

## **Fallet Apostolides vs Orams**

### **Europadomstolens utslag**

Den 19 januari 2010 utfärdade den brittiska hovrätten sin slutgiltiga dom i fallet Apostolides vs Orams, i vilken de beviljade Apostolides överklagan och beordrade att beslutet i Nicosias tingsrätt från 2004, skulle registreras och verkställas i Storbritannien.

Apostolides hade stämt ett brittiskt par som byggt ett fritidshus på hans mark i den ockuperade delen av Cypern. Den cypriotiska domstolen fann att paret Orams gjort sig skyldiga till intrång på Apostolides mark och ålade dem att riva de byggnationer som de uppfört där och betala skadestånd.

En enhälligt brittisk hovrätt accepterade och följde EU-domstolens förhandsbeslut, som fastslog att enligt förordning (EC) 44/2001 måste den cypriotiska domstolens utslag verkställas i Storbritannien.

EU-domstolen bekräftade att en cypriotisk domstols utslag måste erkännas och verkställas av andra medlemsstater, även om det rör mark på öns norra del, över vilken Cyperns regering inte utövar fullständig kontroll.

EU-domstolens utslag är bindande för alla medlemsländers domstolar.

Fallet bekräftar de cypriotiska domstolarnas befogenheter över hela Cyperns territorium, och förstärker de fördrivna ägarnas rätt till sin egendom. Det betyder att en fördriven ägare kan kräva kompensation av den som nyttjar hans egendom utan tillåtelse, genom att göra anspråk på den personens tillgångar i vilken EU-medlemsstat som helst.

Läs mer om fallet nedan (på engelska).

### **Judgement of the British Court of Appeal in the case of Meletios Apostolides v David and**

#### **Linda Orams – Background paper**

The British Court of Appeal issued on 19 January 2010 its final judgement on the issue of the registration and enforcement in Britain the Nicosia District Court judgement in the case of Apostolides v Orams. The British Court allowed the appeal by Mr Apostolides and ordered the registration and enforcement of the judgement of the Cypriot court.

Mr Apostolides is a Cypriot displaced by the Turkish invasion and occupation. In 2003, when movement to the occupied area was allowed by the occupying forces, Mr Apostolides found the Orams had constructed a villa on his property in Lapithos and brought a civil case against them at the District Court of Nicosia.

In its judgment of 9 November 2004 and 15 April 2005, the Nicosia District Court found the Defendants liable for trespass on 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. Mr Apostolides sought to have this judgement enforced in Britain.

On 6 September 2006 a Judge of the Queen's Bench Division of the High Court of Justice in the UK allowed the Orams' appeal against registration and enforcement in Britain of the Cypriot judgment on the grounds that the application of the *acquis communautaire* was suspended in the occupied area. That court had nevertheless 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. It was also his opinion that the British couple were indeed trespassers.

Mr Apostolides appealed the High Court's decision to the Court of Appeal of England and Wales, which in turn requested a preliminary ruling from the European Court of Justice, in relation to the recognition and enforcement of a judgment of the District Court of Nicosia concerning land in the area not under the effective control of the Government of the Republic of Cyprus, where, according to Protocol 10 to the Treaty of Accession of Cyprus to the EU, the application of the *acquis communautaire* is suspended.

The European Court of Justice confirmed 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. On 28 April 2009 the Court ruled:

1. That the suspension of the application of the *acquis communautaire* in those areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control, does not preclude the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, to a judgement which is given by a Cypriot court sitting in the area of the island effectively controlled by the Cyprus Government, but concerns land situated in the areas not so controlled.
2. The fact that the judgement cannot, as a practical matter, be enforced where the land is situated does not constitute a ground for refusal of recognition or enforcement under Art. 34(1) of Reg. 44/2001 and it does not mean that such a judgement is unenforceable for the purposes of Art. 38(1) of that Regulation.

The Court of Appeal unanimously accepted and followed the ECJ's preliminary ruling, holding that the Orams had to implement the decision of the Cypriot court. It also held that, according to the Regulation 44/2001, its decision was final. The Orams are now called to pay a significant amount in pecuniary damages and legal costs, as well as cease their trespassing onto Mr Apostolides land.

This case is very important as, it confirms that the exploitation of the properties of displaced Greek Cypriot owners in the occupied areas is illegal, that the displaced owners have not lost their rights to their properties and reinforces those rights by allowing an effective legal remedy in civil law in the European Union. It means that, a case could be brought against anyone who trespasses over the property of displaced owners and has property in the European Union. This legal precedent thus provides a great disincentive to further exploitation and marketing of those properties, against the policy of the occupation authorities for the alienation of those properties from their lawful owners. The judgement of the European Court of Justice is binding on the courts of all member states, if they are called upon to enforce judgements concerning properties in the occupied area.

It is also noted that, in its judgement the British Court of Appeal referred to the obligations imposed on states by the binding nature of the Security Council Resolutions, which call, inter alia, for respect of the sovereignty and territorial integrity of the Republic of Cyprus and the non-recognition of the secessionist entity. The Court stressed that respect of the sovereignty of the Republic of Cyprus entails the respect and recognition of the decisions of the Cypriot judiciary.

### **The European Court of Justice Ruling**

The European Court of Justice ruled on Tuesday 28th April 2009 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 area of Cyprus occupied by Turkey.

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 Court's ruling refers to the Apostolides vs Orams case. Mr Apostolides had brought a case at the Cypriot District Court against a British couple who had constructed a villa on his property. In its judgment of 15 November, 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. Mr Apostolides sought to have this judgement enforced in Britain.

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. Although on technical points the British Court avoided getting involved in enforcing the Cyprus judgment and allowed Orams's appeal, it needs to be stressed that 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.

Mr Apostolides appealed the High Court's decision at the Court of Appeals of England and Wales, which has requested a preliminary ruling from the European Court of Justice, in relation to the recognition and enforcement of a judgment of the District Court of Nicosia.

The European Court of Justice confirmed 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.