

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

63

Strasbourg, 21 August 1987

SECRET
CM/Del/Concl(87)409

ADDENDUM II
Item 17

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CONCLUSIONS OF THE 409th MEETING OF THE MINISTERS' DEPUTIES

(held in Strasbourg from 18 to 26 June 1987)

ADDENDUM II

17.

CYPRUS AGAINST TURKEY

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

(Concl(87)403/13, Letter HD/C12 of 1.2.84)

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Mr Loucaides, Deputy Attorney General of the Republic of Cyprus
made the following statement:

"Before this case is adjourned and the member States go away to give consideration to it in the recess, I should like to make some important points about the way in which they should approach the material in front of them and to request the distinguished delegates to convey to their governments this statement.

The written submissions of the parties have been filed and we are now at the stage of the preliminary discussion of the case by the Deputies with a view to preparing the case for a decision under Article 32 of the Convention. You will recall that we have made it clear from the very beginning of these proceedings that the final decision on the case should be reserved to the Ministers by virtue of their express competence under Article 32 and in accordance with Rule 2 para 3 of the Rules of Procedure for the Meeting of the Ministers' Deputies. Therefore, when the preliminary discussion of the case at the level of Deputies is concluded, the decision thereon should be left to the Ministers' meeting in November.

I would like to draw the attention of this Committee to certain procedural matters concerning the task of examining the case in conformity with Convention.

(a) Although this Committee is a political organ, its function in terms of Article 32 of the Convention is clearly judicial in nature and for that matter you are expected to act on legal considerations and not on factors of political expediency. This position is clearly supported by the very terms of Article 32, legal authors and by the Directorate of Human Rights in its Memorandum dated 8 August 1983 (paras 17-18).

(b) Although you are not in theory bound by the report of the Commission, such report constitutes, according to the memorandum just quoted, "a point of departure of the procedure which takes place before the Committee of Ministers" and therefore the solid basis of the case before you. If a solution contrary to the one reached by the Commission is to be adopted, then such a solution must be specifically reasoned on the basis of the facts and the law. In para 24 of the above memorandum it is stated in this respect that: "The very act of deciding a disputed issue of fact or law automatically implies a duty to give express reasons for preferring one of two or more possible solutions. The object of giving grounds for a decision is to subject to the reasoned criticism of the parties and, if the decision is to be published to a larger section of opinion, the reliability of the findings of fact, the correctness of the interpretation and the logic of the legal reasoning."

(c) It is submitted that there is no valid ground whatsoever for departing from the findings of the Commission. These findings are the result of a full proper and impartial investigation of the case by eminent jurists from each State represented in this Committee, after giving to the parties all possible opportunities to present their case. The fact that Turkey intentionally avoided taking part in the examination of the merits of the case does not in any way affect the correctness and validity of the findings of the Commission. To accept the contrary would amount to the absurd proposition that a State refusing co-operation in Convention proceedings like Turkey, is put in a more advantageous position than one honouring its obligations. Besides the Commission's findings are impeccable. They reflect the true and indisputable situation.

Nobody can seriously deny that there are in Cyprus over 170,000 Greek-Cypriot refugees whom the Turkish Army prevents from returning to their homes in the occupied area. Can there be any doubt about that?

Nor can it be denied that the possessions of Greek-Cypriots who were forced to leave the occupied part of Cyprus are under the actual control and authority of Turkey and have been distributed to Turks. If this is denied then Turkey should through her forces facilitate the Greek owners in regaining their properties.

Nor can anybody seriously deny that a large number of Greek-Cypriot missing persons were in Turkish custody in 1974 in the occupied area. Such missing persons were known to be alive after the coup.

Finally, nobody can deny that Turkey has, since May 1976, driven out most of the remaining Greek-Cypriots, especially those from the Karpass area who took the risk of staying in the occupied area, depriving them of their homes and giving them to settlers from Anatolia.

(d) The written submissions of Turkey before this Committee do not affect in any case the findings of the Commission. It is important in this respect to stress the fact that the material submitted by Turkey has been intentionally withheld from the Commission - obviously because it could not stand the evidential scrutiny of the investigatory machinery of the Commission under the Convention. Turkey could not distribute propaganda material before the Commission. Turkey asserted that she did not co-operate with the Commission because such co-operation would amount to recognition of the applicant government. As rightly pointed out by the Commission, this assertion has no substance. In any case such assertion becomes a completely unfounded poor pretext considering the fact that Turkey has been co-operating with this Committee in exactly the same proceedings where the Government of Cyprus is still the other party to the same case. If Turkey wished to make counter-allegations she should have done that in accordance with the provisions of Article 24 of the Convention. On the other hand, if Turkey wanted to dispute the case of Cyprus before the Commission she should have acted in a responsible manner by placing her material before the Commission at the proper stage, as she was in fact asked to do both by the Commission and by your Committee.

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Mr Chairman,

The bulky memorials of the Respondent Government submitted to this Committee exemplify the danger of this Committee allowing Turkey to by-pass the Commission. Take the most recent "pot-pourri" of 466 pages of repetition in the form of cheap propaganda, consisting of an admixture of historical inaccuracies, indeed of barefaced lies in many instances, of smear tactics, of self praise, of selective quotations and of irrelevancies. It is an attempt to divert this Committee and the foreign Ministers from the real issues clearly set out in the Commission's Report and on which they should concentrate.

Selective quotation is one of the misleading methods used by Turkey in its Memorials. For example pages 211-218 of the last Memorial take out of context anything which is critical of the Government of Cyprus during the 1964-1967 intercommunal disorders. They do not quote at all the UN Secretary General when he states that Turkish Cypriots were politically kept as refugees on Turkish orders and they omit the criticisms of Turkey in whatever they select to quote.

I must remind this Committee that the question to which States must address themselves, is whether there were new or continuing wrongs committed after 19 May 1976 for which Turkey bears responsibility, and not what glosses Turkey chooses to put on intercommunal disputes since 1963. The Commission clearly found Turkey responsible, and we advise careful reading of its Report with concentration on that, instead of looking at the misleading Turkish Memorials.

We have not ever said - as asserted by Turkey - that intercommunal political difficulties and violence began in 1974. We have said they began in the mid-nineteen fifties. Memories are short. In fact violence was initiated by Turkey, by riots in Istanbul, killing Greeks and destroying their property, and by riots in Cyprus from 1956 onwards. The June 1958 violence and concentration by Turkish Cypriots in particular areas was ordered by Turkey as part of a plan to take over part of Cyprus as a prelude to partition. It was accompanied by threats of invasion of Cyprus, Western Thrace and the Greek islands. Mr Selwyn Lloyd repeatedly warned the Greek Government of the time of these threats from the beginning of 1958. Turkey's policy is set out by her own leading Foreign Ministry officers and politicians in our Annex 2 at pp 37-61. It should be added that tragic consequences in December 1963, such as fighting in Omorphita, followed from Turks, on Mr Zorlu's and Mr Menderes' orders, driving out at least 800 Greeks of Omorphita in June 1958. But this too is irrelevant - although it shows the distorted account of history the Turkish Memorial gives.

The greatest propaganda lie is the pamphlet enclosed in the last Turkish Memorial on the so-called "Akritas Plan".

Incidentally, at p. 119, this so-called "Plan" has on it a faked photograph of a staged massacre, condemned by the Times newspaper on 9 January 1964. ("faking of atrocities for propaganda").

The reality is that, at a time when the 1960 Constitution had broken down for over two years, when the Turkish leadership of Dr Kucuk and Mr Denktash, together with the head of Turkey's military regime, were planning to establish a Turkish Republic in northern Cyprus (Turkish documents proving this were given to the UN in February 1964) and when no army could constitutionally be established in Cyprus because of a Turkish Cypriot veto, a defensive Organisation was set up by some former EOKA supporters. This Organisation's object was to defend the Greek Cypriot Community, to defeat a Turkish Cypriot coup or rebellion, and, if legal steps and a long-term political campaign ultimately failed to result in a working constitution in Cyprus, to ensure self-determination to the people of Cyprus as the 1959 constitutional settlement would have failed. Some of the former EOKA groups were in November 1963 angered or impatient at the break-down of order and incipient Turkish coup, with Turkish Cypriots known to be arming. The document, dubbed, not by its authors but by others, "Akritas Plan", was written by Mr Yorgadgis, a former EOKA fighter, leader of the Organisation, and also Minister of the Interior, to cool down hot-heads and to tell them that matters were under control. There was never at any time any "extermination plan". In particular, Turkish Cypriots were not to be attacked. The Turkish Memorial, selective though it is in printing parts of Mr Yorgadjis' document, at P. 125 shows that Turks were not to be attacked. The omitted parts emphasise that Turks were not to be attacked. Yet Turkey preferred to quote selectively and refer to the imaginary "Akritas Plan". If a lie is repeated enough, it is hoped it will be believed. Turkey invokes in support of her fanciful story for the so-called "Akritas Plan" an article by Mr Alecos Constantinides (printed twice in Turkey's Memorial pp. 128 and 229). It is sufficient to state that Mr Constantinides has been twice found guilty by the Courts of Cyprus for publishing false news and was several times sued for libels against individuals. In one case the Court stated that Mr Constantinides is representing the Turkish interests.

Again, there never were "extermination plans" by Greek officers and the National Guard. The quotations and translations from Greek in the last Turkish Memorial are misleading. What there were, as all armies have, are contingency plans for self-defence in case of a Turkish attack. No verbatim translation was provided of documents in Greek and reference to these and their interpretation is misleading. Extermination is incompatible with Greek civilisation; it is not a method which is popular with the Greeks. It seems to be however a method resorted to by other nations.

Turkey asserts that we are not genuine in our interest for the rights of the Turkish Cypriots. We have proved the contrary. In our recourse against Turkey we have reported the violations of human rights of the Turkish Cypriots in the occupied area by Turkey and have supplied evidence for that. We also asked the Commission to investigate the matter. It is not our fault that Turkey prevented the Commission from carrying out this investigation by refusing access to the occupied area so long as the Commission did not recognise the so called "state" of the Turkish Cypriots that your Committee declared to be illegal.

The far-fetched character of Turkey's defence for driving out Greek Cypriots is astonishing. At p. 10 of the last Turkish memorial they allege Greek Cypriots fled because they were guilty and feared retaliation. They fled because they feared the barbarity and the extermination methods of the Turkish Army manifested after 20 July 1974 and manifested over hundreds of years of Ottoman rule in Greece and Asia Minor. Out of those who remained behind some stayed in their land at all costs, others were held prisoners by Turkey in the Kyrenia area, or hostages in the Karpass until all Turkish Cypriots had been brought at the end of 1975, on Turkey's insistence, to the occupied area. Then most remaining Greek Cypriots were driven out. We refer you to our map at p. 28 and to Annex 5 at p. 70 onwards. The fact remains that the Greek Cypriot refugees are in any case prevented by the Turkish army from returning to their homes. We ask why are they prevented?

One thing emerges. At least, even if only impliedly, there is an admission by Turkey that the human rights of Greek Cypriot refugees have been infringed "But please don't do anything about it" is then added by Turkey.

This brings me to the Turkish allegation of abuse of procedure by Cyprus; first, in bringing this application; second, in the way we have pursued it before this Committee; and third in stating that a fourth application will be brought.

Mr Chairman,

We brought this application because 7,000 people were driven out of the Karpass after our first and second application. It was when this became clear, that we took action. It was also clear that three years had gone by and no action to stop new violations and continuing violations by Turkey was being taken. We could not, and did not, now that in October 1977 this Committee would resolve not to do anything about earlier violations by Turkey. What is wrong in bringing additional applications if no remedy is given in the meantime?

Second, this Committee well knows that our request in October 1984 to postpone consideration of the Report was at the request of the UN Secretary General to give his initiative a chance to solve the Cyprus problem on the basis of UN Resolutions asking for respect of human rights in Cyprus. Unfortunately after eighteen months, he had got nowhere - and we certainly did not know that he would on 29 March 1986 produce a document virtually dictated by Turkey setting out through her surrogate Mr Denktash her terms for surrender and legitimization of the secession of the so-called "Turkish Republic of Northern Cyprus" at the expense of the human rights of the people of Cyprus.

We admit that it was a mistake to accept adjournment of this case believing that there would be a prospect for a solution of the Cyprus problem in line with human rights so long as such solution depended on the Turkish side. But is this mistake a reason for excusing Turkey from responsibility for the mass violations found by the Commission?

From June 1984 we consistently demanded and we still demand that the matter go to the Foreign Ministers. If you can believe what Turkey says at pp. 2-3 of her Memorial - or in the rest of it - you can believe anything!

Regarding a fourth application we repeat: What is wrong in bringing new applications for continuing or new violations? The Committee cannot stop examining claims of violations of human rights because the same victims are being injured yet once again in the same country by the same aggressor by the same or similar methods.

Mr Chairman,

We ask member States to disabuse their mind of the unsubstantiated wild and irrelevant claims by Turkey and to give the victims, whose rights are at issue in this case, a remedy. Allow me to point out in this respect that in any case the material submitted by Turkey to this Committee for the first time cannot, as it stands, form the basis of any decision without investigation. In the Rules for the Application of Article 32 it is recognised that this Committee is not well equipped to undertake the task of taking evidence etc. This clearly implies that a proper investigation of facts must be carried out by organs such as the Commission or an ad hoc investigatory committee before factual findings are made by this Committee. Such an investigation has not been carried out in respect of the material submitted by Turkey to your Committee in this case. This is another reason for rejecting this material.

In these circumstances you are left to consider the case on the basis of the Report of the Commission. In fact the past practice of this Committee shows that in all inter-State cases the Report of the Commission was acted upon by this Committee. The only exception is the previous case of Cyprus v. Turkey where this Committee failed to consider whether there had been a violation of the Convention or not. In failing to do that the Committee was, according to the memorandum of the Directorate of Human Rights referred to before, acting contrary to what is required by Article 32 of the Convention (p. 10). We are confident that you will not propose the same course to the Ministers' Meeting in November, bearing particularly in mind the fact that the inaction of the Committee in the previous case has encouraged Turkey to continue violating the rights of thousands of persons in Cyprus. We are also confident that you will not propose failure to attain the majority of 2/3rds envisaged by Article 32. Such a course, reminding one of Pontius Pilate, is aptly characterised by the Directorate of Human Rights as amounting to "a real denial of justice which has always been considered as a violation of human rights" (para 49).

Mr Chairman,

The seriousness of this case needs no elaboration. It is sufficient to remind you that you have before you a well organised operation of massive violations of human rights by Turkey, leading to compulsory separation of different ethnic groups, Greek Cypriots and Turkish Cypriots, in a European country contrary to the principles and philosophy of the European Convention. Are you going to propose to your Ministers that they condone this situation? This is the crux of the matter."

The Representative of Turkey pointed out that this application merely repeated previous applications and that Mr Loucaides was repeating what he had already said on earlier occasions. He had referred to the refugees and missing persons. The Turkish authorities regretted the existing situation, for which her government was in no way responsible, and it was astonishing to see those who were totally responsible, giving lectures of humanity.

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The Greek Cypriots had discovered the problems of 1974, while the Turks had been aware of them since 1963. Mr Loucaides had referred to the draft agreement put forward by the Secretary General of the United Nations in March 1986 and had stated that it had been imposed upon him by Turkey and Mr. Denktash. In actual fact, that document was the outcome of a series of talks with both sides concerned, i.e. the Turkish and Greek Cypriots.

She quoted the following passages from the covering letter from the Secretary General of the United Nations dated March 1986.

"I am pleased to present to you herewith the draft framework agreement as it has emerged from our joint efforts, I repeat, joint efforts. When considering this text, I would urge both sides to keep the following in mind:

This framework is an indispensable step, I repeat, an indispensable step, in an on-going process. Both sides have agreed on the matters that will be negotiated after the framework agreement is accepted, and to do so in good faith and with a willingness to consider each other's concerns.

These negotiations will provide each side with ample opportunities to assure itself of the good intentions of the other. While the text commits the two parties to proceed towards an overall solution within an agreed framework, its ultimate implementation will depend on both sides being able to negotiate to their mutual satisfaction the matters on which agreement has yet to be achieved.

Acceptance of the draft framework agreement will allow, for the very first time, all the outstanding issues to be tackled in earnest and in a decisive manner as an integrated whole."

That letter was clear: the refusal of the Greek Cypriots was the negation of their earlier consent.

Mr Loucaides had expressed the wish that the case should be put to the Ministers at their November Session. Her delegation had serious legal and political reservations on the matter which she would elaborate at a later stage.

In Cyprus there were two parties concerned: the Turkish Cypriot population and the Greek Cypriot population. Nothing had happened to change that fundamental fact. Both had become members of a bi-communal Republic. From 1963 to 1974, during the tragic phase of Cyprus, this machinery collapsed as a result of the merciless persecution of the Turkish Cypriots by the Greek Cypriots, which is common knowledge by all and need not be exposed here in detail. She appealed to the common sense of her colleagues concerning the allegations over the "Akritas plan".

The only way of guaranteeing respect for human rights was to encourage contacts between the two communities under the auspices of the UN Secretary General. But the Greek Cypriots' approach was not conducive to a negotiated settlement for they were not interested in a settlement: their rejection of the Secretary General's draft framework agreement of 29 March 1986 was proof of that.

This might be their policy but it was up to the Committee to facilitate a settlement between the two and not to encourage the Greek Cypriots who preferred propaganda to serious negotiations, to abuse the Council of Europe and the Human Rights Convention machinery for political purposes.

Mr Loucaides said that, although he had been criticised for repeating himself, the fact was that he had been obliged to do so because he was talking about repeated violations of the human rights of the refugees and missing persons. What he had said was taken from the report of the European Commission on Human Rights.

He referred to paragraph 8 of the last report of the United Nations' Secretary General. There was only one solution open to Turkey in this case, that was to try to divert attention from it. The Greek Cypriots, for their part, had accepted the efforts of the United Nations' Secretary General.

How could confidence be restored between the two communities when one of them was prevented from going to one part of the island, Turkey was interfering and thousands of Turks were present on the island? Taking refuge in the inter-communal talks would mean that human rights would continue to be violated as long as those talks lasted.

The period 1963 to 1974 was a tragic time during which mistakes had been made on both sides. But Turkey could not be excused for what it had done.

There was a responsibility on the Committee of Ministers to draw the attention of governments to the flagrant violations of the principles which the Institution defended.

The Representative of Turkey declared that Turkey honoured its obligations arising from the European Convention on Human Rights and respected the Commission. But even the Commission could make a mistake and its findings were not immune to challenge.

On the substance of this second statement, she declared that since 1974 there had been two communities, each one exercising its own jurisdiction and control over its own territory. That very fact showed that there was not a single authority representing all Cypriots and speaking on their behalf. There was a "Turkish Cypriot State and Government" in the North and there was a Greek Cypriot State and Government in the South. If the situation were to change, that change would be to a bi-zonal, bi-communal Federal Republic based on absolute political equality between the two communities.

She suggested that the Greek Cypriots return to the negotiating table instead of abusing the Council of Europe as a forum for political propaganda.

The Representative of the Federal Republic of Germany made the following declaration:

"My authorities are of the opinion that the two parties should be requested to come forward with proposals as to what either side could do to settle problems of the people concerned and that a deadline for submission of such proposals should be indicated to them.

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Such a request to settle problems of the people concerned, problems which are subject matter of the present proceeding 'Cyprus against Turkey' could be based, legally on two considerations:

First, the aim of the procedure under Article 32 in the first place is the termination and exclusion of human rights violations and not the accusation of a Contracting Party.

Second, before any decision on a violation of the Convention, the attempt to achieve a friendly settlement should be made.

It is my authorities' view that the recommendation of the CDDH of which we took note this morning to introduce the legal institute of a friendly settlement into the procedure provided for in article 32 of the Human Rights Convention should be applied already here and now in this case.

The motive of my authorities for making this proposal is to help the people concerned. My authorities believe that this cannot be done by a stale compensation of guilt, but by constructive and concrete steps that are apt to relieve the situation of the people concerned.

When making this proposal it might be indicated to summarise the present attitude of the Federal Republic of Germany towards the problems of Cyprus as follows:

- the Federal Republic of Germany adheres to the unity of Cyprus;
- the present stalemate of the situation has been caused by the non-acceptance of the proposals of the UN Secretary General by the Greek Cypriot side. The reasons for this non-acceptance are not entirely but only partly convincing;
- the Federal Republic of Germany supports as ever and wholeheartedly the mediation efforts of the UN Secretary General.

As to the proposal just made by the Representative of Cyprus to seize the Committee of Ministers at its 81st meeting in November with the case 'Cyprus against Turkey', I should like to say that we cannot support this proposal."

The Representative of Greece reminded the meeting that the Committee of Ministers was faced with a serious problem whose human dimension made it a matter of urgency. Each day added to the sufferings of thousands of people. How much more time would have to go by? Time limits had already been extended for the preparation of memoranda. He invited the Turkish delegation to discuss the Commission's report here and now.

Regarding the application from the Turkish Cypriot regime, it emanated from an entity which had no existence and was not recognised anywhere except in Ankara.

It was the duty of the Committee of Ministers to find a solution to the Cyprus problem.

He appealed to all present to speed up the discussion of this case so the decision could be submitted to the Committee of Ministers at the 81st Session in November.

In reply to a question from the Representative of Norway, the Chairman said he was prepared to start discussing the substance of the case at the Deputies' 410th meeting (September 1987). He added that, under Rule No 8 of the Rules for the application of Article 32 of the Convention, he had obtained the opinion of the Representatives of the States parties to the dispute in regard to the procedure to be followed.

The Representative of Portugal stated that his authorities were in favour of a solution being sought by the Deputies and thought it desirable to avoid bringing the question before the Committee of Ministers at Ministerial level.

Decision

The Deputies agreed to resume consideration of this item at A level at their 410th meeting (September 1987).