

— the term ‘the northern area’ refers to the area of the Republic of Cyprus over which the Government of the Republic of Cyprus does not exercise effective control.

Does the suspension of the application of the *acquis communautaire* in the northern area by Article 1(1) of Protocol No 10 of the Act of Accession 2003 of Cyprus to the EU 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 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup> (‘Regulation 44/2001’), which is part of the *acquis communautaire*?

2. Does Article 35(1) of Regulation 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 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 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 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 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?

<sup>(1)</sup> OJ L 12, p. 1.

**Action brought on 13 September 2007 — Commission of the European Communities v Kingdom of Spain**

**(Case C-423/07)**

(2007/C 297/35)

*Language of the case: Spanish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: D. Kukovec, agent and M. Canal Fontcuberta, abogada)

*Defendant:* Kingdom of Spain

**Form of order sought**

— declare that, by not including, in the works to be awarded by concession in the concession notice and in the tendering specifications relating to the award of a public concession for the construction, maintenance and operation of the motorway links to Segovia and Ávila, and for the maintenance and operation of the Villalba-Adanero section of the same motorway, works which were subsequently awarded, the Kingdom of Spain has failed to fulfil its obligations under Article 3 and Article 11(3), (6), (7), (11) and (12) of Directive 93/37/EEC<sup>(1)</sup>, and under the principles of the EC Treaty, in particular the principle of equality of treatment and non-discrimination;

— order Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

Under Royal Decree 1724/99 of 5 November the Ministry for Infrastructure and Transport awarded a public works concession for the construction, maintenance and operation of the following sections of toll motorway: the A-6 toll motorway link to Segovia, and the A-6 toll motorway link to Ávila, and for the maintenance and operation from 2018 of the Villalba-Adanero section of the A-6 toll motorway. In the context of awarding that concession, there were awarded many other works of which notice had not been given, to a value greater than the total value of the published works, and which were in part outside the geographical area of the concession.

First, the Commission claims that the Kingdom of Spain has infringed Article 3 of Directive 93/37 and consequently Article 11(3), (6), (7), (11) and (12) of the same directive by awarding works without prior public notice. The Commission states that all the works awarded should have been published in the Official Journal in accordance with the provisions of Directive 93/37.

Secondly, the Commission considers that there is no information either in the notice or in the tendering specifications which would enable tenderers to bid for works on sections other than the A-6 toll motorway links to Ávila and Segovia such as those which were subsequently awarded. The Commission considers therefore that the Spanish authorities have infringed the principle of equality of treatment by accepting a tender which manifestly did not comply with the essential conditions set out in the published notice and tendering specifications.

<sup>(1)</sup> Council Directive of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

**Reference for a preliminary ruling from High Court of Justice (England and Wales), Queen's Bench Division, Administrative Court made on 14 September 2007 — The Queen on the application of Mark Horvath v Secretary of State for Environment, Food and Rural Affairs**

(Case C-428/07)

(2007/C 297/36)

*Language of the case: English*

**Referring court**

High Court of Justice (England and Wales), Queen's Bench Division, Administrative Court

**Parties to the main proceedings**

*Applicant:* Mark Horvath

*Defendant:* Secretary of State for Environment, Food and Rural Affairs

**Questions referred**

1. Where a Member State has provided for a system of devolved government, in relation to which powers are retained to the central state authorities to act for the whole of the territory of the Member State to ensure compliance with that Member State's obligations under Community law, in relation to Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71, and (EC) No 2529/2001<sup>(1)</sup> ('the Council Regulation'):

a) Can a Member State include requirements relating to the maintenance of visible public rights of way in its standards of good agricultural and environmental condition under Article 5 and Annex IV to Council Regulation 1782/2003?