

Statement by the Law Office of the Republic of Cyprus - 19.01.2010

The Law Office of the Republic welcomes the issue, today, of the final judgment of the English Court of Appeal in the case of Meletis Apostolides against Charles and Linda Orams.

It should be recalled that this case concerned Mr Apostolides' application for the judgments of the District Court of Nicosia, which held that the Orams were committing trespass on Mr Apostolides's property in Lapithos and ordered the said couple to pay damages, proceed with demolition of the premises erected thereon and deliver vacant possession of the said property to Mr Apostolides, to be recognised and enforced in England. A first instance English Court had found that the judgments of the Cypriot Court could not be recognised in England because Regulation (EC) No. 44/2001, on the basis of which recognition was sought, had been suspended, together with the remaining EU acquis, "in relation to" those areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control. Besides, the said first instance Court was of the opinion that, even if the Community Regulation were applicable, the present case fell within the exception set out in Article 34(2) thereof in relation to judgments issued in default.

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 18th December 2008, the Advocate General of the ECJ, Mrs Kokott, issued her Opinion to the Court. The role of the Advocate General of the ECJ is to assist the Court by means of a reasoned Opinion which, albeit non binding, the Court takes seriously into account. Advocate General Kokott's Opinion fully supported the arguments presented before the ECJ by Mr Apostolides and the Republic of Cyprus which, as a Member State of the EU, intervened as of right before the Court.

On 29/4/2009 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.

What remained, therefore, was for the English Court of Appeal to issue its judgment as to the substance of the appeal Mr Apostolides filed against the first instance English judgment. The national courts are bound to follow the judgments of the ECJ on preliminary references. Therefore, the Orams couple did not seek to dispute the substance of the ECJ judgment, but raised the following two issues before the Appeal Court:

(I) Whether the judgments of the District Court of Nicosia were prevented from being recognised and enforced in England because such enforcement would be contrary to an alleged "international public policy" (a matter which, according to the Orams, was not examined by the ECJ).

(II) Whether the judgment of the ECJ on the preliminary reference is affected by an alleged "objective appearance of bias" on the part of the President of the ECJ, Mr Vasilios Skouris.

(I) "International Public Policy"

In the context of this first issue, the English Court of Appeal, in addition to the arguments presented by the Orams, had also before it the written intervention allowed to be made on behalf of an affected group of British “buyers” (British Residents Society – BRS), who claimed that the judgments of the District Court of Nicosia are contrary to customary international law which, supposedly, does not recognise State jurisdiction over territory in respect of which the State does not exercise effective control. Before examining the Orams’ arguments, the Court devoted a single paragraph of its judgment to reject the submissions put forward in the BRS intervention. According to the Court, these submissions do not add anything at all to the Orams’ arguments and, to the extent that they challenge the ECJ’s judgment on the preliminary reference, they cannot succeed as the said judgment is binding upon the English Court of Appeal.

The Court then turned to the arguments raised by the Orams, the essence of which is that litigation over issues regarding immovable property in the occupied areas cause tension between Greek Cypriots and Turkish Cypriots and jeopardize efforts to resolve the Cyprus problem, which all nations have an obligation, under international law, to support. Therefore, the recognition and enforcement of such judgments by the United Kingdom would, according to the Orams, be contrary to the United Kingdom’s international obligation to support the efforts for a peaceful resolution of the Cyprus problem.

Focussing on the Orams’ arguments, the Court firstly recorded its disagreement with the characterisation of the ECJ’s judgment as “thin”, commenting, with full respect to the ECJ, that it dealt clearly and cogently with the issues put before it.

As to the substance of the Orams’ arguments, the Court held as follows:

Accepting that there is an international consensus that every encouragement must be given to achieve a peaceful solution to the Cyprus problem, the Court added that it is a very large step to proceed from that acceptance to accepting the proposition that it would be manifestly contrary to the public policy in the United Kingdom to recognise judgments of the Cyprus Courts. Stressing that the role of the Courts is to apply the rule of law, the Court noted that international support to the efforts for a solution to the Cyprus problem does not impose a duty upon an English Court to assess whether a court judgment is helpful or not in the efforts for peace on the island.

Despite the fact that, with the above analysis, the Court dismisses the Orams’ argument, it goes on to further examine whether it would be right or even helpful for the peace process not to recognise judgments of the District Court of Nicosia. In this regard it determines that non-recognition of a lawfully made judgment by a lawful court of a Member State of the European Union would inflame the situation.

Furthermore, the Court recalls the obligation arising from a number of Resolutions of the Security Council of the United Nations for respect of the territorial integrity and single sovereignty of the Republic of Cyprus, which clearly includes the obligation to respect the Courts, the judicial arm of the sovereign State. As for the United Kingdom, the Court acknowledges the additional obligations emanating from the Treaty of Guarantee.

Consequently, the Court concludes, even if the English Courts were under a duty to determine what “international public policy” entails, balancing the importance of the peace process in Cyprus on the one hand and the obligations of the United Kingdom,

under the Treaty of Guarantee and the Security Council Resolutions, to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus, on the other hand, they would come to the conclusion that the judgments of the Cyprus Courts must be enforced in the United Kingdom.

(II) Alleged “objective appearance of bias” of the President of the ECJ, Mr Vasilios Skouris.

The Orams, in their attempt to avoid the application of the unfavourable to them ECJ judgment, alleged that the President of the ECJ, Mr Vasilios Skouris, because he was decorated by the Republic of Cyprus, visited our country several times and met with Cypriot politicians not only in Cyprus but also at the Court’s seat in Luxemburg, did not appear to have the objective guarantees of impartiality that would allow him to preside over the Court’s composition that tried their case.

The English Court of Appeal, stressing the particularities of the ECJ as a common Court to all the Member States of the European Union and, also, recognising the role of the President of such Court, which is to ensure the widest possible dissemination of knowledge as to the role and operation of the Court, examined the Orams’ complaints against Mr Skouris, one by one, and rejected them. It concluded that an objective observer would find that there was no possibility that the President of the ECJ would be influenced by his decoration and by any other contacts he had with Cyprus. Concluding, the Court of Appeal stressed that the present case was to be determined and was determined by the Grand Chamber of the ECJ on the basis of legal principles alone.

The judgment of the English Court of Appeal is significant on multiple levels. Primarily, the Court emphasises the United Kingdom’s obligation to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus. Also, the jurisdiction of the Cyprus Courts to determine cases concerning immovable property in the occupied areas and the obligation of the English Courts to recognise and enforce such judgments of the Cyprus Courts is now recognised, at a final level, by the highest competent English Court. Furthermore, with this decision the property rights of refugees displaced from the occupied areas are more effectively protected, because their civil rights under EU Law against individual usurpers of their property are fully safeguarded. Therefore, the said judgment can constitute a significant element in discouraging further unlawful exploitation of Greek Cypriot properties in the occupied areas.