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The Application of EU Law in an Unrecognised Entity: Apostolides v Orams

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Case C-420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, ECLI:EU:C:2009:271, delivered 28 April 2009.

KEYWORDS

Cyprus – Protocol No 10 – Suspension of the *acquis* – Territorial differentiation – Fundamental rights – Lawfare – State recognition – Recognition of judgments.

I. INTRODUCTION

'THE CYPRUS ISSUE entails a conflict between 50,000 Turkish soldiers in the North and 50,000 Greek-Cypriot lawyers in the South'.[1] Despite its exaggerating manner, this common joke among students of the Cyprus dispute accurately depicts the transition of the conflict from warfare to 'lawfare'. Undoubtedly, the Cyprus issue has been one of the most judicialised disputes in the world.[2] In this book, for example, there are two chapters on cases that have arisen from the Cyprus dispute. Unlike *Anastasiou I*,[3] which concerned preferential access of Turkish-Cypriot products to the EU internal market *before* the accession of Cyprus to the EU, the facts of *Apostolides v Orams*[4] took place *after* Cyprus became a Member State.

The importance of the case lies precisely in the fact that it highlighted the limits of the territorial suspension of EU law in northern Cyprus – an area over which the Government of the Republic of Cyprus does not exercise effective control (section IVA). However, in order to better understand *Apostolides v Orams*, the broader context of the case law from international courts in Europe that have been adjudicating aspects of the conflict needs to be

[1] Interview with a high-rank UN official (on file with the author).

[2] See, eg K Özersay and A Gürel, 'The Cyprus Problem at the European Court of Human Rights' in T Diez and N Tocci (eds), *Cyprus: A Conflict at the Crossroads* (Manchester, Manchester University Press, 2009) 273.

[3] Case C-432/92, *Regina v Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd and Others*, ECLI:EU:C:1994:277 See this volume, ch 25.

[4] Case C-420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, ECLI:EU:C:2009:271 (hereafter Grand Chamber judgment in *Apostolides v Orams*).

understood (section IVB). In a way, the case serves as a useful reminder of the fact that, despite the expectations that parties often have in regard to an international dispute, decisions of the Court and other courts on issues that arise from such mega-conflicts[5] can only offer incremental solutions (section IVC).

II. FACTS

The Republic of Cyprus gained its independence from the UK by virtue of three treaties, namely the Treaty of Guarantee, the Treaty of Alliance and the Treaty of Establishment, and a national constitution, all of which came into operation the same day – 16 August 1960.[6] This international legal framework set out a complicated power-sharing arrangement between the Greek-Cypriot and the Turkish-Cypriot communities on the island guaranteed by the UK, Greece and Turkey. This sophisticated institutional regime was short-lived: it collapsed just four years later.[7] The territorial division of the two communities was consolidated and took its current form, however, in 1974. A coup against the Greek-Cypriot President of the Republic, orchestrated by the military regime in Greece, led to the military intervention by the other guarantor state: Turkey. Since then, the two communities have lived in two ethnically homogeneous states sharing a de facto border: the internationally recognised Republic of Cyprus (RoC) and the internationally unrecognised Turkish Republic of Northern Cyprus (TRNC).

During the more than 50 subsequent years of territorial and political segregation, the two communities and the three guarantor states have been negotiating to achieve a comprehensive settlement of the Cyprus issue on the basis of a bizonal, bicommunal federation, with political equality between the two ethno-religious groups. The closest they came to a solution was in April 2004, when the two communities were asked to approve the UN-sponsored plan for the Comprehensive Settlement of the Cyprus Problem – commonly known as the Annan Plan – in simultaneous referendums.[8] The Turkish Cypriots endorsed it while the Greek Cypriots heavily rejected it. Still, a week later, on 1 May 2004, the RoC became an EU Member State. The terms of the Republic's accession are described, inter alia, in Protocol No 10 on Cyprus of the Act of Accession 2003.[9] According to Article 1(1) of this Protocol, the application of EU law is suspended in northern Cyprus – an area where RoC's internationally recognised government does not exercise effective control.

One of the consequences of the territorial division of the island in the aftermath of the 1974 intervention was that thousands of Cypriots had to abandon their properties as they

[5] See, eg Case C-386/08, *Firma Brita GmbH v Hauptzollamt Hamburg-Hafen*, ECLI:EU:C:2010:91. See this volume, ch 57; Case T-512/12, *Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) v Council of the European Union*, ECLI:EU:T:2015:953; Case C-104/16 P, *Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)*, ECLI:EU:C:2016:973; *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, ECLI:EU:C:2018:118. See this volume, ch 75; Case C-363/18, *Organisation juive européenne and Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*, ECLI:EU:C:2019:954. See this volume, ch 89; Case C-457/18, *Republic of Slovenia v Republic of Croatia*, ECLI:EU:C:2020:65. See this volume, ch 90.

[6] See generally www.kypros.org/Constitution/English/.

[7] See generally N Skoutaris, *The Cyprus Issue: The Four Freedoms in a Member State under Siege* (Oxford, Hart Publishing, 2011) ch 2.

[8] www.hri.org/docs/annan/Annan_Plan_April2004.pdf.

[9] Protocol No 10 on Cyprus of the Act of Accession 2003 [2003] OJ L236/955.

had to flee. Although many displaced Greek Cypriots claim ownership of the land they were forced to vacate, the Turkish-Cypriot authorities 'nationalised' those abandoned properties.[10] One of those Greek Cypriots was Mr Apostolides, who used to live in northern Cyprus, where his family owned land. In 2002, Mr. and Mrs. Orams, British citizens, purchased a plot of land from a Turkish-Cypriot private vendor, who was the registered owner under the relevant TRNC law. Mr Apostolides claimed ownership over part of that land.

In order to protect his ownership rights over the land, Mr. Apostolides instituted proceedings in the District Court of Nicosia against Mr. and Mrs. Orams on 26 October 2004. On 9 November 2004, the District Court issued its judgment in default of appearance, according to which the Orams had to demolish the newly built villa, the pool and the fencing, and had to give Mr. Apostolides possession of the land, as well as paying damages. On 15 November 2004, the Orams applied to the District Court to have the judgment set aside. The Nicosia District Court, following the case law of the European Court of Human Rights (ECtHR) in *Loizidou*,[11] held that Mr Apostolides had not lost his right to the land. In that sense, the conduct of Mr and Mrs Orams towards the property amounted to trespass. Thus, Mr. and Mrs. Orams's application for setting aside the judgment was dismissed. The Orams appealed against that judgment to the Supreme Court of Cyprus, which, by its decision on 21 December 2006, rejected the appeal.[12] In accordance with the procedure laid down in Regulation 44/2001,[13] on 21 October 2005, it was ordered that the judgments be registered and be declared enforceable in the UK. Mr. and Mrs. Orams challenged that order under Article 43 of Regulation No 44/2001, asking the High Court of Justice (England and Wales) to set it aside.

In its decision, the Queen's Bench division of the High Court focused on whether the decision of the Cypriot court could be declared enforceable in the UK in accordance with Regulation 44/2001. The British court firstly affirmed that the order was in full compliance with the procedure of the Regulation. In particular, it pointed to Article 22(1), according to which it is the courts of the Member State where the property is situated that have exclusive jurisdiction in proceedings that have as their object rights, *in rem*, in immoveable property. However, it still held that the EU *acquis*, and therefore Regulation 44/2001, were of no effect in relation to matters which relate to northern Cyprus. The reason for that was the fact that the EU *acquis* was suspended in northern Cyprus. As a result, Mr. Apostolides could not rely on the Regulation to enforce the Cypriot judgments that he had obtained. As Mr Apostolides 'could not rely on the *acquis* against his own [g]overnment in connection with his human rights arising from matters relating to the area controlled by the TRNC, he cannot rely on the *acquis* against' the Orams to enforce his judgments against them.[14]

Unsurprisingly, Mr. Apostolides challenged the decision of the High Court before the Court of Appeal. Given the important legal questions that the case was posing for the EU legal order, the Court of Appeal referred the matter to the Court. On 18 December 2008, Advocate General (AG) Kokott delivered her Opinion.[15] Four months later, the Court delivered its judgment.

[10] See Art 159 of the TRNC Constitution.

[11] *Titina Loizidou v Turkey (Merits and Just Satisfaction)*, Application No 15318/89 (judgment 18 December 1996), ECHR Reports 1996-VI – see s IVB of this chapter.

[12] Supreme Court of Cyprus, *Orams v Apostolides* (Case No 121/2005) (judgment 21 December 2006).

[13] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and enforcement of judgments in civil and commercial matters [2001] OJ L12/1.

[14] *Orams v Apostolides* [2006] EWHC 2226 (QB), para 30.

[15] Opinion of AG Kokott, Case C-420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams*, ECLI:EU:C:2008:749 (hereafter Opinion of the AG in *Apostolides v Orams*).

III. THE COURT

The first question referred to the Court was whether the suspension of the application of the EU *acquis* in northern Cyprus 'precludes the recognition and enforcement under Regulation 44/2001 of a judgment relating to claims to the ownership of land situated in that area'.[16] AG Kokott started by distinguishing the territorial scope of the Regulation from the '*reference area* of proceedings or judgments in respect of which the regulation lays down provisions'.[17] Under the then Article 299 EC (now Article 52 TEU),[18] the territorial scope of the Regulation 'corresponds to the territory of the Member States with the exception of certain regions specified in that provision'.[19] Therefore, it applied in the UK and, subject to Protocol No 10, in the RoC.[20] On the other hand, the reference area of the Regulation was broader, in the sense that it 'also applies to proceedings which include a non-member-country element'.[21]

The dispute before the Court of Appeal did not involve the recognition and enforcement of a judgment of a court of a Member State in northern Cyprus, nor did it entail the recognition and enforcement of a judgment of a court situated in northern Cyprus.[22] In fact, as the Grand Chamber noted, the relevant 'judgments concern land situated in the northern area',[23] but 'were given by a court sitting in the Government-controlled area'.[24] Therefore, the restriction of the territorial scope of the Regulation does not affect the case.[25] In sum, the Court agreed with the Opinion of AG Kokott[26] that the suspension of the application of the *acquis* in northern Cyprus 'does not preclude the application of Regulation 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'.[27]

The second question that the Court of Appeal referred to the Court was whether the fact that the judgment was given by a national court situated in the government-controlled areas concerning land situated in northern Cyprus could be regarded as an infringement of the rule of jurisdiction laid down in Article 22(1) of Regulation 44/2001.[28] Unsurprisingly, the Orams argued that Article 22(1) must be interpreted restrictively, to the effect that national courts of the RoC should not have jurisdiction for actions in connection with rights over land in northern Cyprus.[29] Interestingly enough, the Court noted that

> 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 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.[30]

[16] ibid para 24.
[17] ibid para 25.
[18] Furthermore, the territorial scope of the Treaties is specified in Art 355 TFEU.
[19] Opinion of the AG in *Apostolides v Orams* (n 15) para 26.
[20] ibid.
[21] ibid para 27.
[22] ibid para 31.
[23] Grand Chamber judgment in *Apostolides v Orams* (n 4) para 38.
[24] ibid para 37.
[25] Opinion of the AG in *Apostolides v Orams* (n 15) para 32.
[26] ibid para 53.
[27] Grand Chamber judgment in *Apostolides v Orams* (n 4) para 39.
[28] ibid para 47.
[29] Opinion of the AG in *Apostolides v Orams* (n 15) para 83.
[30] Grand Chamber judgment in *Apostolides v Orams* (n 4) para 51.

Therefore, with regard to the second question, the Court also followed the Opinion of AG Kokott,[31] holding that Article 35(1) does not entitle a national court of a Member State to refuse the recognition and enforcement of a judgment given by the courts of the RoC concerning land situated in northern Cyprus, an area over which RoC's internationally recognised government does not exercise effective control.[32]

The third question that the Court of Appeal referred to the Court concerned the public policy proviso in Article 34(1) of the Regulation. It asked whether the recognition and enforcement of a judgment must be refused on the basis of the proviso that a judgment cannot be enforced, as a practical matter, in the Member State where the judgment was given, as that government did not exercise effective control over the area to which the judgment related.[33] The Court noted that according to its settled case law, the public policy proviso should be interpreted as restrictively as possible in order to allow for the free movement of judgments within the Union.[34] In fact, the Court clarified that

> recourse to the public-policy clause … 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.[35]

However, in the order for reference to the Court, the Court of Appeal did not refer to any fundamental principle within the UK legal order that the recognition or enforcement of the judgments in question would be liable to infringe.[36] Thus, in the absence of a fundamental principle in the UK legal order which would be infringed by the recognition or enforcement of the Cypriot judgments, the Court rejected that argument as well.[37] According to the Court, 'the fact that claimants might encounter difficulties in having judgments enforced in the northern area cannot deprive them of their enforceability'.[38]

IV. THE IMPORTANCE OF THE CASE

A. The Territorial Suspension of the Acquis

The unprecedented situation (for an EU Member State) of not controlling part of its territory is acknowledged in Protocol No 10 of the Act of Accession 2003. In the absence of a comprehensive settlement of the Cyprus dispute, in 2003, the EU Member States and Cyprus considered that it was necessary to provide for the suspension of the application of the *acquis* in northern Cyprus, a suspension which would be lifted in the event of a solution.[39] What the *Apostolides v Orams* judgment did was, after the accession of Cyprus to the EU, to provide for the first authoritative description of the limits of that territorial suspension of the EU *acquis*.

[31] Opinion of the AG in *Apostolides v Orams* (n 15) para 89.
[32] Grand Chamber judgment in *Apostolides v Orams* (n 4) para 52.
[33] ibid para 53.
[34] ibid para 55. See also H Meidanis, 'The Brussels I Regulation and the Cyprus Problem before the Court of Justice: Comment on *Apostolides v Orams*' (2009) 34 *EL Rev* 963, 970.
[35] ibid para 59.
[36] Grand Chamber judgment in *Apostolides v Orams* (n 4) para 61.
[37] ibid para 62.
[38] ibid para 70.
[39] Art 1(1) of Protocol No 10.

As AG Kokott rightly pointed out, the *acquis* 'is to be suspended *in* that area and not *in relation* to that area'.[40] This reading of the provision was in accordance with the settled case law of the Court,[41] according to which

> provisions in an Act of Accession which permit exceptions to or derogations from rules laid down by the Treaty must be interpreted restrictively with reference to the Treaty provisions in question and must be limited to what is absolutely necessary[42]

and clearly sets a limit to the suspension. This finding was upheld by the Court,[43] which also pointed out that 'Protocol No 10 constitutes a transitional derogation based on the exceptional situation in Cyprus'.[44] More importantly, the Court stressed the need to interpret the suspension provided by Protocol No 10 as restrictively as possible and to limit any exceptions and/or derogations to what is absolutely necessary.[45] In *Apostolides v Orams*, this meant that the suspension of the *acquis* could not 'be interpreted as meaning that it precludes the application of Regulation 44/2001 to the judgments concerned given by the Cypriot court'.[46] The main scope of Article 1 was to limit the responsibilities and liability of the RoC as a Member State under EU law. Although Cyprus joined the Union with its entire territory, its government could not guarantee effective implementation of the EU law in TRNC.[47] In fact, according to the ECtHR,[48] Turkey exercised effective control in those areas. This is why the suspension had to be understood as limiting 'any unrealisable obligations for the Republic of Cyprus in relation to northern Cyprus which bring it into conflict with Community law'.[49]

The territorial nature of the suspension meant that Greek-Cypriot and Turkish-Cypriot citizens of the bicommunal RoC should be able to enjoy – even while being in TRNC – the rights attached to Union citizenship that were not linked to the territory as such.[50] If the Court had followed the ratio decidendi of the High Court of Justice (England and Wales), then the suspension of the *acquis* – instead of limiting the responsibilities and the liability of Cyprus as a Member State under EU law for actions and omissions of the breakaway TRNC state – would pose a threat for the effective protection of the fundamental rights of Union citizens. In particular, the suspension of the *acquis* would have meant that the violation of Mr. Apostolides's property rights could not have been remedied. In that sense, Article 1(1) of Protocol No 10 would have created a gap in the EU's system of human rights protection. Such a lacuna would sit rather uncomfortably with the commitment of the EU in Article 6 TEU to respect fundamental rights, as guaranteed by the EU's Charter, and additionally, rights derived by the European Convention on Human Rights (ECHR).

If the Court had held that northern Cyprus should not be the subject of EU law for any purpose, and as such the application of Regulation 44/2001 should be denied on the ground of the suspension of the *acquis*, that would have opened the possibility of the judicial review of the Act of Accession 2003 by the ECtHR. Mutatis mutandis, this is what occurred in *Matthews*

[40] Opinion of the AG in *Apostolides v Orams* (n 15) para 34.

[41] Case 231/78, *Commission v United Kingdom*, ECLI:EU:C:1979:101, para 13; Joined Cases 194/85 and 241/85, *Commission v Greece*, ECLI:EU:C:1988:95, paras 19–21; Case C-3/87, *Agegate*, ECLI:EU:C:1989:650, para 39; Case C-233/97, *KappAhl*, ECLI:EU:C:1998:585, para 18.

[42] Opinion of the AG in *Apostolides v Orams* (n 15) para 35.

[43] Grand Chamber judgment in *Apostolides v Orams* (n 4) paras 33 and 35.

[44] ibid para 34.

[45] ibid para 35.

[46] ibid para 36.

[47] Opinion of the AG in *Apostolides v Orams* (n 15) paras 40–41.

[48] See *Cyprus v Turkey*, Application No 25781/94 (judgment 10 May 2001) ECHR Reports 2001-IV, para 77.

[49] Opinion of the AG in *Apostolides v Orams* (n 15) para 42.

[50] M Uebe, 'Cyprus in the European Union' (2003) 46 *German Yearbook of International Law* 375, 384.

v UK.[51] According to the ECtHR's decision in that case, 'the Convention does not exclude the transfer of competences to international organisations provided that Convention rights continue to be "secured" and thus, Member States' responsibility … continues even after such a transfer'. In such a scenario, the RoC, together with all the other contracting parties to the Act of Accession, could have been held responsible for those human rights violations that had taken place because of the suspension of the *acquis* in northern Cyprus. For all those reasons, it is important that the Court declared that the purpose of Protocol No 10 was to prevent the RoC from being found in breach of EU law by reason of matters occurring in northern Cyprus and beyond its control.

B. The Relationship with the Case Law of the European Court of Human Rights

Being one of the numerous cases that have arisen from the Cyprus dispute and have been decided by courts in Europe, the judgment in *Apostolides v Orams* should be seen within that broader context. The first judicial decision with significant political repercussions in this saga was *Loizidou v Turkey*.[52] In this groundbreaking judgment, the ECtHR held that the Turkish army exercises 'effective overall control over that part of the island', and that such control entails Turkey's responsibility for the policies and actions of the internationally unrecognised TRNC.[53] Hence, the denial of access to and the subsequent loss of control of the property that Ms Loizidou had suffered were imputable to Turkey.[54]

The decision was enthusiastically received by the Greek-Cypriot community, and especially by the displaced persons who had lost access to their properties because of the territorial division on the island. As a result, over the period of the following 10 years, the ECtHR was flooded with over 1400 cases related to the property dimension of the conflict. To respond to the paralysis that this volume of case law created, the ECtHR held that Turkey should introduce a remedy that genuinely secures 'effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before the Court'.[55] Following that judgment, Turkey and the internationally unrecognised TRNC established an 'Immoveable Property Commission' in accordance with the guidance of the ECtHR. The latter welcomed the steps taken by Turkey 'in an effort to provide redress for the violations of the applicant's Convention rights as well in respect of all similar applications pending before it'.[56]

Taking the cue from what was, at the time, a recent ECtHR judgment, the Commission made an interesting argument before the Court in *Apostolides v Orams*. The Commission expressed doubts as to whether the Orams–Apostolides dispute was a civil and commercial matter within the meaning of Article 1(1) of Regulation 44/2001.[57] Although it was a dispute between private parties, the Commission sustained that it should have been placed in the wider

[51] *Matthews v United Kingdom (Merits)*, Application No 24833/94 (judgment 18 February 1999) ECHR Reports 1999-I.

[52] *Loizidou v Turkey* (n 11).

[53] ibid para 56.

[54] ibid para 57.

[55] ECtHR, *Xenides-Arestis v Turkey (Merits and Just Satisfaction)*, Application No 46347/99 (judgment 22 December 2005) [unreported], para 39.

[56] ECtHR, Case of *Xenides-Arestis v Turkey (Just Satisfaction)*, Application No 46347/99 (judgment 7 December 2006) [2007] 44 EHRR SE13, para 37.

[57] ibid para 40; Opinion of the AG in *Apostolides v Orams* (n 15) para 54.

context of the Cyprus conflict.[58] Therefore, the claim should have been brought in front of the TRNC 'Immovable Property Commission' before reaching the Court, if at all.[59]

The Court adopted a purely legal, if not overly legalistic, approach in order to reply to this argument. The Court pointed out that 'it was self-evident that the Orams–Apostolides dispute was a civil one, since the lawsuit was not against a State but against individuals, and no *jure imperii* action was involved'.[60] The response of AG Kokott, however, was more elaborate. The AG pointed out that Mr Apostolides did not make any claim against a government authority, but a civil claim for restitution of land and further claims connected with loss of enjoyment of land against the Orams.[61] To her, 'Those claims do not alter in nature as a result of the possibility that Mr Apostolides may have alternative or additional claims under public law outstanding against the TRNC authorities'.[62] More importantly, AG Kokott noted that although the ECtHR took a positive view of the compatibility of the TRNC compensation regime, they explicitly 'rejected the argument that the applicant was obliged to bring the matter of compensation before the Immovable Property Commission, and instead itself awarded her compensation'.[63]

It is almost impossible to criticise the reasoning of the Opinion of AG Kokott and the approach of the judgment of the Court on legal grounds. Still, a year later, the ECtHR announced their decision in *Demopoulos v Turkey*.[64] There, the Grand Chamber of the ECtHR made clear that the Immovable Property Commission established by Turkey and the TRNC was an adequate and effective remedy to address all the property disputes arising out of the Cyprus conflict until there was a comprehensive settlement of the problem. One can only wonder whether the decision in *Demopoulos v Turkey* somehow questions the stance and the approach of the Court not to openly acknowledge the existence of the Immovable Property Commission route, as the Commission suggested.

The fact is that if the Court had risked speculating on the outcome of *Demopoulos* a year before the ECtHR had decided it, there would have been a clear danger of being arbitrary and injudicious. Indeed, it is impossible to second-guess what would have been the outcome of *Apostolides v Orams* if the decision in *Demopoulos* had been delivered before the Court's judgment. Still, it can definitely be argued that if there is a case in the future with similar facts, the Court will have to seriously consider the fact that the ECtHR has held that the TRNC Immovable Property Commission provides opportunities for redress under the current status quo. Until that moment, the judgments in *Demopoulos v Turkey* from the ECtHR and *Apostolides v Orams* from the Court will sit uncomfortably together.

C. Lawfare and Settlement

It is quite common for the parties in a conflict to use every forum as an arena for their political battle – a platform for seeking international and local endorsement of their political

[58] Opinion of the AG in *Apostolides v Orams* (n 15) para 55.
[59] ibid para 56.
[60] Meidanis (n 34) 973, citing Grand Chamber judgment in *Apostolides v Orams* (n 4) paras 40–46.
[61] Opinion of the AG in *Apostolides v Orams* (n 15) para 60.
[62] ibid para 61.
[63] ibid para 68.
[64] ECtHR, Joined Cases *Takis Demopoulos and Others, Evoula Chrysostomi, Demetrios Lordos and Ariana Lordou Anastasiadou, Eleni Kanari-Eliadou and Others, Sofia (Pitsa) Thoma Kilara Sotiriou and Nina Thoma Kilara Moushoutta, Yiannis Stylas, Evdokia Charalambou Onoufriou and Others and Irini (Rena) Chrisostomou v Turkey*,

arguments. In that sense, it is far from surprising that the judgment of the Court in *Apostolides v Orams* created euphoria on the Greek-Cypriot side. Such euphoria was counterbalanced by the decision of the ECtHR in *Demopoulos* a year later. The fact that the ECtHR recognised the Immovable Property Commission as a lawful and appropriate forum for the redress of the violations of property rights was considered a major setback for the Greek-Cypriot community.

If one steps back from this virtual scoreboard, the inherent limitations of the judiciary when it comes to the resolution of such mega-conflicts must be realised. Since the ECtHR judgment in *Loizidou*, different aspects of the Cyprus issue have been adjudicated by different courts in Europe for more than 30 years. The decisions of the courts have been both hailed and scourged by the ethno-religious communities, their political elites, academics and commentators. Yet it is very difficult to appreciate their precise political impact. AG Kokott thoughtfully admitted as much. 'It is … by no means clear whether recognition of the judgment in the present context would be beneficial or detrimental to solving the Cyprus problem.'[65]

This is not to suggest that this case law has no impact. The Court in *Apostolides v Orams* seemed aware of the political and legal consequences of an adverse judgment, as the one of the English High Court, that would not have protected the property rights of Greek Cypriots in the TRNC effectively. Such a judgment would have questioned the viability of the special post-2004 legal status that northern Cyprus enjoys within the Union's legal order. Suddenly, the suspension of the *acquis* would have posed impediments to the effective protection of the fundamental rights of Union citizens. Moreover, a decision that would have upheld the property rights of the Orams would have made the quest for the creation of a restitution mechanism in a future reunified Cyprus infinitely more complicated. The reason for that, apart from the rights of the dispossessed Cypriot owners and the current users of their properties that have to be balanced in such a future mechanism, is that such a judgment would have created a third category of lawful claimants: the bona fide purchasers of Greek-Cypriot property in the TRNC. The Court's decision put an end to that prospect.

What neither the Court nor the ECtHR could achieve was the holistic resolution of the property dimension of the Cyprus issue. All such judicial decisions create a labyrinthine legal regime that has allowed for incremental changes. As in any other international problem, it is only a comprehensive political settlement that can provide the appropriate framework for the effective protection of the fundamental rights and freedoms of all EU citizens in northern Cyprus. In other words, such judgments have shown both parties in the conflict that time is not on their side, and a rapid political settlement is by far the best solution to resolve property disputes. In this context, it should be understood that the current status quo, which has caused the suspension of the *acquis*, has to be considered as a temporary solution.

V. ADDITIONAL READING

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[65] Opinion of the AG in *Apostolides v Orams* (n 15) para 111.

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