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PART II

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CYPRUS *v.* TURKEY
 (*Application No. 8007/77*)¹

DECISION ON THE ADMISSIBILITY OF THE APPLICATION

European Commission of Human Rights. 10 July 1978

SUMMARY²: *The facts*:—Following serious unrest in Cyprus in July 1974, Turkish armed forces occupied the northern part of the island by force. A Turkish Federated State of Cyprus was set up in the occupied area in 1975, proclaiming itself to be the Turkish Cypriot member of a Federal Cyprus, the other member-State of which was to comprise the other part of the island under the control of Greek Cypriots. The Turkish Federated State of Cyprus was not recognized by the Government of the Republic of Cyprus, which continued to claim to be the sole government of the island, or by the vast majority of States. Turkish forces remained on the island. In 1977 the Government of Cyprus lodged this application against Turkey with the European Commission of Human Rights, alleging violation of human rights by Turkey in the Turkish occupied areas, which it claimed amounted to breaches of Articles 1—6, 8, 13 and 17 of the European Convention on Human Rights.³

Submissions of the Parties: The Turkish Government maintained that the application should be declared inadmissible on the grounds that:

(1) the applicant Government did not have *locus standi* to make the application, since (a) it was not the lawful Government of Cyprus, because it did not include the representative of the Turkish Cypriot community required by the Constitution of Cyprus and the treaties⁴ from which that Constitution had resulted and (b) it was not recognized by Turkey with the result

¹ An extract from the Commission's decision in earlier proceedings brought against Turkey by Cyprus (Applications nos. 6780/74 and 6950/75) appears at p. 83, below.

² Prepared by Mr. C. J. Greenwood.

³ The details of the violations alleged in the application are set out in the judgment at pp. 11—24, below. The substance of these allegations was not considered in these proceedings.

⁴ The Zurich and London Agreements of 1959 (164 B.F.S.P. (1959-60) 1,219,388,557, Cmnd. 679) and the Nicosia Treaties of 1960 (382 U.N.T.S. 8, Cmnd. 1252, 1253). These treaties, to which the United Kingdom, Greece and Turkey were parties, provided for the independence of Cyprus under a Constitution which was to maintain a balance of power between the Greek Cypriot and Turkish Cypriot communities.

that, in international law, it lacked the capacity to bring an international claim against Turkey;

(2) Turkey had no jurisdiction over the territory of the Turkish Federated State of Cyprus;

(3) the application was substantially the same as the earlier applications brought before the Commission and was thus inadmissible under Article 27(1)(b);⁵

(4) the Commission was precluded from hearing the present case by the decision of the Committee of Ministers of 21 October 1977 in the earlier proceedings;⁶

(5) domestic remedies had not been exhausted as required by Article 26 of the Convention and the six month time limit imposed by that Article had been exceeded;⁷

(6) the application was an abuse of the procedure of the Commission, since its principal aim was political propaganda (pp. 24—37 and 62—59).

The applicant Government maintained that:

(1) it was the lawful Government of Cyprus, recognized as such by the overwhelming majority of States and international organizations and operating under the Constitution, the lack of participation by representatives of the Turkish Cypriots being due to a deliberate abstention from the Government of those representatives. The non-recognition of the Government by Turkey did not affect the application of the European Convention on Human Rights;

(2) responsibility for events within the occupied areas rested with Turkey, since the Turkish Federated State of Cyprus had not received international recognition and was completely subordinate to the Turkish military authorities;

(3) the present application concerned different violations from those raised in the earlier applications. In any event, Article 27(1) did not apply to inter-State applications;

(4) the Committee of Ministers' decision had no bearing on the present application since the Committee had only been empowered to deal with the case before it;

(5) Turkey had failed to indicate that there were effective domestic remedies to exhaust. The six month rule in Article 26 did not apply where there were no domestic remedies and, in any event, the six month period had not been exceeded;

(6) the application was not an abuse of procedure, for the applicant was concerned to protect the victims of the alleged violations (pp. 37—62 and 69—71).

⁵ See p. 83, below. Article 27(1) of the Convention provides that the Commission shall not deal with any petition submitted under Article 25 which . . .

(b) is substantially the same as a matter which has already been examined by the Commission . . .

⁶ See below, p. 81.

⁷ Article 26 provides that:

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

CYPRUS *v.* TURKEY (SUMMARY)

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Held:—The application was declared to be admissible.

(1) *Locus standi*: The applicant Government had *locus standi*.

(a) The Commission had to follow international practice regarding the status of this Government. That practice revealed that the applicant Government continued to be internationally recognized as the Government of Cyprus (p. 72).⁸

(b) The Convention represented not mutual undertakings between the parties but objective obligations based upon a system of collective enforcement. Each party owed obligations not to the other parties but to persons within its jurisdiction. Proceedings under the Convention did not require direct contact between the governments concerned. It followed that the non-recognition of the applicant Government by Turkey was irrelevant (p. 72-3).

(c) Regard had to be paid not only to the Constitution of Cyprus but also to practice under that Constitution which appeared, with the consent of the international community, to establish the authority of the applicant Government. Moreover, the protection of the people of Cyprus under the Convention should not be impaired by any constitutional defect of the Cypriot Government (p. 74).⁹

(2) *Turkey's jurisdiction*: Article 1 of the Convention required each party to secure the rights and freedoms set out in the Convention to everyone “within their jurisdiction”, a phrase which included persons under their actual authority and responsibility even outside their territory. The responsibility of Turkey was thus engaged by any interference by the Turkish armed forces or officials with the rights and freedoms under the Convention of persons in the occupied areas. This responsibility could not be excluded on the ground that the events took place within the jurisdiction of the Turkish Federated State of Cyprus. Since Turkey's recognition of the Turkish Federated State of Cyprus did not affect the existence of Cyprus as a single State (as Turkey had conceded), the Turkish Federated State of Cyprus could not be regarded as an entity exercising “jurisdiction” for the purposes of Article 1 of the Convention (p. 74).¹⁰

(3) *Domestic remedies rule*: The domestic remedies requirement did not render the application inadmissible.

(a) The domestic remedies rule did not apply to complaints directed against legislative measures and administrative practices unless specific and effective remedies against legislation existed in the respondent State. The rule did not apply, therefore, to those parts of the application which complained of interference with property rights pursuant to the legislation of the Turkish Federated State of Cyprus (p. 77).

(b) For the purpose of the present complaints, remedies in domestic courts in Turkey could not be regarded as “practicable and normally functioning” (p. 78).

(c) The remedies allegedly available in the courts of the Turkish Federated State of Cyprus could not be regarded as effective since the majority of the complaints concerned Greek Cypriots who were now refugees in the

⁸ See also the decision in the earlier applications, p. 83, below, at p. 84.

⁹ See also the decision in the earlier applications, p. 83, below, at p. 85.

¹⁰ See also the decision in the earlier applications, p. 83, below, at p. 86.

south of the island and were prevented from crossing into the north, while none of the cases in the northern courts had concerned interference with property rights by public authorities or persons acting with official consent (p. 78-9).¹¹

(4) *Six month limitation period*: The six month limitation period in Article 26 continued to apply even though there were no domestic remedies available, the six months beginning to run from the date of the alleged violation. The present case, however, concerned allegations of a continuing state of affairs, so that the six month period would not begin to run until that state of affairs had ended (p. 79).

(5) *Similarity to earlier applications*: The Commission was not empowered under Article 27(1)(b) to declare an application filed by a State under Article 24 inadmissible, since to do so would involve an examination of the merits which, in an inter-State case, had to be reserved for the post-admissibility stage. In any event, the present application was not identical with the earlier ones (p. 80).

(6) *The Committee of Ministers' Decision of 21 October 1977*: The text of this decision, which related to the earlier applications, had not been officially communicated to the Commission and appeared to take no position on this application. The Commission was limited to the case before it and had to act in independence of any other body. It was thus not precluded by the decision of the Committee of Ministers from examining the present application (p. 81).

(7) *Abuse of procedure*: The Commission's power under Article 27(2) to consider an application inadmissible on this ground was, by its terms, not applicable to inter-State cases. The present application was not, in any event, an abuse of the Convention procedure (p. 82).

The text of the decision of the Commission commences on the following page.

¹¹ See also the decision in the earlier applications, p. 83, below, at p. 87.

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THE FACTS

⁽¹²⁾ I. *The application*1. *Original submissions*

On 6 September 1977 the applicant Government submitted the application to the Commission in the following terms:

“The Republic of Cyprus, Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and additional Protocols thereto requests under Art. 24 of the European Convention on Human Rights the Secretary General of the Council of Europe to refer to the Commission of Human Rights the following breaches of provisions of the Convention and First Protocol, committed by the Republic of Turkey, Member State of the Council of Europe and High Contracting Party to the European Convention on Human Rights and additional Protocols thereto.

The Republic of Cyprus contends that the Republic of Turkey continues to commit, since 18 May 1976 when the Commission of Human Rights adopted its Report in respect of Applications Nos. 6780/74 and 6950/75 for violation of human rights by Turkey in the areas occupied by the Turkish army in Cyprus, breaches of Arts. 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention¹ and Arts. 1 and 2 of the First Protocol and of Art. 14 of the Convention in conjunction with all the afore-mentioned Articles.

Turkey continues to occupy 40% of the territory of the Republic of Cyprus seized in consequence of the invasion of Cyprus by Turkish troops on 20 July 1974 (see the area in red colour of the map attached as Appendix A).

In the said Turkish occupied area the following violations of human rights continue to be committed by way of systematic conduct by Turkish

¹ The reference to Art. 2 was added by letter of 8 September 1977.

[¹² This report has been reproduced from the Yearbook of the European Convention on Human Rights, see p. 82. Only the English text (even-numbered pages) is here reproduced, the French text (odd-numbered pages) being omitted.]

state organs, in utter disregard of the obligations of Turkey under the [10
 European Convention on Human Rights, ever since the adoption of the
 afore-said Report by the Commission:

- a) *Detention or murder* of about 2,000 missing Greek Cypriots (a considerable number of them being civilians) who were last seen alive in the Turkish occupied areas of Cyprus after the invasion and in respect of whom the Turkish Authorities refuse to account or co-operate and accept suggested procedures for the tracing of them through international humanitarian organisations such as the ICRC.
- b) *Displacement of persons from their homes and land.* Turkey continues to refuse to allow the return to their homes in the Turkish occupied area of Cyprus of more than 170,000 Greek Cypriot refugees. Instead, Turkey continued to force through inhuman methods the remaining Greek Cypriot inhabitants of the said region to leave their homes and seek refuge in the Government controlled area. They, like the rest of the refugees, are still prevented by Turkey to return to their homes.
 The homes and properties of the Greek Cypriot refugees continued to be distributed amongst the Turkish Cypriots who were shifted into the Turkish occupied area as well as amongst many Turks illegally brought from Turkey in an attempt to change the demographic pattern in the Island. This distribution is now being intensified in respect of the Famagusta area.
- c) Many families were and still are separated as a result of the said measures of displacement.
- d) *Looting* of appreciable quantities of commercial commodities and other movable properties from Greek Cypriot owned businesses, houses and other premises especially in the Famagusta area.
- e) *Robbery of the agricultural produce, livestock, stocks in commercial and industrial enterprises and other movables belonging to the Greek Cypriots.* The agricultural produce belonging to Greek Cypriots continues to be collected and exported directly or indirectly to markets in several European countries. Nothing belonging to the Greek Cypriots in the occupied area has been returned and no move is being made for such return.
- f) *Seizure, appropriation, exploitation, occupation and distribution* of land, houses, enterprises and industries belonging to Greek Cypriots on an organised and permanent basis.
- g) *Wanton destruction of properties* belonging to Greek Cypriots.