute a restriction, not a deprivation.

(see *Holy See of Kitium and Municipal Council, Limassol*, 1 R.S.C.C. 15, *Thymopoulos and others v. Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, *Kirizis and 2 others v. The Republic of Cyprus* (1965) 3 C.L.R. 46, *Demetriades and others v. Council of Ministers* (1996) 3 C.L.R. 85, *Antoniou and others v. The Republic* (1990) 3 C.L.R. 3251, *Strovolos Municipality v. Yasemidou and others* (1996) 3 C.L.R. 223, *Lanitis E.C. Estates Ltd and others v. The Republic* (1989) 3 C.L.R. 3252, *Iera Metropoli Pafou v. Aristo Developers Ltd* (2011) 1 C.L.R. 1377, *Psaltis and others v. The Republic of Cyprus* (2008) 3 C.L.R. 452, *Kyprianou v. The Republic* (2003) 3 C.L.R. 8, *Konstantinou v. Strovolos Municipality* (2012) 1 C.L.R. 1990, *Sofroniou and others v. The Municipality of Nicosia and others* (1976) 3 C.L.R. 124, *Orphanides v. The Improvement Board of Ayios Dometios* (1979) 3 C.L.R. 466, *Theodoulou v. The Republic of Cyprus* (1990) 3 C.L.R. 2806, *Stavride and others v. The Republic of Cyprus* (1992) 3 C.L.R. 303, *Ioannides v. E.A.C.* (2007) 3 C.L.R. 233, *Simeonidou v. The Republic of Cyprus* (1991) 3 C.L.R. 137)."

57. He further noted his disagreement with the approach followed in *Charalambous* (cited above) as follows:

"1. Even taking into account the originality of the legal issue that it had to resolve, the [court in *Charalambous*] still departed from the long-standing binding jurisprudence, which had interpreted the provisions of Article 23 §§ 1,2,3, and 4 in a clear manner, without being asked to do so by the parties and without justifying that deviation from the previous case-law.

2. It should have first decided whether the salary and pension cuts were a "restriction or limitation" as provided by paragraph 3 of Article 23 and, in particular, whether the deductions were "absolutely necessary in the interests of public safety or public health or public morals, or town and country planning or the development and use of any property for the promotion of the public benefit or for the protection of the rights of others". The [court in *Charalambous*] did not do this, nor did it find that

the deductions fell within any of the above [permissible] limitations. On the contrary [the court in *Charalambous*] proceeded under the erroneous, in my opinion, assumption that the limitation was permissible, and analysed the limits/extent of the right on that basis, and then concluded that the definition of property rights in Article 23 "does not extend to a salary of a particular amount". ...

3. They used Greek jurisprudence and ECtHR case-law to justify the deductions, missing the facts that (a) Article 17 of the Greek constitution, expressly provides that property rights "may not be exercised contrary to the public interest" ...; and (b) Article 1 of Protocol No. 1 also provides for the imposition of restrictions on public interest grounds. Article 23 of the Constitution does not allow restrictions in a similar manner to [the above articles]. Restrictions and deprivations are foreseen in an express and limited manner in paragraphs 3 and 4 of Article 23.

4. The [court in *Charalambous*] used Article 1 of Protocol No. 1, which allows States to enact laws to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. This would be similar to using Article 24 of the Constitution to justify the relatively small contribution "without breaching the stricter provisions of Article 23 of the Constitution." With all due respect, any reference to law under Article 1 of Protocol No. 1 is made with the proviso that the law being dealt with is not unconstitutional. In addition, in the same judgment the [court] decided that [Law no. 112(I)/2012] is not a tax law ... it is not then clear how [the court] could rely on Article 24 of the Constitution, which requires citizens to pay taxes or to make contributions.

5. The case of *Maria Koutselini-Ioannidou* followed ... Having in mind the above, I am of the humble opinion that *Charalambous* is incorrect to the extent that it finds that the salary and pension cuts did not breach the provisions of Article 23 of the Constitution for the reasons I have already stated and because it clashes with the jurisprudence of the Supreme Court, both prior to and subsequent to this decision, to the extent that it weakens its jurisprudential gravity. As a result, it would be justified not to apply that case and rather to apply *Koutselini-Ioannidou* and the case-law prior to that setting out the same principles."

(γ) Judge A.L.

58. Judge A.L. fully agreed with the reasoning of Judge S.N. (see paragraph 51 above) and reiterated the precedence of Article 23 of the Constitution over Article 1 of Protocol No. 1 to the Convention because it provided greater protection of the right to property. He was therefore of the view that Article 23 should apply instead. He further reiterated that:

(a) salaries and pensions constituted property rights which fell under Article 23 § 1 of the Constitution;

(b) following the literal reading of the Constitution, a restriction or limitation of proprietary rights was only allowed on the grounds provided for under Article 23 § 3; and

(c) while the need to consolidate public finances had been understandable, there was at the same time an obligation on the state to remain in line with the Constitution as it was in such periods of crisis that the Constitution protected citizens.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTIONAL PROVISIONS

59. The relevant Constitutional provisions read, in so far as relevant, as follows:

Article 23

"(1) Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such a right.
The rights of the Republic to underground water, minerals and antiquities are reserved.
(2) No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.
(3) Restrictions or limitations which are absolutely necessary in the interests of public safety or public health or public morals, or town and country planning or the development and use of any property for the promotion of the public benefit or for the protection of the rights of others, may be imposed by law on the exercise of such a right.
Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation is to be determined in case of disagreement by a civil court.
(4) Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from persons belonging to its respective Community, or by a public corporation or a public utility body on which such a right has been conferred by law, and only:
(a) for a purpose which is to the public benefit and shall be specially provided for by a general law of compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and
(b) when that purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and
(c) upon the payment in cash and in advance of just and equitable compensation, to be determined in case of disagreement by a civil court.
..."
Article 28
"1. All persons are equal before the law, the administration and justice and are entitled to equal protection and equal treatment.
2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, color, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution. ..."

## II. OTHER RELEVANT DOMESTIC LAWS

### A. The Law on Extraordinary Contribution of Officials, Employees, and Pensioners of the Public Sector and of the broader Public Sector of 2011 (Law no. 112(I)/2011) and relevant amendments

60. The preamble of Law no. 112(I)/2011 reads as follows:
"Because the Republic has recently being going through an adverse financial period and in order to avoid further exacerbating the budget situation as a consequence of the events of July 11th, 2011, it

is necessary to limit expenditure for the public sector, the wider public sector, the local governments and the local school authorities and;

Because it has become necessary, pursuant to the above purpose, to, among other things, deduct as a special contribution to the Republic a part of the gross income and pensions paid to officials, employees and pensioners in the civil service, the wider public sector, local government and the local school authorities".

61. The comment about the "events of July 11th 2011" referred to an explosion that occurred on that date at the Evangelos Florakis naval base near the village of Mari (see *Herakleous and others v. Cyprus* (dec.), no. 57596/12, § 4, 20 June 2017).

62. Law no. 112(I)/2011 was amended by Amending Law no. 193 (I)/2011 which entered into force on 1 January 2012 for a period of two years (section 6 of the Amending Law). This Law lowered the specific scale percentages to make them the same as those in the private sector. It provided that the deduction of the extraordinary contribution would start at incomes or pensions over EUR 2,500 at the following percentages: 2.5 % for a salary scale of EUR 2,501-3,500, 3% for a salary scale of EUR 3,501-4,500 and 3.5% for a salary scale of EUR 4,501 and above (section 3 of the Amending Law). It also added a reservation deducting a high percentage corresponding to 3%, 3.5% and 4.5% on the above salary scales when at the time of the entry into force of the law an officer was at the top of the salary scale for his position (this reservation was subsequently amended by Amending Law no. 74(I)/2012 applying these percentages to, *inter alia*, officers at the top of the scale in positions with "combined scales", and officers on a fixed salary, paid under a contract for services, sponsored externally or on a grant (χορηγία) or who received other remuneration (αντιμισθία). Amending Law no. 193(I)/2011 also made the special contribution tax-deductible, unlike the original provision (section 5 of the Amending Law and section 6 of Law no. 112(I)/2011).

63. Amending Law no. 184(I)/2012, which was in force between 1 January 2013 and 31 December 2016, provided that the scale percentages set by Law no. 193(I)/2011 would remain until 31 December 2016 (section 3(a) of Law no. 112(I)/2011 as amended). However, it amended the percentages to be deducted after 1 January 2014 so that they would start at incomes or pensions over EUR 1,500, as had initially been the case under Law no. 112(I)/2011, at the following percentages: 2.5 % for EUR 1,501-2,500, 3% EUR 2,501-3,500, 3.5% for over EUR 3,501 (section 3(b) of Law no. 112(I)/2011 as amended).

B. The Law on Extraordinary Contribution of Employees, Pensioners and the Self-Employed of the Private Sector of 2011 and subsequent amending laws

64. On 1 January 2012, four months after Law no. 112(I)/2011 came into force, Law 202(I)/2011 on the Extraordinary Contribution of Employees, Pensioners and the Self-Employed of the Private Sector came into force at the same time as Amending Law no. 193(I)/2011. Law 202 (I)/2011 provided for the deduction of an extraordinary contribution from salaries or pensions from employees, pensioners and the self-employed in the private sector, using the same percentages and on the same salary scales as Amending Law no. 193(I)/2011(see paragraph 62 above).

65. Amending Law no. 183(I) of 2012, which entered into force on 1 January 2014, made the same amendments to the percentages to be deducted from 1 January 2014 until 31 December 2016 as Amending Law no. 184(I)/2012 (see paragraph 63 above).

C. The Law on the Reduction in Emoluments and Pensions of Officials, Employees and Pensioners of the Public Sector and of the broader Public Sector of 2012 (Law no. 168(I)/2012) and relevant amendments

66. The preamble to Law no. 168(I)/2012 reads as follows:

"Because the State has recently fallen into an adverse financial period and, to avoid further exacerbating the fiscal situation, it becomes necessary to limit expenditure in the public sector, the wider public sector, local government and local school authorities; and

Because, pursuant to the above purpose, it becomes necessary, *inter alia*, to reduce the salaries and pensions paid to officials, employees and pensioners in the civil service, the wider public sector, the local governments and school authorities."

67. This law was amended three times. First, by Law no. 31(I)/13, which increased the effective percentage of deductions initially to 0.8% of the gross salary or pension and subsequently to 3.8% (for low income and low pensions) and to 14.5% and subsequently to 17.5% (for high income and high pensions). Law no. 94(I)/2018 reduced the effective percentage of deductions to 1.8% (for low income and low pensions) to 17.5% (for high income and high pensions) for the period between 1 July 2018 until 31 December 2018. Law no. 94(I)/2018 further reduced the effective percentage of deductions to 0% (for low income and low pensions) to 17.5% (for high income and high pensions) for the period between 1 January 2019 and until 31 December 2019. The same law further reduced the effective percentage of reductions to 3.3% for those who previously had reductions of 5.8% to 15% for those who previously had reductions of 17.5% for the period between 1 January 2020 and until 31 December 2020. The same law further reduced the effective percentage of reductions gradually and as of 1 January 2023 the reductions of salaries and pensions on the basis of the Reduction of Salaries and Pensions Law was discontinued (see table in paragraph 35 above).

III. RELEVANT DOMESTIC CASE-LAW

A. *Maria Koutselini-Ioannidou v. The Republic of Cyprus*, cases nos. 740/2011 and others ((2014) 3 A.A.D. 361)

68. On 7 October 2014 the plenary of the Supreme Court comprising ten judges delivered its judgment *Maria Koutselini-Ioannidou v. The Republic of Cyprus* (cited above). The case concerned whether the provisions of Law 88(I)/2011, which suspended the applicants' pension for as long as they held another public position or office from which they gained a salary, had been in breach of Article 23 of the Constitution. The Supreme Court, by a majority of seven (M.N., T.E., S.N., L.P., D.M., A.L., K.S.) to three (C.P., A.P., M.C.) found Law 88(I)/2011 had breached Article 23 of the Constitution.

69. The majority stated that the right to property could not be restricted, and a person could not be deprived of their property except as provided under Article 23 § 3 of the Constitution. The majority noted that Article 23 of the Constitution provided greater protection than Article 1 of Protocol No. 1 to the Convention as the third paragraph of Article 23 did not allow the restriction of the right to property for the public benefit. With reference to *Charalambous* (cited above), the majority reiterated that the reference to the "development and use of any property to the promotion of the public benefit" under Article 23 § 3 did not coincide with the general limitation of property for the public benefit.

70. With reference to domestic case-law the majority noted that a pension constituted a property right. At the same time, the "suspension" of pensions as provided for by Law 88(I)/2011 did not mean that once the applicants retired from their other public post they would receive the pension that was suspended retroactively. The "suspension" essentially meant that the applicants either (a) lost their right to a pension for as long as they held public office or a position in the civil service or (b) if their salary while in office was less than their pension, they would only receive part of their pension so as to equate their salary to the amount of their monthly pension.

71. Against this background, the majority noted that there was no difference between those who (a) lost their pension in its entirety, and (b) those who lost part of their pension, because in both cases there was an impermissible deprivation or restriction of their property rights. Nor was there a possibility of balancing the general interest of the society on the one hand with the applicants' individual interest to their property on the other hand, since Article 23 § 3 did not allow the deprivation or restriction of that right for reasons of public benefit. As such, the majority considered that the case-law of the European Court of Human Rights under Article 1 of Protocol No. 1 which provided for a proportionality assessment had not been applicable to the circumstances of that case.

72. In any event, according to the majority, Law 88(I)/2011 did not contain a public interest justification, but rather referred to the "modernisation of pension schemes" without sufficiently elaborating on this point. With the above in mind, the majority found the relevant sections of Law 88(I)/2011 which effected the suspension of pensions, unconstitutional.

73. The minority considered that the suspension of pensions was the result of the applicants' own actions as they had accepted appointment to another public position or office knowing that their pension would be suspended. As for those who had already been holding a public position, it had been open to them to resign in order to receive a full pension. Hence, according to the minority there had been no deprivation or limitation to the right to property.

B. Case-law concerning the interpretation of Article 23 of the Constitution

74. In *Holy See of Kitium v. Municipal Council of Limassol* (1 RSCC 15, 2 March 1961) the Supreme Constitutional Court as it existed at the time examined, *inter alia*, the authorities' refusal to grant the Holy See of Kitium a building permit. In interpreting the provisions of Article 23 of the Constitution, the court stated that the right to property safeguarded by Article 23 § 1 included the right to possess and enjoy property. The court considered that whether an interference (and in that case, the decision to refuse a building permit) amounted to a "deprivation" which could be achieved only under paragraph 4 of Article 23, or whether it amounted to a "restriction or limitation" which could only be imposed under paragraph 3 of Article 23 was "a question of fact or degree".

75. The reasoning used in *Holy See of Kitium* (cited above) was subsequently cited in many other cases that followed concerning the interpretation of Article 23 of the Constitution such as *Kirizis and others v. The Republic of Cyprus* ((1965) 3 C.L.R. 85), *Thymopoulos and others v. Municipal Committee of Nicosia* ((1967) 3 C.L.R. 588) and *Demetriades and Others v. Council of Ministers* ((1996) 3 C.L.R. 85) among many other authorities. In the latter case, also referred to by the Supreme Court majority in *Charalambous* (cited above) as well as in the dissenting opinion of Judge L.P. in *Avgoustis* (cited above)(see paragraphs 16 and 56 above), concerning the imposition of restrictions on the use of the applicant's immovable property, the Supreme Court plenary stated in relation to Article 23, among other things, the following:

"1. The right to property, movable and immovable, is enshrined in the Constitution - (Article 23 § 1).
The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol, which form part of domestic law as a result of the European Convention for the Protection of Human Rights (Ratification) Law of 1962 (Law 39/62), do not extend the right to property as enshrined in the Constitution, nor do they enhance its content. The relevant provisions of the Protocol are, in essence, identical to those of Article 23 § 1 of the Constitution. (See Article 1 of the Additional Protocol, Ratifying Law 39/62.)
2. The right to property is subject to both restrictions and deprivations, in accordance with and for the reasons provided for in paragraphs 3 and 4 of Article 23 of the Constitution.
Urban planning, as well as the development and use of any property, are explicitly defined as reasons on the basis of which restrictions on the use of property may be imposed by law.
...
3. Deprivation of property can only take place with the expropriation of land, a procedure which presupposes, as defined in Article 23 § 4 of the Constitution, compensation of the owner before the alienation of his property - (see, inter alia, *Holy See of Kitium and Municipal Council of Limassol*, 1 R.S.C.C. 15).
Restrictions on the use of property do not require the owner to be compensated in advance for damage that he may suffer as a result of their imposition. Compensation for a substantial reduction in the economic value of the property, due to restrictions on its use, is determined, in the event of a dispute, by a competent civil court, (Article 23 § 3) - (see, inter alia, *Nikos Kirzis and Others v. The Republic of Cyprus* (1965) 3 C.L.R. 46, *Demetrios Thymopoulos and Others v. Municipal Committee of Nicosia* (1967) 3 C.L.R. 588).
...
4. ...
5. The classification of the conditions imposed for the use of property as "restrictions" is not decisive for determining their character. If the conditions imposed, restricting the use of property, result in a substantial neutralization of the right to property, the act is annulled for abuse of power.
When restrictions lead to deprivation of property is the issue that we will consider below.
Conditions restricting the use of property, which leave intact the core of the right to property, constitute a limitation and not a deprivation.
Restrictions on the use of property result in its deprivation only when they render property inactive - (see Kyriakopoulou - "Administrative Greek Law", Volume III, pp. 366 and 368; P.D. Dagtoglou - "Constitutional Law - Individual Rights B'", pp. 907, 936, 937, 938; Lanitis E.C. Estates Ltd. and Others v. Republic and Others (case no. 108/88, et al., 21 December 1989)). ..."

C. Leave to apply to the Supreme Constitutional Court for the resolution of conflicts of case-law

76. A Supreme Constitutional Court with third instance jurisdiction was created in Cyprus. It began dealing with cases on 1 July 2023.
77. Several public servants had unsuccessfully challenged the constitutionality of other austerity measures, including a law reducing the extra lump sum they would receive following retirement, in the Administrative Court and the Supreme Court. Following the establishment of the Supreme

Constitutional Court they applied to that court (see application no. 10/23) for leave to apply for a resolution of a conflict which had arisen in the jurisprudence of the Supreme Court prior to the creation of the Constitutional Court, namely that among *Charalambous, Koutselini-Ioannidou* and *Avgousti*. On 19 March 2024 the Supreme Constitutional Court held that it had no jurisdiction to examine conflicts in the jurisprudence of the former Supreme Court. It held that it could only examine conflicts arising in the new Court of Appeal (*'Εφετείο'*). It noted, *obiter*, that there was in any event no conflict in the Supreme Court's jurisprudence, and it restated the findings of that court in *Avgousti* (cited above).

**THE LAW**

I. MATTERS OF PROCEDURE

A. Joinder of the applications

78. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

B. Standing of deceased applicants' successors

79. In their last observations the Government informed the Court about the death of three applicants, namely Ms Pantelitsa Constantinou Loizia, Ms Georgia Vyra Dionysiou and Mr Stylianos Christofi.

80. On 27 August 2024 the applicants' representative was asked to provide comments in reply to the information provided by the Government.

81. On 20 September 2024 the applicants' representative confirmed the death of the said applicants and informed the Court of the names of persons wishing to pursue the application in their stead. He had provided documents proving the relationship of Ms Pantelitsa Constantinou Loizia to the person wishing to pursue the application in her stead, which was her father. There was no other information identifying the relationship between the remaining deceased applicants and the persons wishing to pursue their applications. No authority forms were provided for either of the persons intending to pursue the applications.

82. On 24 September 2024 the Court invited the applicants' representative to provide information in respect of the persons who wished to pursue the proceedings before the Court in respect of each of the deceased applicants, provide the Registry with a written statement explaining their legitimate interest in having the proceedings pursued, and return to the Court the official authority form duly completed and signed by each person wishing to pursue the proceedings.

83. On 14 October 2024 the applicants' representative had informed the Court that the father, husband, and son of the deceased applicants, respectively, expressed the wish to pursue the application the applicants had initially filed. The authority forms provided had not however been duly completed by the persons wishing to pursue the application, as the data concerning the personal information of the said persons had been absent. Instead, the personal information of the deceased applicants was replicated. No information was provided to the Court about the failure to provide duly completed authority forms.

84. The Court notes first, as regards the father of Ms Pantelitsa Constantinou Loizia, that while he has provided sufficient documents proving his relationship with the deceased applicant, he has not provided the court with a duly completed authority form. The Court considers it essential for

representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 of the Convention on whose behalf they purport to act (see, *mutatis mutandis*, *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011 and *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009). It is equally important that a representative claiming to act on behalf of a late applicant's relative submits a duly filled and signed power of attorney. The Court notes second that as regards Ms Georgia Vyra Dionysiou and Mr Stylianos Christofi, the persons wishing to pursue the application in their stead have neither provided the Court with duly completed authority forms, nor have they provided proof of their relationship with the deceased.

85. Accordingly, the Court finds that the persons wishing to pursue the applications in the name of Ms Pantelitsa Constantinou Loizia, Ms Georgia Vyra Dionysiou and Mr Stylianos Christofi, respectively, do not have standing to pursue the proceedings. As far as these applicants are concerned their application can be struck out of the Court's list pursuant to Article 37 § 1 (a) and (c) of the Convention. The Court sees no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols (Article 37 *in fine*) requiring it to continue the examination of the application in respect of these three applicants (see *Burlya and Others v. Ukraine*, no. 3289/10, §§ 73-75, 6 November 2018).

The Court accordingly decides to strike the application, in so far as it concerns these three applicants, out of its list.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicants in applications nos. 45039/20, 45089/20, 45101/20 and 45899/20 complained that their right to a fair trial had been violated by the Supreme Court's failure to follow established case-law in *Avgousti* (see paragraph 41 above), contrary to Article 6 of the Convention, which provides:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

87. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

*1. The parties' submissions*

(a) The applicants

88. The applicants argued that the principle of legal certainty had not been complied with. They argued that the domestic courts should have examined their complaints using the established methods of analysis and interpretation of Article 23 of the Constitution. It was established that no deprivation or restriction of the right to property could be made except as provided in either Article 23 § 3 (if a restriction) or § 4 (if a deprivation), and that property rights could not be restricted for the "public interest". That interpretation had been confirmed by the plenary of the Supreme Court in *Koutselini-Ioannidou*, following *Charalambous,* which had a similar legal framework.

89. The applicants further contended that the majority in *Avgousti* had disregarded the precedent set by *Koutselini-Ioannidou* without giving adequate reasons; that they had introduced extraneous words and ideas (such as the core of the right) into the text of Article 23 without sufficient explanation, which had led to inconsistency and contradiction in the judgment; and that they had

found the measures in *Avgousti,* contrary to those in *Koutselini-Ioannidou,* to have been limited in duration - despite the fact that all measures had had permanent effect.

(b) The Government

90. The Government contended that the Supreme Court in *Avgousti* had followed the precedent set by *Charalambous* and that that had been more appropriate in the circumstances. The Supreme Court had approached the issue in those two cases under the first paragraph of Article 23 of the Constitution. Unlike *Koutselini-Ioannidou*, neither *Charalambous* nor *Avgousti* had been decided under the third paragraph of Article 23, which did not apply to the circumstances of the case. The Supreme Court was the highest court in the country with jurisdiction to interpret the constitution. It had not added a new element to the Constitution, nor had it distorted the language of the constitutional provisions. It had rather interpreted the existing provisions of Article 23 of the Constitution and ruled that the disputed measures had been constitutional because the relatively small reductions had left the core of the right to receive a salary or pension intact.

91. The Government also asserted that the judgments in *Charalambous* and *Koutselini-Ioannidou* (both cited above) had not been in conflict given the different facts of the two cases, which justified their different outcomes. Specifically, the Supreme Court had found that, unlike the applicants in *Koutselini-Ioannidou*, the applicants in *Avgousti* (cited above) had not lost their property forever as their salaries and pensions had merely been reduced by an amount which depended on the original level of the salary or pension, and for a limited period of time. In addition, the reduction of salaries and pensions in both *Charalambous* and *Avgousti* was based on laws which had been enacted to avert the dire economic crisis facing Cyprus, whereas the total withdrawal of the applicants' pensions in *Koutselini-Ioannidou* had been merely for the purpose of modernising the pension schemes. *Charalambous* and *Avgousti* affected the same group of people, namely employees and pensioners in the public and wider public sectors, whereas *Koutselini-Ioannidou* affected only those who held another paid official position while receiving a pension. Therefore, according to the Government, the Supreme Court in *Avgousti* had given reasons for following the precedent of the judgment in *Charalambous* – in essence examining the case under the first paragraph of Article 23 as a whole - and not *Koutselini-Ioannidou*, in which the court had applied the third paragraph of Article 23.

92. The Government further stressed that the Supreme Court in *Avgousti* (cited above) had not departed from the reasoning or method of assessment that it had used in previous similar cases with the same subject matter. The court had applied *Charalambous* as being closer on its facts to the case, whereas *Koutselini-Ioannidou* had been decided on its own specific circumstances, which were different from those in *Avgousti.* The court did not overrule *Koutselini-Ioannidou* but merely distinguished it on the facts. The judgments in *Charalambous* and *Avgousti* were relevant precedents for the Supreme Court's approach to Article 23 of the Constitution and the reduction of salaries and pensions in a tiered and logical manner and for a limited period.

93. In any event, according to the Government there had been only three judgments of the Supreme Court relating to the constitutionality of the reduction of salaries and pensions and whether that reduction was compatible with three specific laws, and they had not revealed any profound or protracted differences in the case-law. The divergences of approach and in the application of Article 23 had led to the evolution of domestic case-law in different

circumstances. *Charalambous* and *Avgousti* had dealt with the reduction of salaries and pensions under Article 23 § 1 of the Constitution (looking at the scope of the rights involved) and *Koutselini-Ioannidou* had dealt with the total extinction of pension rights under Article 23 § 3 of the Constitution.

2. *The Court's assessment*

(a) General principles

94. The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011). Save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the national courts (ibid, § 50).

95. In examining complaints of allegedly discordant case-law under Article 6 § 1 of the Convention the Court will apply the principles which have been summarised in *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016 and *Nejdet Şahin and Perihan Şahin*, cited above, §§ 49-58. Accordingly, the Court will need to establish:

firstly, whether there are profound and long-standing differences in the case-law of those courts;

secondly, whether there is a mechanism in domestic law for resolving such inconsistencies; and

thirdly, whether that mechanism has been used and, if appropriate, to what effect (see, among many authorities, *Lupeni Greek Catholic Parish and Others*, § 116 and *Nejdet Şahin and Perihan Şahin* §§ 53-55, both cited above).

(b) Application of these principles to the circumstances of the present case

96. The present case involves an alleged inconsistency in the case-law of a court of last resort (see *Lupeni Greek Catholic Parish and Others*, cited above, § 117; *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009; *Beian v. Romania* (no. 1), no. 30658/05, § 38, ECHR 2007-V).

97. The issue in question arose in June 2014, with the Supreme Court's judgment in *Charalambous* (see paragraph 11 above). It should first be noted that at that time, the domestic courts were faced with an entirely novel factual situation, namely, the excessive budget deficit and financial crisis (see paragraph 12 above). The facts of the present case must therefore be analysed against this background. The Court further notes that case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see, among many authorities, *Nejdet Şahin and Perihan Şahin*, cited above, § 58).

98. With the above in mind, the Court observes that with its judgment in *Charalambous*, the Supreme Court departed for the first time from the previously established case-law, under which interferences which left the core of the right to property intact constituted a restriction of that right to be examined under Article 23 § 3 as the only other provision of the Constitution which regulated the imposition of restrictions on the right to property (see paragraphs 56, 74 and 75 above for an outline of the principles which applied prior to *Charalambous*). The Supreme Court in *Charalambous* held that since the core of the right to property (and in that case specifically the right to a salary) remained intact, there was no need to apply Article 23 § 3 (see paragraph 22 above). The Supreme Court found the interference in that case to be minimal, proportionate, and justified on account of the State's dire financial position.

99. Subsequently in October 2014, in *Koutselini-Ioannidou* (see paragraph 68 above), concerning legislation suspending the public service retirement pension of beneficiaries for as long as they held public office or employment, the Supreme Court plenary took the approach that had been applied prior to *Charalambous.* The court therefore held that the interference with the complainants' right to a pension constituted a restriction and therefore had to be examined under Article 23 § 3 of the Constitution, which sets out the terms for permissible restrictions on the right to property (and specifically the right to a pension in that case). The Supreme Court held that since the "public benefit" was not included in the list of justifications in Article 23 § 3 of the Constitution, the contested interference with the applicants' pension rights for reasons of the public benefit was unconstitutional.

100. Some time later, in the judgments issued in 2018 and 2019, the Administrative Court (first instance jurisdiction) followed *Koutsellini-Ioannidou* and the previously established approach (see paragraphs 38 and 39 above), while the Supreme Court in *Avgousti* (judgment of April 2020) followed *Charalambous* (see paragraph 42 above). The Supreme Court in *Avgousti* declined to follow *Koutselini-Ioannidou,* distinguishing the interference in *Koutselini-Ioannidou* as permanent, the complainants in that case having partially or fully lost their pensions. The majority reasoned that the applicants in *Avgousti* had only suffered a restricted reduction to their salaries or pensions which had lasted for a limited period (see paragraph 45 above). The court further referred to the extreme financial strain under which Cyprus was at the time. For the above reasons, it found *Charalambous* a more appropriate precedent on account of the similarities of the two cases on their facts.

101. The Court reiterates that the existence of conflicting court decisions, especially when those decisions involve large numbers of applicants, can in certain circumstances create a state of legal uncertainty likely to reduce public confidence in the judicial system, which is clearly one of the essential components of a State based on the rule of law. Divergences of approach may arise between courts as part of the process of interpreting legal provisions while adapting them to the particular situation (see *Albu and Others v. Romania*, nos. 34796/09 and 63 others, cited above, § 38).

102. Turning to the present cases, the Court finds that the domestic courts gave a reasonable explanation for the varied approaches in their decisions, explaining the differences between *Charalambous, Koutselini-Ioannidou* and *Avgousti.* In *Avgousti* the Supreme Court explained that the difference in approach was justified by the differences in the facts of the cases (see paragraph 91 above). Specifically, the Supreme Court in *Avgousti* distinguished *Koutselini-Ioannidou* because the interference in that case was permanent and the complainants in that case had partly or totally lost their pensions. On the contrary, the majority found that the applicants in *Avgousti* had only suffered a restricted reduction to their salaries or pensions, particularly related to the dire economic situation of the state, which only lasted for a limited period (see paragraph 45 above). The Court reiterates that is not in principle its function to compare different decisions of national courts even if given in apparently similar proceedings and that it must respect the independence of those courts (see, among other authorities, *Nejdet Sahin and Perihan Sahin*, cited above, § 50 and *Ferreira Santos Pardal v. Portugal*, no. 30123/10, § 42, 30 July 2015). In the light of the factual differences between the cases as expressed by the Supreme Court and the reasons for the different approaches advanced by it, the Court is not convinced by the applicants' argument that there was a divergence of case-law, let alone a profound and longstanding one.

103. The Court further notes in this connection that the newly established Supreme Constitutional Court, albeit in an *obiter* comment, found that there had been no conflict in the Supreme Court's case-law (see paragraph 77 above).

104. The Court concludes that there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

105. The applicants in all applications complained that they had unlawfully and unjustifiably been deprived of part of their salaries and pensions in violation of 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."

A. Admissibility

106. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

*1. The applicants*

107. The applicants in application no. 77396/14 submitted in general that the reduction of their salaries constituted an arbitrary and unjustified interference with their right to property. They mainly relied on the dissenting opinion given by the minority of the Supreme Court in *Charalambous* (cited above). They considered, *inter alia*, that bearing in mind the wider protection afforded to the right to property under Article 23 of the Constitution, compared to Article 1 of Protocol No. 1 to the Convention, the interference had not been in accordance with domestic law.

108. The applicants in all the other applications similarly relied on the dissenting opinions of the minority of the Supreme Court in *Avgousti* (cited above) and in essence supported the contention that the interference with their right to receive a salary and pension had not been lawful. They regarded the relevant laws as unconstitutional because Article 23 of the Constitution did not allow interference with the right to property on public interest grounds and afforded as such greater protection than Article 1 of Protocol No. 1. They argued that Article 23 had been the object of analysis and interpretation in several judgments which should have been followed. They reiterated the arguments raised under Article 6 of the Convention as regards the foreseeability of the domestic courts' judgments in *Charalambous* and *Avgousti* (see paragraphs 88 and 89 above).

109. They further contended that Law no. 168(I)/2012 lacked explanations as to the necessity of its enactment.

*2. The Government*

110. The Government accepted that the relevant deductions constituted an interference with the applicants' right to property.

111. As to the lawfulness of that interference the Government clarified that the Supreme Court in the cases of *Charalambous, Koutselini-Ioannidou* and *Avgousti* (all cited above) had noted that contrary to Article 1 of Protocol No. 1, Article 23 § 3 did not include "public benefit" or "public interest" as

legitimate grounds for interference with the right to property. The wider protection referred to in those cases covered only paragraph 3 of Article 23 and in that limited sense, the protection to the right to property under the Constitution was wider than Article 1 of Protocol No. 1. However, the Government asserted that the wider protection had no bearing on the Supreme Court's reasoning in the present case or on the lawfulness of the measures under domestic law. They further reiterated the arguments raised under Article 6 of the Convention as regards the foreseeability of the domestic court's decisions in *Charalambous* and *Avgousti* (see paragraphs 90-93 above).

112. The Government further disagreed with the applicants that Law no. 168(I)/2012 lacked explanations as to the necessity of its enactment, as it had been clear from the preamble to the law and the explanatory report that the measures had been necessary on account of the adverse financial situation in Cyprus.

113. Lastly, the Government argued that the said measures, served the public interest, namely the survival of the State; had been proportionate, ranging from 0% to 17.5%; had been temporary in nature (applied only for as long as necessary); and had in no way placed the applicants at risk of having insufficient means of living, or exposed them to hardship inconsistent with Article 1 of Protocol No. 1.

*3. The Court's assessment*

(a) General principles

114. The Court reiterates that the States Parties to the Convention enjoy quite a wide margin of appreciation in regulating their social policy. As the decision to enact laws to balance State expenditure and revenue will commonly involve consideration of political, economic and social issues, the Court considers that the national authorities are in principle better placed than the international judge to choose the most appropriate means of achieving this and will respect their judgment unless it is manifestly without reasonable foundation (see *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, § 31, 7 May 2013 and references therein). This margin is even wider when the issues involve an assessment of the priorities as to the allocation of limited State resources (ibid).

115. Under the Court's well-established case-law, the principles which apply generally in cases concerning Article 1 of Protocol No. 1 are equally relevant when it comes to pensions (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011), salaries and welfare benefits (see, *inter alia*, *Savickas and Others v. Lithuania* (dec.), no. 66365/09, § 91, 15 October 2013; *Koufaki and ADEDY*, cited above, § 32; and *Mihăieş and Senteş v. Romania* (dec.), nos. 44232/11 and 44605/11, 6 December 2011).

116. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see, *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 112, 13 December 2016). The existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of "law", Article 1 of Protocol No. 1 refers to a concept which comprises statutory law as well as case-law. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness (see *Anželika Šimaitienė v. Lithuania*, no. 36093/13, § 111, 21 April 2020). It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms on which the deprivation of property is based

should be sufficiently accessible, precise, and foreseeable in their application (see *Lekić v. Slovenia* [GC], no. 36480/07, § 95, 11 December 2018).

117. Any interference must also pursue a legitimate aim "in the public interest" and must be reasonably proportionate to the aim sought to be realised. In other words, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *Savickas and Others*, cited above, § 91, and *Koufaki and ADEDY,* cited above, § 32 and further references therein).

(b) Application of these principles to the circumstances of the present case

*(i) Applicability of Article 1 of Protocol No. 1 and the existence of an interference*

118. The Court finds Article 1 of Protocol No. 1 to be applicable in the present case (see, *mutatis mutandis*, see *Da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, §§ 31-32, 1 September 2015, *Savickas and Others*, cited above, § 91, 15 October 2013, and *Koufaki and ADEDY,* cited above, § 34). It notes that from September 2011 to 31 December 2016 a monthly sum was deducted from the salaries of the applicants in application no. 77396/14 on the basis of Law no. 112 (I)/2011 as an extraordinary contribution, leading to a *de facto* reduction of their salaries (see paragraphs 6 and 7 above). Similarly, a monthly sum was deducted from the salaries or pensions of the applicants in applications nos. 45039/20, 45089/20, 45101/20 and 45899/20 on the basis of Law 68(I)/2012 from 1 December 2012 to 1 January 2023 (see paragraph 35 above), also leading to a *de facto* reduction of their salaries or pensions. The domestic courts also held in their judgments that both pensions and salaries constituted property rights (see paragraphs 20, 38, 39, 45 above), and the Government do not argue to the contrary.

119. The Court further finds that the extraordinary contributions or deductions made under the disputed legislation constituted an interference with the right to the applicants' peaceful enjoyment of their possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, *inter alia, Koufaki and ADEDY,* cited above, § 34, with further references).

*(ii) Lawfulness of the interference*

120. The parties do not dispute that the interference with their property rights was based on Law no. 112(I)/2011 (as regards the applicants in application no. 77396/14) and on Law no. 168(I)/2012 (as regards the remaining applicants). The parties disagree however as to the compatibility of those laws with Article 23 of the Constitution which protects the right to property. The Court accepts that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018).

121. The Court notes that this complaint is closely linked to the complaint under Article 6 § 1 of the Convention in which it found that there has been no violation (see paragraph 104 above). In that connection, the Court notes that the constitutionality of Laws nos. 112(I)/2011 and 168(I)/2012 was upheld by the Supreme Court in *Charalambous* and *Avgousti*, where it set out a comprehensive interpretation of the relevant legislation and resolved any ambiguities. The Supreme Court in both cases applied the standards that the Court has developed in respect of Article 1 of Protocol No. 1 to the Convention. While Article 1 of Protocol No. 1 does not have exactly the same wording and scope as Article 23 of the Constitution, the Court does not find compelling reasons to depart from the

conclusions reached by the Supreme Court and to substitute its own views for those of that court on a question concerning the interpretation of the Constitution of Cyprus and the domestic law for which that court has given acceptable reasons (see *Žegarac and Others v. Serbia* (dec.), no. 54805/15 and 10 others, § 91, 17 January 2023).

*(iii) Whether the interference pursued a legitimate aim*

122. It is clear that the contested measures were taken to limit public expenditure because the State was going through a period of adverse finances and in order to avoid further exacerbating the budgetary situation (see paragraphs 12, 42, 60 and 66 above). The Court notes that in cases from a number of countries concerning similar austerity measures during an economic crisis with the aim of reducing public spending it found such aims to be legitimate for the purposes of Article 1 of Protocol No. 1 (see among other authorities, *Mockienė v. Lithuania* (dec.), no. 75916/13, § 42, 4 July 2017; *P. Plaisier B.V. v. the Netherlands* (dec.), nos. 46184/16 and 2 others, § 88, 14 November 2017; *Mamatas and Others v. Greece*, nos. 63066/14 and 2 others, §§ 101-05, 21 July 2016; *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), nos. 62235/12 and 57725/12, §§ 25-26, 8 October 2013; *Frimu and Others v. Romania* (dec.), nos. 45312/11 and 4 others, § 42, 7 February 2012; and *Mihăieş and Senteş*, cited above, § 18).

123. The Court reiterates that the notion of "public interest" is necessarily extensive. As it has already said, the decision to enact laws to balance State expenditure and revenue will commonly involve consideration of political, economic and social issues, and the margin of appreciation available to a legislature in implementing social and economic policies is a wide one. The Court will therefore respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Koufaki and ADEDI*, § 31, with other references). In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policymaker should be given special weight (ibid.).

124. In view of the above considerations, the Court has no reason to doubt that the contested interference pursued the legitimate aim of protecting the public purse during a difficult financial period.

*(iv) Proportionality of the interference*

125. It remains therefore to be established whether a "fair balance" was struck in the present case between the demands of the general interests of the community and the requirements of the protection of the applicants' fundamental rights.

126. The Court notes first that none of the applicants argued that the measures taken had been disproportionate or that they had had to bear an individual and disproportionate burden. Rather, their submissions focused on the lawfulness of the interference. The applicants in application no. 77396/14 failed however to provide any information about their income and salary scale or how they were specifically affected by the subsequent amending laws, that is, whether the contribution was deducted from every applicant's salary for the whole period.

127. Regardless, as regards the applicants in application no. 77396/14 the Court observes that a small reduction was imposed in the form of a special contribution which ranged from 0% to 3.5% of the gross monthly salary and/or pension of officials and employees in the civil service and the wider public sector. The deduction was tiered.

The Court notes that the deduction imposed on the applicants in all the remaining applications was tiered and ranged from 0% to 17.5% of the gross salary or pension.

128. Those reductions do not, in the Court's view, constitute a substantive reduction compared to previous situations that have been examined by the Court (see, for example, *Mockienė*, cited above, §§ 5-13, where service pensions were reduced by 5% to 20%, amounting to a reduction of approximately 15% for four years; *Mihăieş and Senteş*, cited above, §§ 8-9 and 21, concerning a reduction of public-sector wages by 25% for six months in order to balance the State budget; and *Koufaki and ADEDY*, cited above, §§ 5-9, where Greece reduced public-sector wages with retroactive effect by percentages ranging from 12% to 30%, further reducing them later that year by an additional 8%, and also reduced holiday and Christmas allowances for higher-earning public-sector employees). In any event, the applicants have not argued that the deduction of this contribution from their salaries jeopardised their only means of subsistence or put them at risk of having insufficient means to live on (see, *inter alia*, *Mockienė*, § 45; and also, *mutatis mutandis*, *Béláné Nagy*, § 118; both cited above).

129. The Court further observes that the contested interference was not indefinite. For the applicants in application no. 77396/14 it lasted for about five years and four months (from 1 September 2011 until 31 December 2016, see paragraph 6 above) and for the remaining applicants for about ten years (from 1 December 2012 until 1 January 2023, see paragraph 35 above). While the applicants and all others must have been adversely affected by the contested measures, they were obliged only temporarily to endure a reasonable and justifiable reduction in their pensions or salaries.

130. Lastly, the Court reiterates that the possible existence of alternative solutions to address the economic crisis does not itself render the contested measures unjustified. 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 found to reduce the State budget deficit and overcome the financial crisis (see, for example, *Mockiené* § 44; *Da Conceição Mateus and Santos Januário*, § 28; *Da Silva Carvalho Rico*, § 45; and *Koufaki and ADEDY*, § 48 all cited above).

131. Against this background and bearing in mind the State's wide margin of appreciation in social legislation (and the legitimacy of the aim of rationalising public expenditure at a time of serious economic difficulties) the Court sees no grounds to find that the authorities failed to strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the applicants' individual fundamental rights.

132. It follows that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

## IV. ALLEGED VIOLATION of ARTICLE 1 OF PROTOCOL NO. 12 TO THE CONVENTION

133. The applicants in application no. 77396/14 complained that their rights under Article 1 of Protocol No. 12 to the Convention had been violated. This provision reads as follows:

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

### A. The parties' submissions

134. The Government argued, *inter alia,* that the applicants had failed to show that they had been in an analogous position to employees in the private sector. They said that employees in the private sector were employed by private individuals. Their terms of employment and dismissal, promotion, wages and other benefits were governed by various laws and their individual contracts. In any event, because of the economic crisis, employees of the private sector had also suffered reductions to their salaries in 2011 (see paragraph 64 above).

135. The applicants complained that they had been discriminated against on the basis of their status as civil servants. They submitted that the fact that they received their salary from public funds could not justify differential treatment. They considered that the Law disproportionately focused on civil servants instead of spreading its effect to people of greater economic capacity.

B. The Court's assessment

136. The Court reiterates that discrimination, both for the purposes of Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, means treating differently, without an objective and reasonable justification, persons in similar situations (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 81, ECHR 2013 (extracts) and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 55, ECHR 2009). There will be a difference in treatment if it can be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment (see *Molla Sali v. Greece* [GC], no. 20452/14, § 133, 19 December 2018 and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012 (extracts)).

137. Turning to the circumstances of the present case the Court observes that civil servants and private employees cannot be regarded as being in an analogous or relevantly similar situation within the meaning of Article 1 of Protocol No. 12. The essential distinction, which is directly relevant to the context of the disputed measures, is that they draw their incomes from different sources, namely a private budget and the State budget respectively (see *Giavi v. Greece*, no. 25816/09, § 52, 3 October 2013, and *Panfile, v. Romania* (dec.), 13902/11, § 28, 20 March 2012; see also *Fábián v. Hungary* [GC], no. 78117/13, §§ 122 and 131-33, 5 September 2017). The Supreme Court emphasised in its judgment that the State payroll was one of the greatest burdens on the public finances (see paragraph 13 above). It should also be noted in that connection that the Court has on numerous occasions accepted the distinction that some Contracting States draw for pension purposes between civil servants and private employees (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 117, 25 October 2011 and the citations therein).

138. Nor can an analogy be drawn between civil servants and persons who were not in an employment relationship with the State but who were for example suppliers under contracts for services (see, *mutatis mutandis*, *Giavi*, cited above, § 52).

139. The Court finds therefore that the applicants have not shown that, as public officials or civil servants whose employment, remuneration and social benefits were dependent on the State budget, they were in an analogous or relevantly similar situation to that of the other employees they referred to. It follows there can be no claim for discrimination.

140. In view of the above, the applicants' complaint under Article 1 of Protocol No. 12 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

**FOR THESE REASONS, THE COURT,**

1. *Decides*, unanimously, to join the applications;
2. *Decides*, unanimously, to strike the applications of Ms Pantelitsa Constantinou Loizia, Ms Georgia Vyra Dionysiou and Mr Stylianos Christofi out of its list;
3. *Declares*, unanimously, the complaint under Article 6 of the Convention in applications nos. 45039/20, 45089/20, 45101/20 and 45899/20 admissible;
4. *Declares,* unanimously, the complaint under Article 1 of Protocol No. 1 in all applications admissible;
5. *Declares*, by a majority, the complaint under Article 1 of Protocol No. 12 in application no.77396/14 inadmissible;
6. *Holds*, by five votes to two, that there has been no violation of Article 6 of the Convention;
7. *Holds*, by five votes to two, that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

Done in English, and notified in writing on 13 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.
Ilse Freiwirth Registrar
Ivana Jelić President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of judge Serghides joined by judge Adamska-Gallant is annexed to this judgment.
DISSENTING OPINION OF JUDGE SERGHIDES JOINED BY JUDGE ADAMSKA-GALLANT

I. INTRODUCTION

1. This case is a landmark case for the protection of the right to property under Article 1 of Protocol No. 1 to the Convention.

2. The applications concerned interferences by the State with the pensions and salaries of officials and employees in the civil service at a time of economic crisis. They all raise issues under Article 1 of Protocol No. 1 to the Convention and four of them, namely, those with numbers 45039/20, 45089/20, 45101/20 and 45899/20 additionally raise issues under Article 6 of the Convention.

3. e respectfully disagree with our eminent colleagues in the majority who voted in favour of points 6 and 7 of the operative provisions, namely, finding that there has been no violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. Judge Serghides also disagrees that the complaint under Article 1 of Protocol No. 12 to the Convention regarding application no. 77396/14 is inadmissible, and that is why he voted against point 5 of the operative provisions.

4. We will first address the complaint under Article 1 of Protocol No. 1. Given that the complaints under Article 1 of Protocol No. 1 and under Article 6 of the Convention contain overlapping arguments, some limited repetition is both unavoidable and necessary for clarity.

II. COMPLAINT UNDER ARTICLE 1 OF PROTOCOL NO. 1

A. Relevant legal provisions

5. The applicants in all applications complained that they had unlawfully and unjustifiably been deprived of part of their salaries and pensions in violation of 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."

6. Mention should also be made of Article 53 of the Convention – a highly pertinent provision headed "Safeguard for existing human rights" – which, as will be seen, stipulates that when the domestic law (such as Article 23 of the Constitution in the present case) affords greater protection to certain rights than the Convention (for example, the right to enjoyment of property under Article 1 of Protocol No. 1 thereto), then the Convention cannot be read as limiting the higher protection afforded domestically. Specifically, Article 53 of the Convention reads:

"Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party."

7. The relevant provisions of the Constitution of Cyprus are the following:

Article 23

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right. The right of the Republic to underground water, minerals and antiquities is reserved.
2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.
3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilisation of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right. Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property: such compensation to be determined in case of disagreement by a civil court.
4. Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only -
(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and
(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and
(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court."

Article 33

"1. Subject to the provisions of this Constitution relating to a state of emergency, the fundamental rights and liberties guaranteed by this Part shall not be subjected to any other limitations or restrictions than those in this Part provided.
2. The provisions of this Part relating to such limitations or restrictions shall be interpreted strictly and shall not be applied for any purpose other than those for which they have been prescribed."
Article 169
"Subject to the provisions of Article 50 and paragraph 3 of Article 57-
...
(3) treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto."
Article 179
"1. This Constitution shall be the supreme law of the Republic.
2. No law or decision of the House of Representatives or of any of the Communal Chambers and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution."

B. Legal analysis

*1. Existence of an interference*

8. We agree with the judgment (see paragraph 106) that Article 1 of Protocol No. 1 is applicable in the present case. In our separate opinion we will refer to the deductions of salaries and pensions under Laws nos. 168(I)/12, 31(I)/13 and 94(I)/18, as well as Law no. 113(I)/2011, as "interferences" with the right to property secured by Article 23 § 1 of the Constitution and Article 1 of Protocol No. 1 to the Convention. We also refer to the Supreme Court (plenary), in *Republic of Cyprus v. Charalambous and others*, nos. 1480/2011 and others, 11 June 2014 ((2014) 3 AAD 175), and the Supreme Court (appellate jurisdiction) in *Republic of Cyprus v.Avgousti and others,* nos. 177/2018 and others, 10 April 2020, as the "domestic court".

*2. Whether the interference was lawful*

(a) The domestic legal basis as a starting point

9. Now we will turn to *the lawfulness* of the interferences. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions must be lawful (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 112, 13 December 2016). The existence of a legal basis is not in itself sufficient to satisfy the principle of lawfulness. When speaking of "law," Article 1 of Protocol No. 1 alludes to a concept which comprises statute law as well as case-law. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness (see *Anželika Šimaitienė v. Lithuania*, no. 36093/13, § 111, 21 April 2020). It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms on which deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Lekić v. Slovenia* [GC], no. 36480/07, § 95, 11 December 2018). The Court needs compelling reasons to depart from the conclusions reached by the domestic courts, and

to substitute its own views for those of the domestic court (see *Zegarac v. Serbia* (dec.), no. 54805/15, § 91, 17 January 2023), in the present case, on a question concerning the interpretation and application of the Constitution of Cyprus and the domestic law. As will be further developed below, we humbly argue that in the circumstances of the present case, such reasons do exist here.

10. The present case is one of *a highly country-specific nature* since it is intrinsically linked to the constitutional and legal framework of Cyprus. To review the lawfulness of an interference under Article 1 of Protocol No. 1, one must first reflect on the unique provisions of Article 23 §§ 1-4 of the Cyprus Constitution as the relevant provisions regulating the right to property and possibilities of interference with such right in Cyprus. It is noted that the said provisions have a clear, logical, and coherent structure.

The first paragraph of Article 23 sets out the scope of the right to property.

The second paragraph prohibits interference with the right for reasons other than those specified in Article 23.

The first sentence of the third paragraph sets out the conditions under which the right to property could be restricted and the second sentence of the third paragraph provides for compensation in the event of a material decrease in the economic value of the property.

The fourth paragraph regulates the deprivation of property.

In addition, in reviewing the legal basis for an interference, one must not lose sight of the traditional interpretation of the above paragraphs by the domestic courts. For that, we refer the reader to paragraphs 56 and 74-75 of the judgment). Accordingly, domestic jurisprudence has established that terms restricting the use of property which leave the core of the right to enjoy property intact does not constitute a deprivation but a limitation of the right. In other words, if an interference with a right has been so extensive as to essentially obliterate it, this is regarded as an act of deprivation; otherwise, it is a limitation or restriction.

11. In Cyprus, the Constitution is the supreme law of the land (Article 179 § 1 of the Constitution, cited above). With respect to the right to property, Article 23 of the Constitution provides *greater protection* than Article 1 of Protocol No. 1 to the Convention. This was explicitly acknowledged by the Supreme Court in *Charalambous* (see paragraphs 18 and 23 of the judgment). This is because the Constitution does not generally permit restrictions or limitations on the right to property on grounds of "public interest", whereas Article 1 of Protocol No. 1 allows such restrictions or limitations. Accordingly, the domestic authorities in Cyprus cannot restrict the right to property on the basis of "public interest", since no such legitimate aim or exception exists in Article 23 of its Constitution ("public interest" justifications can only apply to town and country planning and the development of property, as found by the Supreme Court in *Charalambous*, cited above). Article 23 of the Constitution affords *broader protection* for property rights than Article 1 of Protocol No. 1 and as a result Article 53 of the Convention (cited above) presupposes that constitutional standards should be taken into consideration when assessing violations of Article 1 of Protocol No. 1. Moreover, while Article 1 of Protocol No. 1 subjects property rights to "the conditions provided for by law", that reference necessarily incorporates the Constitution's standards − including those of Article 23 – into the *lawfulness test* under Article 1 of Protocol No. 1. For this reason, the issue raised by the present case must be examined in a *country-specific context*. It should also be noted that, under Article 169 § 3 of the Constitution (cited above), treaties ratified by Cyprus – including the European Convention

on Human Rights, ratified by Law no. 39/1962 – have superior force over ordinary legislation but not over the Constitution itself. Article 179 § 2 (cited above) further confirms that no law shall in any way be "repugnant" to any of the provisions of the Constitution.

12. It should be clarified that the present case must be distinguished from *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, 7 May 2013. Unlike Greece, in Cyprus – as has been shown above – "public interest" is not considered a legitimate aim for restrictions or limitations of the right to property under Article 23 § 3 of the Constitution, unless the restrictions or limitations concern town planning. Due to the absence of such restriction or limitation in the domestic law of Greece, the Court in *Koufaki and ADEDY* briefly explained that the interference was based on domestic law without delving into the matter further (ibid., § 35) and then proceeded to focus on the necessity and proportionality of the measure. Therefore, this precedent cannot apply to the present case, which precisely concerns the domestic law of Cyprus and the higher protection that the State itself has chosen to afford to property rights.

13. We respectfully argue that in the present cases, the domestic court fell into several fundamental flaws concerning the interpretation and application of the provisions of Article 23 §§ 1-4 of the Constitution, thereby in multiple respects failing to satisfy the lawfulness criterion of Article 1 of Protocol No. 1, leading to a violation of this Convention provision.

(b) Deprivation

14. *First*, in our view, the domestic courts arbitrarily characterised the interferences in question as restrictions or limitations rather than deprivations. It is our humble opinion that the interference in question could not be anything other than deprivation, since part of the salaries and pensions was compulsorily taken without being returned, with the consequence that the owners lost that part of the property for ever. Thus, in essence, the said interferences concerned partial expropriations of movable property, just as the compulsory taking of even the smallest portion of a large parcel of land by a government or other competent authority, for the purpose of aligning or widening a road, is considered to be a partial compulsory acquisition. In such cases, even if the interferences are not substantial, they constitute by their very nature deprivations, and not merely restrictions or limitations. This is one way deprivation may occur; the other is when, although the whole of the property remains intact, its utility is so severely affected by the interference that it becomes virtually useless – as happens, for example, when very heavy building restrictions are imposed. However, this is not the case here, because part of the property was compulsorily taken forever.

15. Had the domestic court correctly classified the interferences as a deprivation of property, it would undoubtedly have found them unlawful. This is because the requirements or conditions for a deprivation of property set out in Article 23 § 4 of the Constitution – the only constitutional provision dealing with deprivation – as well as the requirements of the relevant law on compulsory acquisitions[9], were not satisfied. One requirement set out in Article 23 § 4 of the Constitution that was not met in the present case is that, since the interferences were monetary in nature, the safeguard provided for in Article 23 § 4(c) of the Constitution – requiring monetary compensation (payment in cash and in advance) in cases of deprivation – could not, by its nature, be satisfied. Another requirement of Article 23 § 4(c) that was not fulfilled is that the interferences were not carried out under the law on compulsory acquisition as stipulated in Article 23 § 4(c), namely, Law no. 15/1962.

16. Consequently, because the lawfulness requirement under Article 1 of Protocol No. 1 was not met, the domestic court should have found a violation of this Convention provision, as any interference with property rights must be lawful.

(c) Restriction or limitation

17. *Second*, not only did the domestic court fail to properly characterise the interferences as deprivations, but having characterised and dealt with them as *restrictions or limitations*, it also addressed them in an arbitrary manner, bypassing the provisions of Article 23 §§ 2 and 3 of the Constitution. Therefore, even if, for the sake of argument, we were to agree with the domestic court that the interferences in the present case constituted a restriction or limitation instead of a deprivation, we would still conclude that the interferences were unlawful for the following reasons.

18. The domestic court stated that "public interest" does not form part of the legitimate aims provided for in Article 23 § 3 of the Constitution concerning restrictions or limitations, except for town planning purposes (see, in this connection, paragraph 18 of the judgment outlining the majority's findings in *Charalambous*, and also Article 33 § 2 of the Constitution, cited above, providing that restrictions or limitations to human rights shall be interpreted *strictly*). Since the present case does not concern town planning – which would justify restrictions on "public interest" grounds – then the only outcome would be that the interferences in question, which were carried out precisely for the "public interest" (securing public finances), were unlawful. Therefore, while the domestic court correctly held that "public interest" is not included in Article 23 § 3 of the Constitution, it regrettably failed to conclude that the interferences in question were unlawful under this provision and by extension that they were in breach of Article 1 of Protocol No. 1.

19. Under Article 23 § 2 of the Constitution, it is clear that any interference with property should fall either under Article 23 § 3 of the Constitution as a restriction or a limitation or under Article 23 § 4 of the Constitution as a deprivation of property. Any other form of interference should be considered unlawful. So, even if one were to accept that there was no deprivation but merely a restriction or limitation, any interference that does not pursue one of the legitimate aims set out in Article 23 § 3 would still be unlawful.

To use the words of William Schabas, "[b]y virtue of article 53, the Convention cannot be interpreted so as to prejudice the protection of human rights enshrined in the national law of a State"[10]. Both the first instance[11] and appellate courts in *Avgousti* referred to Article 53 of the Convention, making it clear that the Convention guarantees a minimum level of protection for the rights and freedoms it contains, while allowing the Contracting States to provide broader protection if they wish. In this connection, the appellate court in *Avgousti* said the following, which leaves no doubt that since the right to property is afforded greater protection under Article 23 of the Constitution than that afforded by Article 1 of Protocol No. 1, this higher level of protection is recognised by Article 53 Convention as prevailing:

"The salary and pension as a property right

Given, as common ground, that salary constitutes a property right, the first-instance court decisions highlighted and based their reasoning on the recognised (see *Charalambous* (above)) distinction between Article 23 of the Constitution and Article 1 of the Protocol. Article 1 [of Protocol No. 1] permits the restriction of a property right for reasons of public benefit, whereas Article 23.3 does not

include public interest or public benefit among the permissible grounds for limiting the right to property.

Instead, the Constitution follows a case-specific regulation that results in a 'closed list' of permissible restrictions. Consequently, in this respect, Article 23 of the Constitution affords greater protection than Article 1 of the Protocol. It is undisputed that, according to Article 53 of the ECHR and Article 53 of the Charter of Fundamental Rights of the European Union, it is not permissible to invoke a right or freedom of the ECHR in order to restrict or abolish a fundamental right already recognised by the national legal order." (unofficial translation from Greek).

The domestic court rightly acknowledged the guarantees of Article 53 of the Convention; however, it did so only in theory. In practice, the domestic court did something contradictory. While it said, on the one hand, that "public interest" cannot be invoked as a justification for the restriction of property rights under the Constitution, it proceeded, on the other hand, to examine the interference under Article 1 of Protocol No. 1 which contains "public interest" as a legitimate ground for interference with property rights. By upholding the restriction on the basis of "public interest", the domestic court – and the majority of the Court in the present case – afforded the right in question a lower level of protection than that guaranteed by the Constitution, thereby failing to give practical effect to Article 53 of the Convention. In so doing, the domestic court did not remain faithful to what is said regarding the mechanism and application of Article 53.

20. *Third*, after determining that only the right to a salary and a pension is protected under Article 23 § 1 of the Constitution – but not their quantum[12] – the domestic court held that the interferences did not affect its core, as the reductions in salaries and pensions were minor. It treated these interferences as restrictions or limitations within the meaning of Article 23 § 1 of the Constitution, without, however, applying *any lawfulness test*. With all due respect, this approach is flawed for the following reasons:

(a) Although the content of a right to a salary or a pension is comprehensive, a distinction may nevertheless be drawn between its core and the remainder of its content. Such a distinction may be relevant under Article 23 § 2 of the Constitution in determining whether an interference amounts to *a deprivation* falling under Article 23 § 4 of the Constitution, or *a restriction* or *limitation* falling under Article 23 § 3 of the Constitution. That was the right distinction drawn by the case-law prior to *Charalambous* (see paragraph 24(b) below). However, no such distinction can be used in arguing that the part of the right which is not its core is entirely unprotected and that upon it can be imposed restrictions or limitations under Article 23 § 1 of the Constitution other than those of Article 23 § 3 and without any lawfulness criteria. The mere justification given by the domestic court to leave interferences outside the protection of Article 23 § 2, namely, that the interferences did not impair the core of the property right should not be considered a valid justification, because, by definition, any restriction or limitation must not impair the core of the property right; otherwise, it would amount to a deprivation falling under Article 23 § 4 of the Constitution. Article 23 § 3 of the Constitution encompasses restrictions and limitations, ranging from minor to substantial; however, if they impair the core of the right, they fall under Article 23 § 4 of the Constitution as deprivations. The most important point to be underlined is that Article 23 of the Constitution does not provide for any restrictions or limitations other than those stated in paragraph 3 of the said Article.

(b) If a restriction or a limitation were to be assessed under Article 23 § 1 of the Constitution merely because it does not affect the core of the right, as the domestic court did, this would, with respect, disregard the wording and purpose of Article 23 §§ 2 and 3. The dichotomy between deprivations and restrictions or limitations is critical in maintaining the hierarchy, internal coherence and integrity of the legal framework established by the relevant paragraphs of Article 23 of the Constitution. In other words, to allow, as the domestic court does, a limitation to be applied under Article 23 § 1 solely on the basis that it does not impair the core of the property right, would circumvent the internal structure of Article 23 and would undermine the distinct roles and hierarchy assigned to Article 23 §§ 2, 3 and 4. Such an approach blurs the necessary legal boundaries between limitations and deprivations and risks eroding the protections that the constitutional legal system is designed to safeguard in respect of property rights. The blurring of constitutional provisions protecting the right to property is fundamentally inconsistent with the interpretative method mandated by Article 31 of the 1969 Vienna Convention on the Law of Treaties (VCLT), applied by analogy in the present case. Article 31 requires that legal texts be given their ordinary meaning, read in context and in the light of their object and purpose. To merge distinct constitutional guarantees into one another disregards these interpretative principles, producing an arbitrary and unpredictable standard that undermines legal certainty. It also empties the property clause of its independent content and protective force, leaving individuals without a clear safeguard against unjustified interference. The interpretation given by the domestic court does not have a basis under the current constitutional provisions and it would not have unless the Constitution were to change. But even in that case it would not be prudent to have two categories of restrictions and limitations – one under paragraph 3 and the other under paragraph 1. If the legislature had intended this, it would simply have amended paragraph 3 of Article 23 – as it is not a "basic" constitutional provision under Article 182 § 2 of the Constitution – to include "public interest" as a legitimate aim. (While paragraph 3 of Article 23 of the Constitution is not a "basic" constitutional provision, paragraph 4 (c) of Article 23 of the Constitution is).

(c) The domestic court's approach resulted in accepting that the restrictions or limitations under Article 23 § 1 of the Constitution would, in fact, be completely *free from any conditions* (unconditional), despite the explicit provision of Article 23 § 3, which deals *expressly* and *exclusively* with restrictions and limitations and places certain conditions on them, not leaving room for any additional restrictions or limitations or corresponding conditions. To put it otherwise, the domestic court, by arbitrarily characterising and classifying the interferences as restrictions or limitations under Article 23 § 1 in relation to the right to property, left the right not only with less protection than it would enjoy under Article 1 of Protocol No. 1 itself, but effectively unprotected altogether. Since paragraph 1 of Article 23 of the Constitution does not provide for restrictions or limitations – this being done *only* in paragraphs 2 and 3 of Article 23 – it also does not set any conditions for such restrictions or limitations, such as the criteria of necessity, lawfulness or legitimate aim. Consequently, such restrictions or limitations may be applied without any basis in legislation and subject solely to the arbitrary will of the executive and contrary to the principle of separation of powers which is established by Article 35 of the Constitution.

Effectively, the new approach proposed and applied by the domestic court creates another oxymoron. What the domestic court did was to exclude the right to a salary or pension from the

protection of Article 23 of the Constitution, as long as the "core of that right" (without defining what that "core" is) remained unaffected. In other words, the domestic court is saying that as regards salaries and pensions, only the core of that right falls within the scope of Article 23. If then the rest of the right to a salary (meaning anything other than the core) is not protected by Article 23, why did the domestic court proceed with a proportionality assessment? If the core of the right was not engaged, and no protection was merited under Article 23, then a proportionality assessment should also not be engaged.

If one were to argue that the criterion to be applied under Article 23 § 1 to justify placing any restriction or limitation there is that the "core of the right" must remain unaffected, this would still be tantamount to the judiciary replacing the constitutional legislator by adding criteria not originally envisaged in that paragraph. That result, however, would be absurd and contrary to the text and aim of the Constitution, the supreme law of the Republic.

(d) It is clear from the above, that although the provision of Article 23 expressly and exclusively lists the legitimate aims it covers, without including "public interest", the domestic court has, nevertheless, acknowledged "public interest" indirectly by relying on the provision of Article 23 § 1, which is entirely irrelevant and does not concern restrictions or limitations on rights.

21. To illustrate more clearly the inherent inconsistency and arbitrariness of such reasoning, it is sufficient to consider the following parallel. Where two provisions within the same Article of the Constitution (Article 23 §§ 2 and 3) clearly provide that a restriction or limitation based on "public interest" is impermissible, it cannot fall within the competence of a court to render such a restriction or limitation lawful by invoking unfounded and unreasonable justifications. An instructive analogy may be drawn from the field of criminal law: where the Criminal Code expressly prohibits certain conduct, it would be incompatible with the rule of law for a court to declare that conduct non-criminal by judicial fiat, through the invention or introduction of excuses lacking any basis in law.

22. While the domestic court's concern was to uphold the legality and constitutionality of wage-reduction and pension-reduction measures during a period of financial difficulty, in the name of the public interest, an interpretation and application of constitutional provisions have emerged, that are, regrettably, misguided. It should always be remembered, however, that the Constitution must remain the highest legal authority and should not be compromised or set aside in response to temporary national difficulties. Otherwise, the rule of law and the very principles of democracy may be endangered.

23. By way of conclusion, as with our findings regarding interferences amounting to deprivation, so too when dealing with interferences in the form of restrictions or limitations, the unavoidable conclusion is that, because the lawfulness requirement under Article 1 of Protocol No. 1 was not met, the domestic court should also have found a violation of this Convention provision, since any interference with property rights must be lawful.

(d) Foreseeability and legal certainty

24. In the previous section we established that the domestic court's interpretation and application of the constitutional provisions were fundamentally flawed and by extension failed to uphold the "lawfulness" requirement of Article 1 of Protocol No. 1. There is however another aspect of the "lawfulness" requirement that was breached and should be examined. This is the lack of

foreseeability and legal certainty due to conflicting case-law of the domestic court which will be discussed below, particularly when we review the Article 6 complaint.

(a) We reiterate here, for the sake of convenience, the legal principles set out in paragraph 10 above. From the domestic case-law provided in *Charalambous* and *Avgousti* (both cited above), in both the majority and minority judgments, it is evident that prior to *Charalambous*, the domestic courts interpreted and applied the provisions of Article 23 of the Constitution as follows. The first paragraph of Article 23 set out the scope of the right to property. The second paragraph prohibited interference with the right for reasons other than those specified in Article 23. The first sentence of the third paragraph set out the conditions under which the right to property could be restricted and the second sentence of the third paragraph provided for compensation in the event of a material decrease in the economic value of the property. Under the established judicial practice, the courts would first need to establish whether the restriction had been provided for by law. They would then need to establish whether the restriction had been based on one of the grounds set out in that paragraph (public health, morals, etc), with the grounds of "public interest" being available only for town planning purposes. If both criteria had been fulfilled, the courts would then examine the proportionality of the restriction. The fourth paragraph regulated the deprivation of property.

(b) The theory of the "core" of the right had been used to distinguish between deprivations and restrictions or limitations: if the interference with the right had been so extensive as to essentially obliterate the right, the interference was regarded an act of deprivation (whereby Article 23 § 4 applied), otherwise it was a restriction or limitation (whereby Article 23 § 3 applied).

(c) The court in *Charalambous* introduced, for the first time, the idea that as regards the right to a salary – which fell within the ambit of Article 23 – the constitutional protection merely covered the core of that right, or protected the right from substantial reduction since essentially Article 23 did not guarantee a right to a salary of a particular amount. This conclusion was later also adopted by the majority in *Avgousti* as regards both the right to a salary and the right to a pension. In other words, the right to a salary or pension could be limited, but not to the extent that the right would be rendered void. The majority in both cases noted that the small reduction imposed in the form of a special contribution did not render the right to the said property (whether salary or pension) devoid of any effect and as such it did not constitute a deprivation. Some dissenting judges considered that the deduction of a special contribution was not merely a restriction but in fact deprived the applicants of that part of their property as it was never meant to be returned.

(d) If the majority in the domestic court were right in considering that the interference did not constitute a deprivation (thus ruling out the applicability of Article 23 § 4), the interference, however small, still constituted a restriction or limitation of the right (thus, attracting the applicability of Article 23 § 3). It appears – from the judgment in *Koutselini-Ioannidou* (no. 740/2011, 7 October 2014 (2014) 3 AAD 361), the first-instance court judgments, the applicants' arguments and the minority judges' reaction – that, as a logical consequence flowing from the case-law at the time, including that on the "core of the right to property" and the numerical hierarchy of the constitutional provisions, if the interference did not constitute a deprivation, it would, as a restriction on or limitation of the right, be assessed under Article 23 § 3 as the *only* constitutional provision regulating the restriction or limitation of movable or immovable property. This is especially so, given that the range of protection under Article 23 of the Constitution did not – according to the domestic courts – vary

depending on the type and nature of the property – whether movable or immovable (see paragraph 17 of the judgment).

(e) Instead, having found that only the core of the right to a salary or pension was protected by the Constitution, the domestic court in *Charalambous* and *Avgousti* (both cited above) concluded that the small special contribution did not merit examination under Article 23 § 3, and that it had been necessary and justified in the public interest (citing the economic crisis).

(f) It is to be noted in this connection that in justifying this departure, the majority in both cases cited case-law of this Court in respect of Article 1 of Protocol No. 1 to the Convention. However, Article 23 of the Constitution is not identical to Article 1 of Protocol No. 1 to the Convention. Nor was the domestic courts' practice as regards the application of Article 23 of the Constitution similar to this Court's practice as regards the application of Article 1 of Protocol No. 1 to the Convention. For example, unlike the established domestic practice for Article 23 of the Constitution which required the domestic courts to choose between paragraphs 3 or 4 of Article 23 depending on the nature of the interference, under this Court's case-law, the Court is not required to specifically choose whether an interference should be examined under the general principle of the peaceful enjoyment of property comprised in the first rule of Article 1 of Protocol No. 1 or in the context of deprivation of property in the second rule of that provision (see, among many examples, *Credit Europe Leasing Ifn S.A. v. Romania*, no. 38072/11, § 71, 21 July 2020). Nevertheless, despite the above differences, the majority in *Avgousti* performed a fair balance assessment in the manner that the Court would under Article 1 of Protocol No. 1, without engaging the third paragraph of Article 23 of the Constitution, which appears according to the established domestic case-law and practice at the time to have been the specific paragraph in the Cyprus Constitution regulating instances of restriction or limitation of rights in respect of both movable or immovable property, and which constituted a significant difference between Article 1 of Protocol No. 1 to the Convention and the Constitution.

(g) Considering the differences between Article 23 of the Constitution and Article 1 of Protocol No. 1 to the Convention, as also identified by the domestic court, and in the light of the fact that with the new interpretation the court essentially enabled the State to bypass the stricter provisions of paragraph 3 of Article 23 which, as interpreted by the domestic court, do not allow the restriction of property rights on "public interest" grounds (with the exception of specific areas such as town planning which are not relevant to the present context), the domestic court was expected to provide a more substantial statement of reasons in both judgments – instead of simply referring to this Court's case-law – justifying the departure from the text of the law, to ensure compliance with the principles of legal certainty and foreseeability (see, *mutatis mutandis*, *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010). See more on the criticism in paragraph 24(j) below.

(h) Similarly, in the absence of sufficient reasoning as to why the court would not follow the hierarchy of the constitutional provisions as traditionally applied, the domestic court's assessment in *Charalambous* (cited above) holding, on the one hand, that the deduction of an extraordinary contribution from the applicants' salaries could not be justified on the basis of Article 23 § 3 for reasons of public interest and, on the other, that the reduction had been in the public interest and necessary for reducing the budgetary deficit, had not been foreseeable.

(i) It should also be emphasised that the new approach introduced in *Charalambous* was unforeseeable *per se* and also unforeseeable in its subsequent application by the domestic courts. Specifically, after the *Charalambous* judgment, the Supreme Court plenary, following the earlier established practice, held in *Koutselini-Ioannidou* (cited above) that the "suspension" of pensions in the sense of either losing the pension entirely or receiving a lower pension if the pensioner had another public sector job had not been in conformity with the Constitution, which provided higher protection than Article 1 of Protocol No. 1, as Article 23 § 3 did not allow the restriction of property rights for the public benefit.

(j) The domestic court in *Avgousti* (cited above) subsequently declined to follow the latest precedent set out in *Koutselini-Ioannidou* (cited above). The Government argued that in doing so, the domestic court had not departed from *Koutselini-Ioannidou,* but rather had distinguished it (see paragraph 91 of the judgment), by considering that, unlike *Koutselini-Ioannidou*, the applicants had not lost their property forever and that Laws nos 112(I)/2011 and 168(I)/2012 did not remove the applicants' salaries or pensions entirely. That has also been accepted by the majority in this Court, while acknowledging, however, that the domestic courts have varied their approaches in their decisions (see paragraph 102 of the judgment). We humbly submit that such reasoning as to a variation of approaches is unconvincing in the light of the fact that, like *Koutselini-Ioannidou,* where the interference would last as long as the person had a public sector job, similarly in *Charalambous* and *Avgousti* (both cited above) the relevant laws had no fixed expiry date and could potentially apply for as long as necessary for the consolidation of the public finances. At the same time, neither the law affecting the pensions of the civil servants in *Koutselini-Ioannidou,* nor the laws affecting the applicants in the present case provided for the return of the amounts deducted. In addition, similar to the present case, where the applicants suffered a reduction in their salaries or pensions, we observe that *Koutselini-Ioannidou* concerned not only the total cancellation of pensions of serving officials but also a reduction in the pensions of those whose salary while in office had been less than their pension (see paragraph 70 of the judgment).

In the light of the above similarities, we consider that the domestic court failed to provide a sufficiently reasonable explanation for the divergence in its approach between the two cases (see, *mutatis mutandis, Brezovec v. Croatia,* no. 13488/07, §§ 64 and 67, 29 March 2011).

Therefore we respectfully disagree with the majority's finding that "the Supreme Court ... set out a comprehensive interpretation of the relevant legislation and resolved any ambiguities" (see paragraph 121 of the judgment).

Our disagreement stems from our view that the cases in question were virtually the same as to their facts (in all cases pensions or salaries were diminished for a public purpose) and that even if that were not so, in all three cases the Supreme Court was interpreting a single legal issue. Specifically, in all three cases the legal issue was the interference with movable property rights, whether salary or pension, the scope of the protection offered by Article 23 of the Constitution, and the test to be applied when an interference with a property right is challenged.

We respectfully submit that it is difficult to reconcile the notion that *a single constitutional provision* – such as Article 23 § 3 of the Constitution – could be interpreted and *applied differently* when the legal issue *is identical* and the facts *are substantially the same*, as in the present case, concerning the taking of a portion of the pensions or salaries of public servants. Such inconsistency results in undermining

the coherence of interpretation and application of the Constitution and, ultimately, in the failure to apply the correct constitutional provision. This renders the interference unlawful within the meaning of Article 1 of Protocol No. 1 to the Convention, as the lawfulness requirement presupposes that the applicable constitutional provisions are not interpreted in an absurd manner and are applied in a foreseeable and consistent manner.

One last but very important point which needs clarification: *The interpretation of a constitutional provision, in this case, Article 23 § 3 of the Constitution, does not change according to the particular facts of each case.* What may vary is its application – depending on whether the facts of a case fall within the scope of that provision or not. For if the Court were to accept that the interference is a deprivation, then Article 23 § 3 would not apply but the provision of Article 23 § 4 would apply instead. A court may depart from its previous interpretation only when it is convinced that its earlier decision on the interpretation of a legal instrument, in the present case the Constitution, was clearly wrong, and in such case, it must provide clear reasoning for doing so. In the present case, however, this did not happen.

In sum, the domestic court and the majority in this Court, with all due respect, fell into, *inter alia*, the following fundamental errors. First, they considered the facts of the cases to be different, while they were substantially the same. Second, they erroneously considered that the meaning of constitutional provisions may change according to the facts, while the legal issues are the same. Third, they considered that they could disregard the constitutional provision directly relevant to the matter (Article 23 § 3) — the application of which would have inevitably led to a finding of a violation — and instead rely on another constitutional provision (Article 23 § 1) that was entirely irrelevant, in order to justify a conclusion of no violation. Fourth, they engaged in a manifestly unreasonable interpretation and application of the Constitution in order to conclude that there had been no violation of Article 23 of the Constitution. Lastly, the significant and consequential changes in the case-law (pre-*Charalambous* case-law to *Charalambous*, *Charalambous* to *Koutselini-Ioannidou*, and *Koustelini-Ioannidou* to *Avgousti*), by rotation, leading from violation to no violation of the Constitution, which have led to the current interpretation in *Avgousti* based on a manifestly unreasonable reading, were indeed uncertain and unforeseeable. The interpretation given in *Avgousti*, like that in *Charalambous*, failed to satisfy the legal standards of reasonableness, non-arbitrariness, foreseeability and legal certainty, and was therefore unlawful.

(k) Accordingly, and although the Court's power to review compliance with domestic law is limited as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, as explained above, we respectfully conclude that the domestic court's approach lacked sufficient reasoning, precision and consistency (see, *mutatis mutandis, Anželika Šimaitienė*, cited above, § 113). The applicants could legitimately expect the domestic courts to take a reasonably consistent approach to interferences as those with their immovable property, and, in the absence of such consistency, to give a sufficient explanation for the differences in approach (see, *mutatis mutandis, Jokela v. Finland*, no. 28856/95, § 65, ECHR 2002-IV). To reiterate and emphasise, the domestic court failed, in both *Charalambous* and *Avgousti* (both cited above), to provide a reasonable explanation for justifying its departure from the previous established case-law and practice and it failed to interpret the Constitution consistently in order to avoid the risk of unforeseeable or

arbitrary results for property owners and to enable individuals to foresee the consequences of their actions (see *Aliyeva and Others v. Azerbaijan*, nos. 66249/16 and 6 others, § 134, 21 September 2021).

(l) The above discussion shows that the requirements of foreseeability and certainty, inherent in the criterion of lawfulness, were not satisfied, owing to conflicting precedents that rendered the legal framework unpredictable and unclear. The unforeseeability and uncertainty were aggravated not only by the conflicting precedents but also by the unreasonable and constitutionally incompatible interpretations previously adopted by the domestic court.

(m) The foregoing considerations are sufficient to enable us to conclude that the relevant deductions were not lawful for the purposes of Article 1 of Protocol No. 1. The domestic court's assessment, which essentially bypassed the constitutional restrictions, was manifestly arbitrary and unreasonable. In this connection, we wish to note the majority's failure to recognise such arbitrariness in the present judgment.

25. In our view there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention, on account of the lack of foreseeability and legal certainty resulting from the conflicting case-law of the domestic courts.

26. This finding normally makes it unnecessary to examine 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' fundamental rights. However, for the sake of completeness, and considering the domestic courts' assessment as well as the majority's assessment in this respect, we will proceed to examine that issue as well.

*3. Proportionality*

27. The domestic court engaged in a flawed discussion about the proportionality of the interference (see paragraphs 22-23 of the judgment concerning *Charalambous and others* and paragraph 46 of the judgment concerning *Avgousti and others*), in coming to its conclusion. As it said in *Avgousti*, the domestic court took into account the fact that the State had been under extreme financial strain; that the reduction in salaries and pensions was moderate, effective, and proportionately equal; that these reductions diminished over time; that they were made in accordance with the law and did not affect the core right to salary and pension or endanger the applicants' living standards; and that they did not constitute a deprivation of property.

28. It should be noted at the outset that these general considerations do not constitute a proper proportionality assessment. A thorough proportionality assessment would require assessing the extent of the interference, namely what amount was taken and for how long, for each applicant separately, and deciding whether the interference was proportionate according to each person's means, living conditions, etc. While the percentages of 1.5% to 3.5% affecting the applicants in *Charalambous*, or 0.8%-17.5% affecting the applicants in *Avgousti* (cited above) may, compared to austerity measures adopted in other countries, seem low[13], nonetheless their impact on each individual applicant may differ and should be assessed on a case-by-case basis. The same flawed approach was applied by the majority in the present case in their finding of no violation of Article 1 of Protocol No. 1.

29. As a result, the test actually performed was better than nothing, but the problem remains that it was made without a constitutional legal basis and under the wrong constitutional provision, and without any lawfulness criteria. In the present case, it happened to be a law which imposed the

interferences, but it could happen that interferences are imposed by the executive, without a legal basis, and the executive could then act without restraint. Thus proportionality considerations alone cannot solve every problem or justify every decision. It is important to note that the Government simply invoked extreme financial strain, without invoking the law of necessity as a legal justification for bypassing the provisions of the Constitution. The law of necessity is inherent in the Cyprus Constitution. This is a principle of international law enshrined in the Constitution that allows a State to temporarily disregard certain obligations when it is the only way to protect essential interests threatened by a grave and imminent peril. For the defence of necessity to apply, several strict conditions must be met. However, since the question was not raised and the Court did not examine it, any further discussion on the law of necessity is unwarranted.

30. We would therefore conclude that there has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention, on account of the failure to conduct a proportionality test.

III. COMPLAINT UNDER ARTICLE 6

31. The applicants in applications nos. 45039/20, 45089/20, 45101/20 and 45899/20 complained that their right to a fair hearing had been violated by the Supreme Court's failure in *Avgousti* to follow established case-law, contrary to Article 6 of the Convention, which provides:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

32. The principles for dealing with alleged violations of Article 6 § 1 of the Convention where the case-law of domestic courts is inconsistent are summarised in *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016 and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-58, 20 October 2011.

33. The criteria for assessing situations in which divergent decisions by different domestic courts or by the same court of last resort entail a violation of the fair-trial requirement enshrined in Article 6 § 1 of the Convention consist in establishing: firstly, whether there are profound and long-standing differences in the case-law of those courts; secondly, whether there is a mechanism in domestic law for resolving such inconsistencies; and thirdly, whether that mechanism has been used and, if appropriate, to what effect (see, among many authorities, *Lupeni Greek Catholic Parish and Others*, § 116, and *Nejdet Şahin and Perihan Şahin* §§ 53-55, both cited above).

34. The present case involves an alleged inconsistency in the case-law of a court of last resort (see *Lupeni Greek Catholic Parish and Others*, cited above, § 117; *Tudor Tudor v. Romania*, no. 21911/03, § 29, 24 March 2009; *Beian v. Romania* (no. 1), no. 30658/05, § 38, ECHR 2007-V).

35. An analysis of the relevant domestic practice shows a divergence in the case-law of the plenary of the Supreme Court as regards the scope of the protection offered by Article 23 of the Constitution and the test to be applied when an interference with a property right is challenged.

36. Jurisprudence had established that terms restricting the use of property that left the core of the right to property intact did not constitute a deprivation of the right but a limitation on it. Restrictions would result in a deprivation only when they rendered the property unusable. In other words, if an interference with the right had been so extensive as to essentially obliterate the right, it was regarded as an act of deprivation (and Article 23 § 4 applied); otherwise, it was a restriction or limitation (and Article 23 § 3 would apply).

37. The divergence in question arose in June 2014 when the Supreme Court in *Charalambous* departed for the first time from previously established case-law, under which interferences which left the core of the right to property intact constituted a restriction of that right to be examined under Article 23 § 3, the *only* provision of the Constitution which regulated restrictions on the right to property and which defined whether the extent of the restriction was such as to merit awarding the affected party damages (see paragraphs 56, 74 and 75 of the judgment, as well as paragraph 10 of this dissenting opinion for an outline of the principles which applied prior to *Charalambous*). The Supreme Court in *Charalambous* held for the first time that since the core of the right to property (and in that case specifically the right to a salary) remained intact, there was no need to apply Article 23 § 3. The domestic court found the interference in that case to be minimal, proportionate, and justified on account of the State's dire financial position.

38. We observe, at the outset, that case-law development is not, in itself, contrary to the proper administration of justice, since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see, among many authorities, *Nejdet Şahin and Perihan Şahin*, cited above, § 58). Nonetheless, we humbly submit that the domestic court did not develop a perceptible line of case-law; rather, it fundamentally altered its methodology on the interpretation and application of Article 23 of the Constitution. In doing so, the domestic court in *Charalambous* did not seriously comment on the previously established case-law and practice. Other than explaining that there was no right to a specific amount of salary, the court did not give reasons why even a small reduction in a person's salary might not be examinable under Article 23 § 3 of the Constitution, although that was the only constitutional provision dealing with restrictions to the right to property (whether movable or immovable). According to the well-established jurisprudence, a duty is imposed on the domestic court to make a more substantial statement of the reasons justifying a departure from established case-law (see *mutatis mutandis*, *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010). That court should also have given the applicants a more detailed explanation of why in their case a different test (namely a broad application of Article 23 § 1 instead of applying the specific provisions of Article 23 § 3 regulating restrictions in general) was applied.

39. Subsequently in October 2014, in *Koutselini-Ioannidou*, the Supreme Court plenary applied the approach that had been used prior to *Charalambous* and therefore found that the interference with the complainants' right to a pension constituted a restriction and so had to be examined under Article 23 § 3 of the Constitution, which set out the terms for restricting the right to property (and, in that case, specifically the right to a pension). The domestic court held that since the "public interest" was not included in the list of justifications in Article 23 § 3 of the Constitution, the interference with the applicants' pension rights purportedly for reasons of public benefit, was unconstitutional.

40. Sometime later, in the judgments issued in 2018 and 2019, the Administrative Court (first instance jurisdiction) followed *Koutsellini-Ioannidou* (cited above) and the previously established approach, while the Supreme Court in *Avgousti* (judgment of April 2020) followed *Charalambous*. The Supreme Court in *Avgousti,* as said above, declined to follow *Koutselini-Ioannidou* (cited above), distinguishing it on the facts because it found that the interference in *Koutselini-Ioannidou* had been permanent and the complainants in that case had lost all or part of their pensions. The reasons given

for the decision of the majority in *Avgousti* were that the applicants in that case had only suffered a restricted reduction to their salaries or pensions which had only lasted for a limited period. However, it should be noted that similar to *Koutselini-Ioannidou*, the impugned laws affecting the applicants in *Charalambous* and *Avgousti* did not have a defined expiry date. In fact, Law no. 112(I)/2011 and Law no. 168(I)/2012 remained in force for a significant length of time, namely for over five and ten years respectively. In addition, neither law provided for the restitution of the deducted amounts. Lastly, similar to the present cases where the applicants suffered a reduction in their salaries or pensions, it is to be noted that *Koutselini-Ioannidou* concerned not only the cancellation of pensions of serving officials but also a reduction in the pensions of those whose salary while in office had been less than their pension.

41. It should be remarked that the domestic court delivered judgments that were diametrically opposed on the same subject, namely interference with movable property rights, whether to a salary or a pension. It needs to be recalled that divergences in case-law constitute, by their very nature, the inherent consequence of any judicial system which is based on a set of lower courts having authority over their territorial jurisdiction. However, as we underscore, the role of a supreme court is precisely to resolve such contradictions (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII). Consequently, if a divergent practice develops within one of the highest judicial authorities in the country, that authority itself becomes a source of legal uncertainty, thereby undermining the principle of legal certainty and reducing public confidence in the judicial system.

42. In this connection, it should be noted that in neither the first case (*Charalambous*) nor in the last case (*Avgousti*) did the Supreme Court comment on the case-law and practice that had been established before *Charalambous*. Each panel of the Supreme Court merely relied on its own precedents without giving sufficient reasons for taking a different approach from the others. The Supreme Court failed to specify in which circumstances interferences with pension or salary rights should be assessed through the methodology established in *Koutselini-Ioannidou* (and earlier case-law prior to *Charalambous*), and in which circumstances the approach developed in *Charalambous* and subsequently adopted in *Avgousti* should be applied. We therefore consider that these disparities in judicial interpretation cannot be regarded as part of an evolving case-law, which is an inherent trait of any judicial system (see *Lupeni Greek Catholic Parish and Others*, cited above, § 126).

43. As we said above, we respectfully disagree with the majority finding that "the domestic courts gave a reasonable explanation for the varied approaches in their decisions explaining the differences between *Charalambous*, *Koutselini-Ioannidou* and *Avgousti*" (see paragraph 102 of the judgment). For the avoidance of repetition, we refer the reader to paragraph 24(j) of this opinion.

44. The divergence concerned not a secondary matter but a *pivotal aspect* of the cases, namely the determination of what circumstances allowed the State to restrict a person's property rights and what the safeguards were. We, therefore, find the divergences in the interpretation of the scope of Article 23 of the Constitution *to be profound*. In our view, those two divergent interpretations as to the scope of application of the provisions of Article 23 of the Constitution inevitably created a situation of uncertainty in the case-law which undermined the principle of legal certainty (see, *mutatis mutandis, Ferreira Santos Pardal v. Portugal*, no. 30123/10, § 49, 30 July 2015).

45. Turning to the question whether the divergences in the case-law *were "long-standing"*, the specific circumstances of each case must be considered, such as the time frame during which the divergence in case-law has persisted (see *Mariyka Popova and Asen Popov v. Bulgaria*, no. 11260/10, § 43, 11 April 2019), the number of opportunities that the domestic courts have been given to express their view on the relevant matter within that time frame (see *Svilengaćanin and Others v. Serbia*, nos. 50104/10 and 9 others, § 81, 12 January 2021) and the scale of the divergence (see *Albu and Others v. Romania*, nos. 34796/09 and 63 others, § 38, 10 May 2012 and *Tudor Tudor*, cited above, § 31).

46. It should be underlined that the first divergent decision dates from June 2014 when *Charalambous* was decided, and that this situation still persisted in April 2020, when the applicants' case was decided by the Supreme Court in *Avgousti*. In our view that period of time (almost six years) should be seen as significant, especially when taking into account the large number of cases relating to the austerity measures adopted by the Government; the large category of potential applicants (namely anyone employed in the public sector whose salary or pension was affected); and the fact that State interference with personal property rights is potentially an issue of widespread relevance[14]. We therefore find the divergences in the case-law in the present case also *to have been long-standing*.

47. We observe that the applicants *were not able to have the ambiguity* in the practice of the national court *dealt with* by applying to a higher court since judgments of the Supreme Court *were final and not subject to appeal*. Even when the Supreme Constitutional Court was set up in 2023 there was no such option available to the applicants as the Constitutional Court could only review matters of conflicting case-law from the newly established Court of Appeal and not from the former Supreme Court acting under its appellate jurisdiction.

48. The foregoing considerations are sufficient to enable us to conclude that the requirements of legal certainty were not satisfied in the present case. Legal certainty is a fundamental aspect of fairness and an essential guarantee of the right to a fair trial. The law and judicial process must be predictable and consistent; otherwise, the fairness of the trial is undermined.

49. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. REMAINING COMPLAINTS

50. Judge Serghides disagrees with the finding of the majority that the complaint under Article 1 of Protocol No. 12 to the Convention regarding application no. 77396/14 is manifestly ill-founded and must be rejected. Very briefly, he finds that there has been a violation of that provision, because the fact that the applicants, as civil servants, are paid from public funds could not justify differential treatment compared with employees in the private sector. The fact that they received their salaries from different sources did not mean that they were not in an analogous or relevant situation within the meaning of Article 1 of Protocol No. 12. What makes them analogous is that they are all employees within the same country; they earn their living through employment in the same national economy, contribute to the same fiscal system, and are equally affected by the State's economic policies. Any justification for reducing their salaries and pensions should be consistent. In economic terms, both categories are "in the same boat"; consequently, singling out only civil servants for salary or pension deductions amounts to differential treatment of similarly situated persons and imposes a disproportionate burden on one category of employees, civil servants, for a problem originating in the general economy.

51. Since we are in the minority, we will refrain from examining any issues of pecuniary and non-pecuniary damage as well as costs and expenses.

## V. GENERAL CONCLUSION

52. As said in the beginning, the present case is *highly country-specific* due to Cyprus' unique constitutional provisions on the right to property which *give more protection* to this right *than* Article 1 of Protocol No. 1 does.

53. Concerning the Article 1 of Protocol No. 1 complaint, we respectively argue that the domestic court fell into several fundamental flaws concerning the interpretation and application of the provisions of Article 23 §§ 1-4 of the Constitution, thereby in multiple respects failing to satisfy the lawfulness criterion of Article 1 of Protocol No. 1, leading to a violation of this Convention provision. We also argue that there has been a violation of this provision due to the lack of foreseeability and legal certainty created by conflicting case-law of the domestic court. We further question the approach of the domestic courts, as well as the majority's approach, as regards the proportionality test.

54. As to the Article 6 complaint, we humbly submit that, due to conflicting case-law and a lack of reasonable explanation for such divergence, the requirements of legal certainty have not been met, resulting in a violation of Article 6 § 1 of the Convention.

55. As said in the introduction to this opinion, the present case is a landmark case for the effective protection of the right to enjoy property – a fundamental principle of the rule of law – under Article 1 of Protocol No. 1 and under Article 23 of the Cyprus Constitution. Regrettably, however, the judgment of the Court is unconvincing and falls short of the high standards expected for the protection of the right to the enjoyment of property under Article 1 of Protocol No. 1, and especially the even higher standards of protection required by Article 23 of the Constitution, which by virtue of Article 53 of the Convention are embedded in the lawfulness criterion of Article 1 of Protocol No. 1. Our concern lies not only in the outcome, but also in the message it sends: that States may interfere with property rights without fulfilling the lawfulness requirement. This has the potential to set a worrying precedent for Council of Europe member States that could erode the safeguards which Article 1 of Protocol No. 1 was designed to provide. This opinion allows us not only to express our views on how the present applications should have been resolved, in accordance with the mandates of the Convention, but also to send a signal as to how property rights should be protected, the rule of law upheld, and human dignity safeguarded, thereby helping to avert future conclusions that might undermine these fundamental principles.