



RESEARCH NOTE

FROM THE RESEARCH AND DOCUMENTATION DIRECTORATE

Reducing pensions payable

[...]

[...]

July 2023
[...]



PLAN

Summary	1
German law	28
Austrian law	34
Cypriot law	39
French law	46
Greek law	52
Italian law	64
Latvian law	74
Lithuanian law	79
Netherlands law	85
Polish law	92
Portuguese law	96
Romanian law	105
Slovenian law	112

SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (RDD) received a request for a research note relating in essence to the laws of Member States in the event of decreases in pensions in respect of which a claimant who meets all the conditions may make a claim for payment ('pensions payable').¹
2. The question raised by this note is more specifically whether national legislators can reduce the amount of pensions payable when new legislation is adopted.
3. An overview of the 27 EU Member States was conducted to identify those where the national legislators have adopted reforms leading to a reduction in pensions payable (first condition) and where the legality of that reform has been reviewed by the national courts (second condition).
4. That overview delivered a representative sample of thirteen Member States that have adopted reforms of their pension schemes leading to a reduction in pensions payable and for which relevant case-law on the topic has been found,² namely **Austria, Cyprus, France, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania and Slovenia**.³
5. Given the scope of the request, this note focuses solely on legislative reforms affecting pensions payable. It therefore does not deal with reforms that reduce the amount of future prospective pensions. Consequently, where reforms relate to both future pensions and pensions payable, only the latter aspect has been analysed. However, national case-law on the reduction of future pensions has been taken into account in so far as the considerations referred to enable conclusions to be drawn on whether the legislature can also reduce pensions payable.

1 For the purposes of this note, the concept of 'pensions payable' is understood to mean, firstly, pensions due but not yet being paid to the beneficiary (because, for example, the paying body handling his or her pension application has not yet made a decision to award a pension), and, secondly, pensions in payment, that is to say those already being paid out to the beneficiary.

2 Mostly constitutional court rulings. However, case-law from courts other than constitutional courts has also been taken into account, particularly from **Austria, Cyprus, France, the Netherlands and Poland**, in so far as it contains considerations that are relevant for the purposes of this note.

3 [...]

6. Moreover, this note focuses solely on reductions effected through an amendment by the legislature to existing legislation. Hence, it does not deal with reductions effected by such legislation through an adjustment mechanism provided for by the legislation, such as an automatic indexation mechanism. It also does not deal with pension reductions resulting from an individual decision such as a decision rectifying an error made in the initial calculation of the beneficiary's entitlement or a decision taking account of a change arising in the beneficiary's situation while the pension is in payment and leading to a reduction, under existing legislation, in the amount paid.
7. Moreover, the summary focuses solely on reductions in the nominal amount of a pension and disregards situations where the amount is merely frozen because of a decision by legislators to suspend an adjustment mechanism that would have increased the amount. In that case, the nominal pension amount remains unchanged, even if, in periods of inflation, its actual value falls.
8. Finally, as regards the pension schemes analysed, this note focuses on pension schemes managed by public bodies, operating on a pay-as-you-go basis,⁴ and excludes schemes managed by private organisations.

I. LEGISLATIVE REFORMS ENTAILING A REDUCTION IN PENSIONS PAYABLE

9. By way of preliminary, it should be noted that pension reductions have been discussed in Europe for over a decade, as shown by various reports published by the Organisation for Economic Cooperation and Development (OECD) since 2005, entitled 'Pensions at a Glance'. These reports⁵ cover the pension systems in OECD member countries, which include all but five EU Member States.⁶

4 That is to say a system where current pensions are funded by contributions from active members who at the same time are building up entitlements to future pensions that will in turn be funded by contributions from future active members. Moreover, the pensions paid out in some of those schemes are also funded by public subsidies from the general State budget on top of revenue generated from contributions paid in by members, or even, regarding more specifically certain civil servant schemes exclusively funded by the general State budget – which is the case, for example, with the pensions of German civil servants, which are wholly funded by the general State budget, with no obligation for civil servants to pay contributions into their pension scheme, or Lithuanian service pensions, paid by way of social guarantee to certain persons who exercised important public functions (such as judges) or who were exposed during their service to additional risks (such as police officers or army personnel).

5 Those reports are available on the OECD website: https://www.oecd-ilibrary.org/finance-and-investment/les-pensions-dans-les-pays-de-l-oecd_19991371.

10. The first of those reports, published in 2005, noted a wave of pension scheme reforms in OECD countries, prompted by worries concerning essentially the financial viability of the pension schemes, due, notably, to ageing populations.⁷ The 2013 report observed for its part that ‘the pension landscape has been changing at an astonishing pace over the past few years. After decades of debate and, in some cases, political standstill, many countries have launched significant pension reforms, including higher retirement ages, changes in the way entitlements are calculated and other measures to introduce savings in their pension systems.’⁸
11. Thus, while in 2007 changes made in the calculation of entitlements that had the effect of reducing the amount of pensions paid out related in principle only to the future pensions of current workers,⁹ that was no longer the case in 2013.¹⁰
12. It is true that in the following years, retirement pension payments did not fall in absolute value,¹¹ and that during the COVID-19 pandemic, retired persons in most OECD countries had not felt the economic impact of the crisis.¹²
13. However, the editorial of the latest OECD ‘Pensions at a Glance’, published in 2021, warned that ‘the biggest long-term challenge for pensions continues to be providing financially and socially sustainable pensions’ and that ‘putting pension systems on a solid footing for the future will require painful policy decisions’. As well as increasing contributions and raising the retirement age, the editorial also mentions lowering pensions.¹³
14. A scenario where both future pensions and pensions that have become payable could be subject to a decrease therefore remains topical.

⁶ Namely Bulgaria, Cyprus, Croatia, Malta and Romania. However, Bulgaria, Croatia and Romania are candidates to the OECD; for a complete list of this organisation’s member countries, see <https://www.oecd.org/en/about.html>.

⁷ OECD, *OECD Pensions at a Glance 2005: Public Policies across OECD Countries*, OECD Publishing, Paris, 2005, p. 16.

⁸ OECD, *Pensions at a Glance 2013: OECD and G20 Indicators*, OECD Publishing, Paris, 2013, p. 9.

⁹ OECD, *Pensions at a Glance 2007: Public Policies across OECD Countries*, OECD Publishing, Paris, 2007.

¹⁰ OECD, note 8.

¹¹ See OECD, *Pensions at a Glance 2015: OECD and G20 Indicators*, OECD Publishing, Paris, 2016, p. 13.

¹² OECD, *Pensions at a Glance 2021: OECD and G20 Indicators*, OECD Publishing, Paris, 2021, p. 9.

¹³ See OECD, note 12.

Such a decrease raises economic and political questions respectively as to whether a decrease is needed to safeguard the financial viability of the pension system in question and the likelihood that it will be implemented, given the fact that ‘pension reforms are among the most contentious, least popular, and potentially perilous reforms’¹⁴ It also raises a legal question as to its admissibility in the light of the fundamental rights of claimants.

15. Although national legislators in thirteen Member States have adopted at least one reform decreasing pensions payable, the reforms adopted vary in terms of number (A), purpose (B) and scope (C).

A. NUMBER

16. In some states, only one legislative reform reducing pensions payable was identified, whereas in others several such reforms were noted.
17. Regarding the first category, worth noting are the cases of **France** and the **Netherlands**, where, respectively, in the second half of the 1990s, pensions in a scheme specific to doctors (**France**) were revalued downward, and a reform of conversion pensions reduced the pensions of certain surviving spouses (**Netherlands**).
18. As regards the second category, namely that of states having adopted several reforms, in some states, the number is scarcely higher than in the two countries referred to in the previous point.
19. Thus, for example, in **Germany**, there have been only two reforms reducing pensions payable. In fact, in 1991, as part of the transfer of pension entitlements acquired under the former German Democratic Republic to the general pension scheme for the reunified Germany, the legislature reduced the pensions for certain categories of persons. Ten years later, in 2001, the same legislature decided to slightly reduce entitlements to the special pension scheme for civil servants, in particular in order to align their entitlements with the entitlements provided for under the general German scheme, which in principle covers all workers except civil servants.
20. The same number of reforms was noted in **Latvia** and **Lithuania**, where, in different crisis situations around the year 2000 and in 2009, the national legislature adopted legislation reducing pensions, and also in **Cyprus** and **Poland**, where relevant decisions by the national legislature were taken in 2011 and 2012 and in 2011 and 2016, respectively.

¹⁴ See OECD, note 12.

21. States that adopted a higher number of legislative reforms reducing pensions that have become payable include those most affected by successive financial crises since 2007, namely **Greece, Italy and Portugal**, where national legislators adopted a whole raft of such reforms since the beginning of the 2010s.

B. PURPOSE

22. With the exception of the Netherlands, the thirteen Member States analysed have all adopted legislative reforms reducing payable pensions for economic reasons, in order to save or re-establish the **financial balance** of the pension scheme in question or even that of the general State budget for the Member State concerned.
23. Of those reforms undertaken for economic reasons, a distinction can be drawn between those implemented in order to ensure the **long-term viability of the scheme** (**Austria, Cyprus, France, Germany, Italy, Latvia, Lithuania, Poland and Romania**), and those implemented as emergency measures to deal with **economic crisis** situations (**Cyprus, Italy, Greece, Latvia, Lithuania, Portugal and Slovenia**).
24. As for reforms adopted to ensure the long-term viability of the scheme, in **Germany and Austria**, such reforms consisted of bringing the civil servants' scheme or certain schemes specific to the public sector into line with the general scheme.
25. A similar objective of alignment seems to have been pursued with the reform of the method used to calculate pensions paid to former parliamentarians and their successors based on the formers' term of office, decided on in 2018 in **Italy** 'in the context of budgetary constraints.'¹⁵ In relation to the general pension scheme, the Italian legislature had already, in 1995, adopted a reform¹⁶ applicable to scheme members who started working from 1996 on, stipulating that the pension amount would no longer be a percentage of the final salary before retirement but would be calculated on the basis of total contributions paid in. An equivalent change in the calculation method was decided in 2012 for pensions of Italian parliamentarians who acquired their pension rights from 2012 on. In 2018, this calculation method was extended to pension rights acquired by parliamentarians prior to 2012 and, from 1 January 2019, applied also to pensions already payable at that date.

¹⁵ See, to that effect, the order of 8 October 2020, *Coppo Gavazzi and Others v. European Parliament*, T-389/19 to T-394/19, T-397/19, T-398/19, T-403/19, T-404/19, T-406/19, T-407/19, T-409/19 to T-418/19, T-420/19 to T-422/19, T-425/19 to T-427/19, T-429/19 to T-432/19, T-435/19, T-436/19, T-438/19 to T-442/19, T-444/19 to T-446/19, T-448/19 to T-454/19, T-463/19 and T-465/19, on appeal, [EU:T:2020:504](#), paragraph 230.

¹⁶ Known as the Dini reform, implemented by [Legge n. 335 – Riforma del sistema pensionistico obbligatorio e complementare](#) (law No 335 reforming the compulsory and supplementary pension scheme) of 8 August 1995 (ordinary supplement to GURI No 190 of 16 August 1995).

The consequence of this latter reform was that for certain beneficiaries, the amount of their pension was significantly reduced.

26. In **France**, pensions under the complementary doctors' scheme were reduced in a decree that reduced the value of a parameter used to calculate the pensions, in an attempt to restore financial balance to the scheme in question.
27. In 2011, **Cyprus** decided to suspend payment of the pension to former civil servants where the beneficiary occupied another public position throughout their term of office or service in that position.¹⁷
28. **Romania** adopted a reform entailing the recalculation of all public service pensions.¹⁸
29. As stated above, pensions can also be reduced because of an economic crisis. In this context, by way of example, note firstly the cases of **Greece** and **Portugal**, states where the national legislature adopted, from 2010 and 2012 respectively, a whole series of laws reducing pensions for an indefinite period in order to release funds to counter the crisis and stabilise the public budgets. While in both states most laws targeted pensions in the public sector in the wider sense, some measures affected all retired persons.
30. Secondly, of note are **Latvia** and **Lithuania**, where reductions were decided in 2009 due to the crisis affecting those countries, and concerned pensioners from all sectors, while being limited in duration.
31. Thirdly, another noteworthy example of reductions decided in the context of an economic crisis are **Cyprus** and **Slovenia**, which also targeted, for a limited duration and in stages, certain specific pensions. In **Cyprus**, between December 2012 and December 2022, percentage reductions at a progressive rate were applied to public-sector pensions. In **Slovenia**, the legislature provided in 2012 for a reduction in pensions paid from the State budget for which the amount was higher than EUR 622 per month until economic growth exceeded a certain threshold.
32. Furthermore, a measure similar to the one referred to in the previous paragraph was adopted in 2018 – albeit outside the context of an immediate economic crisis – by the **Italian** legislature, targeting so-called 'gilt-edged pensions' of an amount higher than EUR 100 000 euros per year.

¹⁷ By Ο περί των Συντάξεων Κρατικών Αξιωματούχων (Γενικές Αρχές) Νόμος του 2011 [[L. 88\(I\)/2011](#) – law of 2011 on pensions of state civil servants (General principles), in its initial version.

¹⁸ By [Ordonanța de urgență a Guvernului nr. 4/2005 privind recalcularea pensiilor din sistemul public, provenite din fostul sistem al asigurărilor sociale de stat](#) (Emergency Ordinance No. 4/2005 on the recalculation of public pensions originating from the former state social insurance system) of 3 February 2005 (*Monitorul Oficial al României*, part I, no 119, of 7 February 2005).

The pensions were to be reduced in percentage terms at a progressive rate according to the portion above that amount for a period of five years from 2019.¹⁹

33. In three Member States, the objective of legislative reforms to reduce pensions was not purely economic in nature. Firstly, in the **Netherlands**, in relation to survivor pensions, the legislature, in the mid-1990s, given the social changes and in particular the increased participation of women in the labour market, implemented reforms of survivor pensions whereby the pension amount was reduced depending on other income available to the surviving spouse, and applied that new regulation also to persons already in receipt of the pension at the time it came into force.²⁰
34. Secondly, in both **Germany** and **Poland**, the legislature adopted, in 1991 and 2016 respectively, laws²¹ reducing the pension amount for certain categories of persons who were, at the time of the German Democratic Republic and the Polish People's Republic, employed in positions close to the regimes in place (targeting notably members of the communist party, the secret services or the police). In both states, the laws were not primarily aimed at making savings but mainly to reduce benefits seen as too high or whose beneficiaries were seen as undeserving.

C. SCOPE

35. The scope of the legislative reforms adopted in the thirteen Member States analysed comprises three elements.

¹⁹ Under [Legge no 145 – Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021](#) (law No 145 regarding the budget for the 2019 financial year and the 2019-2021 multi-annual budget), of 30 December 2018 (GURI No 302 of 30 December 2018).

²⁰ On this reform, see Centrale Raad van Beroep (Higher Social Security and Civil Service Court, the Netherlands), judgment of 24 January 2001, [99/1770 Anw and 99/2072 Anw](#).

²¹ Namely:

- for Germany, the [Gesetz zur Überführung der Ansprüche und Anwartschaften aus Zusatz- und Sonderversorgungssystemen des Beitrittsgebiets](#) (law on the transfer of payable pension rights and future pension rights acquired in supplementary and special pension schemes of the German Democratic Republic to the general pension scheme of the Federal Republic of Germany) of 25 July 1991 (BGBl. 1991, pp. 1606 and 1677),
- for Poland, the ustawa o zmianie ustawy o zaopatrzeniu emerytalnym funkcjonariuszy Policji, Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu, Służby Kontrwywiadu Wojskowego, Służby Wywiadu Wojskowego, Centralnego Biura Antykorupcyjnego, Straży Granicznej, Biura Ochrony Rządu, Państwowej Straży Pożarnej i Służby Więziennej oraz ich rodzin (law amending the law on pension provision for officers of the police, the Internal Security Agency, the Foreign Intelligence Agency, the Military Counter-Intelligence Service, the Central Anticorruption Bureau, the border guards, the Government Protection Bureau, the state fire service and prison service and their families), of 16 December 2016 ([Dz. U. de 2016, position 2270](#)).

1. PERSONAL SCOPE

36. Reductions can be universal and can affect all schemes or only some schemes.
37. In five Member States, that is to say **Greece**, **Latvia**,²² **Lithuania**,²³ **Romania**²⁴ and **Slovenia**,²⁵ the national legislature has adopted legislative reforms entailing a reduction in the amount of all pensions payable (namely both public-sector and private-sector pensions).
38. In other Member States, the relevant measure applied only to the public sector (**Germany** and **Cyprus**), to specific schemes for certain occupations or activities (that is to say the scheme for doctors in **France**,²⁶ the scheme for deputies in **Italy**, schemes for former members of town councils, the railway and the National Bank in **Austria** or for persons engaged in activity close to the former communist regimes in **Germany** and **Poland**), or to a certain type of pension (namely pensions paid to the surviving spouse in the **Netherlands**).²⁷

2. MATERIAL SCOPE

39. Reductions can take different forms. A reduction can be direct and relate to the monthly pension amount itself (**Austria**, **Cyprus**, **France**, **Germany**, **Greece**, **Italy**, **Latvia**, **Lithuania**, the **Netherlands**, **Poland**, **Portugal**, **Romania** and **Slovenia**), or to additional benefits (such as 13th and 14th month entitlements in **Greece**, paid leave in **Portugal** or the single annual supplement in **Slovenia**).
40. A reduction can also be indirect and involve the imposition of a solidarity contribution (**Cyprus**, **Italy**, **Portugal** and **Slovenia**).
41. A reduction can further be modulated in terms of its magnitude, by being applied only, where applicable, to pensions above a certain threshold (**Greece**, **Italy**, **Portugal** and **Slovenia**).

22 By Likums 'Par valsts pensiju un valsts pabalstu izmaksu laika periodā no. 2009.gada līdz 2012.gadam' (law on the payment of retirement pensions and state benefits during the period from 1 July 2009 up to the year 2012), from 16 June 2009 ([Latvijas Vēstnesis, 2009, No 100](#)).

23 By Lietuvos Respublikos socialinių išmokų perskaičiavimo ir mokėjimo laikinasis įstatymas Nr. XI-537 (provisional law on the recalculation and payment of social benefits No XI-537), of 9 December 2009 ([Žin., 2009, No 152-6820](#)).

24 See note 18.

25 By Zakon za uravnoteženje javnih financ (law on balancing the public finances) ([Uradni list RS, No 40/12](#)).

26 This measure taken by decree No 99-237 of 26 March 1999 and therefore by a text ranking lower than a law in the formal sense did not amend the method for calculating the pensions in question but only the value of one parameter used in the calculation, namely the value of one retirement point. See Cour de cassation (Court of Cassation, France), 2nd Civil Chamber, judgment of 17 April 2008, Nos [07-12.143](#) and [07-12.144](#).

27 See above, paragraph 33.

42. Lastly, a reduction in pensions can be attached to whether or not its beneficiary has other income, notably in the form of another pension or of remuneration for a professional activity (**Cyprus, Latvia, Lithuania, the Netherlands and Poland**).

3. TEMPORAL SCOPE

43. In most cases, reductions in pension amounts were intended by the legislature to be permanent (**Austria, France, Germany, Greece, Italy, Lithuania, the Netherlands, Poland, Portugal and Romania**).
44. However, a reduction can also be limited in time in so far as the purpose of the reduction is to deal with a sudden crisis and not to ensure the financial stability of the scheme in question over the long term (**Cyprus, Italy, Latvia, Portugal and Slovenia**).

II. CONCEPTS AND CRITERIA APPLIED BY THE NATIONAL COURTS

45. In the face of legislative reforms entailing a reduction in pensions payable, the question arises as to whether there are standards or principles, drawn notably from constitutional law, that restrict the national legislature's margin of manoeuvre in adopting such reforms.
46. The question can be summarised as follows: are pensions, particularly those already payable, intangible? If not, what are the higher-ranking rules governing the power of the legislature to reduce their amount?
47. Faced with the question of whether there was in **France** a constitutional principle of the '**intangibility of liquid pension rights**', the Conseil constitutionnel (Constitutional Council) replied in the negative.²⁸ Regarding the other Member States analysed, the question does not appear to have been phrased in those terms. However, in view of the case-law of those states, it appears that the question, if put, would also receive a negative reply.
48. Admittedly, in seven Member States (**Austria, Cyprus, Lithuania, Poland, Portugal, Romania and Slovenia**), the case-law analysed expressly refers, in the context of pension rights, to the concept of 'acquired rights'.
49. Moreover, regarding **Portugal** more specifically, the law laying the bases of the social security system even has a legal definition of the concept of 'acquired rights', which seems, in substance, to match the definition of the term 'payable pension' as used in this summary.

²⁸ Constitutional Council judgment of 3 August 1994, law on supplementary social protection for employees and transposing Directive No 92/49 and Directive No 92/96 of 18 June and 10 November 1992 of the Council of the European Communities, [No 94-348 DC](#), Rec., p. 117.

That law defines rights acquired under social security as ‘those recognised or liable to be recognised due to the fact that all the legal conditions justifying their recognition are met’.²⁹

50. However, in neither **Portugal** nor the six other states referred to above in paragraph 48 has recognition of ‘acquired rights’ prevented the legislature from modifying those rights to the detriment of the rightholder.
51. In **Austria**, for example, the constitutional court expressly ruled that in the absence of a provision in the Constitution guaranteeing the protection of acquired rights, the national legislature had a certain margin of manoeuvre to make such modifications.³⁰
52. Thus, in all the Member States analysed, the national legislature seems in principle to have the ability to modify downward not only future pensions but also pensions already payable.
53. Nevertheless, note that there is an exception, albeit one very limited in scope, concerning **Romania**. The Curtea Constituțională (Constitutional Court) ruled in 2010³¹ that a person who pays contributions into the social security budget acquires the right to receive a pension in the amount resulting from the application of a ‘contributory principle’ that is apparently unique to the Romanian legal system. According to the same court, under that principle, a pension, provided it is contributory, that is to say it represents the counterpart of previous contributions paid in by its holder, constitutes an acquired right that cannot be reduced, even temporarily. In this context, it is worth pointing out that in 2009, namely in the year preceding that decision of the Curtea Constituțională (Constitutional Court), the average level of pension for retired persons who had paid contributions throughout their working life in Romania was EUR 157 a month.³²
54. In addition, **Romania** has special pensions for certain categories of persons,³³ known as ‘service pensions’ with two components, one portion corresponding to the contributory pension under the general scheme and a supplement borne by the state budget. The Romanian constitutional court ruled that the national legislature could modify the supplement, or even abolish it depending on the funds available, having due regard for general constitutional provisions and principles.³⁴

²⁹ See Article 66a of [lei n.º 4/2007](#), de 16 de janeiro que aprova as bases gerais do sistema de segurança social (law No 4/2007 of 16 January 2007 laying the bases of the social security system).

³⁰ See Verfassungsgerichtshof (Constitutional Court, Austria) of 12 December 2013, [G 53/2013](#).

³¹ See Curtea Constituțională (Constitutional Court, Romania), judgments [No 872](#) and [No 874](#) of 25 June 2010 (*Monitorul Oficial al României*, part I, No 433 of 28 June 2010).

³² See, in that regard, Rosioru, F., [Âge et pauvreté en Roumanie](#), *Revue Quart Monde*, 214 (2012/2), p. 37.

³³ That is to say, inter alia, soldiers, police officers, judges and parliamentarians.

55. Hence, that exception, limited solely to Romanian contributory pensions, does not seem likely to overturn the general observation that all of the legal systems analysed recognise the ability of the national legislature to reduce pensions, that is to say, not only future pensions but also those that are already payable.
56. However, this discretionary power afforded to the legislature is restricted. In all the legal systems analysed, the reduction must be compatible with certain concepts and must meet certain criteria.
57. While the approaches taken by the national courts in this context are not identical, they do appear similar. In effect, in the legal systems of all the Member States analysed, examination of the legality of legislative reforms reducing payable pensions focuses on rights and principles that intersect significantly. While not all of those rights and principles are necessarily found within the same Member State, there are overlaps between the approaches followed by the different national courts. The distinction is not always clear between those rights and principles that intersect and influence each other.
58. However, the national courts adopt a similar approach in their analysis, taking as a departure point the objective of guaranteeing the economic rights of interested parties to ensure they have a means of subsistence (A). Only once that initial hurdle is overcome is the legislation in question also analysed based on the principles of equal treatment (B), of the protection of legitimate expectations (C) and of proportionality (D).

A. RELEVANT RIGHTS RANKED AS CONSTITUTIONAL

59. The rights included in this section fulfil, in the present context, a similar function, namely, to guarantee interested parties' economic rights (that is to say a pension) to ensure they have a means of subsistence. Those rights are structured around the right to property, the right to social security and the right to proper maintenance.

1. THE RIGHT TO PROPERTY

60. It seems commonly accepted – as per a ruling by the European Court of Human Rights ('ECtHR') in relation to the right to property under Article 1 of the first additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('ECHR')³⁵ – that pensions in principle come within the scope of the right to property.

³⁴ See Curtea Constituțională (Constitutional Court, Romania), [judgment No 873](#) of 25 June 2010 (*Monitorul Oficial al României*, part I, No 433 of 28 June 2010).

Thus, the courts in eight Member States have assessed the constitutionality or legality of reforms reducing pensions in the light of that right as enshrined in their national constitutions (**Germany**,³⁶ **Latvia**³⁷ and **Poland**³⁸) and/or the abovementioned provision of the ECHR (**Cyprus**,³⁹ **France**,⁴⁰ **Greece**,⁴¹ the **Netherlands**⁴² and **Romania**⁴³).

61. However, according to the Bundesverfassungsgericht (Federal Constitutional Court), pension rights only come under that fundamental right if they are the counterpart of work provided or of contributions paid in by the rightholder, meaning that in **Germany**,⁴⁴ survivor pensions are not protected under that right, because, inter alia, the beneficiaries of that type of pension did not themselves contribute to the scheme in question.⁴⁵

³⁵ See the ECtHR, judgment of 11 November 2002, *Wessels-Bergervoet v. the Netherlands*, [CE:ECHR:2002:1112JUD003446297](#).

³⁶ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgments of 28 February 1980, [1 BvL 17/77 e.a.](#), and of 28 April 1999, [1 BvL 32/95](#), ECLI:DE:BVerfG:1999:ls19990428.1bvl003295; and orders of 30 September 1987, [2 BvR 933/82](#), and of 20 February 2020, [1 BvR 2071/18 e.a.](#), ECLI:DE:BVerfG:2020:rk20200220.1bvr207118.

³⁷ *Latvijas Republikas Satversmes tiesa* (Constitutional Court, Latvia), judgment of 8 June 2007, [No 2007-01-01](#), paragraphs 20 and 21.

³⁸ *Sąd Najwyższy* (Supreme Court, Poland), judgment of 16 March 2023, [II USKP 120/22](#).

³⁹ See *Ανώτατο Δικαστήριο Κύπρου* (Supreme Court, Cyprus), judgments of 18 May 2010, [Filippou v. Dimokratias](#), administrative appeal No 78/2007; of 7 October 2014, [Maria Koutselini-Ioannidou et al v. Kypriaki Dimokratia](#), joined cases Nos 740/11, 891/11, 892/11, 893/11, 927/11, 928/11, 930/11, 931/11, 960/11, 963/11, 964/11, 966/11, 996/11, 997/11, 998/11, 999/11, 1028/11, 1029/11, 1031/11, 1032/11, 1033/11, 1034/11, 1035/11, 1036/11, 1040/11, 1048/11, 1051/11, 1087/11, 1150/11, 1163/11, 1186/11, 1187/11, 1191/11, 1205/11, 1206/11, 1276/11, 1287/11, 1310/11, 1364/11, 1540/11, 1612/11, 1681/11, 1710/11, 114/12, 556/12, 563/12, 564/12 and 587/12, ECLI:CY:AD:2014:C748, and of 10 April 2020, [Kypriaki Dimokratia v. Avgousti](#), administrative appeals Nos 177/18, 75/19, 76/19, 77/19, 79/19, 80/19, 84/19 and 85/19, ECLI:CY:AD:2020:C122.

⁴⁰ Cour de cassation (Court of Cassation, France), 2nd civil chamber, judgment of 17 April 2008, Nos [07-12.143](#) and [07-12.144](#).

⁴¹ ΣτΕ Ολ. (Council of State, assembly, Greece) 668/2012.

⁴² See note 20.

⁴³ See note 34.

⁴⁴ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgments of 16 July 1985, [1 BvL 5/80 e.a.](#), and order of 11 May 2005, [1 BvR 368/97](#), ECLI:DE:BVerfG:2005:rs20050927.2bvr138702.

⁴⁵ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), order of 18 February 1998, [1 BvL 1318/86](#), ECLI:DE:BVerfG:1998:rs19980218.1bvr131886. The approach of the German judges excluding conversion pensions from the scope of the right to property seems to be in line with initial ECtHR case-law, which excluded benefits known as ‘non-contributory’ pensions and therefore survivor pensions from the scope of Article 1 of the first additional protocol to the ECHR (although more recent case-law seems likely to give rise to doubts as to whether it maintains that position); on that ECHR case-law, see Gómez Heredero, A., *Social security as a human right – The protection afforded by the European Convention on Human Rights*, Human Rights Files No. 23, Council of Europe Publishing, Strasbourg, 2007, p. 23 and 25.

62. A similar approach seems to have been taken in **Romania** by the Curtea Constituțională (Constitutional Court), which ruled that the non-contributory portion of a pension does not come under the right to property.⁴⁶
63. However, even if a pension comes under the scope of the right to property, it seems accepted by most that the protection afforded by that right is not absolute and – as the ECtHR also found⁴⁷ – that the right to property does not guarantee the right to a pension of a specific amount.⁴⁸
64. Thus, that fundamental right does not in principle exclude the national legislature from reducing the amount of a payable pension.⁴⁹
65. It should, however, be noted that in **Lithuania**, the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court) only allows a reduction in pensions on condition that the reduction is temporary⁵⁰ and – having regard to the inviolable character of the rights to property enshrined in the Constitution of that Member State – that the legislature sets up an equitable mechanism to compensate for the disadvantages resulting from such a reduction.⁵¹ Hence, given that, in Lithuania, a reduction is only permitted temporarily and on condition of compensation,⁵² it is analogous, in fact, to a moratorium or suspension of payment.
66. For the courts in the other Member States analysed, while pensions can be reduced for an indefinite period without compensation, the power of the legislature does not seem unlimited, because otherwise the fundamental right to property would be void of substance.

⁴⁶ See note 34.

⁴⁷ See, to that effect, ECtHR, 1 June 1999, *Skórkiewicz v. Poland*, No 39860/98, [CE:ECHR:1999:0601DEC003986098](#).

⁴⁸ See, to that effect, *Ανώτατο Δικαστήριο Κύπρου* (Supreme Court, Cyprus), judgment of 10 April 2020, [Kypriaki Dimokratia v. Avgousti](#), note 39; Cour de cassation (Court of Cassation, France), note 40; ΣΤΕ ΟΛ. (Council of State, Greece), note 41; *Latvijas Republikas Satversmes tiesa* (Constitutional Court, Latvia), note 37, and *Centrale Raad van Beroep* (Higher Social Security and Civil Service Court, the Netherlands), note 20.

⁴⁹ See, to that effect, note 36.

⁵⁰ On that restriction in the Lithuanian legal system, according to which a reduction in pension rights must only be temporary, see also point 75 below.

⁵¹ See Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court, Lithuania), [judgment of 3 December 2003](#), No 47/2001-08/2003-20/2003-32/2003-38/2003.

⁵² In this context, it should, however, be noted that the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court, Lithuania) required, firstly, a mechanism to compensate for service pensions that might be subject to ‘significant’ reductions (see, to that effect, [judgment of 29 June 2010](#), No 06/2008-18/2008-24/2010) and ruled, secondly, that a reduction not exceeding 20% was not ‘significant’ (see, to that effect [judgment of 6 February 2012](#), Nos 46/2010-47/2010-48/2010-49/2010-51/2010-52/2010-70/2010-77/2010-82/2010-83/2010-84/2010- 85/2010-86/2010-87/2010-94/2010-100/2010-101/2010-109/2010-114/2010-123/2010-124/2010- 128/2010-129/2010-133/2010-134/2010-142/2010-143/2010-1/2011-2/2011-5/2011-8/2011-16/2011- 21/2011-23/2011-25/2011-29/2011-32/2011-37/2011-39/2011). Thus, in the light of the condition regarding the significance of a reduction restricting the scope of application of the requirement for compensation and given that 20% was deemed not significant, it seems that the scope of the requirement is more limited than first appears.

67. Thus, German, Cypriot and Greek courts have linked the option to make such a reduction to the condition that the reduced pension can fulfil its function, which consists of ensuring the beneficiary has a means of subsistence (**Germany**),⁵³ or that the reduction does not undermine the beneficiary's dignity (**Cyprus**⁵⁴ and **Greece**⁵⁵), failing which a pension reduction would be regarded as infringing the right to property.
68. Moreover, the **German**⁵⁶ and **Greek**⁵⁷ courts require that the reduction be justified by an objective or by reasons in the public interest. As an example of one such ground, in **Germany**, the Bundesverfassungsgericht (Federal Constitutional Court) ruled that it was necessary to guarantee funding for a pension scheme to ensure, in the interest of all, that the scheme operates properly and makes a financial return, and that it is adapted to developments in the economic climate.⁵⁸
69. Regarding the intensity of judicial review relating to objective reasons put forward by legislators, **Greek** case-law makes a distinction between extreme emergency situations, where legislation must be adopted under the pressure of exceptional circumstances, and situations where such an emergency does not exist or no longer exists. Regarding reductions decided on in situations coming under the first category, the courts have only limited control, which does not extend to economic choices made by legislators.⁵⁹ In relation to reductions decided on in 'normal' situations, on the other hand, the Symvoulío tis Epikrateias (Council of State) requires legislators to conduct a documented and scientifically substantiated special study demonstrating, inter alia, that the legislation is both appropriate and necessary.⁶⁰
70. Furthermore, according to **German** constitutional case-law, even in a case where the general interest could justify a reduction in the pension amount, that interest must be balanced against the interest of beneficiaries in receiving the full amount of those pensions.⁶¹

⁵³ See, to that effect, Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 28 April 1999, [1 BvL 32/95](#), ECLI:DE:BVerfG:1999:ls19990428.1bvl003295; and orders of 13 December 2002, [1 BvR 1144/00](#), ECLI:DE:BVerfG:2002:rk20021213.1bvr114400, and of 29 August 2007, [1 BvR 858/03](#), ECLI:DE:BVerfG:2007:rk20070829.1bvr085803.

⁵⁴ See, to that effect, Ανώτατο Δικαστήριο Κύπρου (Supreme Court, Cyprus), judgment of 10 April 2020, [Kypriaki Dimokratia v. Avgousti](#), administrative appeals Nos 177/18, 75/19, 76/19, 77/19, 79/19, 80/19, 84/19 and 85/19, ECLI:CY:AD:2020:C122, and Διοικητικό Δικαστήριο (Administrative court, Cyprus), judgment of 12 October 2020, [Dimitriadou v. Kypriakis Dimokratias](#), No 5747/2013, ECLI:CY:DD:2020:472.

⁵⁵ See, to that effect, ΣτΕ Ολ. (Council of State, assembly, Greece) 2287/2015, σκ. 7; and 2289/2015, σκ. 5.

⁵⁶ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgments of 28 February 1980, [1 BvL 17/77 e.a.](#), and of 1 July 1981, [1 BvR 874/77 e.a.](#)

⁵⁷ ΣτΕ Ολ. (Council of State, assembly, Greece) 2287/2015; 668/2012, σκ. 35, and 2194/2014, σκ. 12.

⁵⁸ See note 56.

⁵⁹ Πατσίκας, Δ., *Η συνταγματική νομολογία του Συμβουλίου της Επικρατείας*, Εκδόσεις Σάκκουλα, Αθήνα-Θεσσαλονίκη, 2022, p. 124 à 126, also available at sakkoulas-online.

⁶⁰ ΣτΕ Ολ. (Council of State, assembly, Greece) 2287-88/2015, σκ. 7.

Thus, the Bundesverfassungsgericht (Federal Constitutional Court) deemed unjustified a considerable reduction in the pension amount that affected only a limited category of beneficiaries and that was, according to legislators, motivated by the concern to make budgetary savings, in so far as the savings generated by the reduction were negligible in terms of overall budgetary expenditure.⁶² Furthermore, on the weighing of different interests, the court pointed out that it was necessary to take into account the extent to which the social benefit in question was the counterpart to the beneficiary's own contributions into the scheme.⁶³

71. While the two requirements laid down, respectively, by the Greek and German courts and referred to in the two preceding paragraphs – namely, the production, firstly, of a documented and scientifically substantiated special study demonstrating, *inter alia*, that a measure is both appropriate and necessary and secondly, balancing the interests of the interests at issue – emerge from an analysis of proportionality, they are nevertheless applied by those national courts in the context of the fundamental right to property – which illustrates the inter-related nature of the various rights and principles applied.

2. THE RIGHT TO SOCIAL SECURITY OR RIGHT TO A PENSION

72. The constitutions of some Member States, in addition to the right to property, also provide for the right to social security, which includes, *inter alia*, the right to a pension (**Greece**,⁶⁴ **Latvia**,⁶⁵ **Lithuania**,⁶⁶ **Poland**⁶⁷ and **Portugal**⁶⁸). Thus, for example, Article 52 of the **Lithuanian** Constitution guarantees citizens' entitlement to an old-age and disability pension, as well as to social assistance in the event of unemployment, widowhood, loss of family support and in other cases provided for by law. In **Portugal**, Article 63 of the Constitution, entitled 'Social Security and Solidarity' provides that 'everyone has the right to social security, that 'the state is charged with organising, coordinating and subsidising a unified and decentralised social security system ... and that 'the social security system shall protect citizens in illness and old age and when they are disabled, widowed or orphaned, as well as when they are unemployed or in any other situation that entails a lack of or reduction in means of subsistence or the ability to work'.

⁶¹ See, to that effect, Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 1 July 1981, [1 BvR 874/77 e.a.](#)

⁶² See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 28 April 1999, 1 BvL 32/95, ECLI:DE:BVerfG:1999:1s19990428.1bv1003295.

⁶³ See, to that effect, Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 28 February 1980, [1 BvL 17/77 e.a.](#)

⁶⁴ See Article 22(5) of the Greek Constitution.

⁶⁵ See Article 109 of the Latvian Constitution.

⁶⁶ See Article 52 of the Lithuanian Constitution.

⁶⁷ See Article 67(1) of the Polish Constitution.

⁶⁸ See Article 63 of the Portuguese Constitution.

73. If there is a fundamental entitlement to social security, the national courts, when assessing the legality of legislation reducing pension rights in the light of that entitlement do so alongside or instead of an examination in relation to the right to property.
74. Thus, in **Latvia**, the Latvijas Republikas Satversmes tiesa (Constitutional Court) has underlined that the right to social security as guaranteed by the Constitution grants the person concerned protection that is broader than the right to property, also enshrined by the Constitution, on the ground that the latter right does not guarantee the pension amount.⁶⁹ According to that same court, the right to social security can be restricted only if the restriction is provided for by law, if it pursues a legitimate objective and if it is not contrary to the principle of proportionality.⁷⁰
75. In **Lithuania**, the case-law has, by relying on the constitutional right to a pension, circumscribed the freedom of legislators to reduce pension rights by imposing particularly stringent conditions. The Konstitucinis Teismas (Constitutional Court) inferred from the wording of the relevant constitutional provision, which states ‘the State guarantees citizens the right to an old-age and disability pension’, the obligation incumbent on the national legislature to adopt legislation that guarantees the necessary funds are raised to pay the pensions. It concluded that only in exceptional situations, such as an economic crisis or a natural disaster where the State is unable to raise the funds needed to pay pensions, can the State reduce pensions. However, even in such a situation, pensions can only be reduced temporarily and only in a measure that infringes neither the constitutional balance between the interests of the individual and those of society nor the principle of proportionality.⁷¹
76. In the other Member States analysed, the national courts do not seem on the other hand to have laid down such stringent conditions circumscribing legislators on the basis of that specific constitutional right.
77. In **Portugal**, while the Tribunal Constitucional (Constitutional Court) has confirmed that the right to social security includes the right to a pension, it has nevertheless held that ‘there is no direct link between the pension received by the beneficiary and the amount of the contributions made over the course of his or her professional life’,⁷² meaning that the right does not guarantee a certain pension amount.

⁶⁹ See Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), judgment [No 2009-43-01](#) of 31 December 2009, paragraph 20.

⁷⁰ See note 69.

⁷¹ See Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court, Lithuania), [judgment of 25 November 2002](#), No 41/2000.

78. The same observation holds true for the **Cypriot, Greek and Polish** courts.
79. Thus, in **Poland**, according to the Trybunał Konstytucyjny (Constitutional Court), the relationship between contributions and the amount of the retirement pension received is not an absolute relationship because the purpose of a retirement benefits system is to ensure that the subsistence needs of beneficiaries are effectively met, while respecting the principle of social solidarity.⁷³
80. Similarly, in **Greece**, the right to social security enshrined by the Constitution is considered only a ‘relative acquired social right’ which does not constitute an absolute bar on legislators reducing pensions.⁷⁴ However, according to the Symvoulío tis Epikrateias (Council of State), such a reduction must be justified by overriding reasons of an economic or financial nature and must not lead to a wholesale attack on the core nature of the entitlement to social security.⁷⁵

3. THE RIGHT TO PROPER MAINTENANCE

81. In **Germany**, the Bundesverfassungsgericht (Federal Constitutional Court) held that the pensions of civil servants do not come under the application of the right to property but the right to proper maintenance. While both rights are enshrined in the German Constitution, the right to proper maintenance constitutes, as regards civil servants, a *lex specialis* in relation to the right to property and aims to ensure proper remuneration and pension for civil servants for the duties they perform.⁷⁶ Contrary to the right to property, which does not extend to survivor pensions (because the beneficiaries of those pensions have not themselves previously paid contributions),⁷⁷ the protection provided by the right to proper maintenance also includes such pensions, in so far as the civil servant’s family has the right to proper maintenance,⁷⁸ the existence of contributions being irrelevant in the context of that latter right.
82. However, without taking into account the particularity discussed in the previous paragraph, the right to proper maintenance does not seem, in the context of pensions, to lead to substantial protection more extensive than that arising from the right to property.

⁷² See Tribunal Constitucional (Constitutional Court, Portugal), judgment [No 187/13](#) of 5 April 2013.

⁷³ See Trybunał Konstytucyjny (Constitutional Court, Poland), judgment of 4 November 2015, SK 1/14.

⁷⁴ See ΣτΕ 1166/1989, *Ελλάνη* 1991, p. 397; Χρυσόγονος, Κ., *Ατομικά και κοινωνικά δικαιώματα*, Εκδόσεις Σάκκουλα Αθήνα-Θεσσαλονίκη, 5η έκδ., 2023, § 36, p. 795, available at [sakkoulas-online](#).

⁷⁵ See note 74.

⁷⁶ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), order of 30 September 1987, [2 BvL 933/82](#).

⁷⁷ See above, paragraph 61.

⁷⁸ See, to that effect, note 76 and Battis, U. *Bundesbeamtengesetz*, 6th ed., C.H. Beck, Munich, 2022, annotation 22 under paragraph 4 BBG.

In fact, according to German constitutional case-law, the right to proper maintenance does not guarantee a certain pension amount and does not preclude that amount from being reduced by the legislator.⁷⁹

83. Hence, the German legislator can reduce pensions payable to (former) civil servants where such a reduction is justified by a public interest objective. Nevertheless, the constitutional court has clarified that the concern to make savings is not in itself capable of justifying a decrease in civil servants' pensions. Also required are reasons relating specifically to the retirement system, such as for example, the desire to counter rising spending to fund civil servants' pensions or the concern to bring the special scheme for civil servants into line with the general pension scheme.⁸⁰

B. EQUAL TREATMENT

84. Regarding the court decisions analysed for the purposes of this note, the courts in eight Member States referred explicitly to the principle of equal treatment (**Austria, Cyprus, Germany, Greece, Italy, Lithuania,⁸¹ Portugal and Slovenia**) in the context of pension reductions. In addition, in **Latvia**, even though equal treatment is not taken into account as an independent assessment criterion, it appears in part of the reasoning of the Latvijas Republikas Satversmes tiesa (Constitutional Court) on the principle of proportionality. That court in particular reproached legislators for not taking into account the different situations of people affected by the reduction, namely the pension amount and the existence of other income.⁸²
85. In the decisions analysed for **Austria** and **Slovenia**, the principle of equal treatment occupies a fundamental place in analysis when the national courts are called upon to rule on legislation reducing pension rights.
86. By virtue of **Austrian** law, that principle (*Gleichheitssatz*) prohibits arbitrary differential treatment by legislators.⁸³

⁷⁹ See note 76.

⁸⁰ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 27 September 2005, [2 BvL 1387/02](#), ECLI:DE:BVerfG:2005:rs20050927.2bvr138702.

⁸¹ Called 'principle of non-discrimination' in **Lithuania**. See Konstitucinis Teismas (Constitutional Court, Lithuania), [judgment of 6 February 2012](#), No 46/2010-47/2010-48/2010-49/2010-51/2010- 52/2010-70/2010-77/2010-82/2010-83/2010-84/2010-85/2010-86/2010-87/2010-94/2010-100/2010- 101/2010-109/2010-114/2010-123/2010-124/2010-128/2010-129/2010-133/2010-134/2010-142/2010- 143/2010-1/2011-2/2011-5/2011-8/2011-16/2011-21/2011-23/2011-25/2011-29/2011-32/2011-37/2011- 39/2011.

⁸² See note 69.

⁸³ Consolidated case-law of the Oberster Gerichtshof (Supreme Court, Austria); see, in that regard, legal rule (*Rechtssatz*) RS 0053981 and the case-law cited.

According to the Verfassungsgerichtshof (Constitutional Court), the principle is not infringed by the fact that, in reducing the pensions of persons appointed to political office, the legislature provided transitional provisions favouring persons appointed to such office at regional level but not for those appointed at municipal level, given that the bodies involved were different.⁸⁴ Moreover, the principle of equal treatment, which is explicitly enshrined in the Austrian Constitution, forms the legal basis from which Austrian case-law has deduced the principle of the protection of legitimate expectations,⁸⁵ which will be dealt with below in paragraph 93 and below.

87. **Slovenian** law allows pension reductions only if the principle of equal treatment, enshrined in Article 14 of the Constitution, is respected. Thus, the Ustavno sodišče (Constitutional Court) has held that a regulation which only reduced pensions above a certain threshold was contrary to that principle, on the ground that the legislator had not reduced all pensions.⁸⁶
88. In this respect, it should be noted that the solution adopted by the Ustavno sodišče (Constitutional Court, Slovenia) seems diametrically opposed to that developed by its counterpart in **Latvia**. The Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia) has expressly required legislators to define groups of pensioners whose pensions could not be reduced or could be reduced only by a certain amount⁸⁷ – which amounts to the choice of legislators in Slovenia ultimately being overturned by the constitutional court of that state.⁸⁸
89. In **Germany**, compliance with the principle of equal treatment, enshrined in Article 3(1) of the Constitution, is one of the conditions for legislation providing for a reduction in pensions to be approved by the national courts. Thus, the Bundesverfassungsgericht (Constitutional Court) ruled contrary to that principle legislation providing for the recalculation of pensions in payment, for most beneficiaries, on the basis of the interested party's average remuneration over the last twenty years before retirement and, for certain categories of beneficiaries, on the basis of average remuneration over their entire professional lives.

⁸⁴ See Verfassungsgerichtshof (Constitutional Court, Austria) judgment of 13 June 1997, [B4870/96](#).

⁸⁵ See, for example, Verfassungsgerichtshof (Constitutional Court, Austria) of 12 October 2016, [G 478/2015 e.a.](#)

⁸⁶ Ustavno sodišče (Constitutional Court, Slovenia), judgment [U-I-186/12-34](#) of 14 March 2013.

⁸⁷ See note 69.

⁸⁸ Slovenian legislation excluded not only pensions below a certain threshold from being reduced, it also provided that for pensions above that threshold, the reduction was staggered according to the value of the fraction of the pension amount above the threshold.

According to the court, the legislation disadvantaged the latter categories of beneficiaries and was not objectively justified.⁸⁹

90. In **Cyprus**, the Anotato Dikastirio Kyproua (Supreme Court) held that the principle of equal treatment was infringed by a law that suspended the public service retirement pension of a beneficiary for as long as he held public office or public employment, whereas other pension beneficiaries engaged in activity other than a public office or public employment continued to collect it while exercising that other activity.⁹⁰
91. In **Portugal**, a similar reasoning was followed by the Tribunal Constitucional (Constitutional Court) in respect of a provision providing for a temporary 90% reduction in paid leave affecting public service pensioners.⁹¹ In that regard, the court found that the reduction in question was concomitant with an extraordinary solidarity contribution imposed on all pensions above a certain amount. Consequently, public service pensioners saw their pensions reduced twice over, once as part of the reduction in paid leave and again because of the contribution imposed on their pensions. In the light of that dual reduction, the courts held that public service pensioners had been discriminated against compared to both active public service staff and to pensioners from other sectors. Firstly, while active public service staff were also affected by the reduction in paid leave, they did not have to pay the extraordinary solidarity contribution. Secondly, pensioners from other sectors were also subject to the contribution but did not have their paid leave reduced.
92. The **Greek**⁹² and **Italian**⁹³ legal systems focus on the principle of equality, particularly in the context of solidarity as regards charges levied by the state. In that regard, in **Italy**, the Corte costituzionale (Constitutional Court) has held that a fiscal measure on the solidarity contribution that targeted only retired persons infringed the principle of equality and the criteria of progressiveness by instigating discriminatory treatment.⁹⁴ Regarding the principle of equality in relation to charges levied by the state in **Greek** law, the national court concluded that that principle restricted the power of legislators to take measures economically unfavourable to several categories of the population.⁹⁵

⁸⁹ Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 28 April 1999, [1 BvR 1926/96 e.a.](#)

⁹⁰ See *Ανώτατο Δικαστήριο Κύπρου* (Supreme Court, Cyprus), judgment of 7 October 2014, *Maria Koutselini- Ioannidou et al v. Kypriaki Dimokratia*, note 39.

⁹¹ See note 72.

⁹² The principle of national and social solidarity is enshrined in Article 25(4) of the Greek Constitution, which provides that the state has the right to require all citizens to fulfil the duty of social and national solidarity.

⁹³ Article 53 of the Italian Constitution provides that all are required to contribute to public expenditure in proportion to their resources and that the taxation system is based on the principle of progressiveness.

⁹⁴ Corte Costituzionale (Constitutional Court, Italy), judgment No 116 of 3 June 2013.

C. THE PRINCIPLE OF PROTECTION OF LEGITIMATE EXPECTATIONS

93. In nine of the thirteen countries analysed (**Austria, Germany, Greece, Italy, Latvia, Lithuania, Poland, Portugal and Slovenia**), the case-law analysed expressly refers to the principle (of protection) of legitimate expectations.
94. However, as regards **Slovenia**, the Ustavno sodišče (Constitutional Court) has held that the principle could not be invoked against a reduction in acquired rights – pensions in payment in the case in point – because of a law prompted by the state’s economic inability to pay social transfers.⁹⁶ According to that court, the lawfulness of such a reduction must be assessed solely in the light of the principle of equal treatment.
95. By contrast, in **Greece**, the principle of protection of legitimate expectations, in combination with the principle of human dignity, is seen as precluding successive pension reductions given that such reductions, in view of their cumulative effect, lead to those affected being deprived of a large portion of their income.⁹⁷
96. In **Latvia**,⁹⁸ **Lithuania**⁹⁹ and **Poland**,¹⁰⁰ the constitutional courts have ruled contrary to the principle of protection of legitimate expectations legislation that had the effect of reducing a pension in payment when the beneficiary was engaged in parallel professional activity. It should be noted in that regard that the **Polish** legislation in question provided that payment of the pension would be suspended while the activity in question was ongoing – which the court of that Member State did not classify as a reduction but as a change in a granting condition which, according to that same court, is not permitted for pensions already in payment.
97. In **Latvia**, the Latvijas Republikas Satversmes tiesa (Constitutional Court) has deduced from the principle of protection of legitimate expectations the necessity for the sums saved by the reduction in question to be subsequently paid to the pensioners affected.¹⁰¹

⁹⁵ ΣτΕ Ολ. (Council of State, assembly, Greece) 668/2012, σκ. 35, *Αρμ* 4/2012, p. 624 to 636.

⁹⁶ See note 86.

⁹⁷ See, to that effect, Χριστοφορίδης, Σ., *Δυσμενής μέτρα κατά δημοσίων λειτουργών και υπαλλήλων*, Εκδόσεις Σάκκουλα, Αθήνα-Θεσσαλονίκη, 2014, p. 91 to 93, also available at sakkoulas- online; [4η ειδική συνεδρίαση Ελεγκτικού Συνεδρίου](#), 31 October 2012, επί του σχεδίου νόμου “Συνταξιοδοτικά θέματα του Δημοσίου” και “Τροποποιήσεις στις Συνταξιοδοτικές ρυθμίσεις”.

⁹⁸ Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), judgment of 19 March 2002, [No 2001- 12-01](#).

⁹⁹ See note 71.

¹⁰⁰ See Trybunał Konstytucyjny (Constitutional Court, Poland), judgment of 13 November 2012, [K 2/12](#).

This requirement, imposed by virtue of that principle, seems to coincide in substance with a requirement formulated in **Lithuania** by the Lietuvos Respublikos Konstitucinis Teismas (Constitutional Court) in the context of the right to property and regarding the necessity to provide an equitable mechanism to compensate for the disadvantages resulting from such a reduction.¹⁰²

98. Moreover, it is also apparent from **Latvian** case-law that protection of legitimate expectations is only ensured if the interested parties are put in a situation that allows them to make choices to prepare for changes affecting their pensions.¹⁰³
99. This ability to prepare for changes, or rather the inability to prepare for them, has also been highlighted by the constitutional courts in **Germany** and **Portugal**.
100. In that respect, in **Germany**, the Bundesverfassungsgericht (Federal Constitutional Court) has noted that those who have reached or are close to retirement age often do not have the resources to take measures to counter the negative effects of a reform that changes their pension rights.¹⁰⁴
101. In **Portugal**, the Tribunal Constitucional (Constitutional Court) has held that as a pensioner no longer has any mechanism to protect himself or herself and adapt his or her own behaviour to the new circumstances, his or her confidence in the stability of the legal system and in the maintenance of rules merits enhanced protection.¹⁰⁵
102. However, neither the Tribunal Constitucional (Constitutional Court) in **Portugal** nor the Bundesverfassungsgericht (Constitutional Court) in **Germany**, have deduced from such considerations that the principle of protection of legitimate expectations excludes any reduction to pensions payable. According to both courts, where there is a legitimate expectation, the expectations of individuals as regards the continuity of the existing legal order should be weighed against reasons in the public interest that justify its ‘discontinuity’.¹⁰⁶
103. Moreover, even if the reduction in question is, in principle, lawful, both constitutional courts require any negative effects to be mitigated by transitional provisions when changes to the scheme are ‘abrupt’ (**Portugal**) or the negative effects are considerable (**Germany**).¹⁰⁷

¹⁰¹ See note 98.

¹⁰² See above, paragraph 65.

¹⁰³ See note 98.

¹⁰⁴ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), judgment of 27 September 2005, [2 BvL 1387/02](#) ECLI:DE:BVerfG:2005:rs20050927.2bvr138702, and order of 27 February 2007, [1 BvR 10/00](#), ECLI:DE:BVerfG:2007:ls20070227.1bvr1001000.

¹⁰⁵ See Tribunal Constitucional (Constitutional Court, Portugal), judgment No 187/13 of 5 April 2013, paragraph 65, (<https://www.tribunalconstitucional.pt/tc/acordaos/20130187.html>).

¹⁰⁶ In relation to Portugal, see Tribunal Constitucional (Constitutional Court), [judgment No 128/09](#) of 12 March 2009 and, for Germany, note 104.

104. When assessing the principle of protection of legitimate expectations, the **Italian** and **Austrian** constitutional courts apply the same criteria as for examining proportionality.
105. Indeed, in **Italy**, according to the case-law of the Corte costituzionale (Constitutional Court), a reduction in pensions payable could be deemed contrary to the principle of legitimate expectations when it unduly impacts citizens' confidence in legal certainty with regard to material situations founded on previous legislation.¹⁰⁸
106. In **Austria**, such a reduction is considered in constitutional case-law as infringing the principle if the legislature unexpectedly and significantly changes an existing legal situation.¹⁰⁹
107. The example of this **Italian** and **Austrian** case-law shows that in judicial practice, the principles of protection of legitimate expectations and proportionality are closely inter-related.

D. THE PRINCIPLE OF PROPORTIONALITY

108. The principle of proportionality has been referred to, to varying degrees, in the court decisions of ten Member States (**Austria, Cyprus, Germany, Greece, Italy, Latvia, Lithuania, the Netherlands, Portugal and Poland**).
109. By contrast, in **Romania**, even though the principle is expressly referred to in the Constitution,¹¹⁰ national case-law does not to date seem to have taken it into account in the context of a pension reduction, at least explicitly.
110. In **Lithuania**, by contrast, the Konstitucinis Teismas (Constitutional Court) has expressly pointed out that even during an economic crisis, when the national legislature is entitled to restrict, under certain conditions, an individual's socio-economic rights, such as pension rights, such a reduction must always respect the principle of proportionality.¹¹¹

¹⁰⁷ See Bundesverfassungsgericht (Federal Constitutional Court, Germany), order of 27 February 2007, 1 BvL 10/00, ECLI:DE:BVerfG:2007:ls20070227.1bvl001000.

¹⁰⁸ Corte Costituzionale (Constitutional Court, Italy), judgments No 349 of 12 December 1985, No 173 of 27 June 1986, No 211 of 17 June – 2 July 1997 and No 416 of 27 October – 4 November 1999.

¹⁰⁹ See note 85.

¹¹⁰ Article 53 of the Romanian Constitution, entitled 'Restrictions on the exercise of certain rights or freedoms' provides, in paragraph 2, that 'restrictions may only be imposed if they are necessary in a democratic society. The measure must be proportionate to the situation for which it was taken and applied in a non-discriminatory manner, without infringing on the existence of the right or freedom.'

111. The same requirement has been laid down in substance in **Cyprus** by the Anotato Dikastirio Kyprou (Supreme Court), which upheld the constitutionality of such a reduction in the light of the principles of proportionality and proportional equality, all while balancing the legitimate interests in the case. ¹¹²
112. In general, the principle of proportionality is not implemented autonomously by the national courts but rather features as an inherent part of an assessment as to whether there has been infringement of the rights and fundamental principles outlined in the earlier parts of the note.
113. Thus, in **Latvia**, the Latvijas Republikas Satversmes tiesa (Constitutional Court) has observed that the right to social security can be restricted only if the restriction is provided for by law, if it pursues a legitimate objective and if it is not contrary to the principle of proportionality. ¹¹³ It is also in the context of the right to property and the right to social security that the proportionality test is carried out in **Greece**. ¹¹⁴
114. In **Portugal**, it is more in the context of the right to social security that proportionality is assessed to determine whether a reduction in the amount of a pension is ‘appropriate’, ‘necessary’ and ‘equitable’. Assessing proportionality involves verifying whether the legislation adopted is adequate to achieve the objective pursued and whether there are viable alternatives with equivalent effectiveness, and also examining the extent of its impact on the rights concerned. ¹¹⁵
115. In **Austria**, proportionality is one of the criteria for assessing the legality of interference, by the legislator, in the protection of legitimate expectations. In addition, Austrian law provides for a principle of objectivity (*Sachlichkeitsgebot*) with a similar function to the principle of proportionality in the context of equal treatment. Thus, legislation must not be inappropriate with regard to the objective pursued and must not lead to unjustified differentiation. ¹¹⁶
116. The principle of proportionality has played a role in several Member States in determining the extent of pension reductions. That is the case in **German** law in particular, where a 5% reduction in pension entitlements, spread over a period of seven years, was deemed not disproportionate as regards those concerned and therefore held to be lawful. ¹¹⁷

¹¹¹ See note 71.

¹¹² See *Ανώτατο Δικαστήριο Κύπρου* (Supreme Court, Cyprus), judgment of 10 April 2020, [Kypriaki Dimokratia v. Avgousti](#), note 39.

¹¹³ See *Latvijas Republikas Satversmes tiesa* (Constitutional Court, Latvia), note 69, paragraph 26.

¹¹⁴ *ΣτΕ Ολ.* (Council of State, assembly, Greece) 2290/2015 and – 2287-88/2015.

¹¹⁵ See, inter alia, *Tribunal Constitucional* (Constitutional Court, Portugal), judgment NO 396/11.

¹¹⁶ Consolidated case-law of the *Oberster Gerichtshof* (Supreme Court, Austria); see, in that regard, legal rule (*Rechtssatz*) RS 0058455 and the case-law cited.

117. In **Austria**, a 10% reduction was not deemed disproportionate.¹¹⁸ However, a 38% pension reduction imposed suddenly was considered not objectively justified and deemed to constitute serious interference infringing the principle of equality¹¹⁹ – which is, according to Austrian case-law, the fundamental principle from which the principle of proportionality derives.¹²⁰
118. In **Greek** law, a reduction amounting to 50% of judges’ pensions in 2010 constituted a substantial deprivation of their right to property, manifestly disproportionate in view of the purely budgetary objective pursued, due, inter alia, to previous cumulative reductions, to the amount of the reduction and to its retroactivity.¹²¹
119. In **Italy**, the Corte costituzionale (Constitutional Court) ruled that a percentage reduction in pensions above EUR 100 000 euros gross per year was lawful,¹²² but the period of five years was deemed excessive in view of the three-year horizon for the State’s provisional budget. The court underlined the importance of the constitutional principle of the proportionality of reductions in view of the amount of future pensions.¹²³
120. By contrast, in **Poland**, in a case where the amount of a retirement pension was reduced by more than half under national legislation that reduced the pensions of persons who, at the time of the Polish People’s Republic, were working in positions close to the regime in place, the Sąd Najwyższy (Supreme Court) ruled that reducing the pension to the amount of the average benefit was contrary to the principle of proportionality in so far as the legislation in question provided for the reduction regardless of the nature of the duties or the length of employment.¹²⁴

¹¹⁷ See note 80.

¹¹⁸ See note 84.

¹¹⁹ See Verfassungsgerichtshof (Constitutional Court, Austria) of 18 March 1987, [G 255/86 e.a.](#)

¹²⁰ See above, paragraph 86.

¹²¹ [2η ειδική συνεδρίαση Ελεγκτικού Συνεδρίου](#), 27 February 2013, επί του σχεδίου νόμου ‘Ρυθμίσεις για την τροποποίηση και τη βελτίωση συνταξιοδοτικών, δημοσιονομικών, διοικητικών και λοιπών διατάξεων του Υπουργείου Οικονομικών’, p. 36 et seq.; Χριστοφορίδης, Σ., see note 97, p. 86.

¹²² Article 1(261) of Law 145/2018 provided for a deduction in percentage for ‘gilt-edged pensions’ for a period of five years (2019-2023): 15% for the portion exceeding EUR 100 000 up to EUR 130 000; 25% for the portion exceeding EUR 130 000 up to EUR 200 000; 30% for the portion exceeding EUR 200 000 up to EUR 350 000; 35% for the bracket exceeding EUR 350 000 up to EUR 500 000; 40% for the portion exceeding EUR 500 000.

¹²³ See Corte Costituzionale (Constitutional Court, Italy), judgment No 234 of 22 October 2020.

¹²⁴ See note 38.

121. In the **French and Slovenian** legal systems, the principle of proportionality does not appear to have played any particular role to date in the context of the issue analysed in this note.

CONCLUSION

122. In each of the thirteen Member States analysed for this research note, legislative reforms reducing pension rights and, inter alia, targeting pensions already payable have been subjected to judicial review.
123. Reforms have been approved in two States, **France** and the **Netherlands** – the measure at issue in both States was, incidentally, the only reform identified that reduced payable pensions. By contrast, in four other states, namely **Latvia, Poland, Romania and Slovenia**, the measures at issue failed the constitutionality test. In the seven remaining states, **Austria, Cyprus, Germany, Greece, Italy, Lithuania and Portugal**, the findings are mixed, given that some courts to which cases were referred upheld a reduction in the benefit amount (including) for pensions payable in certain cases, while others did not.
124. That said, in none of the thirteen Member States analysed is a reduction by legislators in the amount of pensions payable wholly excluded, subject to certain conditions laid down in the case-law analysed, the chief common features of which can be summarised as follows.
125. The essential condition laid down by the case-law is that the reduced pension should continue to ensure its beneficiary the means of subsistence guaranteeing him or her a certain dignity. In addition, the reduction must also be justified by a public interest objective and must respect the principles of equal treatment, legitimate expectations and proportionality.
126. In that regard, the extent of the reduction – that is to say the percentage or, where applicable, the effective amount of the reduction – appears to be a particularly important criterion in the light of which the reduction may be upheld or not by the national courts called upon to review reforms adopted by legislators.
127. In any event, in all the Member States analysed, the national courts attempt to find a fair balance between the need to ensure the financial viability of pension schemes over the long term in the general interest, and, inter alia, in that of current contributors and future pensioners on the one hand and, on the other hand, the legitimate expectations of pensioners, who no longer have the means to protect themselves or to adapt their own behaviour to the new circumstances, that the benefits ensuring their subsistence will not be reduced.

[...]