

Case C-420/07

Meletis Apostolides

v

David Charles Orams

and

Linda Elizabeth Orams

(Reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division))

(Reference for a preliminary ruling – Protocol No 10 on Cyprus – Suspension of the application of the *acquis communautaire* in the areas falling outside the effective control of the Cypriot Government – Regulation (EC) No 44/2001 – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Judgment given by a Cypriot court sitting in the area effectively controlled by the Cypriot Government and concerning immovable property situated outside that area – Articles 22(1), 34(1) and (2), 35(1) and 38(1) of that regulation)

Summary of the Judgment

1. *Accession of new Member States to the Communities – Act of Accession of 2003 – Protocol No 10 on Cyprus – Suspension of the application of the *acquis communautaire* in the area in which the government of that Member State does not exercise effective control*

(Act of Accession of 2003; Protocol No 10, Art. 1(1); Council Regulation No 44/2001)

2. *Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Exclusive jurisdiction – Proceedings which have as their object rights in rem in immovable property – Rule of ‘forum rei sitae’ laid down in Article 22(1) of the regulation, determining the international jurisdiction of the Member States*

(Council Regulation No 44/2001, Arts 22(1) and 35(1) and (3))

3. *Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Recognition and enforcement of judgments – Grounds for refusal – Infringement of public policy in the State where recognition is sought – None*

(Council Regulation No 44/2001, Arts 34(1) and 45(1))

4. *Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Enforcement – Conditions – Enforceability in the Member State of origin*

(Council Regulation No 44/2001, Arts 38(1) and 54)

5. *Judicial cooperation in civil matters – Jurisdiction and enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Recognition and enforcement of judgments – Grounds for refusal – Failure to serve the document initiating the proceedings in sufficient time on the defendant – None*

(Convention of 27 September 1968, Art. 27(2); Council Regulation No 44/2001, Arts 34(2) and 45(1))

1. The suspension of the application of the *acquis communautaire* in the areas of the Republic of Cyprus over which the government of that Member State does not exercise effective control, provided for in Article 1(1) of Protocol No 10 on Cyprus to the Act concerning the conditions of accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of

Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, does not preclude the application of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to a judgment which is given by a Cypriot court sitting in the area of the island effectively controlled by the Cypriot Government, but concerns land situated in areas not so controlled.

Provisions in an Act of Accession which permit exceptions to or derogations from rules laid down by the Treaty must be interpreted restrictively with reference to the Treaty provisions in question and must be limited to what is absolutely necessary in order to attain its objective. It follows from a literal interpretation of Article 1(1) of Protocol No 10 that the suspension for which it provides is limited to the application of the *acquis communautaire* in the northern area of the Republic of Cyprus. That does not apply to the judgments the recognition of which is sought, since they 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 since, first, it does not nullify the obligation to apply Regulation No 44/2001 in the government-controlled area and, second, it does not mean that that regulation must thereby be applied in the northern area.

(see paras 35, 37-39, operative part 1)

2. Article 35(1) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters does not authorise a court of a Member State to refuse recognition or enforcement of a judgment given by the courts of another Member State concerning land situated in an area of the latter State over which its government does not exercise effective control.

In that connection, Article 22 of Regulation No 44/2001 contains a mandatory and exhaustive list of the grounds of exclusive international jurisdiction of the Member States. That article merely designates the Member State whose courts have jurisdiction *ratione materiae*, but does not allocate jurisdiction within the Member State concerned. It is for each Member State to determine the organisation of its own courts. Furthermore, the principle prohibiting the review of the jurisdiction of the court of the Member State of origin, laid down in Article 35(3) of Regulation No 44/2001, prevents a review of the domestic jurisdiction of the court of the Member State of origin concerned being conducted in the case in the main proceedings. Therefore, the *forum rei sitae* rule provided for in Article 22(1) of Regulation No 44/2001 concerns the international jurisdiction of the courts of the Member States and not their domestic jurisdiction. It follows that where land is situated in the territory of a Member State and, therefore, that the rule of jurisdiction laid down in Article 22(1) of Regulation No 44/2001 has been observed, the fact that the land is situated in an area of that Member State over which the government of that State does not exercise effective control may possibly have an effect on the domestic jurisdiction of the courts of that Member State, but cannot have any effect for the purposes of that regulation.

(see paras 48-52, operative part 2)

3. The fact that a judgment given by the courts of a Member State concerning land situated in an area of that State over which its government does not exercise effective control, cannot, as a practical matter, be enforced where the land is situated does not constitute a ground for refusal of recognition or enforcement under Article 34(1) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In the absence of a fundamental principle in the legal order of the Member State in which recognition is sought, which the recognition or enforcement of the judgments concerned would be liable to infringe, no refusal to recognise them, under Article 34(1) of Regulation No 44/2001 and no refusal of enforcement in accordance with Article 45(1) of the same regulation, would be justified on the ground that a judgment given by the courts of a Member State, concerning land situated in an area of that State over which its government does not exercise effective control, cannot, as a practical matter, be enforced where the land is situated. The infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.

(see paras 59-62, 71, operative part 3)

4. The fact that a judgment given by the courts of a Member State, concerning land situated in an area of that State over which its government does not exercise effective control, cannot, as a practical matter, be enforced where the land is situated does not mean that such a judgment is unenforceable for the purposes of Article 38(1) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Although it is true that the enforceability of the judgment in the Member State of origin is a precondition for its enforcement in the State in which enforcement is sought and, therefore, there is no reason for granting to a judgment, when it is enforced, rights which it does not have in the Member State of origin, it cannot be reasonably argued that judgments concerning

land situated in an area of that State over which its government does not exercise effective control are totally unenforceable in that Member State. As regards judgments imposing obligations, in respect of which the certificate provided for in Article 54 of Regulation No 44/2001 declares the enforceability in the Member State of origin at the date on which the certificate was issued, the fact that claimants might encounter difficulties in having judgments enforced in the northern area cannot deprive them of their enforceability and, therefore, does not prevent the courts of the Member State in which enforcement is sought from declaring such judgments enforceable.

(see paras 66-71, operative part 3)

5. The recognition or enforcement of a default judgment cannot be refused under Article 34(2) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 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. Article 34(2) of Regulation No 44/2001, unlike the equivalent provision contained in Article 27(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, does not necessarily require the document which instituted the proceedings to be duly served, but does require that the rights of the defence are effectively respected. Thus, a default judgment given on the basis of a document instituting proceedings which was not served on the defendant in sufficient time and in such a way as to enable him to arrange for his defence must be recognised if he did not take the initiative to appeal against that judgment when it was possible for him to do so. *A fortiori*, the rights of the defence that the Community legislature wished to safeguard by Article 34(2) of Regulation No 44/2001 are respected where the defendant did in fact 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.

(see paras 75-78, 80, operative part 4)