



THE CYPRUS BANKING CRISIS
General Court of the European Union
Judgments in Cases T-680/13 and T-786/14

Introduction

On 13 July 2018 the General Court of the European Union (“the Court”) issued its judgments on the cases T-680/13 and T-786/14 whereby the claims for compensation based on non-contractual liability launched by several individuals and companies in relation to the Cypriot banking sector claiming damages from the European Union have been rejected.

Due to their exposure to Greek bonds, in early 2012, several banks established in the Republic of Cyprus (‘RoC’) and more specifically, the Cyprus Popular Bank Public Co Ltd (‘Laiki’) and Bank of Cyprus Public Co Ltd (‘BoC’), faced financial difficulties.

Particularly, the losses suffered by Laiki and BoC amounted to more than EUR 4 billion and which represented approximately 25% of the GDP of the RoC.

Simultaneously, the RoC was also facing financial and budgetary difficulties as a result of the exposure of its banking sector to the Greek economy and having been downgraded by rating agencies. Consequently, the RoC became unable to refinance itself at rates compatible with long-term fiscal sustainability and issued various measures in order to cover its financing needs which included the issuing of short-term treasury bonds and receiving a loan of EUR 2.5 billion from the Russian Federation.

By 25 June 2012, rating agencies had downgraded the RoC to a speculative grade and the RoC’s bonds ceased to be accepted as collateral for the monetary operations of the Eurosystem. On the same day, the RoC requested for financial assistance from the ESM (European Stability Mechanism). According to the Cypriot Government, the assistance sought to *‘contain the risks of the Cypriot economy, notably arising from the negative spill over effect through its financial sector, due to its large exposure to the Greek economy’*.

On 26 April 2013 a Memorandum of Understanding was signed between the RoC and the Commission whereby it was agreed that financial assistance would be granted in the form of a microeconomic adjustment programme. The programme was to be

negotiated by the Commission together with the European Central Bank ('ECB') and the International Monetary Fund ('IMF').

Following the implementation of the programme, major bank restructuring took place with the aim of correcting the budget deficit and restoring the soundness of the RoC's financial system.

The Claims

The claims arose by several individuals and companies (the 'Applicants') who at the time were depositors in Laiki and BoC or shareholders or bondholders thereof.

As a result of the implementation of the measures the Applicants considered that the value of their deposits, shares or bonds suffered from a substantial reduction in value.

Hence the Applicants brought actions for non-contractual liability before the General Court of the European Union in order to be compensated by the European Union for the alleged losses suffered.

The Court examined whether the 3 conditions in order for the European Union to incur non-contractual liability were satisfied. In particular, the conditions to be met are (i) the unlawfulness of the conduct complained of the European Union Institution, (ii) the reality of the damage and (iii) the existence of a causal link between the conduct of the institution and the harm invoked.

The Court noted that in order for the first condition to be met, a sufficiently serious infringement of the rule of law intended to confer rights on individuals must be established. The Applicants argued that in this instance, the rule of law was (i) the right to property, (ii) the principle of legitimate expectations and (iii) the principle of equal treatment.

Findings of the Court

The right to property

The Applicants considered that their right to property has been deprived with regard to deposits held in or shares or bonds of Laiki and BoC.

The Court noted that it has already examined three of the measures imposed by the Memorandum of Understanding by the judgments of 20 September 2016 namely, the takeover by BoC of the insured deposits in Laiki and the maintenance of uninsured deposits in Laiki pending its liquidation, the conversion of 37.5% of uninsured deposits in BoC into shares with full voting and dividend rights, and the temporary freezing of another part of the uninsured deposits, whereby it was held that *'those measures could not be considered to constitute a disproportionate and intolerable interference which infringes the right to property'*.

The Court examined other measures falling within the right to property such as the reduction of the nominal value of BoC shares. Such a measure was intended to ensure the stability of the Cypriot financial system and the euro-zone in its entirety. Since the less restrictive alternatives would not have been feasible nor would have they allowed the expected results to be achieved, the measure has been deemed to be proportionate to the objective pursued.

Additionally, the Court examined the aim and procedure for the sale of the Greek branches and found that there was no infringement to the right of property.

The principle of legitimate expectations

In order to rely upon this principle, it must be assumed that precise, unconditional and consistent assurances were provided to the interested party by the competent European Union authorities. The Applicants claimed that they were given consistent and precise assurances by European Union authorities that the measures provided for in the Memorandum of Understanding would not be imposed on RoC.

The Court held that the Applicants could not derive a legitimate expectation from the acts and conduct invoked in their actions.

The principle of equal treatment

The Applicants claimed that the uninsured depositors of Laiki were discriminated against vis-à-vis creditors thereof whose claims were based on the Emergency Liquidity Assistance ('ELA') granted to Laiki.

Further, discrimination was claimed based on discrimination vis-à-vis depositors, shareholders and bondholders of banks established in other Member States which benefited from financial assistance prior to RoC as well as vis-à-vis the cooperative banking system which was not subject to a bail in. The Court held that the case concerns different situations that are not comparable and hence no unlawful discrimination can be established.

Additionally, with regard to the allegation of discrimination based on nationality vis-à-vis depositors of the Greek branches, the Court found that although the situations in this instance are comparable, the difference is justified by an objective and reasonable objective, namely the need to prevent contagion from the Cypriot banking system to the Greek financial system.

As a result of the Applicants' failure to demonstrate the infringement of the first condition, that of the rule of law, and consequently the failure to satisfy the condition for establishing a non-contractual liability of the European Union, the Court rejected the claims for compensation.

Conclusion

These recent judgments have come to follow the decision of 20 September 2016¹, whereby it was held that the objective of the measures taken were of a general interest pursued by the European Union, namely the stabilisation of the euro area as a whole.

Taking into consideration the measures imposed and the imminent risk of the financial risks that would have been borne by the depositors had both the banks failed, the Court has deemed that such measures were necessary and proportional to the objectives pursued.

Seeing as the judicial bodies of the European Union have thus far not been satisfied that the measures taken in order to save the financial system of the RoC and to extent, that of the euro zone, amounted to a disproportionate and intolerable interference of the Applicants' right to property as guaranteed by Article 17(1) of the Charter, it appears that any claims for compensation against the European Union Institutions will fail to be acknowledged by the Court of Justice of the European Union - CJEU.

It remains to be seen whether the European Court of Human Rights - ECHR, will take a different approach as to whether the recognised restrictions of the right to property are justified.

¹ Judgments in Joined Cases C-8/15 P Ledra Advertising v Commission and ECB, C-9/15 P Eleftheriou and Others v Commission and ECB and C-10/15 P Theophilou v Commission and ECB and in Joined Cases C-105/15 P Mallis and Malli v Commission and ECB, C-106/15 P Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB, C-107/15 P Chatzithoma v Commission and ECB, C-108/15 P Chatzioannou v Commission and ECB and C-109/15 P Nikolaou v Commission and ECB

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