Orig. English

Application No. 9940/82
France v. Turkey

Application No. 9941/82
Norway v. Turkey

Application No. 9942/82
Denmark v. Turkey

Application No. 9943/82
Sweden v. Turkey

Application No. 9944/82
Netherlands v. Turkey

REPORT OF THE COMMISSION

(Adopted on 7 December 1985)

Introduction

1. This Report relates to five applications which were lodged against Turkey by France (No. 9940/82), Norway (No. 9941/82), Denmark (No. 9942/82), Sweden (No. 9943/82), and the Netherlands (No. 9944/82) on 1 July 1982 under Art. 24 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The applications were registered on the same day.

2. In the proceedings before the Commission the Parties were represented by their Agents as follows (1):

French Government:	Mr. Gilbert Guillaume
Norwegian Government:	Mr. Egil Amlie
Danish Government:	Mr. Niels Boel
Swedish Government:	Mr. Hans Björk
Netherlands Government:	Mr. S.H. Bloembergen
Turkish Government:	Mr. Suat Bilge

3. On 6 December 1983 the Commission, following written and oral proceedings, declared the applications admissible (2). It then proceeded to carry out its tasks under Art. 28 of the Convention which provides as follows:

> "In the event of the Commission accepting a petition referred to it:
>
> a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
>
> b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

4. The Commission found that the Parties had reached a friendly settlement of the case and on 7 December 1985 it adopted this Report which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and of the solution reached.

(1) A full list of the parties' representatives is provided in the Appendix.
(2) This decision is to be reported in Decisions and Reports, Vol. 35.

The following members of the Commission were present when the report was adopted:

MM. G. SPERDUTI, Acting President
C.A. NØRGAARD
J.A. FROWEIN
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
J.A. CARRILLO
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
J. CAMPINOS
H. VANDENBERGHE
Mrs. G. THUNE

PART I

Statement of the Facts

5. The applications related to the situation in Turkey between 12 September 1980 and 1 July 1982. They recalled that, in September 1980, the Turkish Parliament was dissolved, that its powers were transferred to the National Security Council and that full executive power was transferred to the Chairman of the Council.

6. The applicant Governments submitted that the Law on the Constitutional Order of 27 October 1980 and a number of laws and decrees made under it abrogated the constitutional protection of fundamental rights.

7. The applicant Governments alleged violations of:

- Art. 3 of the Convention, in that detainees were tortured or subjected to inhuman or degrading treatment, and that such cases constituted a widespread and systematic practice;

- Arts. 5 and 6 of the Convention with regard to detention and criminal proceedings under martial law; and

- Arts. 9, 10 and 11 of the Convention, with regard to restrictions on political parties, trade unions and the press.

8. The applications also referred to the notice of derogation given by the Turkish Government under Art. 15 of the Convention and submitted that, whatever situation existed in Turkey prior to 12 September 1980, a public emergency threatening the life of the nation did not obtain there on 1 July 1982. Further, the legislation, administrative measures and practices complained of went beyond what was strictly required by the exigencies of the situation. Moreover, under Art. 15, para. 2, a right of derogation could not be invoked as a justification for violations of Art. 3. The applicant Governments also submitted that Turkey did not comply with her obligation under Art. 15, para. 3, to keep the Secretary General of the Council of Europe fully informed of the measures taken and the reasons therefor.

9. The respondent Government contested the above allegations. They submitted that Turkey validly exercised her right of derogation in accordance with Art. 15 of the Convention. A state of veiled war or public emergency threatening the life of the nation existed at the time of the military intervention and continued to exist during the above period. Against a background of steadily increasing terror, brought about by conflict between the extreme right and the extreme left, Parliament was paralysed and no longer in a position to exercise its responsibilities.

10. The respondent Government further submitted that the measures taken were not beyond the exigencies of the situation. A programme, whose aim was the establishment in Turkey of a true democracy and the re-establishment of human rights, was carried out, in accordance with the time-table announced by the Head of State, by the Government which took power on 12 September 1980.

11. The respondent Government denied that an administrative practice of torture or ill-treatment of prisoners existed. The martial law authorities had given numerous written directives to prevent maltreatment. In a number of cases persons responsible for such treatment had been punished.

Proceedings before the Commission

12. On 1 July 1982 the Acting President of the Commission, proceeding under Rule 39 of the Commission's Rules of Procedure, brought the applications to the notice of the Government of Turkey and invited them to submit written observations on the admissibility of the applications before 5 October 1982. The respondent Government's request for an extension of this time-limit until 31 January 1983 was granted by the Commission on 4 October 1982.

13. The respondent Government's observations arrived on 31 January 1983, the applicant Governments' observations in reply on 15 April 1983.

14. A request by the respondent Government for leave to reply in writing to the applicant Governments' submissions was granted by the Commission on 3 May 1983. The respondent Government's memorial arrived on 5 August 1983.

15. On 3 May 1983 the Commission also decided to hold a hearing on the admissibility of the applications in October 1983. The respondent Government's request for a postponement of the hearing until December 1983, on the ground that elections would be held in Turkey on 6 November 1983, was refused by the Commission on 5 July 1983.

16. On 11 July 1983 the Commission ordered the joinder of the applications under Rule 29 of its Rules of Procedure.

17. A further request by the respondent Government for an adjournment of the hearing, on the ground that an indispensable adviser of the Government had fallen seriously ill, was granted by the Acting President on 12 September 1983. The Commission decided on 6 October 1983 to hold the hearing on 2, 3 and 5 December 1983.

18. On 6 October 1983 the Commission accepted from the respondent Government a "Memorandum of Law" submitted by them on 14 September 1983.

19. On 6 December 1983 the Commission, having heard the Parties' oral submissions on 2, 3 and 5 December and having deliberated on 5 and 6 December, declared the applications admissible.

20. Following this decision the Commission, acting under Art. 28 of the Convention through delegated members appointed under Rule 28, para. 2, of its Rules of Procedure, held a meeting with the Parties on 14 May 1984. Proceeding under Art. 28, para. a, of the Convention the Delegation decided as a first step to hear 12 witnesses proposed by the applicant Governments in relation to their allegations under Art. 3 of the Convention. This hearing, in which the respondent Government did not participate, took place in Strasbourg from 25 to 27 June 1984.

The Commission also invited the Parties to file their observations on the merits of the remaining allegations. The applicant Governments' observations were submitted on 12 July 1984, the respondent Government's in reply on 20 November 1984.

21. In the meantime on 6 March 1984 the Commission considered the state of proceedings under Art. 28, para. b, in the light of a letter from the respondent Government of 13 January 1984 and the applicant Governments' reply of 24 February 1984.

The Commission recalled the respondent Government's reference, made at the hearing in December 1983, to the evolution of the situation in Turkey since the introduction of the applications in July 1982. The respondent Government's representatives had, at the hearing, referred to the election of the Turkish Parliament on 6 November 1983 and to the dissolution of the National Security Council, as showing a progressive restoration of democracy in Turkey; they had emphasised that the prevailing legislation was again subject to the authority of the elected Turkish Parliament and that most of the laws and decrees which formed the basis of the applications were no longer in force.

The Commission now invited the respondent Government to indicate any proposals which they wished to make in this context under Art. 28, para. b, and to provide information concerning the further evolution of the above situation in Turkey, since the hearing, and relating to the application of the rights and freedoms guaranteed by the Convention.

22. The respondent Government replied in a letter dated 8 May 1984 and, at the meeting on 14 May 1984 (cf. para. 20 above), an oral exchange of views took place between delegated members of the Commission and the Parties' representatives. At a further separate meeting, between the Commission's Delegation and the applicant Governments' representatives on 9 July 1984, the latter stated preliminary views on basic elements to be included in a friendly settlement. These were considered by the Commission on 11 July 1984 and, as approved by the Commission, brought to the respondent Government's attention in a letter dated 12 July 1984.

23. At a separate meeting with the Commission's Delegation on 2 October 1984 the respondent Government accepted the above items as a starting point for more formal discussions and put forward their own detailed views on the question of a settlement.

24. On 10 October 1984 the Commission considered the state of its proceedings under Art. 28 in the light of the separate discussions which it had had with the Parties' representatives. It decided:

- to convene a meeting between the Delegation and the representatives of both Parties in Strasbourg in November 1984, and

- to inform the Parties of its intention in the exercise of its task to send a Delegation to Turkey in January 1985. It was envisaged that this mission would also include a visit to Turkish prisons.

25. At the Delegation's meeting with both sides on 30 November 1984 the respondent Government stated their proposals for a settlement. The applicant Governments reserved their position.

26. On 3 December 1984 the respondent Government's Agent addressed a letter to the Commission expressing the view that a visit to Turkey would facilitate the reaching of a settlement of the case in accordance with Article 28, paragraph b, of the Convention.

27. On 12 December 1984 the Commission decided to send a delegation to Turkey (1) in order to continue its efforts under Art. 28, para. b, and to gather first-hand information concerning the present situation as it relates to Turkey's obligations under the Convention.

28. During its visit to Turkey (27 January to 2 February 1985), the Delegation had discussions with the Minister of Justice, Members of the Grand National Assembly and Government officials, and with the President and Members of the Military Court of Cassation and the Military Prosecutor General at that Court. It also interviewed members of the legal profession, academics, trade unionists and journalists. The Delegation visited Military Detention Centres in Diyarbakir (Diyarbakir Prison), Istanbul (Metris and Sagmalcilar Prisons) and Ankara (Mamak Prison) where, after briefings by the military prison commanders, it was able to talk in private with prisoners and see the places it wished to see.

29. On 22 February 1985 at a subsequent separate meeting with the Delegation in Strasbourg, the applicant Governments made further suggestions for a settlement, which were communicated to the respondent Government.

(1) The Delegation was composed of MM. G. Sperduti, J.A. Frowein, Sir James Fawcett, MM. S. Trechsel and J.A. Carrillo.

30. On 4 March 1985, at a separate meeting with the respondent Government, the Delegation outlined a settlement proposal with regard to the applicant Governments' allegations under Art. 3 of the Convention.

31. This proposal was further elaborated during the Delegation's discussions with both Parties on 18 and 19 April 1985.

32. On 16 May 1985 the respondent Government communicated their outline for a settlement of the case. The applicant Governments' views on this proposal were stated in a communication of 31 May 1985.

33. On 1 July 1985, at a further meeting with both sides, the Commission, through its Delegation, informed the Parties of its preliminary views.

34. On 2 July 1985 the Parties presented their joint proposal for a settlement of the case which the Commission considered on 3 July 1985. On 5 July 1985 the Commission addressed a letter to the Agents of the Parties in which it recorded its own clarifications to the text submitted to it on 2 July 1985. It invited the Parties to state their position before 31 August 1985.

35. On 16 August 1985 the applicant Governments requested an extension of the above time-limit. On 3 October 1985 the applicant Governments furthermore proposed certain amendments and requested further clarifications with regard to the proposed settlement. Following contacts between the Acting President and the Parties the proposed settlement was further discussed at a meeting between the Delegation of the Commission and the Parties which took place in Paris on 22 and 23 November 1985.

36. On 5 and 6 December 1985 the Parties informed the Commission that they had reached a friendly settlement.

PART II

Solution reached

37. Following its decision on the admissibility of the application, the Commission placed itself at the disposal of the Parties with a view to securing a friendly settlement in accordance with Art. 28, para. b, of the Convention and invited the Parties to submit any proposals they wished to make.

38. A series of meetings took place between the Parties and the Delegation of the Commission, as described above.

39. After discussions which the Parties had between themselves the Agents of the six Governments in the case presented to the Delegation of the Commission a proposed joint outline for a settlement. In its substantive parts, and in its final form, it reads as follows:

"A. As to matters relating to Article 3 of the Convention

1. The State Supervisory Council set up under Article 108 of the Turkish Constitution will be instructed to have special regard to the strict observance by all public authorities, including the military and civilian detention houses and prisons and police headquarters, of obligations assumed by Turkey under Article 3 of the European Convention on Human Rights.

2. The Government of Turkey prevailing itself from Article 57 of the Convention, will report on 1 February 1986, 1 July 1986 and 1 October 1986, to the European Commission of Human Rights, via the Secretary General of the Council of Europe, of the measures by which the internal law and practice of Turkey ensures the effective implementation of Article 3 of the Convention (including conditions and procedures of detention). Each report is for the information of the Commission of Human Rights only and should not be used for other purposes.

3. During a period not exceeding three months following the submission of each report, a dialogue will be held on the basis of the information envisaged in paragraph 2 above, by delegates of the European Commission and representatives of the Government of Turkey. The dialogue will be carried out by correspondence and, if so requested by one side, by a meeting the duration of which should not exceed one week, or by any other appropriate means agreed upon by both the delegates of the Commission and the representatives of the Government of Turkey.

4. In the course of the dialogue, the delegates of the European Commission of Human Rights, may comment on the information received. Such comments are of a confidential nature and should be made to the representatives of the Turkish Government only.

5. The dialogue being carried out under the joint responsibility of the Commission and the representatives of the Government of Turkey, a short final report on the implementation of the present arrangement shall be prepared not later than 1 February 1987, by the participants at the dialogue and be made available at the Secretariat of the Commission, to representatives of the Contracting Parties to the Convention.

B. As to derogations under Article 15 of the Convention

1. While noting with satisfaction that the Government of Turkey has progressively reduced the geographical scope of martial law, and also that the martial law administration is making use of its powers with the greatest restraint only, special regard is given to the following declaration made by the Prime Minister of Turkey on 4 April 1985 in Washington D.C.:

"I hope that we will be able to lift martial law from the remaining provinces within 18 months".

2. As a number of restrictions of personal rights and freedoms have been implemented during the emergency situation covered by Article 15 of the Convention, it was noted that a number of decrees or other legal enactments, mentioned by the applicant Governments in their applications, have been changed or amended in the meantime, taking into account the obligations assumed by Turkey under the European Convention on Human Rights. A table indicating those changes is attached hereto as Annex I. The Government of Turkey will keep the Commission informed of further changes to be enacted in the same spirit.

C. As to the issue of Amnesty

The question of amnesty is of concern to the Turkish Grand National Assembly and to the Government of Turkey. Work on amnesty has been started by the Turkish Government with a view to facilitate, within the framework of the Turkish Constitution, the granting of amnesty, pardons or similar measures of leniency. Deliberations are expected to take place in Parliament in the forthcoming months on the basis of initiatives under Article 88 of the Turkish Constitution. The Turkish Government will inform the Commission of developments on this matter.

Annex I

The legislation referred to in the applications	Changes effected
Act n° 2324 of 27.10.1980 Act n° 2485 of 29.6.1981 Act n° 2356 of 12.12.1980	They are revoked with the establishment of the Bureau of the Grand National Assembly as stipulated in the provisional article 3 of the Constitution
Decree n° 7 of the National Security Council (NSC) Decree n° 8 of the NSC Decree n° 52 of the NSC Decree n° 65 of the NSC	They have been revoked by provisional article 3 and article 177 of the Turkish Constitution which entered into force on 7 November 1982
Act n° 2533 of 16.10.1981	It has been replaced by Political Parties Act n° 2820 of 22.4.1983
Act n° 2301 of 12.9.1980 and Act n° 2515 of 3.9.1981	These two acts are in connection with the powers of the martial law commanders and are, in accordance with article 122 of the Constitution, in force in those provinces where martial law exists
Act n° 2364 of 24.12.1980	It has been replaced by Act n° 2822 of 5.5.1983 (Law on Collective Bargainings, Strikes and Lockouts)
Act n° 2485 of 29.6.1981	It has been revoked, in accordance with provisional article 3 of the Constitution, by the establishment of the Bureau of the Turkish Grand National Assembly
Act n° 2342 of 14.11.1980 Act n° 2310 of 18.10.1980	Applicable only in those provinces where martial law exists or to such cases which had been brought to the martial law courts before martial law was abolished in that particular province
Decree n° 6 of the NSC	No longer in force"

40. The Delegation of the Commission, after the Parties had presented their outline, held a discussion with them. During that discussion and in subsequent correspondence the following clarifications were made:

a. The procedure laid down by paragraph A,2 is inspired by Art. 57 of the Convention, but is not the procedure provided for by Art. 57.

b. The information in the reports under paragraph 2 will form the basis for the dialogue in paragraph A,3. This does not exclude that items not contained in the said information, but concerning the same subject matter, are raised in the dialogue.

c. The comments made by the Delegation under paragraph A,4 will be put before the plenary Commission.

d. The final report under paragraph A,5 will be prepared by the Commission and representatives of the Government of Turkey, both sides expressing such common or respective views as they consider appropriate.

41. The Commission,

Having regard to:

- Applications Nos. 9940-9944/82 introduced by Denmark, France, the Netherlands, Norway and Sweden on 1 July 1982, alleging breaches of the Convention;

- the decision of the Commission dated 6 December 1983 declaring the applications admissible;

- the determination of the Government of Turkey to secure compliance with the rights and freedoms guaranteed by the Convention;

Noting the willingness of the five applicant Governments, in the light of the developments in Turkey, including the measures taken by Turkey with a view to reestablishing an effective democracy and securing compliance with the rights and freedoms defined in the Convention, to discontinue the contentious proceedings dealing with allegations for the period 12 September 1980 to 1 July 1982;

Noting that the Government of Turkey have during the proceedings informed the Commission in particular of:

- criminal prosecutions and convictions concerning cases of torture;
- progressive lifting of martial law in the country;
- measures of leniency;

Having special regard to the fact that the terms of the present settlement provides for further progress and continued information to the Commission in relation to matters raised in this case, namely:

- conditions and procedures of detention;
- further implementation of personal rights and freedoms;
- the issue of amnesty;

Observing that the applications referred to a period of time in the past from 12 September 1980 to 1 July 1982;

Notes that the six Governments concerned have come to an agreement to settle the case;

Concludes that the settlement reached was secured on the basis of respect for Human Rights as defined in the Convention, in the sense of Article 28, pararaph b;

Declares that, on the basis of the above understanding, it is prepared to fulfil the functions set out by the settlement;

Adopts by majority the present Report, in conformity with Article 30 of the Convention, the English text being authentic.

Secretary to the Commission — Acting President of the Commission

(H.C. KRÜGER) — (G. SPERDUTI)

APPENDIX

List of Parties' representatives following admissibility

France

Mr. G. Guillaume
Mlle. A. Pèzard
Mlle. C. Chanet

Norway

Mr. E. Amlie
Mr. Ø. Riseng
Mr. J. Bech
Mr. L. Ulland
Mr. P. Wille
Mr. T. Brautaset
Mr. P. Moe
Mr. B. Bye

Netherlands

Mr. S. Bloembergen
Mr. J. Keur

Denmark

Mr. N. Boel
Mr. T. Lehmann
Mr. G. Blaehr
Mrs. N. Baruch
Mr. S. Gad

Sweden

Mr. H. Björk
Mr. H. Westerlind

Turkey

Mr. S. Bilge
Mr. H. Golsong
Mr. I. Unat
Mr. R. Turmen
Mr. Y. Türkmen
Mr. T. Firat
Mr. T. Kurttekin
Mr. S. Özsoy
Mr. H. Diriöz
Ms. A.N. Tekinöz