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Significance of ECJ decision in Thomas Pringle case

Even before today's adverse judgement of the European Court of Justice concerning the legality of the European Stability Mechanism Treaty under EU law, this country had already paid over €500 million euro in October as a first instalment of Ireland's legal obligation under the Treaty to 'irreversibly and unconditionally' contribute €1 billion in various forms of capital to the ESM Fund. Now further payments will be required.

The judgement does not bode well for the future integrity of EU treaties, the Commission and the institutional framework of the 27-member EU that has been built up over the years and which the ECJ is supposed to exist to uphold. The set-up that the ECJ has apparently endorsed will inevitably move the 17 member states that use the euro down a different legal-political path than the rest of the EU.

In his dissenting judgement in the Supreme Court, Judge Hardiman said that the ESM has introduced a new point of reference for the exercise of Irish government power in addition to the 'common good of the people of Ireland' and 'the aims of the EU'. The new point of reference is the interest of 'the euro area as a whole or of its Member States'. The other side of that equation is that the interests of members of the euro zone – especially the smaller ones – are completely submerged under the interests of the euro zone.

For example, there is no fixed commitment by the ESM to support Ireland should its assistance be required. The judgement is brutally frank: 'stability support may be granted to ESM Members which are experiencing or are threatened by severe financing problems only when such support is indispensable to safeguard the financial stability of the euro area as a whole and of its Member States and the grant of that support is subject to strict conditionality appropriate to the financial assistance instrument chosen' (Para 142).

In addition such assistance, 'in no way implies that the ESM will assume the debts of the recipient Member State. On the contrary, such assistance amounts to the creation of a new debt, owed to the ESM by that recipient Member State, which remains responsible for its commitments to its creditors in respect of its existing debts' and any financial assistance granted must be repaid and 'the amount to be repaid is to include an appropriate margin' (Para 139).

Although 27 judges heard Deputy Pringle's application, only one judgement was delivered and we do not know if there were any dissenting judgements. Nevertheless, we owe Deputy Pringle a debt of gratitude for his courageous and public spirited action in undertaking this

case. History will show how important it has been in re-asserting principles of democracy accountability and the rule of law.

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