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Advocate General's Opinion in Case C-420/07

Apostolides v Orams

IN ADVOCATE GENERAL KOKOTT'S OPINION, A JUDGMENT OF A COURT OF THE REPUBLIC OF CYPRUS MUST BE RECOGNISED AND ENFORCED IN OTHER MEMBER STATES EVEN WHERE IT RELATES TO LAND IN NORTHERN CYPRUS

Such recognition and enforcement is not precluded by the fact that, pending resolution of the Cyprus problem, the application of Community law is suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control

The background to the Opinion delivered today is the division of Cyprus following the intervention of Turkish troops in 1974. The Republic of Cyprus, which acceded to the EU in 2004, has effective control over the southern area alone, while, in the northern area, the Turkish Republic of North Cyprus has established itself, even though it is not recognised by the international community for the purposes of international law except by Turkey. Since the Republic of Cyprus does not exercise sovereign jurisdiction over the northern area, the application of Community law was suspended in that area by a protocol to the Act of Accession.

In the opinion of the Advocate General, that protocol does not exclude the application of the EU Regulation on Jurisdiction and the Recognition and Enforcement of Judgments¹ in a dispute before the United Kingdom courts which relates to Northern Cyprus.

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 Mr Apostolides, a Cypriot national from the southern area, and Mr and Mrs Orams, a British couple, in relation to the recognition and enforcement of a judgment of the District Court of Nicosia. That court in the southern area of Cyprus had delivered a judgment ordering Mr and Mrs Orams to vacate an area of land in Northern Cyprus and to pay various monetary amounts. Mrs and Mrs Orams 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 Mr Apostolides, whose family was forced to leave the north as a consequence of partition.

Advocate General Kokott refers to the fact that the suspension of Community law in the northern area of Cyprus was intended to enable the Republic of Cyprus to accede to the EU, following the

¹ Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

failure of the negotiations on reunification to reach a successful conclusion. The intention was to avoid a situation in which the Republic of Cyprus, as a Member State, infringed Community law because it could not ensure the application of Community law throughout the territory of that State. The recognition and enforcement of the judgment of the District Court of Nicosia in the United Kingdom does not, however, require the application of the regulation in the northern part of Cyprus. Rather, it is the courts of the United Kingdom alone which require to act.

The enforcement of that judgment in the United Kingdom is also not precluded by the fact that the claims upheld in it are connected to the military occupation of Northern Cyprus. The dispute between Mr Apostolides and Mr and Mrs Orams is civil in nature and falls within the scope of application of the regulation. It is only claims for damages against public authorities that are excluded by the regulation, and the present case does not involve claims of that kind.

Advocate General Kokott is, moreover, of the opinion that the District Court of Nicosia has jurisdiction in relation to the property dispute irrespective of the fact that the Republic of Cyprus does not exercise effective control over Northern Cyprus. In addition, the fact that the judgment cannot actually be enforced at this time does not, in the Advocate General's opinion, relieve courts in *other* Member States from the obligation to recognise and enforce the judgment. It is not a requirement of that obligation that actual enforceability be possible in Northern Cyprus.

Lastly, Advocate General Kokott examines the question whether the enforcement of a default judgment in another Member State must be refused where there are irregularities involving the service of the writ instituting the proceedings. As a result of various difficulties, Mr and Mrs Orams did not enter appearance before the District Court of Nicosia in good time, with the result that a default judgment was issued against them. Subsequently, however, they had the opportunity to bring an appeal against that judgment. Consequently, the Advocate General concludes that enforcement cannot be refused where the result of the defendant's appeal is that the default judgment has been reviewed in full and fair proceedings.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

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Languages available: ES DE EL EN FR HU IT PL PT RO

The full text of the Opinion may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-420/07>

It can usually be consulted after midday (CET) on the day of delivery.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

ou B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956