



FLASH REPORT ON FUNDAMENTAL RIGHTS IN CYPRUS, Issue 1, May 2009

[Next Flash Report in August 2009]

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1. DISCRIMINATION

Cyprus Review issues Rethinking Migration, Discrimination and Multiculturalism in a Post-tourist Society

In January 2009 a special issue of the journal *Cyprus Review* was published (vol. 20, no. 2, Fall 2008), titled *Rethinking Migration, Discrimination and Multiculturalism in a Post-tourist Society*, which is devoted to the interconnected issues and key debates in Cyprus and the EU relating to migration, integration, discrimination and multiculturalism from an academic as well as a policy perspective. The paper entitled “Evaluating the Anti-discrimination Law in the Republic of Cyprus: A Critical Reflection” (pp.79-116) considers the socio-legal dimensions of the new institutional framework that has resulted from the transposition of the anti-discrimination Acquis (the EU law and principles). The article presents and evaluates the current anti-discrimination law and institutional framework in the Republic of Cyprus, locates the gaps in transposition mainly in the area of reviewing discriminatory laws and provisions and examines the short-comings and limitations of the law, their repercussions and of the state of implementation. It also offers a number of recommendations aimed at strengthening the legal framework and at developing the policy framework so as to render implementation more effective. No hyperlink is available for this publication.

Equality body decides on awareness raising TV spot regarding persons with disability

On 11.02.2009 the equality body issued its report pursuant to a complaint regarding a TV spot used for awareness raising in the framework of a charity event. The spot showed a boy trying to buy a puppy with a disability from a pet shop when the pet shop assistant told him that the puppy was “lame” and therefore “useless”, upon which the boy reveals that he also has disability and tells him that the puppy will have someone who understands it. After citing the legislative framework, the equality body expressed concerns that often the media do not contribute to the lifting of stereotypes and prejudices. The report refers extensively to a journalists’ code on disability used in Greece, thus forming the first official source of rules on how disability issues must be approached and presented. It also criticized the TV spot for presenting disability as a disadvantage and recommended to the charity event organizers to involve persons with disability in the planning of the awareness raising campaign as well as to encourage members of its marketing department to acquire a specialization on how disability issues must be presented. No on-line information is available.

2. COMPENSATION OF VICTIMS

ECJ ruling in the case of *Apostolides v. Orams*, concerning property owned by the plaintiff in the Turkish controlled north, which was purchased by the defendant

On 28.04.2009 the ECJ issued a ruling in relation to case *C-420/07 Apostolides v Orams*. The plaintiff, a Greek Cypriot owner of property in the Turkish-controlled northern Cyprus, sued two UK nationals who bought his property and secured a judgment from a Cypriot Court against the defendants to demolish the house they built on his property and to return the property to him. He then sought to have this judgment executed in UK, whereupon the trial court rejected his request. The plaintiff then appealed to the Court of Appeal which, in turn, sought a ruling from the ECJ on the question of property rights of Greek-Cypriots in the northern part of Cyprus and the rights and obligations that derive from that suspension of the application of the *acquis communautaire* in the areas falling outside the effective control of the Cypriot Government. The ECJ ruled that the suspension of the application of the *acquis communautaire* in the areas outside the control of the Republic of Cyprus does not preclude the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction, nor does it exclude the enforcement of judgments delivered by a Cypriot court sitting in the southern area of the island even if the judgment concerns land situated in the north. The case has also other 'collateral' repercussions for compensations to victims: (a) EU citizens who reside in the northern part of county could arguably be entitled to claim benefits deriving from the EU *acquis*. For instance it is now apparent that it is no longer lawful to deprive EU citizens from benefits and rights derived from the Free Movement of Workers directive 2005/38/EC, which are currently denied to EU citizens residing in the northern part of Cyprus based on the laws transposing the directive which are territorially restricted within the area under the control of the Republic (b) The same kind of rights are likely to be claimed and awarded to Turkish-Cypriots residing in the northern part of the country as well as others who have claims against the Republic of Cyprus, otherwise there would be reverse discrimination. (c) The principle of the case paves the way for residents in other EU countries to use their national judicial system to seek judgments against persons who have property in Cyprus and in other EU countries and to enforce these judgments in Cyprus. <http://curia.europa.eu/en/actu/communiqués/cp08/aff/cp080098en.pdf>; http://en.wikipedia.org/wiki/Apostolides_v_Orams (accessed 29.04.2009)

3. THE RIGHTS OF THE CHILD

Helpline for children on internet safety

In May 2009 a helpline will be launched to help children tackle issues related to internet safety, such as phishing, intimidation and bullying. Analogous Helplines are being launched throughout Europe with the support of the European Commission and a paneuropean number will be used (116), although in Cyprus the number initially will be 7000116 until permission is obtained to use the paneuropean number. The line will operate daily between 8pm-9pm and children will be able to call in and talk anonymously to trained professionals concerning issues related to internet risks. The initiative belongs to the NGOs Pancyprian Coordinating Committee for the Protection and Welfare of Children and the Cyprus Neuroscience and Technology Institute, the semi-governmental Cyprus Telecommunication Authority, the Pedagogical Institute of the Ministry of Education and the Turkish Cypriot NGO Olive Branch Foundation. Its goal is to provide guidance and counselling on Internet Safety Issues (www.cyberethics.info). At the same time, two of the project partners are operating a hotline, co-funded by the Safer Internet Plus program of the European Commission, promoting safe use of the internet, aimed at combating child pornography, child trafficking and child sex tourism. The Hotline operates as a combined Awareness Node and a Hotline and accepts reports of illegal

content/activity as set in the Convention for Cyber Crime. (<http://www.cyberethics.info/cyethics2/page.php?pageID=15>). The project partners are at the same time running a series of TV spots warning young people against chatting on the internet with unknown persons. The project engages actors from the government and civil society.

Equality body decision against police for violating children's rights

On 15.01.2009 the specialised body examined a complaint against the police on behalf of two under-age girls who had been forced to disembark from a boat in circumstances which posed a risk for their safety, after their names had been announced through the megaphones of the boat as "illegal passengers". The girls who are Greek nationals residing in Cyprus boarded the boat in Limassol port so as to take a cruise with their parents to Crete. When the boat sailed, the police intercepted it and forced the two girls to disembark. The equality body found that the police failed to comply with legislation and that the treatment of the children was discriminatory, humiliating and posed a threat to their life and safety. No sanction was imposed but the police was asked to consider sending an apology letter to the family. No on-line information is available.

Findings of research on violence against children

A study conducted under a Daphne program relating to violence against women and children coordinated by the University of Ljubljana has revealed that even though the Cypriot Law Ratifying the Convention on Cybercrime N.22(III)/2004 creates offences related to child pornography, there is no law forcing internet providers to report such cases to the authorities. The Office of the Commissioner of Electronic Communications & Postal Regulations stated that this constitutes a gap in the law which must be addressed urgently (<http://www.ff.uni-lj.si/fakulteta/dejavnosti/ziff/daphneeng/oprojektu.htm>)

5. VISA AND BORDER CONTROL

Ombudsman decision on denial of visas by Third Country nationals

On 16.01.2009 the Ombudsman issued a report pursuant to a number of complaints from third country nationals whose entry into Cyprus was denied despite having secured in advance a visa from Cypriot embassies abroad. The complaints alleged that the treatment they received from immigration officers at the airport was racist, humiliating and insulting. The reasons alleged by the immigration department for cancelling the visas issued to the complainants were usually the fact that s/he did not have enough money with her/him or a return ticket or a confirmed place of residence in Cyprus or sufficient baggage, there was suspicion s/he might seek employment in Cyprus or enter into a marriage of convenience. In her findings, the Ombudsman noted that despite the adoption of the principles of the Schengen acquis, the discretion of the national control bodies remains extremely wide allowing for arbitrary interpretations of vague criteria. Significant problems and malfunctioning were noted in the criteria used to check visas issued by Cypriot embassies, whilst the method of checking such visas and the justification of the decisions denying entry to Cyprus are often insufficient or sometimes altogether absent. In particular, the Ombudsman noted that the concept of 'bona fide visitor' is so wide that the preconditions are hard to meet, whilst at the same time wide margins of discretion are left on the individual immigration officers, whose assessment of the reasons of the foreigners' visit to Cyprus is usually ridden with suspicion and prejudice. Whilst a circular issued to embassies instructs them to evaluate visa applications having in mind that "candidate unlawful migrants" might try to enter Cyprus in order to work, the same practice appears to be exercised additionally by the immigration officers at the entry points. Particular prejudice is shown by immigration officers in the case of women who are often perceived as seeking to enter a marriage of convenience or to work in prostitution. The Ombudsman also found the overall attitude

of immigration officers insulting, xenophobic and lacking basic respect towards private life and dignity and criticised the practice of prohibiting visitors from communicating with their contact person in Cyprus and forcing them to depart from Cyprus with the next flight without affording them the opportunity to substantiate their allegations. The Ombudsman recommended the adoption of codified and predefined criteria for reviewing visas; due justifications in the event that entry is denied; and the carrying out of checks with tact and full respect towards private life. No on-line information is available.

6. PARTICIPATION OF THE CITIZENS OF THE UNION IN THE UNION'S DEMOCRATIC FUNCTIONING

Website for Euroelections

The left-wing ruling party AKEL has uploaded a special website regarding the European Parliamentary elections 2009. Apart from Greek, the website has a special page in Turkish. AKEL is the only party with realistic hopes to attract votes from Turkish Cypriots in this election, due to its traditional good relations with the Turkish Cypriot community. <http://www.akel2009.eu/index.php?lang=gr> (27.04.2009)

EU citizens' consultation

A project involving a process of consultation of citizens on the future of Europe was carried out in Cyprus from 03.12.008 and finished with an event taking place on 28-29.03.2009 under the theme "what can the EU do to formulate our economic and social future in a globalised world?" The consultation concluded with 10 proposals formulated to go before the 30 randomly chosen Cypriot citizens who attended the consultation of EU citizens on 28.03.2009 and 29.03.2009 in Limassol (<http://www.european-citizens-consultations.eu/cy/> accessed 29.4.2009). The proposals include: Study by experts in the creation of best practice guides for the improvement of the mass public transport; EU directives on reducing the levels of pollution in urban areas; improvement of information to consumers on what the various commodities contain; the setting up of an EU mechanism for monitoring the circulation and placement of genetically modified goods; tougher sanctions on member-states for non-compliance with environmental directives, the utilisation by the EU of the Asylum Bureau to contribute to the adoption of measures and mechanisms to support countries neighbouring the EU for more effective and humane treatment of irregular migrants and asylum-seekers, the promotion of legislation to improve access for persons with disabilities; the development of a more effective control on the immediate implementation of the EU directives, enabling citizens to report potential deviations via a special mechanism (http://www.indexcyprus.com/site/images/documents/cyprus_report_ecc_09.doc).

7. INFORMATION SOCIETY AND RESPECT FOR PRIVATE LIFE AND PROTECTION OF PERSONAL DATA

Pan-European Survey by the Article 29 Working Group

The Cypriot Data Protection Commissioner has announced that the European Working Group for the Protection of Personal Data set up under article 29 of Directive 95/46/EC, is carrying out a survey in relation to compliance at national level of the telecommunications providers and internet providers with the obligations under national legislation for the maintenance of movement data, enacted under Directive 2002/58/EC for the protection of private life in telecommunications and Directive 2006/24/EC for the maintenance of data. The survey will be carried out through a questionnaire which will be the same in all EU member states with questions focusing on the 10 areas in which the maintenance of data plays an important role. On-site checks will follow for a more thorough analysis of the situation, focusing on practical problems. The results of the survey will be evaluated at both national and EU level, based on which the Working Group of article 29 will probably proceed to issue further recommendations for practical guidance on the subject as a whole and locate areas for future action, aiming at increasing compliance.

http://www.dataprotection.gov.cy/dataprotection/dataprotection.nsf/index_gr/index_gr?opendocument : Click on 'Retention of Data press release')

8. ACCESS TO EFFICIENT AND INDEPENDENT JUSTICE

Court decision in police violence case

On 20.12.2005 plainclothes police officers stopped a car, handcuffed the two passengers and physically assaulted them. In response to the complaints submitted by the victims, the police filed charges against the victims accusing them of assaulting the police officers involved in the incident. It subsequently emerged that the incident had been filmed by a by-stander who handed the video to the press showing the policemen torturing the two handcuffed victims. Following the publicisation of the video, the police withdrew the charges against the two victims. Fearing a backlash from the police, the amateur video maker decided to remain anonymous and handed the video to the Attorney General. The Ombudsman issued a decision condemning the police violence. The authorities charged 10 police officers with numerous offenses, including assault and torture, but the charge of torture was subsequently withdrawn. The video was submitted to the Court as an exhibit by the Attorney General. The Court proceedings were completed on 19.03.2009 upon which the Assize Court acquitted the ten policemen, on the ground that the identity of the perpetrators was not proven beyond reasonable doubt, having found the video submitted by the Attorney General. The court also rejected the testimony of the two victims of the assault who had recognised the perpetrators. The Court decision was met with uproar from the Attorney General, all political parties, citizens; the latter have formed themselves into an action group protesting against the decision (ALERT <http://alertcy.wordpress.com>). An appeal against the Assize Court decision was filed to be heard in September 2009. <http://alertcy.wordpress.com/apofasi-kakourgiodikeiou/>

The ruling of the case C-420/07, *Apostolides v the Orams* was issued on 28.04. 2009.

The case involved a reference for a preliminary ruling from the English Court of Appeal, which dealt with issues affecting access to justice for Greek-Cypriot owners of property in the northern part of Cyprus and rights and obligations related the application of the *acquis*. The court ruled that 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, (Protocol No 10 on Cyprus) concerning the accession to the EU 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 southern area of the island but concerns land situated in the north (http://en.wikipedia.org/wiki/Apostolides_v_Orams)

Annex – Case Law

Case title	Report of the Anti-discrimination Authority regarding the content of a televised spot used in the framework of events for Radiomarathon 2007
Decision date	11.02.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	A.K.R.130/2007 Equality Body Αρχή κατά του Ρατσισμού και των Διακρίσεων [Anti-discrimination Authority]
Key facts of the case (max. 500 chars)	In 2007 a complaint was submitted to the equality body from a disability NGO alleging that a TV spot used for awareness raising in the framework of an annual charity event sent the wrong messages regarding people with disabilities. The spot showed a child trying to buy a puppy with a disability from a pet shop when the pet shop assistant told him that the puppy was “lame” and therefore “useless” as it would never be able to run. Then the child shows the shop assistant that he also has a leg with a disability and tells him that the puppy will have someone who understands it.

Main reasoning/argumentation (max. 500 chars)	The equality body found the complaint well-founded and criticized the TV spot for presenting disability as a disadvantage and for focusing on limitations rather than on abilities. It also expressed concern over media portrayal of disability which often perpetuates negative attitudes and stereotypes and presented a code of conduct used in Greece as an example of good practice.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Using the Greek code of practice as a departure point, the equality body states that media presentations of disability must focus on the person rather than on the disability; must project a positive image of the person with the disability; to avoid 'positive exaggeration' which often results in undermining a person; and to avoid references implying that disability is equivalent to an illness or to unhappiness. The report also presents a list of phrases to be used and to be avoided.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	No sanctions were imposed. The report recommended to the charity event organizers to involve persons with disability in the planning of the awareness raising campaign as well as to encourage members of its marketing department to acquire a specialization on how disability issues must be presented.
Proposal of key words for data base	Media, disability

Case title	<i>Meletis Apostolides V David Charles Orams, Linda Elizabeth Orams</i>
Decision date	28.04.09
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Case C-420/07 European Court of Justice, Reference for a preliminary ruling under Article 234 EC from the Court of Appeal (England and Wales) (Civil Division)
Key facts of the case (max. 500 chars)	The plaintiff, a Greek Cypriot, owns property in the Turkish-controlled northern part of Cyprus, which he was deprived of following the invasion by the Turkish army in 1974. His property was subsequently purchased by the defendants who are UK nationals and who built a holiday home on it and claimed ownership. The plaintiff secured a judgment from a Cypriot Court against the defendants to demolish the house and to return the property to the plaintiff and sought to have this judgment executed in UK against a property owned by the defendants there. The trial court rejected the plaintiff's request and the plaintiff appealed to the Court of Appeal to have this decision reversed. The Court of Appeal sought a ruling from the ECJ on the question of property rights of Greek-Cypriots in the northern part of Cyprus and the rights and obligations that derive from that suspension of the application of the <i>acquis communautaire</i> in the areas falling outside the effective control of the Cypriot Government. The proceedings before the referring court concern the recognition and enforcement in the UK, pursuant to Regulation No 44/2001, of Cypriot court judgments
Main reasoning/argumentation (max. 500 chars)	The Act of Accession of a new Member State is based on the general principle that the provisions of Community law apply <i>ab initio</i> and <i>in toto</i> to that State, derogations being allowed only in so far as they are expressly laid down by transitional provisions. In construing Protocol No 10 the ECJ decided that any provisions in an Act of Accession which permit exceptions to or derogations from rules laid down by the EC Treaty

	<p>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. Therefore the Cypriot court judgment was enforceable in the Courts of UK.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>(a) It clarified the meaning of the suspension of the application of the <i>acquis communautaire</i> in those areas of Cyprus where the Republic does not exercise effective control.</p> <p>(b) It clarified jurisdiction regarding 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 concerning property situated in areas outside the control of the government.</p> <p>(c) It clarified issues regarding Article 34(2) of Regulation No 44/2001 about what factors are relevant to the assessment whether a defendant is 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.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The suspension of the application of the <i>acquis communautaire</i> in those areas of the Republic of Cyprus in which the Government of that Member State does not exercise effective control, provided for by Protocol No 10 on Cyprus to the Act on accession to the EU and the adjustments to the EU Treaties, 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.</p> <p>Article 35(1) of the Regulation 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.</p> <p>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 does not mean that such a judgment is unenforceable for the purposes of Article 38(1) of that regulation.</p> <p>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.</p> <p>The matter is now before the UK court.</p>
<p>Proposal of key words for data base</p>	<p>Protocol No 10 on Cyprus – Suspension of the application of the <i>acquis communautaire</i> in the areas outside the effective control of the Cypriot</p>

	Government – Regulation (EC) No 44/2001 – Court 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
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Original text of the ECJ ruling:

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,

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- 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?

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 *Piraiki-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 seized 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]

* Language of the case: English.

Case title	Ombudsman's report regarding the terms and procedures of reviewing visas at passport control points in airports upon arrival of foreigners to Cyprus
Decision date	16.01.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	File Nos A/P 749/2005, A/P 2230/2005, A/P 2342/2005, A/P 3155/2005, A/P 2355/2006, A/P 2776/2006, A/P 442/2007, A/P 1201/2007, A/P 1659/2007. Επίτροπος Διοίκησης [Commissioner for Administration <i>or</i> Ombudsman]

Key facts of the case (max. 500 chars)	Several complaints were submitted to the Ombudsman from third country nationals whose entry into Cyprus was denied despite having secured in advance a visa from Cypriot embassies abroad, alleging racist, humiliating and insulting treatment by immigration officers. The reasons alleged by the immigration department for cancelling the visas were usually that s/he did not have enough money with her/him or a return ticket or a confirmed place of residence in Cyprus or sufficient baggage or, there was suspicion s/he might seek employment in Cyprus or might enter into a marriage of convenience. The immigration authorities claimed that existing legislation entitled them to review the visas issued by embassies to ascertain compliance with regulations.
Main reasoning/argumentation (max. 500 chars)	The Ombudsman found that wide discretion is exercised by the immigration officers in the reviewing of visas using wide and undefined criteria; that the manner of checking such visas is often tainted with suspicion and prejudice and the immigration officers' behaviour is insulting, humiliating and xenophobic; and that the justification of the decisions denying entry to Cyprus is usually lacking.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Ombudsman found that the criteria of "sufficient means" and proof of residence are so widely phrased which allow arbitrary interpretations. In addition to the overall attitude of suspicion and discrimination with which visas are reviewed, particular prejudice is shown by immigration officers in the case of women who are often perceived as seeking to enter a marriage of convenience or to work in prostitution. The Ombudsman criticised the practice of prohibiting the visitors from communicating with their contacts in Cyprus and forcing them to depart from Cyprus with the next flight without affording them the opportunity to substantiate their allegations.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Ombudsman recommended the adoption of codified and predefined, criteria for reviewing visas; the amendment of the Aliens and Immigration Regulations taking into consideration the provisions of the Schengen Code and adopting objective methods of evaluating a visitor's 'sufficient means'; due justifications in the event that entry is denied; the carrying out of checks with tact and full respect towards private life; the co-operation between Cypriot embassies and immigration authorities to avoid visitors' inconvenience and the issue of informative material by the embassies to warn prospective visitors that a visa does not secure an irrevocable right of entry and provide the list of justifications that may potentially be requested upon passport control at the Cypriot airport.
Proposal of key words for data base	Passport control, visa, foreign visitors

Case title	Report of the Anti-discrimination Authority regarding the forceful disembarking of minors from a boat while it was sailing out from Limassol port
Decision date	15.01.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	A.K.R. 156/2008 Equality Body Αρχή κατά του Ρατσισμού και των Διακρίσεων [Anti-discrimination Authority]
Key facts of the case (max. 500 chars)	A complained was filed to the Equality Body against the police who forced two minors to disembark from a boat sailing out of Limassol port

	in circumstances posing a threat to their safety and traumatising them, after having announced their names through the boat’s megaphones as “illegal passengers”. The minors had boarded the boat having shown at passport control only their identity cards and not their passports. Council of Ministers regulations provide that foreign nationals, as was the case with the two girls, must travel with their passports and not merely their identity cards. The father argued that upon passport control the immigration officer allowed the two girls to pass through with only their identity cards, a fact which the immigration officer in question later disputed.
Main reasoning/argumentation (max. 500 chars)	The Equality Body found that the action of the police had violated the legislation as well as the police’s own code of conduct which provides that its members can use violence only to the extent absolutely necessary and for the attainment of a lawful purpose, whilst taking into consideration the fundamental rights of citizens. The report further found violation of the police’s own Charter of Children’s Rights which provides that no-one has the right to take a child away from its parents against its will unless the state decides this is in the best interests of a child.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The complainants had been subjected to humiliating and discriminatory treatment by the police authorities who failed to exercise their duty in a way that respects the principles of proportionality and fairness.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	No sanctions were imposed. The equality body asked the police to consider sending an apology letter to the family. Although the competence of the police to carry out immigration checks upon departure from the country is not disputed, it is necessary that such checks are carried out in the most painless, mild and constructive way.
Proposal of key words for data base	Police immigration checks – minors forced to disembark from sailing boat

Case title	The Republic v. Andreas Pavlou Efstathiou, Harris Geogiou Haritou, Andreas Georgiou Panagi, Georgios Christaki Pavlou, Georgios Andreou Killilis, Costas Demou Toumbas, Iordanis Kyriakou Iordanou, Andreas Nicolaou Christou, Christiana Andreou Antoniou, Tefkros Charalambous, Georgios Charalambour Vanezi
Decision date	19.03.2009
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Case reference no. 17179/06 Μόνιμο Κακουργιοδικειο, Λευκωσία[Permanent Assize Court, Nicosia]
Key facts of the case (max. 500 chars)	Plainclothes police officers physically assaulted two citizens for several hours, following which the victims filed complaints against the police. In reaction to the complaints, the police filed charges against the victims accusing them of assaulting the police officers; these charges were withdrawn when a video filmed by an eye-witness by-stander was handed to the media. Fearing a backlash from the police, the amateur video maker decided to remain anonymous and handed the video to the Attorney General, who submitted it to the Court as evidence.
Main reasoning/argumentation (max. 500 chars)	The Court acquitted the eleven policemen, on the ground that the identity of the perpetrators was not proven beyond reasonable doubt, having found the video submitted by the Attorney General (AG) as inadmissible because its authenticity was, according to the Court, not

	proven.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court rejected the testimony of the victims who had identified most of the defendants and focused on the submission of the videotape as the only evidence against the defendants. It concluded that on the one hand the authenticity of the video tape was not proven beyond doubt and that the tape was in any case inadmissible because it had to be submitted by its own producer and not by the Attorney General. The Court rejected the identification of the defendants which was made by other policemen because following the publicisation of the video, the media coverage and the Ombudsman's report which found the defendants guilty, the police officers called to identify the suspects already knew who they should identify.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	All defendants were acquitted of all charges. The decision has caused reaction and concern from all sectors of society, politicians and the Attorney General who publicly expressed his disappointment about the quality of Cypriot justice, adding that the decision was wrong and it encourages police brutality and state terrorism
Proposal of key words for data base	Police violence- acquittal- evidence law- inadmissibility of evidence- presumption of innocence