

ECJ issues ruling on Apostolides vs Orams case

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Nicosia, Apr 28 (CNA) --- The European Court of Justice ruled Tuesday that a judgment of a Court in the Republic of Cyprus must be recognized and enforced by the other EU member states even if it concerns land situated in the Turkish occupied areas of Cyprus.

The Court's ruling refers to the Apostolides vs Orams case and came after a dispute has arisen before the Court of Appeal of England and Wales, which has requested a preliminary ruling from the Court of Justice, between Greek Cypriot refugee Meletis Apostolides, and British couple David and Linda Orams, in relation to the recognition and enforcement of a judgment of the District Court of Nicosia.

The court in the government controlled southern areas of Cyprus had delivered a judgment ordering the Orams couple to vacate an area of land in the Turkish occupied north and to pay various monetary amounts.

The British couple had purchased the land from a third party and built a holiday house on it. According to the findings of the court in Cyprus, however, the rightful owner of the land is in fact Apostolides, whose family was forced to leave the north as a result of the Turkish invasion of Cyprus in 1974 and the occupation of the island's northern third.

In statements to CNA, advocate of Greek Cypriot Meletis Apostolides, Constantis Candounas, said that the Court's decision is 100% in favor of his client.

According to a press released by the European Court of Justice on the Apostolides vs Orams case, the suspension of the application of Community law in the areas where the government of the Republic of Cyprus does not exercise effective control and the fact that the judgment cannot, as a practical matter, be enforced where the land is situated do not preclude its recognition and enforcement in another member state.

The press release says that a judgment of a Court in the Republic of Cyprus must be recognized and enforced by the other member states even if it concerns land situated in the northern part of the island.

"Following the intervention of Turkish troops in 1974 Cyprus was partitioned into two areas. The Republic of Cyprus, which acceded to the European Union in 2004, has de facto control only over the southern part of the island while, in the northern part, the Turkish Republic of Northern Cyprus has been established, which is not recognised by the international community with the exception of Turkey. In those circumstances, the application of Community law in the northern area of the Republic of Cyprus has been suspended by a protocol annexed to the Act of Accession", the press release adds.

It is noted that Apostolides, a Cypriot national, brought an appeal before the Court of Appeal (England and Wales), in the course of a dispute between himself and a British couple, the Orams, seeking the recognition and enforcement of two judgments from a court in Nicosia. That court, sitting in the southern part of Cyprus, ordered the Orams to vacate land situated in the northern part of the island and to pay various sums.

The Orams had purchased the land from a third party in order to build a holiday home on it.

According to the findings of the Cypriot court, Apostolides, whose family was forced to leave the north of the island at the time of its partition, is the rightful owner of the land. The first judgment, given in default of appearance, was confirmed by another judgment ruling on an appeal brought by the Orams.

The national court referred to the Court of Justice a number of questions concerning the interpretation and application of the Brussels I Regulation.

It asks, in particular, whether the suspension of Community law in the northern part of Cyprus and the fact that the land concerned is situated in an area over which the government of Cyprus does not exercise effective control have an effect on the recognition and enforcement of the judgment, in particular in relation to the jurisdiction of the court of origin, the public policy of the member state in which recognition is sought and the enforceability of the judgment.

In addition, it asks whether the recognition or enforcement of a default judgment may be refused, on account of the fact that the document instituting proceedings was not served on the defendant in sufficient time and in such a way as to enable him to arrange for his defence, where the defendant was able to bring an appeal against that judgment.

First of all, the Court declares that the suspension provided for in the Act of Accession of Cyprus is limited to the application of Community law in the northern area. However, the judgments concerned, whose recognition was sought by Apostolides, were given by a court sitting in the Government-controlled area.

The fact that those judgments concern land situated in the northern area does not preclude that interpretation because, first, it does not nullify the obligation to apply the regulation in the government-controlled area and, second, it does not mean that that regulation must thereby be applied in the northern area, the press release says.

The ECJ therefore concludes that the suspension of Community law in the northern area provided for by the protocol annexed to the Act of Accession, does not preclude the application of the Brussels I Regulation to a judgment which is given by a Cypriot court sitting in the government-controlled area, but concerns land situated in the northern area.

Next, the Court states, first, that the dispute at issue in the main proceedings falls within the scope of the Brussels I Regulation and, second, that the fact that the land concerned is situated in an area over which the Government does not exercise effective control and, therefore, that the judgments concerned cannot, as a practical matter, be enforced where the land is situated does not preclude the recognition and enforcement of those judgments in another member state.

In that connection, it is common ground that the land is situated in the territory of the Republic of Cyprus and, therefore, the Cypriot court had jurisdiction to decide the case since the relevant provision of the Brussels I Regulation relates to the international jurisdiction of the member states and not to their domestic jurisdiction.

The Court also states, as regards the public policy of the member state in which recognition is sought, that a court of a member state cannot, without undermining the aim of the Brussels I Regulation, refuse recognition of a judgment emanating from another Member State solely on the ground that it considers that national or Community law was misapplied.

The national court may refuse recognition only where the error of law means that the recognition or enforcement of the judgment is regarded as a manifest breach of an essential rule of law in the legal order of the member state concerned.

In the case in the main proceedings, the Court of Appeal has not referred to any fundamental principle within the legal order of the United Kingdom which the recognition or enforcement of the judgments in question would be liable to infringe.

Furthermore, as regards the enforceability of the judgments concerned, the Court states that the fact that Apostolides might encounter difficulties in having the judgments enforced cannot deprive them of their enforceability.

Therefore, that situation does not prevent the courts of another member state from declaring such judgments enforceable.

Lastly, the Court states that the recognition or enforcement of a default judgment cannot be refused where the defendant was able to commence proceedings to challenge the default judgment and those proceedings enabled him to argue that he had not been served with the document which instituted the proceedings or with the equivalent document in sufficient time and in such a way as to enable him to arrange for his defence. In the case in the main proceedings, it is common ground that the Orams brought such proceedings.

Consequently, the recognition and enforcement of the judgments of the Cypriot court cannot be refused in the United Kingdom on that ground, the press release notes.

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