

The application of Regulation 44/01/EC**National Report Cyprus**

Dr. Chrisoula Michailidou

Introduction/background

Modern Cyprus law has its origins in a wide variety of different legal systems which have operated over the years in various civilisations, including those of France, Germany, Greece, Turkey (the Ottoman Codes and Turkish family law) the United States and England. The Cypriot legal system followed English law until 1960. Since then, it has been closely modelled on its English counterpart. Cyprus has adopted the Anglo-Saxon legal system, which allows most English cases to be cited in Cypriot courts. Under certain conditions, the cases are treated as binding, but in most instances they are used as guidelines. Although Cyprus essentially maintained its system based on the Common Law as followed in the English-speaking world, article 146 of the Constitution introduced into Cyprus a new conception compatible with the continental systems.¹ The sources of law in Cyprus may be classified as written and unwritten law. The written law consists of: the Constitution, Statutes enacted by the House of Representatives, subsidiary legislation and the English enactments which were specifically adopted when Cyprus became an independent republic. The unwritten law of Cyprus consists of judicial precedents. Under the Common Law doctrine of *stare decisis*, Cypriot courts are bound to follow decisions of courts of higher level. Being a Common Law jurisdiction and having codified important areas of substantive law, Cyprus applies English Common Law principles where there is no Cypriot legislation in force.²

In 1990, the Republic of Cyprus applied for full membership in the EU.³ By the middle of 2000, it seemed that the only viable political solution to the division of Cyprus which would safeguard the future and security of the two communities in the island would be a bi-zonal, bi-communal state with a central, federal government. The documents establishing the Accession Partnership between Cyprus and the EU underline the need for the promotion of joint activities between the Greek-Cypriot and Turkish-Cypriot communities. The President of the Republic invited the Turkish-Cypriot community to participate in the accession negotiations but they have consistently declined and the so called Turkish Republic of Northern Cyprus

¹ See *Neocleous/Bevir*, Legal History, in: Neocleous, Introduction to Cyprus law, p. 13.

² See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 80.

³ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 73.

(TRNC) have opposed the moves by the Republic to join the EU while the Cyprus problem remains unresolved.⁴

The Treaty of Accession was signed on behalf of the Republic of Cyprus on 16 April 2003. A plan had been put forward, called the *Annan Plan* because it was proposed by the Secretary General of the United States of that name, which was intended to resolve the dispute between the Greek and Turkish Communities. The plan was rejected by the Greek community in a referendum held on 24 April 2004. It was accepted by the Turkish community. The result was that the practical division of the island remained unchanged. It had been decided by the European Council on 13 December 2002 prior to the Treaty of Accession that in the absence of a settlement the application of the *acquis* to the northern part of the island shall be suspended until the Council decides unanimously otherwise, on the basis of a proposal by the Commission. The decision was given effect by Protocol No 10 to the Treaty of Accession. The Protocol provided that 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. It is agreed that the *acquis* also called the *acquis communautaire* refers to the entire body of legislation of the European Union. It includes all treaties, legislation and the decisions of the European Court. A recent English decision has accepted that the effect of Protocol 10 is that the *acquis*, and therefore Regulation 44/01/EC, are of no effect in relation to matters which relate to the area controlled by the TRNC.⁵ Cyprus became a Member State of the European Union on 1st May 2004.

Questionnaire No 1: Collection of Statistical Data

1. Official statistical data not available.
2. Official statistical data not available.
3. Official statistical data not available.
4. Official statistical data not available.

⁴ See *Neocleous/Bevir*, Legal History, in: Neocleous, Introduction to Cyprus law, p. 13.

⁵ See *Orams v. Apostolides*, Case No: QB/2005/PTA/0897, 6 September 2006. For that case see Questionnaire No 2, under 2.2. note 7.

5. Official statistical data not available.

6. Official statistical data not available.

7. It takes approximately 1 to 3 months.

8. Article 5, 22, 23, 34, 38.

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Questionnaire No 2: Collection of Empirical Data

2.1 There is no unified system in Cyprus for the recognition and enforcement of foreign judgments. A judgment of a court of a foreign country has no direct operation in Cyprus, but it may be enforceable by action or counterclaim at Common Law or under statute, or it may be recognised as a defence to an action or as conclusive of an issue in an action.

a. Enforcement under statute

A foreign judgment may be enforceable in Cyprus under statute by a process of direct registration. A judgment creditor may petition *ex parte* the court within a time limit of six years from the date of the judgment or the decision on appeal and have it registered in the District Court either where the debtor resides or where any property to which the judgment relates is situated. Once registered, the judgment takes effect as a judgment of a Cypriot court.¹ The statutory system is applied in the case of specific legislation regulating registration of judgments obtained in England and Wales, Scotland and Northern Ireland² and in the case of bilateral or multilateral Treaties³. Such is also the case in the case of the Regulation 44/01/EC regulating the recognition and enforcement of judgments in civil and commercial matters between the Member States. The system of registration of a foreign judgment for enforcement is not unknown to the Regulation 44/01/EC (see at that point art. 38 II of the Regulation). However it should be noted here, that according to art. 38 I the rule is the declaration of enforceability of the foreign judgment and only exceptionally is in art. 38 II permitted the registration of a foreign judgment.

b. Enforcement of foreign judgements at common law

In the absence of any statutory provision regulating the recognition and enforcement of a foreign judgement, a judgement creditor seeking to enforce a foreign judgement in Cyprus at Common Law cannot do so by direct execution of judgement; he must bring an action on the

¹ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 111.

² The registration of judgements obtained in England and Wales, Scotland and Northern Ireland is regulated by the Foreign Judgments (Reciprocal Enforcement) Law of 1935 Cap. 10.

³ I.e. the European Convention on the Recognition and Enforcement on Certain International Aspects of Bankruptcy.

foreign judgement. As soon as he files the action (a special endorsed writ), he can apply for summary judgement on the ground that the defendant has no defence to the claim, and, if his application is successful, the defendant will not be allowed to defend. Alternatively, the judgement creditor, instead of filing an action on the foreign judgement, may file an action relying on the facts which created the cause of action on which the foreign judgement was issued. The Supreme Court of Cyprus⁴ decided that if the foreign judgement is capable of registration, it cannot be enforced by a common law action on the judgment.⁵ That means that a foreign judgment originating from a European Member State being capable of registration as regulated from a statutory provision cannot be enforced by a common law action on the judgment. In my opinion, it should be noted, that such a system, which rejects the direct recognition of foreign judgments, is not compatible with the system of the *ipso jure* recognition of the Regulation 44/01/EC.

c. Recognition of the foreign judgment as a defence

Except from the enforcement of a foreign judgement by the judgement creditor, it may be a situation, where a defendant to an action pending before Cyprus courts raises the defence that a foreign Court has previously decided the plaintiff's claims adversely and that the foreign judgement should be recognized. The defendant will argue that the foreign judgement should be recognised as a defence to the claim of the plaintiff. This defence is based on the principle of *estoppel per rem judicatum*. To create an *issue estoppel* the following requirements must be satisfied: The judgment relied on must be issued by a court of competent jurisdiction, and must be final, conclusive, and on the merits; The parties in the earlier action relied on as creating the *estoppel*, and those in the later action in which that *estoppel* is raised, must be the same and the issue in the later action must be the same issue as that decided by the judgment in the earlier action.⁶

2.2 Due to the division of the island of Cyprus to Republic of Cyprus and Turkish Republic of Northern Cyprus (TRNC) cross-border litigation accumulates in the Greek Republic of Cyprus. However there also cases of cross-border litigation which take place in the Turkish Republic of Northern Cyprus. Here arises the question, whether the Regulation 44/01/EC applies also on the northern part of Cyprus. A recent English decision has accepted that the

⁴ See *Constantinou v. Ektotiki Eteria Demokritos Ltd and Another*, Civil Appeal Number 8578, 23 February 1996.

⁵ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 106.

⁶ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 113.

effect of Protocol 10 is that the *acquis*, and therefore Regulation 44/01/EC, are of no effect in relation to matters which relate to the area controlled by the TRNC.⁷

2.3 Mostly from Greece und United Kingdom due to historical background, commercial relations and common language.

2.4 We are not aware of any particular problems arising from the use of the standard form concerning Article 54.

2.5 There is no such case law reported.

2.6 There are no such problems reported. As the used languages of Cyprus are Greek and English and the majority of cases dealt with in Cyprus originate in the United Kingdom and in Greece there are no language problems arising. In the case of the rest cases originating in other Member States due to the international nature of the disputes that usually arise, translation into English is usually readily available.

2.7 It is a matter for the discretion of the court. But as a rule, it is required a translation of all documents filed into Greek, certified by a notary public or a person qualified for the purpose , or authenticated by an affidavit.⁸

2.7.1 It is required an exhibition of a certified copy of the foreign judgement issued by the original court, authenticated by its seal, together with a Greek translation certified as correct

⁷ See *Orams v. Apostolides*, Case No: QB/2005/PTA/0897, 6 September 2006. In that case the appeals raise the question of the enforceability in England of judgments of the courts of the Republic of Cyprus concerning land within the Turkish Republic of Northern Cyprus (TRNC). The respondent to the appeals, Mr. Apostolides is a Greek Cypriot, who lived in the area which is now under the control of the TRNC, where his family owned land. The appellants Mr. and Mrs. Orams are British and purchased from a Turkish Cypriot part of land which had come into the ownership of Mr. Apostolides. The former was registered owner under the law of TRNC. On 9.1.2004 Mr. Apostolides obtained a judgment in default of appearance in the Nicosia District Court in Cyprus against the appellants. On 19.4.2005 judgment was delivered in the District Court refusing to set aside the earlier judgment on the ground that there was no valid defence to the claim. On 21.10.2005 those judgments were registered in, and declared enforceable, by the Queen's Bench Division of the High Court pursuant to Council Regulation 44/01/EC. The appeals of Mr. and Mrs. Orams were against those registrations. Mr. Justice Jack allowed the appeals.

⁸ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 112.

either by a diplomatic or consular agent or by a sworn translator or by any person so authorised.⁹

2.7.2 Although the prerequisite of translation usually lead to increased expenditures for the applicant, it should be taken into consideration that it helps a lot the task of the judge to recognise the foreign judgement. From that point of view the prerequisite of translation can lead to much more efficiency.

2.8 Costs are normally awarded to the successful party. Such an award will be subject to taxation by the court's taxing master who is the Registrar of the registering court. The claimant's itemised bill of costs is presented to the Registrar who, after hearing the arguments of both sides, taxes the costs. Current practice indicates that 60 to 70 per cent of the costs claimed are awarded. The court fees are set by regulations and are as follows:

Filing the petition to register the judgment, CY £3.50

Swearing the supporting affidavit, CY £1 and

Each exhibit (of documents), CY £0.10.¹⁰

2.8.1 See above 2.8.

2.8.2 In litigious matters, the minimum solicitor's charges are determined by the Rules of the Supreme Court and they are usually observed by the legal profession. In straightforward cases, law firms will apply those charges, but, in cases of complexity, they may charge on an hourly basis (CY £50 to CY £150 per hour) or on the basis of a special retainer. A lawyer may also make a written agreement with his client fixing the amount and mode of payment for the whole or any part of his costs and disbursements. Where there is such an agreement, the costs are not subject to taxation. A Cypriot lawyer is not permitted to enter into a contingency fee agreement.¹¹

2.8.3 The costs of litigation may be recoverable from the other party. The normal rule is that a successful litigant is awarded an order for costs to be paid by an unsuccessful litigant. This

⁹ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 111.

¹⁰ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 117.

¹¹ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 117; *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 79.

rule may not be applied in part or in whole, if the conduct of the successful litigant is regarded by the court as deserving of the censure of disentitlement to costs. The court will direct the costs to be assessed by the Registrar of the Court. Court fees comprise part of the disbursements which are included in legal costs.¹²

2.8.3.1 The Registrar (see also above 2.8).

2.8.3.2 Only if the party who has been condemned to pay agrees to reimburse voluntarily.

2.8.3.3 Yes.

2.9 Notice in writing of the registration of the foreign judgment in the District Court (see above 2.1. a) must be served on the debtor by the same method of service as used for the writ of summons¹³ disclosing full particulars and informing him of his right to have the registration set aside. The judgment debtor, within the period stated in the order issued *ex parte* by the court, may proceed to file an application to have the registration set aside.¹⁴ That period inevitable provides an opportunity for the judgment debtor to attempt to put assets beyond execution. However, there are protections for the element of surprise, in particular the availability of interim measures, the most significant in Cyprus being a Mareva injunction. A Mareva injunction is an interlocutory order restraining a defendant, usually until trial or further order, from removing his assets out of the jurisdiction. The purpose of the Mareva injunction is to prevent the injustice of the defendant's assets being hidden so as to deprive the plaintiff of the fruits of any judgment. It is a relief *in personam*, which simply prohibits certain acts in relation to the assets frozen. The Cypriot courts do not have jurisdiction to issue Mareva injunctions with extraterritorial effect or to issue so-called worldwide Mareva injunctions. In its discretion the court can refuse a Mareva injunction, even if the usual requirements are made out. The application for a Mareva injunction is made *ex parte*.¹⁵

2.10 No.

¹² See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 80.

¹³ In that case the plaintiff is required to serve the writ of summons on the defendant personally or by substituted service (i.e. post or advertisement). See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 73.

¹⁴ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 112

¹⁵ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 97.

2.11 Not for the time being.

2.12 Not that I am aware of.

2.13 No such problems are reported.

2.14 Yes, the Regulation is available in the Greek language.

2.15 It might be more effective, if the Regulation 44/01/EC would provide for a uniform rule regarding service/notice of the decision on the application for a declaration of enforceability of a foreign judgment –also together with the last one, if not already served on the party against whom enforcement is sought- such in the case of the European Enforcement Order. There is no reason why the service/notice of art. 42 of the Regulation 44/01/EC should be regulated from the national rules of the Member States.

2.16 It depends on each case.

2.17 No.

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*Questionnaire No 3: Legal Problem Analysis**1. General Themes*

1.1 Not that I am aware of.

1.2 There is still no case law on that matter.

1.3 *How is the delineation of the scope of application of the Regulation and other instruments concerning the judicial cooperation in civil matters?*

1.3.1 There is no case law reported with regard to the issue.

1.3.2 There is no case law reported with regard to the issue.

1.4 There is no case law reported regarding that issue.

1.5 For the time being as a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards Cyprus is bound to enforce awards made in foreign states which are contracting parties to the Convention.¹ Regarding mediation, there is already a proposal for a Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.²

1.6 The Cypriot courts have jurisdiction to hear and try any action *in personam* where the defendant is served with a writ or other originating process in the manner prescribed by the Rules of Court or where the defendant submits to the jurisdiction of the court. Cyprus law recognises submission to the jurisdiction by the defendant: through express agreement that

¹ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 118.

² COM (2004) 718 final, 22.10.2004.

disputes in a transaction be referred to a particular jurisdiction, through instructing a lawyer to accept service in that jurisdiction, through an appearance in the proceedings in the jurisdiction to contest its merits.³

The enforcement of a foreign judgment may be impeached if the proceedings in which the judgment is obtained were opposed to the basic principles of due process as reflected in the Cypriot procedural law. Thus, if the foreign court failed to adhere to the *audi alteram partem* rule by refusing to hear the defendant, any resulting judgment might be successfully set aside in Cyprus.⁴

1.7 See Questionnaire 2 under 2.1. The procedure for making the application for a declaration of enforceability is still governed (see art. 40 of the Regulation) by local procedural law, for which special laws indeed apply.

1.8 As it is obvious from Art. 69 of the Regulation, Cyprus has signed one bilateral convention with an EC-Member State, namely the Agreement between the Republic of Cyprus and the Republic of Greece and Cyprus on Legal Assistance in Civil, Family, Commercial and Criminal Matters signed in Nicosia on 5 March 1984. There is strong evidence that the Regulation has seriously reduced the importance of the above bilateral convention.

2. Provisions of Regulation 44/01/EC dealing with Jurisdiction

2.1 General issues

2.1.1 The abolition of the exorbitant bases of jurisdiction of the Regulation could offer much more predictability and legal certainty within the European justice area.

2.1.2 Due to lacking case law of Cypriot Courts on Art. 5 of the Regulation, the compatibility with ECJ case law cannot be estimated for the time being.

2.1.3 Setting out a series of fact-specific grounds of jurisdiction remains the safest course. However, it should be noted here, that in Cyprus like in the other common law countries the

³ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 80.

⁴ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 115.

service of the writ or other originating process not only notifies the defendant of the action brought against him but also establishes the jurisdiction of the Cypriot courts over the defendant.⁵

2.1.4 We do not agree that Art. 4.2 of the Regulation creates discrimination in respect of parties who are domiciled in third states.

2.1.5 There are no reported cases. A choice-of-forum clause is examined *ex officio* by the court, if it can be traced from the file (i.e. from the contractual agreement⁶), irrespective of the parties' attitude.

2.1.6 As expensive and as time consuming as all other interim, pre-trial applications. Usually, issues of jurisdiction are considered and decided upon separately by the courts of Cyprus.

2.2 Questions regarding the various grounds of jurisdiction

2.2.1 There is no available case law regarding the application of the articles 2 and 59 of the Regulation until today. In general terms, a person's domicile is his permanent home. What is meant in this context by a person's permanent home is the place in which he intends to reside permanently, whether or not he is at the moment residing in it. Furthermore, it is an established rule, that a person cannot have more than one domicile for the same purpose at any point in time.⁷ In one case⁸ the difference between residence and permanent establishment is explained: „*Permanent establishment is not synonymous to residence. Residence alone is not sufficient. Permanent establishment indicates a quality of residence rather than its length. The duration of the residence, i.e. regular physical presence in a place is only one of a number of relevant factors. An element of intention to reside and establish is required. Evidence of intention may be important where the period of periods of residence are such as to point to both directions. It is not possible for a person to be permanently settled in the Republic of Cyprus and in another country. The intention of permanently settling may be gathered from the conduct and action consistent with such settlement. Though permanent*

⁵ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 80.

⁶ See *Alain Keytsman Production Byba v. Sigma Radio T.V. LTD*, No 10506/2001.

⁷ See *Neocleous/Koundourou/Tsikkini*, Private International Law, in: Neocleous, Introduction to Cyprus law, p. 876.

⁸ See *Andreou v. Republic of Cyprus*, No 761/93, 762/93.

settlement cannot be assimilated to domicile, it is akin to it and pronouncements on domicile are very relevant and helpful.”

2.2.2 In Cyprus a corporation is resident in the country where its central management and control is exercised. If the exercise of central management and control is divided between two or more countries, the corporation is resident in each of those countries.⁹ A full implementation of all the connecting factors of Art. 60 seems to be the best solution for a unified function of the Regulation in European justice area on that issue.

2.2.3 No case law reported on that issue.

2.2.4 There is no available case law at the moment.

2.2.5 There is no relevant reported case law until now.

2.2.6 There is no relevant reported case law until now.

2.2.7 The issue has not yet been raised before the courts.

2.2.8 No case law available.

2.2.9 No case law available.

2.2.10 All non-contractual, tortuous claims, including *inter alia*, claims based on the tort of negligence.

2.2.11 There is no reported case law concerning the matter.

2.2.12 There is no thoughts expressed on that matter by the courts of Cyprus up to date.

2.2.13 There is no case law in favour of a broad interpretation of the notion of consumer issues until now.

⁹ See *Neocleous/Koundourou/Tsikkini*, Private International Law, in: Neocleous, Introduction to Cyprus law, p. 876.

2.2.14 No case law available for the time being.

2.2.15 There is no application of Art. 15 (1) lit. c) in practice.

2.2.16 There is no case law so far.

2.2.17 There is no case law available.

2.2.18 There is no case law available.

2.2.19 There is no case law concerning the matter.

2.2.20 Not so far.

2.2.21 According to art. 22 Nr. 2 the exclusive ground of jurisdiction is based on the seat of a company, legal person or association. In order to determine the seat, the court shall apply its rules of private international law. That rule might lead to positive or negative conflicts of competence. It should be here reminded, that the similar rule of art. 58 of the Brussels Convention was revised and replaced from rule 60 of Regulation 44/01/EC, which is based on three alternative connecting factors. All these factors comply with the rule 48 I of the European Community Convention, which establishes the freedom of establishment. In conclusion, we think that it would be better, if the exclusive ground of jurisdiction of art. 22 Nr. 2 would be based on the three abovementioned factors of art. 60. Such a solution would lead to a uniform European solution on that matter.

2.2.22 No case law reported until now.

2.2.23 Yes the rule of Art. 22 Nr. 2 is too narrow. See above answer 2.2.21.

2.2.24 We have already mentioned (see above Questionnaire 2, 2.1) that a foreign judgment may be enforceable in Cyprus under statute by a process of direct registration. The judgment debtor may proceed to file an application to have the registration of the foreign judgment set aside in the following cases:

- The foreign judgment is not a judgment within the meaning of the Foreign Judgments Law or the original judgment was registered in contravention of the Law
- The original court had no jurisdiction
- The judgment debtor as defendant in the original court did not receive notice of the proceedings to enable him to defend and did not appear
- The original judgment was obtained by fraud
- The enforcement of the original judgment would be contrary to Cypriot public policy or
- The rights under the original judgment are not vested in the person applying for registration.¹⁰

2.2.25 *Questions relating to the applicability of Article 23*

2.2.25.1 No case law available.

2.2.25.2 According to the *lex fori*.

2.2.25.3 Yes.

2.2.25.4 No case law reported for the time being.

2.2.25.5 No case law available.

2.2.26 No case law available.

2.2.27 *Effect and functioning of Article 31*

2.2.27.1 In Cyprus the kind of provisional measures that is available is the interlocutory relief. The application for interlocutory relief should be filed after the writ is issued and supported by an affidavit or affidavits establishing that:

- The applicant has a *prima facie* case
- There is a possibility that a judgment will be issued in favour of the applicant on the merits
- If the order is not made, there is a great risk that any judgment issued in favour of the applicant will not be satisfied and

¹⁰ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 112.

- On the balance of convenience, the court should issue the requested order in favour of the applicant

A Mareva injunction is an interlocutory order restraining a defendant, usually until trial or further order, from removing his assets out of the jurisdiction. An Anton Pillar order is a bundle of interlocutory orders designated to enable a plaintiff to secure the preservation of relevant evidence which might be otherwise destroyed or concealed by the defendant. There must be a real possibility that such items may be destroyed before any inter-partes application can be made and there must be an extremely strong *prima facie* case on the merits.¹¹ Measures resulting in provisional fulfilment of the claim in terms of provisional payment to the plaintiff are not available in Cyprus.

2.2.27.2 No case law available.

2.2.27.3 No problems have been shown for the time being.

2.2.27.4 See above answer 2.2.27.1.

2.2.27.5 Also in Cyprus similar to the practice of UK, if a person to whom any interlocutory injunction is addressed breaches the court's order, that person is liable to measures in the nature of contempt. Clearly, the person against whom the order was made will be in contempt if he acts in breach of an injunction after having notice of it. A non-party who aids and abets the respondent in breaching the terms of the injunction or who acts with the intention of impeding the administration of justice will also be in contempt. However, Cypriot courts do not have jurisdiction to issue injunctions having extraterritorial effect or to issue so-called worldwide Mareva injunctions.¹²

Regarding execution injunctive relief in Cyprus an injunction may be sought simultaneously with or after the application to register the foreign judgment. When the judgment debtor is a Cypriot or a local Cypriot company, an injunction can be obtained only against their immovable property and not against its movables, save in the case that the specific asset or chattel is the subject of the foreign proceedings.

¹¹ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 97.

¹² See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 95.

In the case of foreign nationals or of international Cypriot companies (which are fully controlled and managed by foreign nationals), injunctive relief can be obtained against any asset they have within the jurisdiction of the Cypriot courts.

An injunction according to section 30 of the Merchant Shipping Law 1963 cannot be obtained against a Cypriot shipping company blocking and/or mortgaging and/or deleting its vessel from the Cyprus Ship Register if the judgment creditor does not have an interest in the vessel himself and he is a mere creditor.¹³

2.2.28 No.

3. *Lis Pendens and Similar Proceedings*

3.1 No experience until now.

3.2 Up to now in Cyprus the principle of *lis pendens* didn't cause a race to the courtroom due to the principle of *forum non conveniens*. The doctrine of *forum non conveniens* relates to cases in which the court is asked to grant a stay of procedures. The courts of Cyprus can stay proceedings on the basis that Cyprus is an inappropriate forum. The courts in Cyprus consider a wide range of factors in determining whether a claim relevant to *forum non conveniens* should be upheld. These include the following:

- Domicile of parties
- Place of business
- Location of disputed transactions
- Existence of legitimate juridical advantage to the plaintiff (such as a more favourable limitation period, advantageous ancillary remedies, or the existence of assets)
- Whether the applicable law is the local law
- Location of evidence
- Convenience and expense of trial as between the forum and the foreign court
- Significance of the degree to which the appropriate foreign law differs from the law of the forum
- Whether the stay of the local proceedings is being sought for factual reasons
- Which country has the closest connection to the facts of the case and

¹³ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 116.

- Existence of a time bar inapplicable in the local forum and the existence of prejudice to the plaintiff in the prosecution of his claim in the foreign court due to cultural, racial, political, or other similar reasons.¹⁴

In one case¹⁵ a sea accident occurred between a Cypriot and Chinese ship in the sea area of Denmark. The Cypriot ship was registered in Cyprus and was owned by a Cypriot company. On 25.8.2003 the owner company of the Chinese ship filed an action for damages to the courts of Cyprus. On 11.6.2003 the Cypriot company filed an action for damages to the courts of Denmark. The Cypriot company filed an application to the Cypriot court demanding the suspension of the proceedings, as the Cypriot court was not the *convenient forum*. It claimed that Denmark as the place of the sea accident was the appropriate *forum*. The Cypriot court has rejected the abovementioned application judging that all factors (the defendant is a Cypriot company, the ship was registered in Cyprus) in that case have a close connection with Cyprus. Although in that case *ratione temporis* the Regulation 44/01/EC was not applicable *lis pendens* according to the principle of priority was not taken into consideration. As far as the subject matter of Regulation is concerned, the principle of *forum non conveniens* is not any more compatible with ECJ case law.¹⁶

3.3 Yes the principle of *forum non conveniens*. See above answer 3.2.

3.4 There is still no case law reported.

3.5 There is no case law available at the moment.

3.6 No problems until now.

3.7 There is no experience on that matter.

3.8 No experience.

3.9 No case law reported.

¹⁴ See *Pittas/Koudounari*, Judicial System and Court Procedure, in: Neocleous, Introduction to Cyprus law, p. 82.

¹⁵ See *Cosco Bulk carrier Co. Limited v. Saramaca Shipmanagement Limited*, No 25/2003.

¹⁶ ECJ, 1.03.2005, C-281/02, *Owusu*.

3.10 No comments.

4. *The Recognition and Enforcement of Judgements, Authentic Instruments and Court Settlements According to Regulation 44/01/EC*

4.1 *Questions regarding the free movement of judgements*

4.1.1 This procedure has been described in the answers to Questionnaire 2. There is no case law for the time being.

4.1.2 We are in favour of the establishment of an additional standard form for application for a declaration of enforceability as such a solution would simplify and unify that procedure in European justice area. The application of the *lex fori* of each Member State on that issue according to art. 40 of Regulation seems to be complicated and less effective for a speedy circulation of judgments.

4.1.3 We are not aware of any case before the Cypriot Courts in which the definition of the term “judgment,, has caused a difficulty.

4.1.4 There is no accessibility of courts by electronic means.

4.1.5 The reasons for objection which are laid down in Art. 34 and 35 are adequate. Another reason that is usually met in common law systems such as Cyprus could be that the judgment was obtained by fraud.¹⁷

4.1.6 There is no reported case in Cyprus in which an issue about the clarity of definiteness of the foreign judgment or title has arisen. We believe that if doubt arose, the applicant for a declaration of enforceability would be asked to produce some further document or evidence as to the proper meaning of the judgment or title.

4.1.7 No case law available until now.

4.1.8 Negative.

¹⁷ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 114.

4.1.9 There has not been any consideration of such interrelation in Cypriot case law.

4.1.10 There is no case law at all.

4.1.11 No.

4.1.12 *Anti-suit injunctions* do not arise in Cyprus and we are not aware of any case law in which this issue has been considered.

4.1.13 We are not aware of any case on that matter in Cyprus, so that we are not in position to state the practical implementation of appeals.

4.2 *Provisional measures according to Article 47*

4.2.1 No case law reported.

4.2.2 No case law available.

4.2.3 See above 4.2.2.

4.2.4 Yes, if the case is appropriate for injunctive relief because it is believed that the only available assets of the judgment debtor are at risk of dissipation, an injunction may be sought simultaneously with or after the application to register the foreign judgment.¹⁸

4.3 *Cross-border enforcement of Court Settlements and Notarial Deeds*

4.3.1 No case law available.

4.3.1.1 No.

4.3.1.2 No.

¹⁸ See *Neocleous/Pittas*, Enforcement of Foreign Judgements and Arbitration Awards, in: Neocleous, Introduction to Cyprus law, p. 116.

4.3.1.3 No experience.

4.3.1.4 No case law reported.

4.3.2 Insignificant

4.3.2.1 No case law reported.

4.3.2.2 No comments.

4.3.2.3 No comments.

4.3.3 *Specific problems regarding court settlements, enforceable instruments and provisionally enforceable judgments*

4.3.3.1 Not that I am aware of.

4.3.3.2 No such problems reported.

5. *Proposals for improvements*

In the judgments in *Bier v Mines de Potasse d' Alsace*¹⁹ and in *Shevill and Others v. Presse Alliance*²⁰ the European Court of Justice held that where the place of the happening of the event which may give rise to liability in tort and the place where that event results in damage are not identical, the expression «place where the harmful event occurred» in Art. 5 Nr. 3 of the Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts for either of those places.

Regarding mass tort and collective claims arising from product and prospect liability we propose an exclusive ground of jurisdiction on the place where the harmful event was caused (Handlungsort), so that a concentration of all collective claims to one *forum* can be achieved. That exclusive ground of jurisdiction on the place of the happening of the harmful event should be established only for collective claims i.e. in the field of group actions, actions of

¹⁹ Case C-21/76, 1976 ECR.

²⁰ Case C-68/93, 1995 ECR I-415.

consumers' and investors' associations. For individual claims concerning product and prospect liability the case law of ECJ on Art. 5 Nr. 3 of the Regulation should continue to apply.