

# COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

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Strasbourg, 16 February 1988

SECRET  
CM/Del/Concl(87)413

ADDENDUM  
Item 47b

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## CONCLUSIONS OF THE 413th MEETING OF THE MINISTERS' DEPUTIES

(held in Strasbourg from 30 November to 3 December 1987  
and on 7, 9 and 10 December 1987)

### ADDENDUM

47b.

CYPRUS AGAINST TURKEY  
Decision to be taken under Article 32 of the  
European Convention on Human Rights  
(Concl(87)412/7, Letter HD/C12 of 1.2.84)

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88 The Chairman said that when this item had been considered at the 412th meeting of the Deputies (12-13 November 1987, item 7), several delegations had said that they were not yet able to state any view. He accordingly invited delegations who so wished to speak now.

The Representative of Denmark wondered whether this item ought not to be returned to at the Deputies' 415th meeting (February-March 1988). He understood that informal contacts had been established to try and find a solution in keeping with the cause of human rights in Cyprus. By that meeting, those efforts should have had time to get underway.

If no one else wished to speak, a decision of some kind had to be taken. But it would be premature to take a decision at the Deputies' next meeting (414th, January 1988).

The Representative of the United Kingdom said that this was a very difficult subject and he could understand a number of delegations needing more time. However, the difficulties were not diminishing with time and he hoped that the question would be considered as soon as possible.

He was inclined to acknowledge that attempts to lay the foundations for subsequent discussion would be helpful, but he hoped that informal contacts would not take too long.

As to the substantive issue, his authorities line was very similar to that taken by other delegations at the Deputies' 412th meeting. Tackling the question from the legal angle alone was not sufficient. In the view of his authorities there was also a political dimension.

Whatever position was adopted in legal terms and on the legal merits, it was important to ensure at the same time that any action or decisions taken did not give rise to a political problem.

Other delegations had pointed out that it was important to help the United Nations Secretary General in his efforts to resolve the dispute which had given rise to this case.

It was important that nothing that might be undertaken interrupt the intercommunal talks on missing persons.

He added that if the Committee agreed to continue consideration of this question at its February-March 1988 meeting rather than at its January 1988 meeting, he hoped that it would then be possible to address the substance of the issue and to reach a solution.

The Representative of Cyprus made the following statement:

"Mr Chairman,

It is with regret that I have to reiterate certain things in respect of this long standing tragic case before us today. We have been emphasizing all along and we repeat it today that the Committee of Ministers although a political organ in composition, when acting under Article 32 of the Convention its functions are more of a judicial nature. Article 32 of the Convention imposes on the Committee a duty to decide on the existence of violations of the Convention in the light of the Report of the Commission of Human Rights. The fact that the Committee is composed of governmental representatives rather than independent jurists does not transform the Committee to an organ deciding on the basis of the political interests of the represented States. We remain duty-bound to act in accordance with the provisions of Article 32 and to ensure fulfilment by State Parties of their obligations arising from the Convention.

This position is clearly set out and explained in the Memorandum prepared by the Directorate of Human Rights on the subject of 'the Role of the Committee of Ministers under the European Convention on Human Rights' of 8.8.83 (paragraphs 12-19). The conclusion in that Memorandum is found in paragraph 18 thereof and it is as follows:

'It is correct to affirm therefore that the Committee of Ministers of the Council of Europe, though a political organ, when discharging its functions under the Convention on Human Rights, is bound by the conditions of the treaty and cannot take into account considerations of political expediency not set out therein. Its action must be taken within the limits of Article 32 of the Convention, which confers on the Committee of Ministers the duty to take decisions on the existence of a violation.'

This position was also stressed in this Committee during our yesterday's meeting by the Director of Human Rights.

Mr Chairman,

It is obvious that we are not here in order to accommodate the interests of any government. We are here to apply the provisions of Article 32 without fear of favour. This is the only way to uphold the principles of the Council of Europe and maintain its prestige.

Unfortunately in the past in a similar case, where Turkey was found guilty for mass violations of human rights in Cyprus, political expediency has prevailed and the Committee adopted a Resolution in 1979 that was not in conformity with the Convention and has not helped in any way the cause of human rights in Cyprus. On the contrary, it has helped Turkey to excuse and consolidate her systematic violations of the Convention in Cyprus and has hardened her claims for the solution of the Cyprus problem in furtherance of her political and strategic interests rather than in conformity with the generally accepted principles of human rights. Turkey is not even prepared to accept as a basis of the solution of the Cyprus problem the fundamental principles of freedom of movement, right of ownership and freedom of settlement of the people of Cyprus. This is the result of your Resolution in 1979.

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We urge you therefore not to repeat the same mistake and not to allow political interests to prevail over human rights.

Eight years after the Resolution in question we still find today Turkey occupying almost 40% of Cyprus, preventing refugees to return to their homes and continuing violating the rights of the people of Cyprus as found by the Commission of Human Rights.

Mr Chairman,

After protracted proceedings before this Committee we finally heard the position of some governments in this important case. Although they all expressed interest and concern for the situation in Cyprus there was an obvious attempt to politisize again the question and thus downplay the gross violations of human rights by Turkey.

The view has been expressed that a purely legal decision might harden positions. We repeat, in this respect, that it is the political approach and the political Resolution in the past that has hardened even more the already hard position of Turkey with the result that we are still today facing the same tragic situation in Cyprus.

The suggestion has been made for the setting up of a discussion group to consider possible solutions at Committee of Ministers level. We have made it clear in the past that we are not against any initiative for a friendly settlement or solution of the human rights problem in Cyprus so long as such settlement or solution is within the framework of Article 32 of the Convention and in accordance with its principles. Turkey did not appear ready to co-operate on these lines. We repeat our position and we stress the importance that we attach to the necessity and the duty of this Committee to act in conformity with the Convention. Our objective in this case is not to gain any political advantage. Our only concern is the restoration of human rights, and it does not matter to us if that takes place through a friendly settlement or any other measures. We are therefore prepared to accept adjournment of a final decision under Article 32 by the Ministers if in the meantime concrete steps are taken for the restoration of the human rights which according to the Commission's Report are still being violated. In order that this is achieved, it is important that the terms of reference of any proposed group must be clearly defined on the basis of the objectives of Article 32 of the Convention and in direct relation to the parties and the facts of the particular case which is before you.

Mr Chairman,

Any effort to politisize the issue, outside the framework of the Convention, is at the same time outside the competence of this Committee. What is more, such effort will undermine the question of human rights in Cyprus. We may, even add that even if you had competence to deal with any political aspects of this case the only way to help towards a political solution of the problem is through restoration of human rights and the application of the principles of the Convention all over Cyprus. This is the only basis for an effective political solution of the Cyprus problem. Any other solution incompatible with the principles of human rights will only be a cause of tension and a danger to the peace and the public order in Europe. In conclusion, we would like to thank all those delegations that have expressed their concern in this case and we feel confident that they will appreciate our persistence to adhere to the Convention which we are all bound to observe, if we really want it to be meaningful."

The Representative of Turkey deeply regretted that the Committee of Ministers should once again have to listen to the same arguments, misrepresenting historical reality, about the general problem of Cyprus. She had no choice but to refer to her previous statements. Everyone knew her authorities position, but she feared she would have to repeat it.

The problem of Cyprus had not started in 1974, but in 1963 when the Greek-Cypriot side had sought to do away with the 1960 Constitution and its bicomunal character, and the Turks had been forcibly excluded from all the institutions of that State. Despite the historical facts, it had again been said that the problem had started in 1974.

Turkey's role within the Island was confined to protecting the rights of Turkish-Cypriots, at the request of the "Turkish Republic of Northern Cyprus".

The Representative of Turkey added that her country complied with its undertakings under the Convention and did its utmost to ensure the good functioning of the system. The Turkish authorities were already engaged in constructive dialogue concerning the application of the Convention. But they were opposed to the misuse and exploitation of the Convention for political purposes. Such steps would lead nowhere. The present case fell in to that category, and such an attitude ran contrary to a negotiated solution. The human rights situation in Cyprus could not be dissociated from the Cyprus problem as a whole.

The European Convention on Human Rights was not in any event the appropriate framework for solving political problems.

If the Greek-Cypriots chose to make propaganda by means of the Convention, the Committee of Ministers must oppose this: faced with this purely political step on the part of "the Greek-Cypriot Administration", the Committee must itself give a political reply.

It was in the light of the foregoing that Turkey had decided not to take part in the proceedings concerning the merits before the Commission, once the stage of admissibility had been passed. The application was identical to the two previous applications and therefore should not have been declared admissible. The Commission's conclusions were also unacceptable to Turkey.

The Representative of Turkey added that the only way of protecting the human rights of all Cypriots and of finding a solution to the problem was to build up mutual trust and to encourage, as did Turkey, a dialogue under the auspices of the United Nations Secretary General in the context of the March 1986 framework agreement, which had been accepted by the Turkish-Cypriot side but rejected by the other side.

Turkey expects the Committee to endeavour to assist the efforts of the United Nations Secretary General, rather than to make his job more difficult.

Regarding the question of a friendly settlement which had been raised, her government had clearly stated its position on this, as could be seen from the Conclusions of the October meeting.

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Lastly, she had no objection to the proposal of the Representative of Denmark to postpone consideration of the matter until the Deputies 415th meeting (February-March 1988).

The Representative of Greece said that what the Representative of Turkey had said prompted him to ask a question: the Representative of Turkey has asserted that the Cyprus question dated from 1963. If that was so, why had no petition been filed by Turkey against Cyprus? They were not now discussing the situation in 1963. What was before the Committee was the case of Cyprus against Turkey, which dated from 1974. That was the Committee's business.

If the Convention had to be interpreted, it should be said that its purpose was to protect human rights against possible violation by the State, and not the reverse. In this context, he wished that everything possible be done to arrive at a decision in this matter.

The Representative of Switzerland was able to support the suggestion of the Representative of Denmark. He pointed out to the Representative of Cyprus that in the suggestion of the Representative of Denmark no reference was made to the discussion group which one delegation had mentioned at the Deputies' 412th meeting. He approved the fact that Denmark's proposal did not mention it.

The Representative of Austria supported the Representatives of Denmark and Switzerland and was in favour of considering the matter later.

The Representative of Cyprus said that the reply of the Representative of Turkey was merely a repetition of her position, which was clear in the eyes of all delegations. Various allegations had been made, to which he had already replied. He added that he had not today heard any concrete proposal from Turkey for the restoration of the Human Rights of the people of Cyprus as a whole.

The Representative of the Netherlands recalled that it was his delegation that had suggested setting up a discussion group. He fully supported the new developments and could agree to the proposal of the Representative of Denmark.

The Chairman, concluding the discussion on this item, said that the Deputies would resume consideration of the matter at their 415th meeting (February-March 1988).

In the meantime, informal contacts would continue for the purpose of reaching a solution capable of serving the cause of human rights in Cyprus.