

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

FORMER THIRD SECTION

CASE OF PHILIPPOU v. CYPRUS

(Application no. 71148/10)

JUDGMENT

STRASBOURG

14 June 2016

FINAL

17/10/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Philippou v. Cyprus,

The European Court of Human Rights (Former Third Section), sitting as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 24 May 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 71148/10) 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 a Cypriot national, Mr Tassos Philippou ("the applicant"), on 16 November 2010.

2. The applicant was represented by Mr A. Demetriades and Mr G. Seraphim, lawyers practising in Nicosia. The Cypriot Government ("the Government") were initially represented by their Agent Mr P. Clerides, Attorney-General of the Republic of Cyprus, and subsequently by Mr C. Clerides, his successor.

3. The applicant alleged that the forfeiture of his pension rights following his dismissal from the public service by the Public Service Commission ("the PSC") had been in breach of Article 1 of Protocol No. 1, and that he had been a victim of discrimination on the basis of his marital status in breach of Article 1 of Protocol No. 12 and Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

4. On 21 January 2013 these complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born on 30 August 1949 and lives in Nicosia.

A. Background to the case

6. The applicant was employed at the Department of Lands and Surveys on 1 December 1971. On 1 January 1996 he was promoted to the position of assistant officer and on 2 February 1998 he was authorised by the director of the department to sign payment orders as authorising officer. On 13 May 2002 a complaint was made by the director following an irregularity in a compulsory acquisition case. It emerged from the investigation that a series of cheques had been issued as alleged compensation to owners of land that had been compulsorily acquired, but that the cheques had never reached the payees named on them.

7. A number of criminal proceedings were brought against the applicant and an accomplice. It also appears that a third person was charged but those proceedings were terminated following the filing of a *nolle prosequi* by the Attorney-General. The proceedings against the applicant involved a total of 223 criminal charges.

8. On 18 January 2005 the applicant received concurrent sentences ranging from two to five years' imprisonment from the Nicosia Assize Court (no. 18115/02) on a plea of guilty, following a plea bargain to twenty-four charges concerning a number of offences. These included, *inter alia*, obtaining the amount of 225,643.67 Cyprus pounds (CYP) (approximately 390,000 euros) by false pretences, issuing false documents, forging cheques, abuse of office, and concealment. Part of the agreement reached between the parties was that the applicant would repay the sum of CYP 150,000 (approximately 255,000 euros), and a confiscation order for that sum was issued in respect of his property. In imposing the sentences the Assize Court also took into consideration another eight cases pending against the applicant before it as well as the District Court of Nicosia.

9. The applicant lodged an appeal with the Supreme Court against his sentence (criminal appeal no. 22/05).

10. Following the applicant's conviction, and having received the Attorney-General's advisory opinion that the offences committed involved dishonesty or moral turpitude, the PSC instituted disciplinary proceedings against the applicant. Similar proceedings were also instituted against his accomplice, on whom the PSC imposed compulsory retirement pursuant to section 79(1)(i) of the Public Service Law of 1990 (Law 1/1990; hereinafter "the Public Service Law"; see paragraph 43 below).

11. By a letter dated 13 April 2005 the PSC informed the applicant of the Attorney-General's opinion and invited him to appear before it on 17 May 2005 and to make representations before proceeding with the imposition of a disciplinary penalty.

12. The PSC convened on 17 May 2005. The applicant's lawyer requested a month to prepare his pleadings, as he had only recently been

appointed and in view of the special nature of the case. The PSC granted the request.

13. On 13 June 2005, the applicant, who was represented by a lawyer, was heard by the PSC. He put forward a number of mitigating factors, which included his dire financial situation following suspension from his duties, the fact that he had paid off most of the sum agreed upon with the authorities, the conviction and sentence he had received from the Assize Court, his significant years of service, and the less severe punishment imposed on his accomplice. He also submitted a socio-economic report by the Department of Social Welfare Services.

14. On 13 June 2005 the PSC decided to dismiss the applicant. In its decision the PSC observed that this case had been one of the most serious cases it had been faced with. The conception and planning of the crimes committed showed a well-set-up fraud which had dealt a blow to the prestige and credibility of the procedures of the Department of Lands and Surveys and also to the image of the Public Service in general. The PSC noted that the offences of which the applicant had been convicted included some of the most serious offences against property, as well as abuse of office and concealment. The gravity of the offences was evident from the severity of the sentences applicable under the law, the substantial sum the applicant had secured through his unlawful actions, and the fact that eight more cases pending against him concerning similar offences had been taken into account by the Nicosia Assize Court when imposing sentence. The PSC also pointed out that the applicant had faced 223 charges in total, which was unprecedented for Cyprus and which disclosed the seriousness and the magnitude of the case.

15. In reaching its decision the PSC observed that it had taken into account the circumstances and conditions under which the applicant had committed the offences. He had been authorised to sign payment orders and had been entrusted by the Republic with the important post of promoting cases concerning compulsory acquisition and serving citizens involved in these cases. The applicant, however, did not live up to his responsibilities, exploited his position, and developed his criminal activities with unprecedented effrontery and recklessness. He had been the mastermind, instigator and main executor of the criminal activities.

16. The PSC also noted that it had taken into consideration what had been said by the applicant's counsel in mitigation, in particular, the applicant's personal and family circumstances, as well as the fact that he had undertaken to compensate for the damage and/or part of the damage suffered by the Republic as a consequence of his criminal acts. Further, the PSC pointed out that he had been the main protagonist and this had been stressed by the Assize Court when distinguishing the sentence passed on him from that passed on his co-accused.

17. Pursuant to section 79(7) of the Public Service Law (see paragraph 43 below), the disciplinary penalty of dismissal resulted in the forfeiture of the entire applicant's public service retirement benefits (hereinafter "retirement benefits"). This entailed the loss of a retirement lump sum and a monthly pension.

18. Lastly, the PSC decided that the part of the applicant's salary that had been withheld during the period of his suspension from service would not be returned to him.

19. Up to the date of his dismissal the applicant had worked for thirty-three years in the public service.

20. On 23 March 2006 the applicant withdrew his appeal.

21. Pursuant to section 79(7) of the Public Service Law (see paragraph 43 below), his wife received a widow's pension. This amounted to 15,600 euros (EUR) per year.

B. Judicial review proceedings

1. The first-instance proceedings

22. On 26 August 2005 the applicant brought a recourse before the Supreme Court (revisional jurisdiction) under Article 146 of the Constitution, seeking the annulment of the PSC's decision to dismiss him from the Public Service and of the consequent forfeiture of his pension rights (recourse no. 994/2005).

23. The applicant claimed that the forfeiture of his retirement benefits had been in breach of Article 23 of the Constitution and Article 1 of Protocol No. 1 to the Convention. In this respect the applicant argued that his pension rights constituted a "possession", and that their automatic forfeiture consequent to his dismissal was disproportionate.

24. On 2 April 2007 the Supreme Court, in an *ex tempore* decision, held that the recourse was admissible. The court observed that the case concerned the discretion of the PSC in deciding on the dismissal, taking into account all relevant parameters and, in particular, the consequences dismissal would have for the applicant. Therefore, the decision on the penalty and the consequences were very closely linked, bringing to the forefront the principle of proportionality as the main aspect of the PSC's discretion. It was obvious from the PSC's decision that in exercising its discretion when choosing the penalty to be imposed it had taken into account the automatic, as it considered, by law, loss of retirement benefits. As a result the court concluded that the extreme severity of the case justified, despite its grave repercussions on the applicant's retirement rights, the penalty of dismissal. If in the end the court were to accept the applicant's claims, the setting aside of the penalty of dismissal could not be

excluded. The Supreme Court therefore concluded that it could continue to examine the merits of the recourse.

25. On 7 May 2007 the Supreme Court dismissed the recourse, but did not award costs against the applicant in view of the nature of the legal issues raised.

26. The Supreme Court, after having ruled that the retirement benefits of a public servant in Cyprus constituted a possession under Article 1 of Protocol No. 1, went on to examine whether or not there had been a violation of the applicant's rights under this provision. Drawing guidance from the Court's case-law, and in particular the judgments in the case of *Azinas v. Cyprus* (no. 56679/00, 20 June 2002, and [GC], no. 56679/00, ECHR 2004-III), and the decision in the case of *Banfield v. the United Kingdom* ((dec.), no. 6223/04, ECHR 2005-XI), the Supreme Court first pointed to those factors which justified the deprivation of the right to property in this case. One such main factor in the court's view was the gravity of the offences committed. It considered in this respect that the characterisation of the case by the PSC as one of the most serious in its history did not appear to be an exaggeration. The impression given by the offences was such that not only did they entail a well-organised fraud but they also, most importantly, as the PSC asserted, dealt a blow to the prestige and trustworthiness of the administration. The court considered that sentencing the applicant to five years' imprisonment, as well as dismissing him, did not necessarily exhaust the limits of the discretion of the State to put things right. Besides, as in *Azinas,* the non-deprivation of pension benefits in the case of a pension plan to which the employee did not make contributions would amount to rewarding the applicant.

27. At the same time, the serious consequences of the applicant's punishment - a sentence of five years' imprisonment and dismissal - had also to be considered, particularly the financial difficulties arising from the deprivation of the said rights as an additional "punishment" for the applicant and his family. The court observed that this was an important factor to be taken into account, according to the circumstances of each case. If the deprivation had not been automatic but discretionary within the framework of enacted procedures, as in England, it would have been possible to examine whether there should be a deprivation and to what extent. The court noted in this respect that it would indeed be good for the State to consider seriously the prospect of an amendment to the law so as to make the system more flexible and fairer in each case. Moreover, there was also the fact that the applicant had to a great extent returned the money he had embezzled, a fact which, although the PSC had said that it had taken it into account, did not appear to have affected its decision, since the punishment imposed on the applicant was, of the ten forms provided for, the extreme one of dismissal instead of choosing the second most serious form of

punishment, that of compulsory retirement, which would not have entailed the loss of retirement rights.

28. In the end, however, the Supreme Court considered that the fact that the case in question arose and was heard on the basis of a different statutory regime from that in *Azinas* as regards the consequences of dismissal entailing the loss of pension rights, tilted the scales, albeit slightly, in favour of the Republic. The proviso in section 79(7) that the applicant's pension from the day of his dismissal would be paid to his wife and dependent children as if he had died on that date reduced for the family the hardship resulting from the dismissal. Despite this, the court observed that it was likely that there would be cases with even more dire consequences for the dismissed employee, such as when there was no wife or dependent children, or their relationship was such that the dismissed employee could not reasonably expect to benefit through them. Nothing, however, had been said to include the present case among those cases, except for the theoretical possibility that his wife could die before the applicant. The court stated that, if matters were otherwise, it was likely that it would have ruled differently.

29. Finally, the Supreme Court stressed that the competent bodies should seriously study the possibility of amending the statutory framework on the basis of the law in force in England, so that deprivation of retirement rights was not automatic but could be looked at with the help of enacted procedures and with the exercise of discretion in order that the PSC might determine, by means of a reasoned decision, the extent to which it was just to forfeit, if at all, in any particular case, according to the individual's special circumstances and needs. The Supreme Court considered that both the rule of law and the modern conception of individual justice demanded this.

2. Appeal proceedings

30. On 5 June 2007 the applicant lodged an appeal with the Supreme Court (appellate revisional jurisdiction; appeal no. 78/2007). He first challenged the first-instance finding concerning section 79(7) of the Public Service Law. He submitted that this section was contrary to Article 23 of the Cyprus Constitution and Article 1 of Protocol No. 1 to the Convention, as the forfeiture of his retirement benefits had been automatic, without the exercise of any discretionary power. In this respect he argued that the first-instance court had applied the proportionality principle incorrectly during the examination of the penalty imposed by the PSC, and therefore had been wrong when it decided that the measure was proportionate and in line with the Convention. Secondly, the applicant claimed that the finding of the first-instance court that the consequences of this decision were reduced because he was married and thus his wife and dependent children would receive a pension, was discriminatory on the ground of marital status and thus in violation of Article 28 of the Constitution.

31. On 12 June 2007 the respondent Government also appealed (appeal no. 81/2007) challenging the first-instance findings (a) that in the present case the retirement benefits could be considered a "possession"; (b) that in the disciplinary dismissal of a public servant there was no enacted framework providing for the exercise of discretion as to whether the retirement benefits would be granted; and (c) that the payment of the pension to the applicant's wife was the only essential factor which tilted the scales in favour of the Republic.

32. On 18 May 2010 the Supreme Court dismissed both appeals without awarding costs, in view of the importance of the matter raised. It agreed with the first-instance court's finding that the right to a pension and its conditions constituted a possession of the employee. This right was created by the appointment of the employee. The fact that a pension was given to the wife and dependent children suggested that pension benefits were considered as "property" which could be transferred. In this respect the court referred to its judgment in the case of *Pavlou v. the Republic* (revisional appeal no. 161/2006, (2009) 3 CLR 1402; see paragraph 46 below) and the Court's judgment in the case of *Apostolakis v. Greece* (no. 39574/07, 22 October 2009).

33. The court went on to find, however, that the deprivation of the applicant's retirement benefits had been justified. In this respect, the court noted that the PSC had chosen the penalty of dismissal under section 79(7) of the Public Service Law, after exercising its discretion and after considering the consequences and the fact that such a penalty was in the public interest. The first-instance court had examined whether the imposition of the penalty of dismissal, which brought about the automatic forfeiture of retirement benefits, was disproportionate. It had examined whether the PSC, when exercising its discretion, had applied the principle of proportionality in deciding on the penalty of dismissal, which itself resulted in the automatic deprivation of retirement rights. In this respect it held that the PSC had exercised its discretion when deciding to impose the penalty of dismissal. The PSC had had a variety of available penalties at its disposal, such as compulsory retirement, which did not bring about the forfeiture of the pension. It decided, however, in view of the offences committed by the applicant, that such deprivation was justified.

34. The Supreme Court pointed out that the European Court of Human Rights had acknowledged that the administration had wide discretion in deciding on such matters.

35. It went on to agree with the first-instance court that the deprivation of the applicant's retirement benefits had been justified in view of the seriousness of the offences, which had dealt a blow to the trustworthiness and credibility of the administration. The relevant domestic law provision was aimed at discouraging public servants from committing serious offences and at protecting the smooth running of the administration.

Section 79(7) of the Public Service Law was not contrary to Article 1 of Protocol No. 1, since the deprivation of retirement benefits was not a punishment on its own, but a consequence of the imposition of the penalty of dismissal.

36. The court went on to distinguish the applicant's case from that of *Apostolakis*, in which the forfeiture had been automatic following a criminal conviction and had entailed deprivation of both pension and social security rights and therefore of all means of subsistence. In the present case, although the applicant had been deprived of his retirement benefits as a public servant, he had been entitled to receive benefits from the Social Insurance Fund, which were calculated on the basis of contributions made by the employer and the employee. Referring to the Court's judgment in the case of *Wieczorek v. Poland* (no. 18176/05, 8 December 2009), it found that the applicant had not been deprived of all means of subsistence.

37. As to the question of discrimination due to marital status, raised by the applicant, the Supreme Court held that the first-instance court's comments on the matter did not support the applicant's claim of discrimination. The comments in question had been made on a hypothetical basis and did not apply to the present case.

38. Lastly, the Supreme Court dealt with the remaining grounds of appeal put forward by the Government. It observed that the first-instance decision was to the effect that in the event of dismissal the law did not provide for a procedure concerning the exercise of discretion for forfeiting retirement rights, but it did not say that it was not possible to exercise discretion on the matter, since it recognised that there was a choice between dismissal entailing forfeiture of rights and compulsory retirement, which did not. Finally, it pointed out that the first-instance court had set out in its decision all the facts which it had taken into account in deciding on the proportionality of the forfeiture, and had rightly concluded that the payment of the pension to the wife meant that the deprivation was not disproportionate. The court did not award costs in view of the important issues raised.

C. Other relevant information

39. The applicant has been receiving a social security pension from the Social Insurance Fund since 31 August 2012, when he reached the age of sixty-three. The pension therefore received by his wife pursuant to section 79(7) of the Public Service Law was then reduced by the complementary sum received by him from the Social Insurance Fund. According to a letter dated 28 November 2012 sent to her by State's Treasury, her pension was reduced by EUR 854,94 per month.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Retirement benefits and disciplinary punishments

40. A public servant's entitlement to retirement benefits is governed by the Pensions Law, Law 97(1)/97, as amended. The relevant sections, as applicable at the time, provide as follows:

Section 4 (Granting of retirement benefits)

"(1) Any pension, lump sum or gratuity, and other allowances, is granted to state officers of the Cyprus Republic in accordance with the provisions of the present Act.

(2) Any pension, lump sum or gratuity granted under this Act shall be calculated in accordance with the provisions in force on the actual date of the state officer's retirement."

Section 5 (charging the Consolidated Fund)

"The Consolidated Fund of the Republic shall be charged with every pension, lump sum, gratuity or other allowance/benefit for which the Republic is liable on the basis of the law"

Section 7 (exemption from income tax)

"Any gratuity and lump sum granted on the basis of the provisions of the Law are exempted from the imposition of income tax."

41. Furthermore, section 8 of the Pensions Law provides the computation formula for pensions and lump sum payments. The following are the cases specified in section 9, as applicable at the time, which entitled a state employee to, *inter alia,* a pension and lump sum payment. These were: (a) on reaching the age of compulsory retirement or at any time thereafter; (b) on reaching the age of fifty-five; (c) on the abolition of his/her post; (d) on his/her retirement, to facilitate the organisational improvement of the service to which he/she belongs, which may thus achieve more effective operation of the service, or savings; (e) in case the employee was unable to perform his/her duties by reason of a mental or physical incapacity which was likely to be permanent; (f) in the event of termination of the employee's services on specialised grounds of public interest in accordance with the relevant applicable law; (g) in the event of his retirement on account of inadequacy or unfitness; (h) in the event of imposition by the competent disciplinary organ of the disciplinary penalty of compulsory retirement; (i) on retirement for reasons of public interest to take some other public office which is incompatible with his/her office or post; (j) on retirement for reasons of public interest to be appointed to a public benefit organisation or local authority; and (k) in the event of voluntary early retirement.

42. Section 45 of the Pensions Law provides for reduction of a pension provided under the provisions of the Law by the equivalent complementary amount which is being paid to a pensioner or in this respect by virtue of the Social Security Laws with regard to insurance payments on which contributions were made after 6 October 1980. For the purposes of sections 5(1) and 88(1) of the Social Security Laws the employee is regarded, with reference to any service other than the service which is taken into consideration in calculating the maximum amount of pension and the amount of gratuity, as not covered by a professional pension scheme.

43. Furthermore, the relevant sections of the Public Service Law (Law 1/1990), as applicable at the time, governing retirement benefits and disciplinary punishment read as follows:

Section 56 (retirement benefits)

(1) The retirement benefits of permanent and pensionable officers are those prescribed by the Pensions Law or any law amending or substituted for the same and any Regulations made thereunder.

(2) The retirement benefits of a monthly-paid officer, who does not belong to the permanent public service and is not serving on contract, shall be prescribed by Regulations made under this Law."

Section 79 (disciplinary punishments)

"1. In accordance with the present Law, the following disciplinary penalties may be imposed:

(a) reprimand

(b) severe reprimand

(c) disciplinary transfer

(d) interruption of annual salary increase

(e) suspension of annual salary increase

(f) pecuniary penalty, which may not exceed three months' salary

(g) reduction in salary scales

(h) reduction in rank

(i) compulsory retirement

(j) dismissal.

...

7. Dismissal entails the loss of all retirement benefits.

It is provided that a pension is paid to the wife or dependent children, if any, of a public servant who was dismissed as though he had died on the date of his dismissal and it shall be calculated on the basis of his actual years of service."

44. It is noted that section 79(1) and (7) of the earlier law, namely, the Public Service Law of 1967 (Law 33/1967), applicable at the time of the

applicant's employment, was the same as that contained in Law 1/1990, save for the last paragraph of section 79(7), which provides for payment of a pension to the dismissed public servant's family. This amendment was introduced by Law 1/1990.

B. Relevant Constitutional provisions and case-law

45. The relevant Constitutional provisions read 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 right. The right of the Republic to underground water, mineral 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 public safety, health or morals, or the town and county 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 ...."

Article 166 (1)

"There shall be charged on the Consolidated Fund, in addition to any grant, remuneration or other moneys charged by any other provision of this Constitution or law -

(a) all pensions and gratuities for which the Republic is liable; ...".

Article 169 (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."

46. The Supreme Court, in the case of *Pavlou v. the Republic* (Revisional appeal no. 161/2006, (2009) 3 CLR 1402), which concerned the reduction of the State pension upon receipt of an old-age pension from the Social Insurance Fund, held that a pension constituted property and was consequently an individual right that required legal protection.

III. RELEVANT INTERNATIONAL MATERIAL

47. The preamble of the Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 reads, in so far as relevant, as follows:

"Preamble

The member States of the Council of Europe and the other States signatory hereto,

...

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

48. The applicant complained that the forfeiture of his retirement benefits following his dismissal from the public service breached 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. The parties' submissions

1. The Government

49. The Government submitted that the determining question in the case, in the light of the Court's case-law concerning similar complaints on forfeiture or loss of pension, was whether a fair balance had been struck between the demands of the general interest of the community and the requirement of the protection of the individual's fundamental rights. They noted that, in line with the Court's case-law, the forfeiture of a retirement pension fell to be considered under the first sentence of the first paragraph of Article 1 of Protocol No. 1, since it acted neither as a control of use nor as a deprivation of property. In the Government's view the required fair balance had not been exceeded.

50. The Government, relying on the Court's decision in the case of *Banfield* (cited above) pointed out that the State's entitlement to bring disciplinary proceedings against the applicant in addition to criminal proceedings was not in question: the criminal proceedings related to the breaches of criminal law and the disciplinary proceedings to the applicant's

breach of the relationship of trust which must exist between all employees and their employer. They observed in this respect that the situation in the present case had been the same as in *Banfield*: the applicant had benefited from procedural protection, and the penalty imposed on him had been a discretionary one.

51. First of all, the disciplinary procedure had commenced following the conclusion of the criminal proceedings. The PSC had transmitted the Assize Court's judgment to the Attorney-General for an opinion as to whether the offences of which the applicant had been convicted entailed dishonesty and moral turpitude. After receiving the Attorney-General's opinion, the PSC had afforded the applicant the right to be heard before deciding on the disciplinary penalty.

52. Secondly, the PSC's decision to dismiss the applicant had been discretionary. This had been evident from both the Supreme Court's *ex tempore* decision of 2 April 2007 and its judgment on appeal (see paragraphs 24 and 33 above). The present case was therefore distinguishable from that of *Apostolakis* (cited above), in which the conviction itself had led to the automatic forfeiture of the pension. Further, unlike in the case of *Azinas* (cited above), the PSC had taken into account a number of issues when deciding on the penalty, such as the mitigating factors cited by the applicant's lawyer. These had included his difficult financial situation - a socio-economic report by the Department of Social Welfare Services had been submitted by the applicant - and the fact that his co-accused had received the lighter penalty of compulsory retirement. In exercising its discretion, the PSC had taken account of the fact that the applicant had been the main protagonist and the brains behind the offences committed. Soon after he had been entrusted with the task of signing authorisations for the payment of compensation to members of the public for compulsory acquisitions of their property, he had systematically, over a period of two years, used his position to defraud public funds of substantial amounts for his own personal gain. He had planned the whole scheme, and had executed it with the aid of his co-accused. As a result 223 criminal charges had been brought against him, and the offences of which he had been convicted and sentenced had been very serious. The Government considered that it could be assumed that the applicant had caused considerable damage to the public's trust in the proper functioning of the Public Service and the honesty of State employees in administering State funds. The PSC had therefore decided to impose the penalty of dismissal, which was the most severe provided by the Public Service Law, as it carried the loss of all retirement benefits specified in section 56 of that Law, as applicable at the time. The Government stressed in this respect that in the case of *Banfield* (cited above) the Court had stated that it was not inherently unreasonable for provision to be made even for total forfeiture of a pension in suitable cases.

53. Thirdly, the applicant's retirement pension and lump sum had been entirely publicly funded, the applicant having made no contributions. The forfeiture related to the State's funding of the pension scheme. No issue therefore arose of forfeiture of contributions made by the applicant. Relying on the case of *Klein v. Austria* (no. 57028/00, § 57, 3 March 2011), the Government submitted that this was an important factor to take into account. The payment by the Republic of a public service retirement pension without any contribution by its civil servants constituted the employee's reward for faithful service. If the applicant had received this reward, or part of it, public confidence would have been further shaken. The Government pointed out in this respect that at the time of his dismissal the applicant had been covered by an occupational pension scheme applicable to all State employees. This scheme provided State employees with benefits upon their retirement or resignation from service. In the event of their death the benefits were given to their dependents. The applicant, upon retirement, would have been entitled to an annual pension and a lump sum payment computable in accordance with the provisions of the Pensions Law, as applicable at the time. That law provided that the Republic was obliged to pay those benefits, which were charged to the account of the Republic's consolidated fund. This was the fund into which, by virtue of the Constitution, all revenues and monies raised or received by the Republic were paid. Had the applicant theoretically retired voluntarily on 13 June 2005, pursuant to section 8 of the Pensions Law (see paragraph 41 above), he would have been entitled to an annual pension amounting to EUR 17,161.65; the lump sum came to EUR 80,087.82.

54. However, in contrast to the *Apostolakis* case (cited above), the applicant's loss of retirement benefits had not entailed loss of his social insurance rights, nor had he been deprived of all means of subsistence. At all material times the applicant, like all State employees, had also been compulsorily insured under the Republic's general Social Insurance Scheme, which covered all employees and entitled them to the payment of a social security pension from the Social Insurance Fund. This pension was funded by employee contributions as well as employer contributions, and its level depended on the amounts that had been contributed. The right to benefits payable from the Social Insurance Fund was not affected in the event of dismissal. Consequently, since 2012, when the applicant reached the age of sixty-three, he had been receiving a social security pension from the Social Insurance Fund amounting to EUR 1,363.98 per month. Although the Government admitted that this amount was slightly less than what he would have been entitled to under the Pensions Law if he had retired voluntarily on 13 June 2005, unlike the applicant in the case of *Apostolakis*, at the age of fifty-six the applicant still had employment potential.

2. The applicant

55. The applicant submitted, firstly, that it was clear from the domestic judgments and was also common ground between the parties that his pension amounted to a possession within the meaning of Article 1 of Protocol No. 1 and that its deprivation constituted an interference with his right to the peaceful enjoyment of his possessions. It was the applicant's position that this interference was unjustified. In this respect he argued that a pension constituted an integral part of the employment contract that the Government offered to all of its employees, namely civil servants. This was evident from the schemes of service provided by the Government. Employment in the civil service came with a general undertaking and a corresponding legitimate expectation that a pension was payable as an integral part of the conditions of service. It was part of the overall employment package which the Government undertook to finance and pay at the end of one's employment. Consequently, when the applicant's employment was terminated by the Government he was entitled to his pension.

56. The applicant submitted that the automatic forfeiture of his retirement benefits upon the imposition of the penalty of dismissal had not been in the public interest and could not be considered justified or proportionate. The applicant had pleaded guilty to twenty-four charges in the criminal proceedings and had been sentenced to five years' imprisonment. The Assize Court when sentencing the applicant had taken into account the seriousness of the offences and had explained why a custodial sentence was appropriate and why it could not be suspended. Despite the fact that the penalty provided by the domestic law ranged from three years' imprisonment to life imprisonment, as part of the arrangement reached with the Government the applicant had received a five year sentence, which he had served. The applicant had also repaid the amount taken as part of the deal. The PSC had then through disciplinary proceedings decided to impose the strictest punishment provided by the law, namely dismissal. In the applicant's view the above had constituted an adequate response to his misconduct and had been commensurate to the damage to public confidence. However, as a result of the dismissal he had also been automatically deprived of all his retirement benefits, including his pension which had been earned during his thirty-three years of employment as a civil servant. This could have been avoided if the PSC had imposed compulsory retirement, which would not have affected his retirement rights. Consequently, even though the applicant had repaid his debt to society having been convicted by a criminal court, served a prison sentence, reimbursed the amount due, and lost his job, all his retirement benefits were forfeited, exposing him to great financial and emotional hardship. The applicant had been subjected to a triple punishment, which was contrary to the principles of international law and the spirit of the Convention, as no

one should be punished more than once for the same offence. Furthermore, the punishment was of a continuing nature: the longer the applicant lived the harsher the punishment was, as he remained without a pension.

57. The applicant argued that just as in the case of *Apostolakis* (cited above) the imposition of the penalty of forfeiture of his retirement benefits was automatic and therefore *sui generis* disproportionate. In the above case the Court had also ruled that the fact that domestic law provided for the pension to be transferred to the family was insufficient to compensate Mr Apostolakis for his loss.

58. The applicant pointed out that the Government had not provided full and detailed information about the public service pension scheme. Furthermore, their observations were misleading, for a number of reasons. First of all, during the criminal proceedings the Government had not insisted on the maximum penalty provided by the domestic law, but had agreed to reach an arrangement in the case. How could they now argue before the Court that the imposition of a lesser disciplinary penalty would have been wrong? Secondly, the Government had attempted to create the impression that there was a clear distinction under domestic law between what was designated as the public service retirement pension and the social security pension, but that was not the case, as these pensions were treated as one. This was the reason why when a person reached retirement he was entitled only to one pension, and the pension granted under the Pensions Law was reduced by the corresponding amount granted as a pension from the Social Insurance Fund. The Government had failed to mention this. When the applicant had turned sixty-three and started receiving a social security pension, the pension received by his wife pursuant to section 79(7) of the Public Service Law was reduced by the complementary amount received by him from the Social Insurance Fund. Thirdly, it was misleading to argue that the payment of the non-contributory pension constituted a reward for faithful service. The pension could not be construed as a reward by the Government to the employee, but as part of his/her entitlements. It was therefore not subject to a work performance review. He lastly submitted, relying on the dissenting opinion of Judge Ress in the Grand Chamber judgment in *Azinas* (cited above), that it would be arbitrary to place the dividing line under the property aspect between those public servants who were working within a system of social security contracts where contributions were formally paid and those whose contributions were from the very beginning indirectly deducted from their salaries and therefore paid by the State.

B. The Court's assessment

1. General principles

59. The principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to pensions (see *Stummer v. Austria* [GC], no. 37452/02, § 82, 7 July 2011, and *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, 18 February 2009). Thus, that provision does not guarantee the right to acquire property (ibid.). Nor does it guarantee, as such, any right to a pension of a particular amount (see, among many other authorities, *Andrejeva,* cited above, and *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011). However, where a Contracting State has in force legislation providing for the payment as of right of a pension – whether or not conditional on the prior payment of contributions – that legislation has to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for individuals who satisfy its requirements (see, among other authorities, *Pejčić v. Serbia,* no. 34799/07, § 55, 8 October 2013; *Stummer,* cited above, § 82; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 64-65, ECHR 2010; and *Banfield,* and *Apostolakis*, § 29, both cited above). The reduction or the discontinuance of a pension may therefore constitute an interference with peaceful enjoyment of possessions that needs to be justified (see, among other authorities, *Grudić v. Serbia*, no. 31925/08, § 72, 17 April 2012, and *Valkov and Others*, cited above).

60. 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 and that it should pursue a legitimate aim "in the public interest" (see, among many authorities, *The Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 83). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions (see, among other authorities, *Stefanetti and Others v. Italy*, nos. 21838/10, 21849/10, 21852/10, 21822/10, 21860/10, 21863/10, 21869/10, and 21870/10, § 52, 15 April 2014). Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation (see, among other authorities, *The Former King of Greece and Others*, cited above, § 87).

61. Any interference must also be reasonably proportionate to the aim pursued. 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, among many other authorities, *The Former King of Greece and Others*, cited above, §§ 89-90).

2. Application to the present case

(a) Admissibility

62. The Court notes that it was common ground between the parties that the retirement benefits of a civil servant in Cyprus constituted a possession under Article 1 of Protocol No. 1. Indeed, in the light of its case-law (see paragraph 58 above), the Court finds that the applicant, when entering the civil service, acquired a right which amounted to a "possession" and that therefore this provision is applicable in the present case.

63. The Court further notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

64. The parties agreed that the forfeiture of the applicant's retirement benefits amounted to an interference with his right to the peaceful enjoyment of his possessions. Furthermore, it was not in dispute that the interference, which was based on the unambiguous wording of section 79(7) of the Public Service Law, was lawful in terms of both domestic and Convention law. The Court, taking into account its relevant case-law, sees no reason to hold otherwise.

65. The Court notes in this respect that the reduction or forfeiture of a retirement pension acts neither as a control of use nor a deprivation of property, but that it falls to be considered under the first sentence of the first paragraph of Article 1 (see *Klein*, § 49, and *Banfield*, both cited above).

66. Accordingly, it is the issue of proportionality which lies at the heart of the case. This being so, the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

67. The Court has no doubt that it was appropriate for the national authorities to bring disciplinary proceedings against the applicant in addition to the criminal ones and, given the applicant's reprehensible misconduct and the nature and gravity of the offences, to opt for the most serious penalty, namely dismissal. Indeed, this is acknowledged by the applicant (see paragraph 56 above), whose grievance is concentrated rather on the automatic forfeiture of all his retirement rights upon his dismissal.

68. In this connection, the Court reiterates that in the case of *Banfield* (cited above) it held that, having regard to the margin of appreciation allowed to States in making appropriate provision for its civil servants' pensions, it did not consider it inherently unreasonable for provision to be made for reduction or even total forfeiture of pensions in suitable cases. More recently, the Court has observed in general (see *Da Silva Carvalho Rico v. Portugal* ((dec.), no. 13341/14, 1 September 2015) and *Stefanetti and Others,* cited above, § 59, 15 April 2014), that the deprivation of the entirety of a pension was likely to breach Article 1 of Protocol No. 1 (see, for example, *Apostolakis*, cited above, and *Kjartan Ásmundsson v. Iceland*, no. 60669/00, ECHR 2004-IX) and that, conversely, the imposition of a reduction which it considers to be reasonable and commensurate would not (see, for example, among many other authorities, *Da Silva Carvalho Rico, and Valkov and Others*, both cited above; *Arras and Others v. Italy*, no. 17972/07, 14 February 2012; *Poulain v. France* (dec.), no. 52273/08, 8 February 2011; and, *a contrario*, *Stefanetti and Others,* cited above). It is evident, however, from the relevant case-law, that whether or not the right balance has been struck will very much depend on the circumstances and particular factors of a given case which may tip the scales one way or the other.

69. In the present case, the applicant, after pleading guilty to a number of very serious offences which included obtaining a substantial amount of money by false pretences, forging cheques, concealment and abuse of office (see paragraph 8 above), was sentenced to five years' imprisonment (criminal case no. 18115/02). In passing sentence the Nicosia Assize Court took into account another eight similar criminal cases pending against the applicant. A total of 223 criminal charges against the applicant were involved.

70. Following the applicant's conviction in the above case and, after receiving the Attorney-General's advisory opinion that the offences committed involved dishonesty or moral turpitude, the PSC initiated disciplinary proceedings against the applicant. The applicant was able to make representations before the PSC before the decision on the disciplinary penalty was taken. In particular, through his lawyer, the applicant put forward a number of mitigating factors and submitted a report by the Department of Social Welfare Services on his financial situation (see paragraph 13 above). Thereafter, the decision of the PSC was reviewed by the Supreme Court at two levels of jurisdiction. In addition, unlike in the case of *Apostolakis* (cited above), there were disciplinary proceedings which were separate from the criminal proceedings, and the applicant's personal position was considered in depth before the PSC decided on the penalty to be imposed. The Court finds, and indeed the parties do not contest, that the applicant benefited from extensive procedural guarantees (see *Banfield*, cited above).

71. The Court observes that it was open to the PSC to impose any of the ten penalties provided for by section 79(1) of the Public Service Law. In the circumstances, it was inevitable that the penalty imposed on the applicant would be at the more severe end of the sliding scale of penalties, and after hearing the applicant's counsel, the PSC chose the most severe penalty, namely dismissal. As a result, section 79(7) of the above Law applied, that is, the applicant forfeited his retirement benefits.

72. In practice, and again differently from the case of *Apostolakis*, that did not leave the applicant without any means of subsistence. In this respect the Court notes that the forfeiture concerned the applicant's public service retirement benefits, that is, a retirement lump sum and a monthly pension (see paragraph 17 above). He remained eligible to receive, and did receive from August 2012, a social security pension from the Social Insurance Fund to which he and his employer had contributed (see paragraph 39 above).

73. Furthermore, a widow's pension was paid to his wife pursuant to section 79(7) of the Public Service Law (a provision which was not applicable in the case of *Azinas;* see the Grand Chamber judgment, cited above, §§ 21-22), which ensured that his family immediately received a pension based on the assumption that he had died rather than been dismissed. It is true that the Court found, in the *Apostolakis* case, that the fact that a pension had been transferred to Mr Apostolakis's family did not suffice to offset the loss of his own pension, as it considered that in future he could lose all means of subsistence and all social cover, for example, if he became a widower or divorced (see *Apostolakis*, cited above, § 40). The Court finds, however, that this reasoning cannot be applied in the present case as the applicant has not claimed that during the seven year period between his dismissal and the date when he became eligible and started to receive a social security pension, he was unable to benefit for any reason from the pension paid to his wife and family. Following that, he began to receive his social security pension in full; his public service retirement pension would in any event have been set off against the amount of the social security pension (see paragraph 58 above). In addition his wife continued and continues to receive a part of the widow's pension (see paragraphs 39 and 58 above).

74. Weighing the seriousness of the offences committed by the applicant against the effect of the disciplinary measures (see, *inter alia,* paragraph 47 above) and taking all the above factors into consideration, the Court finds that the applicant was not made to bear an individual and excessive burden.

75. It follows that there has been no violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 12 AND ARTICLE 1 OF PROTOCOL No. 1 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

76. The applicant complained that the deprivation of his retirement benefits, on the ground that his wife and dependents would still benefit from it, had been discriminatory on the basis of his marital status, and therefore contrary to Article 1 of Protocol No. 12 as well as Article 14 of the Convention taken together with Article 1 of Protocol No.1. Article 14 and Article 1 of Protocol No. 12 read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention 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."

Article 1 of Protocol No. 12

"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."

77. The Government contested that argument.

78. The Court notes that the applicant's complaint as to discrimination is triggered by the findings made by the Supreme Court, at first instance, and in particular, the weight that the court gave to the payment of a widow's pension to his wife from the day of his dismissal pursuant to section 79(7) of the Public Service Law.

79. The Court notes that the clear aim of section 79(7) of the Public Service Law was to ensure that the effects of deprivation of a pension affected the person against whom disciplinary proceedings had been brought, and not his or her family. This provision benefited the applicant's family and did not adversely affect him in any way.

80. Accordingly, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. Lastly, the applicant complained that he had been unable to contest the legality of the decision of the PSC, that the decision had become unassailable, and that he had been deprived of effective access to court. He relied on Article 13 of the Convention. This provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

82. The Court notes that the applicant's complaint under this provision is in effect a complaint about right of access to court under Article 6 § 1 of the Convention. The Court observes, however, that the applicant was able to challenge the decision of the PSC before the Supreme Court. The Supreme Court examined the merits of the applicant's arguments at first instance and on appeal, but he was unsuccessful, as it was ruled at both levels that the forfeiture of his retirement benefits resulting from his dismissal had been proportionate. In these circumstances it cannot be said that the applicant was deprived of his right of access to court. The mere fact that the outcome of the proceedings was not favourable to the applicant is not equivalent to depriving him of this right.

83. It follows that this complaint 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, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 14 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President