

CYPRriot DEPOSITORS BEFORE THE CJEU: KNOCKING ON THE WRONG DOOR?

Abstract

In 2012, Cyprus became the fifth Eurozone country to request financial and fiscal stability support from the President of the Eurogroup. The key elements of a macroeconomic adjustment programme were agreed with the Eurogroup on 25 March 2013. The main aim of the programme, which included plans for structural reforms and privatisation, was to downsize the country's fiscal consolidation. As part of the discussions with the Eurogroup in the run-up to the agreement, Cypriot authorities undertook restructuring and resolution measures for the country's two largest banks which resulted in the so-called 'haircut' of deposits and substantial financial losses for numerous depositors of the two banks. This contribution discusses the first cases brought before the CJEU by Cypriot applicants who challenged the said measures. It is argued that, although the cases were found inadmissible by the General Court, the order of the Court may help the applicants in their attempts to claim damages before the Cypriot District Courts.

On 16 October 2014, in a series of five orders¹, the General Court ruled as inadmissible applications submitted by Cypriot applicants concerning the annulment of the March 2013 Eurogroup statement² regarding Cyprus' bail-in and the so-called 'haircut' on uninsured bank deposits.³ The contested statement announced the agreement reached between the Eurogroup (an informal group comprised of finance ministers of the Member States whose currency is the Euro) and the Cypriot authorities. The agreement was to take certain policy measures with the subsequent approval of a macroeconomic adjustment programme supported by the Eurozone Member States, the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF).⁴

¹ Case T-327/13, *Mallis and Malli v European Commission and European Central Bank*; Case T-328/13 *Tameio Pronoias Prosopikou Trapezis Kyprou v European Commission and European Central Bank (ECB)*; Case T-329/13 *Petros Chatzithoma and Ellenitsa Chatzithoma v European Commission and European Central Bank (ECB)*; Case T-330/13 *Lella Chatziioannou v European Commission and European Central Bank (ECB)*; Case T-331/13 *Marinos Nicolaou v European Commission and European Central Bank*, All Orders of 16 October 2014, not yet reported. The only difference in the claims of the cases is the amount of financial losses that the applicants said to have suffered. Given the identical nature of the claims and the orders, reference to Case T-327/13 or *Mallis and Malli* in this contribution implies reference to the other four cases as well. We discuss one more case later on, which was brought on slightly different grounds: Case T- 289/13, *Ledra Advertising Ltd v European Commission and European Central Bank*, order of 10 November 2014, not yet reported.

² 'Eurogroup Statement on Cyprus' 25 March 2013, accessible at

<http://ec.europa.eu/economy_finance/crisis/2013-03_en.htm>

³ Definitions of the terms 'bail-in' and 'haircut of deposits' should be given at this point. The term 'bail-in' is used here to indicate that the troubled Bank of Cyprus was recapitalised using portions of the holdings of shareholders, bond holders and uninsured depositors. As part of the bail-in, a 'haircut' took place: levies were imposed on deposits of over 100,000 Euros and used as equity to recapitalise the Bank of Cyprus. The Cypriot bail-in and haircut of deposits took place before the agreement for a Memorandum of Understanding for the provision of 10 billion Euros to Cyprus (i.e. the bail-out agreement), which was signed on 24 April 2013. For a detailed discussion, see P. Charalambous 'Cyprus: A bad "haircut" is not easily forgotten' *Financial Regulation International*, 27 November 2013.

⁴ The relevant Memorandum of Understanding for the provision of 10 billion Euros to Cyprus (i.e. the bail-out agreement) was signed on 24 April 2013.

The contested statement from the Eurogroup was welcoming the measures for the restructuring and viability of Cyprus' financial sector with regards to the country's two main banks: Laiki Bank and Bank of Cyprus. The statement was inter alia referring to the fact that Laiki Bank would be immediately restructured – or resolved⁵ - and split into a 'good bank' and a 'bad bank.' Whilst the 'good bank' would be transferred into Bank of Cyprus using the Bank Resolution Framework, the 'bad bank' would cease to exist. The measures adopted to give effect to the plans regarding the two banks resulted to an extensive write-off of Cypriot and foreign bank deposits (i.e. the so-called haircut).

Before examining the case, it is pertinent to note that the measures were implemented at the national level not directly by the Eurogroup statement, but by the Cypriot Comprehensive Law on the Resolution of Credit and Other Financial Institutions.⁶ This law constituted the basis on which the Governor of Central Bank of Cyprus subsequently issued the Resolution Decrees 103⁷ and 104.⁸ Decree 103 provided for the recapitalisation of Bank of Cyprus whilst Decree 104 provided for the resolution of Laiki Bank by transferring all deposits below 100,000 Euros to the Bank of Cyprus and by writing-off all deposits above 100,000 Euros.

Recently, the General Court ruled on five cases brought by depositors of Laiki Bank and Bank of Cyprus who suffered financial losses of over 100,000 Euros each as a result of the two Decrees. It is on these orders of the General Court that we will subsequently focus, particularly on Case T-327/13 *Mallis and Malli v Commission and ECB*.⁹

The applicants' claims were based on the rationale that the two Decrees were in fact the implementation of decisions taken at the EU level by the Eurogroup, which in turn have been communicated through a Eurogroup statement. The applicants challenged this statement in front of the General Court. However, given that the Eurogroup is not an EU institution, but an informal political group for discussion between the ministers of the Eurozone Member States, its decisions cannot be, in principle, submitted to judicial review under Article 263 TFEU. For this reason, the applicants brought their case against the Commission and the ECB, arguing that these two institutions were the de facto authors of the contested Eurogroup statement.

⁵ The European Commission defines bank resolution as 'the restructuring of a bank by a resolution authority, through the use of resolution tools, to ensure the continuity of its critical functions, preservation of financial stability and restoration of the viability of all or part of that institution, while the remaining parts are put into normal insolvency proceedings' European Commission MEMO/14/297 on EU Bank Recovery and Resolution Directive (BRRD), Brussels, 15 April 2014.

⁶ The 2013 Resolution of Credit and Other Institutions Law (Basic Law) L.17(I)/2013, 22 March 2013

⁷ The 2013 Decree on the bailing in of Bank of Cyprus, Regulatory Administrative Act No 103, EE, Annex III(I), No 4645, p. 769-780, 29 March 2013 (hereafter Decree 103).

⁸ 2013 Decree on the sale of certain operations of Laiki, Regulatory Administrative Act No 104, EE, Annex III(I), No 4645, 781-788, 29 March 2013 (hereafter Decree 104).

⁹ Supra note 1.

In particular, the applicants argued that the measures taken were essentially decided by the Commission and the ECB despite the fact that they were announced through the contested Eurogroup statement. Therefore, the applicants submitted that, in reality, the contested statement, despite its form, constituted a joint decision of the Commission and the ECB which the Court should annul. Accordingly, the Decrees issued by the Governor of the Bank of Cyprus were de facto implementing Commission and ECB's decisions. In addition, the applicants asked the Court to declare that the contested statement was a joint decision of the Commission and the ECB. The ECB and the Commission asked the Court to declare the case inadmissible.

In order to decide on the admissibility of the case, the Court embarked on an examination of, firstly, the issue of authorship of the contested decision¹⁰ (i.e. whether the decisions of the Eurogroup as documented in the contested statement could be attributed to the European Commission and the ECB) and, secondly, on whether the Eurogroup's statement had legal effects vis-à-vis third parties as required under Article 263(1) TFEU.¹¹ Both issues will be considered in turn.

The authorship of the contested statement

The Court began its examination by looking into Eurogroup's characteristics and its links with the European Commission and the ECB. It found that the Eurogroup is a discussion forum with a set organisational structure and an elected president and does not constitute part of the structure of the Commission or the ECB. The decisions of the Eurogroup are not controlled by the Commission or the ECB, despite the two institutions' participation in Eurogroup meetings. Therefore, the Court concluded that, contrary to the applicants' arguments, the Eurogroup neither received instructions by the two institutions nor acted as their representative. According to Protocol 14 to the TEU on the Eurogroup, the Commission 'shall take part in the meetings' of the Eurogroup and 'the ECB shall be invited to take part in such meetings.' The conclusion of the Court was predictable, since it is difficult to envisage an alternative reading of Protocol 14 TEU on the Eurogroup. This is even more so given that there are no public records of meetings which could indicate the extent of the involvement of the Commission and of the ECB in the discussions.

Subsequently the Court explained that the applicants' argument could be read in an alternative way, according to which the contested statement should be attributed to the European Stability Mechanism (ESM).¹² In line with this reading of the argument, the ESM is controlled by the Commission and the ECB, and therefore the contested statement came from these two institutions and could be subjected to judicial review. The Court dismissed this reading of the applicants' argument after looking into the ESM

¹⁰ T-327/13, paras 33-50.

¹¹ T-327/13, paras 51-62.

¹² T-327/13, para 46; The ESM is a permanent crisis resolution mechanism for Eurozone Member States. It was established in 2012 by an intergovernmental agreement, namely the European Stability Mechanism Treaty, to provide financial assistance to Eurozone Member States.

Treaty (ESMT), particularly to Articles 4, 5, 6 and 13 thereof, which define the ESM's organisational structure as well as the role of the European Commission and the ECB. It was found that the ESMT did not transfer any powers from the Commission or the ECB to the ESM and that neither of the two institutions had the power to control or instruct the ESM. The Court also referred to *Pringle*¹³ and noted that the acts of the ECB and the Commission as participants in the ESM are only binding on the ESM.

The line of argument regarding the role of two EU institutions in the ESM does not clarify any issues regarding judicial review and accountability of EU institutions for actions taken by the ESM. It is, indeed, a strained argument to suggest that the Commission and the ECB control the ESM. Nevertheless, the role of the two institutions in the ESM remains rather obscure and so does their liability for actions taken by the ESM.¹⁴ Neither of these aspects was elaborated by the Court in *Mallis and Malli*.

Legal Effects of the contested statement vis-à-vis third parties

After dismissing the arguments that the contested statement is attributable to the European Commission and to the ECB, the Court examined whether the statement was a measure intended to produce legal effects and hence capable of being the subject of judicial review under Article 263 TFEU. In this regard, the Court made a link between the legal effects and the authorship of the decision. The order of the Court repeated that, since Eurogroup is not a decision-making body, its statements cannot be seen as acts intended to produce legal effects vis-à-vis third parties. In addition, the Court found that the contested statement of the Eurogroup referred generally to measures agreed with the Cypriot authorities, without confirming any final decision as to whether financial assistance would be granted to Cyprus.

The way in which the Court reached its conclusion regarding the legal effects of the contested statement raises questions about the extent to which the relevant background of the case was considered. In fact, it seems that the Court limited its analysis solely to what the Eurogroup mentioned in the contested statement rather than also looking into the realities behind the agreement to provide financial assistance to Cyprus in March 2013. For instance, an important factor in the analysis of the Court was that the Eurogroup statement did not present the measures for the restructuring of the two banks as a condition for Cyprus to receive financial assistance from the ESM.¹⁵ It should be noted at this point that Article 12 (1) of the ESM Treaty allows for the granting of financial assistance only on the basis of strict conditionality. The Court stressed that, according to the Eurogroup's statement, issuing Decrees 103 and 104 was not a condition required by the ESM on the basis of Article 12 (1) of the ESM Treaty. Hence, the contested statement cannot be seen as having any binding legal effects that could make it subject to judicial review.

¹³ Case C-370/12 *Pringle v Government of Ireland, Ireland and the Attorney General* [2012] ECR I-756

¹⁴ For a detailed analysis of the constitutional issues regarding the role of the EU Institutions in the functioning of the ESM arising from the case of *Pringle* see P. Craig 'Pringle and the Nature of Legal Reasoning' (2014) *Maastricht Journal of European and Comparative Law* 205; and S. Peers 'Towards a new form of EU law? The use of EU Institutions outside the EU Legal Framework' (2013) 9 *EU Constitutional Law Review* 37.

¹⁵ T-327/13, para. 58.

Further Commentary

In its overall reasoning, the Court may have ignored two key considerations. The first consideration is relevant to the authorship of the measures, in that the decision of Cypriot authorities to implement the two Decrees was not independent of pressure from the Eurogroup, the Commission and particularly the ECB. This is evident when one looks back at the timeline of the issuing of the two Decrees. On the 16th of March 2013, the Cypriot authorities reached an agreement with the Eurogroup which included a one-off stability levy on both insured and uninsured deposits held in Cypriot Banks. Five days later, the Parliament of Cyprus rejected the said plan. Meanwhile, Laiki Bank and Bank of Cyprus were relying exclusively upon funds from the Emergency Liquidity Assistance (ELA)¹⁶ for their operation. Fears of bankruptcy were so imminent that the branches of the two banks were closed for days. On the 21st of March 2013, the ECB decided that funding through the ELA would not be provided beyond the 25th of March, unless a programme was put in place to ensure the stability of the two banks.

Against this background, the Parliament of Cyprus voted on the 22nd of March 2013 the Cypriot Comprehensive Law on the Resolution of Credit and Other Financial Institutions and subsequently the Governor of the Central Bank of Cyprus issued Decrees 103 and 104.¹⁷ In this respect, it is questionable whether the role of Eurogroup, the Commission and particularly the ECB was indeed as nuanced as the Court presented it to be. In a way, Cypriot authorities were given an ultimatum even though this was not written in the Eurogroup statement.

The second consideration refers to the legal effects of the decision. The Court could have considered in its analysis the significance of the statement by the Eurogroup and the assessments by the Commission and ECB of the viability of Cyprus banking sector for the ESM Board's decision to provide financial assistance to Cyprus. Although the Court correctly noted that the measures were not conditions for the provision of financial assistance as required by Article 12 (1) ESMT, the ESM specifically mentions on its website: 'in its Statement of 25 March, the Eurogroup stated that financial assistance to Cyprus is in principle warranted to safeguard financial stability in Cyprus and the euro area as a whole. *Based on this assessment* (emphasis added), on 24 April 2013 the ESM Board of Governors decided to grant, in principle, stability support to Cyprus.'¹⁸ Furthermore, the Financial Assistance Facility Agreement provided that the Commission, together with the ECB, 'assessed (i) the existence of a risk of financial stability of the euro area as a whole or of its member states (unless ECB has already submitted an analysis under Article 18(2) of the ESM Treaty), (ii) whether the public debt of [Cyprus] was sustainable and (iii) the actual or potential financing needs of [Cyprus], and *on the basis of such assessment* (emphasis added)

¹⁶ ELA provides liquidity assistance to solvent financial institutions that are facing temporary liquidity problems. Liquidity assistance is being allocated to the institutions through the National Central Bank of the Member State concerned.

¹⁷ *Supra* notes 3-5.

¹⁸ 'ESM financial assistance for Cyprus' accessible at: <<http://esm.europa.eu/assistance/cyprus/index.htm>>

the Board of Governors decided in principle to grant stability support to the [Cyprus] in the form of a financial assistance facility.¹⁹

The abovementioned quotes indicate that the assessments of the ECB, of the Commission, and of the Eurogroup constituted significant factors in the decision of the ESM to grant support. It could thus be argued that the Court may have underestimated the role of the two EU institutions and the Eurogroup in the adoption of the measures to restructure the banking sector in Cyprus. The possible omission of some background factors brings into question the Court's assertion that the purely informational character of the contested statement becomes evident when the statement is considered in context.²⁰ In other words, the Court found that the contested statement was intended only to communicate to the public some agreements made at a political level and to express the opinion of the Eurogroup as to the possibility for financial assistance by the ESM to Cyprus.²¹ To subscribe to the Court's line of analysis would mean to partially overlook the political negotiations and dynamics that characterised the agreement made between Cypriot authorities and the Eurogroup in March 2013. It is questionable whether this line of analysis is sustainable given the extensive impact of such a political agreement upon individuals; the applicants of *Mallis and Malli* are only two out of many citizens who suffered substantial economic loss and even saw their deposits of a lifetime diminishing as a result of the implementation of Decrees 103 and 104 and the restructuring of the Cypriot banks.

In addition to concluding on the inadmissibility of the applicants' first set of claims, the Court quickly dismissed the applicants' request to declare that the contested statement was a joint decision of the Commission and the ECB. The applicants had asked for a declaratory judgment, which would have clarified the legal state of affairs regarding the authorship and effects of the Eurogroup statement without giving rise to any legal remedies. In that respect, the Court noted that, under Article 263 TFEU and established case law²², it does not have the power to issue declaratory judgments.²³

This is not the first time that the CJEU distances itself from a case related to austerity measures. In 2012, Portuguese courts made two preliminary ruling requests to the CJEU on the compatibility of austerity measures, particularly public sector cuts, with fundamental human rights. The subject of the first request was the Portuguese State Budget Law for 2011²⁴, which had sought to reduce public spending in order to ensure Portugal's compliance with then Article 104 EC (now Article 126 TFEU) and the Stability and

¹⁹ 'Financial Assistance Facility Agreement between European Stability Mechanism and The Republic of Cyprus as the Beneficiary Member State and Central Bank of Cyprus as Central Bank' accessible at: <http://esm.europa.eu/assistance/cyprus/index.htm> p.2.

²⁰ T-327/13, para 61.

²¹ T-327/13, para 61.

²² C-224/03 *Italy v Commission* [2003] ECR I-14751, paras 20-22.

²³ T-327/13, paras 64-65

²⁴ Lei no. 55-A/2010, de 31 de dezembro de 2010, que aprova o Orçamento do Estado para 2011 (Diário da República, série I, n. 253, suplemento, de 31 de dezembro de 2010).

Growth Pact.²⁵ The Court was asked²⁶ whether Article 31(1) of the Charter of Fundamental Rights of the EU (i.e. the right to working conditions that respect dignity) ‘could be interpreted as meaning that employees have the right to a fair remuneration which ensures that they and their families could enjoy a satisfactory standard of living’ and whether the salary cuts in question were contrary to Article 31 (1) of the Charter as they put at risk the standard of living of employees and their families. The second preliminary reference request was made with regards to the Portuguese State Budget Law for 2012 and, similarly to the first case, the Court was asked questions about national legal reforms that took place in light of the financial assistance received by Portugal.²⁷ In both occasions, the CJEU held that it lacked jurisdiction to decide upon the references and sent the cases back to the Portuguese courts.

All things considered, the Cypriot applicants’ attempt to find a link between the adoption of the two Decrees and actions of EU institutions (i.e. the Commission and the ECB), which could fall under the scope of judicial review of Article 263 TFEU, proved so far to be futile. By finding their claims inadmissible, the Court essentially closed the doors to Cypriot depositors who wish to challenge decisions taken prior to the formal agreement between ESM and Cypriot authorities, such as the ones that led to the issuing of Decrees 103 and 104. The outcome of the case should have been apparent from the beginning, especially given the informal character of the Eurogroup which makes the group’s decisions immune from judicial review by the CJEU. Moreover, given that the Decrees which provided for the restructuring of the financial sector in Cyprus were adopted by Cypriot authorities, it is unclear how knocking on the door of the General Court could have been a correct move from the applicants in the first place. Although the essence of the applicants’ claims was to annul the Decrees by which the restructuring measures were adopted, the indirect way in which they argued their claims did not take the case too far.

The rather predictable order of the Court might cast a shadow over the importance of the case. This is so unless one considers the order in light of the applicants’ apparent determination to fight simultaneous legal battles at national and European level until they manage to get damages for the financial losses they suffered as a result of the 2013 haircut and bail-in. Numerous relevant appeals have been filed in Cyprus national courts by depositors of Laiki Bank and Bank of Cyprus. Already in June 2013, the Supreme Court of Cyprus (hereafter Supreme Court) issued a judgment over 55 such appeals.²⁸ The applicants had requested the Supreme Court to annul some of the Decrees issued by the Central Bank of Cyprus on 29

²⁵ Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies [1997] OJ L 209/1; Council Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure [1997] OJ L 209/6.

²⁶ Case C-128/12 *Sindicato dos Bancários do Norte and Others v BPN - Banco Português de Negócios, SA*, Reference for a preliminary ruling from the Tribunal do Trabalho do Porto (Portugal) lodged on 8 March 2012.

²⁷ Case C-264/12, *Sindicato Nacional dos Profissionais de Seguros e Afins v Fidelidade Mundial — Companhia de Seguros, SA*, Reference for a preliminary ruling from the Tribunal do Trabalho do Porto, (Portugal) lodged on 29 May 2012; Lei no. 64-B/2011, de 30 de dezembro de 2011, que aprovou o Orçamento do Estado para 2012 (Diário da República, 1.ª série, n. 250, de 30 de dezembro de 2011).

²⁸ *Christodoulou v Central Bank of Cyprus*, Case No 551/2013; also see P. Charalambous ‘Cyprus: A bad “haircut” is not easily forgotten’ *Financial Regulation International*, 27 November 2013.

March 2013, including Decrees 103 and 104. For the purposes of the current discussion, suffice it to say that the Supreme Court found the applicants' claims inadmissible but left the door wide open for the applicants to claim damages before the national District Courts.²⁹

Most notably, the Supreme Court also stated that the Republic of Cyprus is not beyond the law and thus should not be immune from responsibility for the consequences of its acts.³⁰ The Supreme Court ruled that depositors wishing to contest the Decrees should file a claim at the District Courts against the banks or institutions and authorities of the Republic involved in the implementation of the Decrees. It is with regards to such possible claims that the order of the General Court in Case T-327/13 becomes particularly relevant for the application of the law at a national level. By declaring that the Eurogroup, the Commission, and the ECB had no substantial role in the adoption of Decrees 103 and 104, the General Court implied that the adoption of the Decrees was solely the responsibility of Cypriot authorities.³¹ In a potential claim before Cyprus District Courts, the order of the General Court could be used to support the claim of a depositor seeking damages against the Republic of Cyprus. For instance, the *Mallis and Malli* order of the General Court, in addition to the Supreme Court's statement that the Republic of Cyprus is not beyond the law, could make it more difficult for the Republic of Cyprus to defend the implementation of the two Decrees as being a decision imposed to it by the Eurogroup, the Commission or the ECB.

The argument that the order of the General Court in *Mallis and Malli* could help Cypriot depositors with their claims at the Cyprus District Courts is further supported by a more recent order of the General Court in Case T- 289/13 *Ledra Advertising Ltd v European Commission and European Central Bank*.³² In this case, the applicants went against the European Commission and the ECB in a similarly indirect way as in *Mallis and Malli*, by arguing that the conditions attached to the financial assistance given to Cyprus were imposed by the two EU institutions. Similarly to Case T-327/13, the Court in the latest case ruled that the adoption of the Memorandum of Understanding (MoU) between the ESM and the Republic of Cyprus, which contained the conditions attached to the financial assistance given to Cyprus, did not originate from the Commission and the ECB.³³

The applicants in Case T- 289/13 had also asked for damages from the Commission and the ECB. They argued that certain passages of the MoU were infringing Article 1 of Protocol No 1 to the European Convention on Human Rights, and Article 17 of the Charter of Fundamental Rights of the European Union (i.e. protection of property). They submitted that the infringement of the right to property resulted partly because the Commission infringed its obligation to guarantee that the MoU is in conformity with

²⁹ *Christodoulou v Central Bank of Cyprus*, Case No 551/2013, p.29-30, 36-37.

³⁰ *Christodoulou v Central Bank of Cyprus*, Case No 551/2013, paras 40-42.

³¹ Case T-327/13, paras 58-61.

³² Case T- 289/13, *Ledra Advertising Ltd v European Commission and European Central Bank*, order of 10 November 2014, not yet reported.

³³ Case T- 289/13, paras 45-46.

EU law.³⁴ The Court did not find a causal link between the damages suffered and the alleged inaction of the Commission. The damages were a result of Decree 103, which was issued before the signing of the MoU.³⁵ The liability of the Commission was not examined any further. Similarly to Case-327/13, the indirect challenge by the applicants in Case T-289/13 to the actions of the Commission and the ECB resulted in the inadmissibility of their claim.

In conclusion, Case T-327/13 together with Case T-289/13, show that the doors of the CJEU are currently closed for Cypriot depositors either in relation to challenging the conditions attached to the financial assistance given to Cyprus or in relation to claims for damages. It should be noted, however, that *Mallis and Malli* is currently on appeal before the European Court of Justice (ECJ).³⁶ The appellants argue that the General Court failed to examine the strong links between the Commission, the ECB and the Eurogroup and hence wrongly found that the haircut did not result from decisions of any of these three bodies. They assert that the Court misinterpreted the facts and the law, and that, as a consequence, mistakenly found that the case was inadmissible. Hence, they ask the ECJ to set aside the General Court's order of inadmissibility which 'failed to attribute any conduct or act or decision whatsoever either to the Eurogroup or to the defendants or to the defendants within the Eurogroup.'³⁷

For the time being, the only route for the depositors to claim damages against the involved banks and the Republic of Cyprus is the one available at national level through the District Courts. Even so, the high burden of proof required from an applicant makes the success of potential claims uncertain. According to the Supreme Court, to be entitled to any damages, applicants would need to show that the issuing of the two Decrees left them in a worse position than they would be if the Decrees were not issued and, to that effect, the applicants would need to present quantifiable evidence.³⁸

There are some more pending cases before the General Court on grounds relevant to *Mallis and Malli* and the haircut of deposits; applicants are mainly asking for damages from the European Commission and the ECB.³⁹ The outcome of these cases as well as of the cases before Cyprus District Courts remains to be seen. What is certain is that it will take a long time before Cypriot depositors get any compensation for

³⁴ Case T- 289/13, para. 49.

³⁵ Case T- 289/13, para. 54.

³⁶ Case C-105/15P *Mallis and Malli v Commission and ECB*, appeal brought on 4 March 2015, Case C-106/15P *Tameio Pronoias Prosopikou Trapezis Kyprou v Commission and ECB*, Case C-107/15P *Chatzithoma v Commission and ECB*, Case C-108/15P *Chatziioannou v Commission and ECB*, Case C-109/15P *Nikolaou v Commission and ECB*, appeals brought on 4 March 2015.

³⁷ *ibid.*

³⁸ *Christodoulou v Central Bank of Cyprus*, Case No 551/2013, paras 41-42; for a detailed discussion on the judgment of the Supreme Court, see J. Giotaki 'The Cypriot "bail-in" litigation' (2013) *Butterworths Journal of International Banking and Financial Law* 485.

³⁹ Cases T-149/14 *Anastasiou v Commission and ECB*, Case T-150/14 *Pavrides v Commission and ECB*; Case T-151/14 *Vassiliou v Commission and ECB*; Case T-152/14 *Medilab v Commission and ECB*, all actions brought on 8 May 2014; Case T-680/13 *K. Chrysostomides & Co. and Others v Council and Others*, action brought on 6 June 2014; Case T-405/14 *Yavorskaya v Council and Others*, action brought on 25 July 2014.

the outcome of the implementation of Decrees 103 and 104, if they ever manage to do so. Putting this sentiment aside, the order of the General Court in *Mallis and Malli* and the future judgment of the ECJ could be illustrative (although slightly disheartening) for citizens of other Member States who wish to contest at the supranational level the political terms on which their country received financial assistance from macroeconomic adjustment programmes.

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