

POSITION PAPER (III)

regarding the competent educational and cultural authority responsible for Turkish Cypriot institutions

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7 October 2004

POSITION PAPER

Since the establishment of the partnership Republic of Cyprus (ROC) in 1960, issues of education, culture and religious affairs have always been within the competence of Turkish Cypriot authorities and the Greek Cypriot authorities separately. The constitution of the ROC clearly enumerated these areas within the competence of community chambers (see Art. 87). Since the inter-communal conflict in 1963 that led to the collapse of the partnership Republic, Turkish Cypriots and Greek Cypriots have been governed under separate administrations where each one has conducted the educational matters in practice, respectively, within their administrative bodies. This de facto practice has been legally acknowledged in a wider scope by Greece and United Kingdom with the conclusion of the 30 July 1974 Geneva Declaration which recognizes “the existence in practice in the Republic of Cyprus of two autonomous administrations that of Greek Cypriot Community and that of the Turkish Cypriot Community” (para. 5).

By and large this practice has continued to exist yet to be confirmed once more by the Annan Plan. In the final version of the Annan Plan which was submitted to the separate and simultaneous referenda on 24 April 2004, educational matters were

vested in the Turkish Cypriot and the Greek Cypriot Constituent States. Article 15 of the proposed constitution of the “United Cyprus Republic” provided “the constituent states shall, within the limits of this Constitution, sovereignly exercise within their territorial boundaries all competences and functions not vested by this Constitution in the federal government” and the relevant article did not enumerate educational matters within the competence of the federal government. Moreover, the same constitution recognized the right of each constituent state to appoint representatives and conclude agreements on various matters including education (Art. 18, para. 3 and 4, footnotes 16 and 18). Despite the fact that the Annan Plan did not enter into force due to the Greek Cypriot solid ‘no’ vote in their referendum, fundamental parameters of the Plan have evolved from decades long negotiations which yielded to 1977 and 1979 High Level Agreements and such draft framework agreements as the 1984 Draft Framework Agreement and 1992 Set of Ideas under the auspices of the UN Secretary General. Therefore any future overall solution would be based on the same parameters.

The basic legal document on Cyprus with regard to EU law is the Treaty of Accession signed on 16 April 2003 and particularly its Protocol 10. This Protocol has suspended the application of EU *acquis* in north Cyprus pending a comprehensive solution. But Article 3 provides that “nothing in this Protocol shall preclude measures with a view to promoting the economic development of” north Cyprus. Some argue that because of this suspension it is prohibited for the Turkish Cypriot universities to participate in the academic activities and institutions of the EU, and withdrawal of this suspension by the Council acting unanimously is required. However, it is highly questionable whether such participation would cause a partial and territorial application of the *acquis* in north Cyprus. The scope of *acquis* provisions on universities excludes such an argument and participation of our universities does not imply an extension of the *acquis* to the north Cyprus. Therefore there is no need to withdraw this suspension. In fact, as confirmed by the EU Commission, “suspension of the *acquis* shall only be lifted in the event of a solution to the Cyprus problem”.¹ In any event, under Article 3, taking certain “measures” for the promotion of economic

¹ European Commission Legal Service, **Proposal for a Council Regulation on special conditions for trade with those areas of the ROC in which the Government of the ROC does not exercise effective control**, 10 September 2004, p. 4.

development of north Cyprus is permitted and this necessitates support for the participation of our universities in such activities within the EU.

Realization of the separate and simultaneous referenda on 24 April 2004 has confirmed the existence of ‘inherent constitutive power’² of Turkish Cypriots and Greek Cypriots to establish a new state in Cyprus based on “political equality and respect for each other’s distinct identity” (Preamble, Main Articles of the Annan Plan). This legal framework confirms the fact that the Greek Cypriots do not have a right to represent the will of the Turkish Cypriots.

Following the separate simultaneous referenda, the UN Secretary General in his 28 May 2004 report to the Security Council, clearly states that “the Turkish Cypriot vote has undone any rationale for pressuring and isolating them...The members of the Council can give a strong lead to all states to cooperate both bilaterally and in international bodies, to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots and impeding their development.” When one takes into consideration the fact that the universities in north Cyprus make a tremendous contribution to the Turkish Cypriot economy, it is obvious that elimination of restrictions and impediments on this sector would play a major role in the development of Turkish Cypriots, not just economically but also socially and culturally on their way to integration with the EU.

Since the Secretary General clearly questions the readiness of the Greek Cypriots to share power and prosperity with the Turkish Cypriots in a new partnership in his May 2004 report, Turkish Cypriots have legitimate expectations and demands from the international community and particularly from the EU institutions, to find ways and instruments for the participation of Turkish Cypriot universities in the institutions and activities of their counterparts within the EU. Hence Turkish Cypriot universities should be able to participate in these activities independent from the national agency of the Greek Cypriot government, which consists solely of the Greek Cypriots and aims at realizing their national interests. This will prevent the unjust

² In the preamble of the Main Articles part, the Annan Plan provides: “*We, the Greek Cypriots and the Turkish Cypriots, exercising our inherent constitutive power, by our free and democratic, separately expressed common will adopt this Foundation Agreement.*”

subjugation of the Turkish Cypriots' will to the Greek Cypriot's and contribute greatly to their development as demanded by the UN Secretary General.

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