



Press and Information

General Court of the European Union

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Judgments in Cases T-680/13

K. Chrysostomides & Co. and Others v Council and Others and T-786/14
Bourdouvali and Others v Council and Others

The Court rejects the claims for compensation brought by several individuals and companies in relation to the restructuring of the Cypriot banking sector

The condition relating to the unlawfulness of the conduct complained of the European Union is not satisfied

Over the course of the first months of 2012, several banks established in Cyprus, including the Cyprus Popular Bank (Laïki) and the Trapeza Kyprou Dimosia Etaireia (Bank of Cyprus or BoC) experienced financial difficulties. The Cypriot Government then submitted a request for financial assistance to the president of the Eurogroup, which stated that the financial assistance requested would be provided by the European Stability Mechanism (ESM) in the context of a macroeconomic adjustment programme to be set out in the form of a memorandum of understanding. That memorandum was negotiated by the Commission together with the European Central Bank (ECB) and the International Monetary Fund (IMF), on the one hand, and by the Cypriot authorities, on the other. The Commission, on behalf of the ESM, and Cyprus then signed the memorandum and the ESM granted financial assistance to that Member State.

Several individuals and companies were at the time depositors in Laïki and BoC or shareholders or bondholders of those banks. The individuals and companies concerned consider that the implementation of the measures agreed with the Cypriot authorities resulted in a substantial reduction in the value of their deposits, their shares or their bonds. Those individuals and companies thus brought actions for non-contractual liability before the General Court of the European Union in order to be compensated for losses they claim to have suffered as a result of those measures.

By today's judgments, the Court notes that, in order for the European Union to incur non-contractual liability, a number of conditions must be satisfied, namely (1) the unlawfulness of the conduct complained of the EU institution, (2) the reality of the damage and (3) the existence of a causal link between the conduct of the institution and the harm invoked. As regards the first condition, the Court notes that a sufficiently serious infringement of a rule of law intended to confer rights on individuals must be established. According to the individuals and companies which initiated the actions, those rules of law are, in this case, the **right to property**, the **principle of legitimate expectations** and the **principle of equal treatment**.

The individuals and companies concerned consider first of all that they were deprived of their **right to property** over the deposits which they held in the abovementioned banks or over the shares or bonds of those banks held by them. In that regard, the Court notes that **the Court of Justice**, by judgments of 20 September 2016 ¹, **already examined three of the measures imposed in accordance with the memorandum of understanding**, namely, firstly, the takeover by BoC of the insured deposits in Laïki and the maintenance of uninsured deposits in Laïki pending its liquidation, secondly, the conversion of 37.5% of uninsured deposits in BoC into shares, with full voting and dividend rights, and, thirdly, the temporary freeze of another part of the uninsured deposits. In those judgments, the Court of Justice held that **those measures could not be considered to constitute a disproportionate and intolerable interference which infringes the**

¹ Judgments of the Court of Justice of 20 September 2016 in cases [C-8/15 P](#) and Others, see Press Release [No 102/16](#).

right to property. The Court considers that the individuals and companies concerned failed to adduce any evidence showing that that conclusion is not applicable in the present case.

The Court examined next the conformity of the other measures with the right to property, including, firstly, the measure relating to the reduction of the nominal value of the ordinary shares of BoC and, secondly, that relating to the sale of the Greek branches of BoC and of Laïki. It notes first of all that the conversion of bonds of BoC into shares and the **reduction of the nominal value of BoC shares** were intended to restore the equity capital of BoC and thus to ensure the stability of the Cypriot financial system and the euro-zone in its entirety. According to the Court, it is a measure which is proportionate to the objective pursued, since the less restrictive alternatives would not have been feasible or would not have allowed the expected results to be achieved. The Court concludes that that measure **does not constitute a disproportionate and intolerable interference contrary to the right to property.**

As regards the sale of the Greek branches, the objective was to avoid any contagion between the Cypriot and Greek banking and financial systems so as to maintain financial stability. In the light of the importance of the objectives pursued and the fact that that sale took place in an open, transparent and non-discriminatory procedure, the Court concludes that **the sale of the Greek branches did not constitute an infringement of the right to property.**

As regards the principle of protection of legitimate expectations, the Court notes that the right to rely on that principle assumes that precise, unconditional and consistent assurances were provided to the interested party by the competent EU authorities. The individuals and companies which initiated the actions claim that the competent EU authorities provided them with consistent and precise assurances that the measures provided for in the memorandum of understanding would not be imposed on Cyprus. The Court holds however that **the individuals and companies could not derive a legitimate expectation from of the acts and conduct invoked in their actions.**

The Court also examines the existence of a possible infringement of the principle of equal treatment, which constitutes a general principle of EU law enshrined in the Charter. It is apparent from settled case-law that the principle of equal treatment requires that comparable situations are not treated differently and that different situations are not treated the same, unless such treatment is objectively justified.

In that regard, the individuals and companies which initiated the actions claim that the uninsured depositors in Laïki were discriminated against vis-à-vis creditors thereof whose claims are based on the Emergency Liquidity Assistance (ELA) granted to Laïki. In so far as the debt of Laïki resulting from ELA was transferred to BoC, those creditors could turn to BoC, whereas the debt of Laïki towards uninsured depositors would be extinguished. The Court notes in that regard that **only the Central Bank of Cyprus granted ELA to Laïki and, as a result, had a claim against the latter.** Whereas a private operator (such as the uninsured depositors and shareholders of the banks concerned) acts in his private pecuniary interest, the decisions of a central bank of the Eurosystem (such as the Central Bank of Cyprus) are exclusively motivated by objectives of public interest, so that **the situations of those two categories of person are not comparable** and there is thus no question of discrimination.

Moreover, the individuals and companies claim that those of them whose deposits in the banks concerned exceeded €100 000 were discriminated against vis-à-vis depositors whose deposits did not exceed that amount. Deposits of €100 000 or less were entirely covered by the Cypriot Deposit Guarantee Scheme, whereas deposits exceeding that amount were covered only up to a maximum of €100 000. In addition, the individuals and companies consider that they were discriminated against vis-à-vis the depositors, shareholders and bondholders of banks established in Member States which benefited from financial assistance before Cyprus because the amount of that assistance was each time greater than that of the financial assistance facility granted to Cyprus, and the deposits, shares and bonds of those Member States were not affected. Finally, they consider that they were also discriminated against vis-à-vis companies in the cooperative banking sector, since the latter were not subject to a bail-in.

In response to all of those arguments, the Court holds that the case concerns different situations which are not comparable, so that no unlawful discrimination can be found.

Finally, the individuals and companies consider that they suffered discrimination on the basis of nationality vis-à-vis depositors in the Greek branches. According to them, although the grant of the financial assistance facility was conditional on the adoption, by the Cypriot authorities, of a bail-in measure affecting deposits in the banks concerned in Cyprus, that grant was not subject to a similar condition with regard to deposits in the branches of those banks in Greece. **The Court holds in that regard that those situations are comparable and that there is a difference in treatment, but that that difference in treatment is justified by an objective and reasonable objective**, namely the need to prevent any effect of contagion from the Cypriot banking system to the Greek financial system.

In view of the above, the Court concludes that the individuals and companies which initiated the actions have not succeeded in demonstrating an infringement of the right to property, of the principle of protection of legitimate expectations, or of the principle of equal treatment. **Since the first condition for establishing the non-contractual liability of the European Union (namely unlawful conduct alleged against an EU institution) has not been satisfied, the Court rejects the claims for compensation.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments (cases [T-680/13](#) and [T-786/14](#)) is published on the CURIA website on the day of delivery

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