



Closing of Banks

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following question:

Does the application of a bail-in such as that set out in the case of Cyprus constitute a flagrant breach of the right to property, contrary to Article 17(1) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 1 of Protocol No 1 to the ECHR.?

In order to address the appellants' claims, the Court first stressed that, whilst the Member States do not implement EU law in the context of the ESM Treaty, the Charter is, nevertheless addressed to the EU institutions, including when they act outside the EU legal framework. Moreover, in the context of the adoption of a memorandum of understanding such as that of 26 April 2013, the Commission is bound, under both Article 17(1) TEU, which confers upon it the general task of overseeing the application of EU law, and Article 13(3) and (4) of the ESM Treaty, which requires it to ensure that the memoranda of understanding concluded by the ESM are consistent with EU law, to ensure that such a memorandum of understanding is consistent with the fundamental rights guaranteed by the Charter.

Having established the relevant obligations deriving from both primary EU law and the ESM Treaty, the Court then proceeded to examine whether the Commission contributed to a sufficiently serious breach of the appellants' right to property, within the meaning of Article 17(1) of the Charter, in the context of the adoption of the Memorandum of Understanding of 26 April 2013. To do so, it recalled that the right to property guaranteed by that provision is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union. Consequently, restrictions may be imposed on the exercise of the right to property, under the terms established in article 52 CFR, i.e. if they genuinely meet objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed.

To determine whether the conditions set out in article 52 CFR were fulfilled in this case, the Court noted that, as is apparent from Article 12 of the ESM Treaty, the adoption of a memorandum of understanding such as that resulting from the negotiations between the Cypriot authorities and, in particular, the Commission corresponds to an objective of general interest pursued by the European Union, namely the objective of ensuring the stability of the banking system of the Euro area as a whole. In view of this objective, and having regard to the imminent risk of financial losses to which depositors with the two banks concerned would have been exposed if the latter had failed, the Court concluded that such measures do not constitute a disproportionate and intolerable interference impairing the very substance of the appellants' right to property. Consequently, they cannot be regarded as unjustified restrictions on that right.



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In the light of the above, the Court found that the Commission cannot be considered, by dint of having permitted the adoption of the disputed paragraphs, to have contributed to a breach of the appellants' right to property, guaranteed by Article 17(1) of the Charter.

See: *Ledra Advertising Ltd and Others*, Cases C-8/15 P to C-10/15, Judgement of 20.9.2016.