

British court rejects direct flights between UK and Cyprus occupied areas

Nicosia, July 28 (CNA) - The Administrative Court of the High Court of Justice, Queen's Bench Division, of the United Kingdom dismissed Tuesday an application for judicial review brought by Kibris Turk Hava Yollari (a company registered in Turkey) and CTA Holidays (a company registered in the UK) against the decision of the Secretary of State for Transport to refuse their applications for the granting of permits to conduct direct flights, scheduled and non scheduled/chartered, between the UK and the airport operating illegally in the occupied area of the Republic under the name of "Ercan".

A press release issued by the Law Office of the Republic of Cyprus said "undoubtedly this is a very important judgment for the Republic of Cyprus, particularly in reinforcing its sovereignty and the rights enjoyed under International Law with regard to the conduct of international flights from/to its territory."

"The Court unequivocally held that the Republic of Cyprus enjoys exclusive sovereignty over its entire territory and the territorial waters adjacent thereto, irrespective of whether it exercises effective control over the whole of such territory. The exclusive sovereignty extends, under the Convention, to the airspace over its entire territory and territorial waters," the Law Office said.

It also recalled that the European Court of Justice in its recent judgment of 28 April 2009 in the case of *Apostolides v. Orams* made a similar finding about there being no need to exercise effective control by the Republic of Cyprus over the occupied part of Cyprus in relation to which Cyprus still enjoys sovereignty.

The Republic of Cyprus intervened in the proceedings as Interested Party and presented its position and arguments before the English Court.

In the judgment Mr Justice Wyn Williams dismissed the applicant's case, fully adopting the arguments submitted by the UK Government and the Republic of Cyprus that the Secretary of State for Transport was obliged to reject the applications by reason of (a) the UK's obligations to respect the rights enjoyed by the Republic of Cyprus as a Contracting Party to the Chicago Convention on International Civil Aviation ("the Convention") and (b) the UK's obligations not to recognise the self-styled "Turkish Republic of Northern Cyprus" ("TRNC") and acts emanating from such non-recognised entity.

In order to determine the UK's obligations in this regard, the Court dealt primarily with the interpretation of the term "sovereignty" under Articles 1 and 2 of the Convention. Dismissing the applicant's position and adopting the arguments of the Defendant and the Interested Party, the Court held that "sovereignty" in the Convention should not be given a different meaning from its meaning in customary international law. Therefore, sovereignty does not require, nor depend upon, the exercise of effective territorial control.

The territory of the Republic of Cyprus, as deemed by Article 2 of the Convention, is the land areas and territorial waters under its sovereignty. Given the interpretation adopted by the Court of the term "sovereignty", the territory of the Republic of Cyprus for the purposes of the Convention is the whole of the island of Cyprus and the territorial waters adjacent thereto. Thus, under the Convention, the Republic of Cyprus enjoys exclusive sovereignty over the airspace above the whole of the island of Cyprus and the territorial waters adjacent thereto.

The UK is obliged to respect rights enjoyed by the Republic of Cyprus under the Convention. Thus, to grant permits for scheduled flights between the UK and "Ercan" would breach the Republic's rights under Article 6 of the Convention. Moreover, to allow operation of chartered flights between the UK and "Ercan" would breach the Republic's rights under Article 5 of the Convention. To allow permits for direct flights between the UK and "Ercan", which has not been designated as a customs airport by the Republic of Cyprus, would violate the Republic's rights under Articles 10 and 68 of the Convention. The judge emphasized that the rights of the Republic of Cyprus under the said Convention Articles are not dependent on its exercising effective control over the entire territory over which it enjoys sovereignty.

The Court then rejected any argument that the Republic of Cyprus's rights regarding international aviation were suspended because of lack of effective control.

The Court concluded that, if the UK were to grant any of the permits applied for, this would render the UK in breach of its obligation to respect the rights of the Republic of Cyprus under the Convention.

The Judge noted that the case was doomed to failure on this ground alone. However, he thought it appropriate to set out the principal reasons for his conclusions refusing to recognise the "TRNC" or acts emanating therefrom.

According to the Court's findings, in this regard the UK has consistently recognised the Republic of Cyprus as the only State in Cyprus. The UK is under a legal duty not to recognise the "TRNC" or its "government". This duty of non-recognition is both by virtue of Customary International Law and by virtue of the Treaty of Establishment and the Treaty of Guarantee, a duty which was accepted by the applicants and the UK government.

The granting of the permits to the applicants by the UK government would constitute implied recognition by the UK of the "TRNC", contrary to the UK's duty of non-recognition.

The Court was obliged to refuse to give effect to the validity of acts carried out in a territory which is unrecognised, unless the acts in question can properly be regarded as regulating the day to day affairs of the people within the territory in question and can properly be regarded as essentially private in character.

The judge made the important point that the population in the area not under the effective control of the Republic of Cyprus is served by international airports of the Republic with thousands of people crossing the demarcation line between the area controlled by the government of the Republic of Cyprus and that not under its control on a daily basis. He pointed out that distances on the island are sufficiently small that use of the airports situated in the government-controlled area was perfectly practicable and that this could not be ignored. Thus, the rationale of serious prejudice to the inhabitants of the area affected was inapplicable.

He concluded that the grant of the permits in this case would be in breach of the UK government's duty not to recognise the "TRNC". He could not categorise the acts of the "TRNC" which are relevant to international aviation as acts which regulate the day to day affairs of the people who live within the area not under the effective control of the Cyprus government; the acts in question are essentially public in nature. Thus, the UK was bound to refuse the application for the permits, and therefore the claim for judicial review had to be dismissed.

The Law Office said that according to the judgment, no permits for scheduled or chartered flights or for landing at designated airports can be granted, other than by the government of the Republic. The granting of such permits by any State, or permits as respects "Ercan", are unlawful and violate the Republic of Cyprus's rights under the Chicago Convention. The judge refused to apply a suggested analogy that permitted flights to Taiwan.

The importance of the judgment rests also in the findings of the Court regarding the duty of States not to recognise the "TRNC", as this would be in breach of customary international law and other obligations, the Law Office added.

Furthermore, it noted that the duty of their Courts not to give effect to the validity of acts in unrecognised territories unless the acts can properly be regarded as essentially private in character. Acts which are public in nature cannot be given validity. Thus, permits in the area of international aviation cannot be granted.