

FACTS ABOUT THE ORAMS CASE



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A. BACKGROUND TO THE ORAMS LEGAL DISPUTE

1. Linda and David Orams (defendants) are engaged in a long-running legal battle with Meletis Apostolides (plaintiff), a Greek Cypriot who claims the land their villa stands on.
2. The Orams', a retired British couple, paid an estimated £160,000 in 2003 for TRNC (Turkish Republic of North Cyprus), deeds to their detached villa in Lapta, just outside Kyrenia.
3. On 27 October 2004, Mr Apostolides had papers served on Mrs Orams at her Lapta villa while her husband was away in the United Kingdom (UK). The documents were written in Greek and Mrs Orams refused to sign for them.
4. Mrs Orams eventually found someone who could translate the papers and she discovered that she had received a court summons from the Greek court of South Nicosia. By this time, the deadline for making a response to the court had passed and just 12 days after the writ had been issued, the Greek Cypriot court passed judgment in favour of the complainant, Mr Apostolides, ordering Mr & Mrs Orams to demolish their house in Lapta, return the land to the complainant and pay him compensation.
5. The time provided by the Greek Cypriot court was clearly insufficient for the defendant to organise a defence in Greek in a foreign territory, and Mrs Orams has since lodged a claim that she did not receive a fair trial and her human rights have been breached.
6. As this verdict was not recognised in the TRNC, in October 2005 Mr Apostolides' lawyers asked the South Nicosia District Court to register the adverse judgment against the Orams with the British High Court in London.
7. The Greek Cypriot court used Cyprus' European Union (EU) member status to enforce the damages claim against Mr and Mrs Orams' UK home and over assets. This was done using an EU Regulation on mutual enforceability, where a judgment obtained in one member country is enforceable in all and any others.
8. The case was heard in the British High Court in 2006. In his summary, Justice Jack acknowledged that the case "*is an international problem ill-suited to be resolved by private litigation*". He also stated, "*the problem is clearly not over and there needs to be a proper diplomatic answer granted fairly for both sides of the island, as this is not just a North problem*".
9. In September 2006 the British High Court decided in favour of the Orams', that these claims could not be enforced in the UK. The case turned on the fact that the EU's Acquis Communautaire is currently suspended in the TRNC and therefore Mr Apostolides could not rely upon it to pursue his claims for the land he formerly owned. As such, this victory is a temporary stay of execution; as soon as the Acquis is applied to North Cyprus, such claims will be admissible.

10. The case was taken to the British Court of Appeal. In its ruling dated 19 June 2007, the Court decided to refer certain points of the Orams' case to the European Court of Justice (ECJ). The British Court would give its final verdict by taking into consideration the decisions of the ECJ.
11. In April 2009 the ECJ gave the following judgement: *"A judgement of a court in the Republic of Cyprus must be recognised and enforced by the other member states even if it concerns land situated in the Northern part of the island. The suspension of the application of Community law in the areas where the Government of the Republic of Cyprus does not exercise effective control and the fact that the judgment cannot, as a practical matter, be enforced where the land is situated do not preclude its recognition and enforcement in another Member State"*.
12. The British Court of Appeal can refuse to apply the ECJ Ruling on grounds of 'public policy', where the UK's interests or the well-being of its citizens would be adversely affected.
13. The Orams' case could impact tens of thousands of British citizens; the UK is the home of the largest Cypriot Diaspora (said to exceed a quarter of a million people), as well as many other Britons who have invested in property with potentially disputed title.
14. The British Residents Society (BRS), which represents 1,200 of the 10,000 expatriates living in the TRNC, was granted permission by the British Court of Appeal to intervene through written submissions in the case of *Apostolides v Orams*.
15. The British Court of Appeal is set to hear the case on 11 November 2009.

B. PROTOCOL 10, CYPRUS' EU ACCESSION TREATY 2003

1. The EU incorporated Protocol 10 into the 2003 Accession Treaty of Cyprus as an interim measure following the absence of a comprehensive settlement on the island and was based on the facts on the ground. The Protocol provided that until the final solution was forthcoming, *"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 document reaffirms the EU's *"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"*.
3. Protocol 10 sets out the optimum impact EU entry should have on all citizens on the divided island of Cyprus: *"DESIRING 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"*.
4. As such, the EU is also clearly committed to supporting North Cyprus, which is referenced under Article 3, *"Nothing in this Protocol shall preclude measures with a view to promoting the economic development of the areas referred to in Article 1"*. Article 1 of the Protocol describes the 'areas' as those which *"the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control"*.

C. FACTS RELATING TO THE ECJ'S RULING ON THE ORAMS CASE

1. The ECJ ruling undermines a solution based on UN parameters and the established body of work. Hence it runs the risk of destroying any chance to solve Cyprus as a bi-communal, bi-zonal federal State.
2. In its ruling, the ECJ also ignored the British Court, which recognised that the Orams case was political in nature and that as the property issue affected both sides in Cyprus, it would be better served through a comprehensive political settlement instead of a piecemeal legal approach.
3. The ECJ ruling is at odds with the EU's Protocol 10 on Cyprus. This issue was highlighted by the EU Commission in its submissions to the ECJ (see para. 108): *"EU wide recognition of judgments on property issues could be seen as further jeopardizing diplomatic efforts to bring about reconciliation and a negotiated settlement. That could undermine the common commitment of EU Member States under recital 1 of Protocol 10 to support the UN efforts to bring about a comprehensive settlement of the Cyprus problem and the wish expressed in recital 7 of Protocol 10 that EU Accession would promote civil peace and reconciliation on the island"*.

4. Many commentators ask why the ECJ did not refer the Orams' case to the TRNC's Immovable Property Commission (see below, paragraphs 12 and 13 for more information on the IPC). This would avoid the ongoing costly and stressful litigation, and instead provide Mr Apostolides an effective mechanism to have his property dispute dealt with.
5. By European standards, the ruling was delivered very quickly with little time to consider the full implications.
6. The President of the ECJ and the head of bench that ruled on the Orams case is of Greek origin. Vassilios Skouris spent time in Cyprus "*investigating*" the case, which included meeting Greek Cypriot leader Christofias and Mr Apostolides' lawyers, but no time in the TRNC. Mr Skouris was decorated by the late Greek Cypriot President Tassos Papadopoulos with the Grand Collar of the Order of Makarios III, the highest honour awarded in the Republic of Cyprus (RoC), for Mr Skouris' "*sincere and strong feelings for Cyprus and its people.*" Mr Skouris' involvement in the Orams case undermines both the impartiality and credibility of the ECJ.
7. Many commentators such as Embargoed! believe the ECJ ruling went beyond its remit. The ECJ's brief is to interpret EC Law, yet its Orams' ruling systematically attempts to dictate to the British Courts how it should apply the Law to the case. This is not the ECJ's function but the function of the British Court.
8. The outcome of the Orams case could 'open the floodgates' as it sets a legal precedent for refugees of other European conflicts to claim compensation and their lands back.

D. PUTTING THE ORAMS' CASE INTO CONTEXT

1. Cyprus experienced 11 years of conflict between 1963-74, which culminated in the 1974 war and the division of the island into two ethnic zones – Turkish North and Greek South Cyprus.
2. The Population Exchange Agreement of 1975 between the two Cypriot sides reflected the voluntary movement of most of the island's population during the 1963-74 conflict, who, in the interests of personal safety, preferred to live in homogeneous ethnic zones.
3. While many people are aware that one third of all Greek Cypriots became refugees in 1974, few seem to recall that prior to 1974, 50% of all Turkish Cypriots became displaced. They owned 36% of the land, yet were forced out of their homes and 103 Turkish villages were destroyed. Until the Turkish army arrived in 1974, most Turkish Cypriots were subjected to living in tiny dispersed enclaves that amounted to just 3% of the total area of the island.
4. Under the auspices of the United Nations (UN), the Greek and Turkish Cypriot leaders in their High Level Agreements of 1977 and 1979 confirmed that a bi zonal, bi-communal Federal Cyprus would be the basis for a future political settlement.
5. These principles have been accepted by Cyprus' three Guarantor Powers, Greece, Turkey and the UK, as well as the wider international community.
6. Since 1979, there have been a total of 15 UN sponsored plans, all aiming to resolve Cyprus as a bi-zonal, bi-communal federal State.
7. The current negotiations for a comprehensive solution between the Republic of Cyprus' President Christofias and the TRNC's President Talat also adhere to these principles.
8. The Property Issue, which dates back to December 1963, has become more difficult to resolve with the passage of time. Both sides have adopted different ways to deal with refugee properties, and through necessity, each side has had to develop and sell land belonging to displaced persons.
9. As with previous negotiations, the two Cypriot leaders are seeking a fair resolution to the Property Issue, in which some refugees wish to return to their original homes, whereas others prefer compensation.
10. The method for resolving the Property issue under the UN's 2004 Annan Plan was to set up property commissions on both sides of the island. The commission would either return the land to the rightful owner or compensate the owner for the land. This pragmatic solution allowed legacy issues to be dealt with practically and equitably.
11. In the absence of a political solution, many Greek Cypriots have resorted to starting law suits against Turkey for restitution of their properties and compensation. There are at least 1,400 such cases pending before the European Court of Human Rights (ECHR).



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12. The UN Secretary General, in his report to the Security Council (S/2005/353, date 27 May 2005), shortly after the Orams' case was lodged, highlighted his concern about the detrimental impact these legal cases would have on the island:
"On the island the benefits of the EU membership of Cyprus are becoming manifest. However, in the area of property it has opened up new fronts of litigation and acrimony... The prospect of an increase of litigation in property cases on either side poses a serious threat to people to people relationships and to the reconciliation process. Property rights continue to be an extremely sensitive issue on both sides and it is widely believed that only a comprehensive settlement of the Cyprus problem can bring closure to the property issue."
13. In 2005, the TRNC set up the Immovable Property Commission (IPC) following the European Court of Human Rights (ECHR) decision in the Xenides-Arestis case.
14. As of 4 November 2009, 432 applications have been lodged with the IPC. 81 of these have been concluded through friendly settlements and four through formal hearings, with the IPC paying nearly £38 million GBP in compensation to the applicants. In two cases, it has ruled for exchange and compensation, while deciding a further four cases should be resolved by a combination of restitution and compensation. In one case, it has delivered a decision for restitution after the settlement of Cyprus Issue, while in another the IPC ruled for partial restitution.
15. Currently there is no parallel remedy for Turkish Cypriots and their land claims in the South. Many complain they are faced with a plethora of obstacles preventing them from obtaining their rights.
16. There are currently 10 Turkish Cypriot cases before the ECHR, including the test case by Esat Mustafa. His family is from the Turkish village of Vroisha in the foothills of the Trodos mountains. They, along with all the other Vroisha residents, were forced out of their homes in 1964 and their village razed to the ground. The RoC has refused to deal with his case until the settlement of Cyprus Issue, forcing Mr Mustafa to take his case to the ECHR.
17. There are currently 130,000 landowners in the RoC who have bought but have yet to receive their title deeds from the Greek Cypriot authorities. It is believed many of these deeds relate to land owned by Turkish Cypriot refugees.
18. The crux of the matter remains that while the international community and its respective organs recognise and uphold the rights of Greek Cypriots, there is no parallel treatment for the Turkish Cypriot people and other residents of the TRNC.
19. Embargoed! argues that human rights are not just for Greek Cypriots; both sides in Cyprus have suffered, both have legal and political rights, which must be reflected in the remedies and debates on the Property issue.

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