

# COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

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Strasbourg, 8 June 1977

Secret  
Addendum II to  
CM/Del/Concl(77)271

For distribution to Heads  
of Delegations only

CONCLUSIONS OF THE 271st MEETING  
OF THE MINISTERS' DEPUTIES  
(Strasbourg, 23-27 May 1977)

ADDENDUM II

VIII.

CYPRUS AGAINST TURKEY

Application Nos 6580/74 and 6950/75

Decision to be taken under Article 32 of the  
European Convention on Human Rights on the  
report of the European Commission of Human Rights

(Concl(77)265/XII, Letter HD/C47 of 31 August 1976,  
CM(77)117)

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CM/Del/Concl(77)271  
Addendum II

The Chairman recalled that, at their 265th meeting, the Deputies had taken note of the intention of the Turkish government to present on 17 May 1977 a Memorial on this matter. He thanked the Representative of Turkey for having handed over on the set date the lengthy Memorial contained in CM (77) 117.

In reply to a question by the Chairman, the Representatives of Greece and Cyprus asked for their interventions to be reproduced verbatim in the Conclusions.

The Representative of Turkey made the following statement:

"Mr Chairman, as agreed, the Turkish government prepared a report entitled 'Memorial by the government of the Turkish Republic on the question of human rights in Cyprus' and instructed me to present it to you on the date set by the Committee of Ministers.

You very courteously received me on 17 May 1977 at 6 pm, and I presented you with a Memorial on that occasion.

In February, when I requested the Committee of Ministers to allow at least three months for the preparation of the Memorial, the Turkish general elections were scheduled for October 1977. The Turkish government later decided to hold the elections early and to organise them on 5 June 1977. Practically speaking, therefore, the report is the work of an outgoing government which has now -- in presenting it to the Committee of Ministers -- given a further example of conscientiousness and loyalty towards the Council of Europe.

Some people will perhaps find the Memorial rather long, but it is also accurate and uncompromising, both on the defensive and on the offensive; it is not one-sided but is, on the contrary, objective and comprehensive, and describes both sides of the existing problems.

The Memorial, prepared partly in Ankara and partly in Cyprus with the co-operation of lawyers and technicians, is not an application for enquiry proceedings, but a frank explanation and a statement in Turkey's defence.

Consequently, the Memorial cannot be said to infringe any procedural or other regulations. It speaks with impartiality of the past, discusses the present realistically and envisages the future in a constructive frame of mind.

It may well be destructive when discussing ill-founded conclusions and accusations, but is surely positive as to the long-term solutions to be found.

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Mr Chairman, the Memorial of the Turkish Government on the question of Human Rights in Cyprus contains 11 chapters and 20 annexes, the first two of which are of crucial importance; the other annexes consist of official documents as examples of evidence in support of the assertions made in the Memorial; further examples may be added at any time during the debate.

The chapters of the Memorial are as follows:

- I. Introduction
- II. Brief historical survey of the Cyprus question
- III. Legal observations on the admissibility of the application submitted by the Greek Cypriot Administration
- IV. Turkey's attitude during the admissibility stage
- V. Turkey's legal observations on the Commission's admissibility decision
- VI. Legal observations by Turkey on the report of the Commission
- VII. General remarks concerning the procedure and practice adopted by the Commission
- VIII. Remarks concerning the investigation and errors of judgement on the part of the Commission
- IX. Violation of the Human Rights of Turkish Cypriots by the Greek Cypriot Administration
- X. Standpoint of the Turkish government on the allegations contained in Part II of the Commission's report
- XI. Conclusion

My government's purpose in placing special emphasis on Chapters 3, 4 and 5 which deal with the legal aspects of the procedure followed by the Commission, is to show the Committee, by means of detailed explanations, the reasons for its uncompromising and resolute attitude before the Commission.

Annex I to the Memorial is the historical section and describes the background to the events in detail.

Annex 2 to the Memorial concerns the written observations of Mr Rauf Denktas, President of the Turkish Federated State of Cyprus, on the Commission's report.

Mr Chairman, I take this opportunity to thank and congratulate the Secretariat of the Council of Europe for the zealous way in which it has prepared the texts of our Memorial in both languages in record time. As you can see, our Secretariat can do the impossible when it wishes. This is an encouraging sign for the future.

The texts have been in your possession for two days. Please read them with the attention they deserve, after which you will, I am sure, wish to have them examined by your governments.

I do not intend at this stage of the proceedings to attempt a summary of the contents of the various chapters of the Memorial. The Memorial says what it has to say, and says it very clearly. I do not want to run the risk of giving you the impression that I attach more importance to some chapters than to others, as this is not the case. One cannot summarise a long legal and technical report without running some risk. Nor do I wish to make any personal comments on any of the sections of the Memorial.

When your governments have examined these texts and you are ready to begin considering the details of the report, I shall be very happy to co-operate with you. I hope that a government will, meanwhile, have been formed in Ankara after the elections of 5 June, and that I shall have its instructions. I shall then hear your observations and be able to answer your questions with better authority and greater confidence."

The Representative of Cyprus made the following statement:

"I have carefully read the Memorial submitted by the Turkish Government on 17 May 1977, only a few minutes before the expiry of the time limit granted by this Committee. I have also listened with great interest to the oral statement by the Permanent Representative of Turkey today.

First of all I wish to congratulate the Secretariat for doing everything possible for the circulation of the Memorial among delegations and for the expeditious way in which they have translated and produced a document of such length. In doing so the Secretariat has followed the instructions given to it by this Committee of Ministers.

My statement of today is an interim reply to the Turkish Memorial; it is a first reaction. It is made in order that the various Governments may have the opportunity to consider and weigh the Memorial in conjunction with my present statement. I expect to be able in a few days to submit a written and more comprehensive reply.

The Memorial that the Turkish Government, as presented, has the following title: "Memorial by the Government of the Turkish Republic on the question of Human Rights in Cyprus". This title is partly true.

For the subject matter of this Committee's deliberations is the Report of the Human Rights Commission in Applications Nos. 6780/74 and 6950/75 filed by Cyprus v Turkey. Consequently the title given by the Turkish Government to this Memorial should have been "Memorial of the Government of the Turkish Republic on the Report of the Human Rights Commission in Applications Nos 6780/74 and 6950/75 filed by Cyprus v Turkey".

Of course the Turkish Government can choose the title of its own Memorial but it is my duty to draw the Committee's attention to this important point. The Turkish Government has to make up its mind and inform the Committee whether the submission of their Memorial is indicative of their intention to co-operate in the deliberations of this Committee to administer justice and find out the truth on the basis and within the framework of the Commission's Report. If this is not the case then the Turkish Government should explain to the Committee of Ministers the frame in which they place their intention of co-operating at this stage by submitting the Memorial which is before us. It is clear to everybody present of course that for statements made or memorials submitted to be relevant they must be based on the subject matter of this Committee's deliberations ie the Report of the Human Rights Commission. Whatever is outside the Report cannot be considered relevant.

Allegations which have not been the subject of the Commission's deliberations, scrutiny and impartial and objective judgment are not relevant for the purpose of this Committee's deliberations.

I suppose that several delegations may not have managed so far to go through the Memorial in question. But if one looks at the Table of Contents or one reads the Conclusions in Chapter XI it would be sufficient to form an impression of what it is all about.

Let us take the Table of Contents. It contains 11 Chapters:

- Chapter I "Introduction"
- Chapter II "Short historical analysis of the Cyprus question"
- Chapter III "Legal observations on the admissibility of the application by the Greek Cypriot Administration"
- Chapter IV "Attitude of Turkey during the admissibility stage"
- Chapter V "Legal observations of Turkey on the Commission's decision on admissibility"
- Chapter VI "Legal observations by Turkey on the Commission's Report"
- Chapter VII "General remarks concerning the procedure and practice followed by the Commission"
- Chapter VIII "Observations concerning the investigation and errors of judgment on the part of the Commission"
- Chapter IX "Human Rights violations by the Greek Cypriot Administration"
- Chapter X "Points of view of the Turkish Government on the allegations contained in Part II of the Commission's Report" and
- Chapter XI "Conclusions".

If I thought it necessary to read out the various Chapters it was simply to indicate that practically all of them with the exception of Chapter II and IX refer to the Commission, to the Commission's task under the Convention and to the Commission's findings.

At this stage I shall only read one short sentence from page 93 of the Memorial. It is a sentence like many other sentences that refer to the Human Rights Commission. It reads as follows: "It is quite obvious from the explanations given by the Turkish Government in its statement that the Report which the Commission presented to the Committee of Ministers was not drawn up in conformity with the Convention on Human Rights. That is why the Commission's Report does not provide a suitable basis for action to be taken by the Committee of Ministers under Article 32 of the Convention".

The organ that is set up by the Convention on Human Rights to apply the Convention for the protection and safeguard of human rights, ie the Commission is being accused for having itself violated the Convention. I cannot think of a more serious accusation against the Commission.

If, Mr President and dear colleagues, the serious criticism which is over and over again being repeated throughout this Memorial were true, then the Commission would have to submit its resignation.

If, however, these accusations were false and the attack unjustified, then the accuser should have to draw the consequences. To these accusations my Government is one of the seventeen other Governments which are answerable.

The Committee of Ministers is well conscious of the fact that the Human Rights Convention is the foundation of this Council and that the integrity of those Organs set up by the Convention should be preserved at all costs. Criticism of the Commission in a matter of such importance undermines the foundation of this Council and renders it vulnerable to wider and further political exploitation.

My Government, being one of the 17 others, has instructed me to state in this regard and at this stage that the allegations contained in the Memorial, relating to the Commission are entirely false, unfounded, unjustified and even malicious. The mere fact that the Commission had rejected all Turkish objections at the admissibility stage and had made a Report in which serious violations of Human Rights by Turkey are found does not give Turkey the right to attack the Commission.

The Commission, from the beginning to the end, carried out its task with its usual objectivity and impartiality. Turkey refused to co-operate with the Commission simply because she knew that she had no case. This is shown also by the fact that she co-operated at the admissibility stage with a delegation of twelve persons namely seven Professors of Law, two Ministers and 3 other diplomats. But from the moment when the Commission unanimously rejected the Turkish objections, Turkey, in violation of Article 28 of the Convention, refused to co-operate.

The question, Mr President, that I put last time to the Turkish Delegation has not as yet been replied to. I asked them to tell us how they explain their refusal to co-operate with the Commission, and their co-operation in this respect in the Committee of Ministers. I put this question twice in February and I am putting it again.

It is not my intention to undertake now the Secretariat's task in replying in detail to the various allegations concerning the Commission. I think, Mr President, that it would be useful in our deliberations if the Secretariat were to prepare a short document which should contain on one side the allegations of Turkey and on the other the views and findings of the Commission.

Before I go on to Chapter IX, I would like to read out to you another short sentence from page 93. It reads: "If action were to be taken by the Committee of Ministers on a Report of this kind, it would not only be contrary to the principles of law but would also lead to certain unavoidable results of immense political significance". This sort of blackmail, Mr President, is also contained in other parts of the Memorial.

Mr President, I would like now to refer to Chapter IX titled "Violations of Human Rights of Turkish Cypriots by the Greek Cypriot Administration".

Apart from the fact that these allegations are completely irrelevant to the present case I would nevertheless like to refute and reject most categorically such allegations as being false, unfounded and malicious. Turkey alleges violations over many years. I am asking Turkey why she did not file an application against Cyprus. Surely she cannot reply that the obstacle was her argument of non-recognition because the period during which the alleged violations were supposed to have taken place was a period of diplomatic relations between Turkey and Cyprus when the question of non-recognition did not arise.

But even for alleged violations after the Turkish invasion in 1974, Turkey could have filed an application against Cyprus with a reservation as to the question of recognition.

In any case, allegations which have not been the subject of the Commission's deliberations, scrutiny and impartial and objective inquiry are not relevant for the purpose of this Committee's deliberations.

For these reasons, Mr President, I respectfully submit that Chapter IX on alleged violations by Greek Cypriots against Turkish Cypriots should be completely disregarded as they are totally irrelevant to the present case. The same applies to the long Annex I and indeed to all the Annexes.

On page 268 of Annex I of the Memorial, the Turkish Government draws certain "conclusions" and finds that the Greek Cypriots have violated the Human Rights Convention. In other words, Turkey carried out an inquiry on its own and in its own way on their own allegations for violations of Human Rights and came to its own conclusions. Thus Turkey has played two roles: the role of the complainant and the role of the judge. I regret to say, such methods of administration of justice are not known to the countries represented around this table.



In paragraph 5 of page 91 of the Memorial, Turkey alleges that if they had not have invaded Cyprus the Turkish Cypriots would have been the victim of a "terrible genocide". It is the word "genocide" that I find rather daring especially when it is used by a country like

Turkey with certain experience and a record in such matters. If I were in the position of the Turkish Government I would have carefully avoided and deliberately refrained from using the word "genocide".

Now, Mr President, before I conclude my oral statement today I would like to say something about the witnesses interviewed by the Commission.

As the Turkish Memorial disputes the credibility of the witnesses interviewed by the Commission, in reply I wish to read out the Commission's assessment. Paragraph 61 on page 31 reads as follows:

"Nevertheless, the evidence before the Commission, and the facts established on the basis of this evidence, cannot be seen as presenting a view of the events and incidents complained of mainly from the Greek Cypriot side. The Commission observes in this connection that:

- certain events and incidents referred to in the applications are in great part a matter of public knowledge. In particular, the massive movement of population from the northern to the southern part of Cyprus after 20 July 1974 is an undisputable fact which, as such, calls for no particular investigation;

- the Commission has based its findings in part on reports of other international organisations, in particular the United Nations;;

- the witnesses heard by the Commission's Delegation in Cyprus testified, with little exception, with a restraint and objectivity that gave credibility to their testimony; some of them confirmed a number of statements in the Particulars of the Applications about which they could not have had any direct knowledge;

- in the evaluation of the evidence before it, the Commission has refrained from drawing any conclusions from the fact that the respondent Government, despite every opportunity being offered to them, failed to make any statements, or to propose counter-evidence, on the applicant Government's allegations."

You will notice yourselves that the Memorial does not constitute a reply to the Commission's Conclusions. It contains as I have already stated irrelevant material, mostly political statements in an obvious attempt to politicise the issue, the only course I suppose that is left to Turkey. Although Turkey in the introduction of her Memorial tries to appear as showing great concern for the respect of the Human Rights Convention, yet she shows more interest in the non-recognition of the Cyprus Government rather than the protection of Human Rights. In any case counter allegations for violations of Human Rights cannot, either legally or morally, be considered as a justification for the violations of Human Rights especially of such large scale and continuing nature as found by the Commission in this case.

I do not think I could finish my statement without referring to the problem of continuing violations. You will remember that during our discussion in February, I stressed the urgency of the case and I submitted that if the Committee were to act as a deterrent to these continuing violations it had to act expeditiously without allowing delaying tactics to protract the proceedings. I am now making the same submission to the Committee.

During the last days, a Turkish newspaper "Milliyet" has been publishing in a series of articles, I think 8, extracts from the Memorial which has been orally presented to this Committee, today. I mention this simply for the Committee's information.

I have come to the end of my interim statement today. In the course of our meeting at the end of June I wish to be given the opportunity to complete my statement, taking into consideration the fact that the Memorial reached us only a few days ago. As I have already said my Government will be submitting a short reply in writing. It is for this Committee to decide on the procedure to be followed".

The Representative of Greece made the following statement:

"Mr Chairman, Ladies and Gentlemen, I should first like to associate myself with those who have praised the Secretariat for its technical feat in preparing for us this voluminous documentation in an extremely and, indeed, exceptionally short time. It is really an outstanding achievement and I should like to express my thanks and most sincere gratitude.

I should also like to thank my colleague from Turkey for presenting his Memorial within the time laid down. In fact the limits were strictly observed and today we have before us a lengthy document on whose contents I should like to make a number of comments.

First, I should like to say that my delegation associates itself completely and unreservedly with all that has been said by the Representative of Cyprus on the comments made and concerning the Memorial presented by the Turkish government. Having said that, Mr Chairman, ladies and gentlemen, I should now like to make a few comments and observations of a general nature concerning certain precise legal points.

The case first needs to be put in a general context: it is in fact unprecedented, because never before has one member state of the Council of Europe invaded another member state by means of aggression along traditional lines, or indulged in the systematic violation of human rights during and after the occupation of territory belonging to a Council of Europe member state, indeed, such violation is still going on. I believe that there is no precedent for this in the history of our Organisation although hundreds of applications have been lodged and many cases have been examined by the bodies of this institution. That is the first point which I think should be borne in mind when the governments represented here consider the case before us.

The Memorial presented to us is a voluminous concoction which I could call a legal artifice, and at the same time a tendentious political presentation in support of an argument which has always been rejected in this body. By that I mean the recognition and representative nature of democracy in Cyprus. This argument has often been debated here, and has always been rejected and, in this case, I feel that the arguments put forward in the Turkish Memorial to justify the attitude adopted by that government as soon as the case had been declared admissible are completely ill-founded and should be rejected yet again. Mr Chairman, I do not want to go into legal details here, since it is well known that all the international organisations and not, as is said in the Turkish Memorial, only the Council of Europe, have recognised the representative reality of the Cyprus government. It has been recognised everywhere whenever Cyprus, or the Cypriot democracy has presented itself as a party and a state. Therefore, no further argument is possible. Accordingly, I feel that from the international point of view, even if I wanted to give my colleague from Turkey and his government the benefit of the doubt, during the brief period of the invasion constitutional order was nonetheless upset, its operation paralysed and the Zurich and London agreements not observed. The period was one of confusion, of troubles, following the aggression. But what happened then? Order was restored afterwards, and confirmed by the elections which followed. The Cypriot government duly took over and subsequently recognition of the state of Cyprus was reaffirmed. From the point of view of international law, the reaffirmation of its recognition is not attributive, it was merely affirmative. It is one of the rules of international law which cannot be disputed. All the elements are there for the recognition of the state of Cyprus to be maintained, ie the territory, the exercise of power and the population. From the point of view of international law there is no problem. But the Turkish delegation has always insisted on repeating that there is no legal Cypriot government, but that there is a Turkish Federated State of Cyprus, an entirely artificial creation shored up by the Turkish occupying forces.

I have allowed myself this digression, since the matter is one that has exercised this Committee considerably in the past. Moreover, an explanation is needed, and it must be possible to judge the situation in a strictly international legal order, since the Turkish government claims that the recognition of the Cypriot government is due to solely political considerations.

Mr Chairman, Ladies and Gentlemen, you will have noted that one of the main arguments in the document, which I would venture to describe as a monumental artifice, is the non-validity of the Commission's opinion. Claiming that there has been failure to apply strictly Article 28 of the Convention on Human Rights, with both sides being heard, the Turkish government concludes that the findings of the enquiry cannot be taken into consideration and that the Commission should purely and simply have referred the case with a provisional opinion to the Committee of Ministers, saying 'Gentlemen, we are unable to deal with this case, and consequently you yourselves must study it and tell us what we can do in this field'. That is the argument developed by the Turkish delegates who have presented us with this report. Furthermore, by presenting this argument they are also alluding to the 'Greek case', the second application on 10 April 1970 by the governments of Denmark Norway and Sweden, when those governments seized the Commission by telex of a further application against the Greek government. The application had a limited aim at that time. I wish to make that clear because I do not want this argument, presented surreptitiously, to result in an incorrect interpretation and any similarity between the two cases being established. The aim of the application of 10 April 1970 was limited to the protection of a specific group. The applicants were alleging violations of Articles 3 and 6 of the Convention committed during the preliminary investigations and conduct of a trial in progress in Athens before an emergency military tribunal. The aim of the application was to prevent the trial from having irreparable repercussions. The applicants confirmed their humanitarian intention by asking the President-in-office of the Commission to approach the Greek government to ensure that there was a stay of execution, in the event of capital punishment being pronounced. This was a case of applying the practice of preventive or emergency measures which the

Commission introduced without any statutory text during the first years of its operation. As you will see, Mr Chairman, Ladies and Gentlemen, the primary nature of the application was dissuasive. Its aim was preventive or dissuasive. It was lodged at a time when Greece was no longer a member of the Council of Europe, but when, under the provisions of the Convention itself, Greece continued to be a member of the Council of Europe for a further six months, ratione temporis. It was on this fact that the Commission had to rule and it did so by saying that it had been given no opportunity at all of conducting enquiries. It realised that it was impossible for it to obtain the slightest evidence which could have led to any conclusion on the alleged violations of the Convention. What is the position in the case before us now? We have had lengthy proceedings concerning admissibility; the Commission despatched a group to Cyprus and witnesses were examined. They made statements and their testimonies were regarded by an overwhelming majority of the Commission, almost unanimously, as valid and pertinent. I should like to remind you that the Commission in exercising its functions in the field of establishing facts and when laying down its procedure is completely sovereign. I repeat that when the Commission has to establish the facts it is completely sovereign, and the procedure it introduces always varies with the circumstances, with the possibilities open to it. There is no fixed rule that it has to follow in every case. It determines its procedure and establishes it in the light of possibilities, and judges whether it is able to express an opinion or not. That is a rule which has been observed and which has constituted case law in the context of our institution. Mr Chairman, in support of what I have just said, I should like to refer to a very recent decision taken by the Court of Human Rights in the Irish case, and I think that my British colleagues should be informed about this. In connection with the evidence presented in London on 20 February 1975 by witnesses G1, G2 and G3, the applicant government repeatedly objected to the procedure adopted when hearing the witnesses. According to that government, the evidence should not have been admissible because under the terms of Article 28 the investigation carried out by the Commission has to be undertaken with the representatives of the parties. There was an objection to the validity of the evidence because it was provided by civil servants, and so its credibility was open to question. These objections created a problem for the Court, namely

whether and to what extent the Commission could rule in absolutely sovereign manner and itself pass judgement, or whether the conclusions it had reached needed to be reconsidered. The question on which a decision was asked for was as follows: Is the Court competent? I quote, 'Has the Court jurisdiction to review the procedural decisions of the Commission as such and/or should the Court, when assessing the conclusions of the Commission, have regard to the procedure followed by the latter body?' The reply which concerns us, because other questions were raised which do concern us, was that! The Court found, and I quote, that it did not have jurisdiction, I repeat, it did not have jurisdiction, 'to rule on the correctness of the procedure followed by the Commission for hearing the witnesses G1, G2 and G3, in London on 20 February 1975, but that it is empowered to assess the relevance and probative value of the evidence so obtained.' Ladies and Gentlemen, this is a case of a higher Court declaring itself incompetent, (the Court of Human Rights) to examine the procedure followed by the Commission. But according to Turkey, we should here and now reject outright everything that has been established by the Commission. It is really absurd. I would have nothing further to say without fearing to diminish the importance of what I have just read out to you.

Reference has also been made in the Memorial to the nature of the Commission. It has been asked whether it is a judicial body, a quasi-judicial body, an administrative body. I would have you know that according to case law observed hitherto, the Commission is a quasi-judicial body initially, when it examines admissibility. When it establishes the facts, it then becomes a semi-political body and it seeks to bring about a friendly settlement. When it succeeds in obtaining a satisfactory result by means of this procedure, it can pronounce on the findings without taking action on the proceedings that have been started. If it does not succeed in reaching a friendly settlement, it continues in its original quasi-judicial form and expresses an opinion. Accordingly, there are three phases. Of these three phases Turkey has accepted only the first. Following the

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admissibility phase, Turkey was not willing to co-operate with the Commission. It did not wish to co-operate when it came to establishing the facts, for reasons of its own. But since Turkey shows so much concern over the political problem of Cyprus and is seeking to bring it into this case by a variety of expedients, why did it not take the opportunity, at the friendly settlement stage, of putting forward concrete proposals? It thwarted all attempts to reach a friendly settlement, so demonstrating its intransigence and immobilism in the political area as well.

And then we have the final phase, the Commission's conclusions, that is the opinion. In support of these statements, I should like to quote from a distinguished British lawyer, Mr Lauterpacht, who has this to say in International Law and Human Rights (page 447) about the competence and functions of the Commission. I quote:

'At the same time, it must remain axiomatic that the purpose of that procedure cannot be properly the sacrifice of fundamental human rights to the convenience of governments and, in the absence of most compelling considerations, even to the necessities of the state. The ultimate end of the state is to secure the rights and freedoms of the individual though it is also true, and this is a relevant factor in the situation, that the state is at present an essential condition for securing these rights. For that reason insofar as 'conciliation' is described as the principle task of the Commission, that task cannot properly be interpreted as implying a political compromise, to be invariably achieved at the expense of the individual, between human rights and the susceptibilities of the sovereign state. There cannot properly be any question of 'conciliation' thus conceived when fundamental rights of the individual are flagrantly violated. 'Conciliation' consists in attempts to remove, by non-judicial means and by direct approach to the government concerned, the ascertained cause of the injury.'



I think this passage is clear and that no comments are needed. It bears out the remarks I made just now on the limits to the Commission's action and its nature. Had the respondent state so wished, it could have taken the opportunity of demonstrating its good-will and negotiating with the Commission a friendly settlement, especially as it was at a time of stability for the Turkish government, when it had every opportunity of initiating a dialogue with the Commission.

As the Representative of Cyprus emphasised just now, Mr Chairman, the Turkish Memorial is an indictment of the Commission. It is not defensive in character as would have been logical. It is a deliberate attack on the Commission. (Interruption by the Representative of Turkey: "You are making out that I said we were attacking the Commission. I did not use the word 'attack'.) You have openly criticised the Commission's work, which is tantamount to an attack. There is no reason for you to lose your temper. Everything you have said will appear in black and white, and if, by chance, I have made a mistake, it is I who will have been at fault, and not you. Let us remain calm. I have listened to you calmly as I do to everyone, and I think I deserve the same consideration.

If what I say upsets one of the delegations, then the events and not myself are to blame. The Commission has been violently criticised, despite having done a good job of work. We must be grateful to, Mr Chairman, and indeed its members are selected by us, by our governments. It is unthinkable that we who have appointed these judges, these members of the Commission, should reproach them in this way.

There is indeed another factor referred to in the Turkish Memorial. I shall not dwell on it at length because it seems to me of minor importance, but it is a point worth noting. The Turkish Memorial alleges that Article 15 of the Convention on Human Rights should not have been applied in this case. Why not? Because a state of war existed, it was claimed that Article 15 was not applicable. The Commission's report contains a long explanation on the applicability of that article and I refer you that interpretation. But I should like to add, that Article 15 (3) is quite explicit. Prior notification of any derogation is essential, and if Turkey failed to comply when the attack on Cyprus was being prepared, it could have done so later. It preferred to disregard this provision in the Convention, although it is clear and unambiguous.

And now, Mr Chairman, with your permission and appealing to my colleagues for patience, I should like to refer to two or three paragraphs from the conclusions of the Memorial presented by the Turkish delegation. On page 93 it is stated that 'If action were to be taken by the Committee of Ministers on a report of this kind, it would not only be contrary to the principles of law, but would also lead to certain unavoidable results of immense political significance'. I should have liked my Turkish colleague to provide an explanation, Mr Chairman. What does his government mean by 'unavoidable results of immense political significance'? The text contains, does it not, a veiled threat? I feel that we cannot allow threats of this kind to go unexplained in this body. That is my first comment. It is also stated (page 93) that 'the real object of the application submitted to the Commission by the Greek Cypriot Administration is to create an opportunity for impeding the settlement of the Cyprus question'. Could the Turkish government substantiate this claim? Remembering that we stand together when human rights are violated, is it conceivable that we should all be accomplices in having thereby impeded the settlement of the Cyprus question? It is stated in the same paragraph that 'if the Committee of Ministers were to take action on the Commission's report, this would signify that it supported the conduct of the Greek Cypriots and would assuredly delay the settlement of the Cyprus question'. Mr Chairman, it is no longer a question of accusing the Commission. The member states represented here are simply being warned that if action were taken in this case, the settlement of the Cyprus problem would be delayed. Is such a declaration conceivable?

On page 94 it is stated that: 'It is therefore essential that the Committee of Ministers should make its contribution to the search for a solution through the intercommunal negotiations that have been started'. If I am right, Mr Chairman, Ladies and Gentlemen, if I interpret this statement correctly, it means that if the Committee of Ministers takes no action on the case, if it pays such a price at the expense of human rights, there would be some hope that progress could be made with the intercommunal negotiations. That is the thinking behind the proposal made in the text. Everything is now clear. No other interpretation is possible. Further on it is stated, on the same page, that 'Unfortunately the report of the Commission of Human Rights is of an entirely negative character which could prejudice that search. The Turkish government hopes

that the Committee of Ministers will be particularly alive to this aspect of the question'. We are asked to be alive to this aspect, Mr Chairman, Ladies and Gentlemen. Have we by chance not been alive in the past to the problems concerning us, particularly the protection of human rights?

I continue. Page 94 of the Memorial states that 'Turkey is a loyal member of the Council of Europe, which is devoted to its principles and has endeavoured to make a sincere contribution to its aims and ideals from the very beginning, but if the Committee of Ministers adopts an attitude which in one way or another amounts to lending support to the unjust, unfounded accusations made by an illegal administration which, unilaterally and by the use of force, has abolished a constitutional system based on international treaties, the Turkish government would be compelled to consider very seriously the consequences of such an attitude'. I ask myself the same question again, as I am sure you do, Ladies and Gentlemen, namely what are the significance and scope of this paragraph? To consider very seriously the consequences of such an attitude, should the Committee of Ministers not comply with its obligations under the Statute and the Rome Convention. This warning is a naked threat. It means that if, by chance, we tried to accomplish our task, the Turkish government would be compelled to consider very seriously the consequences of such an attitude! In other words, the proper functioning of our institutions, within the framework of human rights would be a hostile act vis-à-vis Turkey!

And then, after saying all that, the Turkish government goes on to express the hope (page 95) 'that the Committee of Ministers will consider the matter in the light of the legal and political truths .....'. After receiving the warnings referred to earlier, do we have to examine the case before us from a political angle? And what angle? Turkey had every opportunity to do so, if it had co-operated with the Commission. It had the opportunity. It chose to ignore it, attaching scant importance to the affair at the time.

My last comment concerns the text on page 95. I find it quite impossible to understand this paragraph, but maybe I shall grasp its meaning if all of you help me. It is fantastic. I quote 'Finally the Turkish government hopes that by not taking action on the report, the Committee will contribute equitably and impartially, in an indirect but efficacious way, to safeguarding human rights by preventing exploitation of the Convention and its organs for political ends, to the strengthening of European unity by forestalling possible disintegration and to the settlement of the Cyprus question by encouraging the two communities to

negotiate seriously within a very short time'. It is double Dutch. It is hard to imagine what went on in the mind of the author of that paragraph, and indeed, I wonder whether it went through the competent and responsible Turkish administrative channels. I have my doubts, and that is an advantage for the respondent state. I find this text memorable. It is indicative of the Turkish government's conception of the principle of protecting human rights.

Mr Chairman, I now come to the end of my statement and I apologise for its possibly excessive length. I have ventured to take up your time because I am anxious to provide you with details that will enable the situation to be correctly assessed, and because I want to draw the Committee's attention to certain salient features of the Turkish government's Memorial.

In my view it is the right and duty of each delegation, during this moment of reflection, to stress the points it feels are important in connection with the outcome of the affair. We are all anxious that this shall be done, and I felt it incumbent upon me to express that anxiety so far as we are concerned.

Lastly, if a just and lasting solution is to be found speedily for the political question of Cyprus - and here I turn to the respondent state - the settlement of the present case can only facilitate this task. To take the opposite attitude would be to put a spoke in the wheels. Only when the faults committed on both sides have been weighed up will it be possible to conduct frank and open negotiations. It is with this prospect in view that we ought to consider the responsibilities and powers of our Committee in dealing with the affair. The decision to be reached will indirectly but certainly make it easier to reach a negotiated solution of the Cyprus problem, and to ensure its acceptance.

In conclusion, Mr Chairman, I should like to say that the future of our institutions depends on the outcome of this case. The case is one without precedent, as I said when I began my remarks. In the matter before us, the future of the Council of Europe and the democratic institutions is at stake. Above all we must bear in mind the order of priorities for tackling our well-defined and jointly guaranteed tasks.

Mr Chairman, it is with this appeal that I should like to conclude today and thank you for the patience which you and my colleagues here have shown. Thank you, Mr Chairman".

The Representative of the United Kingdom said he did not at this stage want to comment on the substance of the case, but had two remarks on the proceedings so far.

First, he would welcome the advice of the Head of the Directorate of Human Rights on whether it would be appropriate to include in the conclusions the material cited by the Representative of Greece from a case which was sub judice before the Court of Human Rights.

Secondly, he had been somewhat embarrassed, as probably had been other delegations, by the way in which earlier interventions had raised the question of the integrity and objectivity of the Commission and the role of the Committee of Ministers. On the one hand, it had been suggested that the Turkish Memorial cast aspersions on the integrity of the Commission. On the other, it had been suggested that the findings of the Commission and the procedures by which they had been reached were beyond challenge.

Such a polarisation of the discussion could hardly be helpful to a balanced discussion of the case or to the proper discharge of the responsibilities which the convention placed upon the various organs concerned. He hoped therefore that the committee could maintain a balanced "middle of the road" approach, based on its own experience and on the widely accepted interpretations of its role under the convention which had been given from time to time by the human rights experts and the Directorate of Human Rights.

Clearly the casting of aspersions on the integrity and objectivity of the Commission could have damaging consequences. Equally clearly, delegations could not be debarred from challenging the Commission's findings, questioning the evidence on which they were based or drawing attention to wider issues including the political background. As for the role of the Committee as a whole when exercising its quasi-judicial functions under Article 32 of the Convention, it had a duty to review the case in the light of all the circumstances which might include not only the findings of the Commission, but also other considerations such as political factors. The Committee had to use its judgement and was free to disagree with the Commission. It was a self-evident over-simplification, therefore, to suggest that the issues before the committee were purely legal or that the Commission's findings must be endorsed automatically.

The Representative of Greece had also quoted a distinguished legal authority for the view that political compromises should not be made at the expense of individual human rights. But political compromises could also protect or restore human rights.

The Representative of the United Kingdom concluded that he hoped that future discussions could be guided by such a "middle of the road" approach, on the formulation of which he would be glad to have the comments of the Human Rights Director.

The Head of the Directorate of Human Rights stated that he had no observations to add to the pertinent comments made by the Representative of the United Kingdom concerning the role of the European Commission and the Committee of Ministers. With regard to the text quoted by the Representative of Greece concerning the Ireland versus the United Kingdom case which was at present before the European Court he said that the divergence of opinion between the Representative of the United Kingdom and the Representative of Greece arose from differences that existed between the legal system of the United Kingdom and continental legal systems. In fact in the United Kingdom it was forbidden to refer to information relating to a case which was pending before a court whereas on the continent information concerning an affair being dealt with by a court could be revealed. However, in the event, the information given by the Representative of Greece was, in his opinion, of a public nature and was given merely as an illustration.

The Secretary General, referring to the proposal by the Representative of Cyprus concerning a Secretariat comparative document, did not think that the Secretariat should prepare such a document in this case.

The Representative of Cyprus made the following statement:

"My statement is ready. I read it out. I have not added or omitted one word and, for this reason, I hope it will not be affected by any technical difficulties. I would like my statement to be given - I ask my colleagues to help in this - to their ministries together with the Turkish Memorial. I mentioned this in my statement at the beginning of my statement this morning. I wish, Mr Chairman, to reply to a few points. First of all, I wish to take the last point that was made by the Secretary General. He said I had mentioned in my statement that the Secretariat could probably prepare a document in which the allegations by Turkey should be set out on one side, and the findings of the Commission should be set out on the other side as a kind of easy reference. This is just for the purpose of facilitating first of all the technical aspect and of facilitating delegations in the volume of paper which is before us. But the other aspect which is more important is the political aspect. As I said before, and I shall come to the point raised by the British Ambassador, the Secretariat has the responsibility and, of course, the Committee of Ministers has a collective responsibility to defend the Commission when it feels that the Commission is criticised beyond the limits which I shall come back to. For this reason, the Secretariat could prepare its document. The Secretary General said that he would not, but he did not give any reasons. I wish to have reasons."

The Head of the Directorate of Human Rights did not consider it advisable for various reasons that a comparative document should be prepared by the Secretariat in order to make an analysis of the Commission's report and of the Memorial of the Turkish government. Furthermore, in this case, which was pending before the Committee of Ministers, both parties concerned had the opportunity to put their arguments forward, and the Commission's report, the Turkish government's Memorial and the statements made by the various delegations already gave to the Committee of Ministers the information which it needed.

The Representative of Cyprus made the following statement:

"Mr Chairman, I would like to take up the point which was made by the British Ambassador because I think he put his finger on an important point. He said that the Commission has been criticised by one side for lack of objectivity and integrity. In fact, I read out an extract from the Memorial in which it was stated - it is very short: 'If action were to be taken by the Committee of Ministers on a report of this kind, it would not only be contrary to the principles of law'. It is quite obvious from the explanations given by the Turkish government in its statement that the report which the Commission presented to the Committee of Ministers was not drawn up in conformity with the Convention on Human Rights. This is one of the points; there are many others. As I have mentioned, there are nine chapters which deal with the Commission, and if you take any two pages of the Memorial, you will find similar accusations being made. This means that the Commission has not acted in conformity with the Convention which is supposed to apply and see that it is respected. Now, where do we draw the limits? The British Ambassador said, 'Where does one draw the line?'. This is for the Committee of Ministers to decide; it is not for me to tell you. I can tell you my opinion, and it is for every delegation to make its own assessment where the line is drawn concerning the Commission's performance and the execution of its task.

Mention was also made of 'the heat of debate'. What I said was not in the heat of debate, it was a weighed statement after reflection and study of the Memorial which is before us. I do not know if the British Ambassador has had the time to read it, but I have found the time to read the whole 600 pages and my government too, and we came to the conclusions that I have presented before you, and I would like to repeat the request for its early production and distribution. Thank you, Mr Chairman.

It may be that delegates who have asked for the floor will not speak on this very point, and I would just like to say one word only if I may. I have understanding for the reasons that the acting Director of Human Rights has presented to us. I realise the delicate position in which the Secretariat finds itself and for this reason and being sure that all delegations realise themselves the sensitivity in which the Secretariat finds itself in this matter, I am not insisting on the paper. Thank you."

The Representative of the Netherlands expressed his agreement with the United Kingdom Representative.

"The Representative of the Federal Republic of Germany expressed his gratitude for the remark of the United Kingdom Representative. In fact, the deliberations and the decision on this case required wisdom, moderation and a sense of responsibility on the part of the Committee to find a fair and just solution in this case which was of great political importance. Therefore, it would lead to nothing if those concerned were to challenge the integrity or impartiality of the Commission for Human Rights or allege that the fate of the Council of Europe or its bodies responsible for the Human Rights Convention would be at stake. As to the future procedure, he said that the comprehensive document presented by the Representative of Turkey as well as the announced written reply of the Cyprus delegation required careful study by the competent ministries of his government. He supposed that, at the June meeting, both parties would attach value to a second oral plea. As his authorities would certainly not be in a position to take a stand on this matter before the summer break -- and the same might be true for other governments, in September the Ministers' Deputies would proceed to careful and thorough deliberation in which all member states represented in the Committee would take part. He was sure that all parties concerned were interested in an atmosphere appropriate to the subject and in avoiding animosity and emotion."

The Representative of Turkey made the following statement:

"I have listened with interest to the statements of Mr Pilavachi and Ambassador Kambalouris.

I wish to reserve myself the right to reply in writing in due course to these two statements and to the written answer to be prepared, according to Mr Pilavachi, by his authorities, which I will have examined by my government.

At this stage, I will confine myself to stating that, in association, the two speakers have endeavoured, for understandable reasons, to give the Committee a false picture of the Turkish government's attitude towards the Commission of Human Rights and the Committee of Ministers.

My government never thought of questioning the integrity and standing of the Commission of Human Rights. It is the work methods used before and after the investigation and the conclusions to which they led which are criticised in our Memorial. In principle, the Committee of Ministers is not compelled to follow the Commission's advice: it can confirm this advice, quash it or amend it. Our criticisms are pertinent and are aimed at revealing realities.



Admittedly, some members of the Commission have put forward criticisms, in their separate or dissident opinions, of the Commission. Who, can, therefore, deny Turkey the right to defend itself when the reputation and dignity of the Turkish state are at stake, when the pride and honour of the Turkish army -- whose traditional discipline is known to all and to whom is entrusted the task of defending the south-eastern flank of western Europe and who should, therefore, be considered in a certain measure as your army -- are unjustly questioned.

To be able to give satisfaction to Mr Pilavachi and Ambassador Kambalouris, I should, perhaps, instead of submitting a comprehensive and detailed memorandum, have signed a short paper of unconditional surrender.

In their statements, the two speakers avoided carefully touching on the fundamental questions causing them concern and dwelt, intentionally, on some formal aspects of the Memorial whose sense they distorted. Unfortunately, they used some excessive and regrettable language and made inadmissible political allusions.

Mr Pilavachi took the liberty of refuting categorically, in a single sentence, the whole content of Appendix I to our Memorial in which are described authentic facts which are generally known and confirmed in some reports and memoranda of competent international authorities. It is easy to refute realities, but impossible to cause what happened to be forgotten by persons who underwent suffering for over 11 years."

The Representative of Cyprus made the following statement:

"On the question of procedure, I have no objection, as the German delegate said, to having a further discussion in June and leaving the question of decision to September. I realise that it will be much too short for the governments to come to a final decision, having taken account of the fact that the papers have just reached us. Therefore, in June, I expect to make a very short statement, probably much shorter than the one I have made today.

My paper, which is ready, if it would facilitate the task of the Secretariat, I would just have it photocopied and distributed to the delegations so that it would cause no extra work to the Secretariat; for the translation, it is a different matter. It is in English, but it is simple English; I think everybody will understand what I am talking about.

The second point I would like to make -- the distinguished Turkish Ambassador has said in his short intervention that he reserves the right to reply to the questions that I have put. I realise that it may be difficult for him to reply now; I am looking forward to the replies in due course. The second point, he said that we have no intention of attacking the Commission. I was very glad to hear this oral statement, but I am afraid

that it does not reflect the written statement. It is alright to say orally that we are not attacking, that we do not intend to attack the Commission. Well, this should be reflected in the written paper. Either they withdraw certain statements that they have made about the Commission in which we can accept their intention of no attack on the Commission, otherwise I really do not know whether to rely on their written Memorial or on the oral statement just made very briefly."

The Representative of Greece made the following statement:

"I have followed with interest the various speeches made, perhaps as a result of certain observations both by the delegation of Cyprus and by my own delegation. I should like in the first instance to address myself to my Turkish colleague and say to him, because he complained of the terms I used, that my words were not directed at his person, for which I have much esteem. My observations are addressed directly to the text which I read and which you have all received. Let him be assured therefore once again that nothing of what I said was addressed to his person.

The Representative of Turkey referred just now to the criticisms made by certain members who expressed a dissident opinion in relation to the opinion of the large majority; in these dissident opinions there are no criticisms made in the meaning and spirit of your memorandum. It is simply a question of a legal aspect which the Maltese member and the Italian member presented. The Italian member, with regard to the application of Article 15, formulated a separate opinion and that is all; there is no invective and no direct criticism formulated against the procedure followed by the Commission and the assessment of the evidence. Consequently, it was a remark without foundation.

Now I return to the speech made by our British colleague, supported by the delegation of the Federal Republic and backed up also by our colleague of the Netherlands. I am completely in agreement with them - we should make and we are entitled to make a certain evaluation. But, as is said in the text which I read out to you just now, Mr Chairman, we cannot raise doubts about the procedure followed by the Commission.

We are not a court of human rights. In examining this case, we are a jurisdictional body which at all events does not have the same powers as the Court. We are not empowered to express any opinion on procedure. This point must be clearly established before we undertake an examination of the substance of this case. My British colleague has appealed to logic and common sense. The Court of Human Rights, the supreme legal body, is not empowered to do so. Why and how should we? That is logic. Should we look for a middle road, Mr Chairman? Imagine the time that that would take, and how many opinions would reveal

themselves here in finding a middle road and settling our approach. It would lead us to total confusion. Happily, we have a precise and recent text which helps us out of this difficulty. Just now, I did not say that we have no powers. I said that with regard to procedure as followed by the Commission, we are not empowered to place in doubt the justification of that procedure. If there is a delegation with a dissident opinion on this question, I should be grateful if it would present it. But, to contest something that is precise and to set us to steer in the dark between "Scylla and Charibdis", would be tantamount to causing confusion and I believe that that is not our task.

I simply want to say two things on a point of procedure. Firstly, precisely, that the Turkish Representative said just now that certain statements were being made completely without any text and that might cause a problem for those who read the minutes. At the beginning, the Secretariat, you yourself, Mr Chairman, invited all delegations which wished their speeches to be reproduced verbatim to say so. I wonder whether there are any delegations which, not having at the outset foreseen the course which the debate would take, did not make this wish known and yet would now like their speeches to appear verbatim. For my part, I should like at least the speeches of the parties directly concerned to appear in their entirety. That would enable us to achieve balance in the minutes. As regards the other delegations, I would say that the situation is somewhat different. Furthermore, the Turkish Representative said just now that, in this debate, he was always speaking on behalf of his government. I wonder therefore whether, whenever we discuss here, we should make it clear at the outset which delegations are speaking on behalf of their government, and which are not speaking on behalf of their government. There is the case of the British Representative who made a remark concerning procedure. He assured us that he was speaking individually, personally. Thus, the question arises constantly as to the capacity in which each representative is addressing us. It seems to me that, in a debate such as the present one, it would be very difficult to dissociate the person from what he represents. It even appears to me to be practically unthinkable. I should be very grateful to you, therefore, if this point could be cleared up for our future debates."

The Representative of Turkey recalled that he spoke only on behalf of his government, and added that, if he had referred to the criticisms put forward by some members of the Commission of Human Rights, it had never been his intention to imply that these criticisms were similar to those made by his government. He had wished, merely, to emphasise that the work methods and the conclusions of the Commission were not sacrosanct, and could be criticised when they called for criticism.

The Representative of Austria, Denmark and Norway considered that it was unlikely that a final attitude in this case could be adopted by the month of June.

The Secretary of the Committee recalled that the interventions of the Representatives of Cyprus and Greece would be reproduced verbatim in the record of the discussion, as they had requested. Other interventions would be summarised. The record would be distributed as a secret Addendum to the Conclusions.

The Representative of Greece made the following statement:

"I understand what Mr Leuprecht has just explained to us but I said that when the debate began today and certain delegations were asked to say whether they wished their words to be reproduced in extenso, I thought perhaps certain delegations might not have foreseen the course the debate was to take. As for the parties directly concerned, the minutes will show an imbalance with regard to the length and importance of the speeches. This is an omission which it would be desirable to remedy. Would it require an additional effort by the Secretariat? Certainly it would. I think that we have every reason to ask such an effort of it and that from its point of view I can conceive of no serious objection. I think that I am at the moment also speaking for my Turkish colleague who would like what he has said today to appear verbatim in the minutes.

I consider important the point of view which I have just put forward, quite apart from the general rules governing the preparation of this Committee's minutes. After all it is we ourselves who drew up these rules."

Following a brief summing up by the Chairman, the Representative of Cyprus spoke as follows:

"On this point, Mr Chairman, a slight modification of the way you have summarised my position if I may. We would very much have wished a decision in June. I have mentioned in my statement the reasons for the urgency. However, we realise the difficulty in which the Committee finds itself given the time when this Memorandum and our reply are being circulated. For these reasons, we would have no alternative but to leave the matter for decision at the meeting after the one in June. But, of course, I wish to repeat that we would very much have wished if possible a decision in June."

SECRET