

APOSTOLIDES

JUDGMENT OF THE COURT (Grand Chamber)

28 April 2009\*

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,**

\* Language of the case: English.

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. Lõhmus, 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. Chala 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**

- <sup>1</sup> 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 above-mentioned 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?

## The questions referred for a preliminary ruling

### *The first question*

- 32 By its first question, the referring court asks essentially whether the suspension of the application of the *acquis communautaire* in the northern area, provided for by Article 1(1) of Protocol No 10, precludes the application of Regulation No 44/2001 to a judgment which is given by a Cypriot court sitting in the Government-controlled area, but concerns land situated in the northern area.
- 33 It must be observed at the outset that the Act of Accession of a new Member State is based essentially on the general principle that the provisions of Community law apply *ab initio* and *in toto* to that State, derogations being allowed only in so far as they are expressly laid down by transitional provisions (see, to that effect, Case 258/81 *Metallurgiki Halyps v Commission* [1982] ECR 4261, paragraph 8).
- 34 In that regard, Protocol No 10 constitutes a transitional derogation from the principle set out in the preceding paragraph, based on the exceptional situation prevailing in Cyprus.
- 35 However, as the Advocate General observed, in point 35 of her Opinion, provisions in an Act of Accession which permit exceptions to or derogations from rules laid down by

the EC 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 (see, by analogy, Case 231/78 *Commission v United Kingdom* [1979] ECR 1447, paragraph 13; Case 77/82 *Peskeloglou* [1983] ECR 1085, paragraph 12; Case 11/82 *Piraiiki-Patraiki and Others v Commission* [1985] ECR 207, paragraph 26; Case C-3/87 *Agegate* [1989] ECR 4459, paragraph 39, and Case C-233/97 *KappAhl* [1998] ECR I-8069, paragraph 18).

36 In the case in the main proceedings, the derogation provided for by Protocol No 10 cannot be interpreted as meaning that it precludes the application of Regulation No 44/2001 to the judgments concerned given by the Cypriot court.

37 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. However, in the case in the main proceedings, the judgments concerned, the recognition of which is sought by Mr Apostolides, were given by a court sitting in the Government-controlled area.

38 The fact that those judgments concern land situated in the northern area does not preclude the interpretation referred to in the preceding paragraph 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, by analogy, Case C-281/02 *Owusu* [2005] ECR I-1383, paragraph 31).

39 In the light of the foregoing, the answer to the first question is that the suspension of the application of the *acquis communautaire* in the northern area, provided for by Article 1(1) of Protocol No 10, does not preclude the application of Regulation No 44/2001 to a judgment which is given by a Cypriot court sitting in the Government-controlled area, but concerns land situated in the northern area.

*The second to fifth questions*

- 40 As regards the second to fifth questions, it must be stated that the Commission invokes the possibility that the case does not fall within the material scope of Regulation No 44/2001. Such a conjecture thus makes it necessary to determine whether the case in the main proceedings may be regarded as a 'civil and commercial matter' for the purpose of Article 1 of that regulation.
- 41 In that connection, it is to be remembered that, in order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, 'civil and commercial matters' should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of the regulation and, second, to the general principles which stem from the corpus of the national legal systems (see Case 29/76 *LTU* [1976] ECR 1541, paragraph 3; Case 814/79 *Rüffer* [1980] ECR 3807, paragraph 7; Case C-172/91 *Sonntag* [1993] ECR I-1963, paragraph 18; Case C-266/01 *Préservatrice foncière TIARD* [2003] ECR I-4867, paragraph 20; Case C-343/04 *ČEZ* [2006] ECR I-4557, paragraph 22, and Case C-292/05 *Lechouritou and Others* [2007] ECR I-1519, paragraph 29).
- 42 The autonomous interpretation of the concept of 'civil and commercial matters' results in the exclusion of certain judicial decisions from the scope of Regulation No 44/2001, by reason either of the legal relationships between the parties to the action or of the subject-matter of the action (see *LTU*, paragraph 4; *Rüffer*, paragraph 14; *Préservatrice foncière TIARD*, paragraph 21; *ČEZ*, paragraph 22, and *Lechouritou and Others*, paragraph 30).
- 43 Thus, the Court has held that, although certain actions between a public authority and a person governed by private law may come within the concept, it is otherwise where the

public authority is acting in the exercise of its public powers (see *LTU*, paragraph 4; *Rüffer*, paragraph 8; *Sonntag*, paragraph 20; *Préservatrice foncière TIARD*, paragraph 22; and *Lechouritou and Others*, paragraph 31).

44 The exercise of public powers by one of the parties to the case, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such a case from civil and commercial matters within the meaning of Article 1(1) of Regulation No 44/2001 (see, to that effect, *LTU*, paragraph 4; *Rüffer*, paragraphs 9 and 16; *Sonntag*, paragraph 22; *Préservatrice foncière TIARD*, paragraph 30; and *Lechouritou and Others*, paragraph 34).

45 In the case in the main proceedings, the action is between individuals, and its object is to obtain damages for unlawfully taking possession of land, the delivery up of that land, its restoration to its original state and the cessation of any other unlawful intervention. That action is brought not against conduct or procedures which involve an exercise of public powers by one of the parties to the case, but against acts carried out by individuals.

46 Consequently, the case at issue in the main proceedings must be regarded as concerning ‘civil and commercial matters’ within the meaning of Article 1(1) of Regulation No 44/2001.

### The second question

47 By its second question, the referring court asks essentially whether the fact that a judgment is given by a court of a Member State, concerning land situated in an area of that State over which the Government of that State does not exercise effective control, may be regarded as an infringement of the rule of jurisdiction laid down in Article 22(1)

of Regulation No 44/2001 and, therefore, justify a refusal to recognise or enforce such a judgment in accordance with Article 35(1) of that regulation.

48 In that connection, it must be held that 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.

49 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 — such review being permitted only in relation to the provisions of Article 35(1) — 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.

50 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.

51 In the case in the main proceedings, it is common ground that the land is situated in the territory of the Republic of Cyprus and that, therefore, 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 the northern area may possibly have an effect on the domestic jurisdiction of the Cypriot courts, but cannot have any effect for the purposes of that regulation.

52 In the light of the foregoing, the answer to the second question is that 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 third question

53 By its third question, the referring court asks essentially whether 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 constitutes a ground for refusal of recognition or enforcement under Article 34(1) of Regulation No 44/2001.

### — Article 34(1) of Regulation No 44/2001

54 According to Article 34(1) of Regulation No 44/2001, a judgment is not to be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. Article 45(1) of that regulation provides for the refusal of an enforcement order in the same circumstances.

55 As a preliminary point, it should be recalled that Article 34 of Regulation No 44/2001 must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation (see Case C-414/92 *Solo Kleinmotoren* [1994] ECR I-2237, paragraph 20; Case C-7/98 *Krombach* [2000] ECR I-1935, paragraph 21, and Case C-38/98 *Renault* [2000] ECR I-2973, paragraph 26). With regard, more specifically, to the public-policy clause in Article 34(1) of the

regulation, it may be relied on only in exceptional cases (see Case 145/86 *Hoffmann* [1988] ECR 645, paragraph 21; Case C-78/95 *Hendrikman and Feyen* [1996] ECR I-4943, paragraph 23; *Krombach*, paragraph 21, and *Renault*, paragraph 26).

56 While the Member States remain in principle free, by virtue of the proviso in Article 34(1) of Regulation No 44/2001, to determine, according to their own conceptions, what public policy requires, the limits of that concept are a matter of interpretation of that regulation (see *Krombach*, paragraph 22, and *Renault*, paragraph 27).

57 Consequently, while it is not for the Court to define the content of the public policy of a Member State, it is none the less required to review the limits within which the courts of a Member State may have recourse to that concept for the purpose of refusing recognition to a judgment emanating from another Member State (*Krombach*, paragraph 23, and *Renault*, paragraph 28).

58 In that connection, it must be observed that, by disallowing any review of a foreign judgment as to its substance, Articles 36 and 45(2) of Regulation No 44/2001 prohibit the court of the State in which enforcement is sought from refusing to recognise or enforce that judgment solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of the dispute. Similarly, the court of the State in which enforcement is sought cannot review the accuracy of the findings of law or fact made by the court of the State of origin (*Krombach*, paragraph 36, and *Renault*, paragraph 29).

59 Recourse to the public-policy clause in Article 34(1) of Regulation No 44/2001 can be envisaged only where recognition or enforcement of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it would infringe a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its

substance to be observed, 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 *Krombach*, paragraph 37, and *Renault*, paragraph 30).

60 In that connection, the court of the State in which enforcement is sought cannot, without undermining the aim of Regulation No 44/2001, refuse recognition of a judgment emanating from another Member State solely on the ground that it considers that national or Community law was misapplied in that judgment. On the contrary, it must be considered that, in such cases, the system of legal remedies in each Member State, together with the preliminary ruling procedure provided for in Article 234 EC, affords a sufficient guarantee to individuals (see *Renault*, paragraph 33). The public-policy clause would apply in such cases only where that error of law means that the recognition or enforcement of the judgment in the State in which enforcement is sought would be regarded as a manifest breach of an essential rule of law in the legal order of that Member State (see, to that effect, *Renault*, paragraph 34).

61 In the case in the main proceedings, as Mr Apostolides and the Cypriot and Greek Governments have observed, the referring court 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.

62 Accordingly, in the absence of a fundamental principle in the legal order of the United Kingdom 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, 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. Similarly, there can be no refusal of enforcement on the basis of that provision, in accordance with Article 45(1) of that regulation.

## — Article 38(1) of Regulation No 44/2001

- 63 Notwithstanding the foregoing considerations, it should be recalled that the Court has consistently held that, in the application of Article 234 EC, it may extract from the wording of the questions formulated by the national court, and having regard to the facts stated by the latter, those elements which concern the interpretation of Community law, for the purpose of enabling that court to resolve the legal problems before it (see Joined Cases C-330/90 and C-331/90 *López Brea and Hidalgo Palacios* [1992] ECR I-323, paragraph 5; Case C-224/01 *Köbler* [2003] ECR I-10239, paragraph 60; and Case C-346/05 *Chateignier* [2006] ECR I-10951, paragraph 18).
- 64 In the case in the main proceedings, although the fact that the judgments concerned cannot be enforced in the Member State of origin cannot justify the refusal to recognise or enforce those judgments, under Article 34(1) of Regulation No 44/2001, it remains the case that such a fact could be relevant for the purposes of Article 38(1) of that regulation.
- 65 Under the latter provision, a judgment given in a Member State and enforceable in that State is to be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.
- 66 Accordingly, 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 (see Case C-267/97 *Coursier* [1999] ECR I-2543, paragraph 23). In that connection, although recognition must have the effect, in principle, of conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were given (see *Hoffmann*, paragraphs 10 and 11), there is however no reason for granting to a judgment, when it is enforced, rights which it does not have in the Member State of origin (see the Jenard Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1979 C 59, p. 48) or effects that a similar judgment given directly in the Member State in which enforcement is sought would not have.

67 However, in the case in the main proceedings, it cannot be reasonably argued that the judgments concerned are totally unenforceable in the Member State of origin.

68 These are 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.

69 In that connection, it must be observed that Regulation No 44/2001 merely regulates the procedure for obtaining an order for the enforcement of foreign enforceable instruments and does not deal with execution itself, which continues to be governed by the domestic law of the court in which enforcement is sought (see Case 148/84 *Deutsche Genossenschaftsbank* [1985] ECR 1981, paragraph 18; Case 119/84 *Capelloni and Aquilini* [1985] ECR 3147, paragraph 16, and *Hoffmann*, paragraph 27), unless, for the purposes of the enforcement of a judgment, the application of the procedural rules of the Member State in which enforcement is sought may impair the effectiveness of the scheme laid down by the regulation as regards enforcement orders, by frustrating the principles laid down in that regard, whether expressly or by implication, by the regulation itself (see, to that effect, *Capelloni and Aquilini*, paragraph 21; *Hoffmann*, paragraph 29, and Case C-365/88 *Hagen* [1990] ECR I-1845, paragraph 20).

70 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.

71 In the light of the foregoing, the answer to the third question is that 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 fourth question

- 72 By its fourth question, the referring court asks essentially whether the recognition or enforcement of a default judgment may be refused under Article 34(2) of Regulation No 44/2001 by reason of the fact that the defendant was not served with the document instituting the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, where he was able to commence proceedings to challenge that judgment before the courts of the Member State of origin.
- 73 In that connection, it is apparent from recitals 16 to 18 in the preamble to Regulation No 44/2001 that the system of appeals for which it provides against the recognition or enforcement of a judgment aims to establish a fair balance between, on the one hand, mutual trust in the administration of justice in the Union, which justifies judgments given in a Member State being, as a rule, recognised and declared enforceable automatically in another Member State and, on the other hand, respect for the rights of the defence, which means that the defendant should, where necessary, 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.
- 74 The Court has had occasion, in Case C-283/05 *ASML* [2006] ECR I-12041, to make clear the differences between Article 34(2) of Regulation No 44/2001 and Article 27(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36).

- 75 Article 34(2) of Regulation No 44/2001, unlike Article 27(2) of the Convention, 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 (*ASML*, paragraph 20).
- 76 Under Articles 34(2) and 45(1) of Regulation No 44/2001, the recognition or enforcement of a default judgment must be refused, if there is an appeal, 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 that judgment before the courts of the Member State of origin when it was possible for him to do so.
- 77 It is clear from the wording of those provisions that 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.
- 78 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.
- 79 In the case in the main proceedings, it is common ground that the Orams commenced such proceedings in the Member State of origin to challenge the default judgment given on 9 November 2004. Consequently, Article 34(2) of Regulation No 44/2001 cannot legitimately be relied upon.

80 In the light of the foregoing, the answer to the fourth question is that 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.

#### The fifth question

81 Given the answer to the fourth question, there is no need to answer the fifth question.

#### Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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]