

Litigation - Cyprus

Supreme Court rules on administrative recourse in bank resolution measures

Contributed by **Andreas Neocleous & Co LLC**

July 16 2013

Introduction

Decision

Comment

Introduction

Article 146 of the Constitution gives the Supreme Constitutional Court (now the Supreme Court of Cyprus) exclusive jurisdiction to adjudicate any complaint that a decision, act or omission of any organ, authority or person, exercising any executive or administrative authority, is contrary to the Constitution or law, or is made in excess or abuse of powers vested in such organ, authority or person.

Recourse to the court is available to any person whose legitimate interest (whether personal or as a member of a community) is adversely and directly affected by the decision, act or omission concerned. Application for recourse must be made within 75 days of the date on which the decision or act was published or, if not published and in case of an omission, when it came to the knowledge of the person making the recourse.

The Supreme Court may confirm the act or decision or declare it to be null and void. In the case of an omission, it may declare that whatever was omitted should have been performed. The court's decision is binding on all courts, organs or authorities and must be acted on by those concerned. However, the court's jurisdiction is limited to reviewing the legality of the act - it cannot consider the merits of the decision and replace the decision of the administrative body with its own, since this would violate the strict separation of powers prescribed by the Constitution, under which decision making in the field of administration rests entirely within the province of the executive branch of the government.

A number of applications were made to the Supreme Court for review of the Central Bank of Cyprus' March 2013 decision to place Cyprus Popular Bank Public Company Limited and Bank of Cyprus Public Company Limited under the bank resolution regime, which led to substantial losses for customers who held deposits in excess of €100,000.

Decision

On June 7 2013 the Supreme Court issued its judgment on these applications. It decided, by a majority of seven to two, to dismiss the recourse actions filed against the administrative decision on the grounds that the creditor-debtor relationship - between the depositor on the one hand and the bank on the other - is governed by private law as opposed to public law. Accordingly, the Supreme Court decided that the administrative decision fell within the exclusive jurisdiction of the relevant district court and should be decided on by the district court under private law principles, and not under administrative recourse or judicial review principles.

The Supreme Court went on to clarify that in applying such principles, the district court should determine only whether the loss suffered by each depositor as a result of the decrees issued by the Central Bank of Cyprus and the agreements that each bank entered into for selling its

assets was greater than the loss that the depositor would have suffered had the respective financial institution gone into liquidation.

Comment

Although not immediately favourable, the Supreme Court judgment could be construed as a positive development for depositors, as there is now no requirement to wait until the final hearing of all the legal recourse actions filed (which could take a year or more). Instead, anyone affected by the resolution and the restructuring of the banks may now proceed immediately with an action in the appropriate district court. However, due to difficulties in quantifying losses at this stage, this may be impractical.

The Supreme Court decision also states that a civil law claim can be pursued not only against the respective financial institution, but also against the Cyprus government and any person or persons who acted negligently in any way in relation to such matters. The amount recoverable under such a civil law claim would be the difference, if any, between the actual loss suffered by the claimant and the loss that the claimant would have suffered had the institution concerned gone into liquidation. At this stage, there are significant practical difficulties in quantifying either of these amounts and in gathering evidence to substantiate a claim before the district court. Furthermore, Bank of Cyprus depositors face an additional obstacle in quantifying their loss, since they were partially compensated by being allotted shares equivalent to the amount used for the bail-in. No shares have yet been issued and it will be impossible to value any shares that have been issued until trading in them begins.

The limitation period for civil law claims in respect of any book debt claim against a credit institution is six years, although different limitation periods may apply depending on the subject matter of the claim.

For further information on this topic please contact [Vassilis Psyrras](mailto:vassilis.psyrras@neocleous.com) or [Marina Joud](mailto:marina.joud@neocleous.com) at [Andreas Neocleous & Co LLC](mailto:neocleous.com) by telephone (+357 25 110 000), fax (+357 25 110 001) or email (vassilis.psyrras@neocleous.com or marina.joud@neocleous.com).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Authors

Marina Joud



Vasileios Psyrras



© Copyright 1997-2013 Globe Business Publishing Ltd

Online Media Partners

