

## DOCUMENT

The European Court of Justice ruled Tuesday, April 28, 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 Turkish occupied areas of Cyprus. The Court's ruling refers to the *Apostolides vs Orams* case and came after a dispute has arisen before the Court of Appeal of England and Wales, which has requested a preliminary ruling from the Court of Justice, between Greek Cypriot refugee Meletis Apostolides, and British couple David and Linda Orams, in relation to the recognition and enforcement of a judgment of the District Court of Nicosia. The court in the government controlled southern areas of Cyprus had delivered a judgment ordering the Orams couple to vacate an area of land in the Turkish occupied north and to pay various monetary amounts.

The British couple had purchased the land from a third party and built a holiday house on it. According to the findings of the court in Cyprus, however, the rightful owner of the land is in fact Apostolides, whose family was forced to leave the north as a result of the Turkish invasion of Cyprus in 1974 and the occupation of the island's northern third.

The ECJ ruling has potentially devastating implications for EU citizens who have 'bought' usurped Greek Cypriot land and will surely put off others considering investing in property in occupied Cyprus.

### **European Court of Justice**

#### **PRESS RELEASE No 39/09**

28 April 2009

Judgment of the Court of Justice in Case C-420/07

*Meletis Apostolides v. David Charles Orams & Linda Elizabeth Orams*

**A JUDGMENT OF A COURT IN THE REPUBLIC OF CYPRUS MUST  
BE RECOGNISED AND ENFORCED BY THE OTHER MEMBER  
STATES EVEN IF IT CONCERNS LAND SITUATED  
IN THE NORTHERN PART OF THE ISLAND**

*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.*

Following the intervention of Turkish troops in 1974 Cyprus was partitioned into two areas. The Republic of Cyprus, which acceded to the European Union in 2004, has *de facto* control only over the southern part of the island while, in the northern part, the Turkish Republic of Northern Cyprus has been established, which is not recognised by the international community with the exception of Turkey. In those circumstances, the application of Community law in the northern area of the Republic of Cyprus has been suspended by a protocol annexed to the Act of Accession.

Mr Apostolides, a Cypriot national, brought an appeal before the Court of Appeal (England and Wales), in the course of a dispute between himself and a British couple, the Orams, seeking the recognition and enforcement of two judgments from a court in Nicosia. That court, sitting in the southern part of Cyprus, ordered the Orams to vacate land situated in the northern part of the island and to pay various sums. The Orams had purchased the land from a third party in order to build a holiday home on it. According to the findings of the Cypriot court, Mr Apostolides, whose family was forced to leave the north of the island at the time of its partition, is the rightful owner of the land. The first judgment, given in default of appearance, was confirmed by another judgment ruling on an appeal brought by the Orams.

The national court referred to the Court of Justice a number of questions concerning the interpretation and application of the Brussels I Regulation<sup>1</sup>. It asks, in particular, whether the suspension of Community law in the northern part of Cyprus and the fact that the land concerned is situated in an area over which the Government of Cyprus does not exercise effective control.

<sup>1</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters have an effect on the recognition and enforcement of the judgment, in particular in relation to the jurisdiction of the court of origin, the public policy of the Member State in which recognition is sought and the enforceability of the judgment. In addition, it asks whether the recognition or enforcement of a default judgment may be refused, on account of the fact that the document instituting proceedings was not served on the defendant in sufficient time and in such a way as to enable him to arrange for his defence, where the defendant was able to bring an appeal against that judgment.

First of all, the Court declares that the suspension provided for in the Act of Accession of Cyprus is limited to the application of Community law in the

northern area. However, the judgments concerned, whose recognition was sought by Mr Apostolides, 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 because, first, it does not nullify the obligation to apply the regulation in the Government-controlled area and, second, it does not mean that that regulation must thereby be applied in the northern area. The Court therefore concludes that the suspension of Community law in the northern area provided for by the protocol annexed to the Act of Accession, does not preclude the application of the Brussels I Regulation to a judgment which is given by a Cypriot court sitting in the Government-controlled area, but concerns land situated in the northern area.

Next, the Court states, first, that the dispute at issue in the main proceedings falls within the scope of the Brussels I Regulation and, second, that the fact that the land concerned is situated in an area over which the Government does not exercise effective control and, therefore, that the judgments concerned cannot, as a practical matter, be enforced where the land is situated does not preclude the recognition and enforcement of those judgments in another Member State.

In that connection, it is common ground that the land is situated in the territory of the Republic of Cyprus and, therefore, the Cypriot court had jurisdiction to decide the case since the relevant provision of the Brussels I Regulation relates to the international jurisdiction of the Member States and not to their domestic jurisdiction.

The Court also states, as regards the public policy of the Member State in which recognition is sought, that a court of a Member State cannot, without undermining the aim of the Brussels I Regulation, refuse recognition of a judgment emanating from another Member State solely on the ground that it considers that national or Community law was misapplied. The national court may refuse recognition only where the error of law means that the recognition or enforcement of the judgment is regarded as a manifest breach of an essential rule of law in the legal order of the Member State concerned. In the case in the main proceedings, the Court of Appeal has not referred to any fundamental principle within the legal order of the United Kingdom which the recognition or enforcement of the judgments in question would be liable to infringe.

Furthermore, as regards the enforceability of the judgments concerned, the Court states that the fact that Mr Apostolides might encounter difficulties in having the judgments enforced cannot deprive them of their enforceability.

Therefore, that situation does not prevent the courts of another Member State from declaring such judgments enforceable.

Lastly, the Court states that the recognition or enforcement of a default judgment cannot be refused 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. In the case in the main proceedings, it is common ground that the Orams brought such proceedings. Consequently, the recognition and enforcement of the judgments of the Cypriot court cannot be refused in the United Kingdom on that ground.

<http://curia.europa.eu/en/actu/commu...cp090039en.pdf>

The full text of the judgment is available here:

<http://curia.europa.eu/jurisp/cgi-bi...umaff=C-420/07>

## European Court of Justice

### *JUDGMENT OF THE COURT (Grand Chamber)*

28 April 2009

(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).

In Case C 420/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom), made by decision of 28 June 2007, received at the Court on 13 September 2007, in the proceedings.

*Meletis Apostolides v. David Charles Orams & Linda Elizabeth Orams*

*THE COURT (Grand Chamber),*

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas,

K. Lenaerts, M. Ilešič and A. Ó Caoimh, Presidents of Chambers, R. Silva de Lapuerta (Rapporteur), J. Malenovský, J. Klučka and U. Löhmus, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator, having regard to the written procedure and further to the hearing on 16 September 2008, after considering the observations submitted on behalf of:

- Mr Apostolides, by T. Beazley QC and C. West, Barrister, instructed by S. Congdon, Solicitor, and by C. Candounas, advocate,
- Mr and Mrs Orams, by C. Booth QC, N. Green QC, and A. Ward and B. Bhalla, Barristers,
- the Cypriot Government, by P. Klerides, acting as Agent, D. Anderson QC and M. Demetriou, Barrister,
- the Greek Government, by A. Samoni-Rantou, S. Khala and G. Karipsiadis, acting as Agents,
- the Polish Government, by M. Dowgielewicz, acting as Agent,
- the Commission of the European Communities, by F. Hoffmeister and A. M. Rouchaud, acting as Agents, after hearing the Opinion of the Advocate General at the sitting on 18 December 2008, gives the following.

## Judgment

1. This reference for a preliminary ruling concerns the interpretation, first, 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 (OJ 2003 L 236, p. 955) ('Protocol No 10') and, second, certain aspects 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).
2. The reference was made in the course of proceedings between Mr Apostolides, a Cypriot national, and Mr and Mrs Orams, a British married couple ('the Orams'), concerning the recognition and enforcement in the United Kingdom, under Regulation No 44/2001, of two judgments given by the Eparkhiako Dikastirio tis Lefkosias (District Court, Nicosia) (Cyprus).

## **Legal background**

### *Community law*

#### Protocol No 10

3. Protocol No 10 is worded as follows:

‘THE HIGH CONTRACTING PARTIES, REAFFIRMING their commitment to a comprehensive settlement of the Cyprus problem, consistent with relevant United Nations Security Council Resolutions, and their strong support for the efforts of the United Nations Secretary General to that end,

CONSIDERING that such a comprehensive settlement to the Cyprus problem has not yet been reached,

CONSIDERING that it is, therefore, necessary to provide for the suspension of the application of the *acquis* in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control,

CONSIDERING that, in the event of a solution to the Cyprus problem this suspension shall be lifted,

CONSIDERING that the European Union is ready to accommodate the terms of such a settlement in line with the principles on which the E[uropean] U[nion] is founded,

CONSIDERING that it is necessary to provide for the terms under which the relevant provisions of E[uropean] U[nion] law will apply to the line between the abovementioned areas and both those areas in which the Government of the Republic of Cyprus exercises effective control and the Eastern Sovereign Base Area of the United Kingdom of Great Britain and Northern Ireland,

DESIRING that the accession of Cyprus to the European Union shall benefit all Cypriot citizens and promote civil peace and reconciliation,

CONSIDERING, therefore, that nothing in this Protocol shall preclude measures with this end in view,

CONSIDERING that such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus,

HAVE AGREED UPON THE FOLLOWING PROVISIONS:

### *Article 1*

1. The application of the *acquis* shall be suspended in those areas of the

Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

2. The Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1.

### *Article 2*

1. The Council, acting unanimously on the basis of a proposal from the Commission, shall define the terms under which the provisions of European Union law shall apply to the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control.
2. The boundary between the Eastern Sovereign Base Area and those areas referred to in Article 1 shall be treated as part of the external borders of the Sovereign Base Areas for the purpose of Part IV of the Annex to the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus for the duration of the suspension of the application of the *acquis* according to Article 1.

### *Article 3*

1. Nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1.
2. Such measures shall not affect the application of the *acquis* under the conditions set out in the Accession Treaty in any other part of the Republic of Cyprus.

### *Article 4*

In the event of a settlement, the Council, acting unanimously on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the European Union with regard to the Turkish Cypriot Community.’

Regulation No 44/2001

#### *4 Recitals 16 to 18 in the preamble to Regulation No 44/2001 state:*

‘(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must

be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.

(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.’

*5 Article 1(1) of Regulation No 44/2001 provides:*

‘This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.’

*6 Under Article 2 of that regulation:*

‘1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.’

*7 Article 22(1) of Regulation No 44/2001, in Section 6, entitled ‘Exclusive jurisdiction’, of Chapter II thereof, provides:*

‘The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State’.

*8 Article 34 of Regulation No 44/2001 states:*

‘A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member



State in which recognition is sought;

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.’

*9 Article 35 of the regulation states:*

‘1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

3. Subject to ... paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.’

*10 Article 38 of Regulation No 44/2001 provides:*

‘1. A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.’

*11 Article 45 of Regulation No 44/2001 provides:*

‘1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.’

*National law*

12 According to national legislation, the real property rights relating to those areas of the Republic of Cyprus in which the Government of that Member State does not exercise effective control ('the northern area') subsist and remain valid in spite of the invasion of Cypriot territory in 1974 by the Turkish army and the ensuing military occupation of part of Cyprus.

13 Pursuant to Article 21(2) of Law 14/60 on the courts, in the version applicable to the main proceedings, where an action concerns any matter relating to real property 'that action shall be brought before the Eparkhiako Dikastirio of the district in which such property is situated'.

14 By order of the Anotato Dikastirio tis Kipriakis Dimokratias (Supreme Court of the Republic of Cyprus) published on 13 September 1974 in the *Episimi Efimerida tis Kipriakis Dimokratias (Official Journal of the Republic of Cyprus)*, that is after the invasion of the northern area, the territories of the districts of Kyrenia and Nicosia were reorganised.

15 Under Cypriot legislation, the service of a document instituting proceedings on one spouse by handing it to the other is good service. If the defendant does not enter an appearance in the 10 days following service of the document instituting proceedings the claimant may apply for a default judgment. Entering an appearance is an act which does not require the defendant to set out the nature of any defence.

16 In proceedings to set aside a default judgment the claimant is required to establish that he has an arguable defence.

*The dispute in the main proceedings and the questions referred for a preliminary ruling*

17 The proceedings before the referring court concern the recognition and enforcement in the United Kingdom, pursuant to Regulation No 44/2001, of two judgments of the Eparkhiako Dikastirio tis Lefkosias ('the judgments concerned') on an action brought against the Orams by Mr Apostolides concerning immovable property ('the land').

18 The land is situated at Lapithos, in the district of Kyrenia, which is in the northern area. It belonged to Mr Apostolides' family, which occupied it before the invasion of Cyprus by the Turkish army in 1974. As members of the Greek Cypriot community, Mr Apostolides' family was forced to abandon their house and take up residence in the area of the island effectively controlled by the Cypriot Government ('the Government-controlled area').

*19* The Orams claim to have purchased the land in 2002 in good faith from a third party, the latter having himself acquired it from the authorities of the Turkish Republic of Northern Cyprus, an entity which, to this day, has not been recognised by any State except the Republic of Turkey. The successive acquisitions were in accordance with the laws of that entity. The Orams built a villa and frequently occupy the property as their holiday home.

*20* The movement of persons between the northern area and the Government-controlled area was restricted until April 2003.

*21* On 26 October 2004, the Eparkhiako Dikastirio tis Lefkosias, a Cypriot court established in the Government-controlled area, issued the documents instituting proceedings in the action brought by Mr Apostolides against the Orams. On the same day, those documents, one for each spouse, were served at the property on the land by a process server from that court. The documents were both served by being handed in person to Mrs Orams who refused to sign for them.

*22* The process server did not inform Mrs Orams that he was a process server or of the nature of the documents served by him, the documents being written in Greek, which the Orams do not understand. However, Mrs Orams understood that those documents were legal and official in nature.

*23* On its face, written in Greek, each document stated that in order to prevent a default judgment from being given it was necessary to enter an appearance before the Eparkhiako Dikastirio tis Lefkosias within 10 days of service.

*24* In spite of the difficulties encountered in finding in the northern area a Greek-speaking lawyer licensed to appear before the courts of the Government-controlled area, Mrs Orams managed to obtain the assistance of such a lawyer who agreed to enter an appearance on her behalf on 8 November 2004. However, the lawyer did not enter an appearance before that court on 8 November but only on the following day.

*25* On 9 November 2004, as no one had entered an appearance for the Orams, the Eparkhiako Dikastirio tis Lefkosias gave a default judgment on Mr Apostolides' claim. On the same day, the court refused the authority presented by Mrs Orams' lawyer because it was written in English and not in Greek or Turkish.

*26* According to the order for reference, the default judgment of the Eparkhiako Dikastirio tis Lefkosias orders the Orams to:

– demolish the villa, swimming pool and fencing which they had erected on the land,

- deliver immediately to Mr Apostolides free possession of the land,
- pay to Mr Apostolides various sums by way of special damages and monthly occupation charges (that is, rent) until the judgment was complied with, together with interest,
- refrain from continuing with the unlawful intervention on the land, whether personally or through their agents, and
- pay various sums in respect of the costs and expenses of the proceedings (with interest on those sums).

27 On 15 November 2004, the Orams applied to have the judgment set aside. After hearing evidence and arguments from the Orams and Mr Apostolides, the Eparkhiako Dikastirio tis Lefkosias dismissed the Orams' application by judgment of 19 April 2005 essentially on the ground that they had not put forward an arguable defence to dispute Mr Apostolides' title to the land. The Orams were ordered to pay the costs of the application.

28 The Orams appealed against the judgment rejecting their application to set aside the default judgment. The appeal was itself dismissed by judgment of the Anotato Dikastirio tis Kipriakis Dimokartias of 21 December 2006.

29 On 18 October 2005, Mr Apostolides produced the documents required in England to apply, pursuant to Regulation No 44/2001, for the recognition and enforcement of the judgments concerned. By order of 21 October 2005, a Master of the High Court of Justice (England and Wales), Queen's Bench Division, ordered that the judgments be enforceable in England pursuant to that regulation.

30 The Orams challenged that order under Article 43 of Regulation No 44/2001 and a High Court judge set it aside by order of 6 September 2006. Mr Apostolides appealed against that order before the referring court under Article 44 of that regulation.

31 In those circumstances, the Court of Appeal (England and Wales) (Civil Division) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. ...

Does the suspension of the application of the *acquis communautaire* in the northern area by Article 1(1) of Protocol No 10 ... preclude a Member State court from recognising and enforcing a judgment given by a court of the Republic of Cyprus sitting in the Government-controlled area relating to land in the northern area, when such recognition and enforcement is sought under [Regulation No 44/2001], which is part of the *acquis communautaire*?

2. Does Article 35(1) of Regulation No 44/2001 entitle or bind a Member State court to refuse recognition and enforcement of a judgment given by the courts of another Member State concerning land in an area of the latter Member State over which the Government of that Member State does not exercise effective control? In particular, does such a judgment conflict with Article 22 of Regulation No 44/2001?

3. Can a judgment of a Member State court, sitting in an area of that State over which the Government of that State does exercise effective control, in respect of land in that State in an area over which the Government of that State does not exercise effective control, be denied recognition or enforcement under Article 34(1) of Regulation No 44/2001 on the grounds that as a practical matter the judgment cannot be enforced where the land is situated, although the judgment is enforceable in the Government controlled area of the Member State?

4. Where

- a default judgment has been entered against a defendant;
- the defendant then commenced proceedings in the court of origin to challenge the default judgment; but
- his application was unsuccessful following a full and fair hearing on the ground that he had failed to show any arguable defence (which is necessary under national law before such a judgment can be set aside),

can that defendant resist enforcement of the original default judgment or the judgment on the application to set aside under Article 34(2) of Regulation No 44/2001, on the ground that he was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence prior to the entry of the original default judgment? Does it make a difference if the hearing entailed only consideration of the defendant's defence to the claim?

5. In applying the test in Article 34(2) of Regulation No 44/2001 of whether the defendant was "served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence" what factors are relevant to the assessment? In particular:

- (a) Where service in fact brought the document to the attention of the defendant, is it relevant to consider the actions (or inactions) of the defendant or his lawyers after service took place?
- (b) What, if any, relevance would particular conduct of, or difficulties

experienced by, the defendant or his lawyers have?

(c) Is it relevant that the defendant's lawyer could have entered an appearance before judgment in default was entered?

.....

On those grounds, the Court (Grand Chamber) hereby rules:

1. 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.

2. 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.

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

4. 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.

[Signatures]