

## **WARNING:**

### **Caution regarding property purchases in the occupied area of Cyprus**

The European Court of Human Rights, in its Judgment of 18 December 1996, on the individual application of the Greek Cypriot displaced owner from Kyrenia, Mrs. Titina Loizidou, against Turkey, and in the *Fourth Interstate Application of Cyprus against Turkey* of 10 May 2001, upheld the rights of the refugees to their properties. In the *Loizidou case*, the Court ordered the Government of Turkey to compensate the applicant for the time period of deprivation of use of her property and to provide full access and allow peaceful enjoyment of her property in Kyrenia. The right of the displaced owners to their properties was reconfirmed in the decision of the European Court of Human Rights (Dec. 2005) regarding the application of *Myra Xenides- Arestis v. Turkey*, and has since been repeatedly reconfirmed in a multitude of cases brought by Greek Cypriot owners of property in the occupied part of Cyprus against Turkey.]

Greek Cypriot owners may also bring civil action against usurpers of their property before the competent civil Courts of the Republic of Cyprus. In its judgment of 15 November 2004 in the case of *Meletios Apostolides v David and Linda Orams*, the Nicosia District Court found the Defendants liable for trespass in the property of the Plaintiff, ordering them to demolish the villa and other buildings erected on the property, surrender vacant possession to the Plaintiff and pay damages. Pursuant to EC Regulation 44/2001, the judgments of the civil courts of the Republic of Cyprus can be enforced in any of the Member States of the European Union against the assets of the Defendants in that state. On 6 September 2006 a Judge of the Queen's Bench Division of the High Court of Justice in the UK issued his judgment on the Orams' appeal against registration and enforcement in Britain of the Cyprus judgment in favour of Mr. Apostolides.

The British Court avoided getting involved in enforcing the Cyprus judgment and allowed Orams's appeal however, on the substance of the case the British Court pointed out that, according to the relevant judgments of the European Court of Human Rights, the property rights of Mr. Apostolides in relation to the property in question remain in force and Mr. Apostolides remains the lawful owner of his property in Lapithos. Leave to appeal against this judgment of the High Court was granted to Mr. Apostolides

Mr. Apostolides filed an appeal against the first instance judgment and, in order to clarify the multiple issues of European Community Law raised in the case, the Court of Appeal referred to the European Court of Justice [ECJ] a number of questions for

**a preliminary ruling. On 29 April 2009, the European Court of Justice [Grand Chamber] issued its judgment on the preliminary reference, completely overturning the findings of the first instance English Court and upholding the positions of Mr. Apostolides and the Republic of Cyprus, which, as a Member State of the European Union, intervened as of right before the Court.**

**Following the judgment of the Court of Justice of the European Union, the court of Appeal, on 19 January 2010, issued its final judgment on the case. The Court emphasized the obligation to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus, and affirmed the exclusive jurisdiction of Cypriot courts, even in cases concerning property rights of land situated in the occupied areas of the Republic of Cyprus. At the same time, the Court held that, despite international support for the efforts to find a solution to the Cyprus problem, there was no ground for non-recognition and implementation of a lawfully-made judgment of a Court in a lawfully constituted State, which is a Member of the European Union. In that respect, the Court even argued that a refusal to recognize such a judgment by the Cypriot court would inflame the situation. At the same time, the Court stressed that UN Security Council resolutions, while urging negotiations and a settlement of the Cyprus problem, have consistently required respect for the territorial integrity of the Republic of Cyprus under a single sovereignty, which clearly encompasses respect of the courts as the judicial arm of a sovereign state.**

**Under the laws of the Republic of Cyprus, the exploitation of property registered in the name of another, constitutes a criminal offence, for which a European arrest warrant, executable in any of the 27 EU countries, and an International arrest warrant could be issued.**

### **The illegality of the secessionist entity**

**It is reminded that the regime in the occupied area is an illegal secessionist entity (United Nations Security Council Resolutions 541 (1983), 550 (1984) called upon all states to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus and not to recognize any state in Cyprus other than the Republic of Cyprus). As stated by the European Court of Human Rights in its examination of the *Fourth Interstate Application of Cyprus v Turkey* (10 May 2001), "§61. .. it is evident from international practice and the condemnatory tone of the resolutions adopted by the United Nations Security Council and the Council of Europe's Committee of Ministers that the international community does not recognise the "TRNC" as a State under international law. The Court reiterates the conclusion reached in its *Loizidou* judgment (merits) that the Republic of Cyprus has remained the sole legitimate government of Cyprus..."**

**As such, the illegal secessionist entity in the occupied area of Cyprus does not have jurisdiction to perform valid transfers of property ownership.**

### **Caution for foreign citizens**

**Thus, foreign citizens interested in purchasing property in the area under Turkish military occupation are strongly advised to thoroughly examine the legal ownership status of the property concerned, through the Lands and Surveys Department of the Ministry of Interior of the Republic of Cyprus, in order to ascertain, at first, that no violation of the property rights of the legal owners will be effected through the transaction, and, second, to safeguard that the purported seller is the true owner of the property and can transfer a valid title.**

**Foreign visitors are further advised that, material advertising property offered for sale in the areas which are not under the effective control of the Government, found in the possession of persons coming from the areas situated north of the buffer zone to the areas under the effective control of the Government, can and may be confiscated.**

**Given that more than 4/5 of the property in the areas situated in the north of the buffer zone belongs to forcibly displaced owners (the term 'owners' includes the Republic of Cyprus), one can reasonably reach the conclusion that this advertising material relates to illegal activities, even if at the time of its discovery there is no evidence linking the object of the advertisement to specific displaced owners.**

**The material in question could be used as evidence in a future case against usurpers of property in the areas situated north of the buffer zone. It is also considered material that could be used in the commission of crimes, such as under Article 281 of the Penal Code – use of land registered in the name of another without the consent of the registered owner - and Article 14 of the Law on the Registration of Estate Agents – whereby, no person can exercise the profession of a real estate agent or project himself as such, unless he is duly registered and in possession of an annual license issued by the Registration Council of Real Estate Agents.**

**On the basis of the above, such advertising material can be confiscated, since there is reasonable suspicion that it is at the core of the illegal sale of property in the areas situated to the north of the buffer zone. After its confiscation, the said material would be transmitted to the police for evaluation and appropriate use. It is imperative that complete testimonies be taken from the persons carrying this material, since they could be potential witnesses in judicial proceedings. If there is reasonable suspicion that the person in possession of the material is actively participating in circles promoting illegal property transactions or exploitation of hotels belonging to displaced owners, an arrest warrant will be issued against him.**