

BERICHTE UND URKUNDEN

Die Zulässigkeitsentscheidung der Europäischen Menschenrechtskommission im Fall der Staatenbeschwerden Zypern – Türkei vom 26. Mai 1975

Die Europäische Menschenrechtskommission hat am 26. Mai 1975 die beiden Beschwerden¹⁾ der Regierung Zyperns für zulässig erklärt, die diese anlässlich der türkischen Intervention in Zypern gegen die Regierung der Türkei nach Art. 24 der Europäischen Menschenrechtskonvention (MRK) erhoben hatte.

In der Entscheidung, deren Gründe nachstehend abgedruckt sind, widmet sich die Kommission zunächst der Frage des *ius standi* der Beschwerdeführerin. Sie stellt in diesem Zusammenhang fest, daß Zypern trotz der in der Genfer Deklaration vom 30. Juli 1974²⁾ anerkannten faktischen Existenz von zwei autonomen Verwaltungen auf Zypern sowie der Proklamation eines türkisch-zypriotischen Teilstaates durch Vizepräsident Denktasch vom 13. Februar 1975³⁾ weiterhin Vertragspartei der MRK im Sinne des Art. 24 geblieben ist, da diese Erklärungen "did not affect, and were not intended to affect, the continuing existence of Cyprus as a State and High Contracting Party".

Zu den von türkischer Seite ferner vorgebrachten Zweifeln an der Vertretungsbefugnis der Beschwerdeführerin, die darauf gestützt wurden, daß es sich bei ihr nicht um die Regierung Zyperns, sondern nur um

¹⁾ Beschwerde Nr. 6780/74 vom 19. 9. 1974 und Beschwerde Nr. 6950/75 vom 21. 3. 1975. Beide Beschwerden waren von der Kommission am 21. 5. 1975 miteinander verbunden worden. In ihnen werden Verletzungen folgender Konventionsbestimmungen geltend gemacht: Art. 1–6, 8, 13 und 14 sowie Art. 1 des Protokolls Nr. 1.

²⁾ Gemeinsame Deklaration Griechenlands, der Türkei und Großbritanniens; abgedruckt in: Die Vereinten Nationen und Österreich, Jg. 23, 3. Quartal 1974, S. 22.

³⁾ Vgl. Archiv der Gegenwart 1975, S. 19312.

die Führer der griechisch-zypriotischen Gemeinschaft handele, die 1963 unter Verletzung völkerrechtlicher Verträge⁴⁾ die Macht an sich gerissen hätten, vertritt die Kommission die Ansicht, daß die Beschwerdeführerin international weiterhin als Regierung der Republik Zypern anerkannt werde und daher im anhängigen Verfahren als vertretungsberechtigt anzusehen sei.

Dem weiteren Argument der Türkei, die Beschwerden seien unter Verletzung der Verfassung Zyperns⁵⁾ ohne Einschaltung türkisch-zypriotischer Repräsentanten eingebracht worden, hält die Kommission entgegen, daß die jetzige Verfassungspraxis seit 1963 bestehe und von zahlreichen Staaten und internationalen Organisationen akzeptiert worden sei. Sie weist ferner darauf hin, daß dem Zweck des Art. 24 MRK entsprechend der Schutz der Rechte und Freiheiten der zypriotischen Bevölkerung nicht durch etwaige verfassungsrechtliche Mängel ihrer Regierung beeinträchtigt werden solle.

Die Kommission setzt sich sodann mit dem türkischen Einwand auseinander, da Zypern nicht zum türkischen Hoheitsbereich gehöre, sei die Kompetenz der Kommission *ratione loci* gemäß Art. 1 MRK im vorliegenden Fall nicht gegeben. Unter Hinweis auf ihre frühere Rechtsprechung stellt sie fest, daß die Formulierung "within their jurisdiction" in Art. 1 MRK keine Beschränkung der Verantwortlichkeit auf das nationale Territorium bedeute. Die Vertragsparteien seien vielmehr verpflichtet "to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad". Diese Auslegung stehe auch nicht im Widerspruch zu Art. 63 MRK, da dessen Bedeutung nicht nur in der territorialen Ausdehnung der Konvention liege, sondern auch darin, ihre Anwendung in den betreffenden Gebieten den örtlichen Notwendigkeiten anzupassen.

Mit dem Hinweis auf die von den Geschädigten bisher nicht genutzten Möglichkeiten, wegen der behaupteten Rechtsverletzungen durch türkische Hoheitsträger vor Gerichten in der Türkei bzw. vor den Militärgerichten der türkischen Streitkräfte in Zypern zu klagen, hatte die Türkei ferner die Nichterschöpfung des innerstaatlichen Rechtsweges (Art. 26 MRK) geltend gemacht. Hierzu führt die Kommission aus, daß die genannten Klagemöglichkeiten unter den gegebenen Umständen nur dann

⁴⁾ Von der Türkei wird in diesem Zusammenhang auf die Übereinkünfte von London und Zürich im Jahre 1959 und den Garantievertrag von 1960 verwiesen.

⁵⁾ Unter Hinweis auf Art. 46, 47, 49, 50, 54 und 57 der Verfassung.

als effektive Rechtsbehelfe im Sinne des Art. 26 MRK angesehen werden könnten, "if it were shown that such remedies are both practicable and normally functioning in such cases". Dies habe die türkische Regierung jedoch nicht hinreichend darlegen können.

Abschließend prüft die Kommission — mit negativem Ergebnis — die Frage eines möglichen Mißbrauchs des Beschwerderechts durch die Beschwerdeführerin. Sie stellt in diesem Zusammenhang zwar fest, daß die Mißbrauchsklausel des Art. 27 (2) MRK ihrem Wortlaut nach nur für Individualbeschwerden gelte. Es handele sich hierbei jedoch um einen allgemeinen Rechtsgrundsatz, der auch im vorliegenden Fall zu beachten, aber nicht verletzt sei.

Nach der Zulässigkeitsentscheidung richtet sich der weitere Verlauf des Verfahrens nun nach den Art. 28 ff. MRK.

Heinz-Eberhard Kitz

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

Decision of the Commission

as to the Admissibility
of Applications Nos. 6780/74 and 6950/75
by Cyprus against Turkey

The Law

1. The Commission has considered the respondent Government's four objections to admissibility in the following order:

- I. the objection concerning the locus standi of the applicant Government;
- II. the objection concerning the Commission's competence *ratione loci*;
- III. the objection that domestic remedies have not been exhausted; and
- IV. the objection that the applications are abusive.

I. As to the locus standi of the applicant Government

2. The present applications have been introduced under Art. 24 of the European Convention on Human Rights which provides that any High Contracting Party may refer to the Commission any alleged breach of the Convention by another High Contracting Party.

The Commission has first considered *ex officio* whether the applications, which were lodged in the name of the Republic of Cyprus, were brought on behalf of Cyprus as a "High Contracting Party", that is to say, whether Cyprus has been, at the time of the introduction of the applications, and continues to be such a Party.

In this connection the Commission has noted the respondent Government's reference to para. 5 of the Geneva Declaration of 30 July 1974 in which Greece, Turkey and the United Kingdom recognised the existence in practice "in the Republic of Cyprus" of "two autonomous administrations", namely that of the Greek Cypriot Community and that of the Turkish Cypriot Community. The Commission further notes that the Vice-President of the Republic of Cyprus, Mr. Rauf Denktaş, has on 13 February 1975 proclaimed a "Turkish Federated State" in Cyprus.

It is clear, however, from the terms of the above declarations that, whatever may have been their legal significance in other respects, they did not affect, and were not intended to affect, the continuing existence of Cyprus as a State and High Contracting Party to the European Convention on Human Rights. The Commission is satisfied that this is not disputed by Turkey or any other Party to the Convention.

It follows that the applications cannot be rejected on the ground that they have not been brought in the name of Cyprus as a "High Contracting Party" within the meaning of Art. 24.

3. The respondent Government submit, however, that the applicant Government are not the Government of Cyprus but only the leaders of the Greek Cypriot Community who in 1963 have taken the administration of the State into their hands in violation of the London and Zurich Agreements of 1959, the Treaty of Guarantee of 1960, and the Constitution of Cyprus which is a part of those agreements. Under international law the applicant Government are therefore not entitled to represent the Republic of Cyprus.

The Commission, in its examination of this preliminary objection concerning the *ius standi* of the applicant Government in proceedings under Art. 24 of the Convention, notes that this Government have nevertheless been and continue to be recognised internationally as the Government of the Republic of Cyprus and that their acts are accepted accordingly in a number of contexts of diplomatic and treaty relations and of the working of international organisations. In this respect the Commission observes in particular:

- that the Security Council of the United Nations, in Resolution 364 (1974) of 13 December 1974 concerning the prolongation of service of the United Nations Peace-Keeping Force in Cyprus, expressly noted the agreement of "the Government of Cyprus" — that is to say, the applicant Government in the present proceedings — and that this Government's consent was similarly recorded in a number of earlier resolutions of the Security Council since 1964 concerning the same matter;
- that representatives of the Republic of Cyprus, appointed by the applicant Government, have continued fully to participate in the Committee of Ministers

of the Council of Europe, consistently with Arts. 14 and 16 of its Statute, and that the present applications were signed by the then Deputy Permanent Representative (No. 6780/74) and the present Permanent Representative (No. 6950/75) respectively;

- that no objection was raised by any other Party to the Convention, including Turkey, when the applicant Government, acting in the name of the Republic of Cyprus, ratified in 1969 Protocols Nos. 2, 3 and 5 to the Convention and that the applicant Government, as the Government of Cyprus, similarly ratified a number of other international agreements including the European Social Charter.

The Commission therefore concludes that the applicant Government, as constituted at and since the time of lodging the present applications, are to be considered as representing the Republic of Cyprus also for the purpose of proceedings under Art. 24, and any subsequent proceedings under Art. 28, of the Convention.

4. The respondent Government further contend that the applicant Government acted unconstitutionally in bringing the present applications: in the absence of a Council of Ministers constituted in conformity with Art. 46, the decision to seize the Commission has not been taken by the organ competent under Art. 54 of the Constitution; moreover, this decision has not been approved by the Vice-President, as required by Arts. 49 and 57 of the Constitution (in this respect the respondent Government refer to two letters of 24 September and 30 October 1974 from the Vice-President to the Commission which were transmitted by the Permanent Representative of Turkey); lastly, the agents who lodged the applications were not appointed in accordance with Arts. 47 and 50 of the Constitution.

The Commission, even assuming that an inconsistency with the Constitution of Cyprus of 1960 as alleged by the respondent Government could be relevant for the validity of the applications, finds that regard must be had not only to the text of this Constitution but also to the practice under it, especially since 1963. In this respect the Commission notes that a number of international legal acts and instruments, which were drafted in the course of the above practice and presented on behalf of the Republic of Cyprus, have, as stated above, been recognised in diplomatic and treaty relations, both by Governments of other States and by organs of international organisations including the Council of Europe.

5. The Commission also considers that regard must be had to the purpose of Art. 24 of the present Convention and that the protection of the rights and freedoms of the people of Cyprus under the Convention should consequently not be impaired by any constitutional defect of its Government.

6. The Commission therefore concludes that the present applications have been validly introduced on behalf of the Republic of Cyprus.

II. As to the Commission's competence ratione loci

7. The respondent Government further contend that the Commission has no jurisdiction *ratione loci* to examine the applications, insofar as they relate to alleged violations of the Convention in the island of Cyprus. They submit that, under Art. 1 of the Convention, the Commission's competence *ratione loci* is limited to the examination of acts alleged to have been committed in the national territory of the High Contracting Party concerned; Turkey has not extended her jurisdiction to Cyprus or any part thereof, nor can she be held liable, under Art. 63 of the Convention, for any acts committed there.

8. In Art. 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone "within their jurisdiction" (in the French text: «*relevant de leur juridiction*»). The Commission finds that this term is not, as submitted by the respondent Government, equivalent to or limited to the national territory of the High Contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad. The Commission refers in this respect to its decision on the admissibility of Application No. 1611/62 — X. v. Federal Republic of Germany — Yearbook of the European Convention on Human Rights, Vol. 8, pp. 158–169 (at pp. 168–169).

The Commission further observes that nationals of a State, including registered ships and aircraft, are partly within its jurisdiction wherever they may be, and that authorised agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property "within the jurisdiction" of that State, to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged.

9. The Commission does not find that Art. 63 of the Convention, providing for the extension of the Convention to other than metropolitan territories of High Contracting Parties, can be interpreted as limiting the scope of the term "jurisdiction" in Art. 1 to such metropolitan territories. The purpose of Art. 63 is not only the territorial extension of the Convention but its adaptation to the measure of self-government attained in particular non-metropolitan territories and to the cultural and social differences in such territories; Art. 63 (3) confirms this interpretation. This does not mean that the territories to which Art. 63 applies are not within the "jurisdiction" within the meaning of Art. 1.

10. It follows from the above interpretation of Art. 1 that the Commission's competence to examine the applications, insofar as they concern alleged violations of the Convention in Cyprus, cannot be excluded on the grounds that Turkey, the respondent Party in the present case, has neither annexed any part of Cyprus nor,

according to the respondent Government, established either military or civil government there.

It remains to be examined whether Turkey's responsibility under the Convention is otherwise engaged because persons or property in Cyprus have in the course of her military action come under her actual authority and responsibility at the material times. In this respect it is not contested by the respondent Government that Turkish armed forces have entered the island of Cyprus, operating solely under the direction of the Turkish Government and under established rules governing the structure and command of these armed forces including the establishment of military courts. It follows that these armed forces are authorised agents of Turkey and that they bring any other persons or property in Cyprus "within the jurisdiction" of Turkey, in the sense of Art. 1 of the Convention, to the extent that they exercise control over such persons or property. Therefore, insofar as these armed forces, by their acts or omissions, affect such persons' rights or freedoms under the Convention, the responsibility of Turkey is engaged.

III. As to the exhaustion of domestic remedies

11. Under Art. 26 of the Convention the Commission may only deal with a case after all domestic remedies have been exhausted, according to the generally recognised rules of international law. This rule applies not only in individual applications lodged under Art. 25 but also in cases brought by States under Art. 24 of the Convention (cf. the Commission's constant case-law and, in particular, its decision on the admissibility of Application No. 788/60 — Austria v. Italy — Yearbook 4, pp. 116–183 [at pp. 148–153]).

The rule requiring the exhaustion of domestic remedies means in principle that remedies, which are shown to exist within the legal system of the responsible State, must be used and exhausted in the normal way before the Commission is seized of a case; on the other hand, remedies which do not offer a possibility of redressing the alleged injury or damage cannot be regarded as effective or sufficient and need not, therefore, be exhausted (cf. the Commission's decision on the admissibility of Application No. 712/60 — Retimag v. Federal Republic of Germany — Yearbook 4, pp. 384, 400).

12. The respondent Government submit that, under Turkish law, a number of effective remedies are available in criminal, civil, disciplinary and administrative proceedings to persons claiming to be the victims of violations by Turkish authorities of individual rights and freedoms as alleged in the present applications; such remedies can be brought either before the competent judicial authorities in Turkey or before the military courts of the Turkish forces in Cyprus.

13. With regard to the question whether the remedies indicated by the respondent Government can in the circumstances of the present case be considered as effective, the Commission notes that the applicant Government's allegations of large-scale violations of human rights by Turkish authorities in Cyprus relate to a military action by a foreign power and to the period immediately following it.

It is clear that this action has deeply and seriously affected the life of the population in Cyprus and, in particular, that of the Greek Cypriots who were living in the northern part of the Republic where the Turkish Troops operated. This is especially shown by the very great number of refugees who are at present in the south of the island.

14. In these circumstances the Commission finds that remedies which, according to the respondent Government, are available in domestic courts in Turkey or before Turkish military courts in Cyprus could only be considered as effective "domestic" remedies under Art. 26 of the Convention with regard to complaints by inhabitants of Cyprus if it were shown that such remedies are both practicable and normally functioning in such cases. This, however, has not been established by the respondent Government. In particular, the Government have not shown how Art. 114 of the Constitution of Turkey can extend to all the alleged complaints or how any proceedings could be effectively handled given the very large number of these complaints.

15. The Commission therefore does not find that, in the particular situation prevailing in Cyprus since the beginning of the Turkish military action on 20 July 1974, the remedies indicated by the respondent Government can be considered as effective and sufficient "domestic remedies" within the meaning of Art. 26 of the Convention. It follows that the applications cannot be rejected for non-exhaustion of domestic remedies in accordance with Arts. 26 and 27 (3).

IV. As to whether the applications are abusive

16. The respondent Government finally submit that the applications constitute an abuse of the procedure provided for by the Convention in that they are unsubstantiated and contain accusations of a political nature, such as references to the "invasion" and "occupation" of Cyprus by Turkey.

17. The Commission has already held in a previous case (decision on the admissibility of certain new allegations in the First Greek Case, Yearbook 11, pp. 730, 764) that the provision of Art. 27 (2), requiring the Commission to declare inadmissible any application that it considers abusive, is confined to individual petitions under Art. 25 and therefore inapplicable to inter-State applications under Art. 24 of the Convention. It follows that the present applications cannot be rejected under the said provision.

18. The Commission notes, however, that the respondent Government, by inviting the Commission to reject the applications as abusive, invoke a general principle according to which the right to bring proceedings before an international instance must not be abused. They consider that such a principle has been recognised in the Commission's above decision in the First Greek Case.

In that decision the Commission, "assuming that such a general principle exists and is applicable to the institution of proceedings within the framework of the Convention", found that "the alleged political element of the new allegations, even if established, is not such as to render them 'abusive' in the general sense of the word" (loc. cit.).

As regards the present applications the Commission does not accept either of the contentions of the respondent Government that they are an abuse of the Convention process. The Commission, even assuming that it is empowered on general principle to make such a finding, considers that the applicant Government have, at this stage of the proceedings, provided sufficient particularised information of alleged breaches of the Convention for the purpose of Art. 24. The Commission further considers that the terms in which the applicant Government have characterised the Turkish intervention in Cyprus cannot be regarded as "abusive" in the general sense of the word.

Now therefore the Commission, without prejudging the merits of the case,

Declares the applications admissible.

Secretary to the Commission
(A. B. McNULTY)

President of the Commission
(J. E. S. FAWCETT)