

Judgment of the Court (Grand Chamber) of 28 April 2009 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) - Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams

(Case C-420/07) ¹

(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)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicant: Meletis Apostolides

Defendants: David Charles Orams, Linda Elizabeth Orams

Re:

Reference for a preliminary ruling - Court of Appeal (Civil Division) - Interpretation of Article 10(1) of Protocol No 10 to the Act of Accession of Cyprus and of Articles 22, 34(1) and (2) and 35(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) - Suspension of the application of the *acquis communautaire* in those areas in which the Government does not exercise effective control - Recognition and enforcement by the court of another Member State of a decision given by a Cypriot court sitting in the area of effective control and relating to land situated outside that area

Operative part of the judgment

The suspension of the application of the *acquis communautaire* in those areas of the Republic of Cyprus in which the Government of that Member State does not exercise effective control, provided for by 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 Council Regulation (EC) No 44/2001 of 22 December 2000 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.

Article 35(1) of Regulation No 44/2001 does not authorise the 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.

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 and it does not mean that such a judgment is unenforceable for the purposes of Article 38(1) of that regulation.

The recognition or enforcement of a default judgment cannot be refused under Article 34(2) of Regulation No 44/2001 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.

¹ - OJ C 297, 8.12.2007.