

GÜZELYURTLU AND OTHERS V CYPRUS AND TURKEY

- **Güzelyurtlu and others v Cyprus and Turkey**, ECtHR (Grand Chamber), app 36925/07, **29 January 2019**
- **Legalities involved**: international human rights law and public international law (Art. 41 ARSIWA).
- **Tool to deal with inter-legality**: VCLT art. 31(3)(c).

SUMMARY

The case originates from the murder of three Turkish Cypriots, committed in the Republic of Cyprus. The Cyprus authorities opened an investigation and identified eight suspects, who had all fled to the TRNC. Investigations were also opened by the TRNC authorities, who initially arrested the suspects. However, both investigations came to an impasse when the TRNC authorities refused to surrender the suspects to the Republic of Cyprus. And the latter refused to surrender the casefile to the TRNC authorities. The relatives of the victims filed a complaint before the ECtHR under Article 2 of the Convention.

Initially the ECtHR found Cyprus responsible for the lack of cooperation with the TRNC authorities during the investigation into the murder of the three victims. The Court de facto limited the extent to which States can give implementation to their obligations not to recognize illegal entities pursuant to rules of international law, including Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts and Security Council resolution 550/1984. The Court addressed the question whether the authorities of both respondent States had done all that could be reasonably expected of them in the circumstances and it concluded that Cyprus had not. Furthermore, the Court did not accept the argument made by Cyprus that steps taken to cooperate in order to further the investigation in this case would amount to recognition, implied or otherwise, of the TRNC.

The Grand Chamber reversed the Chamber's decision on Cyprus responsibility for failure to cooperate. The Court recognized that the obligations to cooperate imposed by Article 2 of the ECHR cannot provide for duties whose performance would imply Cyprus's implicit recognition of the TRNC.

“The Court notes, however, that the obligation to cooperate, which is incumbent on States under the procedural limb of Article 2, can only be an obligation of means, not one of result, in line with what the Court has established in respect of the obligation to investigate (..) In this connection, the Court is aware that Contracting States cannot cooperate with each other in a legal vacuum; specific formalised modalities of cooperation between States have developed in international criminal law”.

“Although the Court is not competent to supervise respect for international treaties or obligations other than the Convention (...) it normally verifies in this context whether the respondent State has used the possibilities available under these instruments. The Court reiterates in this respect that it must take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties and that the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (Article 31 § 3 (c) of the Vienna Convention of 23 May 1969 on the Law of Treaties)” (para 235-236).

“Therefore, the procedural obligation to cooperate under Article 2 should be interpreted in the light of international treaties or agreements applicable between the Contracting States concerned, following as far as possible a combined and harmonious application of the Convention and those instruments, which should not result in conflict or opposition between them”.

“The Court considers that, given the absence of diplomatic relations between Cyprus and Turkey, the delivery of the requests through the staff of their respective embassies in Athens can be accepted in the specific circumstances of the case as the only channel available to Cyprus. Indeed, the Turkish Government did not refer in their submissions to any alternative channel that Cyprus could have used and, at the hearing, they even conceded that the ordinary diplomatic channel was not available due to the absence of diplomatic relations between the two States” (para 244-245).

The Court, therefore, concluded that the Cypriot authorities used all the means reasonably available to them to obtain the surrender or extradition of the suspects to Turkey.