

Head Office:

Patrician Chambers, 332 Agiou Andreou Str., 3035 Limassol, Cyprus  
P.O. Box 54543, 3725 Limassol, Cyprus  
Tel: +357 25 871 599, Fax: + 357 25 344 548, E-mail: info@pavlaw.com

Nicosia Office:

1 Andrea Haliou, Office 101, 2408 Egkomi, Nicosia, Cyprus  
Tel: +357 22 456 040, Fax: +357 22 456 041, E-mail: nicosia@pavlaw.com

[www.pavlaw.com](http://www.pavlaw.com)



---

**Landmark Supreme Court judgment of 07.06.2013  
in Christodoulou v. Central Bank of Cyprus a.o.  
Case No 551/2013 (and other consolidated cases)  
on the rights of depositors of Laiki Bank & Bank of Cyprus.**

---

The Supreme Court has on 7.06.2013 issued its ruling on the preliminary objections raised by the Central Bank of Cyprus (CPB) and the Cyprus Republic regarding 52 recourses filed before the Supreme Court on matters related to the effect of the regulatory orders issued within the context of the resolution of Laiki Bank (Laiki) and Bank of Cyprus (BOC) in March 2013.

In a judgment issued by 7 of the 13 judges of the Supreme Court (with four not participating as they excluded themselves due to conflict and other reasons) the objections of the Central Bank (CBC) and the Republic were rejected. The Supreme Court decisively ruled out any suggestion that the administrative orders of March 2013 were "Acts of Government" and moreover stated that the question was academic, as even if the acts complained of were acts of government, the Republic would not escape liability for its actions where it could be shown that depositors were made worse off as a result of the administrative orders than if the orders had not been issued.

However, in a move that caught all parties by surprise, the Supreme Court examined whether in the context of the specific law and the circumstances of the resolutions of BOC & Laiki the depositors had locus standi to file a recourse before the Supreme Court or alternatively they should file actions directly before the District Courts to claim their rights without first seeking to set aside the administrative orders through the Supreme Court.

This move was surprising as all parties, as well as the vast majority of lawyers in Cyprus, considered that you could not file any claim for damages before the District Court for any loss caused to you by an administrative action unless such action was

firstly declared invalid by the Supreme Court. This is the unwavering principle of Cyprus administrative law and is supported by all authorities. In fact more than 3000 separate recourses had been filed by various claimants before the Supreme Court precisely for this reason, including relatives of at least two Supreme Court judges, who had for this reason excluded themselves from the hearing of the above case. The Supreme Court in this landmark judgment decided that the depositors did not have a legal right to file recourses but should file claims before the District Courts for damages without first needing to challenge the administrative action of the Republic and the CBC. It is far from clear that the judgment of the Supreme Court is legally sound. In fact the judges in the majority did not refer to a single previous judgment to support their decision and declared the matter as original.

It is irrelevant for our purposes, whether the judgment of the Supreme Court was correct or not, as it is now a binding precedent that cannot be avoided by the District Courts before which claims can now be filed. If, before this judgment, depositors had filed cases before the District Courts, it is virtually certain that the District Court judges would have followed the previous case law and rejected the claims on the basis that the damage was caused by administrative acts that were not first challenged before the Supreme Court. Now the judgment of the Supreme Court, which cannot be challenged further, clears the road of all obstacles to filing actions and damages claims may be immediately filed.

This development is a vast improvement for depositors who have chosen to challenge the administrative actions. They no longer need to wait for several months to a year for the Supreme Court to decide on their recourses, before filing claims for damages, if they are successful. In addition the scope of the claims before the District Court is significantly larger as all actions by the administration, even those that could not be challenged by recourse, can now become the subject of the damages claims, such as the sale of the branches of Laiki and BOC in Greece and England and other similar matters.

The previous roadmap entailed obtaining a favourable Supreme Court judgment and only then filing a District Court action for damages. In cases where depositors also had personal issues that they needed to raise, such as the refusal of their Bank, under the direction of the CBC, to allow certain types of set – off or acknowledge

other rights of the depositors, the depositors would have to file more than one recourse. Now it is clear that the one action may include all matters.

In addition the Supreme Court clearly stated that the defense of "Act of Government" could not be raised again by the Republic before the District Courts. The Supreme Court decided that there is no practical consequence in examining this issue, as **"the state is not above the Law and is not entitled to privileges with reference to any of its actions that cause harm"**.

The Supreme Court stressed as follows:

*"The material rights of depositors of Laiki and BOC are not in the least affected by the view that they do not have locus standi to challenge the administrative actions and that their complains fall within the realm of the private rather than the public law. To the contrary, while an administrative review of the legality [of an administrative action] has a restricted scope, the civil procedures are particularly suitable for the examination of every aspect that may be relevant to the substantial matter. The question of jurisdiction should not, obviously be confused with the substance of the rights"*

The nature of the depositors' rights according to the Supreme Court derives from the contractual relationship between the depositors and their Bank. The Supreme Court says further:

*"The "adverse effect" on the depositors from the provisions of the Decree is the result of the resolution measures and is in favour of the Bank, being the subject matter of the Decree, and also derives from the actions of the Bank and its failure to respond to its contractual obligations following the measures for its resolution. Where the debt/obligations of the bank towards its depositors are affected, the depositor should primarily turn towards the bank in any civil action, for its contractual default in repaying the deposit, with a possible claim against the Republic as having caused the breach of the contractual obligation by means of the Decree".*

The Supreme Court included the following in an indicative list of possible matters that could be examined:

- (a) The sale of the foreign branches of the banks at an undervalued price.
- (b) The creation of new preferential creditors and the amendment of the priorities between creditors.
- (c) The mandatory nature of the conversion of depositors funds into shares.
- (d) The unequal treatment between depositors.
- (e) The extent of the haircut of the BOC depositors as compared to what was really required for its capital adequacy prior to the resolution measures.
- (f) The accuracy of the valuations of the assets of the two banks.
- (g) Any prior responsibility of any local or European agency in bringing about or permitting the creation of the circumstances leading to the current situation and the failure to adequately protect secured depositors.

All the above matters can now be combined in one action, alone with individual complains of the specific plaintiff, without first waiting for the decision of the Supreme Court on every administrative action.

The most important part of the judgment of the Supreme Court was the recognition that the law itself created a legal right actionable directly at the District Court level for a claim of damages arising out of the resolution of the banks. Such claim while nominally also including the banks themselves will be primarily a claim against the Central Bank of Cyprus, as the resolution authority and the Republic itself. The Supreme Court has, as indicated above, refused to exclude the Republic from any claims against it as a result of the relevant administrative actions and to the contrary stressed that the rule of Law requires that the Republic is held accountable for its actions where loss is caused to the depositors as a result of being placed in a worse position than they could have been if the administrative actions had not interfered with their rights.

What this practically means is that:

- (a) Depositors of Laiki should not be put in a worse position than they would have been if Laiki was liquidated and its assets sold and the proceeds distributed between the creditors in proportion.
- (b) Depositors of BOC should not be put in a worse position than they should have been if the haircut was restricted to what was required for the capitalization of BOC before the disastrous effect of the decrees on the assets and liabilities thereof.
- (c) All individual complains of depositors such as failure of the banks to accept set-offs, adverse position of guarantors, breach of contractual or statutory rights etc. can be pursued in the same action.
- (d) Rights, such as a claim for fraudulent trading where new depositors were accepted while the banks were insolvent, can be added.

The above is only an indicative list of possibilities that will be explored, given the clear legal framework created by the Supreme Court judgment. We will continue to keep you all updated of developments and remain at your disposal for any further clarifications.

Stavros Pavlou  
Senior & Managing Partner  
Patrikios Pavlou & Associates LLC