Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 11727
30 September 2008

Situation in Cyprus

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Boriss CILEVIČS, Latvia, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Political Affairs Committee, Mr Joachim Hörster (Germany, EPP/CD), on his excellent report and supports by and large the proposed draft resolution.

2. The Committee on Legal Affairs and Human Rights wishes nevertheless to make a few amendments further stressing that efforts to reach a settlement of the Cyprus issue must be conducted in a manner compatible with international and human rights law.

B. Proposed amendments to the draft resolution

Amendment A : (to the draft resolution)

In the draft resolution, in paragraph 9, after the words "that these activities", replace the words "must not be misused" by the following:

> *"are consistent with United Nations Security Council Resolution 541 (1983) and 550 (1984) on Cyprus and cannot be misused"*

Amendment B : (to the draft resolution)

In the draft resolution, before sub-paragraph 11.1., add the following sub-paragraph:

> *"The Assembly encourages all parties and countries that are directly or indirectly linked to the Cypriot question to develop and to maintain a climate of reconciliation, confidence and mutual respect, as well as to avoid all action or declaration that could harm the ongoing constructive dialogue and accentuate tensions."*

Amendment C : (to the draft resolution)

In the draft resolution, in sub-paragraph 11.2.1., replace the words "their own ports" by the following:

> *"ports in the northern part of the island, and over which the Government of the Republic of Cyprus does not exercise effective control, it being understood that this direct trade is conducted in a manner compatible with the Resolutions of the United Nations Security Council on Cyprus and Protocol No 10 to the Accession Treaty of Cyprus to the European Union"*

1. See Doc. 11699 tabled by the Political Affairs Committee.

Amendment D : (to the draft resolution)

In the draft resolution, in sub-paragraph 11.3.2., replace the words “put on hold” by the following words: “put an end to”.

Amendment E : (to the draft resolution)

In the draft resolution, after sub-paragraph 11.3.3., add the following sub-paragraph:

> *“calls upon the authorities of the Republic of Cyprus and upon the authorities of the Turkish Cypriot Community to protect all religious monuments and allow restoration work to take place whenever necessary;”*

Amendment F : (to the draft resolution)

In the draft resolution, at the beginning of sub-paragraph 14.1., insert the following words:

> *“respect United Nations Security Council Resolutions on Cyprus and”*

Amendment G : (to the draft resolution)

In the draft resolution, at the end of sub-paragraph 14.3, add the following words:

> *“, as well as from the Court’s other judgments concerning citizens of the Republic of Cyprus, namely the Loizidou and Xenedis-Arestis judgments”*

C. Explanatory memorandum by Mr Boriss Cilevičs, rapporteur

1. Like the Political Affairs Committee, I welcome the renewed political process between the two Cypriot parties and calls to seek reunification of the island. I am convinced that there is no contradiction between this renewed political process and the respect for international law and human rights. On the contrary, a lasting political solution must always be based on mutually accepted principles of fairness, including the respect of the fundamental human rights of all concerned.

2. For this reason, I should like to put forward a few amendments to the draft resolution reaffirming more explicitly that efforts to reach a settlement of the Cyprus issue must be conducted in a manner compatible with international and human rights law.

3. As far as international law is concerned, it should be recalled from the outset that the UN Security Council, in Resolution 541 (1983), called upon “all States not to recognise any Cypriot State other than the Republic of Cyprus” and in Resolution 550 (1984) it called upon all States not to recognise the purported State of the “Turkish Republic of Northern Cyprus”.

4. It is also laid down in EU primary law, namely the Treaty of Accession (of Cyprus) to the EU and its Protocol No 10 on Cyprus, that the Republic of Cyprus includes the whole island, with a single government (the Government of the Republic of Cyprus), even though the latter does not exercise effective control over the whole country[2]. This must be kept in mind in the context of the present opinion which refers to EU relations with the northern part of the island.

5. I also find it necessary, in the framework of the settlement of the Cyprus issue, to stress the need to respect human rights and settle outstanding humanitarian questions, in particular the issue of missing persons. The need to preserve cultural heritage in both parts of the island should also be a major concern.

6. Finally, I should mention here that the Council of Europe Commissioner for Human Rights, Mr Thomas Hammarberg, visited Cyprus in July 2008 to review some of the most important human rights issues. He is currently finalising a report which will focus on matters pertaining to asylum and trafficking in human beings, as well as detention of migrants in the Republic of Cyprus. I understand he is also working on a second document, which would contain considerations on human rights issues that are specifically linked to the conflict and to the lasting division of the island.”

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2. In November 1983, the Committee of Ministers of the Council of Europe also condemned the proclamation of statehood and called upon all states to deny recognition to the “TRNC”. A position to similar effect was taken by the European Community and the Commonwealth Heads of Government.

Amendment A:

Explanatory note:

While the Assembly should certainly call for new goodwill steps to allow increased international trade, educational, cultural and sporting contacts of the Turkish Cypriot community to facilitate the latter's integration into Cyprus and Europe, there is a need to reaffirm more clearly that these activities must first and foremost be in conformity with international law, i.e. compatible with UN Security Council Resolutions on Cyprus, according to which the Republic of Cyprus includes the whole island, with a single government (the Government of the Republic of Cyprus).

Amendment B:

Explanatory note:

All parties and countries that are directly or indirectly linked to the Cypriot question should be encouraged to develop and to maintain a climate of reconciliation, confidence and mutual respect, as well as to avoid all action or declaration that could harm the ongoing constructive dialogue and accentuate tensions.

Amendment C:

Explanatory note:

The current wording in the text of the Political Affairs Committee "their own ports" (meaning the ports under the authority of the Turkish Cypriots) is contrary to international law. Turkish Cypriots do not have their "own" ports. There are ports in the northern part of the island over which the Government of the Republic of Cyprus does not exercise effective control. In 1974, the Government of Cyprus declared the ports in these areas to be closed. Under international law, every state has the right to regulate access to its ports and other states have the duty to respect this decision.

The text as it stands could be misinterpreted as implying recognition in the areas concerned of "authorities" other than the Government of the Republic of Cyprus. As this is surely not the intention of the Assembly, clarification by the amendment is necessary.

I support the call upon the authorities of Cyprus to lift objections to the implementation of the European Commission's Direct Trade Regulation allowing free direct trade between Turkish Cypriots and the EU. Nevertheless, in this context, it is also worth adding that the direct trade in question should be conducted in a manner compatible with international and EU law, namely United Nations Security Council Resolutions on Cyprus and Protocol No 10 to the Accession Treaty (of Cyprus) to the European Union, which regulate the application of the *acquis* in areas where the Government of the Republic of Cyprus does not have effective control and is therefore relevant in the context of such trade Regulation[3].

Amendment D:

Explanatory note:

The text as it stands ("put on hold") is not in conformity with the case-law of the European Court of Human Rights based on the *Loizidou v. Turkey* judgment of 1996[4].

According to the Strasbourg Court's case-law, Greek-Cypriot owners of immovable property in the northern part of Cyprus must still be regarded as the legal owners of the said property.

Consequently, authorities of the Turkish Cypriot community should be called upon to "put an end to" the sales of, and construction on, Greek Cypriot properties in the northern part of Cyprus, and not merely to put such transactions "on hold", which would imply that they can resume at a later date.

Amendment E:

Explanatory note:

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3. The *acquis* has been suspended there by virtue of Article 1(1) of Protocol No 10 to the Accession Treaty. Article 1(2) of this Protocol provides a specific legal basis for withdrawing the suspension of the *acquis* in the areas.
4. Judgment of 18.12.1996 (merits), Interim Resolutions DH(99)680, DH(2000)105, ResDH(2001)80.

The authorities of the Republic of Cyprus and those of the Turkish Cypriot Community should be called upon to protect all religious monuments and allow restoration work to take place whenever this is necessary. Indeed, there is a need to respect and preserve cultural heritage in both parts of the island, in conformity with applicable international law.

Amendment F:

Explanatory note:

As already indicated, efforts to reach a settlement of the Cyprus issue must be conducted in a manner compatible with UN Security Council's Resolutions on Cyprus.

Amendment G:

Explanatory note:

The issue of missing persons is crucial in the context of the Cyprus issue. I therefore very much welcome the call of the Political Affairs Committee to Turkey "to cooperate effectively in the efforts to ascertain the fate of the missing persons in Cyprus and to fully implement the judgment of the European Court of Human Rights in the case of Cyprus v. Turkey (2001) pertaining to the tragic problem of the missing persons and their families and abide by and fulfil, without any further delay, its obligations and duties stemming from the aforementioned judgment".

In the same way as the judgment in the above-mentioned inter-state case, judgments in cases brought by individual citizens, including the *Loizidou v. Turkey*[5] and *Xenedis-Arestisv. Turkey*[6] judgments which concern property issues should also be fully implemented by Turkey without any further delay. I am fully aware of difficulties the authorities of Turkey may face in this process, especially as concerns the execution of these judgments. Nevertheless, they should devise ways and means to overcome difficulties with a view to ensuring, without any further delay, the full implementation of the judgments of the European Court of Human Rights concerning citizens of the Republic of Cyprus.

When reviewing the execution of the *Loizidou* judgment, the Council of Europe Ministers' Deputies, on 17 September 2008, considered that there was still a need to clarify "why the restitution could not be envisaged in the present case" and decided to resume consideration of this case at their meeting of 2-4 December 2008, in the light of additional information to be provided by the Turkish authorities on this issue[7].

As regards the *Xenedis-Arestis* judgment, the Ministers' Deputies, also on 17 September 2008, recalled that the amounts awarded in the judgment of the Court of 7 December 2006 have been due since 23 August 2007 and called upon Turkey to pay these amounts, as well as the default interest due, without further delay. They further decided to resume consideration of the examination of the issues raised in this case at their meeting of 2-4 December 2008, if necessary, on the basis of a draft interim resolution.

Concerning the case of Cyprus v. Turkey[8] mentioned above, the Ministers' Deputies, on 17 September 2008[9]:

– *as regards the issue of missing persons*, *inter alia*, "reaffirmed the need for the Turkish authorities to take additional measures to ensure that the effective investigations required by the judgment are carried out, and urged them to provide without further delay information on the concrete means envisaged to achieve this result".

– *as regards the issue of the property rights of displaced persons*, "took note of the information provided by the Turkish delegation concerning the possibilities offered by exchange of property as a means of redress in cases before the "Immovable Properties Commission", but nonetheless noted, once more, with regret, that no information has been provided on the questions relevant to the execution of the

5. Judgment of 18.12.1996 (merits), Interim Resolutions DH(99)680, DH(2000)105, ResDH(2001)80.
6. Judgments of 22.12.2005, final on 22.03.2006 and of 07.12.2006, final on 23.05.2007, CM/Inf/DH(2007)19.
7. See the full text of the Deputies' decision.
8. Cyprus v. Turkey, judgment of 10.05.2001 – Grand Chamber; CM/Inf/DH(2008)6, CM/Inf/DH(2007)10/1rev, CM/Inf/DH(2007)10/3rev, CM/Inf/DH(2007)10/6, CM/Inf/DH(2008)6/5; Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25.
9. See the full text of the Deputies' decision. The Ministers' Deputies decided to resume consideration of this case at their meeting of 2-4.12.2008.

judgment of the Court as they were specified and clarified in the information document CM/Inf/DH(2008)6/5, and reiterated their insistent invitation to the Turkish authorities to reply to these questions without further delay".

These references to the decisions of the Committee of Ministers show that these judgments are still not properly executed and it is therefore the Assembly's duty to remind all sides that the remaining issues must be resolved without further delay. The prompt execution of the Court's judgments is after all the cornerstone of the system of human rights protection in Europe, and has always had the Assembly's unconditional support.

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Reporting committee: Political Affairs Committee

Committee for opinion: Committee on Legal Affairs and Human Rights

Reference to committee: Resolution 1054 (1995), Resolution 1267 (2002)

Opinion approved by the committee on 30 September 2008

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Maffucci-Hugel, Ms Heurtin