

Human Rights Committee

The case of two Greek soldiers detained by Turkey

A Plea for the Rule of Law and Good Neighbourliness

According to a number of reports two Greek soldiers inadvertently crossed the unmarked border with Turkey in March 2018. This part of the border runs through dense forest. At the time in question visibility was poor and there was snow on the ground. The soldiers became disoriented and were unaware they had entered Turkey.

They have been held in detention in Turkey ever since, apparently without charge. It is reported that Turkey links the case of the two Greek soldiers with that of eight Turkish soldiers who entered Greece and applied for asylum. The implication is that if Greece were to return the asylum seekers, Turkey would return the two soldiers. To adopt such an approach would, however, amount to a renunciation of the rule of law with potentially dangerous consequences. The only safe and fair approach is to apply the rule of law.

It is helpful to recall that Turkey signed and ratified the Statute of the Council of Europe on 13 April 1950, Greece having already done so on 9 August 1949. Both are then among the first members of the Council of Europe. Article 3 of the Statute provides that *“Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.”*

It is also helpful to recall that an objective of the Charter of the United Nations is for all states *“to practice tolerance and live together in peace with one another as good neighbours”*, and that the good neighbourliness principle was reaffirmed in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States, approved by the General Assembly of the United Nations on 24 October 1970. The preamble of the Declaration proclaims that *“the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations”*, and *“that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours”*.

It is against the background of mandatory application of the rule of law and the binding UN principle of good neighbourliness, that this matter falls to be resolved.

The Committee starts with the rule of law.

First, the soldiers may not, in terms of Article 5.1.(c) ECHR, be detained on remand unless there is a reasonable suspicion of their having committed an offence. The law may be expressed as follows. For there to be reasonable suspicion *“there must be facts or information which would satisfy an objective observer that the person concerned may have committed an offence”* (Erdagöz v Turkey, 22 October 1997, § 51). This means that the facts or information in question must point to an offence. If the facts are correctly stated, but do not point to illegal conduct, then the requirement of reasonable suspicion is not met (Lukanov v Bulgaria, 20 March 1997, §§ 43 & 44).

The fact that no charges have been brought suggests that the reasonable suspicion test is not met in this case.

Second, even if there were reasonable suspicion (quod non), the soldiers must be brought to trial quickly, according to the rule of special diligence protecting persons in pre-trial detention (Labita v Italy, 6 April 2000, § 153). Not to advance with urgency disregards the presumption of innocence and may amount to punishment without trial.

Third, should the soldiers be put on trial, then, for the trial to be fair in terms of Article 6 ECHR, its outcome must be determined strictly on the merits and may not be influenced or distorted in any way by extraneous and irrelevant factors such as asylum applications made by Turkish soldiers to Greece.

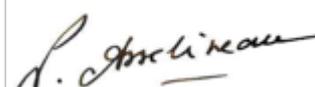
Lastly, and perhaps most importantly, to start by contemplating a trial of the two soldiers is, in the circumstances of their crossing the border, itself a breach of the principle of good neighbourliness. In this case good neighbourliness requires that the authorities start, not by trying to justify detention and putting the soldiers on trial, but by examining before all else whether or not there is any objective and sustainable ground for not returning them to Greece, at most, if courtesy is to be observed on both sides, in exchange for an apology.

The truly disturbing feature of this case is that an international incident is being created out of what seems to be nothing other than a simple error of orientation or navigation with no harm done or intended. Good relations are not cultivated in this way.

In application of the principle of good neighbourliness the soldiers should, in the respectful submission of the Committee, be returned home without further ado.

25 June 2018

Vincent Asselineau, President ECBA



Scott Crosby, Chairman, Human Rights Committee



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