



COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

25 January 2002

Advisory Committee on the Framework Convention for the Protection of National Minorities

Comments of the Government of Cyprus on the Opinion of the Advisory Committee
on the Report on the Implementation of the Framework Convention for the Protection
of National Minorities in Cyprus.



PERMANENT REPRESENTATION
OF THE
REPUBLIC OF CYPRUS
TO THE COUNCIL OF EUROPE

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Strasbourg, 19 November 2001

Dear Mr Imbert,

Re: Opinion on Cyprus by the Advisory Committee on the Framework Convention for the Protection of National Minorities

I would like to welcome on behalf of my Government, the opportunity to comment on the Opinion of the Advisory Committee on Cyprus which has already been a subject of a preliminary discussion at the meeting of the Rapporteur Group on Human Rights at its meeting last Thursday 15 November 2001.

Let me emphasize from the very beginning that we attach great importance to the Framework Convention and the mechanism provided by it for the protection of the interests of national minorities and, of course, as a Contracting Party we fully share the objectives of the Convention itself. The comments and/or remarks which are going to be made, are made in a spirit of a constructive and an ongoing dialogue with the Advisory Committee. The Advisory Committee itself is already well aware of the particular circumstances which have to be taken into account when examining the case of Cyprus. In this respect, I would like to refer in particular to the general remarks which the Advisory Committee itself made in paragraphs 7 and 8 of the Opinion with regard to the state Report submitted by the Government of the Republic of Cyprus.

Mr. Pierre-Henri Imbert
Director of Human Rights
Council of Europe

I would like to state at the outset that in general we find the Opinion fair and positive. We would like, however, to make some comments on a number of points raised in the Opinion of the Advisory Committee as follows:

1) The Republic of Cyprus does not subscribe to the view that there are parts in the Cyprus Constitution that can never change. The Constitution of Cyprus, however, was in effect decided upon by other countries in Zurich and in London. The people of Cyprus did not have a say, and under its provisions, citizens who are neither of Greek nor of Turkish origin, had the obligation to choose one of the two big communities (Greek or Turkish), and if they belong to a religious group, they must follow the collective choice of that group.

Religious Groups

2) It is in this context that a “religious group” was defined in the Constitution “as a group of persons ordinarily resident in Cyprus professing the same religion and either belonging to the same rite or being subject to the same jurisdiction thereof the number of whom, on 16.8.1960 exceeds one thousand out of which at least 500 become on 16.8.60 citizens of the Republic”.

Thereafter, any person becoming a citizen should choose a community. The result is that every citizen, whether Greek, Turk, Maronite, Armenian, Latin or of any other origin whatsoever must belong to one of the two communities. He does not have the choice of not being a member of either. But this state of affairs was imposed by the Constitution.

3) Therefore, a person from Shri-Lanka or the Philippines does not belong to a group or to a community. But if such person becomes a citizen, he should choose a community.

4) The obligation of the religious group to adhere to one of the main communities and the legal obligation to elect their representative are matters regulated by the Constitution and cannot at present be changed.

5) And since we are speaking of the religious groups, we would like to make it absolutely clear in response to some comments made in the Opinion, that the Government of the Republic of Cyprus maintains a continuing dialogue with all the religious groups in Cyprus. This continuing dialogue is maintained between the Presidential Commissioner for Religious Groups, Overseas Cypriots and Repatriates and the Representatives of all the religious groups in the House of Representatives. It should be stressed in this respect that the 3 Representatives of these religious groups is the main Consultative Committee for Minorities.

With regard to the assessment of their size, it should be noted that for election purposes the Government has perfect catalogues of all the voters for each and every religious group. I should add, however, in this respect that the 2001 Census of the population of Cyprus as a whole will hopefully be completed in few days time and it is expected that in this way we will eventually have more complete data with regard to the size of each and every national minority or religious group.

6) With regard to the reference made in the Opinion that further measures aimed at preserving and developing the culture and the identity of Maronites, Armenians and Latins, should be taken, I would like to assure you that the Government of the Republic of Cyprus is extending a very generous economic aid to their associations and churches and we are, indeed, speaking in terms of hundreds of thousands of dollars.

With regard to the education of Maronites in particular, the Government has undertaken the building of an elementary school, the budget for which is, indeed, the highest budget ever approved by the Council of Ministers for an elementary school of its kind in the Republic of Cyprus, It should be added that the building of the school is already well under way and it has been added a class for kindergarten. Furthermore, a number of practical measures such as painting of icons of the Saints of Maronites and their distribution to each and every family of Maronites has been effected with a view to keeping their religion and their identity.

With regard to the Armenians, I would also like to point out that similar measures have been taken with the painting of thousands of icons of Saint Gregory the Illuminator as well as of their national hero Andranik. All these measures are of course taken with a view to keeping their religious and cultural identity and with a view to strengthening their national identity as well.

Turkish Cypriots residing in the area controlled by the Government **Right to vote**

7) As far as the question of Turkish Cypriots living in the free areas of the Republic of Cyprus is concerned, it should be clarified from the very beginning that at the time we are speaking, there are less than 500 such Turkish Cypriots. It would be inconceivable that they could exercise the rights of the Turkish Cypriot Community. That would have amounted to an undesirable development. Imagine 500 persons to elect among themselves a Vice-President with blocking powers in respect of foreign policy, defense and security. Therefore, the only solution in accord with democratic principles is to grant them the right to participate in all elections, elect and be elected, like all other citizens, on the principle of one person, one vote.

That was not done, because the political leadership thought that such an action would have been treated as a provocative one by Turkey and Mr. Denktash. Since, however, it has been repeatedly demonstrated that neither Turkey nor Mr. Denktash are willing to proceed with a reasonable compromise in order to solve the Cyprus problem, the consideration referred to above no longer applies and it is hoped that matters will be put right in the near future.

It should be noted in this respect that the Council of Ministers has approved legislation which enables the members of the Turkish Cypriot community, citizens of the Republic of Cyprus, permanently residing in the area controlled by the Republic of Cyprus, to exercise the right to elect and to be elected at the elections of local authorities (Municipality and Community elections), under the condition that they fulfill the prerequisites set by the Electoral Law. The legislation was submitted to the House of Representatives on the 7th November 2001. It is to be hoped that it will be enacted into a Law of the Republic of Cyprus in the very near future.

Marriage

8) As far as the question of marriage is concerned, it should be noted that the prohibition was the Law inherited by the Republic of Cyprus. The organ competent under the Constitution in its strict wording to put matters right was the Turkish Communal Chamber because the prohibition was embodied in the Law concerning Turkish Family Law. One should expect that the situation will be that it should have been, that is, that such a marriage will become possible within the next few months.

It may be noted in this respect that a new Draft Law giving the right to all persons irrespective of their race or religion to conclude a civil marriage is already now before the House of Representatives and it is expected that it will be approved in the near future.

Revision of Antidiscriminatory Legislation

9) With regard to the observation in the Opinion about the need to revise antidiscriminatory legislation it should be noted that a Draft Law was prepared for giving full and effective implementation of the Convention for the Elimination of all Forms of Racial Discrimination, including the right for compensation.

Compensation for violation of Human Rights

A recent development which is very significant in this respect is a Decision of the Supreme Court (Yiallourous V. Nicolaou Civil Appeal No. 9931) recognizing the right to compensation for violations of human rights which are safeguarded by the Constitution but are not included in any law as a cause of action for compensation. It may be inferred that the rationale of the decision could be applied for violations of human rights safeguarded by Conventions.

Obligation to vote

10) With regard to observations made in the Opinion about the obligation of persons belonging to religious groups to cast a vote in the Parliamentary elections and in the election of Representatives of Minorities, it should be clarified that all Electoral Laws of Cyprus make it obligatory for a voter to go to the ballot station, obtain the ballots and put the ballot into the ballot box. It is not necessary to vote for anybody. A voter may simply leave the ballot "white" as we call it, indicating his dislike for all parties and candidates. His obligation is not to vote for anyone, but to put a ballot in the ballot box. This is also true in respect for elections of Representatives to the House of Representatives, of the Maronites, Armenians and Latins. These Representatives when elected, do not have the right to vote in the House, but only the right to speak in respect of matters concerning their community, The members of the above groups vote together with all other citizens in the elections for President, Member of Parliament, Municipal elections etc. There does not exist any kind of discrimination against the members of these religious groups.

It is also worth mentioning on this occasion that steps are being taken for according to the foreigners who are permanently residing in Cyprus but have not acquired the Cyprus nationality the right to vote at the municipal and local administration elections.

Examination of allegations of ill-treatment by the Police

11) With regard to comments made in paragraph 32 of the Opinion of the Advisory Committee, I would like to point out that things have already substantially changed in this respect. It should be noted that it is no longer a prerequisite for the appointment of criminal investigators by the Attorney-General to investigate instances of alleged commission of criminal offences by members of the police, against Turkish Cypriots or any other person, (including offences contrary to ss.242 and 243 of the Criminal code and s.3 of United Nations Convention Against Torture (Ratification Law of 1990), that a written complaint be submitted to him. This prerequisite, which existed since 1996, when the Council of Ministers had delegated for the first time to the Attorney-General, the power to appoint criminal investigators (which is afforded to it by s.4 of the Criminal Procedure Law Cap. 155) has been eradicated through a decision of the Council of Ministers, taken on 22.3.2001, adopting a recommendation made to it by the Attorney-General, to extend the ambit of the delegation, so as to afford power of appointment of criminal investigators in all instances of alleged commission of criminal offences by members of the police, coming to his knowledge in any manner whatsoever and not only upon submission to him of a written complaint.

This extension of ambit of the Attorney-General's power to appoint criminal investigators, means that the Attorney-General, can now order a criminal investigation by investigators appointed by him, concerning allegations of criminal conduct on the part of members of the police, which come to his knowledge, through *inter alia* newspaper reports, television broadcasts and reports by any organisation, committee, body or tribunal, domestic or otherwise.

12) The criminal investigators are appointed from a list compiled following applications and interviews, which is renewable every two years. Persons appointed as criminal investigators are now chosen only among former Judges and lawyers in private practice, included in the list. Moreover, in carrying out a criminal investigation, the investigators are vested with all the powers and duties afforded to criminal investigators in all cases of criminal investigation under the Criminal Procedure Law and act under the direction of the Attorney-General and in accordance with his instructions. Such criminal investigations, can lead to prosecution following decision by the Attorney-General of persons identified by the investigation as culprits, and to the trial thereof.

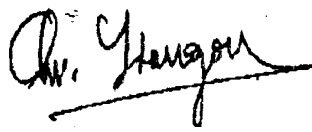
13) The Office of the Attorney-General is also in the process of completing in collaboration with the Law Commissioner, the drafting of new relevant legislation, which could contain provisions to be submitted to the Council of Ministers for approval and then to be introduced to Parliament for enactment into law. Such legislation, could *inter alia* introduce new provisions in the United Nations Convention against Torture (Ratification) Law, rendering persons in charge of police stations criminally liable for ill-treatment, contrary to s.3 of the said Law, of persons detained at the station, in instances in which a medical examination carried out immediately after arrest or admission at the station, does not disclose the presence of injuries on the person arrested or admitted at the station, but nevertheless such injuries are subsequently ascertained by medical examination, to be present after the first examination or upon release.

Concluding remarks

These are the comments we would like to make on a number of points raised in the Opinion of the Advisory Committee. It is obvious in the light of the abovementioned comments that, whereas a review of the Constitution in terms of national minorities is definitely inappropriate at this point of time in view of the fact that in the case of Cyprus there are, admittedly, particular circumstances to be taken into account, the Government of the Republic of Cyprus has already gone a long way to satisfy the opinion of the Advisory Committee that limited legislative measures may be envisaged to overcome some situations in a provisional or transitional way.

Therefore, we are of the opinion that, taking into account the comments we have made, the proposal of the Advisory Committee that the Committee of Ministers should consider the adoption of certain conclusions and recommendations with respect to Cyprus has to be amended accordingly. Needless, of course, to emphasize that we stand ready always to cooperate in this respect with a view to achieving the best results possible in the interests of all those concerned. As we have already stated at the very beginning, we are always in favour of a constructive and *bona fide* continuous dialogue and exchange of views with the Advisory Committee in this respect.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Chr. Yiangou', with a horizontal line drawn underneath the name.

Christophoros Yiangou
Ambassador / Permanent Representative