

The case of Linda and David Orams involves a piece of land in Lapta, T.R.N.C. which Mr. and Mrs. Orams purchased and had registered in their names in accordance with the laws of the T.R.N.C. and subsequently built on.

In 2004, Meletios Apostolides, the Greek Cypriot who owned the land prior to the Turkish military intervention in 1974, obtained an order from the Nicosia District Court in South Cyprus, which is an EU member, ordering Mr. and Mrs. Orams to demolish and vacate the house and pay compensation to him for the use of the land. The order was obtained against Mr. and Mrs. Orams in default of appearance i.e. in the absence of Mr. and Mrs. Orams and without hearing their defence. The legal paperwork was served on Mr. and Mrs. Orams in Northern Cyprus in Greek. At the time, they had no comprehension of what the paperwork was about and, understandably, it took them some time to find someone to translate the paperwork and to find a lawyer who was able to represent them in the courts in the South. By law, they had only 10 days from the date of service to file their appearance, acknowledging service of the papers and appointing a lawyer to represent them. Just 13 days after the paperwork was served, judgment was given against them for failing to file their appearance within the time limit. This judgment ordered Mr. and Mrs. Orams to pay mesne profits (effectively rent) for their period of occupation of the property, cease using the property, demolish the property and pay legal costs. Mr. and Mrs. Orams subsequently applied for this judgment to be set aside, but their application was rejected by the Nicosia court on the grounds that they had no valid defence. The lawyer for Mr Meletios Apostolides, then tried to find a way, by relying on EU law, to enforce against Mr and Mrs Orams and their assets in the UK.

The enforcement in the UK of a judgment delivered by a court of another EU member state is controlled by the Brussels Convention on Jurisdiction and Enforcement of Judgments, Council Regulation (EC) No. 44/2001, incorporated into domestic legislation by the Civil Jurisdiction and Judgments Act 1982 (as amended). This provides, as a basic principle, that any court judgment given in any EU member state must be recognised in all other EU member states, except where 'this would be manifestly contrary to public policy in that member state' or 'where the judgment was given in default of appearance' or 'where it is irreconcilable with a previous judgment involving the same cause of action and same parties.' For the purposes of the case of Mr. and Mrs. Orams, grounds 1 and 2 were relevant.

In 2005, Meletios Apostolides registered the judgments of the Nicosia court at the High Court in the UK and the judgments were declared enforceable as this was a procedural requirement. No submissions could be heard from Mr. and Mrs. Orams at that stage. Mr. and Mrs. Orams subsequently appealed and judgment was given in their favour in September 2006. This was the first time that the issues of the case were explored in full. Judge Mr. Justice Jack who heard this appeal gave this judgment on the ground that EU Law is suspended in the North and the administration in the South does not exercise effective control over the North. He also felt that such cases are a result of an 'international problem ill-suited to be resolved by private litigation'.

Mr. Apostolides then appealed to the Court of Appeal. The Court of Appeal felt that, as this is a matter which involves a substantial question of EU Law, the matter should be referred to the European Court of Justice (ECJ) for a preliminary ruling. On 28th April 2009, the ECJ ruled that the fact that EU law is suspended in the T.R.N.C. does

not preclude the application of the regulation, the fact that it is not physically possible to enforce the judgment in the T.R.N.C. because the Government of the Republic of Cyprus does not exercise effective control does not prevent the enforcement of the judgment in another member state. The ECJ also rejected arguments on public policy and rejected arguments that the judgment was a default judgment on the basis that Mr. and Mrs. Orams had applied for a 'Set-Aside' Order which had been rejected.

The matter then reverted back to the Court of Appeal. Judgment was given on 19th January 2010 in which the Court of Appeal applied the ruling of the ECJ and rejected Mr. and Mrs. Orams' claims that the enforcement of the judgment was contrary to public policy. The Court of Appeal also rejected Mr. and Mrs. Orams' claims that the President of the ECJ at the time when the ruling of the ECJ was given, Judge Skouris, was biased.

Unfortunately, any further appeal by Mr. and Mrs. Orams to the House of Lords (now known as the Supreme Court) has been prevented. Under article 44 of Council Regulation 44/2001, the highest appeal court in relation to the matter of the reciprocal enforcement of judgments is stated to be the Court of Appeal. The legal team for Mr. and Mrs. Orams submitted an application for leave to appeal on the basis that there was an important point of law i.e. public policy which needed to be resolved. However, it is understood that this application has been rejected.

In order to try to comply with the judgment given against them at the Court of Appeal, Mr. and Mrs. Orams have submitted an application to the District Office (Kaymakamlik) for permission to demolish the property. However, this application has been rejected. The legal team for Mr. and Mrs. Orams in the UK intends, therefore, to submit an application for the enforceability of the 'demolition' part of the court order to be declared impossible as the Orams have been prevented from complying with this part of the order by the authorities in the TRNC. It is understood that the TRNC Government has also stated that they will pay all of the mesne profits which Mr. and Mrs. Orams have been ordered to pay to Mr Apostolides together with his legal costs and Mr. and Mrs. Orams' own legal costs and to refund the money which Mr. and Mrs. Orams originally paid to purchase the property and build on it.

Mr. and Mrs. Orams had, however, prior to the judgment of 19th January 2010, filed a case in the European Court of Human Rights (E.C.H.R.) to argue that they had not received a fair trial in the South in breach of their Human Rights under Article 6 of the European Convention on Human Rights and to argue that the judgment in the case of *Apostolides v Orams* contradicts recent case law of the E.C.H.R. in which the E.C.H.R. had indicated that the T.R.N.C. Property Compensation Commission, a Commission established by the T.R.N.C. authorities to consider and resolve applications by Greek Cypriots for settlement for their property left behind in 1974, could be recognised as an effective local remedy for such claims. It is understood that Mr. and Mrs. Orams are currently waiting for a trial date for this.

A meeting was held in January 2010 for the members of the T.R.N.C. Bar Association to discuss the 'Orams' case. It was decided that meetings would be sought with the Government to try to discuss legislative measures which can be taken to provide protection to purchasers in the T.R.N.C. The T.R.N.C. as the party issuing title deeds to Mr. and Mrs. Orams and registering their names on those deeds as the registered

freehold owners of clear unencumbered title after Mr. and Mrs. Orams purchased in good faith in accordance with the laws of the T.R.N.C. clearly have some responsibility to protect them against any adverse claims as a result of this. The T.R.N.C. has, in the case of Mr. and Mrs. Orams and through its Immovable Property Compensation Commission (IPC) has acknowledged this responsibility.

It has been argued by some political commentators that the result in this case will undermine efforts to re-unite the island through the current negotiation process for a comprehensive settlement. Some commentators on the Greek Cypriot side are also concerned that Turkish Cypriots might launch similar individual legal cases in relation to their properties left behind in the South, leaving the Greek Cypriot administration with a heavy financial burden. A recent article in the Cyprus Mail, one of the South's leading English language newspapers, which was published on 14th February 2010, described the situation as a potential 'Pandora's Box'. Recently, the Republic of Cyprus settled a case which had been brought against the administration by Turkish Cypriot Sofi Nezire in the European Court of Human Rights by reaching an out of court settlement to pay the claimant €500,000. The settlement was reached in order to avoid a judgment being given in favour of Mrs Nezire which could set a precedent for further Turkish Cypriot claims. After 1974, the Republic of Cyprus put all Turkish Cypriot properties in the South under the guardianship of the Ministry of the Interior. However, a number of properties were taken and used for public services such as roads, airports and refugee estates. Turkish Cypriots have not been compensated for the loss of these properties and the recent decision in the 'Orams' case may prompt them to commence their own set of litigation cases against the Greek Cypriot administration.

The Cyprus Mail asks what would happen if a Turkish Cypriot applies to a court in the Republic of Cyprus demanding the demolition of the old Larnaca Airport or what would happen if Turkish Cypriots apply en masse for compensation for loss of use of their properties and restitution? The writer in the Cyprus Mail believes that the amounts involved would be 'prohibitive' and the political consequences would be 'devastating'. The writer argues that the only way for this to be avoided is through a comprehensive political solution to the Cyprus problem.

The current legal situation with regards to the 'Orams' case has been further blurred by the decision of the E.C.H.R. in the case of Demopoulos v Turkey which was delivered on 4th March 2010,. In that case, the E.C.H.R. ruled that the T.R.N.C. Property Compensation Commission is does constitute an effective local remedy for Greek Cypriot property claims. This means that Greek Cypriots must refer their claims to the IPC and must have exhausted this as a potential remedy before they can file a case against Turkey in the E.C.H.R.

It is important to note that this ruling does not overturn the ruling in the case of Apostolides v Orams as such. That ruling still exists and Greek Cypriots still have the right to commence litigation in the courts in the South against people who have purchased or who are occupying former Greek Cypriot properties in the North and then seek to enforce those judgments in EU member states. However, as the Republic of Cyprus is a signatory to the European Convention on Human Rights, in any future cases to be heard in the courts in the Republic of Cyprus against people using/occupying former Greek Cypriot properties in the South must take the recent decision of the E.C.H.R. in the case of Demopoulos v Turkey into consideration in

reaching their judgment. Failure to do so could give the applicant the right to apply to the ECHR which has the power to apply penalties against the Republic of Cyprus for non-compliance with the treaty. It will be interesting to see, therefore, whether the courts in the Republic of Cyprus would still be able to reach the same decision as they did in the case against Mr. and Mrs. Orams in any future cases.

It is also important to note that the decision of the E.C.H.R. does not place any obligation on Greek Cypriots to apply to the IPC – Greek Cypriots do have the option of waiting for a comprehensive settlement, however, if they wish to make a claim to the E.C.H.R. they cannot do so unless they have first exhausted this process. It is hoped that this decision will encourage more Greek Cypriots who are growing increasingly sceptical about the possibility of a comprehensive settlement occurring in the foreseeable future to submit applications to the IPC to receive their compensation. The more cases which can be settled in this way, the simpler any future settlement will be as there will be fewer property disputes to be dealt with. Further, litigation on the basis of an ‘Orams’ type case is expensive and time consuming – the case must first be filed in the courts in the South and judgment obtained and then proceedings must be filed in the courts in the EU member state in which the defendant has assets. It can be argued that it will be a more attractive option for Greek Cypriots wishing to recover compensation for their properties to apply to the IPC because the process may be cheaper and faster. A recent article in the Cyprus Mail published on 14th March 2010 indicated that the current ‘gloom’ over the slow progress being made in the reunification talks could ‘spearhead’ further applications to the IPC. According to the article, even Greek Cypriot lawyer, Constantis Candounas who represented Mr. Apostolides in his case against Mr. and Mrs. Orams is quoted as saying that he will now use the Commission to obtain restitution for his client and that ‘every Greek Cypriot refugee should apply’.